

## Comparison Of Regulations For The Approval Of Condominium Developments Before And After The Job Creation Law

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### ABSTRACT

Housing development is an effort to meet one of the basic human needs, as well as to improve the quality of the living environment, give direction to regional growth, expand employment and drive economic activities in improving and equitable distribution of people's welfare. The construction of flats is one alternative solution to the problem of housing and settlement needs, especially areas in urban areas where the population continues to increase, because the construction of flats can reduce land use, make urban open spaces more spacious and can be used as a way to rejuvenate the city for slums. Arrangements related to the construction of flats were initially regulated in the Flats Law, one of which regulated the ratification of flats. The Job Creation Law through its omnibus law model amends several provisions including those related to flats, including through implementing regulations. In this paper using normative juridical research methods, the author will compare the arrangement for the ratification of flats before and after the promulgation of the Job Creation Law and explore potential juridical problems.

**Keywords:** Flats Arrangement, Flats Law, Job Creation Law

### INTRODUCTION

Residence is one of the basic (primary) needs, the implementation of which is regulated in Article 28H of the 1945 Constitution of the Republic of Indonesia, which states, 'Every person has the right to lead a prosperous life, both physically and mentally, to have a place to live, and to obtain a better and healthier environment and the right to receive comfort services'(Suhadi, 2017). In meeting the need for housing, the government is mandated to establish or provide dwellings, whether in the form of row houses or multi-story buildings. However, fulfilling the need for housing is not easy due to the passage of time and the increasing population, leading to rising land prices and greater difficulty in obtaining land.

Apartment buildings are one of the alternative solutions to the housing and settlement needs, especially in urban areas where the population continues to grow. They can reduce land use, create more spacious urban open spaces, and serve as a means of urban renewal in slum areas (Arie, n.d.). The construction of apartment buildings provides a solution to the housing shortage by minimizing land use and increasing open spaces in the central areas of the capital, contributing to urban renewal in slum areas (Arie S. Hutagalung, 2004).

According to the Apartment Law, an apartment is a multi-story building constructed in an environment divided into functionally structured parts, both horizontally and vertically. It consists of units that can be individually owned and used, primarily for residential purposes, equipped with common areas, common property, and common land. With the existence of apartment buildings, the vertical optimization of land use is achieved; constructing buildings with multiple levels is more effective than horizontal land (Ridwan Halim, 2000).

According to the Apartment Law, it is stipulated that apartment buildings can only be constructed on land with ownership rights, building rights, or land-use rights granted by the state, or land-use rights or management rights in accordance with

prevailing laws and regulations ("Pasal 17 UU No. 20 Tahun 2011 Tentang Rumah Susun," 2011). The development of apartment buildings on land with management rights must address the building rights status on that land based on the provisions of laws and regulations before selling the respective apartment units ("Pasal 22 Ayat (3) UU No.20 Tahun 2011 Tentang Rumah Susun," 2011). Apartments themselves are categorized into several types ("Pasal 1 Angka 7-10 UU No.20 Tahun 2011 Tentang Rumah Susun," 2011);

- a. Public apartments, organized to meet the housing needs of low-income communities.
- b. Special apartments, organized to meet specific needs.
- c. State apartments, owned by the state and serving as residences, family development facilities, and support for the duties of government officials and/or employees.
- d. Commercial apartments, organized for profit.

Proof of ownership of an apartment is in the form of a certificate of ownership called the Certificate of Ownership for the Apartment Unit. Ownership of an apartment occurs through a transaction between the Developer as the seller and the consumer as the buyer through a sales and purchase agreement, which is then formalized in a deed of sale (M. Rizal Alif, 2008). However, this is generally feasible only when the apartment building has been completed. Within the apartment building itself, before the issuance of the Certificate of Ownership for the Apartment Unit, it must first fulfill administrative requirements, including the approval of the apartment separation deed and the certificate of occupancy, which is one of the conditions for its approval

In Law Number 20 of 2011 concerning Apartment Buildings, Article 30 stipulates that the explanation (division plan) is a declaration in the form of drawings and descriptions indicating clear boundaries for each apartment unit, common areas, shared objects, and common land, along with proportional value comparison descriptions. ("Pasal 30 UU No.20 Tahun Tentang Rumah Susun," 2011). The explanation can then be described as follows:

- a. Exploratory picture  
It is a drawing showing the boundaries of individual ownership and communal areas structured both vertically and horizontally, functioning as a unified entity, incorporating proportional value comparisons (NPP).
- b. Description of the explanation  
It is a descriptive explanation of the drawings regarding individual ownership and joint ownership which is equipped with technical specifications containing proportional comparison values (NPP), the calculations of which are carried out by the development organizer and ratified by the Regent/Mayor and specifically for the DKI Jakarta area, ratified by the Governor.

