

Politics of Flat Ownership Law on the Regulation of Flats Laws in Indonesia

Kiki Trianggono¹, Salma Suroyya Yuniyanti², Kokom Komalawati³

Faculty of Law, Islamic University Bandung, Indonesia

Author Email: kk862017@gmail.com¹, salmayuniyanti@unisba.ac.id², komalawati79@gmail.com³

Abstract. The 5th precept states that social justice is for all Indonesian people and in Article 28 letter H paragraph (1) it is stated that everyone has the right to live in inner and outer prosperity, to live and get a good and healthy living environment and the right to obtain health services. After a life of inner and outer prosperity, followed by the right to reside, and then talk about the right to a good environment and health. Flats are a good residential choice, in addition to answering the backlog of housing needs, it is also the embodiment of the concept of a livable and affordable home in a healthy, safe, harmonious, and sustainable environment and creating an integrated settlement to build economic, social, and cultural resilience. Based on the above background, problems arise related to the benefits of the construction of flats built in Indonesia for the people of Indonesia. Is UU No. 20 of 2011 following the welfare of the people and how should the arrangement of flats result from the integration of Indonesian law. This study aims to analyze and determine the existence of the Flats Act has or has not been aligned with the welfare of the people of Indonesia. This study is doctrinal legal research that provides an assessment of the regulatory model of the flats act. The arrangement of flats in Indonesia is a form of responsibility of the government which aims to prosper the community in the form of habitable houses as mandated in Article 28 H paragraph (1) of the 1945 Constitution. However, in practice, there is still an overlap between the owners of apartment units and the developers of commercial flats or apartments. Thus, there needs to be a special explanation related to the ownership of flats, so that the owners of flats get legal certainty and legal protection.

Keywords: Arrangement of Flats, Flats Law, Residence

1 Introduction

The construction of flats is mostly done by private or government developers on the grounds of preventing dense settlements with flats to reduce the number of settlements. Not a few flats were built by developments in Indonesia. Indonesia is classified as a densely populated country now the population of Indonesia reaches 278.696,2 million people [1]. The population density is not only in big cities but also covers the countryside to the suburbs.

The density of the population resulting in increased community needs will certainly cause a shortage of land to make a place to live. The most important need in life is a place to live to carry out life. The density of the population is not comparable with the availability of housing because the population is very much so the land is less.

The increasing population led to the construction of flats increased in Indonesia. To reduce the population density that is not comparable with residential land, the construction of flats is referred to as an alternative way to confine land and make the room more spacious. A plot of land can be optimally used to become a multi-storey residence that can accommodate as many people as possible through flats. Vertical optimization of soil use is to a greater extent effective than horizontal optimization of soil [2].

The density of the population affects the development of the construction of flats both in cities and settlements in the suburbs. The construction of flats is an alternative to reduce the population who do not have land or lack land as a place to live. Flats have a foundation as the basis of Law No. 20 of 2011 on flats (UU Rumah Susun) amendment of Law No. 16 of 1985 on flats.

The promulgation of the Flats Act is based on Article 28 letter f of the Constitution of the Republic of Indonesia year 1945 (UUD 1945) as a fundamental right that everyone has the right to live a prosperous life

inwardly and outwardly. Seeing the phenomenon of population density with the unavailability of land for Indonesian citizens to live in, it needs to be done by building vertical and horizontal flats. The Flats Act contains the principles of welfare and efficiency and expediency. The purpose of the government of Indonesia is the establishment of the flats acts to prosper the community and provide efficient housing for residents and provide benefits to the community or Indonesian citizens to occupy the flats.

Residence cannot be separated from the right of ownership of land or land. Ownership of housing is the most important right for the community because it is the basis of the right to live. Land rights or ownership stems from the birth of the agrarian Basic Law No. 5 of 1960 which is often referred to as the UUPA. The UUPA contains regulations on land ownership which are a series of land reform concepts as state policies that are the basis for regulating land. The UUPA was made by the government of the Dutch colonial period until it changed from the work of the revolutionaries.

According to Boedi Harsono stated that with the enactment of the UUPA, there was a fundamental or fundamental change in agrarian law in Indonesia, especially Land Law [3]. UUPA is a foundation for solving problems regarding the land sector. However, the problem of limited land for the residence of Indonesian citizens is a problem for the government to provide housing for its citizens.

Limited land needs for residence, the government provides solutions in the form of residential houses in the form of vertical housing in the form of flats. Initially, the government issued Law No. 16 of 1985 on flats, but with the rapid rate of population growth and property investment breakthroughs that left the old rules, Law No. 16 of 1985 on flats has been difficult to overshadow problems related to units of flats and investment in the construction of flats. As a result of this, the government renewed the old apartment law into law Number 20 of 2011 concerning flats. The new regulation of flats can be useful for the development and ownership patterns of housing for the community.

