

Aspect of Ownership and Utilization on Low-Cost Flats Based on Law Number 20 of 2011

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Abstract: *Critical investigation of questions in yielding the public welfare and in further attempts to improve people's quality of life globally, everyone has a fundamental human right to housing as the basic needs, which ensures access to a safe, secure, habitable, and affordable home with freedom from forced eviction. Especially for low-income people who are always hampered by the inability to receive opportunities for decent and economically affordable housing facilities. If referring to the application of Article 54 paragraph (1) of Law Number 20 of 2011 which states that the general system of obtaining facilities from the government can only be accessed or leased by Low Income Communities (MBR) yet in various reports both through print media and electronic media, there are actually many deviations due to empirical evidence verifies that ownership of such common flats is also controlled by middle-income people through diminishing certain people with low-income household resources.*

Keywords: *Ownership; Utilization; Low-Cost Flats*

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (1) affirms that every person has the right to live prosperously, physically and mentally, to live, and to have a good and healthy environment. Housing has a strategic role in shaping the character and personality of the nation and as one of the efforts to develop Indonesian people as a whole, self-identity,

independent and production.

Therefore the right to a place to live in the form of decent and affordable housing. In accordance with the development of state and government based on the concept of the welfare state, the government is to establish public welfare. To develop the country's obligations, the government shall provide people's needs in various forms. This has been stipulated in the fourth paragraph of the Preamble of

the 1945 Constitution of the Republic of Indonesia that:

“...The State of the Republic of Indonesia aims to protect the entire nation of Indonesia and all of Indonesia’s blood spills, promote public welfare, and educate the nation’s life ...”

Such formulated premise is certainly in accordance with the expected objectives from the concept of welfare state. The demands of the welfare state raise the obligation of the government to interfere with the socio-economic and social life of the people as a rarity to realize public welfare.

As a consequence of the goal of the welfare state, the government intervenes in various government actions for the benefit of the people. With regard to government intervention there are three main duties of the state (government) as follows: 1) the duty to maintain security and order; 2) the duty to uphold justice (justice enforcement); and 3) the duty to build facilities and infrastructure or public infrastructure (public infrastructure development).

Despite various incentives and programmes being offered to boost development of low income mass housing, Rudhi Prasetya¹ states that the main reason why the government needs to intervene in the socio-economic life of its people, is because the state has an extensive interest in the prosperity and welfare of its citizens. In connection with this, the government generally intervenes in economic life in the country concerned which has been providing more protection to its citizens. As well, Wolfgang Friedman² stated as a problem of a mixed economy and legal state in which the state has four functions, as follows: 1) provider function; 2) regulator function; 3) entrepreneur function; and 4) empire function.

Fulfillment of the right to housing is a national problem, yet it is the government’s obligation to guarantee that everyone can exercise this right to live in security, peace, and dignity. This can be seen from the large number of Low-Income Communities (MBR) who have not been able to

¹ Rudhi Prasetya. (1997). *Analisis Ekonomi Terhadap Hukum Kontrak Dalam Menyongsong Era Globalisasi*, Jakarta: Jurnal Hukum Bisnis, Volume 2, p.2.

² Wolfgang Friedman. (1991). *The State and The Rule of Law in A Mixed Economy*, London: Steven and Sons.

inhabit decent homes, especially in urban areas, which results in the formation of slums to meet housing needs, one of which can be done through the construction of low-cost flats as part of housing development given the limited urban areas. Low-cost flats (Rusun) are expected to be able to encourage urban development which is also a solution to improve the adequate standard of living.

Such low-cost flats unit (apartments) called Sarusun is a unit of flats whose main objective is to be used separately with the main function of the dwelling and has a means of dwelling on public roads. There are four types of low-cost flats in the provisions of Law Number 20 Year 2011, as follows: 1) public flats are flats held to meet the housing needs of low income residents; 2) special flats are flats held to meet special needs; 3) state flats are flats owned by the state and function as a residence, a means of fostering family, and supporting the implementation of the duties of officials and or civil servants; and 4) commercial flats are flats held for profit.

Perpetrators of the construction of flats, referred to as the perpetrators of development are every person and or government that conducts housing and settlement development. Every person is an individual or legal entity established by an Indonesian citizen whose activities are in the field of housing and housing management.

Low-Income Communities (MBR) are people who have limited purchasing resources, thus they are necessary to obtain government support to get general supplies. Occupants are people who occupy the Sarusun, both as the landlords and not the owner of the low income community.