According to Government Regulation Number 13 of 2021 regarding the Implementation of Apartment Buildings, in Article 1 number 25, explanation is defined as a statement in the form of drawings and descriptions made before the construction of the apartment building, certified by the local government, indicating clear boundaries for each apartment unit, common areas, shared objects, and common land, along with NPP descriptions

explanation plays a crucial role in apartment buildings, as it marks the beginning of the process for issuing the Certificate of Ownership for the Apartment Unit. From the pertelaan, separate legal entities for apartment units emerge through the creation

of separation deeds. The pertelaan created by the Developer serves as the basis for calculating NPP and is one of the requirements for the approval of the apartment separation deed based on Article 2 of the National Land Agency Head Regulation Number 2 of 1989 concerning the Form and Procedures for Filling and Registration of Apartment Separation Deeds.

Furthermore, pertelaan is a prerequisite for the approval of the Apartment Separation Deed as the basis for issuing the Certificate of Ownership for the apartment unit and the Certificate of Ownership of the Building (SKBG) for the apartment unit.

The primary provisions regarding pertelaan are stated in Law Number 20 of 2011 concerning Apartment Buildings (Apartment Law). Article 30 of the law specifies that: "After obtaining the permit as referred to in Article 29 paragraphs (2) and (3), the developer is required to request approval from the local government regarding the pertelaan, indicating clear boundaries for each apartment unit, common areas, shared objects, and common land, along with NPP descriptions" ("Pasal 30 UU No.20 Tahun Tentang Rumah Susun," 2011).

Construction actors who build publicly owned flats and commercially owned flats are obliged to separate the flats into flat units, common objects, common parts and common land (Martina, 2010). Developers create the separation of apartment buildings, which must be documented in the form of drawings and descriptions. This separation serves as the basis for determining NPP (proportional comparison value), SHM Sarusun (Ownership Certificate for the Apartment Unit), and sales and purchase agreement. The drawings and descriptions are created before the implementation of apartment building construction and must be submitted to the Regional Government to obtain approval. Article 16 of Law No. 20 of 2011 further explains that:

- a. Commercial apartment building development can be carried out by any individual.
- b. Developers of commercial apartment buildings must provide a minimum of 20% public apartments of the total floor area of the commercial apartment building.
- c. The obligation to provide at least 20% public apartments can be fulfilled outside the location of the commercial apartment building in the same regency/city.
- d. Further provisions regarding the obligation to provide public apartments as mentioned in Article 16 paragraphs (2) and (3) are regulated by government regulations."

On October 5, 2020, Law Number 11 of 2020 concerning Job Creation was enacted. The law triggered widespread opposition, leading to multiple constitutional challenge submissions to the Constitutional Court. After a formal review, the Constitutional Court declared Law Number 11 of 2020 concerning Job Creation conditionally unconstitutional. The government subsequently revoked the law, replacing it with Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation. Later, the DPR (People's Consultative Assembly) discussed the Perppu to decide whether to approve it as a law or reject it, requiring the President to revoke it if rejected, reinstating the legal basis to Law Number 11 of 2020 concerning Job Creation. Ultimately, the DPR approved the Perppu, enacted as Law Number 6 of 2023 concerning the Ratification of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. However, all technical provisions derived from Law Number 11 of 2020 concerning Job Creation are still considered valid (BBC News Indonesia, 2023).

Law Number 11 of 2020 concerning Job Creation, before being replaced by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation

and later enacted as Law Number 6 of 2023, resulted in several legal products in the form of technical regulations or implementing regulations. As one of the materials covered by Law Number 11 of 2020 concerning Job Creation is related to the management of apartment buildings, there are still technical provisions related to apartment buildings in the form of government regulations that remain in effect. These regulations are found in Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Apartment Buildings.

One of the crucial matters regulated in Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Apartment Buildings pertains to the approval of the *pertelaan*, as mentioned earlier. In this text, the author intends to compare the legality of the approval of Apartment Building division plans before and after the enactment of the Job Creation Law, with the following formulated issues: How is the legality of the approval of Apartment Building division plans regulated before the enactment of the Job Creation Law?; Are there any issues in the regulation of the approval of Apartment Building division plans after the enactment of the Job Creation Law?"

