



Implementation of Compliance Obligations for Public Flats Provision by The Commercial Flats Construction Actors

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<http://dx.doi.org/10.18415/ijmmu.v7i2.1466>

Abstract

The need for flats as urban dwellings is very large and continues to increase along with the high population. One of the considerations of the flats, especially in urban areas, was inspired by the increasing scarcity of land. This study aims to determine the implementation of fulfilling the obligation to provide public flats by commercial flats. This research method is normative law. The approaches used in this study include the statute approach, conceptual approach, and philosophical approach. The results showed the fulfillment of the obligation to provide public flats by the commercial flats development actors can be done through grants, buying and selling or leasing, but the most realistic to be implemented is through buying and selling. The use of flats by leasing has a business aspect because it contains elements of commercial profit-making, this opens up opportunities for business people in the property business.

Keywords: *Flats; Fulfillment of Obligations; Commercial*

Introduction

The phenomenon that is being watched now is the fulfillment of the need for a residence or residence in urban areas through horizontal housing construction. Meeting the needs in this way cannot be done continuously considering the availability of land in urban areas is very limited (Rees et al., 2008). Therefore, it is appropriate to fulfill the needs of residential or residential areas in urban areas through the construction of flats. Flats in large cities is an inevitable future trend that needs to be promoted and adapted to the culture in Indonesia. The need for flats as a place to live in urban areas is very large and continues to increase along with the high population, both from natural growth such as birth rates and due to urbanization (Santoso, 2014).

Indonesia's population growth is among the fastest in Asia, the rapid population growth is not accompanied by the provision of housing. Finally, some residents do not have a dwelling. According to the 2010 Central Statistics Agency (BPS) census, the number of housing shortages reached 13 million units. Based on a survey conducted by BPS in 2015, the number of housing shortages was 11 million units. Whereas the need for housing every year is as much as 800,000 units (Ministry of Public Works

and Public Housing, 2019) The number of housing needs is not balanced with the ability of people to have residential homes.

Flats are a solution for the people of Indonesia over the limited land for housing and business centers and surrounding areas (Kallo, 2009). One of the considerations of the Flats, especially in urban areas, was inspired by the increasing scarcity of land. With land becoming increasingly scarce, while housing needs remain a major human need, the concept of organizing with a landed house system has begun to shift to the concept of strata title (Flats). Housing construction has begun to shift from horizontal development (to the side) to vertical construction (upward) (Wijaya & Ananta, 2017). Flat Building Efforts is one alternative solution to the need for housing and settlements, especially in urban areas whose population continues to increase because Flat building can reduce land use in the City (Winayanti & Lang, 2004; Rosilawati et al., 2016). In addition, making the city open spaces more spacious, and can be used as a way to rejuvenate the city for slums. With the construction of flats, a plot of land can be used optimally to become a multi-story residence that can accommodate as many people as possible. Through the construction of flats, optimizing land use vertically to several levels will be more effective than optimizing land use horizontally (Santoso, 2014). This study aims to determine the implementation of fulfilling the obligation to provide public flats by commercial construction performers.

Methods

This research is normative legal research. The approaches used in this study include a statute approach, a conceptual approach, and a philosophical approach. In this research, the conceptual approach is carried out by citing opinions, views, or doctrines that have developed in the science of law, specifically the law of apartment buildings, which are put forward by experts in the various scientific literature. With a philosophical approach, research is carried out fundamentally (fundamental approach), to gain a deeper understanding of the social implications and effects of applying a statutory regulation to society or community groups, involving research into history, philosophy, linguistics, economics, and social and political implications for the enforcement of a rule of law (Fajar & Achmad, 2015).

In this research, a philosophical approach or fundamental approach is carried out by examining the philosophical and political foundations of law that are the spirit of the Flats legal regime in Indonesia, particularly those contained in Article 16 paragraph (2) of Law Number 20 the year 2011 concerning Flats.

