

Economic Analysis of Law: Study the Law Purpose in Term of Transition Period Regulation of Rusun Management

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ABSTRACT

Regulation of maximum term of transition period is 1 (one) year, and cannot be extended is an important aspect for the transition process of the Rusun Management from the Developers to PPPSRS. Practically, the Rusun Management by Developers run over the term of transition period. Based on these, the authors will study 3(three) principle purpose of the law (rule of law, justice and benefit) regulation in term of transition period, by using *The Economic Analysis of Law approach* and normative law research methods. Based on the analysis, it was concluded that during the term of transition period, the amount of costs that must be spent by the Developers during the 1 (one) year term of transition period to manage the Rusun, is greater than the results obtained, causing the Developers to incur losses. This reflects that the term of transition period regulation does not provide justice and benefits for the Developers, as contained in the concept of utility and benefit principle, so that it is not a rational choice for the Developers to manage the Rusun for 1 (one) year in the term of transition period. With no sanctions for Developers who manage the Rusun over the term of transition period, this is contrary to the concept of efficiency and the principle of Legal Certainty.

Keywords: *Rusun, Sarusun, Developers, PPPSRS, transition period, Rusun management*

1. INTRODUCTION

The implications of the implementation of Law No. 20 of 2011 for the Rusun Manager as a Legal Entity in the Transition Period, due to the absence of implementing regulations regarding the transition period, and the absence of sanctions for Developers who have run over the maximum period of 1 (one) year of the transition period as regulated in Article 59 paragraph (2) of Law No. 20 of 2011. So that it can be said, the article on this transition period is a "Tiger Toothless" Article, which can only roar loudly, but does not have the legal force to force Developers to revering the Rusun management to PPPSRS. This regulation is clearly prejudice to the owners and / or residents of Sarusun.

As if answering the problems, on December 5th, 2018, applicable Pergub DKI No. 132 of 2018 about Management Guidance of Owned Rusun that applies in the Special Capital Region of Jakarta. The regulation also regulates the management of the transition period by the Developers. However, same as the regulation in Law No. 20 of 2011, in the Pergub, regarding the transitional period and has no sanctions for Developers that run over the transitional period.

The regulation of the transitional period is an important aspect for the transition process of the Rusun management from the Developers to PPPSRS, this arrangement is

generally a regulation, which aims to provide legal certainty, justice and benefit (3 aspects of Legal Purposes). Article 6 paragraph (2), regulates the period of management by the Developers is maksimum 1 (one) year term of transition period, and cannot be extended. However, in practice, the Developers who manage the Rusun in the transitional period have run over 1 (one) year transitional period. Based on the problems, the author will analyze how the position of 3 (three) principles of legal purposes (legal certainty, justice and benefit) in the regulation of the transition period in Article 6 paragraph (2).

In analyzing the problems, the authors use *economic analysis of law*, to describe legal issues using economic values, by relating them to 3 (three) principles of legal purposes (legal certainty, justice and benefit). The research uses the normative research method, also called doctrinal law research, where the law is conceptualized as what is written in the legislation or the law is conceptualized as the norm which is a code of conduct human beings deemed appropriate.[1] This research was conducted with the intention to provide legal arguments as a basis for determining whether an event was right or wrong and how it should be according to law.[2]

Furthermore, before analyzing how the position of 3 (three) principles of legal purposes (legal certainty, justice and benefit) in regulating the transition period in Article 6 paragraph (2), first the author will discuss about the 3 (three) principles of legal purposes, *economic analysis of law*, and aspects of managing Rusun in a transition period.

2. LEGAL PURPOSES AND ECONOMIC ANALYSIS OF LAW

The purpose of law is peace, justice, wealth (benefit), legal certainty and so on. All of this shows that the law is a symptom of society.[3] In this paper, the author will explain 3 (three) principles of legal purposes:

a. *Legal Certainty*

Indonesia uses the Continental European legal system. This legal system is based on positive law that adheres to the principle of legality. There are no prosecutions for crimes or violations committed prior to the regulation that governs them. This aims to provide legal certainty.

b. *Justice*

Justice is a virtue related to human relations. The word "fair" has more than one meaning. Fair can mean according to the law, and what is comparable, that is, what should be. Here it is shown, that a person is said to act unfairly if that person takes more than the proper portion.[4] Sony Keraf argues about the structure of justice, that a fair system or structure is political openness from the government to be processed according to the existing justice rules.[5] Weak regulation has a negative effect on justice, especially on society. The implications are blurred to the loss of public confidence in the government.

c. *Benefit*

Adherents of the sect of utilitarianism introducing a third legal purpose, in addition to justice and legal certainty. He continued, the purpose of the law is for the benefit of all people.[6] The public holds full hope for the creation of legal aspects aimed at expediency. He said that good law is when the application of legal norms gives good benefits to the community and creates prosperity for other communities.