## METHOD

In this research, the author uses a normative legal research method which is a scientific procedure to find the truth based on legal scientific logic from its normative corridors. (Johnny Ibrahim, 2012). Normative legal research is a type of research that analyzes statutory regulations based on dogmatic law, legal theory and legal philosophy (Peter Mahmud Marzuki, 2011). The basis for determining the research is based on the identification of problems related to the provisions regarding the regulation of the legality of ratification of condominium reports and the comparison between the provisions in the Condominium Law and the material changes in the Job Creation Law.

### Theoretical Basis

In analyzing the data to answer the problems posed in this research, several theories will be used, namely theories which are propositions that are interconnected with events or phenomena that occur in a certain way to be observed. Based on the description of the concepts above, the theories The theories that can be used to discuss the problems in this research article are:

#### a. Theory of Legal Certainty

Certainty is a condition that is definite; law, fundamentally, must be certain and fair. Legal certainty is a question that can only be answered normatively, not sociologically. Legal certainty is the implementation of the law according to its wording so that society can ensure its enforcement. In understanding the value of legal certainty, it should be noted that this value has a close relationship with positive legal instruments and the role of the state in actualizing it in positive law. Normatively, legal certainty exists when a regulation is made and promulgated precisely because it regulates definitively and logically (Cst Kansil, 2009). Legal certainty is considered one of the goals of the law and can be seen as an effort to achieve justice. A tangible form of legal certainty is the implementation and enforcement of the law against an action, regardless of who committed it. Legal certainty allows individuals to anticipate the consequences of their legal actions, contributing to the realization of justice. Legal certainty is an inseparable characteristic of the law, especially for written legal norms. "Law without the value



of certainty will lose its meaning because it cannot be used as a guide to behavior for everyone” (Hasan et al., 2023). Clear in meaning, it does not create doubt (multi-interpretation), and logical in the sense that it becomes a system of norms with other norms, so there is no conflict. Referring to the law points to the enforcement of clear, accurate, consistent, and consequential laws whose implementation cannot be influenced by subjectively oriented circumstances. The importance of legal certainty is in line with Article 28D paragraph (1) of the 1945 Constitution, the third amendment, which states that everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law.

According to Gustav Radbruch, the law must embody three identity values: A. The principle of legal certainty (*rechtmatigheid*), viewed from a juridical standpoint. B. The principle of legal justice (*gerechtigheit*), viewed from a philosophical standpoint, where justice is the equality of rights for all individuals before the courts. C. The principle of legal utility (Prayogo, 2016).

#### **b. Theory of Legal Harmonization**

The development of legal substance or legislation in Indonesia continues as a never-ending process because legislation is one of the main pillars of the national legal system. There are still problematic legal regulations, both in terms of substance, process and procedure, and legal drafting aspects. At least three main issues exist in this :

- a) Overlapping and inconsistency of legislation;
- b) Unclear formulation of legislation; and
- c) Implementation of laws hindered by their implementing regulations.

These issues are caused, among other things, by the legislative process neglecting the importance of in-depth material content, coordination, synchronization, and harmonization with other legislation. Therefore, one of the priorities in national legal development is to harmonize legislation systematically from early stages, starting from the preparation of academic texts, the formulation of the National Legislation Program (Prolegnas), to the drafting of bills, draft regulations, and draft presidential regulations.

According to J. M. Sinclair (Sinclair, 1991), in Collins Cobuild Dictionary (1991), the terms 'harmonious' and 'harmonize' are explained as follows : A relationship, agreement etc. that is harmonious is friendly and peaceful. Things which are harmonious have parts which make up an attractive whole and which are in proper proportion to each other When people harmonize, they agree about issues or subjects in a friendly, peaceful ways; suitable, reconcile. If you harmonize two or morw things, they fit in with each other is part of a system, society etc.

Elements drawn from the definition of harmonization include: (i) the existence of conflicting elements; (ii) reconciling conflicting elements proportionally to form a system; (iii) a process or effort to realize harmony, suitability, appropriateness, compatibility, and balance; and (iv) cooperation between various factors in such a way that these factors produce a noble unity. Harmonization of legislation is an effort or process to realize harmony and coherence in the principles and legal systems, resulting in harmonious regulations (legal systems) (Susilawati & Prihanto, 2015).

