

A COMPARISON OF INDONESIA AND FOREIGN FLATS LAWS

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ABSTRACT

There was a gap between Law Number 20 of 2011 and its implementation in the field. The aim of this study is to make legal comparisons of various countries with regard to its implementation and what recommendations can be applied to the condition of Indonesian Flats. The analytical method used is comparative study that is general and in-depth research or facts and traits studied based on specific research. The results of the analysis indicate that there are several numbers of similarities and differences in the legal arrangement of flats in Indonesia, Singapore and USA. In general, the similarity is that the construction of flats is prioritized for certain income groups such as low income who can register as residents of government flats, and subsidized flats. However, there are still houses in Indonesia that have many things and need to be improved, among others, in matters such as Limitation of Flats, Provision of Land Rights for the Construction of Flats, Organizers, Detailed Requirements and Sanctions for violation of requirements.

Key words: Comparative Study, Flats Act.

INTRODUCTION

In the early independence era, the Indonesian Government made arrangements for land ownership with Undang-Undang Pokok Agraria Nomor 5 Tahun 1960. Ratification of the UUPA is a series of land reform concepts as State policies that must be implemented. The UUPA made by the government at that time was the result of monumental and revolutionary work, because the State introduced many things to the ownership of a land and building (Faizah, 2007). Harsono (2007) stated that with the enactment of the UUPA there were fundamental changes to the Agrarian Law in Indonesia, especially the Land Law.

The limitations of land to fulfill the need for housing gave a new understanding to the government to provide solutions in the form of vertical housing. Through Law Number 1 of 2011 concerning Housing and Settlement Areas and Law Number 20 of 2011 concerning Flats (Law on Flats 2011). Through these two laws, the state guarantees the fulfillment of housing for the community, so that the need for housing can be fulfilled, regulating the pattern of development and ownership patterns for a community.

Flats / apartments not only answer the the need for housing issues that have not been fulfilled, but also act as a manifestation of the concept of livable and affordable homes in a healthy, safe, harmonious and sustainable environment and creating integrated settlements to build economic, social and cultural resilience. The concept presented in the previous sentence has indeed been included in Law Number 20 of 2011 concerning Flats where in Article 3 of Law Number 20 of 2011 concerning Flats which consists of letters a to letter h that contained an ideal and dynamic purpose for multi-layered residential patterns.

The reality on the field shows that there are many problems encountered by researchers in the implementation of the Flats concept at the central and regional levels. Based on researchers findings, the domination of the housing sector by the private company, has made it difficult for people within the lower socio-economic bracket (MBR) to find a place to live, as well as the accumulation of problems related to housing for the society. In addition, there are many problem that start with the process of buying and selling until the settlement process of the flats. The problem of fulfilling housing needs is compounded by various problems that arise. This can be seen from not more than 15% of the regions that have regulations on flats. Similarly, the readiness of the government apparatus regulates the vertical occupancy pattern.

Various kinds of them are collisions between Law Number 20 of 2011 and its implementation. This makes government efforts to meet housing needs more complicated. This study will provide an analysis of the legal system used to provide the best concept in the Indonesia Flats law. The aim of this study is to make legal comparisons of various countries with regard to its implementation and what recommendations can be applied to the Indonesian Flats condition.

LITERATURE REVIEW

Definition of Houses, Housing and Settlements

A house is a building that functions as a settlement or residence and a family built facility (Turner, 1982). Housing is a group of houses that function as neighbourhoods or residential environments that are equipped with environmental facilities and infrastructure. The settlements are part of the environment outside protected areas in the form of urban and rural areas that function as neighbourhoods or residential neighbourhoods and activities that support livelihoods and livelihoods (Law No. 4 of 1992 concerning Housing and Settlements).

Ownership

Cheeseman (1995), as quoted by Akis & Koeswahyono, (2010) stated about property rights as follows: Property rights are the highest form of ownership, because (1) the ownership is not limited in time, (2) can be inherited and (3) will not be deleted unless there is an incident that results in the removal of the property. In accordance with this opinion in land ownership regulated in the UUPA of ownership rights is the hereditary, strongest and most fulfilling right that can be owned by landowners considering their social function. Indonesia adheres to the principle of horizontal separation in regulation regarding the relationship between land and what is attached to it. The principle of horizontal separation separates the soil from all objects attached to the soil (Kolopaking, 2013).

Basic Concepts and Definition of Flats

Definition or term of flats (condominiums) is a term known in the Italian legal system. Condos consist of two con syllables which means together and dominium means ownership. The juridical definition of flats can be found in Article 1 number 1 of Law Number 20 of 2011 concerning Flats which states that, "Flats are high-rise buildings built in an environment divided into functionally structured parts, both in horizontal and vertical directions and are units that can be owned and used separately, especially for dwellings that are equipped with shared parts, shared objects, and shared land." From this provision, whatever the concept of high rise buildings mentioned as long as it has an accordance with this provision, it is included in the definition of flats.

