

LEGAL VACUUM REGARDING LICENSING REGULATIONS FOR CONSTRUCTING FLATS IN THE REGIONS

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Abstract

Article 33 of the Law No. _ 20 of 2011 concerning Flats Flats regulates applications for permits for function and utilization plans as well as applications for permits to change function and utilization plans in the construction of flats to be further regulated by Regional Regulations. However, there are still many regions that have not yet established such regulations, so this has implications for the community, both as consumers and those affected by the construction of flats. The problems in this paper: (1) What are the implications of the existence of a legal vacuum (recht v acum) regarding the licensing arrangements for the construction of flats in the regions ? (2) What is the ideal regulatory concept regarding the existence of flats at the regional level ? This paper uses normative legal research. Research results: There is no further regulation in regional regulations in a number of regions as stipulated in Article 33 of the Condominium Law regarding applications for permits for function and utilization plans as well as applications for permits to change function and utilization plans in the construction of condominiums , resulting in a legal vacuum in the regions which has implications there is not optimal legal protection for local communities as consumers when purchasing flats and for local communities who are affected by the environmental impact due to the construction of these flats. Apart from that, it shows that the licensing mechanism in the administrative order of a region is unclear regarding the arrangement and regulation of flats . Hence the formation It is urgent that the regional regulations regarding flats be implemented to provide legal certainty to the public both as consumers and those affected by the construction of flats and to clarify the licensing mechanism for the construction of flats in the regions .

Keywords: Regional Regulations, Licensing, Flats

I. INTRODUCTION

For the Indonesian people, housing is a constitutional right and is included in every aspect and field requiring government action both in the field and must be strictly based on statutory regulations. In implementing it, it must be able to support the growth of the residence as a good living environment, thereby producing various goods and/or services that can be utilized properly. Indonesia itself has an increasingly high population density. We can see this density in everyday life, such as the current density in the capital city. Due to population density, more and more people are looking for a place to live, practically many people prefer flats. According to Article 1 Number 1 of the Condominium Law Number 20 of 2011 (hereinafter referred to as the Condominium Law) is "a multi-

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storey building built in an environment, divided into sections that are structured functionally in horizontal and vertical directions and are units that can each be owned and used separately, especially for residential areas, which are equipped with shared parts, shared objects and shared land.”

Apart from that, many Indonesian people know flats as apartments. An apartment is a residence consisting of a sitting room, bedroom, bathroom, kitchen, and so on on one floor of a large and luxurious multi-storey building, equipped with various facilities such as a swimming pool, fitness center, shop, and so on. Likewise, building flats is an alternative problem solution, because flats can save land use and are a way to rejuvenate the city for slum areas. In the law, it is not regulated in detail regarding the use of a house, but what is regulated is its function as a residence obtained by owning, renting or not renting. However, it is still often found that in the apartments themselves, many business actors are still negligent in purchasing goods and/or services, especially in apartment units which must receive legal protection by the government.

Based on Article 1 Paragraph 1 of the Consumer Protection Law Number 8 of 1999 (hereinafter referred to as UUPK) states that Consumer Protection is all efforts that guarantee certainty in providing protection to consumers. Consumer protection is needed to create a sense of security for consumers in fulfilling their daily needs. The need for consumer protection must also be impartial and fair. As a legal basis, The aim of the UUPK in this case is to make the public as consumers when using goods and/or services receive legal protection.

Consumers themselves have the right to receive the truth of all definite information, the most important thing for consumers is to know what information is related to the goods and/or services they purchase. Consumers are usually in a weak position and therefore can become targets of exploitation from business actors who socially and economically have a strong position. Manufacturers are prohibited from covering or reducing information related to their goods and/or services. The importance of accurate information regarding flats is to be able to make producers better in fulfilling consumer rights. This information includes product quality, price, safety, guarantee and product expiration.

In this regard, the relationship between consumers and business actors which continues to develop requires regulations that provide certainty regarding the responsibilities, rights and obligations of each party. It is hoped that the enactment of the UUPK will provide definite guidelines for the implementation of consumer protection in Indonesia. All parties must carry out their rights and obligations in accordance with what has been determined. However, in reality there are still many who have not fulfilled their rights and obligations and are negligent in selling goods and/or services to consumers.⁵

of the Condominium Law explains that commercial apartments can be run by anyone, each person in this article means an individual or a legal entity. When building commercial flats, the government usually involves developers or those who are familiarly known as developers. Developers in the case of building commercial flats have the authority to design flats in such a shape that the developer can later sell them to make a profit. However, in this case the developer cannot market the flats before the building has been completed, around 20% of the total buildings to be built. If the number of buildings

⁵Jeane Neltje Saly, "Consumer Protection for Unclear Information Regarding the Size of the Bogor Valley Residence Apartment Based on Law Number 8 of 1999 concerning Consumer Protection (Case Study: Decision Number 161/Pdt.G/2016/Pn.Bgr)", *Adigama Law Journal*, Volume 3 Number 2, December 2020.

has not yet been built by 20% and the developer is marketing the units of the commercial flat, then it can be said that the developer has violated Article 16 paragraph 2 of the Condominium Law which requires the developer to have built at least 20% of the total building area to be built . it was built.