## RESULTS AND DISCUSSION

### a. Regulation of Condominium Approval Legality Before the Omnibus Law on Job Creation

Approval is a description of clear boundaries for each Condominium Unit that can be owned individually, common areas, common property, and common land along with the Condominium Unit Ownership Certificate (NPP). Approval must be processed based on the mandate of Law No. 20 of 2011 Article 25, which states that in building condominiums, developers must separate condominiums into individual units (Dinas Perumahan, 2019). In Article 30, it is stated that "After obtaining a permit, the developer must request approval from the local government regarding the approval showing clear boundaries for each condominium unit, common areas, common property, and common land along with the description of NPP." Then, in Article 31 paragraph 4, it is mentioned that "in the event of a change in the plan for the function and utilization of the condominium resulting in a change in the NPP, approval must be obtained again from the regent/mayor." In Article 47 paragraph 3 letter c related to Condominium Ownership Certificate (SHM Sarusun), one of them includes approval explaining the size of the right to common areas, common property, and common land for the respective owner. A similar provision is also found in the Condominium Land Use Right Certificate (SKBG Sarusun) as explained in Article 48 paragraph 2 letter d. In the explanatory section of Article 42 paragraph 2 letter c, it is reiterated, "The certainty of ownership status between SHM sarusun or SKBG sarusun must be explained to prospective buyers as indicated by the approved approval by the local government."

An Approval Drawing is an illustration that clearly outlines the shape and boundaries of each condominium unit, common areas, common property, and common land, including tower/block numbering, floor, unit number of each condominium unit, notation regarding common areas, common property, and common land. Approval Drawing includes (Kusuma, 2018):

- a) Developer's name as the applicant;
- b) Project name;
- c) Submission time;
- d) Approval column;
- e) Unit number;
- f) Unit area;
- g) Comparison Value (NPP) of condominium units;
- h) Data on mechanical, electrical, and utility infrastructure used as common property.

The concept of approval has existed since the regulation of Government Regulation No. 4/1988 concerning Condominiums, which obliges developers or organizers of condominium development to create an approval that shows clear boundaries for each condominium unit, common areas, common property, and common land along with a proportional comparison value description.

The Approval Concept is a description of clear boundaries for each condominium unit both horizontally and vertically, which is a specific part of the building, including common areas, common property, and common land containing a proportional comparison value. The proportional comparison value is a number that shows the comparison between condominium units to the right of common areas, common property, and common land. The proportional comparison value is crucial for

condominium owners because it reflects the rights and obligations of condominium owners over the ownership of common areas, property, and land, rights and obligations in the maintenance and management of condominiums, and voting rights in the Condominium Residents Association (PPRS). Approval is essential in the condominium system because it is the starting point for the process of ownership of condominium units. From the approval, separate legal entities for condominium units and the right to common land will emerge through the separation deed-making process. This approval process can begin if the detailed planning drawings have been prepared and accepted by the institution issuing the Building Permit (IMB).

Separation Deed is evidence of the separation of condominiums into individual units, common areas, common property, and common land with clear approval drawings in the form of illustrations, descriptions, and boundaries in the vertical and horizontal directions containing proportional comparison values. The separation deed is a private deed created by the condominium development organizer. The separation deed along with its approval is requested for approval from the local government and registered at the district/city land office as the basis for the issuance of Condominium Ownership Certificates (SHM Sarusun) or Condominium Land Use Right Certificates (SKBG Sarusun). If there is a change in the building plan by the developer, they must inform the Condominium Residents Association (PPRS), and if the change results in a decrease in the proportional comparison value, the approval of the PPRS is required, and a new proportional value calculation must be made. A new separation deed/adjustment approval must be created and registered again at the district land office to issue a new land book for each condominium unit to be built (WIDYANTARI, n.d.). Erwin Kallo et al., in the book titled *Legal Guide for Condominium Owners/Occupants (Condominium, Apartment, and Rusunami)*, explain (Erwin Kallo, 2009):

"Individual ownership is the ownership right of an individual who has purchased a condominium unit. The unit here is a three-dimensional geometric space bounded by walls and used separately or not together. This individual right is usually reflected in the condominium approval. Approval is a clear indication of the boundaries of each condominium unit, common areas, common property, common land, along with the proportional comparison value (NPP) and its description. Regarding the size/dimensions of condominium units (sarusun), it will be seen and described in the certificate of ownership of each unit."

The issuance of approval involves an Approval Team, consisting of individuals from the National Land Agency, Building Planning and Supervision, and the Housing Department. This Approval Team will conduct a site visit and physical inspection to determine if the completed building complies with the IMB. The results of the location review will be discussed by the Approval Team in a Coordination Meeting with other relevant agencies. If the Approval Team has verified that the approval drawings are in line with the physical conditions in the field, then approval will be requested/endorsed from the local government. After the approval is obtained, the process of printing HMSRS certificates for all condominium units and other parts of the condominium in question will be carried out. The completed HMSRS certificates will be sent to the Regional Office of the National Land Agency where the Condominium is built, and the Regional Office of the National Land Agency will issue a book/bundle of HMSRS certificates in the name of the developer and can be collected by the respective developer (Fatima J.O., 2009).

