

ARRANGEMENT OF LAND ACQUISITION FOR DEVELOPMENT OF CONDOMINIUM HOTEL

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ABSTRACT

The regulation of land acquisitions for development condotel requires rearrangement, reminding that existing regulations don't give justice certainty and protection to people concerned with right to build on property which isn't be arrange in laws 20, 2011 about flats. The existence of the above Right to Build Property Rights in land acquisition for setting apartment units prior to the enactment of Law No. 20 of 2011, that the set is Right to Build, while after the enactment of Law No.20 of 2011 determined Right to Build on State lands. This shows above Right to Build Property unregulated resulting in equality, uncertainty and not protection of the people who have the Right to Build on Rights Reserved. The existence of such arrangements is also caused by less maximum resources the legislators in generating the Actin accordance with the laws of Indonesia ideals.

Keywords: The acquisition of land to the condotel development, justice law enforcement, law protection

INTRODUCTION

Bali is one of the tourist destinations of the world. As a tourist destination the development of condotel grows rapidly in province of Bali especially in Badung regency and city of Denpasar. Supporting facilities in tourism requires more space of land. And it makes the necessary of land is increasing while the position of strategic lands is very limited even not expand. The case makes the price of land located in tourist destination areas raise up high. Consequently the investors to provide the need of facilities in tourism have an initiative in tourism have an initiative to build non-settlement apartment undertaken hotel management or condotel.

The reason of high requirement in development of condotel as follow:

1. Limited providing of lands as facilities at certain region.
2. Demand of rooms raises up rapidly.
3. Promising investments.
4. Create an opportunity to work field/job.
5. To increase the real income of the region.

The development of flats as settlement in province of Bali is less desirable for Balinese people which most of them are Hindus People, it's just because of inappropriate with is culture and custom of Balinese. Where the development of housing in Bali Island has ethnic fundamental, ritual and philosophy and concepts of Rwa Bhineda, Trihita Karana, Tri Angga, Catur Muka and Nawa Mandala tha all orderly regulated in Asta Kosala and asta bumi.

The validity of laws no.20 2011 as the substitution of law no.16, 1985 where the position chapter 17 laws 20, 2011 explained that its only the right built on the land of state is permitted to build unit of flats so what about the right to build on property which hasn't any space at all. This problem can reveal "Concern...among the people. With the hope that public

authority on duty is able to give law certainty and law protection to the people. This case become the focus of study of the research why the right to build on property which isn't be ordered in laws no.20, 2011.

According to the researchers, the birth of laws No.20, 2011 about unit of flats don't accommodate the problems, because of:

1. The position the right to build on property in chapter 7 laws no16,1985 isn't explicitly claimed the right on property in the matter of developing flats, as a result it can reveal several appraisers to public authority in making law decimation related to the division of the right to built on property that be separated into certified of the right of ownership above unit of flats that is disability law don't legal certainly and law protection to the holder, as an example when the certificate the right of ownership above unit of flats as they result of the division the right to built.

On property used is guarantee in bank will reveal troubles for the bank can't receive the certificate the right of ownership above unit of flats as the guarantee of install payment.

2. When the law act No. 16 of 1985 was replaced by law Act No. 20 of 2011 relating to the status of Right to Build (HGB) on the Property Rights under Article 17 of Law act No. 20 of 2011 which is to be built is right to build (HGB) above the ground state and the Right to Build (HGB) above the mean for the Management of the above Broking Property has no place in the Law act No. 20 Year 2011 on the flats. This raises concern for the people who hold the Right to Build (HGB) on the Property will be split into Certificate of Ownership Rights to Housing Project Unit (SHMRS) and also for public officials linked to the construction of non-residential apartments with hotel management. in the province of Bali until now many developers holder Broking (HGB) on the Property cannot do breaking Right to Build (HGB) on the Property will be split into Certificate of Ownership Rights to Housing Project Unit (SHMRS).
3. many people are not aware of the status of the Right to Build (HGB) whether Broking on State lands or Rights to Build (HGB) on Property Owned by having differences such as:
 - a. Right to Build (HGB) above the ground state: rights granted by a state board, the period can be extended and updated, the value of indemnity worth buying and selling.
 - b. Right to Build (HGB) on Property Rights: caused of an agreement made by the parties, the period cannot be extended, the value of the benefit as rent.
4. there has been a shift in the principles and concepts when Law act No.20 of 2011 that examined the formation of Regulations in Indonesia, Law act Number 12of 2011 on the Establishment Regulation Legislation that Indonesia as a State Law in implementing national development is done in an integrated and sustainable the National Law system that ensures protection of the rights of all the people of Indonesia and obligations under Constitution UUD 1945.
5. The enactment of Law act No. 20 of 2011 as a replacement of the law Act No. 16 of 1985 flats which aim to provide certainty and legal protection for the public is not in accordance with the ideals of the Indonesian nation law caused by the legislators and the government in this regard Parliament less than the maximum, it is in line with the opinion that says that Siahaan Pataniari: technical quality our legislators, formally to have increased. But strangely, they just cannot do much more. Here the

