

Implications and Validity of the Association of Owners and Residents of Flats Units in Hotel Condominiums

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ABSTRACT

Normatively, the implementation of flats with the concept of hotel condominiums (condotels) has not been regulated. However, in practice as in Decision No. 34/Pdt.G/2021/PN.Bgr it is stated that the implementation of condotels refers to the provisions of Law Number 20 of 2011 (Flats Law). In its management, condotels are managed by a hotel operator appointed by the developer based on an agreement with the condotel owner. This is a problem when a condotel is managed by a legal entity that is a hotel operator and not by the Association of Owners and Residents of Flats Units (PPPSRS) as mandated in the Flats Law. In this article, we will discuss, how the legal implications for the formation of condotel PPPSRS and the validity of the appointment of a hotel operator who replaces the authority of PPPSRS on Le'eminence condotels based on the Agreement for the Management and Operation of Condotel Unit Stacking Units based on Decision No. 34/Pdt.G/2021/PN.Bgr. This article concludes, PPPSRS on condotels still refers to the Flats Law whose arrangements are specifically regulated in PERMENPUPR 23/2018 which currently has changed to PERMENPUPR 14/2021 and the appointment of a hotel operator, namely PT EHS, which replaces the PPPSRS authority on the Le'Eminence condotel based on the Agreement for the Management and Operation of the Condotel Unit Flats is contrary to Article 1 number 22 of the Flats Law and Article 23 paragraph (3) of PERMENPUPR 23/2018.

ABSTRAK

Secara normatif penyelenggaraan rumah susun dengan konsep kondominium hotel (kondotel) belum diatur. Namun dalam praktiknya seperti dalam Putusan No. 34/Pdt.G/2021/PN.Bgr dinyatakan bahwa penyelenggaraan kondotel mengacu pada ketentuan Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun. Pada pengurusan dan pengelolaannya, kondotel dikelola oleh suatu operator hotel yang ditunjuk oleh pihak pengembang berdasarkan perjanjian dengan pemilik kondotel. Hal ini yang menjadi problematika ketika suatu kondotel dikelola oleh suatu badan hukum yang merupakan operator hotel dan bukan oleh Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) sebagaimana diamanatkan dalam UU Rumah Susun. Dalam artikel ini akan membahas, bagaimana implikasi hukum terhadap pembentukan PPPSRS kondotel dan keabsahan penunjukan operator hotel yang menggantikan kewenangan PPPSRS pada kondotel Le'Eminence berdasarkan Perjanjian Pengelolaan dan Pengoperasian Unit Satuan Rumah Susun Unit Kondotel berdasarkan Putusan No. 34/Pdt.G/2021/PN.Bgr. Artikel ini menyimpulkan, PPPSRS pada kondotel tetap mengacu pada UU Rumah Susun yang pengaturannya secara khusus diatur dalam PERMENPUPR 23/2018 yang saat ini telah diubah menjadi PERMENPUPR 14/2021 dan penunjukan operator hotel yaitu PT EHS yang menggantikan kewenangan PPPSRS pada kondotel Le'Eminence berdasarkan Perjanjian Pengelolaan dan Pengoperasian Unit Satuan Rumah Susun Unit Kondotel bertentangan dengan Pasal 1 angka 22 UU Rumah Susun dan Pasal 23 ayat (3) PERMENPUPR 23/2018.

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I. INTRODUCTION

Nowadays, the ownership of flats is in great demand by the people of Indonesia, especially in large cities that are densely populated. In accordance with its purpose, flats are used to meet the needs of decent housing for the community in order to increase the usability and land use output in areas that are densely populated and have only a limited land area.(Boedi Harsono, 2016) Flats as stipulated in the provisions of Article 1 Number (1) of Law Number 20 of 2011 concerning Flats (Flats Law) are high-rise buildings built in an environment that is divided into functionally structured parts, both in horizontal and vertical directions and are units that can each be owned and used separately, especially for residential premises equipped with shared parts, common objects, and common land.(Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.) Proof of ownership of flats, one of which is marked by the existence of a Certificate of Property Rights to Units of Flats (referred as SHMSRS))(Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.)¹ where the right to the common part, common objects, and common land is based on the unit area of the flats concerned or what is called the proportional comparison value (NPP).

Flats as referred to in Article 1 of the Flats Law consist of public flats, special flats, state flats, and commercial flats. In Article 1 Number (10) of the Flats Law, it is stated that the purpose of commercial flats themselves is to make a profit. In its development in *the world of property or real estate*, the concept of commercial flats has certainly experienced developments as marked by the presence of hotel condominiums (condotels). The definition of condotel business is regulated in Article 1 Number 29 of the Regulation of the Minister of Tourism of the Republic of Indonesia Number 18 of 2016, which is a business of providing accommodation on a daily basis in the form of rooms in 1 (one) or more buildings managed by a hotel management unit service business. Although there is a definition of condotel business, legally there is no specific arrangement governing condotels themselves. Thus, in this article the author will discuss in more detail the application of the law to condotels as related to the case to be studied in Decision No. 34/Pdt.G/2021/PN.Bgr.

In Decision No. 34/Pdt.G/2021/PN.Bgr, which involves PT Kurnia Propertindo as the Plaintiff which is a development company that builds Condotel or Hotel Le'Eminence. In his lawsuit argument, Plaintiff stated that Condotel Le'Eminence is a "non-residential flat" with reference to the understanding in Article 1 Number 29 of the Regulation of the Minister of Tourism of the Republic of Indonesia Number 18 of 2016, which is marked by none of the owners of *The Le'Eminence Condotel* flat unit units inhabiting *the Le'Eminence Hotel*. Therefore, based on the Agreement on the Management and Operation of the Condotel Unit Flats Unit between the Plaintiff and the Unit Owners, the Plaintiff has appointed *PT Eminence Hospitality Service* as the hotel operator who has the position and authority to manage common objects, common land and joint parts whose authority has the same function as the Association of Owners and Residents of Flats Units (PPPSRS). According to the Plaintiff, the presence/obligation to form PPPSRS within the scope of The Le'Eminence Hotel has no urgency under the agreement.(Putusan Nomor 34/Pdt.G/2021/PN.Bg, n.d.) Thus, it is

¹ SHMSRS is a sign of proof of ownership of the land of property rights, building use rights or use rights on state land, as well as building use rights or use rights on land management rights.

necessary to discuss further about the existence of the hotel operator in this case, namely PT Eminence Hospitality Service which replaces the authority and position of PPPSRS which should consist of the owners or residents of *The Le'Eminence Condotel*.

