



Formation of an Association of Flat Owners and Tenants in Condominium Hotels

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Abstract. Condominium hotel ownership in Indonesia is currently increasing, the positive benefits made Indonesian people investing capital in the property sector. Condominium hotels have unit owners, each condominium hotel tenants is bound by various restrictions in the shared space, in which parts, objects and land are shared rights. The management of shared rights is carried out by the Association of Flat Owners and Tenants, or in Indonesian, Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) which has an important function and role in regulating and administering of the shared rights. The research question is can PPPSRS be formed in condominium hotels based on UU no. 20 of 2011. Research method is normative descriptive using secondary data, qualitative analysis, conclusion is deducted logically. Condominium hotel is a combination of the term condominium and hotel, the management is based on Regulation of Minister of Tourism of Republic of Indonesia no. 18 of 2016. Based on a mutual condominium hotel unit ownership agreement, all the management and operations carried out by the hotel operator and cannot form PPPRS as required by Article 74 of UURS, where condominium law stated are non-residential flats based on the Minister of Public Works and Public Housing Letter No. Hk.02.01.MN/984 jo Decisions of the Constitutional Court of the Republic Indonesia No. 62.PUU-XX/2022 where the Hotel Condominium does not apply UURS No. 20 of 2011, so that the management and maintenance of shared rights falls under the authority of the hotel's operator based on the condominium hotel ownership agreement.

Keywords: Condominium Hotel, PPPSRS, Condominium Law

1. Introduction

Nowadays flats can be said to be a solution to the increasing need for housing, especially in big cities where the availability of land is not matched with the need of housing and land in big cities continues to shrink. Flats can be an opportunity for people who want to have a residence in the middle of an urban area [1], which found under the terms of rumah susun (Indonesian for flats), apartments, and condominiums.[2]

According to the law, and object or building can be owned by a person, two people, or even more, which is known as shared ownership. In the basic concept of house ownership, ownership of an object and building consists of two forms of ownership:

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- a. Individual ownership is the right of ownership of an unit of flat space in the form of three-dimensional geometry that is bounded by walls and is used separately or not used together. As for the walls that support the building structure, it is a common part, this will be reflected in the description of the flat. The area or unit size of the flat will be described in the certificate of ownership of the flat.
- b. Shared ownership is the right of ownership that is owned together in proportion with the other owners of the flat.

Flats are functionally structured in a horizontal and vertical direction which are divided into units, each of has clear boundaries, size, and area. Units can be owned and inhabited separately.

In housing units, because there are many owners in one flat or apartment building, each occupant of the flat is bound by various restrictions on the use of shared space in the apartment building. Shared space is the term to refer to parts, objects, or land which later become shared rights.

Shared rights are rights that must be used and managed together, because they involve the interests and lives of many people. Management of flats includes operational activities, maintenance and upkeep of shared parts, objects, and land related must be carried out by managers who are legal entities, except for rental flats as well as special flats and state flats. This must be regulated and carried out by an Association of Flat Owners and Tenants, or in Indonesian, Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) which is formed, then given authority and responsibility.[3]

2. Problems

Based on the research background stated above, the author aims to describe the forming of PPPSRS in condominium hotel based on UU Number 20 of 2011.

3. Method

The research method is descriptive analysis, that makes it easier for the author to represent, demonstrate, or summarize data items, so it can develop patterns that meet the overall conditions of the data. This is a way of finding patterns and relationships using recent as well as historical data. Primary legal materials are legal materials obtained directly from primary sources. Researchers use:

- a. Primary legal materials that include:
 - 1) Civil Code;
 - 2) UU no. 20 of 2011 concerning Flats;
 - 3) Regulation of Minister of Tourism of Republic of Indonesia no. 18 of 2016;

- 4) PP No. 13 of 2021 concerning the Implementation of Flats;
 - 5) Regulation of the Minister of Public Works Housing No. 14 of 2021;
 - 6) Minister of Public Works and Public Housing Letter No. Hk.02.01.MN/984; and
 - 7) Decisions of the Constitutional Court of the Republic Indonesia No. 62.PUU-XX/2022.
- b. Secondary legal materials consist of books, official documents and records, research results in the form of reports, diaries, etc. In this research, books obtained from the national library and articles related to condominium law were used as references.

4. Discussion

One of the property developments in the flat sector in Indonesia is the utilization of the condominium hotel concept, which is used to encourage tourism both in big cities and tourism areas. There is no standard definition that explained the meaning of condominium hotel, even legally there is no special regulation regarding condominium hotel, but it is the word combination of condominium and hotel.