Implementation of spatial planning is an activity that includes the arrangement, guidance, implementation and supervision of spatial planning as referred to in Law No. 26 of 2007 on Spatial Planning. The implementation of spatial utilization and its control as national strategic areas can be carried out by local governments through deconcentration and/or border tasks.³

³ H. Muchsin and Imam Koeswahyono. (2008). *Aspek Kebijaksanaan Hukum*

Penatagunaan Tanah dan Penataan Ruang, Jakarta: Sinar Grafika, p. 49.

In line with the provisions of Article 14 jo Article 2 paragraph (1) of Law no. 5 of 1960 and Article 3 letter a to c of Law No. 24 of 1992 is the achievement of the greatest prosperity of the people known as a just and prosperous society. To ensure legal certainty to control, use and utilize land for people who have a legal relationship with the land in accordance with determined areas for spatial plan.

Empirical evidences have proven that the issues in regard to ownership and utilization of low-cost flats nowadays is a very complicated matters to solve in several big cities such as Jakarta, Makassar and Surabaya. The purpose of the implementation of flats is to ensure the establishment of low-cost flats that are livable and affordable in a healthy, safe, harmonious and sustainable environment and to create integrated settlements to build economic, social and cultural resilience. It has been tarnished by the existence of unfair business practices from stakeholders outside of Low Income Communities (MBR).

To address these issues, various cases have arisen regarding ownership

and utilization of such problematic flats released through print and electronic media, illustrating the shifting social functions of flats to economic functions. Because certain people or legal entities have collaborated with the manager in utilizing space to deliberately get unnatural profits in the implementation of flats.

METHOD

This research-based paper is kind of juridical normative, which is to study legal concepts related to ownership and utilization of low-cost flats, with a statute approach, conceptual approach and case approach. The study also adopts varied approaches to the review, the legal materials used are the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 on Basic Regulations on Agrarian Principles and Law Number 20 of 2011 on Low-cost Flats.

DISCUSSION

Scope of Regulation of Law Number 20 Year 2011 on Low-cost Flats

Based on the provisions of article 4, the scope of the regulation of Law Number 20 Year 2011 covers:

1. Coaching;
2. Planning;
3. Development;
4. Mastery, owner, and utilization;
5. Management;
6. Quality improvement;
7. Institutional;
8. Duties and authorities;
9. Rights and obligations;
10. Funding and financing systems and
11. The role of the community.

Accordingly, the state is responsible for organizing low-cost flats whose development is carried out by the government, which includes planning, regulation, control and supervision, in which the minister who carries out government affairs in the housing and settlement area coordinates cross-sectorally, for regions, and across stakeholders, both vertically or horizontally.⁴ The government conducts development of the implementation of flats nationally to meet the orderly implementation of flats in following ways:

- a. Coordination of the implementation of flats;
- b. Socialization of statutory regulations and norms, standards, procedures and criteria;
- c. Providing guidance, supervision and consultation;
- d. Education and training;

- e. Research and development;
- f. Development of information and communication systems and services; and
- g. Stakeholder Empowerment.

The development of the implementation of flats is carried out to encourage the construction of flats by utilizing techniques and technology, building materials, construction engineering, and appropriate building designs and taking into account local wisdom and harmony in a safe environment for health. The regency or city government in carrying out the development of housing projects has the authority, cited as follows:

- a. Establish policies and strategies in the sector of low-cost flats at the regional or city level based on national and provincial policies and strategies;
- b. Develop and promote legislation in the sector of flats at the regional or city level based on provincial and/or national norms, standards, procedures and criteria;
- c. Monitor and evaluate the operation of policies and strategies in field of low-cost flats; and
- d. Carry out supervision and control over the implementation of laws, policies, strategies, and

⁴ Zainal Lubis. (1999). *Problematika Seputar Pembangunan Rumah Susun*

Dikawasan Perkotaan, Bandung: Logos Publishing, p. 2.

programs in the field of flats at the regional or city level.

The basic matters stipulated in Law Number 20 of 2011 include the guarantee of legal certainty of ownership and occupancy of the Sarusun for MBR; a body that guarantees the provision of public flats and special flats; utilization of state or regional property in the form of land and utilization of waqf land (mortmain property); the obligation of actors to construct commercial flats to provide public flats; providing incentives for actors in the construction of public flats and special flats; assistance and convenience for MBR and consumer protection.