In this case, the community sees how a developer can sell these units when in fact the building has not been completed. Therefore, the developer uses a letter of agreement which indicates that prospective consumers who wish to buy apartment units must fulfill their obligations so that the apartment units that prospective consumers wish to purchase cannot be resold to third parties by the developer. The agreement used by the developer is the Sale and Purchase Agreement or what is also commonly known as PPJB. This Sale and Purchase Agreement has various benefits for potential consumers and the developer itself. For consumers, this PPJB can function to prohibit developers from re-marketing the units they want to buy to third parties. On the other hand, this PPJB also functions so that prospective consumers who want to buy the apartment units in installments can pay in stages while pay in installments and wait for the flats built by the developer to be 100% built. So in the end, after the installments are paid off and the flat has been built, a Sale and Purchase Deed (AJB) can be made .

On the other hand, the function of the PPJB itself for the developer itself is none other than to bind potential consumers so that these consumers do not run away from their obligation to buy the apartment unit. The Sale and Purchase Agreement concerns the relationship with consumers directly, therefore PPJB already has regulations in the Consumer Protection Law Number 8 of 1999 Article 18 which contains a prohibition on making a PPJB. In general, the PPJB regulations themselves have been regulated in the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the preliminary house sale and purchase agreement system (PUPR Ministerial Regulation) .

In making a PPJB there are several conditions that must be fulfilled by the developer, so in the process of making it, even though the PPJB is a standard agreement , in making it the developer must not violate existing provisions. Because it is a standard agreement, in the PUPR Ministerial Regulation, a PPJB can be taken home and studied for 7 days, but in fact there are still many developers who do not heed this regulation. Not only can they not be taken home, but consumers themselves cannot request a *draft* of the PPJB before the PPJB is made before a notary for signature. The problems that occur in the PPJB itself are not limited to just that, but there is something more crucial, namely regarding the unit area stated in the PPJB. Cases that are often experienced by the public involve extensive information in the marketing of apartment units with the area stated in the PPJB making it difficult for the public themselves as consumers to understand the broad meaning of the units being marketed . Meanwhile, the Consumer Protection Law provides provisions that business actors who carry out their business in the Republic of Indonesia must provide clear information regarding the products produced by these business actors.

Not uncommon for the community itself to file civil lawsuits against the developer on the basis of non -performance because they did not provide an apartment unit with the unit size that was agreed upon by the developer himself. During the sale and purchase transaction, the developer did not explain that the units offered by the developer were semigross. However, legal efforts to sue the developer to compensate for the losses experienced by the public or people who bought apartments as consumers who were harmed did not produce profitable results, because the legal actions submitted often occurred until the appeal level still rejected the lawsuit filed by the party. consumer. It is clear that the marketing techniques used by the developer to attract the hearts of every

consumer as a buyer of apartment units have been detrimental to the consumers themselves.⁶

Given this problem, the Government, in this case the Regional Government, should provide protection to residents through regulations regarding the construction of flats in Regional Regulations (Perda). For example, in Sidoarjo Regency, which issued Regional Regulation Number 4 of 2016 concerning Flats, where there are regulations regarding flats being built in on land not in the name of the development actor, must attach a written land use and utilization agreement that has been made before a notary. The developer must obtain permission from the regent regarding plans for the function and use of the flat, and is required to seek approval from the Regional Government regarding a description showing clear boundaries of each apartment owner, shared part and shared land along with a description. Proportional Comparative Value (NPP) of flats.

With the existence of Regional Regulation Number 4 of 2016 concerning Flat Houses like in Sidoarjo Regency, it is more convincing and attractive for consumers to buy flat housing which is often called apartments safely and most importantly there are no problems with the size of each apartment. has been purchased by consumers where this often happens in other areas that do not yet have regional regulations like in above. Because often when consumers have signed a sale and purchase agreement for an apartment after the building has been completed, the size of the building does not match the contents of the agreement, this makes consumers very disappointed if they are faced with this kind of problem, so every city and district, especially cities -Large cities that are densely packed with apartment developments should make regional regulations regarding mechanisms or regulations regarding flats or apartments which are intended to minimize development actors from violating the boundaries or sizes of buildings that have previously been mutually agreed upon. Based on the description in regarding the problems in this research: First, what are the implications of the existence of a legal vacuum related to licensing arrangements for the construction of flats in the regions? Second, what is the concept of ideal regulation regarding the existence of apartment units at the regional level?

