DYNAMICS OF THE FORMATION OF THE ASSOCIATION OF OWNERS AND RESIDENTS OF APARTMENT UNITS IN THE MANAGEMENT OF COMMERCIAL FLATS (APARTMENTS)

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Abstract

The purpose of the state administration is to realize a just and prosperous community life by meeting the needs of everyone entitled to a habitable residence as stipulated in Article 28h of the 1945 Constitution. To meet the housing needs, the government issued Law No. 20 of 2011 on flats. The basic philosophy of Law No. 20 of 2011 on flats as the executor of Agrarian Basic Law for the greatest prosperity of the people. However, in practice, it still raises legal issues regarding the management of commercial flats. The purpose of the study is to assess the workings of the application of law in the rules of management of flats in Indonesia. The results of the analysis obtained the difference in the meaning of Article 59 paragraph (2) with an explanation of Article 59 paragraph (1) of Law No. 20 of 2011 regarding the meaning of the unclear and the existence of multiple interpretations. This is due to a dispute between the developers and the owners and residents because of the legal provisions referred to in the management of commercial flats. Development actors are always stalling to facilitate the formation of the Association of Owners and residents of apartment units. Thus, causing legal uncertainty for residents and apartment unit owners in the management of flats.
Keywords: Association of owners and residents, apartement, flats.

A. INTRODUCTION

Pancasila as a view of life is a crystallization of the values of Indonesian life that is believed to be true. It contains the basic concepts and ideas about life that want to be realized and is a normative guideline that provides the direction of life for the Indonesian nation. By making Pancasila a view of life, the Indonesian people will have a handle and guidelines for solving every problem, both in the fields of ideology, politics, economics, social culture, defence and security.[1] The view of life is related to the value system about good and bad, about just and unjust, honest and lying and so on.[2]

Urbanization is a major factor affecting the availability and need for housing. The increase in urbanization of people in large cities can lead to a deterioration in the balance between meeting economic needs and housing. People who try their luck mostly work in the

[1] Doddy Susanto, Wiyata Negara Pancasilan (Jakarta : Yayasan Permata Bangsa , 2012), 30.

[2] Soeprapto, Pancasila (Jakarta: Konstitusi Press, 2013), 25.

informal sector so the obtained income is not comparable to the needs of life that must be lived. In the development, the construction of units of houses on the outskirts of the railway, on river banks and in places that should not be intended for settlements. This resulted in the environment around the settlement becoming seedy and the houses built were not by applicable residential standards.[3]

The purpose of State Administration as outlined in Paragraph IV of the Preamble to the Constitution of the Unitary State of the Republic of Indonesia (UUD 1945), is to realize a just and prosperous community life both physically and mentally. Therefore, the government as the holder of the sovereignty of the people always strives and builds to realize the noble ideals that are the hopes of the nation. Welfare implies a condition that describes the fulfilment of the demands of human needs, both external and inner needs so that self-satisfaction, tranquillity, peace and happiness are realized. This condition can only be achieved by hard, honest and responsible work. Furthermore, article 28h paragraph (1) of the 1945 Constitution, asserts that:

"Everyone has the right to live in prosperity, inwardly and outwardly, to live, and to have a good and healthy living environment".[4]

Meanwhile, Article 33 paragraph (3) of the 1945 Constitution, asserts that:

"Earth and water, and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people".

The issuance of the UUPA was in the hope of being able to become a legal basis for resolving land issues that have occurred so far, but, in its application, the UUPA still raises legal problems, this is because the dualism of agrarian law applies, and also the existence of legal norms that cause multi-interpretation. Thus, it can be difficult for the performance of the executors. Furthermore, in its development since the promulgation of the UUPA, the government has enacted several implementing laws, especially in the field of Housing and residential areas, namely Law No. 1 of 2011 on housing and residential areas (Law No. 1 of 2011).

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[3] Ayu Fitria Febriani, Kebijakan Kepemilikan Rumah Susun di Indonesia, Lentera Hukum, Volume 6 Isuse 1, tahun 2019, 17-34

[4] E savitri and PT Griya Asri Prima, Indonesia Apartement (Jakarta : Griya Asri Prima , 2007), 40.