Condominium are apartments with different ownership and management systems. An apartment can be defined as a residence consisting of a sitting room, bedroom, bathroom, kitchen, and other room that existed in one floor of a large and luxurious multi-storey building and is equipped with various facilities such as a swimming pool, fitness center, retail, and others.[4] Hotel is a building specifically provided for people to be able to stay or rest, obtain services, and/or other facilities for free, including other buildings that are managed and owned by the same party, except for shops and offices.

The concept of condominium hotel or abbreviated as condotel is based on Regulation of Tourism Minister of the Republic of Indonesia Number 18 of 2016. Condominium hotel or condotel is the type of business that provides accommodation on a daily basis in the form of room units in one or more buildings managed by hotel management. Condotel is one of the ways of investing both individually and as a legal entity, therefore in essence, the legal aspects in implementing the concept of investment in condotel are not too different from the implementation of investment concept in flat.

Based on the Flats Law or in Indonesian, Undang-Undang Rumah Susun, the type of flats in Indonesia are:

- a. Public Flats are flats organized to meet housing need for low-income citizens;
- b. Special Flats are flats organized to meet special needs;
- c. State Flats are flats owned by the state and functionate as a residence of tenancy, a facility for family development as well as supporting the implementation of the officials and/or civil servants' duties; and

d. Commercial flats are flats organized for profit.

The utilization of flats is regulated in UU article 50 no. 20 of 2011 that stated as follows:

- a. Tenancy is a place to live or in another meaning of tenancy is a residence (which is inhabited); and
- b. Mixed, is a mixture of residential and non-residential use as referred in article 4 PP 13/2011. The four types of flats can be used as residential and mixed functions.

The use of flats can change from a tenancy function to a mixed function due to changes in regional spatial planning. The use of flats is not limited only as a place to live, but also as a place of business and various investment purposes. Investment is an activity carried out by legal subjects by investing a certain amount of money or buying an asset with an aim of obtaining profits in the future. A hotel is one of the type of accommodation that uses part or entirety of it for lodging services, it also provides food and beverage and other services for the general public which are managed commercially. Conventionally, hotel owners or managers will build or buy the entire building and hotel facilities to operate it as a hotel.

Kallo (2008) stated that a condotel is a rental condominium which is a variant of a rental type apartment. This residence was originally a system in the United States as a luxury building owned by individuals such as an apartment. When the owner does not maintain the building, the condotel is rented out like a hotel.[5]

Thus, condominium hotel combined the characteristic of condominium and hotel which produce a type of residential property managed with the systematic of a hotel. In condotel, investors buy condotel units that resemble hotel rooms. When the unit owner is not staying, the units that have been purchased are included in the group of units that can be rented out like a hotel room. The hotel is fully responsible for managing unit rentals. Hotels and investors can share the revenue from room rentals. Hotel room units can be traded like apartment units. The birth of property ownership is stated in the Certificate of Ownership of Flat Units or in Indonesian, Sertifikat Hak Milik Satuan Rumah Susun (SHM Sarusun). By using this concept, hotel room units can be bought and sold.

The investment concept of condominium hotel is carried out by building collective ownership of the hotel building. Currently, the investment concept of condominium hotel is one of the property investment concepts that is rapidly growing. The unit owner only need to pay in full price of the condotel unit that has been mutually agreed upon, and for all the management and operation are carried out by the hotel operator who has collaborated with condotel developer based on an agreement on the management and operation of the flat unit based on article 1233 KUH Civil Law that stated the legal relationship in the agreement can be born because of the will of the parties, as a result of the agreement reached by the parties, and a as a result of orders of laws and regulations, which consist of: [5]

- a. Sale and purchase agreement, which is an agreement between the investor and the condominium hotel developer, in the investment concept of condominium hotel;
- b. Agreement for the transfer of rental rights to manage the unit is an agreement between the developer and the hotel manager (operator). It is a cooperation agreement in the operation and management of the condominium hotel; and
- c. Agreement between the developer and the hotel manager (operator). The agreement made by the developer and the hotel manager is a cooperation agreement in the operation and management of the condominium hotel.

The concept of condotel is directed at the utilization of hotel. Condotel room units can be rented to other parties and managed by hotel management and condominium hotel management. The owners of condominium hotel do not live in it, they are only given the right to use the room unit for limited time according to the agreement.^[6] In general, the owners will get income from managing the hotel, there's some part of the profit that will be given from the condominium hotel management.