Results and Discussion

Article 16 of Law Number 20 the Year 2011 concerning flats actually only regulates the stages of development of the Flats, and the alignments to the MBR (Modern Business Residential) have not been fully realized if the discourse is only limited to the stage of providing. Siding with the MBR will only be fully realized if the provisions of Article 16 of Law Number 20 the Year 2011 concerning Flats (Law on Flats) are withdrawn consequently to the extent of Apartment Units's control by the MBR, especially by possessing them. Therefore, after the Public Flats have been built/provided by the actors of the Commercial Flats, there is a need for further legal actions so that the Public Flats can be controlled by the MBR. Based on Article 45 paragraph (1) of the Condominium Law, the mastery of Apartment Units in the General Flats can be done by owning or renting. Thus the legal actions referred to are legal actions that can give birth to ownership rights for MBR or lease legal relations. Legal actions that can give birth to property rights include grant and sale and purchase, while leasing is done through a lease agreement.

There are different perspectives on funding a backlog between the Ministry of PUPR (Ministry of Public Works and Public Housing) with the Central Statistics Agency. From the perspective of the Ministry of PUPR, the house's backlog is against a house that is not suitable for habitation, whereas

according to BPS (the Central Statistics Agency) the backlog is for a house owned. In the perspective of BPS, someone (a household) who lives in a livable house, but rents (not owned), is still considered a backlog. On the contrary, according to the Ministry of PUPR, as long as they live in a habitable house, regardless of whether it is owned or rented, then it is not counted as a backlog. With this difference in perspective, the BPS backlog version tends to be higher than the Ministry of PUPR. The backlog at the Ministry of PUPR is reducing the number of people living in non-habitable homes, not reducing the population living in rented houses, nor increasing the population to have their own homes or not a homeownership program.

Apart from differences in perspectives between the Ministry of PUPR and BPS regarding backlog figures, the acquisition of Apartment Units by MBR through property rights guarantees the right to a place to live rather than Apartment Units who is controlled through leases, given the characteristics of property rights as the strongest, fully fulfilled, and permanent rights, while leases only temporary or limited by a certain period. Therefore, if the MBR controls the Public Apartment Units with ownership rights, it means that the MBR's right to adequate housing is strong, full and permanent, while if the MBR controls the General Apartment Units with rent, it means that the MBR's right to adequate housing is also temporary, i.e. for the duration of the rental period. The MBR that owns the Public Apartment Units with ownership rights is called the owners, while the MBR who inhabit the General Apartment Units without owning property rights such as leases are called occupants. Mastery of Public Apartment Units by MBR with ownership rights can reduce the backlog of property and livable backlogs, but MBR that controls the Public Apartment Units by leasing can only reduce the occupancy backlog but does not reduce the number of backlogs owned.

Fulfillment of Obligations for Provision of Public Flats by Performers in the Construction of Commercial Flats through Grants

The legal basis of the grant is contained in the Civil Code Article 1666 to Article 1639. The grant under the Criminal Code is outlined in book III of the Alliance and is one of the types of agreements, but since the grant is a type of unilateral agreement and the object of wealth or property (material), the discussion of grants is included in material laws. Accordance to Article 1666 of the Civil Code, the grant is a contract with which the assignee in his lifetime, freely and irrevocably, assigns an item for the purpose of the grantor receiving the grant. The law does not recognize grants other than those made by living persons. This is the difference between a will, which is given after the testator dies. The grant agreement is essentially a one-sided agreement, since the most active in the act is the creditor, while the grantee is a passive party. This means that grant recipients do not have to fulfill their obligations back and forth (Asyhadie, 2018).