Article 1 Number 1 of Law No. 20 of 2011, confirms “flats are multi-storey 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 sections, shared objects and shared land”.

Legal issues related to property rights to flats are still frequent, there are also other concrete cases such as those related to the establishment of the Association of Owners and Residents of Sarusun, hereinafter referred to as PPPSRS as stipulated in Article 74 paragraph (1), ayar (2), and Paragraph (3), Article 75 and Article 76 of Law No. 20 Of 2011 About Flats. Referring to the norms of the articles mentioned above, in fact, the residents have the authority to form the pppsrs. However, the implementation of the norms of Articles 74 and 75 of Law No. 20 of 2011 due to the provisions of Article 59 paragraph (1) and Paragraph (2) of Law No. 20 of 2011 which confirms paragraph (1) development actors who build public-owned flats and commercial flats in the transition period before the formation of PPPSRS are obliged to manage flats and Paragraph (2) the transition period as referred to in Paragraph (1) shall be determined no later than 1 (one) year since the first delivery of the sarusun to the owner.

The provisions of Article 59 of Law No. 20 of 2011, caused multiple interpretations for developers and apartment owners that this can cause their disputes resulting in the absence of comfort and order, which ultimately led to the estuary of the absence of legal certainty and justice for apartment owners. Looking at the issue above, the application for testing of Law Number 20 of 2011 concerning flats against the 1945 Constitution, which was submitted by Kahar Winardi et al. based on the power of attorney dated January 07, 2015, to provide legal counsel to Didi Supriyanto, , RA Shanti Dewi, and M. Imam Nasef.

In the decision of the Constitutional Court Number 21/PUU-XIII / 2015 dated May 10, 2016, which decided, among others, "grant the application of the applicants for a portion; and stated Article 75 paragraph (1) of Law Number 20 of 2011 concerning flats along the phrase" Article 59 paragraph” 2) " contrary to the Constitution of the Republic of Indonesia year 1945 as long as it is not Flats; and states Article 75 paragraph (1) of Law No. 20 of 2011 on flats.

As long as the phrase “Article 59 paragraph (2)” does not have binding legal force as long as it is not meant that what is meant by “transition period” in the explanation of Article 59 paragraph (1) is not interpreted as 1 (one) year without being associated with the unsold of all apartment units. Issues related to the establishment of the Association of Owners and Residents of Apartment Units (PPPRS) provide dynamics for the owners and residents of

commercial Flats (Apartments) which are related to the management of commercial flats. Article 59 paragraph (1) of Law No. 20 of 2011 confirms the existence of a legal entity, namely PPSRS, which will manage commercial Flats (Apartments) after the handover from the Developer (Developer) to the buyer within the deadline as stipulated in the article. Thus, there was a transition in the management of commercial flats (apartments) from the developer as the old owner to PPPSRS as the representative of the new owner.

Meanwhile, some problems in the transfer of management rights to the owners of commercial flats are related to one unit one vote or one member one vote, so speculation arises for control of the management of commercial flats (apartments). This happens if the milk house unit building is not sold by the developer, thus the developer becomes the majority owner of the apartment unit.

Based on the description above, the main issue of this study is to examine and analyze the "dynamics of the formation of the Association of Owners and residents of apartment units in the management of commercial flats (apartments)", with the focus of research on how the management of flats and the ratio decidendi decision of the Constitutional Court No. 21/PUU-XIII/2015 has provided legal certainty and how should the management of commercial flats regarding the authority of PPPSRS as a manager.

B. METHOD

Research can be done on specific legislation or recorded law. To identify the definitions, the principal/basis of law, namely the legal community, legal subjects, rights and obligations, legal events, legal relations and objects of law.[5] This study is a normative legal research that refers to library materials or secondary data. This research is used to reach a conclusion by drawing a major premise to a minor premise. The premise used, for example, is that everyone has the right to live in prosperity, physically and mentally, to live and get a good and healthy living environment, as a major premise, then it is known that there are cases related to issues regarding the management of flats, with a minor premise of applying rules or norms in the rules of flats, there are cases of legal uncertainty and injustice in the management of flats. Therefore, a more

[5] Mayrona, D., Usman, R., & Saprudin, S, Perlindungan Hukum Terhadap Konsumen Perdagangan Elektronik Dengan Sistem Prapesan. JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah, 8 (3), 2023, 1632-1646.

in-depth legal dogmatic study is needed involving legal cases and pretexts contained in the legislation regarding flats in force in Indonesia.