In conducting legal analysis aimed at regulating human behavior, can be used *Economic Analysis of Law* which is a legal analysis built using the basic economic concepts approach, as well as promoting legal analysis with economic reasons and considerations, this approach is closely related to justice in law.

Starting from the foundation of *utilitarianism*, which emphasizes the principle of expediency as a doctrine of legal science. According to this principle, a law can only be recognized as a law if it can provide maximum benefit to the most people.

According to Posner, *Economic Analysis of Law* can be used as an approach to address legal problems by expressing different definitions and assumptions different laws to get an overview of satisfaction and an increase in happiness. To do this, the law is used as *economic tools* to achieve *maximization of happiness*. [7]

The approach and the use of *Economic Analysis of Law* to be drafted by economic considerations without losing the

element of fairness, so that justice can be *economic standard* that is based on three basic elements, known as *the economic conception of justice*, which consists of the value, utility, and efficiency based on human (*rational choice*). [8] The following will describe the elements of *the economic conception of justice*:

- a. The concept of rational choice, humans are rational creatures, who are given / have choices that are felt or believed to provide the best results for increasing prosperity. As a rational being, the choice is chosen based on the profit and loss, advantages, disadvantages, abilities, limitations, in accordance with the level of rationality, by comparing the costs to be incurred and the results obtained.
- b. The concept of value, as an economic value can be seen from the human desire for something, by knowing the extent to which the individual is willing to get it, both with money, actions, and other contributions that can be made. Humans in determining a value which in the end always aimed at the relevance of the increase in wealth (*wealth maximization*). While the increase (*maximization*) is defined as choosing the best alternative that is limited.
- c. The concept of Efficiency which is a legal provision is said to be effective if it has value (that is, its application can be upheld), and efficient (its application for the welfare of many people). Efficient can be interpreted if the rule of law can reduce obstacles in *private bargaining* (the rule of law is able to make a smooth interaction and transactions, in terms called *bargaining*).
- d. The Concept of *Utility*. According to Coler and Ulen, utility is the benefit obtained because decision making in choosing options with alternative uses The use of the concept of utility means the usefulness or benefits of economic goods that can provide / produce benefits that lead to prosperity.

The economic conception of justice becomes a reference to assess the extent of the impact of the application of a legal provision / legislation to the wider community. Posner argues that, people will obey the provisions of the law if they expect to get more benefits than breaking them, and vice versa.

3. RUSUN MANAGEMENT

a) *Management of Rusun in the Transition Period*

Definition of Rusun according to Imam Koeswahyono, is a building ownership consisting of parts, each of which is a single unit that can be used and occupied separately and individually owned along with other parts of the building and land which is the location of the building, because of

its function is used together, is jointly owned by the owner of the individually owned part.[9]

Rusun management is regulated in Article 4 paragraph (1), which covers operational, maintenance, and care activities for shared parts, shared objects, and shared land. The purpose of "maintenance" is the activity of maintaining the reliability of buildings and their infrastructure and facilities so that they are always worthy of function. Whereas the purpose of "maintenance" is the activity of repairing and / or replacing parts of the building, components, building materials, and / or infrastructure and facilities so that the building can remain functional.

The transition period is a period when Sarusun has not been completely sold, and the handover of Sarusun has been sold for the first time to the owner, Article 6 paragraph (2). While Sarusun owners who have an obligation to make PPPSRS not yet formed, so Developers has an obligation to manage the Rusun during the transition period, Article 6 paragraph (1).

b) Term of Transition Period

The transition period begins when the handover of Sarusun has been sold for the first time to the Owner, Article 6 paragraph (2), and PPPSRS has not been formed, Article 6 paragraph (3). The beginning of the transition period is not related to the entire Sarusun, Article 6 paragraph (3) has not yet been sold. If the above conditions are fulfilled, then the Developers who builds the Rusun has an obligation to manage the Rusun during the transition period, Article 6 paragraph (1).