Legal Research is an analytical process that includes certain methods, systematics and thoughts that aim to study certain legal symptoms, then try solutions to problems that arise. So it's needed an appropriate research method. This method helps the process research in accordance with the formulation of the problem being studied and the objectives research to be achieved. Jacobstein and Roy Merisky interpret Legal Research as an effort to search for various things types of rules that are primary and main in a law in this case which is then applied to an event law (In other words, everyone does a search primary rule of a law then he has done it legal research).⁷ This research is normative juridical research, namely research carried out by examining library materials.⁸ *The approach* used is the method of *st atue a proach* (legislative approach), *conceptual approach* (conceptual approach), and *case approach* (case approach).⁹

⁶ Sri Bakti Yunari, "Legal Efforts to Settle Apartment Consumer Disputes Regarding the Inconsistency in the Area of Semigross Units in the Sale and Purchase Agreement", Adigama Law Journal, Volume 3 Number 1, July 2020 E-Issn: 2655-7347.

⁷ Ani Purwati, 2020, Legal Research Methods : Theory and Practice, Surabaya: CV. Jakad Media Publishing, p. 4-5.

⁸ Soerjono Soekanto and Sri Mamudji, 2003, Normative Legal Research: A Brief Overview, Jakarta, RajaGrafindo Persada, p. 13-14.

⁹ Peter Mahmud Marzuki, 2007, Legal Research, Jakarta: Kencana, p. 93.

C. DISCUSSION

Implications of the Legal Vacuum Regarding Licensing Regulations for Constructing Flats in the Regions

Houses and housing are one of the most basic human needs. According to the definition in Article 1 number (5) of Law Number 1 of 2011 concerning Housing and Settlement Areas, what is meant by settlement is part of a residential environment consisting of more than one housing unit which has infrastructure, facilities, public utilities, as well as supporting other functional activities in urban or rural areas. In Article 1 point (3) of Law Number 1 of 2011 concerning Housing and Settlement Areas, it is stated that residential areas are part of the living environment outside protected areas, whether in the form of urban or rural areas, which function as residential or environmental areas. housing and places of activity that support life and livelihood. It is not only houses or housing that humans need, but more precisely, it is a place to live, which in this case in the current era is what is called a flat. In this discussion, the focus will be more on the discussion of the flat itself.

Not much different from the concept of housing, flats must also meet standards for human health and health. This will encourage the creation of quality humans. At this time, many residents gather in a city, so this causes a fairly high population density in a city. Meanwhile, the housing provided by the government or the private sector is not enough to meet the housing needs of residents moving to the city, both in terms of quantity and quality. When a small area of land is inhabited by many people, it will result in the land becoming increasingly scarce and tending to have a higher value. The scarcity of land with this high value requires people to have different alternative solutions. Therefore, in order to be more effective in utilizing land, especially in densely populated environments/areas, it is necessary to organize the land so that the use of the land can truly be felt by many people. In connection with this, now we are starting to think about constructing a building that will be used for housing so that the building in question can then be used together with other communities, so that flats are formed.

However, every new thing must have rules to regulate it in order to create order in particular regarding the construction of flats, in this case regarding flats it is regulated in the Flats Law, which in article 1 paragraph 1 provides the meaning that flats are:

"A multi-storey building built in an environment that is divided into functionally structured sections, both in horizontal and vertical directions and are units that can each be owned and used separately, especially for residential areas equipped with sections together, common objects, and common land."

Meanwhile, the apartment unit or what is usually called (*strata title*) according to Maria S. W Sumardjono is a system that allows the division of land and buildings into units called units (*Parcels*), each of which has a separate right, but in addition Individual ownership is also known as land, objects and parts which are *common property*.¹⁰ *Strata title* gives the holder rights, including: First, exclusive money (can be used for one's own enjoyment); and Second, parts, objects, land together (must not be controlled by the holder of exclusive rights continuously) which is used and enjoyed jointly with other unit owners. Condominium is a juridical definition, meaning that it is a multi-storey building which always contains a system of individual ownership and joint rights over joint shares,

¹⁰Liliana Tedjosaputro, "Status of Flat Units (Sarusun) That Have Not Been Certified Against Buyers", *Legal Spectrum Journal*, Vol. 15 No. 2, 2018, p. 321.

joint objects and joint land, the use of which is residential or non-residential. Independently or integrated as a single building system.