C. ANALYSIS AND DISCUSSION

1. Management arrangements of commercial Flats (Apartments) according to law No. 20 of 2011 about flats.

The philosophical basis for the establishment of Law No. 20 of 2011 on flats is the outlook on life of the Indonesian nation contained in the Pancasila items contained in the Preamble to the 1945 Constitution. This view of life contained the basic concepts of life aspired to by a nation as well as the basis of the deepest thoughts and ideas about life forms that are considered good. The view of the life of a nation is the crystallization and institutionalization of the values that are owned and believed to be true and cause determination in that nation to make it happen.

The values of Pancasila which is the purpose of the Indonesian nation are spelled out in the law that must be able to provide justice, order and welfare for all Indonesians both physically and mentally. In line with the goals of the Indonesian nation, philosophically the values contained in Pancasila, especially the fifth precept which reads: "social justice for all Indonesian people", become the basis for legal product regulation, in this case, the regulation of flats to realize justice and welfare.

The philosophical foundation as contained in Pancasila and the Preamble of the 1945 Constitution is poured into the trunk of the 1945 Constitution, namely Article 33 paragraph (3) which asserts that "the Earth and water, and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people". Further Article 33 paragraph (5). affirming that "further provisions regarding the implementation of this article are provided for in the law. Observing the norms of the article in question, the Constitution gives authority to the Legislature (DPR) and the government as a law-making institution to draft regulations in all fields in order to realize the goals of the state as mandated by the 1945 Constitution.

Furthermore, related to the agrarian law, the government enacted Law No. 5 of 1960 on the basic regulation of Agrarian principles better known as the agrarian Basic Law (UUPA). Konsiderans UUPA stated:

a) in the Republic of Indonesia, where the structure of people's lives, including their economy, is still mainly agrarian, earth, water and space, as a gift of God Almighty has a very important function to build a just and prosperous society;
b) that in the Republic of Indonesia, the structure of people's lives, including the economy, is still mainly agrarian, earth, water and space, as a gift of God Almighty has a very important function to build a just and prosperous society;
c) that the agrarian law has the nature of dualism, with the enactment of customary law in addition to agrarian law which is based on Western law;
d) that for the indigenous people, the agrarian law of colonization does not guarantee legal certainty.

The civil law legal system originated from the concept of the theory of state sovereignty both internally and externally. With this sovereignty, the state has monopoly control or is called state monopoly on law-making. The monopoly of law-making in the state was then set forth in the theory of separation of powers known as trias politica teachings initiated by Montesquieu. In civil law countries, which in fact are also positivists, have reduced the meaning of law to a narrower space, namely statutes law is a statute enacted by the legislative power. In brief, the sources of law in the civil law system consist of statutes, regulations, and Customs. Statutes are laws, while regulations are regulations that have been made through the power delegation from the Legislature to the executive. The third source, namely custom costumes, is quite interesting to observe considering that custom is not a legal term that is appropriate in the world of positivism. Custom is practised in a society that is not set forth in written form (non-state law).[6]

In the civil law system, the sources of law will not be separated from the theory of the state of law, according to Lon Fuller in his book The Morality of Law, mentioning, among others:[7]

a) The rule of law must be clearly written so that it can be known and applied correctly.

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[6] Ade Maman Suherman, Pengantar Perbandingan Sistem Hukum (Jakarta : Raja Grafindo Persada , 2004), 68.

[7] Lon Fuller, The Morality of Law (New Heven: USA: Yale University Press, 1964). 39.

b) The law must be constant so that there is legal certainty. But the law must also be changed if the political and social situation has changed.

c) The actions of government and law enforcement officials must be consistent with applicable law.