In the context of the implementation of the obligations of Article 16 paragraph (2) of the Condominium Law through grants, then after the Public Flats are provided, the actors in the construction of Commercial Flats then transfer the control of the Public Apartment Units to the MBR for free without any contra achievements or rewards from the MBR as the grant recipient. The implementation of the obligations of Article 16 paragraph (2) of the Condominium Law through grants is the most favorable way to the MBR, but at the same time is the most difficult to implement. It is considered the most siding because the grant will give birth to the MBR rights to Apartment Units. Ownership rights are the most fulfilled and strongest rights and are permanent. Therefore, the MBR's right to the place of residence becomes full, strong and permanent. The MBR also does not need to counter any achievements to obtain ownership rights to Apartment Units through a grant agreement. That way, the affordability of the General Apartment Units for MBR is increasingly guaranteed regardless of income.

In addition to being regulated in the Civil Code, grants are also regulated in the Compilation of Islamic Law (KHI), especially in Chapter VI on Grants. KHI determines that the terms of the grant are made by people who are at least 21 years old, are of sound mind, without coercion, and give as much as

1/3 of their property to another person or institution, in the presence of two witnesses to own, and The gifted asset must be the right of the donor (vide Article 210 paragraph (1) and (2) KHI).

In Islam, grants are not only beneficial for grant recipients, but also for grant providers, who in this case are actors in the construction of commercial flats that donate Apartment Units to the MBR. Some of the benefits of grants for grants according to Islamic perspectives, among others, can eliminate the disease of envy, bring a sense of mutual love, love, love, and can eliminate the feeling of revenge.

As previously mentioned, the implementation of Article 16 paragraph (2) of the Condominium Law through grants is the most difficult method to implement, especially because the profit-oriented development of Commercial Flats is worried to suffer losses from the implementation of the provisions of Article 16 paragraph (2) of the Condominium Law through grants. , so that the commercial purpose of making a profit cannot be realized. In connection with that, Posner (2014) explained that humans are homo economics, meaning that in taking action to meet their economic needs, they prioritize economic value with economic reasons and considerations as well. In the Economic Analysis of Law, there is the concept of rational choice that starts from the basic assumption that human beings are essentially rational beings. With the rationality inherent in each individual, humans who are faced with a series of choices will choose the choices that are felt and are believed to provide the best results by getting more than what is desired and expected (Sugianto, 2013). Principals for building commercial flats in principle would prefer to carry out the obligation to provide public flats as stipulated in Article 16 paragraph (2) of the flats law through buying or leasing rather than by means of grants because buying-and-selling rent provides more economic benefits to commercial flats development actors.

Fulfill the Obligations of Provision of Public Flats by the Actors of the Construction of Commercial Flats through Sale and Purchase

Apartment Units sale and purchase (strata title) occur in a process that starts from binding, followed by submission (material agreement) and ends with registration and award of certificates. Every stage of one another has an inseparable link because these elements are a system of buying and selling. Article 1457 of the Civil Code states that a sale and purchase agreement is an agreement whereby one party is bound to submit an object and the other party to pay the price promised. According to Badrulzaman (1994), there are two elements in the sale and purchase agreement, namely the binding and surrender of objects. Buying and selling are considered to have occurred between the two parties, immediately after reaching an agreement on the object and its price, even if the item has not been delivered or the price has not been paid. However, ownership rights over the goods sold do not transfer to the buyer as long as the delivery has not been made. Submission (transfer of title) must be based on a civil event in the form of an agreement/contract which is the basis of the rights (legal title) of the transfer of ownership rights. The contract is obligatory and must be followed by submission which is a material agreement (zakelijke overeenkomst). Obligatory contracts issue personal rights to the parties, while the surrender issues property rights that are real rights.

The Condominium Law stipulates that the sale and purchase of Apartment Units can be carried out either after the Flat is completed or before the Flat is finished. Completed sale and purchase of Apartment Units have been made through a Purchase Deed (AJB), while the sale and purchase of Apartment Units that have not yet been built are carried out by a Purchase Binding Agreement (PPJB).