As already mentioned in above that regarding flats themselves, it is regulated in the Flats Law which explains the purpose of public flats . The provisions in article 16 of the Condominium Law explain that the construction of commercial apartments can be carried out by anyone, in which case the meaning of the word each person means every individual or legal entity. As explained above, the government in building commercial flats usually involves developers or those who are familiarly known as developers. Developers, in the case of building commercial flats, have the authority to design or develop flats in such a shape that the flats they design can then be sold by the developer to reap profits from their activities in building the flats. However, according to the rules in this case, the developer cannot market the flats until around 20% of the total buildings to be built have been completed. If the number of buildings has not yet been built by 20% and the developer is marketing the units of the commercial flat then it can be said that the developer has violated Article 16 paragraph 2 of the Condominium Law which requires the developer to have built at least 20% of the total building area to be built. . If these rules are violated, the developer may be subject to administrative sanctions.

In the buying and selling stage Buying a flat is a little different with the purchase of housing conventional. If consumers buy conventional housing then the buying and selling process has just begun carried out after building the house it was completed and then a deed of transfer of land rights is issued and b building called the Deed of Sale and Purchase (AJB) which was held in front authorized PPAT. Whereas for flats this is not the case may be applied because construction of flats is very long and complex as well usually takes quite a long time. So there are often buyers buy a flat in good condition the house is not finished yet, and the certificate is not yet available So. At the usual time of payment buyers use credit with a bank, meaning the funds come from bank then the bank will grant credit after the buyer submit down payment or *down payment* to developer . Next is the developer responsible for the housing development. But cases often occur development has not been completed by the developer already got some loans from banks and debtors as buyers The apartment has signed the contract credit until next month already have to repay the loan in installments. Often when the house is finished The buyer was disappointed because the construction did not comply with the specifications offered during promotion carried out, so that buyers feel disadvantaged.¹¹ Going further is related to basic matters which are also very important to discuss, namely regarding development permits. In Article 33 of the Condominium Law stated that "further provisions regarding applications for permits for function and utilization plans as intended in Article 29 as well as applications for permits for changes to function and utilization plans as intended in Article 31 are regulated in Regional Regulations .¹²

¹¹ *Ibid* , p. 323.

¹² Article 29 Law no. 20 of 2011 concerning Flats:

- (1) Development actors must build flats and their surroundings in accordance with their function and utilization plans.
- (2) The function and utilization plan as intended in paragraph (1) must obtain permission from the regent/mayor.
- (3) Specifically for DKI Jakarta Province, the function and utilization plan as intended in paragraph (2) must obtain the Governor's permission.
- (4) The permit application as intended in paragraph (2) and paragraph (3) is submitted by the development actor by attaching the following requirements:

This means that regarding permits or processes for building flats, it is mandatory to be further regulated in the regional regulations of each region that will carry out the construction of flats. However, in this case the absence of a regional regulation regarding permits for the construction of flats becomes a legal problem due to the existence of a legal vacuum for an area as is the case in the city. Pontianak, it is known that until now there are no regulations related to regional regulations that specifically regulate licensing for the construction of flats, so that if left unchecked, problems will occur in the future. In particular, it is feared that this will have implications for the legal certainty of protecting the rights of local communities as consumers who buy flats and the impact on the environment related to the construction of flats.

Gustav Radbruch is of the opinion that legal certainty refers to ensuring that laws are fair and contain norms of goodness that really function as regulations and are adhered to, where this legal certainty is the operation of the law¹³. Regarding this certainty, Renner is of the opinion that legal certainty itself is more about the legal institution that is used as the basis for its writing, related to how far the legal order is in accordance with the social function of an institution¹⁴. Even though the Condominium Law actually regulates the licensing process, if there is no Regional Regulation that

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- a. land title certificate;
 - b. district/city plan statement letter;
 - c. site plan drawing;
 - d. architectural plan drawing containing plans, views and sections of an apartment that clearly shows vertical boundaries
 - e. and horizontal from sarusun;
 - f. structural plan drawing along with calculations;
 - g. plan drawing that shows clearly
 - h. joint shares, joint objects, and joint land; And
 - i. drawings of general utility plans and installations and their equipment.

(5) In the event that an apartment is built on leased land, the developer must attach a written agreement on the use and utilization of the land as intended in Article 21 paragraph (1).

Article 31 Law no. 20 of 2011 concerning Flats:

- (1) Changes to the plan for the function and use of an apartment as intended in Article 29 paragraph (2) must obtain permission from the regent/mayor.
- (2) Specifically for DKI Jakarta Province, changes to the planned function and utilization of flats as intended in paragraph (1) must obtain permission from the Governor.
- (3) Changes to the plan for the function and use of the flat as intended in paragraph (1) do not reduce the function of the common parts, common objects and residential function.
- (4) In the event that changes to the plan for the function and use of the flat as intended in paragraph (1) result in changes to the NPP, the explanation must be re-validated by the regent/mayor.
- (5) Specifically for DKI Jakarta Province, changes to plans for the function and use of flats as intended in paragraph (4) receive approval from the Governor.
- (6) To obtain permission for changes as intended in paragraph (1), the development actor must submit reasons and proposals for changes by attaching:
 - a. site plan drawing and its amendments;
 - b. architectural plan drawings and their alterations;
 - c. drawings of structural plans and calculations along with changes thereto;
 - d. a plan drawing that clearly shows the common parts, common objects, and common land along with any changes thereto; And
 - e. drawings of general utility plans and installations as well as equipment and changes thereto.
- (7) Applications for modification permits as intended in paragraph (4) and paragraph (5) are subject to a levy.