The reform of the law on flats has become a national political law because the rule of law on flats since the enactment of the UUPA until the emergence of Law 16 of 1985 is no longer relevant. Legal politics in the arrangement of decent flats under the principles contained in the Flats Act should be a concern for the government. The politics of law is one process to create a harmonized IU constituent. The legal politics of the regulation of flats arise due to changes and problems caused by the lack of land along with the rate of population growth. This means that the government forms or issues an apartment law as one of the solutions regarding the rules of all apartment dynamics.

Flats are a good residential choice, in addition to answering the backlogs of housing needs, it is also the embodiment of the concept of a livable and affordable home in a healthy, safe, harmonious, and sustainable environment and creates an integrated settlement to build economic, social, and cultural resilience. The concept of decent housing, habitable, healthy, safe, harmonious and cultured is included in Law No. 20 of 2011 on flats where the purpose of flat development has been refined from the rules on flats in the previous legislation, as in Article 3 of Law No. 20 of 2011 on flats contained an ideal and dynamic destination for the arrangement of double-decker dwellings.

Starting from ensuring the realization of livable and affordable flats in a healthy, safe, harmonious and sustainable environment and creating integrated settlements to build economic, social and cultural resilience. Improve the efficiency and effectiveness of the use of space and land by observing the principles of sustainable development and environmentally sound. Reduce slum housing. Meet social and economic needs, especially for MBR. Empowering stakeholders in the field of flats construction. Ensure the fulfilment of the needs of decent and affordable flats, especially for MBR. Provide legal certainty in the provision and ownership of flats.

The purpose contained in the Flats Act is necessary to regulate the pattern in the issue of flats. Although the arrangement of flats has been updated to the UUPA. Many problems occur in the implementation of the right of ownership of flats. Article 17 and Article 18 seemed to forget the concept of Article 21 and Article 22 of the UUPA. Therefore, there is friction between the rules of flats with the implementation that can lead to injustice for candidates for ownership of flats. It is necessary to have an analysis that can draw a common thread with the background that can be drawn into the problem that is what the elements behind a policy of rules of flats from the ownership of flats.

2 Methodology

This research is a legal doctrinal reference to Library materials or secondary data[4]. Legal research normative covers research on the application of the rules of flats in Indonesia with the implementation. Law research done by researching Library materials or secondary data alone can be called normative research. Therefore, this study seeks to describe or give an idea of how the settings of flats in the ownership of the

housing unit stacking to realize the justice of the law for the owner of the unit flats as well as provide input and ideas to the stakeholders in the field of the implementation of flats commercial.