According to Yudohusodo (1991), flats have different characteristics with horizontal occupancy. Flats have a dualism of the ownership system, namely the individual and joint ownership system, both in the form of space and objects. The joint ownership system consists of parts which are each unit that can be used separately known as the condominium. This system requires the separation of rights from each unit carried out by making a deed of separation containing a proportional comparison value that will be used as the basis for issuing the certificate of ownership of the unit concerned.

METHODOLOGY

The analytical method used is comparative study that is a general and in-depth research or facts and traits studied based on specific research.

RESULTS AND DISCUSSION

Indonesia adheres to the Civil Law legal system, while Singapore and America adhere to the Common Law legal system. With regard to flats, in Indonesia regulated in Law Number 20 of 2011 concerning Flats, in Singapore flats are regulated in The Executive Housing Scheme Act (1996), while in America Flats are regulated in Landlord Tenant Laws that are different in each state but still have the same general provisions as regulated by the Uniform Condominium Act (Global Property Guide, 2018).

Flats Law in Indonesia

Law No. 20 of 2011 concerning Flats arranges concerning the construction of flats which are defined as high-rise buildings built in an environment which is divided into functionally structured parts, both horizontally and vertically and are units of each - each can be owned and used separately, especially for residential areas equipped with shared parts, shared objects, and shared land. Types of Flats According to Law No. 20 of 2011 are: (1) Public flats are flats that are organized to meet the needs of the home for low-income people. (2) Special flats are flats organized to meet special needs. (3) State flats are state-owned flats and function as residences or dwellings, facilities for family development, as well as supporting the implementation of duties of officials and / or civil servants. (4) Commercial flats are flats held for profit. Construction of public flats, special flats and state flats is the responsibility of the government. Construction of public flats carried out by each person receives government facilities and / or assistance. Construction of public flats and special flats can be carried out by non-profit institutions and business entities. The construction of commercial flats as referred to in Article 13 paragraph (2) can be carried out by everyone. The developer of commercial flats must provide general flats of at least 20% (twenty percent) of the total floor area of the commercial flats constructed. This obligation can be carried out outside the location of the commercial flats in the same district / city. Further provisions regarding the obligation to provide public flats as referred to in paragraph (2) and paragraph (3) are regulated in government regulations.

Section VI of Law 20 of 2011 regulates Authorization, Ownership, and Utilization of Flats Units. Section VI Article 45 states that (1) Authorization of the public flats can be carried out by means of ownership or rent. (2) Authorization of the special flats can be done by borrowing or leasing. (3) Authorization of the state flats can be done by borrowing, or leasing. (4) Authorization of the commercial flats can be carried out by means of ownership or rent. (5) Authorization of flats with leases as referred to in paragraph (1) and paragraph (4) are carried out with a written agreement made in front of an authorized official in accordance with the provisions of the legislation.

Flats Law in Singapore

Singapore regulates condominiums under a rule known as the Executive Condominium Housing Scheme Act. Condominium arrangements in Singapore in this act are fairly short but contain important general matters. The arrangement will be further stated below. The Minister may establish an executive condominium scheme to provide housing accommodation to such class of persons as he may determine. The Minister may make regulations for the purposes of carrying out the provisions of this Act, including regulations for or with respect to: (1) the terms and conditions for the sale of any housing accommodation under the executive condominium scheme; (2) the persons to whom any housing accommodation may be sold under an executive condominium scheme, including but not limited to the qualifications as to income, the minimum size of the family, citizenship of

and ownership of any other properties by all or any such persons; and (3) prescribing the penalty (such penalty, if unpaid, to constitute a debt due to the Government under the executive condominium scheme and be recoverable as such) to be paid to the Government by any purchaser of a housing accommodation sold under the executive condominium scheme or by any applicant for such housing accommodation for non-observance or non-compliance with any of the restrictions, conditions or requirements of sections 5 and 9 in lieu of any action which may be taken against him under any of those provisions. (4) The Minister may from time to time, by notification in the Gazette, appoint one or more developers to develop such land as he may specify and to sell any housing accommodation under the executive condominium scheme. (5) Subject to the provisions of this Act, no person shall be entitled to purchase any housing accommodation under the executive condominium scheme if such person or his spouse has at any time: (1) between the date of making an application to purchase the housing accommodation and the date of issue of the temporary occupation permit in respect of the housing accommodation, owned or purchased any flat, house, building or land or has an estate or interest therein; (2) within 30 months immediately prior to the date of making an application to purchase the housing accommodation, or between the date of such application and the date of issue of the temporary occupation permit in respect of the housing accommodation, sold any flat, house, building or land of which he was the owner, or divested himself of any estate or interest therein; (3) made any misrepresentation of a material fact or false statement in a material particular, whether innocently or otherwise, relating to the purchase of the housing accommodation; or (4) between the date of making an application to purchase the housing accommodation and the date of issue of the temporary occupation permit in respect of the housing accommodation, become ineligible to purchase the housing accommodation by virtue of any regulation made under section 3 (2).