¹³ Bernard L. Ask. 2006. *Legal Theory of Human Orderly Strategy Across Space and Our Generations*. Yogyakarta: Genta Publishing, p. 106.

¹⁴W. Friedman. 1994. *Legal Theory and Philosophy and Contemporary Problems*. Jakarta: Raja Grafindo Persada, p. 2.

further regulates licensing then it could be said that there will be a disorganized administrative order regarding condominiums and there will be no optimal protection for the community .

To be able to guarantee certainty about people's rights in purchasing flats at the regional level, it is necessary to have written regulations, in this case the Condominium Regional Regulations, which are made and enforced first on the community. In reality, in social life, general rules are needed, where existing rules, both existing and future rules, are adapted to the conditions of society. This shows that the problems and needs of the community are involved in the consideration of making future regulations. In this case, legal certainty contains 2 (two) meanings , namely: First, general rules serve as guidelines and instructions for individuals regarding what actions are permitted and what are not permitted. Second, provide certainty to the public so that they can avoid government arbitrariness, and can know what obligations the state must carry out towards the community. All of this can be interpreted as meaning that with more regulation, justice can be created .¹⁵

When purchasing an apartment or flat, two different stages or mechanisms can be taken by the buyer before obtaining a flat unit certificate , namely:¹⁶

1. Construction of the flat housing units has not been completed. The buyer will sign what is called a PPJB, namely a Sale and Purchase Agreement between the consumer and the developer, which can be done before the construction of the flat is completed and is accompanied by the following conditions:
 - a. Certainty of space allocation;
 - b. Certainty of land rights;
 - c. Certainty of ownership status of the apartment;
 - d. Licensing for the construction of flats; And
 - e. Guarantee for the construction of the apartment from the guarantor institution.

(Article 43 of the Condominium Law)

2. Construction of the flat housing units has been completed . The buyer will sign what is called a Deed of Sale and Purchase (AJB), namely: a deed of sale and purchase between the consumer and the developer, which can be done after it is issued:
 - a. Functional Eligibility Certificate
 - b. SHM s a su su su n house owner or SKBG apartment unit .

(Article 44 of the Condominium Law)

There will be 4 (four) interested parties involved in the process of purchasing an apartment unit through a credit process, namely the bank, developer, buyer and PPAT, at that time the document will be signed :

- a. Sale and Purchase Deed, which explains the purchase of the flat by the buyer. This deed is made by PPAT and signed by the seller and buyer in the presence of the bank and PPAT, and usually the PPAT has been determined by the bank. This sale and purchase deed is the basis for transferring ownership of the apartment. The deed that has been signed will be registered with the BPN along with a certificate of Ownership Rights for the Flat Unit (SHM-SRS) and then on that basis, the BPN will cross out the name of the developer as owner on the SHM-SRS and

¹⁵Peter Mahmud Marzuki. 2008. Introduction to Legal Science. Jakarta: Kencana, p. 137.

¹⁶Liliana Tedjosaputro, "Status ...op.cit , p. 325-327.

write the name of the buyer as the new owner. This process is called the name change process.

- b. Deed of Encumbrance of Mortgage Rights (APHT) which states that the buyer authorizes the Bank to place collateral for the Certificate of Ownership of the Flat Unit (SHM-SRS)/SKBG of the Flat Unit and the Certificate of Functional Worthiness which has been reversed to the name of the buyer, in the certificate the name and date of birth of the buyer will be listed as the owner of the SHM-SRS/SKGB apartment unit and the Functional Eligibility Certificate as well as the name of the bank as the buyer's creditor;
- c. After all the processes have been carried out, the certificate is not handed over to the buyer but is kept by the bank (as collateral) but the buyer can have a photocopy of it; and If the buyer has paid off all credit, the bank will issue a debt write-off letter (Roya), stating that the creditor has paid off the loan, therefore asking BPN to write off the collateral;
- d. The bank will provide all documents that are first signed to the buyer (sale and purchase deed, certificate, etc.) which then become the full property of the buyer;
- e. The buyer's task is to come to BPN with the certificate, letter of intent, sale and purchase deed and other personal documents to request that BPN write off the guarantee (this can also require the services of a notary to do this). The process takes around 2-3 working days.