Management activities are one of the goals of organizing flats with legal certainty and Justice, which is still not optimally realized, it is necessary to reconstruct these provisions to realize more optimal legal certainty and Justice. Thus, to gain breadth of thought to provide input, it is necessary to conduct a study of the legal system in other countries, namely the Netherlands. As for the reason why the Dutch state, in general, that the family of the Indonesian legal system is the same as the Dutch legal system, the reasons are basically as follows:[8]

a) That in the Netherlands the problem of flats / multi-storey buildings (flat-woningen) has long been addressed (at least since 1950 and now (since 1972) has been solved completely.
b) Based on the principle of alignment (concordantie beginsel) in the past many/most Western private law (BW, WvK and others) Indonesia plagiarized the private law of the Netherlands and its influence is still felt today; for example: the law of engagement (tiet verbintenissen recht) and commercial law (tiet handelsrecht).
c) Among teachers and law students it is no secret that the compulsory and/or supplementary/voluntary literature (facultative) in solving a series of legal problems, mostly taken from the books of Dutch authors, considering, among others, the articles of the Civil Code and the trade Code of us together or similar to the BW and WvK of the Netherlands.

In addition, the legal system of civil law originated from the concept of state sovereignty theory both internally and externally. With this sovereignty, the state has monopoly control or is called state monopoly on law-making. The monopoly of law-making in the state was then outlined in the theory of separation of powers known as trias politica teachings initiated by Montesquieu. In civil law countries, which are also positivists, they

[8] **Andrian Sutedi, Hukum Rumah Susun & Apartemen (Jakarta : Sinar Grafika , 2012). 324.**

have reduced the understanding of the law to a narrower space, namely the laws (statutes) law is a statute enacted by the legislative power. In brief, the sources of law in the civil law system consist of statutes, regulations, and Customs. Statutes are laws, while regulations are regulations that have been made through the power delegation from the Legislature to the executive. The third source, namely custom costumes, is quite interesting to observe considering that custom is not a legal term that is appropriate in the world of positivism. The custom is practised in a society that is not outlined in written form (non-state law).[9]

As a country that adheres to the Civil Law System, the judge is only a mouthpiece of the law that has been established in law enforcement and must uphold legal certainty. Relying on the Civil Law system written law must be realized in the form of legislation drawn up by state institutions that have the authority. The concept of the Civil Law system in Indonesia is the rule of law for apartment units promulgated in law No. 20 of 2011 about flats. Regulations were established to regulate the implementation and management of flats in Indonesia.

Furthermore, the management of flats in Indonesia is regulated in Law Number 20 of 2011, Law Number 11 of 2020, Government Regulation Number 13 of 2021, Government Regulation Number 18 of 2021, and PMPU-PR Number 14 of 2021 following the provisions. Law No. 20 of 2011 confirms that Article 56 Paragraph (1) reads the management of flats includes operational activities, maintenance, and care for the common, common objects, and common land and Paragraph (2) reads the management of flats as referred to in Paragraph (1) must be carried out by managers who are legal entities, except for rental public flats, special flats, and state flats.

In Article 57 paragraph (1) reads in carrying out the management as meant in Article 56 paragraph (2) the manager is entitled to receive a management fee and Paragraph (2) reads the management fee as meant in Paragraph (1) is charged to the owner and occupier proportionally and Paragraph (3) reads the management fee of rental public flats and special flats owned by the government and residents proportionally.

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[9] *Ibid*, hlm. 68.

Article 59 paragraph (1) also stipulates that developers who build public-owned flats and commercial flats in the transition period before the formation of PPPPSRS must manage the flats and Paragraph (2) reads the transition period as referred to in Paragraph (1) shall be determined no later than 1 (one) year since the first delivery of the sarusun to the owner. The above articles affirm that the task of managing and interests related to commercial flats (apartments) is carried out by PPPSRS.

Regarding the purpose of management according to the court in legal consideration [3.17] Constitutional Court decision number 85/PUU-XIII/2015 confirms that "... the principle of flats not only consists of objects, namely land, buildings and facilities but also consists of human elements that inhabit the building, which in this case is called "occupant" so that the management of flats is not just material management but also human management and attention to residents as aspects that must also be managed,...".