In the consideration of the Judge in Decision No. 34/Pdt.G/2021/PN.Bgr, stated that in practice, the mechanism for organizing condotels still refers to the normative provisions for the implementation of flats, as one of which is characterized by evidence of ownership of units of condotel units in the form of SHMSRS.(Putusan Nomor 34/Pdt.G/2021/PN.Bg, n.d.)² In this case, the Owners of the Le'Eminence condotel Unit are not residing in the condotel. The system for condotels is that hotel room units can be rented out to third parties managed by the condotel management and the Owners will only be given the right to use the hotel room unit at a time in accordance with what is agreed with the condotel manager. Then, in his deliberations the Judge also stated that, "condotels that do not function as 'residential' dwellings have deviated from the concept of flats and this is what has led to frequent disputes."(Putusan Nomor 34/Pdt.G/2021/PN.Bg, n.d.)

The Flats Law does not regulate the existence of a non-residential function that stands alone. Meanwhile, Article 50 of the Flats Law states that it expressly only divides the two functions of flats, namely residential and mixed. The existence of these differences in utilization often presents problems such as differences between the functions recorded in the administrative requirements and their implementation and also the management related to PPPSRS and the formation of PPPSRS. However, in principle condotels are implemented under the Flats Law.(Putusan Nomor 34/Pdt.G/2021/PN.Bg, n.d.) Referring to Decision No. 34/Pdt.G/2021/PN.Bgr, the implementation of condotels is in principle based on the Flats Law. So that in its implementation condotel development actors are obliged to form PPPSRS after the transition period as regulated in Article 59 Paragraphs (1) and (2) of the Flats Law.(Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.) According to Article 1 Number (21) of the Flats Law, PPPSRS is a legal entity consisting of owners or residents of flats units. PPPSRS is specifically regulated in the Regulation of the Minister of Public Works and Public Housing Number 23/PRT/M/2018 (PERMENPUPR 23/2018) which is currently regulated in the Regulation of the Minister of Public Works and Public Housing Number 14 of 2021 concerning the Association of Owners and Residents of Flats Units (referred as PERMENPUPR 14/2021).

So that referring to the Flats Law, PERMENPUPR 23/2018 jo. PERMENPUPR 14/2021 and the judge's consideration in Decision No. 34/Pdt.G/2021/PN.Bgr, the perpetrators of the construction of the Le'Eminence Condotel or in this case the Plaintiff should be obliged to form a PPPSRS consisting of the owners or residents of the Le'Eminence Condotel after the transition period in accordance with applicable legal provisions. This is certainly interesting to be studied further regarding the implementation of PPPSRS related to condotels. Thus, this article will discuss the legal implications for the formation of the Association of Owners and Occupiers of Flats Units (PPPSRS) related to commercial flats units with the concept of hotel condominiums (condotels) and the validity of the formation of condotel PPPSRS formed based on the Agreement for the Management and Operation of Condotel Unit Flats Units which was studied based on a case study of Decision No. 34/Pdt.G/2021/PN.Bgr.

² page 4 states in the plaintiff's suit argument "that the ownership of the flats is not a dwelling which is broken down ownership to the defendants and the co-defendants against the units of the non-residential flats units are functioned or leased into hotel rooms to third parties, with proof of ownership in the form of SHMSRS as affirmed in Article 47 subsection (1) of the Flats Act."

In discussing the legal implications of PPPSRS related to commercial flats units with the concept of condotels and the validity of the formation of condotel PPPSRS formed based on the Agreement for the Management and Operation of Condotel Unit Stacking Units, this article begins with a description of the concept of commercial flats associated with condotels. The next section discusses the formation of PPPSRS in accordance with applicable legal provisions. The discussion continued with an analysis of the case reviewed based on the Decision of the Bogor District Court No. 34 / Pdt.G / 2021 / PN.Bgr. Then, at the end, a conclusion was presented, which would answer the legal implications and validity of the appointment of a hotel operator who replaced the authority of PPPSRS in *the Le'Eminence condotel*.

The formulation of the problem in this study is the legal implications for the formation of condotel PPPSRS and the validity of the appointment of hotel operators who replace ppsrs authority in Le'Eminence condotels based on the Management and Operation Agreement of Condotel Units.

II. RESEARCH METHOD

The research method used in this article is normative juridical that will examine the implications and validity of ppsrs formation in hotel condominiums based on laws and regulations, legal principles, and related legal literature to answer legal issues in this article. The research in this article is descriptive analytical by utilizing secondary data consisting of primary, secondary, and tertiary legal materials to analyze legal facts that occur.

III. RESULTS AND DISCUSSION

1. Commercial Flats with Hotel Condominium concept

Flats as referred to in Law Number 16 of 1985 which has been updated to Law Number 20 of 2011 concerning Flats are high-rise buildings built in an environment that is divided into functionally structured parts, both in horizontal and vertical directions, where the high-rise buildings, each of which can be owned and used separately, especially for residential premises equipped with shared parts, common objects, and common land. (Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.) According to Prof. Arie S. Hutagalung, in his book entitled, "Condominiums and Their Problems", the definition of Flats or Condominiums itself comes from latin, namely Condominium which consists of two words, namely 'Con' meaning together and 'dominium' meaning ownership. (Arie S. Hutagalung, 2002) In its development, *condominium* has the meaning of a building ownership consisting of parts that are each a unit that can be used and inhabited separately, and is owned individually along with other parts of the building and the land on which the building stands which because of its function is used together, jointly owned by the owner of the individually owned part mentioned above. (Arie S. Hutagalung, 2002).