The term of transition period is maksimum 1 (one) year since the first submission of Sarusun to the owner, and cannot be extended, article 6 paragraph (2). The purpose of regulating this transition period is to regulate the management of Rusun that have not been completely sold for a period of 1 (one) year after the handover of Sarusun is conducted for the first time to the owner. In addition, this transition period is intended to provide a transition period from Developers to PPPSRS. Regardless of the number of Sarusun that has been occupied, the management of the Rusun must continue to be carried out, so that at this time, the Developers has the position as the owner of the unsold Sarusun. This aims to protect buyers even though Sarusun has not yet been sold.

c) Contribution for Management Costs in Transition Period

Developers as Provisional Managers during the transition period, are entitled to receive management costs, the amount of which is based on the real costs including operational costs and maintenance costs, Article 9 paragraf (2) The amount of costs for the Management of the Rusun, is determined by the Developers as the Manager of the Rusun, by paying attention to aspects of transparency and justice, Article 11 paragraph (4). The calculation of the amount of environmental management fees is calculated

based on the NPP of the Rusun multiplied by the total cost of management for a year divided by 12 (twelve) months, Article 11 paragraph (3).

If, the transition period for the management of the Ruaun starts when the Sarusun has not been completely sold, the Developers has the status as the owner of the unsold Sarusun, Article 7 paragraph (2). Costs for Rusun managing in the transition period are borne by the Developers and the owner of Sarusun based on the NPP of Sarusun, Article 11 paragraph (1). The Developers also has the obligation to pay environmental management fees in accordance with the NPP Sarusun he has, Article 9 paragraph (1) letter g.

The transition period starts from the handover to the Sarusun Owner for the first time, and during this transition period, the Developers is obliged to manage the Rusun. Where the Developers is the owner of Sarusun which has not yet been sold. So that the Development Actor also has an obligation to pay environmental management fees in accordance with the NPP Sarusun he has.

d) Simulation

If only a small portion of Sarusun has been sold and has been handed over, the Developers is obliged to pay environmental management fees for the majority of Sarusun that have not been sold in accordance with the number of Sarusun NPPs they have. In this situation, the Developers suffers losses in terms of financing the management of the Rusun during the 1 (one) year transition period.

Conversely, if a large portion of Sarusun has been sold and has been handed over, the Developers is obliged to pay environmental management fees from a small portion of Sarusun that has not yet been sold, in accordance with the number of Sarusun NPP it has. In this situation, the Developers could benefit, or at least not experience a large loss in terms of financing the management of the Rusun during the 1 (one) year transition period.

Based on the two simulations above, it becomes a difficult choice for the Developers in carrying out the obligation to manage the Rusun for a 1 (one) year transition period, if only a small portion of Sarusun has been sold and Sarusun has been handed over to the owner, because it will suffer losses.

e) Sanctions

Although there is a prohibition on extending the transition period, but because there is no stipulation of sanctions for Developers that run over the transition period of no longer than 1 (one) year, it allows Developers to ignore this prohibition. This creates legal uncertainty for Sarusun owners.

4. ANALYSIS

a. Rational Choice

The concept of rational choice, which basically every person is given / has a choice that is chosen based on profit-loss, advantages-disadvantages, abilities-limitations, which are in accordance with the level of rationality, by comparing the costs must be excluded and the results obtained, which are felt or believed to give the best results for increasing prosperity. The concept of rational choice in this analysis will look at the profit and loss aspects of the costs of managing the Rusun during the transition period.

Based on the description of management fees during the transition period, as well as the above simulation, it can be concluded that during the transition period, if the number of Sarusun that has been sold and handed over is small, the Developers will bear the management fee for the majority of the Sarusun that has not yet been sold. When comparing the costs that must be incurred by the Developers to manage the Rusun in the transition period, then the costs incurred are certainly greater than the results obtained. This causes the Developers will suffer losses as long as the number of Sarusun sold is small. So it is not a rational choice for the Developers to manage the Rusun for a period of transition.

The concept of rational choice is related to the principle of fairness in the purpose of the law, how the regulation of the transition period can provide a fair value for the Developers and Sarusun Owners. As well as how the regulations regarding the period of transition period that should or should be fair for Developers and Sarusun Owners. Thus, the obligation to manage the Rusun by the Developers during the transition period becomes a rational choice for the Developers.

b. Value

The concept of value of the management of the Rusun is to regulate the Rusun management that are owned in order to be effective, efficient, and provide legal protection to owners, occupants and the general public in making the Rusun as a place to healthy live, comfortable, safe and harmonious. So it needs to be measured the extent to which the Developers, owner and / or occupant is willing to spend money, actions, or other contributions, to get a healthy, comfortable, safe and harmonious residence.

As explained above, the Developers and Sarusun Owners both have the obligation to pay the costs of managing the Rusun in the transition period, based on their Sarusun NPP.