PPJB is an agreement whereby the seller binds himself to sell Apartment Units to the buyer and the buyer binds himself to pay the price of Apartment Units purchased. Although there has been a sale and purchase agreement, as long as Apartment Units has not been handed over to the buyer, the ownership rights to Apartment Units are still with the seller. The difference between sales made with PPJB and sales according to national land law is the sale and purchase according to the law of land originating from customary law adheres to the principle of cash, light, and tangibility, while the sale and purchase referred to in PPJB is only obligatory, and further action is needed in the form of legal acts of

buying and selling. The practice of buying and selling through PPJB does not conflict with national land law, because PPJB is still in the form of a "sale and purchase agreement" which is a preliminary agreement to be able to carry out buying and selling actions before an authorized official.

In PUPR Ministerial Regulation Number 11/PRT/M/2019, concerning the System of Preliminary Purchase Agreement, the Purchase Binding Agreement is also known as the Preliminary Purchase Agreement, which is an agreement between the development agent and each person to make a home purchase or Apartment Units that can be done by development actors before the construction of flats or in the process of construction for single houses and series houses stated in the notarial deed.

The buying and selling process after the construction of the flats is completed through AJB (Deed of Sale), which is made by the Land Deed Making Officer (PPAT). The construction of the Flat is declared complete when the Apartment Units SLF (Certificate of Eligibility for Functions) and SHM (Certificate of Property Rights) of Apartment Units or SKBG Apartment Units have been issued. So, the development actors can only sell Apartment Units through AJB if they have pocketed Apartment Units SLF and SHM or SKGB (Certificate of Ownership of Apartment Units Flats). AJB was made before PPAT for SHM Apartment Units, and notary for SKBG as proof of rights transfer (Santoso, 2017). The process of buying and selling is also involved in the BPN (National Land Agency) or the land office.

The process and procedure for buying and selling General Apartment Units are not much different from buying and selling Commercial Apartment Units, only that the Public Flat is a Flats intended for MBR. Therefore, to be right on target, it must be ensured beforehand that prospective buyers of the General Apartment Units are people who meet the requirements to be categorized as MBR. If the Public Flat that has been provided by the Commercial Flat development actors is enjoyed by the non-MBR community, then the philosophical and political objectives of the law contained in Article 16 paragraph (2) of the Flat Law will not be achieved.

One of the principles of managing flats as stipulated in Article 2 letter d of the flats Act is affordability and convenience, namely the foundation so that the results of the development of the flat can be reached by all levels of society, and encourage the creation of a conducive climate by providing facilities for the MBR. In Article 2 letter d of the Condominium Law, the principle of affordability is compared to the principle of ease of using the conjunctions "and". That means that the principle of affordability with the principle of ease is an inseparable whole. The relationship between the principle of affordability and the principle of ease is that, with the facilities provided to the MBR as a form of state siding, the right to adequate housing for the MBR will be more affordable.

Forms of financing for towing costs are also regulated in PUPR Regulation No. 21/PRT/M/2016 concerning the Ease and/or Assistance in Obtaining Houses for Low-Income Communities. The PUPR Minister Regulation regulates the types of financing that MBR can use for obtaining towing flats, including the acquisition of public flats provided by commercial flats through buying and selling with MBR. The financing system specified in the PUPR Regulation is conventional and sharia. Both are alternatives that MBR can use to buy Public Flats which are provided by commercial flats, according to the agreement of the parties involved in the credit agreement or financing agreement. Among those specified in the PUPR ministerial regulation are KPU Sejahtera Susun, namely credit with the support of the Housing Financing Liquidity Facility issued by the Implementing Bank to the MBR in the context of ownership of the Flats Prosperous Housing Unit purchased from the development actors, and KPR Sejahtera Syariah KPR, namely financing based on sharia principles with the support of the Housing Financing Liquidity Facility issued by an Executing Bank that operates in a sharia way to the MBR in the context of ownership of the Flats in the Prosperous Housing Unit purchased from the development actors.