As in Singapore, condominiums themselves were built by the Minister with the aim of providing housing accommodation for certain communities only. (Henty, 2011) For example, people who are allowed to buy condominiums must meet qualifications such as income, minimum family size, citizenship and property ownership. (Singapura, n.d.-a)³ This is regulated in section 3 number (1) of

³ Section 3 number (2) (b) "the persons to whom any housing accommodation may be sold under an executive condominium scheme, including but not limited to the qualifications as to income, the minimum size of the family, citizenship of and ownership of any other properties by all or any such persons"

The Executive Condominium Housing Scheme Act. So it can be said that the type of condominium in Singapore can only be owned by certain circles in accordance with the prerequisites determined by the Minister of Singapore. Unlike Indonesia, condominium is only another term for commercial flats so there is no difference in ownership requirements for buyers. Based on the Flats Law, there are types of flats in Indonesia, namely:(Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.)

- a. Public Flats, are flats organized to meet the needs of houses for low-income people (MBR).
- b. Special Flats, are flats that are organized to meet special needs.
- c. State Flats, are state-owned flats and function as residences or residences, family development facilities and support for the implementation of the duties of officials and / or civil servants.
- d. Commercial Flats, are flats that are organized for profit

The development of the property world today has an impact on flats, especially on the types of Commercial Flats that are held for profit, this is marked by the presence of the concept of *Condominium Hotels (condotels)*. The existence of condotels is the development of the designation of a condominium in the context of the development of the tourism industry because investment in the condotel sector is considered to be one of the profitable investments, especially in areas that are the destination of tourists.(Desak Putu Dewi Kasih dan Ni Putu Purwanti, 2017) According to Benioff, condotels combine the characteristics of condominiums and hotels resulting in residential property types that are managed with a hospitality system.(Monica Sondang Odilia Adi; et.al, 2011) In the Flats Law, there is no understanding of condotels, but the definition of condotels is regulated in Article 1 number 5 of Denpasar Mayor Regulation Number 42 of 2007 concerning Condominium Hotel Buildings (Condotel) where condotels are high-rise buildings built by Perwali Denpasar in an environment that is divided into functionally structured parts in horizontal and vertical directions which are units that each can each owned and used separately, which is equipped with shared parts, common objects, common land and functions as a star-rated hotel. In addition, in Article 1 number 29 of the Regulation of the Minister of Tourism of the Republic of Indonesia Number 18 of 2016, it is explained about the condotel business, which is a business of providing accommodation on a daily basis in the form of rooms in 1 (one) or more buildings managed by the hotel management unit service business.(Peraturan Menteri Pariwisata Republik Indonesia Nomor 18 Tahun 2016 Tentang Pendaftaran Usaha Pariwisata, n.d.)

Normatively, condotels do not have specific and specific arrangements contained in the legislation. The mechanism for organizing condotels is also normative in practice referring to the implementation of flats.(M Ilham Hermawan, n.d.) The elements in the condotel concept are the same as the concept of flats according to the Flats Law, namely:(Desak Putu Dewi Kasih dan Ni Putu Purwanti, 2017)

- a. In terms of physical terms, flats are buildings with more than one floor;
- b. In terms of function, it can be used vertically or horizontally; there is a part that can be used and owned separately by the collector called the unit of flats (reffered as sarusun),
- c. In terms of ownership, there is a common right of all owners consisting of common parts, common objects and common land, the main purpose of which is for residential premises or residential houses.

The relationship between the unit units of the condotel with the common object, the shared part, and the common land is seen from the NPP. The definition of NPP itself is a value that shows the comparison between condotel units to rights to common parts, common objects and common

land, based on the area or unit value of condotels. NPP is not only a description of the condotel unit's property rights to rights to land, objects, and common parts, but a reflection of the owner's obligation to incur the cost of maintaining and repairing joint ownership which will later be charged to him.

Basically, condotels are shared buildings such as commercial flats with dual functions that can be used as residences for their owners and at the same time as hotels that are commercialized through third parties or hotel operators. Referring to the concept, a condotel is a condominium that is sold to investors for each unit of its "strata title" then operated (managed) as a hotel by a hotel operator who has been appointed by the developer provided that there is a *return on investment* for a certain period based on the management period and profit sharing from the hotel management after deducting operational costs.

Condotel itself is designed for ownership of *property rights or strata of title*.(Sari, 2018) In this case, the condotel concept gives the hotel company to sell condotel units to individual capital owners so that the hotel company does not need to spend too much capital in building its hotel.(Sari, 2018) Thus, based on the concept of condotels described above, the implementation of condotels that refer to flats, units of condotel units or hotel rooms can be traded such as Commercial Flats which aim to obtain profits with proof of ownership of the condotel units marked by the issuance of SHMSRS or Building Ownership Certificates (SKBG) as regulated in Article 47 and Article 48 of the Flats Law.⁴

The concept of a condotel that does not function as a residential residence has certainly deviated from the concept of flats. This is certainly a legal problem when condotels are said to be flats not residential. In Law Number 16 of 1985 concerning Flats (Law 16/1985) it is regulated regarding residential and non-residential flats. If condotels are included in non-residential flats, this is still in line with the provisions of the old Flats Law as stipulated in the Explanation of Article 1 Number (1) and Article 3 Paragraph (2) of Law 16/1985.⁵ However, this provision has been repealed and declared invalid with the birth of the Flats Law (Law 20/2011) as it turns out in the provisions of Article 118 of the Flats Law.