Concept of Regulation of Implementation and Licensing of Flat Units in the Region

The increasing problem of flats in Indonesia is caused by high investment in flats which is not accompanied by legal knowledge regarding flats among the wider community. Regulations regarding flats have quite fundamental differences from the construction of residential houses on land on individual (private) property rights. Housing is a basic human need where there is limited land, the construction of multi-storey houses or what we know as flats is an alternative solution to the problem of housing and settlement needs, especially in urban areas where the population continues to increase, because the construction of flats can reduce the use of land, makes city spaces more spacious and can be used as a way of urban rejuvenation for slum areas.

For decades, the Netherlands has had its laws referred to by Indonesian law, as well as in the regulation of flats by referring to *the Tiende Title a Bugerlijke Wetboek* in the section called *Appartemensrechten*. Against the increasing need for housing in Indonesia in 1970 the Minister of Home Affairs was tasked with regulating land issues. Therefore, several laws and regulations have been issued which open up the possibility for someone to own a plot of land together with other people with special designation of parts of the building that are owned individually by the certificate holder. These regulations include:

- 1) Minister of Home Affairs Regulation Number 14 of 1975 concerning Registration of Rights to Jointly Owned Land and Ownership of Building Parts Thereon and Issuance of Certificates;
- 2) Minister of Home Affairs Regulation Number 4 of 1977 concerning Implementation of Land Registration Administration Concerning Rights to Jointly Owned Land and Ownership of Parts of Buildings Thereon;
- 3) Minister of Home Affairs Regulation Number 10 of 1983 concerning Procedures for Applications and Granting Permits for Issuing Certificates of Rights to Jointly Owned Land Accompanied by Separate Ownership of Parts of Multi-Storey Buildings;

Meanwhile, the current requirements and implementation of flat construction refer to Articles 23, 24 jo. Article 33 of the Condominium Law states that:

Article 23:

- 1) The construction of flats is carried out through technical planning, implementation and technical supervision.
- 2) Technical planning, implementation and technical supervision as intended in paragraph (1) are carried out in accordance with the provisions of statutory regulations.

Article 24 states that the requirements for building an apartment include:

- a. Administrative Requirements;
- b. Technical Requirements;
- c. Ecological Requirements.

Meanwhile, Article 33 states that "further provisions regarding applications for permits for function and utilization plans as intended in Article 29 as well as applications for permits for changes to function and utilization plans as intended in Article 31 are regulated in Regional Regulations." In this regard, the only region that is responsive to the provisions of Article 33 of the Condominium Law is Sidoarjo Regency which issued Sidoarjo Regency Regional Regulation Number 4 of 2016 concerning Condominiums.

Furthermore, to make it easier to understand p Flats require an approach using the *3 in 1 in the Land Acquisition concept*. The *3 in 1 in the Land Acquisition* concept is the activity of providing flats from start to finish or from upstream to downstream which ultimately leads to three points, namely the *starting point*, namely the licensing aspect, the *decision point*, namely the control aspect and the *product point*, namely the certification aspect. In this case the author takes the perspective of Sidoarjo Regional Regulation Number 4 of 2016 concerning Flats.

1) *Starting Point*

The first stage is identifying aspects of the permit. aspects of the permit are divided into three requirement, namely administrative requirements, technical requirements and ecological requirements (Article 11 paragraph (1)). The administrative requirements and ministries are set out in Article 11 paragraph (2), which includes: status of land rights and Building Construction Permit (IMB). It is also stated in article 17 paragraph (2) letter d along with the explanation, that permits for the construction of flats are indicated through IMB. *P e r s e r s i c a t i o n s t e k n i s* are set in *P a s a l 1 1* paragraph (3) that is includes: (1) building layout which includes requirements for location designation as well as building intensity and architecture, and (2) building reliability which includes requirements for safety, health, comfort and convenience.

Ecological requirements are set out in Article 11 paragraph (4) that is includes harmony of local culture and balance of environmental functions and is equipped with environmental management documents. In explanation Article 11 paragraph (4), what is meant by environmental management documents are documents required for those responsible for businesses and/or activities that have an impact on the environment in the licensing process. The document can be in the form of AMDAL or UKL-UPL. Apart from administrative requirements, technical requirements and ecological requirements, the construction of flats must obtain the Regent's permission regarding plans for the function and use of the flats (Article 12 paragraphs (1) and (2)). The permit application is submitted by the construction actor by attaching the following requirements:

- a. Land title certificate;
- b. Regency plan statement letter;
- c. Site plan drawing;

- d. Architectural plan drawing containing plans, views and sections of the flat which clearly shows the vertical and horizontal boundaries of the flat;
- e. Structural plan drawing along with calculations;
- f. A plan drawing that clearly shows the common parts, common objects and common land; And
- g. Drawings of general utility plans and installations and their equipment.