Ownership and Utilization of Low-cost Flats

Responding to the development in big cities, especially the fulfillment and ownership needs which are very limited nowadays, and on the other hand the concentration of population that is increasing every day into the city. In addition, the provision of land in cities which is increasingly narrow due to the accumulation of land on certain people so that people do not

have adequate land to build housing and settlements, the government especially in big cities such as Jakarta and Surabaya are forced to establish housing either vertical or flat.

In regard to such obvious issues, Marbun⁵ identified one of the complications of the settlement problem in Indonesia's major cities is the land problem. This has implications for the construction of housing for the majority of urban low-income people, including the ownership of shared land over flats.

In order to extend the public welfare and improve the standard of living of the people, especially in efforts to equalize the fulfillment of basic housing needs as safeguarded by the Guidelines of State Policy, it is necessary to more increase efforts to provide adequate housing at prices that can be reached by people's purchasing power, especially for the low income people. In connection with the provision of housing for these low income people, the utilization of land for housing development will have an impact on the maximum use of land. Low-cost flats are based on the

⁵ M. Marbun. (2003). *Hiruk Pikuk Pembangunan Perumahan Di Perkotaan*,

Media Jaya, No. 004 Th XXVII/Jakarta, Mei, p. 38.

principles of general welfare, justice and equity, harmony and balance in life. In line with the role of the community in housing development, the central government and regional governments have the responsibility to be a facilitator providing assistance and facilities to the community, as well as conducting research and development covering various aspects related to spatial planning, land, institutional financing, local wisdom and supporting legislation.

In line with the general policy direction, the implementation of housing and settlements both in densely populated urban areas and in rural areas where land availability is more extensive needs to be realized in the presence of order and legal certainty in its management, both in the form of ownership and utilization. The city government and regional government need to provide easy housing for low income people through a gradual apartment development planning program in the form of facilities for financing and / or construction of public infrastructure, facilities and facilities in a residential environment.

In addition, as part of the international community that also signed the Rio de Janeiro Declaration, Indonesia has always been active in settlements. The soul and spirit set forth in Agenda 21 and the Habitat II Declaration are that housing is a basic human need and it is the right for all people to occupy adequate and affordable shelter for all. On agenda 21, the importance of housing as a human right is emphasized. This was in accordance with the spirit of the 1945 Constitution of the Republic of Indonesia.

The right to ownership and use of low-cost housing is an essential part of human rights, especially for low-income people who are always oppressed from the inability to obtain opportunities for decent and economically affordable home facilities. As in accordance with the principles of justice and equity, that is, providing a foundation so that the results of the construction of flats can be enjoyed proportionally and evenly for all people. For low-income people, the affordability and ease of obtaining the implementation of flats is a manifestation of the goal of building flats by the government and regional

governments to provide maximum benefits and benefits for the people's welfare.

The right of ownership and use of flats as stipulated in the second part, Article 46 through Article 55 of Law Number 20 of 2011 concerning Flats is no further explanation in the explanation section of the said Law. In civil rights relations, it gives pleasure and power to the individual in carrying out the law protecting human interests by allocating a power to him to act in the framework of his interests. This allocation of power is carried out regularly, in the sense that power and depth are determined. Such power is what is called a right. Thus not every power in society can be called a right, but only certain power, which is given by law to someone.

It turns out that rights not only contain elements of protection and interest but also will. A concrete example is the stipulation of Article 18 of Law Number 20 of 2011 which states that flats can be built by utilizing waqf land. The law provides protection for waqf land donors, but the protection is not only aimed at waqf landowners, but also against their will in relation to the utilization of the

land or the realization of their desire to provide benefits for the use of the said plot of land for the benefit of the construction of flats. Thus not only the interests of waqf landowners get protection, but their will in the utilization of the waqf land referred to.

General point of views have declared that the right to a person is always correlated with obligations to others. Thus, the legal freedom possessed by someone is also interpreted in this way, and therefore independence in a person is correlated with the obligation of others not to interfere with that independence. Such crucial situation is not completely such its evidence. Actually here we are dealing with two rights and not one as seen by this general interpretation. A concrete example in the application of Article 46 Paragraph (1) of Law Number 20 Year 2011 which states that ownership rights to Sarusun are property rights to individuals who are separated from the common right to a common share, shared objects and shared land.

The application of Article 46 in fact raises both disputes regarding interpretation and legal certainty regarding joint rights over common

shares, shared objects and shared land, even though the understanding can be found in the formulation of Article 1 number 4.5 and 6 of Law Number 20 Year 2011.