issue is up to the mental determination and our legislators to truly represent the people. Not common knowledge that, because they are nominated by the party, many of our legislators do not actually have roots in the community. In fact, to be a political leader, a person must meet the following requirements: capability, acceptability, and popularity. As a result, many of our legislators to act more like a bureaucrat, who thinks that they have served the people and not vice versa.

6. In shaping the legislation must be based on the principles of good cover set out in Article 5 of Law act No. 12 of 2011 are:
 - a. clarity of purpose
 - b. Institutional or official right shaper
 - c. Correspondence between types, hierarchies and substance
 - d. can be implemented
 - e. Usefulness
 - f. Clarity of formulation and
 - g. Openness

In Article 6, paragraph (1) No. 12 of 2011, the content Laws reflect the principle:

- a. Aegis
- b. Humanity
- c. Pride
- d. Kinship
- e. Nationality
- f. Unity In Diversity
- g. Justice
- h. Rights Equality in Government
- i. Legal Certainty and Order And / Or Balance, In Conformity and Harmony.

Associated with the replacement of law Act No.16 of 1985 with Law act No. 20 of 2011 on apartment units, substance right to build (HGB) on the Property Rights set out in Article 37 of the UUPA Jo. Article of law act 29 Government Regulation No.40 of 1996, should Right to Build (HGB) on Property Rights under Article 17 and 18 of Law act No. 20 of 2011.

When Right to Build(HGB) above Property is not regulated in Law Number 20of 2011,it violates the principle of the formation of legislation in particular Article 5 and Article 6, paragraph (1) of Law act Number 12 of 2011 concerning the administration of justice, order and legal certainty, balance, conformity and harmony.

Legal framework for the development Condotel is Flats Act is Law No.16 of 1985 Flats (here in after referred UURS1985) which has been replaced by Law No.20 Year 2011 About Housing Project (here in after referred to UURS2011). Although UUPA and in Article37of Government Regulation No.40 of 1996 that the Right to Build(HGB) above Free hold and is set but the Law act No.16 yo1985Act No.20 of 2011Right to Build (HGB) on Property Rights land is not set to set, causing fuzziness Flats norm.

With attention-problematic philosophical, theoretical, legal and social mentioned above and the many contradictions in the administration happened land acquisition for the construction of condominium hotel, it is very relevant for further investigation on the "Settings Land Procurement for Development Condominium Hotel".

SHIFTING CONCEPTS AND PRINCIPLES OF NATIONAL LAND LAW THAT OCCUR OUT OF SYNC

Related to land acquisition, Maria Sumarjono found principally legal context of land acquisition in Indonesia, among others:

- a. Land tenure and use by anyone for any purpose must be the foundation right.
- b. All rights to the land directly or indirectly rooted in the rights of the nation
- c. Way to acquire land that is already owned by the right person / legal entity must be through an agreement between the parties concerned.

Benhard Limbong conclude from the existing provisions for land acquisition there are several ways to acquire land by giving compensation (the most major way), waived the right to land, and the land rights revoked.

In practice, known as 2 (two) types of land acquisition, the first land acquisition by the government for the benefit of both the public and land acquisition for private interests which include commercial and non-commercial interests or not social. Under article 4UUPA allow states to authorize individuals or legal entities to use, cultivate the land, which is set:

1. On the basis of the right to control of the State, as referred to in Article 2 defined the kinds of rights to the earth's surface, called ground, which can be assigned to and owned by the people, either alone or together with persons and other legal entities.
2. The rights to the land referred to in paragraph 1 of this article gives the authority to use the land in question, as well as earth and water bodies and the space above it is necessary merely for the sake of which directly relate to the use of the land within the boundaries according to this Law and other legal regulations higher.
3. In addition to the rights to land as referred to in paragraph 1 of this article is also determined water rights and space.

