



Legal Justice for Buyers Who Have Paid Ownership Payments of Flats Units When They Are Not Certificated

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<http://dx.doi.org/10.47814/ijssrr.v6i3.1065>

Abstract

On the one hand, the availability of land and housing at affordable prices is a problem for the urban population explosion. For this reason, efforts to build flats are a priority for housing procurement, considering the large number of residents who need housing. With consideration of affordable prices, the construction of flats for middle-class citizens is still paying attention to the standardization of decent, healthy, and comfortable housing. Act No. 20 of 2011 concerning flats in Article 24 explains that the construction of flats must comply with technical and administrative provisions and the UUPK regarding the rights of residents buying flats to obtain certificates that must be fulfilled according to the agreed agreement.

Keywords: *Buyer; Flats; Legal Justice*

Introduction

Every human being will always be faced with the problem of meeting the most basic needs, such as food, clothing, shelter, and means of transportation. Boarding or housing is a primary human need, and primary. The need to own and build a house requires land. Because land in the form of land has become a source of energy, which has benefits as a means of making a living in various fields or as a place to live in the form of housing. Settlement issues are not only seen as a means of meeting the needs of each citizen's life but more than that as a process of development and growth of a society. Fulfilling the needs of the community as one of the residents' residential facilities, the existence of a residence has been regulated in the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), especially in Article 28 letter H Paragraph (1) which explains that, every citizen have the right to live in physical and spiritual prosperity, have a home to live in, find a good, healthy living area and have the right to receive health services (Dhenita Sari et al., 2018).

By looking at this view, the need for settlements and housing is one of the most important factors in increasing decent housing and the potential for increasing welfare for the community, including

population growth in utilizing settlement and housing facilities. This will affect the development aspects of flats, both facilitated by the government and the private sector. In line with time, the increase in population, the construction of flats is more and more popping up and continues to increase. This has resulted in an increasing number of offices, so people feel the need for available housing in the form of flats is getting bigger, especially to avoid traffic jams. In the period between 2010 and 2020, almost every big city in Indonesia has an area of flats or apartments (Yana et al., 2020).

One of the factors that influence the development of flats that grow and develop in Indonesia is urbanization so the phenomenon of urbanization has become a concern of planners and policymakers in the last few decades. In terms of population, urbanization is defined as an increase in the proportion of the population living in urban areas. The increasing urbanization of the population in various cities so far has led to a shrinking balance between fulfilling economic needs and the availability of places to live. Residents who struggle with their economy mostly choose to work in the informal sector so that the income they earn is not commensurate with fulfilling the necessities they must live (Suharto et al., 2019).

Housing c, construction is intended so that every family can live in a decent house in an environment that is healthy, safe, peaceful, and orderly. Adequate housing is in the form of a house that meets the requirements for building safety and the adequacy of the minimum size of the building area and health. Furthermore, in line with the increase in population every year, the implementation of development continues to increase, followed by an increase in the need for land for residential areas. The process of the rural-urban complex is a separate problem for urban governments, especially the fulfillment of residential areas so spatial and regional planning is needed to fulfill residential facilities, especially the development of residential areas that are suitable for living together. The concept of a terraced house that can be lived in together and is divided into several sections separately, either vertically or horizontally, for each occupant or family, is known as a "flat." (Zachman, 2020).

In various big cities, it is quite important if the development of residential areas and settlements is fully directed at the development of Flats. The construction of flats (flats) aims to answer the need for decent housing or housing for the community, through obeying land and using idle land in each densely populated area but with very limited availability. Conceptually, flats are not just houses that are built and managed to meet the needs of low-income communities (MBR) as the public knows. The procurement of flats refers to the implementation of Law of the Republic of Indonesia Number 20 of 2011 concerning Flats (RI Law No. 20 of 2011), especially in Article 1 paragraph, (1) it is explained that an apartment is a high-rise building built in an environment and divided into several dwellings. in a structured manner, according to its function, either in the form of a sideways (horizontal) or rising (vertical) building. The building is in the form of units or units where each part can be owned and used separately, especially as a residence by several families together in each part (Putri Lijaya et al., 2021).