So that by referring to the Flats Law, there is no longer the term residential flats and not residential but public flats, special flats, state flats, and commercial flats.(Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.) Thus, condotels can no longer be categorized as non-residential flats but commercial flats organized for profit as stated in the provisions of Article 1 Numbers (1) and (10) of the Flats Law. Based on the description above, it can be concluded that condotels are commercial flats that use the merger of two concepts between condominiums and hotels whose implementation still refers to the normative provisions of the Flats Law. Although the unit over the condotel is unoccupiable by the owner and its management is regulated using a hospitality management system, the unit over the condotel can still be owned by a legal subject characterized

⁴ Article 47 Paragraph (1) of the Flats Law: "As a sign of proof of ownership of the flat on land property rights, building use rights, or use rights on state land, building use rights or use rights on land management rights are issued SHM flats." Then, Article 48 Paragraph (1) of the Flats Law: "As a sign of proof of ownership of flats on state/regional property in the form of land or waqf land by rent, a SKBG flats is issued."

⁵ Explanation of Article 1 Number (1) of Law 16/1985: "Flats intended in this Law is a term that provides a legal definition for high-rise buildings that always contain a system of individual ownership and common rights, the use of which is for residential or non-residential, independently or integrated as a unit of development system." The Explanation of Article 3 Paragraph (2) of Law 16/1985: "The construction of suusun houses for non-residential purposes, must support the functioning of settlements, and can provide conveniences for people's lives."

by a sale and purchase transaction against the unit of the flat unit for the condotel unit whose proof of ownership can be SHMSRS or SKBG

2. Association of Owners and Residents of Flats Units (PPPSRS)

In essence, the legal aspects in the implementation of condotels refer to the implementation of the concept of flats regulated in the Flats Law both in the construction of condotels, ownership of condotel units, as well as the management and management of condotels.(Sari, 2018) In the management and management of condotels which are carried out by a management body whose formation or appointment is carried out by PPPSRS in the form of a legal entity and professionally, and must have completeness such as organizational units, members and tools that can be used to manage the flats or condotels concerned.(Christina Herawati Gunawan dan Hasni, 2020)

Definition of PPPSRS is a legal entity consisting of owners or residents of flats units.(Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.) Referring to Article 59 Paragraph (1) of the Flats Law, there is an obligation for condotel construction actors to form PPPSRS after a transition period of no more than 1 (one) year from the first handover to the owner. During the transition period, development actors who build flats are required to manage flats after the building of the flats is completed and the flats has been handed over to the owners for the first time, before the formation of PPPSRS and unsold sarusun for a period of not more than 1 (one) year transition period or the first handover of sarusun to the owner. The arrangement is intended to provide a legal basis for development actors to manage flats before the establishment of PPPSRS.(Meliala, 2020) Before the transition period ends, development actors are obliged to facilitate the formation of PPPSRS and in the event that PPPSRS has been formed, development actors immediately hand over the management of common objects, common parts, and common land to PPPSRS as stipulated in the provisions of Article 75 Paragraphs (1) and (2) of the Flats Law.

In Singapore, PPPSRS is regulated in the Building Maintenance and Strata Management Act, which regulates the obligations of development actors before PPPSRS is formed, namely to make a list of buyers of flats related to the value of shares set for each lot indicated in the strata unit list to the Commissioner.(Singapura, n.d.-b)⁶ Where each lot owned by the owner will determine their voting rights as provided in section 3 number (30) of the Land Titles (Strata) Act Chapter 158.(Singapura, n.d.-b)⁷ In this case, it means that the voting rights of flat owners in the PPPSRS are guaranteed. Meanwhile, in Indonesia, the Flats Law itself regulates the obligations in the formation of PPPSRS to the owner as stipulated in the provisions of Article 74 of the Flats Law. This is intended to protect the owner's right to the owner as the holder of SHMSRS. As in the management and management of condotels, the owner is required to form and become a member of PPPSRS.(Sari, 2018)

PPPSRS membership as stipulated in the provisions of Article 95 of Government Regulation Number 13 of 2021 concerning The Implementation of Flats (PP 13/2021), consists of owners and/or occupants which provided that residents who are not owners are prohibited from occupying positions in the PPPSRS management structure. Each pppsrs member has voting rights related to the interests

⁶ 17 number 7 (a) : "the share value assigned or to be assigned to each lot or proposed lot shown in the schedule of strata units or amended schedule of strata units (as the case may be) filed with the Commissioner under section 11".

⁷ 30 number (2) "The share value of a lot shall determine: a) the voting rights of the subsidiary proprietors; b) the quantum of the undivided share of each subsidiary proprietor in the common property; and c) the amount of contributions levied by a management corporation on the subsidiary proprietors of all the lots in a subdivided building".

of occupancy, ownership and management.(Peraturan Pemerintah Nomor 13 Tahun 2021 Tentang Penyelenggaraan Rumah Susun, n.d.) PPPSRS is selected based on the principle of kinship by and from PPPSRS members through PPPSRS general meetings which are specifically held for the purposes of selecting PPPSRS members. However, during the sale period, the development organizer is obliged to act as a "temporary" PPPSRS while preparing for the formation of the "real" PPPSRS and is entitled to receive management fees as stipulated in the provisions of Article 57 of the Flats Law. (Meliala, 2020)

PPPSRS is a legal entity whose task is to regulate and take care of the common interests of the owners of flats units and their residents, as their ownership, occupancy and management, so that an orderly and safe life is carried out in a healthy and harmonious environment.(Meliala, 2020) Pppsrs' position as a legal entity means that administrators can act for and on behalf of PPPSRS both inside and outside the court based on their position. The rights and obligations of PPPSRS are regulated in an articles of association and bylaws, and must obtain approval from the local government (pemda) of the local reGENCY/municipality, or the provincial government for DKI Jakarta.(Peraturan Pemerintah Nomor 13 Tahun 2021 Tentang Penyelenggaraan Rumah Susun, n.d.) Pppsrs is obliged to take care of the interests of the owners and residents related to the management of ownership of common objects, common shares, common land, and occupancy. In addition, PPPSRS can also form or appoint a governing body to carry out its obligations.(Peraturan Pemerintah Nomor 13 Tahun 2021 Tentang Penyelenggaraan Rumah Susun, n.d.)