Therefore, looking at the regulations regarding the approval of condominium drawings mentioned above, it revolves around the regulations within the Condominium Law, in which its implementation involves a significant role from local governments. Each local government generally has its own regulations related to the approval of condominium drawings specified in regional regulations.

#### **b. Issues with the Regulation of Condominium Drawing Approval Post the Enactment of the Omnibus Law on Job Creation**

Due to the concept carried by the Omnibus Law on Job Creation, where the law makes changes to many regulations simultaneously in one law, the regulation within the Condominium Law, including the content related to the approval of condominium drawings, is one of the materials modified by the Omnibus Law on Job Creation. Therefore, the author will first compare the provisions related to the approval of condominium drawings in the Condominium Law and then compare them with the changes in the Omnibus Law on Job Creation.

Firstly, in Article 30 of the Condominium Law, it is deleted by the Omnibus Law on Job Creation, even though it contains provisions related to condominium drawings. It is stated that the developer, after obtaining a permit, must request approval from the local government regarding the approval that shows clear boundaries for each condominium unit, common areas, common property, and common land along with the description of NPP. This deletion is related to the removal of the permit requirements for condominium development. However, considering the transfer of regulations to government regulations, it allows the regulation related to condominium drawings to be arranged in government regulations, which will be discussed in the next section.

In Article 31, it mentions the alteration of the function and utilization plan of condominiums, which requires permission from the regent/mayor (specifically for the Special Capital Region of Jakarta, approval must be obtained from the Governor). The alteration of the function and utilization plan emphasizes that it must not reduce the function of common areas, common property, and residential functions. This results in a change in NPP, where its approval must be re-endorsed by the regent/mayor (specifically for the Special Capital Region of Jakarta, the alteration of the function and utilization plan of condominiums must obtain approval from the Governor). To obtain alteration permission, the developer must submit reasons and proposals for changes, including:

- a) Site plan drawings and their changes;
- b) Architectural plan drawings and their changes;
- c) Structural plan drawings and calculations and their changes;
- d) Plan drawings clearly showing common areas, common property, and common land and their changes;
- e) Drawings of public utilities and installations and their changes.

This article is also amended in the Omnibus Law on Job Creation to state that the alteration of the function and utilization plan for condominiums must comply with Business Licensing from the regent/mayor in accordance with the norms, standards, procedures, and criteria set by the Central Government (specifically for the Special Capital Region of Jakarta, the alteration of the function and utilization plan for condominiums must comply with Business Licensing from the governor in accordance with the norms, standards, procedures, and criteria set by the Central Government).



The alteration of the function and utilization plan for condominiums does not reduce the function of common areas, common property, and residential functions.

This article was also changed in the Job Creation Law to read: Changes to the function and utilization plans for flats must comply with the Business Permit from the regent/mayor in accordance with the nonna, standards, procedures and criteria set by the Central Government (Especially for the Special Capital Region Province Jakarta, changes to plans for the function and use of flats must comply with the Business Permit from the governor in accordance with the norms, standards, procedures and criteria set by the Central Government). Changes in the planned function and use of the Flat do not reduce the function of the Common Parts, Common Objects and residential functions.

The Condominium Law also regulates technical aspects of marketing and buying and selling condominiums. In Article 42, it is stipulated that the use of the Pre-Project Selling marketing system is possible. The developer can carry out marketing before condominium construction is implemented. However, the developer must have at least:

- a) Certainty of land allocation;
- b) Certainty of land rights;
- c) Certainty of condominium possession status;
- d) Condominium development permits; and
- e) Guarantee for condominium development from a guarantee institution.

Regarding the certainty of condominium possession status, there is an additional explanation in the explanation of Article 42 paragraph 2 letter c, which states that the certainty of ownership status between SHM condominium or SKBG condominium must be explained to prospective buyers as indicated by the approved approval by the local government. There are no changes to the regulations in Article 42 of the Condominium Law in the Omnibus Law on Job Creation.