Managers formed or appointed by PPPSRS must be legal entities, registered and have a business license from the Regent/mayor, specifically the province, the explanation is stated in Article 75 paragraph (4) of Law Number 20 of 2011 concerning flats. Commercial flats (apartments) differ from other types of flats in that Article 82 paragraph (1) of government regulation number 13 of 2021 states that development actors who build public-owned flats and commercial-owned flats in the transition period before the formation of PPPSRS are obliged to manage flats.

It is very important to get an understanding of the above-mentioned property rights, the right of ownership of the apartment (appartementsrecht), is also a special kind of material rights. As is already known from the type of its name, it is a special kind of ownership. It is the joint right ownership of the entire building, with the exclusive right to use only a certain part of the building, that is, an apartment unit. This right is generally used in flat or apartment buildings. Many people own the whole building of flats together and every one of them has an exclusive right to the enjoyment of any of the flats or apartments in it. In addition, they all have a common right to the enjoyment of common parts of the building, such as entrances and stairs.[10]

[10] Arie S. Hutagulung, Hukum Pertanahan Di Belanda Dan Indonesia (Denpasar : Pustaka Larasan, 2012). 8.

A right of ownership can be divided into a right of ownership of an apartment by a so-called “deed of division” from a notary. If the building has one owner, then the owner can assign ownership of the apartment and transfer one or more rights to another person, and if the building already has more than one owner, they can assign joint ownership of the apartment and then thereafter have their transferable apartment. A deed of division is drawn up by a notary and its division into rights to an apartment is valid only if the deed is superbly registered in the public archive.[11]

According to Arvie Purnomo,[12] ownership of a house or building is primarily focused on the land on which the building is located. Any part of the land is owned by someone, and that someone has a building attached to that part of the land automatically. Establish material rights to the land to be given to others, for example to tenants and it is possible to separate ownership of the land from ownership of the building by establishing a building right. The owner of the apartment unit is the owner of the house or the community of owners and residents of the house, as established by the law itself, this applies also to commercial flats or apartments. According to sources in Indonesia, ownership of commercial flats or apartments is given the right to ownership apartments provide one part of the ownership rights to the entire building. Each owner of an apartment unit has 25% (twenty five percent) ownership rights over the entire building, this depends on each building's size. Thus, the ownership of commercial flats or apartments has joint responsibility for its use.

Concerning the provisions governing the management of the transition period as stipulated in Article 59 to Article 60 relating to the provisions of Article 74 to Article 78 of Law No. 20 of 2011, according to the author of the provisions of the norms of the article has not been set so that in its implementation creates legal uncertainty that affects the provisions; the management provisions in the transition period begin from the first

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[11] *Ibid*, hlm 17-18.

[12] Wawancara dilakukan di Jakarta dengan melalui koreponden tertulis melalui aplikasi WhatsApp dan telepon, tanggal 10 Januari 2024 Pukul. 10.00 WIB- sampai selesai, dengan memberikan pertanyaan dan diskusi kepada Arie Purnomo, Doctoral Researcher, Faculty of Law, Economics and Governance (Peneliti Pada Program Doktoral Fakultas Hukum, Ekonomi dan Pemerintahan, Universitas Utrecht, Belanda, terkait pengaturan pengelolaan rumah susun yang berkepastian hukum dan berkeadilan menurut undang-undang Belanda saat ini.

submission and the provisions of the management costs borne by the development actors and apartment unit owners based on the NPP of each apartment unit.

Affirmation of Article 59 paragraph (1) and Paragraph (2) of Law No. 20 of 2011 that the phrase "first delivery" then in Article 59 paragraph (2) "the transition period as referred to in Paragraph (1) shall be determined no later than 1 (one) year since the "first delivery" of the apartment unit to the owner. The discrepancy in Article 59 paragraph (1) and Paragraph (2) lies in the intention of when the submission was first carried out and calculated, whereas when the submission was first carried out, the transition period began from then on. This is a matter of law because the rules contained in the law asserted in Article 59 paragraphs (1) and (2) are less clear.