There are differences in the management and management of condotels with flats in general, namely condotels will be fully carried out by the developer (development actor or developer) and the hotel operator who has obtained power of attorney from the owner, so that the matters that are the responsibility of PPPSRS in flats will be carried out by the developer and hotel operator. However, generally certain responsibilities such as the establishment of PPPSRS are only de jure charged to the condotel owner, de facto this kind of responsibility is generally carried out by the developer with the handover of power of attorney from the owner (Sari, 2018)

In the management and management of condotels, generally an agreement is carried out between the developer and the hotel manager (hotel operator). The agreement made by the developer and hotel operator is a cooperation agreement in the management and management of the condotel. Some of the things stipulated in this cooperation agreement are regarding the period, management procedures, rights and obligations of the parties, profit sharing procedures, and others, especially regarding the limitations of the authority of the hotel operator in carrying out their duties.(Sari, 2018)

3. Establishment of PPPSRS at Kondotel Le'Eminence based on the Decision of the Bogor District Court No. 34/Pdt.G/2021/PN.Bgr

This case involves PT Kurnia Propertindo is a Plaintiff who in this case is a development company that built *Le'Eminence* (formerly Sahid Eminence) and also as a seller and one of the owners of units of flats with the concept of condotels. Against Arief Adang (Defendant I) and Yernadi Hari Yuliono (Defendant II) are the Defendants and the Defendants, namely Herman Saleh (Co-Defendant I) and Budiman Widyatmoko (Co-Defendant II). The Defendants and the Defendants are the purchasers of the units of the Le'Eminence condotel as well as the owners of several units of flats for *the Le'Eminence condotel unit*.

In Decision No. 34/Pdt.G/2021/PN.Bgr, the Judge ruled that this case was a case of Unlawful Acts (PMH) in which in the formation of the PPPSRS deliberative committee and the formation of PPPSRS condotel Le'Eminence had met one of the alternative criteria of PMH in the provisions of

Article 1365 of the Civil Code which in the process of its formation there have been several criminal acts in the form of data collection by participants of deliberative meetings by force and intimidation of security that maintains and makes inconsistency so that the act is detrimental to the Plaintiff side. Then in the formation of the PPPSRS deliberation committee and the formation of PPPSRS have not met the provisions of the Regulation of the Minister of Public Works and Public Housing Number 23 / PRT / M / 2018 (PERMENPUPR 23/2018) and the Flats Law so that the management formed does not have legal force.

The plaintiff in his lawsuit stated, that the Le'Eminence condotel is a non-residential flat, which can be noticed from several things, where none of the owners of the Le'Eminence condotel flats unit inhabit the Le'Eminence Hotel, and furthermore Le'Eminence Hotel is a condotel that presents a designated hotel operator, in this case *PT Eminence Hospitality Service* based on the Agreement for the Management and Operation of the House Unit Unit Arrange Condotel Units. In the agreement, it is very clear that the hotel operator has the position and authority to manage common objects, common land and common parts, so that the presence / obligation to form PPPSRS within the scope of *Le'Eminence Hotel* has no urgency, considering that the authority of the operator with the authority of PPPSRS has the same function.

In the consideration of the Panel of Judges in Decision No. 34/Pdt.G/2021/PN.Bgr, it is stated that the mechanism for organizing condotels is normatively in practice subdued by the implementation of flats even though hotel room units can be rented out to other parties and managed with hospitality management by the condotel management. The owners do not reside in the condotel, they are only given the right to utilize the room unit for times in accordance with what has been previously promised. That the non-functioning of condotels as a place to live "dwellings" deviate from the concept of flats and is often a problem. The Flats Law does not regulate the existence of a non-residential function that stands alone. Article 50 of the Flats Law expressly only divides the two functions of flats, namely "residential and mixed". The existence of these differences in utilization often presents problems, namely the difference between the functions recorded in the administrative requirements and their implementation then the management related to PPPSRS and the formation of PPPSRS. However, in principle condotels are implemented under the Flats Law.(Putusan Nomor 34/Pdt.G/2021/PN.Bg, n.d.)

In this case study, the Plaintiff in his lawsuit stated that *the Le'Eminence* condotel is a non-residential flat and the formation of PPPSRS within the scope of *The Le'Eminence Hotel* does not have urgency, considering that the authority of the hotel operator, namely *PT Eminence Hospitality Service (PT EHS)* with the authority of PPPSRS has the same function. This is based on the existence of a *Condotel Unit Management and Operation Agreement* between the Plaintiff and the owners of *The Le'Eminence Condotel*. Explicitly, in its decision, the Panel of Judges explained that the implementation of condotels still refers to the provisions of the Flats Law, so that in the implementation and management of condotels, they must still form PPPSRS as mandated in the provisions of the Flats Law.

In the provisions of Article 59 paragraph (1) of the Flats Law, there is an obligation for the Plaintiff as the perpetrator of the construction of *The Le'Eminence Condotel* to form PPPSRS after a transition period of no more than 1 (one) year from the first handover of the "sarusun" (Unit of Flats) to the owner. Then in Article 4 paragraph (2) of PERMENPUPR 23/2018, the formation of PPPSRS must be facilitated by development actors or Plaintiffs at the latest before the transition period ends. However, in this case, the Plaintiff as the development actor did not carry out his obligation to form

PPPSRS after the transition period and felt that the formation of PPPSRS did not have urgency because the PPPSRS authority had the same function as the hotel operator, namely PT EHS.

