



# Legal Aspects of Condotel Ownership for Property Investment in Indonesia

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**Abstract.** The rapid development of housing is in line with the development of tourism areas, as well as efforts to increase the usability and functionality of land as building procurement to improve the quality of life for densely populated areas with limited land. Development in Indonesia is directed at high-rise buildings or hotel condominiums (condotel). Condotel built in a tourism area supports increased investment. Condotel is a multi-storey building that is built in an environment that is divided into functionally structured parts in horizontal and vertical directions, which are called units and every each units can be owned and used separately, equipped with shared parts, objects, and land, it can also be used as a star rated hotel. What are the legal aspects of condotel ownership as investment property in Indonesia based on Act No. 20 of 2011 concerning Flats. This research uses normative law with descriptive analysis research with secondary data. Ownership of condotel in Indonesia is a mixture of flats and hotels which are subject to the regulations of the Flats Law, but it functions as hotels. Based on the non-compliance by developer to the provisions of Article 29 Paragraph 2, Article 50, and Article 74-75 Act No. 20 of 2011, the Central Government and Regional Governments seem to 'allow' this non-compliance behavior. On the basis of that reasons, for the sake of legal certainty and guarantee of legal protection for the investment climate in the condotel special property sector to enforce the rules and provide strict sanctions for parties who do not comply in accordance with what is mandated by the Flats Law. To support investment in the property sector in Indonesia, the Central Government needs to make a special policy for the construction of Non-Residential Flats (Condotel).

**Keywords:** Condotel Ownership · Property Investment

## 1 Introduction

Indonesian have a massive power to invest in the property sector, because with this investment they will get a higher value in other investment fields. One of them is investment in the property sector in the ownership of Apartments/Condominiums which are managed as Hotels and can be called Condominium Hotels. Initially the construction of the Condominium Hotel was intended as a form of Flats, but the management functioned it as a Hotel.

The growth of hotel development is increasingly intensive in 2015-2018 in Jakarta and Bali [1], both in the form of condominium hotels. The construction of the Condominium Hotel is based on the concept of flat ownership, which is regulated in Act No. 16 of 1985 in conjunction with Act No. 20 of 2011 which was created as a new concept of ownership in society. Flats are multi-storey buildings that are built in an environment that is divided into functionally structured parts, both horizontally and vertically, which are called units, and each units can be owned and used separately, especially for residential areas equipped with common property, common object, and common land [2].

Based on the search results there's nothing to provides a standard definition of Condominium Hotel, but it is a combination of Condominium and Hotel. According to the meaning of the word, Condominium comes from Latin which consists of two words, "con" which means together and "dominium" which means ownership. In its development, Condominium has the meaning as an ownership of a building consisting of parts, that are called units, each unit can be used and occupied separately, also it can be individually owned along with other parts of the building and the land on which the building stands because the function is shared, jointly owned by the owners of the individually owned parts that has been mentioned [3], while the hotel is a multi-room building that is rented out as a place to stay and dine for people who are on their way; a form of accommodation that is managed commercially, provided for everyone to obtain services, lodging, and dining [4]. Condominium Hotel is a building that is intended as a place to live/use housing but the physical building is towering and has several levels like apartments/flats [5], so that when combined, a Condominium Hotel or abbreviated as Condotel is a building consisting of parts, each of which are called a unit that can be used and inhabited separately, and is individually owned along with the building, other parts of the building and the land above where the building stands which of its shared function, is jointly owned by the owner of the individually owned part, it is rented out as a place to stay and dine for people who are on a trip, a form of commercially managed accommodation, provided for everyone to obtain services, lodging, and dining, as well as obtaining services and other facilities by making payments [6]. Based on the background that has been stated above, the author aims to describe the Legal Aspects of Condotel Ownership for Property Investment in Indonesia.

## **2 Method**

The type of research chosen is normative with descriptive research and the type of data used is secondary data. The results of the study were analyzed qualitatively by drawing conclusions using a deductive mindset.