Associated with Legal purposes, the Value concept is very closely linked to the principles of justice and the principle of benefit. In the cost of managing the Rusun during the transition period, it has become an obligation for the Owners and Performers of Development as Sarusun Owners to sell.

However, it becomes unfair when, the Developer only manages with a period of 1 (one) year during the transition period, where only a small portion of Sarusun has been sold, and Sarusun has been handed over to the Owner. In this situation, the Developer will certainly feel the injustice contained in the regulation of the transition period.

c. Efficiency

Regulation term of the transition period will be effective if it has value (that is, its application can be enforced), and efficient (enactment for the welfare of many people), and whether the regulation can reduce the obstacles in *private bargaining* (legal regulations) it is able to make smooth interactions and transactions)

The concept of efficiency based on the effective elements above, has a close relationship with the principle of Legal Certainty. Indonesia as a country adhering to the Continental European legal system, which is based on positive law that adheres to the principle of legality, will not take action against crimes or violations committed before the regulations that govern them. This aims to provide legal certainty.

Based on the above simulation, the Developer who manages the Rusun in 1 (one) year of the transition period will suffer a loss, another thing if the Developers manages the Rusun in a longer period of time, which can give the Developers an opportunity to gain profits. So that in the absence of sanction regulation for Developers that run over the period of the Rusun in the transition period, it becomes a gap for Developers to obtain benefits that are used either to reverse the value of losses they experienced during the transition period, or purely aiming for profit.

Based on the explanation above, the regulation of the transition period is not effective, because it is difficult to enforce its application, on the one hand Developers suffer losses in managing the Rusun during the transition period, on the other hand, there are no sanctions for developer which run over the transition period, so it becomes a rational choice for Developers to continue managing the Rusun over the transitional period. If this is not immediately regulated, the Actions of the Developers can be detrimental to the owner and / or residents of Sarusun.

d. Utility

During the transition period, the Developer has an obligation to manage the Rusun for 1 (one) year term transition period. However, during this time period, based on the above simulations, the Developer will suffer losses in managing the Rusun. Thus, managing Rusun is not an option that is in line with the utility concept. Because in principle, decision making in choosing choices from existing alternatives, must take into account what benefits will be obtained, whether it can provide / produce benefits that lead to welfare. This utility concept is the same as the principle of benefit on the purposes of Law, which is to obtain benefits for all people.

5. CONCLUSION

Based on the approach *economic analysis of law*, the position of the purposes of legal certainty, justice and benefit in regulating the transition period in Article 6 paragraph (2), it can be concluded that during the transition period, the Developers (as the Sarusun Owner that has not been sold) and Sarusun's owner, both have the obligation to pay the cost of managing the Rusun, based on their Sarusun NPP. This arrangement is in accordance with the concept of value which is closely related to the principle of justice and the principle of expediency.

The Developer will bear the management fee for the majority of Sarusun that has not yet been sold. So. The amount of costs that must be incurred by the Developer during the 1 (one) year transition period to manage the Rusun is greater than the results obtained. This causes the Developer to suffer losses as long as the number of Sarusun sold is small, reflecting that this regulation does not provide justice and benefit to the Developer, as contained in the concept of utility and principle of expediency, so that it is not a rational choice for the Developer to manage the Rusun for 1 (one) year transition period.

With no sanctions for Developers who manage the Rusun run over the transitional period, so it becomes a rational choice for Developers to continue to manage the Rusun run over term of the transition period. This is contrary to the concept of efficiency and the principle of Legal Certainty. However, this situation provides an opportunity for the Developer to manage the Rusun in a longer period of time, which can provide an opportunity for the Developer to gain profit, which is used to reverse the value of the loss he experienced during the transition period, or purely aims to seek profits.

6. SUGGESTIONS

Based on the conclusions, the authors submit a suggestion to do deeper research to know the actual conditions or conditions of management by the Developers in the transition period. The research is expected to provide a comprehensive and detailed picture of the amount of management costs during the transition period, calculation of the profit and loss management of the Rusun in the transition period, using the normal curve so that it can be known the balance points of the Rusun management during the transition period, and it also needs to be carefully examined regarding Developers rights to gain profits in managing the Rusun in the transition period, with due regard to and without violating the rights and interests of the Sarusun Owner.

Society has high hopes for the creation of legal aspects that can be applied fairly at all levels of society, guaranteeing legal certainty and providing benefits. To obtain this law, it is necessary to evaluate the transitional period of time based on the above research results.

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