Fulfill the Obligations of Provision of Public Flats by the Actors of the Construction of Commercial Flats through Leasing

The actors in the construction of commercial flats can carry out the obligation to provide the public flats in Article 16 paragraph (2) of the flats law, by granting control rights through rent to the MBR. In this case, the MBR is not the owner of Apartment Units, but rather as a resident. Therefore, also, leasing can only reduce the number of habitable backlogs, but it cannot reduce the number of backlogs that belong to. The regulations regarding renting leases are contained in Book III Chapter VII of the Civil Code and can be applied to all kinds of leases and rental prices, as well as all types of objects that are objects for lease, both movable and immovable, tangible or intangible, both leased according to time certain times and indeterminate times, including leases for renting public flats, which are provided by actors in the construction of commercial flats. A rental agreement in English is called a hire agreement. In Indonesia, the definition of a lease is regulated in Article 1548 of the Civil Code, which is an agreement in which the party renting binds himself to give the renter the pleasure of an object for a certain time with payment of a certain rental price. Abdulkadir Muhammad explained, there are four main elements of leasing in Article 1548 of the Civil Code, namely the subject of leasing, deeds for leasing, the object for leasing, and the period of leasing (Muhammad, 2011).

Rental of Public Flat between the actors of the construction of Commercial Flat with MBR is included in the rental of housing because the Flat is a form of housing. The PKP Law distinguishes the forms of houses based on relationships or inter-building ties, which include single houses, row houses and flats (vide Article 22 of the PKP Law). Hamzah et al (1992) define rental housing as an agreement (contract) made by the owner with the tenant of the house, both verbally and in writing, for the use of a house in time and with lease payments agreed by both parties. In Article 1 number Government Regulation Number 44 of 1994 concerning Residents of Houses by Non-Owners (Government Regulation 44/1994), it is stated that Renting a house is a condition where the house is inhabited by non-owners based on the rental agreement. The subject of renting housing, in this case, is the actors in the construction of Commercial Flats as the owner of Apartment Units and MBR as the tenants of Apartment Units. The object for leasing it is a Public Flat Apartment/Units provided by the Commercial Flat Construction actors as required under Article 16 paragraph (2) of the Flat Law.

Apartment Units must be made in written form between the owner and the tenant in front of the authorized official and registered with PPPSRS (Association of Owners and Residents of Flats), which at least contains provisions regarding rights and obligations, the rental period, the amount of rental price and the condition of force majeure, as well as (vide Article 45 paragraph (5) and (6) of the Condominium Law and Article 28 paragraph (4) and (5) Government Regulation 14/2016).

According to Article 24 paragraph (2) ministerial regulation PUPR Number 01/PRT/M/2018, occupants' rights include (a) obtaining information on utilizing Apartment Units, occupancy rules, and management of the flats; (b) utilize public infrastructure, facilities, and utilities; (c) submit a complaint to the manager related to the apartment shelter and management; and (d) for residents with disabilities and elderly are entitled to priority occupancy. The occupants' obligations according to Article 24 paragraph (3) ministerial regulation PUPR Number 01/PRT/M/2018 include (a) paying rent, electricity, and/or water; (c) obeying the rules of occupancy; (d) maintaining the security and order of the flat; and (e) maintaining the cleanliness and beauty of the flat. In addition, Article 25 of PUPR Regulation Number 01/PRT/M/2018 requires residents of the Flats to obey the rules set by the manager

The rights and obligations of tenants are also specified in Government Regulation 44/1994. According to Government Regulation 44/1994, the tenant has the right to occupy or use the house in accordance with the agreed conditions. Article 6 Government Regulation 44/1994 determines the rights and obligations of the renting party/owner, which is entitled to receive rent from the lessee as promised and is obliged to surrender the house to the tenant in good condition as promised. If one party neglects its

obligations or performs prohibited actions as stated above, then the lease relationship can be terminated before the lease period ends.

If the house for rent is destroyed during the lease period, then the lease relationship is declared to expire. In the event that the rented house is destroyed due to the owner's mistake, the owner is obliged to return the rent to the renter. If the rented house is destroyed and can no longer be inhabited, the tenant can request the return of the rental price in accordance with the remaining time, and if only part of the destroyed property, the rental relationship can be continued based on consultation (vide Article 12 Government Regulation 44/1994).