2. Reorganizing the establishment of the Association of Owners and residents of apartment units in the management of commercial flats (apartments)

In addition, the management of commercial flats or apartments by the Association of Owners and Residents of Apartment Units (PPPSRS) as stipulated in Article 74 paragraph (1) confirms that the owner of the apartment unit is obliged to form pppsrs. The obligation of the owner to form PPPSRS is associated with the provisions of Article 75 paragraph (1) of Law Number 20 of 2011, this development actors should facilitate the formation of PPPSRS.

Viewed from the obligation as the owner of an apartment unit is obliged to form a legal entity Association as mandated in Article 74 of law no. 20 of 2011. Meanwhile, the development actors are obliged to facilitate the formation of the Association of owners and residents of apartment units. This can be illustrated if the owner wants to form PPPSRS, then the obligation of development actors can be carried out to facilitate the formation.

In practice, the formation of PPPSRS has many problems that result in PPPSRS not being formed. On the one hand, it is caused by the development actors who are not optimal in facilitating and intending to remain in control of management, because if PPPSRS has not been formed, the development actors are obliged to be managers. In addition, the owner is reluctant to form because the apartment unit building has not been or partially sold, even in general the units have been sold but there are no residents. In addition, apartment ownership as an investment makes it difficult to form PPPSRS as a manager.

Therefore, to provide legal certainty and justice, there is a need for re-arrangement in the trunk of the body in Article 59 or (2) of Law No. 20 of 2011 which reads the transition period as referred to in Paragraph (1) shall be determined no later than 1 (one) year since the first delivery of the sarusun to the owner. Then the author's proposal is amended so that it reads the transition period as referred to in Paragraph (1) shall be stipulated for a maximum of 1 (one) year from the first delivery of the apartment unit to the owner without being associated with the unsold of all apartment units.

While in the explanation, the explanation of Article 59 paragraph (1) which is meant by the transition period, the proposal from the author of Article 59 paragraph (1) to be deleted is changed to be quite clear. In the elucidation of Article 59 paragraph (2), it is amended so that it reads "The first submission is the submission of an apartment unit by the developer to the owner by handing over the key after the function eligibility certificate is issued, equipped with the submission of: a. Key handover minutes; b. Act of sale; and c. SHMSRS or SKBG unit flats. In elucidation of Article 59 paragraph (3), it is amended so that it reads that what is meant by a manager is that he must be a legal entity in the form of a Limited Liability Company, and have a business license from the competent authority. In the body of Article 75 paragraph (4) of Law No. 20 of 2011, the norm initially reads PPPSRS as referred to in Paragraph (1) may establish or appoint managers as referred to in the explanation of Article 59 paragraph (3) of Law No. 20 of 2011.

In addition, the dynamics in the management of flats are contained in Article 74 paragraph (1) which confirms that the owner of the unit of flats is obliged to form the Association of Owners and Residents of Flats in the sense that the residents and owners of flats are obliged to form the Association. If it is associated with the provisions of Article 75 paragraph (1) of Law Number 20 of 2011, it is where the development actors (developers) should facilitate the formation of the Association of Owners and Residents of apartment units. When viewed from the obligation the owner is obliged to form a must and be active in the formation.

Development actors should facilitate but the implementation of these obligations depends on the actions of the owner. Whenever illustrated if the owner intends to form an association of owners and residents of apartment units, then the obligations of the developer

can be implemented, but on the contrary, if the owner does not carry out the formation of the Association, even though the developer intends to facilitate, it cannot be realized.

In practice, the formation of the Association of owners and residents of apartment units has many problems that are not realized by the formation of the Association of owners and residents of apartment units. However, on the other hand, it is caused by development actors who are not optimal in facilitating master management because if the Association of owners and residents of apartment units has not been formed, the developer is obliged to be the manager. On the other hand, apartment owners are reluctant to form an association of owners and residents of apartment units because the owners who will occupy the apartment units are not yet full so the apartment units have been sold but there are no residents. Therefore, it makes it difficult for managers, namely development actors, to facilitate the formation of Associations of owners and residents of apartment units.