In the event that the apartment is built on land not in the name of the developer, a written land use and utilization agreement must be attached before a Notary. After obtaining the Regent's permission regarding the plan for the function and use of the flat, the developer is obliged to request approval from the Regional Government regarding a description showing clear boundaries of each unit of the flat, common parts, joint objects and common land along with a description of the NPP (Article 13 paragraph (1).

2) Decision Point

The second stage is identifying aspects of land control. The status of the land on which flats can be built must be ascertained. Article 9 paragraphs (1) and (2) confirms that flats can be built on land:

- a. right of ownership;
- b. building use rights or use rights over state land;
- c. building use rights or use rights above management rights ;
- d. Apart from being built on land, public flats and/or special flats can be built using state/regional property in the form of land; or utilization of waqf land .

3) Product Point

This final stage is the certification aspect. Article 19 paragraph (2) confirms that the construction of an apartment is declared complete if : (1) Certificate of Functional Appropriateness has been issued, and (2) SHM of the apartment or SKBG of the apartment. Functional Eligibility Certificate: Construction actors are required to submit an application for a functionally appropriate certificate to the Regent through the Head of the SKPD in charge after completing all or part of the construction of an apartment as long as it does not conflict with the IMB. The regional government issues a certificate of functional fitness after carrying out an inspection of the functional fitness of the apartment building in accordance with the provisions of statutory regulations (Article 15 paragraphs (1) and (2)).

Certificate of Ownership Rights (SHM) for the owner of the apartment building is proof of ownership of the owner of the apartment building on land with ownership rights, building use rights, or use rights on state land, building use rights or use rights on land with management rights issued by SHM to the landlord . SHM s a host su su n is issued to every person who meets the requirements as a holder of land rights. The SHM and host of the house is an inseparable unit consisting of: (Article 22 paragraphs (1) to (3)) .

- a. Copy of land book and measurement letter for joint land rights in accordance with statutory provisions;
- b. a floor plan at the level of the apartment in question showing the owner of the apartment which are owned; And
- c. Explanation regarding the size of the share of rights to joint shares, joint objects and joint land for those concerned.

SHM apartment units as intended in paragraph (1) is issued by the office district land. (Article 22 paragraph (4)). Sarusun Building Ownership Certificate (SKBG) is a proof of ownership of the sarusun over state/regional property in the form of land or waqf land by way of lease, a sarusun SKBG is issued. The SKBG sarusun is an inseparable unit consisting of:

- a. Copy of building construction book;
- b. Copy of land rental agreement;
- c. Floor plan drawing at the level of the apartment in question showing the apartment owned; And
- d. Explanation regarding the size of the share of rights to the joint shares and joint objects in question.

SKBG for homeowners is issued by the district technical agency in charge and responsible for building construction. In buying and selling activities for apartment units, the sizes offered to consumers are known, including square meters and *semigross*. Sizes with the term *semigross* are not found in Indonesian legislation. This is known in the marketing practice of flats/apartments which uses the unit area in *semigross criteria* (gross area) instead of the net area.

In the Indonesian property dictionary ¹⁷written by Kallo and Erwin, it is stated that there are 2 (two) types of area, namely: (1) Net marketing area and (2) *Semigross area*. The net marketing area is the area of the agreement object which is calculated from the walls within the agreement object, including all columns contained within the agreed unit. Meanwhile, the *semigross* area is the area of the object of the agreement which consists of the calculation of the net marketing area plus the area of the common parts in each unit depending on each floor where the unit is located, such as (elevator, corridor, pantry, service room, main lobby and roof).

The use of "*Semigross*" is because in apartment units there are many reductions for shared spaces/common parts and in other technical matters such as:

- a. Construction structures include:
 1. Pile Foundation;
 2. Columns of Reinforced Concrete;
 3. Floor blocks and slabs;
 4. Emergency stairs and Stairs in Public Areas;
 5. Structural walls made of Reinforced Concrete
 6. The space between the ceiling and the floor plate above it;
 7. Ceiling outside the Sarusun area;
 8. Roof Floor Duck;
 9. Roof Gutter;
 10. Roof truss;
 11. Roof covering, whether in the form of concrete plates, roof tiles, metal deck.
- b. Condominium Utility Network, Including All Equipment that Forms One Unit of the Relevant System, Consisting of:
 1. Electrical grid system;
 2. Clean Water Distribution network system;
 3. Dirty water, rainwater and septic tank (DSDP) drainage network system;
 4. The fire prevention network system includes: fire alarm network and equipment such as *Sprinkler Head, Box Hydrant, Fire Extinguisher, head detector, alarm detector, alarm indicator lamp and smoke detector* ;
 5. Air conditioning/air conditioning network system;
 6. Sound network system;
 7. Lighting system;
 8. Telephone network system;

¹⁷Erwin Kallo, 2016, Indonesian Property Dictionary, Jakarta: Elex Media Komputindo.