According to Article 28 paragraph letter H (1) of the Constitution of 1945 says every person has the right to live physical and spiritual prosperity, residence, and get a good and healthy environment as well as the right to health services, in relation to the article, the government has enacted Law No. 16 of 1985 flats, and has been replaced by Law No. 20 Year 2011 on the flats and Presidential Decree No. 4 of 1988 flats in which one important agenda is accelerating infrastructure development including construction of Housing and Settlements to meet the needs of the community and a decent life and a healthy environment. Article 33 paragraph (3) of the Constitution of 1945 which states that: Article33paragraph(3) of the Constitution of 1945whichstates that: Earth, water and wealth contained therein controlled by the state and used as much as possible for the prosperity of the people. It can be concluded that these concepts are controlled by the state means that the state has the authority to manage and regulate land use in the best interests of the people.

This statement implies an obligation for the earth, water, space and the natural resources placed in the power of the state to realize the power of the people of Indonesia, which meant welfare is the welfare of physically and spiritually fair and equitable for all Indonesian people. Article 2 paragraph (2) of Law Number 5of 1960 on Basic Regulation Agrarian give authority to, among others:

- I. Set up and organize the allocation, use, supply, and maintenance of earth, water and the space;
- II. Determine and regulate legal relations between persons with earth, water, and space;

- III. Determine and regulate legal relations between persons and legal actions regarding the earth, air and space.

Pursuant to Article 2 of the UUPA and UUPA explanation includes the concept definition of "controlled" by the State does not mean "owned" but the rights shall authorize the State as the above. Thus the public authority of the state that are the basis of a general nature for the government to make the adjustment, arrangement, mastery, and the optimum use of land in land acquisition for the construction of apartments/condos.

Construction of apartment or condominium is a means of supporting the development options Tourism in tourist destination areas in Indonesia. This is caused by the limited land for construction of tourism facilities at strategic places. Concept of utilization of space horizontally (stretch) has been developed in Indonesia, but the model space utilization upwards (vertically) with the construction of flats has not been known, but the model should be done to overcome the difficulties for land.

The island of Bali as a tourist destination area in Indonesia with the concept of cultural tourism that has developed a special character in its development including supporting the development of tourism facilities in the form of such a fast growing tourism. Regulation Regent of Badung and Denpasar mayor rules, developers are allowed to build buildings such as hotel and condotel to support tourism due to limited land. This suggests there has been a shift in the value of traditional Balinese culture with the concept of Tri Hita Karana Asta Kosala, Asta Bumi, in building a vertical structure in the public interest, and to this day the Balinese people can accept the presence of vertical buildings for nonresidential built with management hotel. Thus the research findings obtained from the study of the problem, which is as follows:

First, Law No. 20 of 2011 cannot give justice to the holders of the Right to Build (HGB) over land to build flats can be compressed, it demonstrates the law number 20 of 2011 did not adhere to the principle of justice.

Second, a shift in values that serve as the foundation and concepts in residential construction in accordance with the teachings of Hinduism is the foundation, ethics, rituals, philosophy and concepts bhineda Ruwa, Tri Hita Karana, Tri Angga, Catur Muka and Nawa Mandala.

Third, there was a shift of meaning hierarchy theory Norma, which should lower regulation must not conflict with higher laws here there are no norms in the Law No. 20 of 2011 is not in accordance with the norms contained in UUDNRI 1945.

Fourth, there is no horizontal synchronized between Articles 17 of Law No. 20 of 2011 with Article 37 of the UUPA vertical, not synchronized occurs between the Law No. 20 of 2011 with UUD NRI 1945.

Fifth, there was a shift Concepts and Principles of National Land Law in the presence of Act No. 20 of 2011 on the flats where the National Land Law based on customary law while the Condominium adoption of Anglo-Saxon law.

Sixth, the substance and the substance of the Act No. 20 of 2011 are not in accordance with the principle of justice, certainty and cannot provide legal protection for the community.

Existence Right to Build (HGB)

On Property Rights Broking settings above can Proprietary in exploration under the provisions governing the building Time shares are as follows:

- a. Article 35 UUPA:

- I. Share-building is to have the right to establish and buildings on land not his own, with a maximum period of 30years.
 - II. At the request of the holder of the rights and needs as well as considering the state of the buildings, the period mentioned in paragraph (1) may be extended by a maximum of 20 years.
 - III. Share-building can be switched and transferred to another party.
- b. Article 36UUPA:
- I. Citizens and legal entities established under Indonesian law and domiciled in Indonesia;
 - II. When Broking is owned by anyone other than those specified in paragraph (1) within 1 year of the land should be transferred to that may have Broking or remove rights and land to state land;
 - III. Right to build can be switched and transferred to another party.
- c. Article 37UUPA
- Right to Build (HGB) occurred:
- I. Regarding land directly controlled by the State: due to the determination of the Government.
 - II. Regarding land: because the agreement formed between the authentic owner of the land concerned parties will obtain the right to build (HGB), which is intended to give rise to such rights.
- d. Article 24 of Government
- Regulation No.40 Year 1996 on the Right to Build:
- I. Right to build free hold land occurs with administration by the holder of the Property Rights deed made by a Land Deed Official.
 - II. Granting Right to build free hold land referred to in paragraph (1) shall be registered at the Land Office.
 - III. Right to Build Free hold land bind third parties inceregistered as mentioned in subsection (2)
 - IV. The provisions on the procedure for granting and registration of land Broking Property Rights shall be further regulated by Presidential Decree.
- Provisions are not set above Broking Property can be found in Article7 of Law Number 16 of 1985:
1. Council estate can only be built on land ownership, land rights, land use rights or management rights of the State in accordance with the legislation in force.
 2. The construction of the building flats on the land held by the management right, must settle the status of the right to build over the management rights in accordance with the legislation in force before selling the apartment units are concerned.
 3. The organization shall segregate the construction units and flats above the joint in the form of images and descriptions are approved by the competent authority in accordance with the legislation in force that provide clarity on:
 - a. Boundary-units that can be used separately for the individual;
 - b. The upper limit of the collective descriptions and objects with which they are entitled each unit;

- c. Boundaries and land-description and magnitude with which they are entitled top art of each unit.

With the enactment of Law No.20Year2011 on the Flats which was promulgated on 10 November 2011 as a substitute of Law Number 16 of 1985 on the flats house in the provisions of Article 17of Law No.20 of 2011 said that:

Flats can be built on the land:

- a. Property rights;
- b. Right to build or use rights on state land, and
- c. Right to build or use rights over management rights.

Before the Enactment of Law No.20 of 2011

Under article 28, paragraph H(1) of the Constitution of the Republic of Indonesia of 1945 states that every person has the right to live prosperous and unseen live and earn a good living environment and healthy and are entitled to health care. Furthermore Article 33 paragraph (3) of the Constitution

The Republic of Indonesia 1945 Constitution to determine the Earth, Water and natural riches contained therein controlled by the state and used as much as possible for the prosperity of the people, it can be concluded that the concept of state-controlled means to have the authority to administer and manage land for the overall prosperity of the people, in other words on highest levels of the state has the right to set designation and utilization. Settings required by the state because of concerns that without state intervention there will be in equities in access to acquisition and utilization of natural resources in this land for low income people (MBR). Thus the authority of the state in the area of land including land acquisition for setting Condotel development was not in line with the ideals of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year of 1945.

Thus when Act No.16 of 1985 are applicable norms vagueness in Article 7 which just set the Right to Build (HGB) is not explicitly stated whether the Right to Build (HGB) above the ground state or above Right to Build Rights Reserved.

After the Enactment of Law No.20 of 2011

After the enactment of Law No. 20Year of 2011 vacancy occurs where the norm is set only Right to Build (HGB) above the ground state while the Right to Build(HGB) above Property is not set, raising concerns for holders of Right to build (HGB) on Ownership and public officials. This is due to their sources of the law makers that the government and the parliament are not up to adopt laws that are not in accordance with the ideals of the laws of Indonesia.

Government regulation of flats house yet published, the old government regulation was the Government Regulation No.4 in 1988 cannot accommodate all of the existing problems. Separation deed by deed under the hand should be notarized.

CONCLUSIONS

1. A shift in the concept and principle of the law of the land due to shifting political and ideological vision of law organizing the procurement of flats, from populist arrangement for the benefit of low-income communities (MBR), a medium that is concerned with setting up a medium-sized communities have a high income for commercial and investment, thus resulting in the allotment of flats not more to help low-income people (MBR) but rather to take advantage of the investments made.

.Occurs out of sync setting land acquisition for flats both horizontally between Article 17 of Law No. 20 of 2011 with Article 37 of UUPA, as well as between the vertical in synchronize Act No. 20 of 2011 with UUDNRI, 1945, which resulted in a shift in the concept and principles of law national land especially Right to Build utilization for construction of flats

2. The existence of the above Right to Build Property Rights in land acquisition for setting apartment units prior to the enactment of Law No. 20 of 2011, that the set is Right to Build, while after the enactment of Law No. 20 of 2011 determined Right to Build on State lands. This shows above Right to Build Property unregulated resulting in equality, uncertainty and not protection of the people who have the Right to Build on Rights Reserved. The existence of such arrangements is also caused by less maximum resources the legislators in generating the Act in accordance with the laws of Indonesia ideals.

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