Seeing the practice in the formation of the Association of Owners and residents of apartment units has not provided a normative legal certainty. When a regulation is made and promulgated it is certain because it regulates clearly and logically. Concerning Article 59 and Article 74 of Law No. 20 of 2011 on flats which talks about the provisions in the establishment of the Association of owners and residents of apartment units, there are still doubts (multi-interpretation). In the sense of a system of norms with other norms there is a clash and cause a conflict of norms.

As stated by Radbruch the law has 3 (three) objectives, namely Justice, legal certainty and expediency.[13] In line with Radbruch, Satjipto Rahardjo stated that legal certainty is an icon of modern law.[14] Legal certainty arose simultaneously with the system of development of the modern legal system. Modern law responds to the development of modern legal systems. Modern law answers the development of the times, in the sense that modern law is closely related to the development of modern states, as well as advances in industrialization and technology, which are characterized by a capitalist economic system.

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[13] Gustav Radbruch, *Rechtphilosophie* (Stuttgar: K.F. Kohler, 1973).

[14] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban* (Jakarta : UKI Press, 2006).

This is where positivistic-analytical appears. Thus, legal certainty is a feature of written legal norms.[15]

Furthermore, Satjipto Rahardjo also argued, there are four things related to the meaning of legal certainty, Namely:

1) The law is positive meaning that it is a legislation.
2) The law is based on facts, not a formulation of the judgment that will be made by the judge.
3) The fact must be formulated clearly to avoid errors in meaning, besides it is also easy to run.
4) The positive law cannot be changed frequently.

According to Apeldoorn, legal certainty has two aspects, namely the question of the determination of the law in concrete matters. This means that the parties seeking justice want to know what the law is in a particular case before they start the case and legal certainty means legal security. It means protection for the party against authority. In line with Satjipto Rahardjo and Apeldoorn, Jan Michiel Otto defines legal certainty as the possibility that in a given situation,[16], one of them is related to the dynamics of the formation of the Association of Owners and residents of apartment units, namely, there are legal rules that are less clear, inconsistent and can be easily obtained issued by and recognized because of the (power) of the state.

As stated by the above scientists reflect that the highlighted law is legal certainty because as a characteristic of written legal norms. When associated with the problem of managing flats in Indonesia, from the aspect of the rules it is clear in written form but the legal norm is the implementation of these rules in the community. The rules governing the management of flats are contained in Article 59 and Article 74 of Law No. 20 of 2011 on flats. These rules have not been in line with the idea of the theory of legal certainty when associated with the purpose of the state enshrined in the 1945 Constitution

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[15] Wiryanto, "Rekontruksi Pengawasan Etik Terhadap Hakim Konstitusi" (Universitas Brawijaya , 2017).

[16] Lon L.fuller, The Morality of Law, New Haven: The Yale University Press, 1969, sebagaimana dikutip Satjipto Rahardjo, Loc.cit, hlm. 136.

and the Implementing Act can be explained that the explanation of the constitution confirms one of the purposes of the Constitution is to lay the foundations to provide legal certainty regarding land rights for the people as a whole.

D. CONCLUSION

The management arrangement of flats has not been confirmed in the management of the transition period, the first submission, and the establishment of PPPSRS, so legal certainty has not been accommodated in the management arrangement of flats in legal substance. Legal substances include disputes between development actors and owners or residents, which is due to the uncertainty of differences in the provisions of Article 59 paragraph (2) with an explanation of Article 59 paragraph (1) of Law Number 20 of 2011 which defines a "transition period". The difference is used by development actors to act in their interests because the apartment units have not been entirely sold even though they have exceeded the limit. In addition, in terms of the formation of the Association of Owners and Residents of apartment units, there are many and often disputes due to development actors sometimes buying time for the formation of PPPSRS with the aim that PPPSRS membership can be controlled by development actors. It is necessary to change the legal provisions relating to the management of flats, among others, Article 59 and Article 75 of Law No. 20 of 2011.

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