## **3 Result and Discussion**

Indonesia has the fourth largest population in the world, a large proportion of the working age population, and the availability of abundant natural resources. Therefore, Indonesia is an attractive destination for investment [7]. Nowadays, people are interested in owning flat units according to their different needs and desires regarding the conditions and facilities of the flats they want to have, with the facilities given and provided by property

developers in the flats they build, ownership of the flats it is not only to fulfill the need for housing, but also has become a lifestyle for certain groups of people, apart from being an alternative to expanding space, because it is considered to have reached every person's ability to inhabit flats [8]. The development of investment needs in the property sector by maintaining and increasing people's purchasing power, so that the construction of flats is used as a hotel using The Principle of Flat Ownership, where the development of such growth has grown not only in big cities but in the area that has a tourism destination.

The basic concept of flats ownership technologically is a multi-storey building system where the spaces can be used individually are well known and implemented especially in big cities, while another term is building ownership which means a single owner system, where the holder of land rights is also the owner of the building. Building owner. The use of the ownership system as mentioned below is only bound in the form of a legal lease relationship, which does not provide material rights to the object of the agreement so that its use for those who are related is very limited [9]. The right of ownership of the apartment unit, or in Indonesian, Hak Milik Satuan Rumah Susun (HMSRS) is a new institution of material rights introduced through the Law on Flats. In addition to ownership of the apartment unit, the right of ownership to the apartment unit in question also includes the right of joint ownership of the so-called joint parts, joint objects, and joint land, all of which are an integral part of the apartment unit concerned [10].

The basic concept that underlies the ownership rights to the apartment unit itself is based on theories about ownership of an object. According to the law, an object or building can be owned by one person, two people or even more, which is known as joint ownership. In the basic concept of home ownership, joint ownership of an object and building consists of two forms of ownership, namely:

a) Joint Ownership

Joint ownership which is jointly owned in proportion to the other owners of the Flat.

b) Sole proprietorship

Sole proprietorship is the right of ownership of a unit of flat space in the form of a three-dimensional geometry bounded by a wall and used separately or not together. As for the walls that support the structure of the building as a joint part, this will be illustrated in the description of the apartment and the area or unit size of the apartment unit will be described in the certificate of ownership of the apartment unit [11].

The concept of ownership of flats is based on the Flats Law. Ownership of flats is the right of ownership to separate individual flat units with shared rights to shared parts, shared objects and shared land. The ownership of the apartment unit on the land with the right of ownership, the right of building or the right of use on the land with the right of management is proven with the proof of ownership of the Certificate of Ownership of the Flat Unit, or in Indonesia is Sertifikat Hak Milik Atas Satuan Rumah Susun (SHMSRS).

Ownership contained in the Condominium Hotel (Condotel) uses the concept of Flats Law no. 20 of 2011, the ownership of Condominium Hotels based on Article 46 No. 20 of 2011, the ownership rights to the condominium unit are ownership rights to the condominium unit which are separate individuals with joint rights to common parts, shared objects, and shared land. The rights to shared shares, shared objects, and

joint land are calculated based on the NPP, based on this Article 46, the shares, objects and land in the Condotel are equated with joint ownership, while the hotel room unit is considered as an apartment unit, legally Condotel ownership literally cannot be equated with flat ownership even though it is proven by a Certificate of Ownership of the Flats Unit [12] because the flat units cannot be traded and only rented so that it does not fulfill individual ownership because Condotel is managed by hotel management carried out by the Condotel management, the owner only has the right to use the hotel room unit at any time in accordance with the previous agreement, so that there is no ownership of the hotel room unit [13].

Condominium Hotel (Condotel) is a combination of the words of Condominium and Hotel, where Condominium has the meaning as a building ownership consisting of parts, that are called units, each unit can be used and inhabited separately, and individually owned with other parts of the building and the land on which the building stands which, because of its shared function, are jointly owned by the owners of the individually-owned parts mentioned above [14], while a hotel is a multi-room building that is rented out as a place to stay and dine for people who are on a journey; a form of commercially managed accommodation, Erwin Kallo said that a condotel is a rental condominium which is a variant of a leased apartment. This residence was originally a system in the United States as a privately owned luxury building such as an apartment. When the owner does not occupy the building, the condotel is rented out like a hotel [15].