In its implementation, prior to the establishment of The PPPSRS management, Plaintiff should have facilitated the Owner of the Le'Eminence Condotel to form a PPPSRS Deliberation Committee as stipulated in Article 75 Paragraph (1) of the Jo Flats Law. Article 7 permenpupr 23/2018. However, in this case, Defendant I had invited Plaintiff to be present at the formation of the PPPSRS Deliberative Committee of *The Le'Eminence Condotel* dated November 25, 2020 and by invitation Plaintiff was unable to attend or send his deputy. The absence of Plaintiff resulted in the non-fulfillment of the provisions of Article 8 paragraph (1) of PERMENPUPR 23/2018 in which the Deliberation Committee consisted of the Owner and representatives of the Development Actors, resulting in its formation becoming invalid. Thus, in this case, the Plaintiff should have facilitated the Owner or in this case the Defendants to organize the PPPSRS Deliberative Committee of *The Le'Eminence Condotel* because it was his obligation as a development actor.

Then for the implementation of the deliberations on the formation of PPPSRS Kondotel Le'Eminence, it was not attended by representatives of local governments as reviewers where in this case it must be officially invited by attaching the draft rules of deliberation, draft articles of association and bylaws of PPPSRS and draft occupancy rules that will be discussed and determined in deliberations, so that this makes all the processes of stages in the formation of the PPPSRS Deliberation Committee and the establishment of PPPSRS *Condotel Le'Eminence* is not in accordance with applicable legal rules as stipulated in Article 10 paragraph (1) of PERMENPUPR 23/2018. In this case, the Defendants at the time of the formation of the PPPSRS Deliberation Committee and in the implementation of the PPPSRS Formation deliberations should pay attention to and obey all the processes in accordance with the applicable legal provisions so that the formation of the PPPSRS *Condotel Le'Eminence* formed by the Owner has legal force.

In this case, the Defendants as owners of Le'Eminence Condotels have the authority in the formation of the Deliberation Committee and the establishment of PPPSRS, as in the provisions of Article 74 paragraph (1) of the Jo Flats Law. Article 4 permenpupr 23/2018. Then in the provisions of Article 74 paragraph (2) of the Law on Flats jo. Article 20 paragraph (1) of PERMENPUPR 23/2018 states that PPPSRS consists of owners or occupants who have authority from the owner of the sarusun. In the said provision it is seen that the perpetrator of the development or in this case the Plaintiff shall not be a member of the said PPPSRS. However, the Plaintiff should have facilitated and assisted the owners or occupants to make PPPSRS before the expiration of the transition period as stipulated in Article 75 paragraph (1) of the Jo Flats Law. Article 7 PERMENPUPR 23/2018. Based on Article 59 paragraph (2) of the Flats Law, it is said that the transition period is calculated from the time the first handover of the unit of flats to the owner. This means that even though at the time of the handover of the first unit of flats there were still units that had not been sold, the transition period had been calculated.

Development Actors or Plaintiffs can facilitate the formation of PPPSRS by means of: (Peraturan Menteri Pekerjaan Umum Dan Perumahan Rakyat Nomor 23/PRT/M/2018 Tahun 2018 Tentang Peraturan Menteri Pekerjaan Umum Dan Perumahan Rakyat Nomor 23/PRT/M/2018 Tentang Perhimpunan Pemilik Dan Penghuni Satuan Rumah Susun, n.d.)

- a. Provision of meeting rooms and their completeness, at least including tables, chairs, whiteboards/stationery, loudspeakers, and the use of boards/information media to residents of the Owner and/or Occupants;

- b. Data on the ownership and/or occupancy and location of Sarusun based on the results of data collection carried out by Development Actors; and
- c. Administrative support as well as consumption provisioning.

The formation of PPPSRS consists of the preparation of the formation of PPPSRS and the implementation of the formation of PPPSRS. At the preparatory stage, based on Article 5 of permenpupr 23/2018, it is said that development actors are required to socialize occupancy to prospective buyers and before the formation of PPPSRS. In the socialization, development actors inform about the rights and obligations of owners and residents in PPPSRS. Socialization can also be done using information media, namely through leaflets, information boards, brochures and/or other forms of indirect information that are easily obtained by unit owners of flats.

After socialization, the next stage is data collection. Based on Article 6 of PERMENPUPR 23/2018, development actors are required to collect data on the owners and/or legal occupants of flats units. This means that the owner or legal occupant has a proof of ownership or proof of Sarusun's occupancy. In this case, the Owner of the Le'Eminence Condotel has proof of ownership in the form of SHMSRS as stipulated in Article 47 paragraph (1) of the Flats Law. The purpose of the data collection is to be used as a basis for deliberations that will be held for residents. Furthermore, at the stage of forming a deliberative committee, the Plaintiff can facilitate it by conducting a meeting to form a deliberative committee. This is in accordance with Article 7 of permenpupr 23/2018. This committee shall be formed before the end of the transition period where the costs required in forming it shall be borne by the Plaintiff as the actor of the development. It is further explained in Article 8 that the committee formed shall consist of at least the chairman, secretary, treasurer, and 4 (four) members. It is further explained in Article 9 paragraph (1) that this Committee is in charge of:

- a. drawing up and establishing a deliberative schedule for the formation of PPPSRS;
- b. prepare draft rules, draft articles of association and bylaws, and draft work programs of the management;
- c. disseminate a deliberative schedule to all Owners;
- d. consulting with local government technical agencies of regencies/cities that organize government affairs in the field of housing, specifically the Province of the Special Capital Region of Jakarta to technical agencies of provincial local governments that organize government affairs in the field of housing;
- e. organizing deliberations for the formation of PPPSRS;
- f. accounting for the results of deliberations to the Owner; and
- g. For regencies/cities that organize government affairs in the field of housing, specifically for the Special Capital Region of Jakarta Province to the technical agencies of the provincial local government that organize government affairs in the field of housing.

At the deliberative stage conducted by the deliberation committee, it must formally invite all Owners to attend the deliberations and representatives of the local government as reviewers. Where the invitation is delivered no later than 7 (seven) working days before the deliberation. This is in accordance with Article 10 of permenpupr 23/2018. Based on Article 13 of permenpupr 23/2018, the deliberations were carried out for the formation of an organizational structure; preparation of articles of association and bylaws; election of PPPSRS administrators; and the election of PPPSRS supervisors.