3 Results and Discussion

A. Political Law Update Before And Entry Into Force of Law No. 20 of 2011 on The Flats.

1. Law No. 16 Of 1985 About House Layout (Arrangement Before The Occurrence of Law No. 20 of 2011 About House Layout.)

Before the amendment of Law No. 16 of 1985, through the 1945 Constitution, the Indonesian nation agreed that Indonesia is a state of law. The agreement is not only a cornerstone of state life but is a major element in the pulse of life in Indonesia. The law is recognized as a commander in Indonesia is not necessarily recognized just like that. Putting the law as the pulse of national and state Life is certainly through a process of synchronization with the pattern of national life in the past, present and future projections. By putting the law in the dimension of the past, present and future of the nation, the pattern of law is certainly the pattern of Indonesia and can be a tool to realize the goals of the country [5]. Indonesia is a country of law. In Indonesia, making a law is the foundation of State Life and is a major element in the pulse of life in Indonesia. The establishment of law in the regulation of flats in Indonesia is an effort to realize the mandate contained in the Constitution of the Republic of Indonesia in 1945 to provide certainty of rights to the unit of flats for Indonesian citizens. according to Sadjipto Rahardjo, the protection of the law serves to provide shelter to human rights (Human Rights) that harmed others and the protection it provided to the community to enjoy all the rights granted by law [6]. Protection law to protect the Citizens of the State of Indonesia as stipulated in the UUD of 1945 as a constitutional right. The formation of the settings flats is a policy of the State through the State agency that has the authority to set various kinds of regulation desired where the regulation is an expression of society. These regulations are used to achieve the ideals to be achieved by the State [7]. It can be argued that political law is a tool used to create the legal system of Indonesia. The implementation of the provisions on the flats covering the years went by the provisions of the law which has been consistently in the process of reform of the law as well as law-making that leads to the attitude of the law of nature *ius contitutum* and created the law of the *ius constituendum*. The study of the politics of the law compliant with the historical background, the view of the world and the socio-cultural and political will of the respective government. Two sides of the political law can not be separated from each other because it's a tool to assess and criticize a law or regulations that are compatible with the purposes of the Country. Country Indonesia professes a legal system of civil law, which means government based on the legislation with the concept in the National law of the "Rechtsstaat" centrism legal certainty through the codification of norms in the form of legislation. Flats are buildings that are characterized by a horizontal house model that has two sides, namely the first side of the individual ownership system and the second side of joint ownership. Development as a result of population density with the lack of availability of land for residence. Indonesia has not achieved its goal of building flats. Amendment of Article 3 which is the purpose of the construction of flats. Starting from the purpose of building flats which is part of the responsibility of the government to achieve a state goal, namely the welfare of the Indonesian people as stated in the 1945 Constitution. Thus, the politics of law in the formation of the arrangement of flats affects the implementation of the arrangement of flats. As the basis of land rights based on Article 4 paragraph (1) of the BAL, which reads: "based on the right of control of the State as referred to in Article 2 determined the presence of various rights on the surface of the earth which is called the land, which can be assigned to and owned by the people either alone or Together with other persons as well as legal entities.". Associated with ACT No. 16 of 1985 on the flats that will be the goal for the establishment, namely the welfare of the people. The provisions of the right of ownership over land include: a) the rights of ownership of an individual for units of flats are used separately; b) the rights of a joint of parts of a building of flats; c) the rights along the top of the objects; d) the rights along the ground. Land rights are a unity that can not be separated from each other in the end pursed into individual rights and collective rights. The entry into the force of individual rights includes the unit of flats managed by individuals or by the owner of a housing unit stacking. Whereas, the mutual rights are managed together, because it involves the interests and lives of all the inhabitants of the flats. LAW No. 16 the Year 1985 includes ownership rights to the land between the other part, the soil together and objects together. The direction of the policy of LAW No. 16 And 1985 On the flats is the development for the welfare of the people and the development of the law and the mines. So, it can be observed in the rules of the house of stacking the existence of the right material in the form of the right of ownership of the individual who is known by The SHMSRS certificate (Unit freehold Unit flats) and the right of joint ownership. In addition, in terms of the management of the flats that can be managed and built by the commercial that type of flats commercial. Therefore, flats are residential as an optimization for the government as a form of

implementation of the goals mandated by the 1945 Constitution, namely providing a habitable and safe place to live.

2. After The Law No. 20 of 2011 About The Flats

The development of the rules of flats in Indonesia from Law No. 16 of 1985 until the establishment of changes to changes in law no. 16 of 1985, namely law No. 20 of 2011 was influenced by the political atmosphere. The existence of changes in legislation on flats in which change the formation of legislation into more systematic legislation. The change in the law is due to the condition of the community influenced by legal politics, namely the growth of multi-storey buildings is growing rapidly and increasing, along with the increasing population in Indonesia. So, UU No. 16 of 1985 which used to be the guidelines for the implementation of flats is not following the current period. Therefore, it is replaced by Law No. 20 of 2011 on flats (which is abbreviated as the flats law). The development of the times referred to is the development of new types of flats where in the second period all the rules incorporated in the Act of Flats despite the growing flats commercial. The shift needs to be ownership of the flats in the big City due to the presence of the narrowness of the land by the number of incoming investments. This means that the concept of flats is applied to the concept of non-residential not to the concept of the beginning of the construction of flats following the period before Act No. 16 of 1985 on flats and after Act No. 16 of 1985 on flats. The concept of non-residential and commercial combined with residential or crowded apartments built in Indonesia, especially in big cities. The construction of this apartment is due to the economic crisis that has caused consumer interest to fall so the construction of apartments is sometimes also intended to be “service apartments” and even hotels for daily rent [8]. The Flats Act regulates the types of flats, among others, public flats, special flats, state flats and commercial flats built by private parties, which are better known as apartments. Law No. 20 of 2011 aims to protect consumers or owners of apartment units. The provisions that indicate protecting consumers regulated in Article 16 of the flats law, as regulated on the construction of commercial flats as referred to in Paragraph (1) shall provide public flats at least 20% (twenty per cent) of the total floor area of commercial flats built. In addition, the rules that can protect the owners of apartment units are shown by the provisions regarding the Association of Owners of apartment unit residents. The terms are arranged as a form of rights of the owner of the housing unit stacking to manage the flats or apartments. However, in its implementation still appears a conflict of interest between the Association of the Owner of the Inhabitants of an apartment with private parties or developer.