Flats Law in America

Flats in America are commonly referred to as condominium. The law relating to the condominium arrangement in the United States can still be categorized as incomplete and comprehensive even though there has been a Uniform Condominium Act (UCA) since 1980 issued by the National Conference of Commissioners on Uniform State Laws or commonly known as the Uniform Law Commission. This is due to the large number of characters in Condominium ownership that must be regulated in the every United States state such as the existence of individual units owned by individual buyers, the existence of common areas that are jointly owned, there is also the interest of the promoter who first establish the condominium, or if the condominium is a development building from beforehand, the rights of previous occupants must also be accommodated, not to mention the problem of how to transfer ownership rights from the developer to the owner's association. (Condominium Act Summary, 2018).

A condominium has four critical phases: creation, financing, management and termination. A comprehensive act deals with each phase and with the problems of consumer protection and regulation. In the first phase of condominium construction in America, a condominium must be recorded in the appropriate land use record. This record or declaration will later function as a notification of building specifications and the distribution of rights and the allocation of interests of various parties to the building. In the second phase, pure financing is a joint agreement from developers and owner associations, Uniform Condominium Act (UCA) only provides protection if 75% of units have been sold, the ownership rights must have been transferred to the condo owner association from the initial developer. The owner association is responsible for the budget and its use in condominium management in order to operate properly. The fourth phase was the termination of the condominium, although no one at the beginning bought a condominium unit expecting to terminate or destroy the condo, but Uniform Condominium Act (UCA) still provided arrangements for this. That is, if 80% of the unit owners ask for the termination or destruction of the condominium, this can be done, the money value of the terminated condominium sale will be distributed to all owners fairly under UCA protection. In practice, indeed every state in the United States has a different detail setting because each state has its own State Condo Laws.

Procurement of condominiums for low income people is regulated separately by the United States government. There is an affordable housing program subsidized by the government and some in the form of ordinary apartments with low rental rates but protected by the government to remain affordable. The American government also develops a Low-Income Housing Tax Credit (LIHTC) which provides tax deductions for investors who want to build and maintain an apartment rental rate for low-income residents (Lens & Reina, 2016). The comparative results of the Law on flats between Indonesia, Singapore and America in general can be summarized in the following table:

Table 1: Comparison of 3 countries

Comparison	Indonesia	Singapore	America
Law Name	Undang-Undang Nomor 20 Tahun 2011	Executive Condominium Housing Scheme Act	<i>Uniform Condominium Act (UCA)</i>
Clarity of Limitation of Flats	Uncertain limitation of luxury flats and simple flats	Clearly limited what is meant by flats and luxury apartments	Clearly limited what is meant by flats
Acquisition of Land Rights for the Construction of Flats	the right of ownership of the land along with the objects attached to it are also holders of rights to the objects that are above the land	Housing development with the Strata Title system is a system that regulates the part of the land which consists of layers (strata), namely the lower and upper layers with strata	Housing development with the Strata Title system is a system that regulates the part of the land which consists of layers (strata), namely the lower and upper layers with strata
Administrator	State or Regional-Owned Enterprises, Cooperatives, and Private-Owned Enterprises that are engaged in this sector, as well as Non-Governmental Organizations.	Developer or developer appointed by the minister	Government and private sector. Especially for the private sector there is a tax incentive mechanism for those who want to build low income flats

Groups who are allowed to buy	apartment construction which is prioritized for low income groups,	also for certain groups that are determined in terms of income, number of families, citizenship and other property ownership	For certain groups determined in terms of income, number of families, citizenship and other property ownership
Terms and Conditions for purchase	First submit a purchase application that must be reviewed by the government or the developer	First submit a purchase application that must be reviewed by the government	First submit a purchase application that must be reviewed by the government
Buyer Requirements Details	Not clear because it only concerns the applicant's personal	Very detailed and clear because it also regulates the asset ownership requirements by the applicant pair	Very detailed and clear because it also regulates the asset ownership requirements by the applicant pair
Sanctions against violation of requirements	Do not arrange for forced collection or acquisition from flats	Arrange forced collection or acquisition of flats	Arrange forced collection or acquisition of flats

There are similarities and differences in apartment arrangements in Indonesia, Singapore and America Law. In general, the similarity are that the construction of flats is prioritized for certain income groups such as low income who can register as residents of government flats, and subsidized flats. However, the arrangement of flats in Indonesia still has many shortcomings and needs to be corrected, among others in terms of Clarity of Limitation of Flats, Acquisition of Land Rights for the Construction of Flats, Organizers, Details of Buyer Requirements and Sanctions for violation of requirements.

CONCLUSION

The results of the analysis indicate that there are several numbers of similarities and differences in the legal arrangement of flats in Indonesia, Singapore and USA. In general, the similarity is that the construction of flats is prioritized for certain income groups such as low income who can register as residents of government flats, and subsidized flats.

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