The utilization contained in the concept of Condotel Hotel does not include what is regulated in Article 50 Act No. 2011, where the Flats are used as Residential and Mixed, Occupancy is a place to live or can be in other meanings of occupancy is a residence (inhabited) [16], therefore the hotel room units are not a place to live to form a family but are rented out. Condotel cannot be categorized as occupancy as regulated in Article 50, resulting in differences in the use of functions so that it does not meet administrative requirements in the construction of the condotel as a residence [17], which in Article 29 Paragraph 2 Act No. 20 of 2011 in conjunction with Article 29 Paragraph 1 of the Job Creation Law, one of the conditions for the construction of flats must have a Building Permit or Izin Mendirikan Bangunan (IMB)/Building Construction Approval or Persetujuan Bangunan Gedung (PBG), in which developers must build flats and their environment in accordance with the planned function and utilization. The first concept of Condotel development in Indonesia is based on Act No. 16 of 1985 in conjunction with Government Regulations or PP 4 of 1988 that the use of Flats including Non-residential, what is meant by non-residential is shops, the arrangement of the layout of the apartment units must be according to the standards determined and can be accounted for in harmony, enjoyment, and smooth relations outside and inside into the owners/occupants as well as visitors, so that with Article 50 Act No. 20 of 2011, Condotel is not included in the utilization of the function of Flats, so that from a legal aspect based on utilization, it has not been clearly regulated on the use of the Condotel so that it will harm the buyer as a property investment.

The ownership of flats has a special nature and is different from the ownership of houses or housing in general, because the ownership is a residential unit and a combination of all holders of property rights to the apartment building unit. With regard to individual property rights but the ownership is separate, flats are also individual and

separate parts, in this case the management is managed independently by the owner of the apartment unit concerned, but joint parts, shared objects and joint land are managed jointly by all owners of flats through the Association of Tenants and Owners of Flats or Perhimpunan Penghuni dan Pemilik Satuan Rumah Susun (P3SRS) [18]. With the use of Condotel being used to function as a hotel, it does not meet the legal elements to be a residential, so that in the Condotel it is not possible to form the P3SRS as required by the Flats Law [19]. The main purpose of the establishment of P3SRS is to take necessary legal action for the benefit of the Owner and Tenant of the flat unit and maintain the environment and facilities available in the flat, take care of the management of shared land, shared parts, shared objects and residents of the flat.

P3SRS is a legal entity that has the position, authority and responsibility in the management of joint parts, shared objects and joint land. In Article 75 paragraph 3 Act No. 20 of 2011 in conjunction with Article 2 of the Minister of Public Works and Public Housing Regulation No. 14 of 2021, states that the Association of Owners and Tenants is absolute as the manager of flats. P3SRS can appoint or form managers of flats, but in the condotel there cannot be the formation of P3SRS, because the appointment is made based on an agreement made at the time of sale and purchase, so that the owner is passive in managing, where the transfer of management is carried out to parties who have a relationship with the executor of the construction of the condotel. , so it can be said that the condotel manager violated Articles 74-75 Act No. 20 of 2011 in conjunction with the Minister of Public Works and Public Housing Regulation No. 14 of 2021.

## 4 Conclusion

Based on the discussion above, it is concluded that there are non-compliance by developers to the provisions of Article 29 Paragraph 2, Article 50 and Articles 74-75 Act No. 20 of 2011, while on the other hand, the Central Government and Regional Governments seem to 'allow' the non-compliance behavior. For this reason, for the sake of legal certainty and guarantee of legal protection for the investment climate in the growing Condotel property sector, it is recommended that the Government (Central and Regional) enforce the rules and provide strict sanctions for parties who do not obey as mandated by the Flats Law. To support investment in the property sector in Indonesia whose benefits are used for non-residential purposes, the central government needs to make a special policy for the construction of non-residential flats (condotel) as to create legal protection for the owners of the flats.

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