In this situation, quite several parties compete and are involved in the process of procuring and managing flat settlement projects, especially the role of a developer who has a responsibility as the founder of the flat, owner, and occupant as well as managing it. Owners and occupants are in an institution called the Association of Flat Owners and Occupants (PPPSRS). The association is a legal entity organization whose members are the owners or administrators of the apartment units. Referring to article 74ayat (3) RI Law No. 20 of 2011 concerning Flats, where PPPSRS has a position as a legal entity according to this law (Sihombing, 2021).

In RI Law no. 20 of 2011 concerning Flats, especially Article 046 explains that there is a stipulation regarding Ownership Rights over Flats Units which explains that (Izzattisselim, 2019):

- a) The right to own an apartment is a property right that is individual or individual which is separate from the joint right to a joint part, both in objects and land together.
- b) The right to part of the joint ownership, both in the form of objects and land, which is calculated according to the NPP rules.

In addition, the ownership of the apartment unit is proven by the issuance of a certificate of ownership rights (SHM) for each person who has fulfilled the requirements as the holder of land ownership rights as stated in Article 47 of RI Law No. 20 of 2011 concerning Flats. Flats are commercial in nature, either in the form of flats or apartments in several areas, many of which the owner has not yet obtained a certificate of ownership rights for. Most of the occupants or buyers of the flats do not hold certificates for the flats, and only have the rules of a Sale and Purchase Agreement (IJB) or a Sale and Purchase Deed (AJB). fulfilled all the requirements and partially paid the mutually agreed payments (Sakti et al., 2020).

This fact, after the apartment has been sold and bought out to the public, the buyer has the right to the part that has been sold, and the developer cannot own it. This is by RI Law No. 20 of 2011 concerning Flats, especially Article 75 Paragraph (2) states that if the PPPSRS has been formed, the developer must hand over the management of the object, residential part, and shared land. The developer still wants to manage the flats which are seen as providing many big benefits from their management, thus giving rise to conflicts between owners and developers that are prolonged between owners and developers.

Factually there are two PPPSRS within the apartment unit, namely the PPPSRS which was made by the developer, and the PPPSRS which was formed by the residents of the flat occupants. The existence of the two PPRSs has been regulated in Article 59 Paragraph (2) concerning the transition of the authority of PPPSRSs since it was first formed by the developer and then given to the residents of the flats. At the general meeting held by the developer, the occupants, and the related government, a decision was issued that the developer must provide a certificate of ownership and stop the management of PPPSRS that had been formed by the developer (Dhenita Sari et al., 2018). In fact, for a long period, the developer did not implement the decisions made at the meeting that had been agreed upon, and the residents of the flats have not received SHM and management rights. The ownership of the apartment unit, the occupants, or residents have rights and obligations that have been fulfilled, in which these rights and obligations are balanced, both from the developer's side and from the residents' residents.

Research Methods

Jenis penelitian yang digunakan dalam penelitian ini ialah penelitian uang mengarah pada hukum normatif (Soekanto & Mamudji, 2015) Dengan menggunakan bahan hukum primer dan sekunder, beserta bahan hukum tersier sebagai bahan pendukung. In connection with the type of research used, normative legal research (Mahmud Marzuki dan Peter Mahmud, 2011), several approaches to the problem will be used in this study, as follows: The statutory approach, the conceptual approach, the philosophical approach, the comparative approach, and the case approach are all examples. These five approaches are carried out to solve problems that occur in connection with the nature of the mark, the legal ratio of cancellation of trademark rights, and the legal consequences of trademark cancellation for licensees so that in the future business actors, especially in Indonesia, can use their trademark rights as one of the supporting pillars of a successful business as he did.

Results & Discussion

The Politics of Agrarian Law in the Certification of Flats Urbanization in Indonesia

The problem that many people experience, especially business actors or apartment managers, is committing acts that violate the law, for example not submitting ownership certificates for the apartment units (SHMSRS). This is closely related to consumer rights which are not fulfilled by business actors so that they can be included in the category of violating the provisions of the articles contained in the UUPK.