It is an obligation for flat unit owner to form PPPSRS. PPPSRS is a legal entity consisting of apartment owners or tenants. Based on the provisions, for this case, PPPSRS has the responsibility of the rights and obligations in managing the flats and managing the interests of the owners and tenants in relation to the management of shared ownership of parts, objects, land, and residency. Management of flats includes operational activities, maintenance and maintenance of shared parts, objects, and land.

In managing shared rights in a condominium based on Article 74 UURS, the condominium owner is obliged to form an Association of Flat Owners and Tenants, or in Indonesian, Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) whose members are owners or residents that have authorization by the owner of the condominium unit. Apart from that PPPSRS is given the position of a legal entity based on law. PPPSRS as stated in Article 75 paragraph (3) is obliged to take care of the interests of owners and residents relating to the management of ownership of shared parts, objects, land, and residency.

Each owner of the flat is bound by various restriction on the use of shared space in the apartment building. This shared space is a term to refer parts, objects, or land which later become shared rights. Thus, this shared space is not owned by a particular individual, but is managed by PPPSRS, an organization established to organize and manage shared spaces and the interests of owners or tenants in flats or apartments.

PPPSRS has a duty to manage the interests of owners and tenants related to the management of shared ownership of parts, objects, and land, and residency as regulated in Article 86 Paragraph (5) PP 13/2021. In the concept of condominium hotel, the owner (investor) is also required to form and become a member of the PPPSRS, however, the difference is that the management of the condotel will be fully carried out by the developer and the hotel operator who have obtained authorization from the investor. Therefore, the things that are the responsibility of PPPSRS in flats will be carried out by the developer and operator of the condominium hotel.

One of the requirements for PPPSRS management and supervisors is the owner must reside in the flats. The condominium hotel is not a residential flat, it can be noticed that none of the owners of the flats reside in the condominium hotel in accordance with the Regulation of Minister of Tourism of Republic of Indonesia no. 18 of 2016. In addition to it, the characteristic of condotel is having hotel operators that are appointed based on the management and operation agreement of the condotel flat units. In the agreement, it is clear that the operator has the position and authority to manage shared objects, parts, and land, so that the obligation to form PPPSRS is not an urgency, considering that the authority of the condotel operator and PPPSRS has the same function.

Condominium hotels are non-residential flats that are not built to be inhabited, but are used for things that are more in the nature of strata offices, hotels, or anything that aim to seek economical profit, because basically non-residential flats have never been inhabited by each owner even though the ownership of the unit is individually owned in accordance with Article 47 UU no. 20 of 2011. Non-residential flats units, whose ownership is owned individually, then functionalized as hotels, which are legally subject to regulations regarding the provision of hotel accommodation services.

Condominium hotel based on the Letter of the Minister of Public Works and Public Housing Letter No. Hk.02.01.MN/984 addressed to the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency regarding regulations on non-residential flats, states that since the enactment of UU no. 20 of 2011 concerning flats, provisions for non-residential flats are no longer regulated in the UU, this is reinforced by the Decision of the Constitutional Court of the Republic of Indonesia no. 62.PUU-XX/2022. Condotel has the same building structure and ownership as flats, but the difference lies in the function of condotel, which is as a business activity. It turns out that the existence of such characteristics is not specifically accommodated in positive law. The formation of an Association of Flat Owners and Tenants which is required in Article 74 UURS cannot be implemented in Condominium Hotels where the ownership is based on a mutual agreement and all the management and operation is carried out based on the management and operation agreement for the condominium hotel units and it will be fully carried out by the developer and the hotel operator

5. Conclusion

Condominium hotel is a combination of the terms condominium and hotel, which is managed based on the Regulation of Minister of Tourism of Republic of Indonesia no. 18 of 2016, in condominium hotel there is an investment agreement to seek profit. Ownership is born as proven by a Certificate of Ownership of Flat Units, or in Indonesian, Sertifikat Hak Milik Satuan Rumah Susun (SHM Sarusun) in accordance with UURS Article 47. Based on a mutual ownership agreement for condominium hotel units, all condominium hotel management and operations carried out by the hotel operator and cannot form PPPRS as required by UURS Article 74, in which legal condominiums are non-residential flats based on Letter of the Minister of Public

Works and Public Housing Letter No. Hk.02.01.MN/984 in conjunction with Decision of the Constitutional Court of the Republic of Indonesia no. 62.PUU-XX/2022. Therefore UURS No. 20 of 2011 cannot be applied to condominium hotels, the management and administration of shared rights falls under the authority of the hotel operator based on the ownership agreement of condominium hotel. The ownership of the condominium hotel units is based on the management and operation agreement of the individual units condominium hotel and it will be fully implemented by the developer and hotel operator who have received authorization from the previous investor.

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