9. Building monitoring network system (Building monitoring System);
 10. Vertical Transportation System (Lift);
 11. Generators and emergency power equipment;
 12. Waste processing system;
 13. Lightning rod.
- c. Flat Facilities
1. Apartment Landscaping Elements;
 2. Play ground;
 3. Lobby;
 4. Hallway/corridor area in the flat;
 5. Lounges;
 6. Public area toilets
 7. Rooms for flat utility systems (elevator room, elevator machine room, generator room, control room, fuel room, panel room, electricity, waste storage room, pump room, floor station, janitor room)
 8. Shafts in flats,
 9. Water storage tank;
 10. Fuel storage tanks (diesel) for generator engines;
 11. Roads around buildings;
 12. Socket outside the flat area.

What often happens in the marketing of flats is that the semigross size is not the net size, so the size offered to consumers is often different from the certificate that has been given and has been measured by BPN. Referring to Article 124 of the Government of the Republic of Indonesia Regulation Number 13 of 2021 Concerning the Implementation of Flats , it states that:

- 1) Facilitation in the land certification process as intended in Article 122 paragraph (2) letter b takes the form of:
 - a. measurement and mapping;
 - b. Joint Land registration; And
 - c. Joint Land certification.
- 2) Measurements and mapping are carried out by government agencies that carry out government affairs in the land sector with funding sources from the State Revenue and Expenditure Budget.
- 3) Joint Land Registration is carried out by the Regional Government based on an approved Report.
- 4) Joint Land Certification is issued by the administering government agency.

In Article 7 of the Regulation of the Head of the National Land Agency Number 2 of 1989 concerning the Form and Procedure for Filling Out and Registration of Deeds of Separation of Flats, it is stated that:

1. For ownership rights to apartment units that have been recorded, a certificate can be issued.
2. The certificate as intended in paragraph (1) of this article is made by:
 - a. Make a copy of the relevant land book;
 - b. Make a copy of the measurement letter for joint land, and
 - c. Make a plan drawing of the apartment unit in question.
3. A copy of the Land Book, a copy of the Measurement Letter and the Plan Drawing after being bound together in a document cover, is called a certificate.
4. The certificate in paragraph (3) of this article is proof of the rights referred to in Article 9 paragraph (1) of Law Number 16 of 1985.

Meanwhile, in general, registration activities must refer to Article 14 PP 24 of 1997 which states that the collection and processing of physical data is carried out by measurement and mapping.

1. For the purposes of collecting and processing physical data measurement and mapping activities were carried out.
2. Measurement and mapping activities as referred to in paragraph (1) includes:
 - a. Creation of registration base maps;
 - b. Determination of boundaries of land parcels;
 - c. Measuring and mapping land parcels and making registration maps;
 - d. Preparation of land register;
 - e. Making measurement letters.

Formally, juridically, *project selling* is possible as long as it meets the requirements set out in the Condominium Law. According to Article 42 paragraph (2) of this Law, marketing of flats is possible before the construction of the flat is carried out as long as the developer has at least certainty about the land use; certainty of land rights; certainty of ownership status of the apartment; condominium construction permits; and the existence of a guarantee for the construction of the apartment from a guarantee institution.

The conditions that must be fulfilled in the pre-project selling concept *are* contained *in* article 42 (2) of the Condominium Law regarding marketing requirements before construction which must meet 5 provisions, namely certainty allocation of space, certainty of rights on land, certainty of use House condominiums, permits for the construction of condominiums, and guarantees from guarantor institutions. These five conditions are cumulative, meaning that all five must be fulfilled for *developers* wishing to carry out *pre-project selling*. The main basis for determining the rights and obligations of the parties lies in freedom of contract, while the mechanism for determining the rights and obligations of the parties is outlined in the form of a Sales and Purchase Agreement (PPJB).

D. CONCLUSION

The absence of further regulations in regional regulations in a number of regions as stipulated in Article 33 of the Condominium Law regarding applications for permits for function and utilization plans as well as applications for permits to change function and utilization plans for the construction of condominiums has resulted in a legal vacuum in the regions. This could have implications for the lack of optimal legal protection for local communities as consumers when purchasing flats and for surrounding communities who could be affected by the environmental impact of the construction of these flats. Apart from that, this also shows that the licensing mechanism in the administrative order of a region is unclear regarding the arrangement and management of flats. Hence the formation It can be said that this regional regulation regarding flats is very urgent to be implemented immediately in the regions to provide legal certainty to the public both as consumers and those affected by the construction of flats and to clarify the licensing mechanism for the construction of flats in the regions.

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