In this study, researchers will analyze more about agreements and broken promises made by managers or developers of flats in Surabaya. For this reason, for the first time, we will explain the legal relationship between the business actor and the residents who own the flat. The legal relationship that forms the basis of the relationship between the business actor and the occupants of the flat is the legal relationship between buying and selling. A sale and purchase transaction is a form of contractual agreement that has a reciprocal nature between one party (the seller) who promises to hand over proof of ownership of an item or object, while the other party (the buyer) promises to pay the agreed amount of money in return for the acquisition of said ownership.

By the understanding of the sale and purchase agreement above, if it is examined further it is known that the party acting as a seller occurs between the seller or the developer of the flat and the residents buying the flat. In this case, those who acted as buyers were residents who legally resided in the flats. Then the sale and purchase relationship between the management of the flat and the residents, which became the object of the sale and purchase agreement was the handing over of the ownership certificate of the flat unit (SHMSRS) (Yana et al., 2020).

In UUPA article 20 it is explained that property rights are hereditary rights, the strongest and most complete, which can be owned over a plot of land taking into account social functions, which can be transferred and transferred to other parties. Property rights are the "strongest and most complete" rights and can be owned by everyone over land. The application of this nature does not mean that these rights are "absolute" rights, rights that are unlimited and cannot be contested as iHake Eigendom. Thus, what is referred to as property rights has several characteristics (SARI, 2021).

- a. Firstly, it is hereditary, which means that the ownership rights to the land in question can be transferred by law from a deceased landowner to his heirs.
- b. Second, strongest, which means that the right to land is the most powerful among other land rights.
- c. Third, fully fulfilled, which means that the ownership rights to the land can be used and used as capital for agricultural businesses and for constructing buildings.
- d. Fourth, it can transfer ownership and be transferred (traded).
- e. Fifth, it can become collateral by being burdened with mortgage rights.
- f. Sixth, has an unlimited period.

About the subject of ownership rights, as stipulated in the UUPA Article 21 paragraph (1) and paragraph (2), it is known that those who can have ownership rights are Indonesian citizens and legal entities appointed by the government through Government Regulations (PP). The regulation in question is Government Regulation No. 38 of 1963 concerning the Appointment of Legal Entities as referred to in Article 1. Those who can acquire ownership rights to land include state-managed banking companies, agricultural cooperative associations established under Law Number 79 of 1958 concerning Cooperative Associations, religious institutions appointed by the Minister of Agriculture and Agrarian Affairs on the recommendation of the Minister of Religion and social legal entity (Zainuddin & Ulya, 2018).

Legal Justice in the Payment of Uncertified Flats

Based on the results of interviews with several residents, it is known that the residents' views are that the developer has been dishonest in providing information on the development of the issuance of the certificate of ownership of the apartment unit. It is known that for a very long time, the developer did not process the issuance of the certificate of ownership of the apartment unit and only carried out the process of filing for separation to the national land agency (BPN) at the end of 2019. Even though the buyer or residents have often and for a long time questioned the certificate of ownership of the apartment unit from the beginning of its formation, Each time the developer asked, they said that the certificate of ownership for the apartment unit was still being processed at the National Land Agency office. In this case, the developer has lied in providing information about the existence of a certificate of title to the apartment unit requested by the consumer as the buying citizen (Agustiwi, 2014).

The developer in this case has violated UUPK article 4 (b) because the developer has lied in providing information about the condition and guarantee of the goods to the consumers of the flats. The developer deliberately provides information that is not by the condition of the guarantee of the good, namely the ownership certificate of the flat unit to the residents of the flat (Negara & Lemes, 2019).

In addition to complaints about ownership certificates for flats that were not provided by the developer, there were also other complaints, such as the issue of service fees set by the developer in the flat area. According to residents, this is very burdensome. Parking rates in flats are imposed by the developer because the units located on the ground floor are designated for business land by the developer. However, the parking fee which is referred to as a business location on the ground floor is felt to be burdensome to the flat occupants and the occupants feel that this policy is unfair, because the flat occupants are only charged a monthly parking fee like a cleaning fee whose value is calculated per household and not per parking visit (Subekti & Suyanto, 2020).