Then, in Article 47, it is stated that as proof of ownership of condominiums on land owned by the state, the right to use buildings, or land use rights on state land, the right to manage is issued in the form of a Condominium Certificate (SHM Sarusun). The SHM Sarusun is issued for anyone who meets the requirements as a land rights holder. The SHM Sarusun is an inseparable unity consisting of:

- a) A copy of the land book and survey letter on joint land rights in accordance with the provisions of the legislation;
- b) Floor plan drawings at the level of the respective condominium building showing the owned condominiums; and

**c. Approval regarding the size of the right to common areas, common property, and common land for the person concerned.**

The SHM Sarusun is issued by the district/city land office. The SHM Sarusun can be used as collateral for debts with a mortgage burdened in accordance with the provisions of the legislation. Then, in Article 48, it is mentioned that as proof of ownership of condominiums above state/regional assets in the form of land or wakaf land by way of lease, the Condominium Management Rights Certificate (SKBG Sarusun) is issued. The SKBG Sarusun is an inseparable unity consisting of:

- a) A copy of the building book;
- b) A copy of the lease agreement for the land;
- c) Floor plan drawings at the level of the respective condominium building showing

the owned condominiums; and.

**d. Approval regarding the size of the right to common areas and common property of the person concerned.**

The Condominium Management Rights Certificate (SKBG Sarusun) is issued by the technical agency of the district/city responsible for building construction. The SKBG Sarusun can be used as collateral for debts with a fiduciary burden in accordance with the provisions of the legislation. The SKBG Sarusun used as collateral in fiduciary must be registered with the ministry responsible for legal affairs. Regarding the regulation in Article 47 of the Condominium Law, there is also no change in the Job Creation Law.

Furthermore, it has been mentioned above that the Job Creation Law has produced technical legal products in the form of Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning Condominium Management. In this aforementioned Government Regulation, there are many references related to the approval of Condominium Management. In the general provisions, precisely in Article 1 number 25, the definition of Condominium Management is stated as a statement in the form of drawings and descriptions made before the implementation of Condominium construction approved by the local government indicating clear boundaries of each Condominium, Common Areas, Common Property, and Common Land along with the description of NPP. In Article 16, it is mentioned that Condominium Management is one of the requirements that must be completed in the function and utilization plan license as a reference for developers to build Condominiums and their surroundings.

In Article 28, it is stated that drawings and descriptions as a form of separation of Condominiums constitute Condominium Management made before the implementation of Condominium construction and must be submitted to the Regional Government. Condominium Management is approved by the regent/mayor or governor for the Special Capital Region of Jakarta Province. The request for approval of Condominium Management is made after the Condominium is completed. In the event of physical changes, spatial function, and building function during the implementation of Condominium construction resulting in changes to the Condominium Building Plan (PBG) and changes to the size of Condominiums, Common Property, Common Areas, and Common Land, approval of the amended Condominium Management must be obtained. Changes to Condominium Management require re-approval by the regent/mayor or governor for the Special Capital Region of Jakarta Province. Condominium Management or changes to Condominium Management are documented in the form of a separation deed certified by the regent/mayor or governor for the Special Capital Region of Jakarta Province after the issuance of a fit-for-function certificate.

In Article 41, it reinforces the regulations in the Condominium Law and the Job Creation Law, stating that the Condominium Certificate (SHM Sarusun) is an inseparable entity consisting of:

- a) A copy of the land book and survey letter for Common Land and Common Areas according to the provisions of the legislation;
- b) Floor plan at the level of the respective Condominium showing the owned Condominiums; and

**e. Condominium Management detailing the size of the rights to Common Areas, Common Property, and Common Land for the concerned party.**

Continuing in Article 42, it states that the application for the issuance of SHM Sarusun must at least include the following documents:

- a) Separation deed that has been certified, accompanied by Condominium Management;
- b) Certificate of rights to Common Land;
- c) Condominium Building Plan (PBG);
- d) Certificate of fitness for function; and
- e) Identity of the Developer.

In Article 50, it is mentioned that the Condominium Management Rights Certificate (SKBG Sarusun) is proof of ownership of Condominiums on state/ regional property in the form of leased land or endowed land, and is an inseparable unit consisting of:

- a) A copy of the building book;
- b) A copy of the lease agreement for the land;
- c) Floor plan at the level of the respective Condominium showing the owned Condominiums; and

**f. Condominium Management detailing the size of the rights to Common Areas and Common Property for the concerned party.**

Article 54 further states that Condominium Management detailing the size of the rights to Common Areas and Common Property includes: a. The type and quantity of Common Areas and Common Property; and, b. The calculation results of NPP for each issuance of Condominium Management Rights Certificate (SKBG Sarusun). NPP for the issuance of SKBG Sarusun shows the ratio between Condominiums and the rights to Common Areas and Common Property, calculated based on the value of the respective Condominium against the total value of the Condominium at the time the Developer first calculated the overall construction costs to determine the selling price.