The minutes of the meeting held will be set forth in a Notarial deed containing the decision of the meeting. Meanwhile, the results of the meeting include the deed of establishment/formation, the

election of the management, and the ratification of the AD/ART. (Christina Herawati Gunawan dan Hasni, 2020) In addition, it is explained in Article 54 paragraph (2) of Government Regulation Number 20 of 1988 that the establishment of PPPSRS is carried out by a deed ratified by the Regent or Mayor of the Regional Head Municipality level II. PPPSRS must also be endorsed by the Minister of Law and Human Rights in order to obtain legal entity status. After becoming a legal entity, only then can PPPSRS act out on behalf of PPPSRS itself. (Syahmardan, n.d.)

After PPPSRS was formed, all forms of operation of flats that were previously in the hands of the claimants who were development actors have moved to PPPSRS. The plaintiff as the actor of the development must submit the management of the Joint Object, Joint Section, and Common Land to PPPSRS no later than 3 (three) months from the formation of PPPSRS before a Notary. This is in accordance with Article 29 of permenpupr 23/2018. According to Arie S. Hutagalung, PPPSRS's obligations include: (Arie S. Hutagalung, 2002)

- a. Provide accountability to the PPPSRS general meeting.
- b. Submit reports to PPPSRS at least twice a year on the work of the governing body.
- c. Carrying out administrative tasks related to all issues of Occupancy of flats.
- d. Implement the decision of the PPPSRS general meeting.
- e. Establish cooperative relationships, either directly or indirectly with parties related to the management of flats.

The main duties of PPPSRS based on Article 59 PP No. 4 of 1988 are:

- a. Certify the AD ART prepared by the management at the PPPSRS general meeting.
- b. Fostering residents towards the awareness of harmonious, harmonious, and balanced cohabitation in flats and flat environments.
- c. Supervise the implementation of the provisions contained in the AD ART.
- d. Carrying out the administrative duties of the Occupation.
- e. Appoint or establish and supervise the governing body of the flats and the environment of the flats.
- f. Organizing separate bookkeeping and financial administration as PPPSRS wealth.
- g. Establish sanctions for violations that have been stipulated in the AD ART.

Thus, it is seen that the Plaintiff is only authorized to carry out the management of the Le'Eminence Condotel during the transition period in accordance with Article 59 of the Flats Law. Before the transition period expires, the Plaintiff must facilitate the formation of PPPSRS. If the Plaintiff as the perpetrator of the construction does not do so, then in accordance with Article 107 of the Flats Law, he may be subject to administrative sanctions. (Izzattisselim, 2019) Dimana sanksi administratif tersebut antara lain terdiri dari:

- a. written warnings;
- b. restrictions on development activities and/or business activities;
- c. temporary suspension of work on the implementation of construction;
- d. temporary or permanent cessation on the management of flats;
- e. imposition of administrative fines;
- f. revocation of the IMB;
- g. revocation of certificates of proper function;
- h. revocation of SHM sarusun or SKBG sarusun;
- i. demolition orders of flats; or
- j. revocation of business license.

In this case, the Plaintiff stated that the Le'Eminence condotel presented a designated hotel operator, in this case PT EHS under the Agreement for the Management and Operation of the Condotel Unit Flats Unit. In the agreement, it is stipulated that PT EHS in this case has the position and authority to manage common objects, common land and common parts, so that the presence / obligation of PPPSRS formation within the scope of Le'Eminence Hotel becomes no urgency, considering that the authority of the operator with the authority of PPPSRS has the same function. Basically, a condotel is a condominium that is sold to investors for each unit of its "strata title" and then operated (managed) as a hotel by a hotel operator who has been appointed by the developer provided that there is a return on investment for a certain period of time based on the management period and profit sharing from the hotel management after deducting operational costs. (Desak Putu Dewi Kasih dan Ni Putu Purwanti, 2017).

The purpose of the establishment of PPPSRS, among others, serves to regulate in carrying out management related to joint rights in the ownership, occupancy and management of flats. In the ownership function, PPPSRS is tasked with monitoring the process of issuing a Certificate of Property Rights to Flats Units (SHMSRS) for each owner of a flats unit. In the occupancy function, PPPSRS is what ensures the creation of security and order in the environment of flats. Meanwhile, the management function is to monitor the administration and legal relationship between the Owner and the Occupier and third parties (Izzattisselim, 2019)

In the management and management of condotels, there are differences with flats in general. The condotel will be fully carried out by the development actor or developer and the hotel operator who has obtained authorization from the owner, so that the things that are the responsibility of PPPSRS in flats will be carried out by the developer and hotel operator. Even so, generally certain responsibilities such as the formation of PPPSRS are only de jure charged to the owner of the condotel, de facto this kind of responsibility is generally carried out by the developer with the handover of power from the owner. (Sari, 2018)

Referring to this case, the Plaintiff should still be obliged to facilitate the establishment of the PPPSRS Deliberative Committee and the Establishment of the PPPSRS Kondotel Le'Eminence. Regarding the presence of a hotel operator, namely PT EHS which replaces the authority of PPPSRS, the establishment of PPPSRS Kondotel Le'Eminence should de jure still refer to the provisions of the Flats Law jo. PERMENPUPR 23/2018 where the formation of PPPSRS Kondotel Le'Eminence is carried out by the Owner, namely in this case the Defendants and The Defendants who have full authority over the formation of PPPSRS are not PT EHS appointed by the Plaintiff which is only based on the "Agreement" without follow the procedure as regulated by the Flats Law and PERMENPUPR 23/2018.