With respect to the term of the lease, Article 5 paragraph (3) of Government Regulation 44/1994 specifies that the tenancy period for renting a house on the right of another person shall not exceed the period of use of the land authorized by the landlord. Accordingly, if the developer of Commercial Rental Residential Provides General Rental on Rental Land, Building Use Rights (HGB) or Rental Rights, then the rental term of the Apartment Units by MBR shall not exceed such rental period, HGB, or such use. The tenant is obligated to keep the agreed rental period and return the house in good condition and vacate the occupancy when the lease term expires. In the case of a tenant refusing to vacate and vacate the rented house within the time limit agreed upon in the agreement, the occupation is declared invalid or unenforceable and the owner may seek the assistance of the State Police of the Republic of Indonesia to vacate it (vide Article 10 Government Regulation 44/1994).

Rental prices are also referred to as rent rates, which in accordance with Article 1 of Article 17 of the ministerial regulation PUPR No. 01/PRT/M/2018, are the sum or value of a nominal amount of money as payment for the rent of Apartment Units within a certain period. Rental prices or rents are generally agreed upon between the purchasers/lessee and the tenants, but the Commercial Renter's development, in this case, provides the Rural General for the benefit of the MBR, therefore, the Rental General Rental rates provided by the Commercial Renter development should take into account the capabilities of the MBR and the limits set by the legislation. In Government Regulation 44/1994 it is stated that the rental price of a Rental house for which the development is obtained by the Government and the Local Government shall be determined by the regional head in accordance with the authority set by the Minister.

Provisions regarding prices or rental rates apply to Public Flats which obtain facilities from the Government/Regional Government or Public Flats which are state/regional property. Therefore, the Government/Regional Government is expected to provide facilities for Commercial Flats that provide the public flats as far as possible so that the rental rates charged to the MBR can adjust to the rates set by the regional head.

The provision of public flats by commercial flats through rental to MBR has a high value for commercial flats because the Apartment Units provided are still owned by the commercial flats and he still enjoys a sum of money on the rental prices of the Public Units Apartment. Wijaya and Ananta (2017) explain the element or aspect of business in the construction of public houses has special limitations compared to the elements or aspects of the business that exist in the construction of commercial houses. Especially for Public Apartment Units, their utilization can only be done in the form of ownership by the owner who is an MBR (in accordance with the occupancy function), and even if they want to be rented (business aspects), the Public Flat/Apartment can only be leased to the MBR. The use of flats by renting has a business aspect because it contains an element of "making a profit" in it. From this utilization, there are opportunities for business people in the property business. Although the profit gained from renting a Public Flat is not as big as the profit of renting a Commercial Flat, but the provision of Public Flat by the actors of the Commercial Flat building by leasing, if planned and managed properly, can still provide benefits to the Commercial Flat building actors.

Developers of commercial flats can work together with parties who are willing to become passive income investors in providing public flats required by article 16 paragraph (2) of Law Number 20 of 2011 concerning Flats. Passive income investors are owners of a property in the form of land and/or buildings that will be used as a Public Flat (Geltner et al., 2001). The investor cooperates with the actors in the construction of commercial flats who are required to provide public flats by Article 16 paragraph (2) of the flats law, with a profit-sharing system for renting the property that functions as the public flats to the MBR. The business which is run in the context of passive income does not transfer the ownership rights to the property. This system is the same as the leasehold concept commonly known in the laws of the Anglo Saxon countries. The money from lease payments will be distributed between the passive income of the investor and the developer/development agent or the operator (manager) in accordance with the agreed agreement.

Conclusion

Fulfillment of the obligation to provide public towers by commercial towers can be done through grants, buying or selling, but the most realistic thing to be implemented is through buying and selling. Provision of Public Flats through buying and selling can reduce the number of backlogs owned and occupied, while the provision of Public Flats through rental can only reduce the backlog of habitation, cannot reduce the backlog of property.

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