Regarding the procedures for issuing SKBG Sarusun, Article 56 stipulates that for the initial issuance, it is done upon the request of the Developer based on the separation deed, where the request must at least include the following documents:

**g. Separation deed of Condominiums that has been certified, accompanied by Condominium Management;**

- a) Certificate of land rights;
- b) Lease agreement for the land;
- c) Condominium Building Plan (PBG);
- d) Certificate of fitness for function; and
- e) Identity of the Developer.

Article 83 mentions the obligations of the Developer during the transition period, at least:

- a) Acting as a temporary Manager;
- b) Providing copies of Condominium Management and NPP to the Owners;
- c) Preparing documents to be submitted to the deliberative assembly formation committee (PPPSRS), including:
  - 1) A copy of the built drawings (as-built drawing);

- 2) A copy of PBG and changes to PBG;
- 3) A copy of the certificate of fitness for function;
- 4) A copy of the deed of sale and purchase;
- 5) Documents containing Condominium Management details for Common Areas, Common Property, and Common Land;
- 6) Certified separation deed;
- 7) A copy of the Common Land certificate or a copy of the lease agreement for the land;
- 8) A list of Owners; and
- 9) Temporary occupancy regulations.

Furthermore, in Article 100, it is stated that the Developer must provide technical documents to PPPSRS, including:

- a) Condominium Management;
- b) Separation deed;
- c) Technical data for the construction of Condominiums;
- d) Built drawings (as-built drawing); and
- e) All licensing documents.

Article 118 emphasizes control through permits, inspections, and supervision at the planning stage for compliance of technical plan documents with city/district plan information, which is equipped with: a. Infrastructure, facilities, and public utility provision plans in accordance with statutory provisions; and, b. Condominium Management. Control through permits, inspections, and supervision at the planning stage involves the issuance process of PBG and approval of Condominium Management. Finally, in Article 124 number 3, it is stated that Common Land Registration is carried out by the Regional Government based on the certified Condominium Management.

In the explanatory section of Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning Condominium Management, concerning Condominium Management, only Article 30 paragraph 1 is mentioned, which relates to the separation deed that serves as evidence of the separation of Condominiums into Condominiums, Common Areas, Common Property, and Common Land, explained as follows: The term "separation deed" refers to evidence of the separation of Condominiums into Condominiums, Common Areas, Common Property, and Common Land, with clear Condominium Management in the form of drawings, descriptions, and boundaries in both vertical and horizontal directions containing NPP.

The legal issue in this study is the inconsistency in the regulation of condominium management during marketing that is not in line with each other. With the emergence of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation number 14 of 2016 concerning housing and settlement areas, in Article 22C paragraph (2), it is explained that the certainty of ownership status between SHM for a condominium unit or SKBG for a condominium unit must be explained to prospective buyers based on Condominium Management certified by the regional government. This means that the certification of Condominium Management is done before the condominium is built, in line with Article 1 number 25 of Government Regulation Number 13 of 2021 concerning Condominium Management, which states that Condominium Management is a statement in the form of drawings and descriptions made before the implementation of condominium construction, certified by the regional government, indicating clear boundaries.



However, in Government Regulation number 13 of 2021 concerning condominium management, in Article 28 paragraph (4), it is stated that the application for the certification of Condominium Management is made after the completion of the condominium construction. This raises legal uncertainty about when the certification of condominium management is carried out, whether before the construction of the condominium or after its completion.

Based on the emergence of normative inconsistencies as explained above, these norms apparently contain normative conflicts related to different regulations regarding the regulation of condominium management in Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation number 14 of 2016 concerning Housing and Settlement Areas and Government Regulation number 13 of 2021 concerning Condominium Management. Inconsistencies in the regulation of condominium management cause legal uncertainty for developers, especially for consumers, namely condominium buyers, in accordance with the mandate of the 1945 Constitution Article 28D paragraph (1), which states "Every person has the right to recognition, guarantees, protection, and legal certainty that is fair and equal treatment before the law." "(Pasal 28 D Ayat (1) UUD 1945," 1945).