However, de facto in the management and management of condotels, this kind of responsibility is generally carried out by the developer with the handover of power from the owner. This is generally done by an agreement between the developer and the hotel manager (hotel operator). In this case, PT EHS as the hotel operator was appointed by the Plaintiff to carry out the authority of PPPSRS, namely to manage common objects, common land and common parts based on the Agreement for the Management and Operation of Condotel Unit Flats Units between Unit Owners and PT EHS. However, according to the author, the PPPSRS authority certainly cannot be replaced by a hotel operator, namely PT EHS.

Although PPPSRS and PT EHS are both legal entities, there should be a difference in authority over the *Le'Eminence Condotel*. PPPSRS is a legal entity consisting of owners or residents of the sarusun (Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun, n.d.), so that in its

management PPPSRS should consist of the owners of *the Le'Eminence Condotel* who are members of the PPPSRS. Each pppsrs member has voting rights related to the interests of occupancy, ownership and management. (Peraturan Pemerintah Nomor 13 Tahun 2021 Tentang Penyelenggaraan Rumah Susun, n.d.) The essence of PPPSRS is that it is selected based on the principle of kinship by and from PPPSRS members through PPPSRS general meetings which are specifically held for the purposes of selecting PPPSRS members. (Meliala, 2020) So that if the PPPSRS authority is replaced by a hotel operator or in this case PT EHS, of course the owner of the *Le'Eminence Condotel* will not have voting rights related to the interests of the occupancy, ownership and management of the *Le'Eminence Condotel* even though the Owners have absolute authority over the voting rights.

PT EHS is a hospitality company that works in the field of hotel management and management appointed by Plaintiff to manage and manage kondotel *Le'Eminence*. The position of PT EHS in this case replaces the position and authority of PPPSRS based on the Agreement for the Management and Operation of the Condotel Unit Flats Unit (*Agreement*) as stated by the Plaintiff is certainly contrary to the provisions of the law. First, in this case PT EHS is not the owner or occupant of the *Le'Eminence condotel unit* while in Article 1 number 22 of the Flats Law, PPPSRS is a legal entity consisting of owners or residents of sarusun. Second, PT EHS is a party that manages *Condotel Le'Eminence* only based on the Agreement, even though PT EHS is not the owner who is present at the deliberations and resides in *Condotel Le'Eminence*. This is contrary to the provisions of Article 23 paragraph (3) of PERMENPUPR 23/2018 which states that PPPSRS administrators and supervisors are owners who are present in the deliberations and reside in flats or in this case *Condotel Le'Eminence*.

The role of PT EHS as the manager of *Condotel Le'Eminence* is carried out based on the Agreement, which means that PT EHS has a role not to represent the Owners of *Le'Eminence Condotels*. PT EHS plays a role in daily operational activities like hotel operations such as being tasked with managing and carrying out all hospitality activities in condotels, namely in managing decoration, cleanliness, security, and others. (Sari, 2018) The agreement, which is the basis for PT EHS in the management of *Condotel Le'Eminence*, should not contain clauses that replace the position and authority of PPPSRS that should be formed for *Condotel Le'Eminence* because this will certainly harm the Owner who has the authority to form PPPSRS and has rights in its management and membership. In this case, of course, the Owners of the *Le'Eminence Condotel* or in this case the Defendants and the Defendants felt aggrieved because the Plaintiffs as Development Actors did not facilitate the implementation of the PPPSRS Deliberative Committee and the Establishment of the *LE'Eminence Condotel* PPPSRS so they demanded their right to form PPPSRS as mandated in the Flats Law.

In this case, the Agreement made by the Plaintiff on the power of attorney of the Owners with PT EHS constitutes a cooperation agreement in the management and management of the condotel. Some of the things stipulated in this cooperation agreement should only be provisions regarding a limited period of time, management procedures, rights and obligations of the parties, procedures for sharing profits, and others, especially regarding the limitations of the authority of the hotel operator in carrying out their duties. (Sari, 2018) So it is hoped that the Agreement is a win-win solution for the parties because the concept of the existence of condotels itself is the development of the designation of a condominium or flat whose management can be rented out like a hotel so that it is considered that this is one of the investments whose purpose is to be profitable for owners and investors in a fair manner.

IV. CONCLUSION

Based on the analysis and discussion above, this article concludes that condotel is a development of the concept of commercial flats that uses the merger of two concepts between condominiums and hotels whose implementation still refers to the normative provisions of the Flats Law. This is characterized by the similarity of the elements inherent with the concept of flats both in terms of physical, operational, and designation such as the unit for the condotel can still be owned by a legal subject characterized by a sale and purchase transaction against the unit of flats units for the condotel unit whose proof of ownership can be in the form of SHMSRS or SKBG even though the unit on the condotel is not inhabited by the owner and its management is regulated using hospitality management system, So that basically the implementation of condotels still refers to the Flats Law which also involves the management of condotels themselves which must form PPPSRS as a legal entity consisting of owners or residents of the sarusun who have the authority to manage the sarusun. Thus, the legal implication for the formation of condotel PPPSRS is that PPPSRS on condotels still refers to the Flats Law whose arrangements are specifically regulated in PERMENPUPR 23/2018 which has now been changed to PERMENPUPR 14/2021.

This article also concludes that the appointment of a hotel operator, namely PT EHS, which replaces ppsrs authority on le'eminence condotels based on the Agreement for the Management and Operation of Condotel Unit Flats Units is contrary to statutory provisions. First, in this case PT EHS is not the owner or occupant of the Le'Eminence condotel unit while in Article 1 number 22 of the Flats Law, PPPSRS is a legal entity consisting of owners or residents of flats. Second, PT EHS is a party that manages Condotel Le'Eminence which is only based on the Agreement, even though PT EHS is not the owner who is present at the deliberations and resides in *Condotel Le'Eminence*. This is contrary to the provisions of Article 23 paragraph (3) of PERMENPUPR 23/2018 which states that PPPSRS administrators and supervisors are owners who are present in the deliberations and reside in flats or in this case *Le'Eminence Condotel*.

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