Shared land is a piece of land or a rental house for a building that is used on a separate shared basis on which flats are built and the boundaries of the building permit requirements are specified. The shared part is the part of the apartment which is owned separately for joint use in a unitary function with the units of the apartment. Nonetheless, shared objects are objects which are not part of the flats yet they are parts that are shared together not separately from shared landmarks. There is no further explanation of the provisions of Article 1 numbers 4, 5 and 6.

The rights to shared parts, shared objects and shared land are calculated based on the Proportional Value Comparison (NPP) which is a number that shows the comparison between the rights to common shares, shared objects and shared land which is calculated based on the relevant sarusun value to the total value of the Sarusun homes as a whole when the development actors first take into

account the total development costs to determine the selling price (Article 46 paragraph (2) jo Article 1 number 13). Under the researcher's opinion, there is no clear standard on this matter accompanied by unclear boundaries of liability in respect of this joint right by individuals or legal entities.

In some cases this joint ownership as happened in apartment complexes in urban areas is very disturbing to the community, especially residents of Sarusun, both as landlords and non-owners. The crucial question arises on who is most responsible for the legal consequences of such shared matter. In responding to the interests of the community in flats, sectoral law, in this case Law Number 20 of 2011, not only always provides the instruments exactly what happens in the community. Law Number 20 Year 2011 shall even provide shape to the community, also providing a platform towards the economic and social development goals of the community. In this context Law Number 20 Year 2011 will play a role as Tut Wuri Handayani (giving moral encouragement) or what is referred to as toot of social engineering.

The ownership rights to the sarusun are the ownership rights of the sarusun which are separate individuals with the common rights to the common share, shared objects, and shared land to justify the existence of a principal difference from shared ownership. Law Number 20 of 2011 does not provide an explanation of the scope of joint ownership of land rights, so a correct understanding of the right to ownership of the land must be seen in the Civil Code and Law Number 5 of 1960 on Basic Rules on Agrarian Principles (UUPA).

In the Civil Code besides being known by the principle of horizontal attachment also known as the principle of vertical attachment. This is regulated in Article 571 of the Civil Code. In Article 571 of the Civil Code it is stated that ownership rights to a piece of land include ownership rights to everything that is on it and in the land. Article 571 of the Civil Code implies the principle of following the juridical status of the land, meaning that all items attached to the land follow the juridical status of the land. Where the land has gained position as immovable property, all plants and buildings on it become immovable

property and unite their owners with the land.

In connection with the principle found in countries that use the principle of attachment, the land law which is adopted by the LoGA rests on customary law, which does not recognize the principle of attachment but adheres to the principle of horizontal separation. Thus Law Number 20 of 2011 in terms of ownership of flats follows the principle of horizontal separation.

Ownership of flats must meet the requirements as the holder of the joint land rights concerned as intended in Article 21, Article 26 and Article 42 of the BAL. In the case of communal land with ownership rights, it is limited to Indonesian citizens who do not have dual citizenship. Specifically for legal entities that can have flats on shared land, are legal entities designated by PP Number 38 of 1963 including banks established by the state, social and religious bodies and agricultural cooperatives that meet the requirements.

One of the most important features of ownership of flats is the strong evidence of land being the object of the flats. This is stipulated in

Article 47 paragraph (1) of Law Number 20 Year 2011 which states that as proof of ownership of land on ownership rights, building rights, or usage rights on land management rights are issued certificates of ownership. Sarusun (SHM Sarusun). Therefore, the certificate of ownership of the apartment unit consists of:

- a. A copy of the land book and the measurement letter on the shared land in accordance with the provisions of the legislation;
- b. Draw a floor plan at the level of the apartment in question that shows the owned property;
- c. Analysis on the size of the rights to the joint section, shared objects, and the joint land concerned. All of them are an inseparable unit.

In connection with the provisions of article 47 described in this line of report, in the framework of guaranteeing the certainty of rights for ownership of flats, a strong proof is provided in the form of a Sarusun title certificate (SHM Sarusun). Therefore SHM must include the rights to shared parts, and joint objects which are all an integral part of the unit concerned, which gives rise to the rights and obligations of the landlord.