Protection and legal certainty for developers, especially for consumers, regarding condominium management are crucial, given the urgency of condominium management as a requirement for the issuance of condominium unit ownership certificates (Eman Ramelan (et.al), 2015). Thus, the certification of condominium management affects the certificate of ownership of condominium units stated in the Conditional Sale and Purchase Agreement (PPJB) and the Deed of Sale and Purchase (AJB). Moreover, if this uncertainty leads to issues related to the possibility of differences in specifications promised to consumers compared to the specifications in the certified condominium management, legal protection for condominium consumers might be compromised due to legal uncertainty.

Legal protection for consumers is an effort to realize legal certainty and provide protection to consumers based on Article 1 paragraph (1) of Law number 8 of 1999. Consumer protection, according to Article 2 of Law Number 8 of 1999, is based on five principles: benefit, justice, balance, consumer safety and security, and legal certainty. Legal protection for consumers includes ensuring that consumers do not obtain condominiums that violate legal provisions and protects against unfair conditions for consumer (Novenry et al., 2022).

The presence of Law Number 8 of 1999, which prioritizes consumer interests, does not mean detriment to business actors in their business operations, especially developers involved in condominium (Sariffuddin & Susanti, 2011). Developers are expected to conduct condominium marketing and sales in accordance with this law. As a legal foundation, this law provides protection to both consumers and business actors, a realization that must be acknowledged by both parties—consumers and business actors (Sariffuddin & Susanti, 2011). Thus, from the identification of potential normative legal issues, clarity is needed to resolve normative inconsistencies that may cause legal uncertainty in the implementation of condominium management certification.

Comparing it with the regulations for Condominium management in Singapore generally, there are no specific regulations regarding the certification of condominium management by the local government, whether it is done before or after the condominium is built. Condominium regulations in Singapore are governed by several

laws, including the Land Title Act 1993, Land Title (Strata) Act Chapter 158, Registration of Deeds Act Chapter 269, Singapore Land Authority Act Chapter 301, Residential Property Act Chapter 274, and Housing and Development Act Chapter 129. While condominium management in Indonesia involves the local government through the certification of condominium management, Singapore has active involvement from the Housing and Development Board (HDB) in selecting Singaporean citizens to obtain flats. The legal effectiveness increases given the legal consciousness of Singaporean society, which is highly compliant with the rules set by the Singaporean Government (Yurika Dibba Destari Dierdja, 2014).

In general, the objects of condominium construction are as follows (Nur, 2018):

- a) Vacant land for housing;
- b) Stand-alone properties;
- c) Landed properties in condominium development not covered by the approved Planning Act;
- d) Shophouses built in areas designated for housing;
- e) Entire apartments or units in a condominium;
- f) Leasehold estates included in restricted residential property for a period not exceeding 7 years, including extensions;
- g) HDB flats purchased directly from HDB;
- h) HDB flats resold with HDB approval;
- i) HDB shophouses;
- j) Executive condominiums purchased according to the Executive Condominium Housing Scheme Act 1996.

## CONCLUSION

Regulations regarding the re-certification of condominium management are stipulated in the Condominium Law, specifically in Article 25, which states that in constructing a condominium, developers must separate the condominium into individual units. Article 30 mentions that "After obtaining permission, developers must request certification from the local government regarding the condominium plan, clearly delineating each unit, common areas, shared property, and communal land, along with the NPP description." Furthermore, Article 31, paragraph 4, specifies that "if changes in the condominium's function and use result in modifications to the NPP, recertification of the plan must be obtained from the regent/mayor." In Article 47, paragraph 3, letter c, concerning Condominium Ownership Certificate (SHM Sarusun), it includes a description of the condominium plan explaining the size of the ownership rights to common areas, shared property, and communal land. Similar provisions are found in the Certificate of Condominium Ownership Rights (SKBG Sarusun) as outlined in Article 48, paragraph 2, letter d. The explanatory notes in Article 42, paragraph 2, letter c, also emphasize that "the certainty of ownership status, whether it is an SHM Sarusun or SKBG Sarusun, must be explained to prospective buyers based on the certified condominium plan by the local government."

Following the enactment of the Omnibus Law that amended provisions in various existing laws, including the Condominium Law through Government Regulation No. 13 of 2021 on Condominium Management, detailed regulations on the certification of condominium plans were established. However, the author also identified legal gaps where the regulations on the certification of condominium plans are inconsistent with those in Government Regulation No. 12 of 2021, amending

Government Regulation No. 14 of 2016 on the organization of housing and residential areas. Essentially, this creates legal uncertainty regarding whether the certification of condominium plans is done before or after the construction of condominium units.

### **Acknowledgment**

The author's suggestion is for the government to promptly clarify and rectify these normative inconsistencies to ensure legal certainty and uphold consumer protection in condominium management.

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