Residents complained about this and asked the flat manager to provide different parking rates to visitors to the culinary area or the shop on the ground floor because it was seen that the needs of the occupants differed from visitors to the shop or culinary location on the ground floor. However, until now the complaints from the residents have not been resolved by the developer, even though the residents have repeatedly complained about the parking fee problem to the developer who manages it. In addition, the developer is seen by the residents as not being transparent about the issue of financing the maintenance of the apartment building, the flat residents suspect that the developer deliberately hinders the process of issuing the certificate of title belonging to the apartment unit so that the developer gets many benefits from the management and maintenance of the apartment, such as the provision of water, electricity, and so on.

About these problems, one of the important aspects of land law according to the UUPA is the relationship between land and the objects attached to it. The certainty of the legal position of ownership of objects attached to the land is very important because it involves broad influences on all legal relations relating to ownership of land and objects attached to it.

Mechanisms for apartment ownership rules are regulated separately from other home ownership systems, in which case residential houses are unitary. Characteristics of the right to ownership of an apartment unit is an ownership right that can be obtained individually or as a legal entity appointed by the government. Nevertheless, the nature of ownership is not separate from shared ownership. The Law on Flats as Article 46 paragraph (1) explains that the ownership rights to flats are individual property rights that are separate with joint rights to shared parts, shared objects, and shared land. Article 460 paragraph

(2) explains the ownership rights to the common share, common property, and common land as referred to in paragraph (1) which are calculated based on the NPP (Rohman & Adisiswanto, 2021).

Further information is known from the Law on Flats article 47 which explains several other important regulations. First, it is proof of ownership of the apartment unit on private land, building use rights or usufructuary rights on state land, building use rights, or usufructuary rights on land with management rights issued in the Certificate of Property Rights (SHM) for the apartment unit. Second, the SHM of the flats as referred to in paragraph (1) can be issued to any person who has fulfilled the requirements as the holder of land rights.

Third, SHM flats as referred to in paragraph (1) are an inseparable unit, which consists of copies of land books and measurement certificates for joint land rights by statutory provisions, drawings of floor plans for the level of the respective flats, and indicating the unit of flats owned and a description of the number of shared rights, joint objects, and common land for each owner. Based on the analysis of the legal studies and discussion that has been described, what needs to be paid attention to is the issuance of a letter of the decision on extension for all owners of SHM of an apartment unit and extending shared land which is recorded in the land book and their land certificates. Then all SHMM apartment units must be re-registered immediately. So, the ownership of an apartment unit that includes common land must still be extended to the rights to the common land, because the ownership of joint rights is ownership that is owned separately for joint use.

Conclusions

Based on the problems and analysis of the legal studies presented in the discussion, it is known that the business actors, in this case, PT XX in Surabaya, who run the business of selling apartment units in the city of East Surabaya, has violated several applicable legal provisions, namely article 147 paragraph (2) of the Law. Invite Flat House. The developer intentionally does not give the flat residents rights in the form of a certificate of ownership of the flat unit. The developer always gives an excuse that the certificate of ownership of the apartment unit requested by the residents is still being processed at the BPN office, which has not met the administrative requirements for more than 15 years.

The status of ownership of flats is regulated by the government and the status of individual or business entity ownership rights is enforced following the rules of the Flats Law, and ownership of flats is marked with proof of issuance of SHM. Government policy regarding the management or development of flats can also be owned individually which is referred to as the ownership rights of the flats. While the ownership certificate is first issued on behalf of the developer and after each unit of the flat is sold or owned individually, an SHM is issued for the unit with proof of ownership for each room. This is regulated in Article 47 of the Flats Law concerning the ownership status of flats units which is strengthened through the issuance of SHM of flats according to the requirements of the holder of ownership rights to land.

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