The Sarusun SHM consists of: (a) copy of the land book and joint land survey according to Government Regulation No. 24 of 1997 concerning land registration; (b) drawings of the level of the relevant flats which show the units of flats which are owned; (c) a statement regarding the magnitude of the part of the right to a shared portion, shared objects and shared land which are inseparable and bound in a document cover, which is a proof of ownership rights to the unit of flats he owns.

Issuance is carried out by the relevant Regency or City Land Office. The SHM sarusun must already exist before the relevant flats can be sold. In the event of inheritance or transfer of the certificate rights concerned is given to the new owner after the registration of the transfer of rights at the Regency or City Land Office.

The use of flats can be seen in the application of Article 50 to Article 55 of Law Number 20 Year 2011. Article 50 states that the use of flats is carried out in accordance with the function of residential or mixed. What is meant by a mixed function is a mixture of residential and non-residential functions. Utilization of flats as

intended in Article 50 may change from residential functions to mixed functions due to changes in spatial planning. Changes in functions caused by changes in spatial planning are the basis for replacing a number of flats and / or resettling the Sarusun owners who have been converted. The party that changes the function of the apartment must guarantee the ownership rights of the property.

Every person who occupies, inhabits or owns a sarusun must use the sarusun in accordance with his function (Article 52). Likewise everyone can rent a sarusun covering the rights of individuals or the sarusun includes the right to a shared portion, a shared object and a shared land (Article 53).

The general Sarusun that receives the funds from the government can only be owned or leased by the Low Income Community (MBR). Everyone who has a common stock can only transfer ownership to another party in the case:

- a. Inheritance;
- b. An agreement on ownership of a flat for a period of 20 (twenty) years;
- c. Moving residence proven by a certificate of moving from the authorities.

The provisions of Article 55 of Law Number 20 Year 2011 has stipulated that Sarusun in state flats can be rented by individuals or groups with the convenience of the government. The application of Article 50 to Article 55 above is synergized with the application of Chapter XII, Article 89 and Article 90 of Law Number 20 Year 2011 on rights and obligations. Article 89 states that:

- (1) Everyone who has the rights to live in a decent, affordable and sustainable environment in a healthy, safe and harmonious environment
- (2) In organizing low-cost flats, everyone has the rights cited as follows:
 - a. To provide input and proposals in the compilation of policies and strategies for flats at the national, provincial and regency or city levels;
 - b. To oversee the compliance of stakeholders in the implementation of policies, strategies and development programs for flats in accordance with the stipulated conditions, both at the national, provincial and regency or city levels;
 - c. To receive information, conduct research and develop apartment knowledge and technology;

- d. To participate in helping manage information on low-cost flats, both at the national, provincial and regency or city levels;
- e. To build flats;
- f. To get benefits from the implementation of flats;
- g. To obtain appropriate compensation for losses directly experienced as a result of conducting business in the flats;
- h. To file a representative lawsuit to the court against the implementation of flats which harmed the community.

In addition to the aforementioned rights, everyone must obey the implementation of policies, strategies and programs for building flats that are carried out in accordance with the provisions of the legislation in the flats, as referred to in Article 90 of Law Number 20 Year 2011. In the implementation of flats, each person mandatory:

- a. Maintain security, order, cleanliness and health in the apartment environment;
- b. Participate in preventing the implementation of flats that harm and endanger others and / or public interests;
- c. Maintain environmental infrastructure and facilities as well as public facilities located in flats;
- d. Oversee the utilization and functioning of infrastructure, facilities and public facilities

in a condominium environment.

Even if the concept of a right relates to the freedom from interference by other individuals or the government, rights and duties are always closely related and cannot be separated from one another. Both go side by side. These are the two sides of the same coin. If the state gives the right to life to a citizen, it also imposes an obligation on him to not to expose his life to dangers, as well as to respect the life of others.

CONCLUSION

Based on results obtained in this line of research, if we are observing the application of Article 54 paragraph (1) of Law Number 20 Year 2011 which states that the general system of obtaining facilities from the government can only be owned or leased by Low-Income Communities (MBR), in various granting rights through print media and actual electronic media. There are still many deviations, because empirical evidences have proven such issues on such common Sarusun ownership is also controlled by middle-income people through diminishing certain people with low-income household

resources. Unfair business practices are also in the face of ownership and utilization of Sarusun for being rented. In prior to the last 20 years, there has been an agreement on the ownership of low-cost flats where this is very contrary to the application of Article 54 paragraph (2) letter b of Law Number 20 of 2011 even the certificate of transfer from the authorities sometimes remains unclear of its legality.

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