B. Elements that Affect the Political Law on the Ownership of Flats in Indonesia

A society that is simple with a system of life shared communal does not recognize the property rights of an individual over an object. Objects are regarded as belonging together and used to meet together. In its development, then society needs to increase and become more complex [9]. Roscoe Pound was quoted as saying by Mimi Rosidi Akis explain the development of property rights into 3 (three) phases as follows:

1. First Phase: the early members of the community held the agreement to acquire the property rights to objects. A member of the community may only have objects that he wants if the object has not become the property of other members of the community. Ownership of objects at this stage still is physical without being constituted by the documents of the juridical anything. The position of property rights at this stage is still very weak because it has yet to be proven/maintained juridically.
2. Second Phase: at this stage, the mastery of the physical can be proved/maintained juridically. Interference to the rights belonging to the legitimate according to the law will be addressed also by the law that there is.
3. Third Phase: at this stage, the private property of individuals has grown to a more perfect stage. The guarantee of property rights is not only about its position but even to its use and enjoyment of the results are fully guaranteed by applicable laws and regulations [10].

The development of the mastery of property rights to land enters the concept Phase of the third. Rights belonging to individual or personal evolved from the Dutch colonial period up until this time, as well as the ownership of the rights over the flats unit there are private rights and collective rights. The movement of the mastery of the land rights set out in Article 16 of the BAL, the right of the highest property rights. Indonesia adheres to the principle of horizontal in the settings of the relationship between the land attached above and below it, which means the presence of the principle of horizontal separating the land from all the objects that are inherent in it.

Joint ownership of an object or building is divided into 2 (two) namely joint ownership which is bound by the main basis the legal bond that first exists between the owners. The owners are not free to transfer their rights to others without the consent of the other owners; as well as free joint ownership, there is no prior or previous legal relationship between the co-owners, other than the joint right to be owners of a thing. Here there is a will to jointly become the owner of an object to be used together.

The ownership of the unit rumah susun in Indonesia is still reaping the conflict in the implementation of flats commercial because flats commercial under the auspices of private parties or the developer, but that manages

the flats will be managed by the owner of the housing unit stacking, as mandated by the LAW of the flats. However, in practice, there is still the presence of a conflict of interest between both. Thus, according to the authors of the current flats law, it provides opportunities for private parties or developers to enter and interfere in the management and ownership process of commercial flats or apartment units. Therefore, the existence of legal politics that enter into the rules related to the ownership of apartment units can harm the owners of apartment units.

4 Conclusion

The common thread that can be drawn in these problems, the regulations applicable in Indonesia the Indonesian system is used for ownership of an apartment with the principle of horizontal separation is not under the social structure has not been there that provides legal certainty as well as can be said to not create justice for the inhabitants of apartments or flats. Regulations governing the flats, namely Law No. 20 of 2011 on flats have not provided welfare and justice for the community, especially residents or owners of parts of flats. The implementation of land registration only provides evidence in the form of requirements as owners of joint rights. Therefore, there is a need for a special explanation of the articles concerning the ownership of apartment units, in this case including articles 42, 43 and 75 of Law No. 20 of 2011 related to sales, apartment unit sales agreements and the Association of Owners and residents of apartment units (PPPSRS).

Reference

- [1] Badan Pusat Statistik Indonesia, “<https://www.bps.go.id/indicator/12/1975/1/jumlah-penduduk-pertengahan-tahun.html>.” <https://www.bps.go.id/indicator/12/1975/1/jumlah-penduduk-pertengahan-tahun.html> (accessed Jul. 03, 2023).
- [2] Suriansyah Murhaini, *Hukum rumah susun: eksistensi, karakteristik, dan pengaturan*. Indonesia : Laksbang Grafika , 2015.
- [3] Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria*. Jakarta: Djambatan, 2007.
- [4] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia, 1990.
- [5] Mia Kusuma Fitriana, “Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara (Laws And Regulations In Indonesia As The Means Of Realizing The Country’s Goal),” *Jurnal Legislasi Indonesia, Kementerian Hukum Dan HAM Republik Indonesia*, vol. 12, no. 2, Mar. 2015, Accessed: Jul. 03, 2023.
- [6] Marwan Mas, *Pengantar Ilmu Hukum*. Jakarta: Alumni, 2004.
- [7] Sudarto, *Hukum Pidana dan Perkembangan Masyarakat Kajian Terhadap Pembaharuan Hukum Pidana* . Bandung: Sinar Baru, 1983.
- [8] Arie S. Hutagalung, “Dinamika Pengaturan Rumah Susun Atau Apartemen,” *Jurnal Hukum Dan Pembangunan* , vol. 4, pp. 317–330, Oct. 2004.
- [9] Muhammad Fathony and Lego Karjoko, “Implikasi Hukum Pembuatan Akta Pemindahan Hak Atas Hak Milik Atau Hak Guna Bangunan Untuk Rumah Susun Bagi Warga Negara Asing,” *Jurna UNS*, vol. 6, no. 1, pp. 1–15, 2019.
- [10] Imam Koeswahyono and Mimi Rosmidi Akis, *Konsepsi Hak Milik Atas Satuan Rumah Susun Dalam Hukum Agraria* . Malang: Setara Press, 2010.