

## PROPERTY OWNERSHIP OF HOUSING UNITS IN FLAT (SRS) BY LAW NUMBER 20 OF 2011 ON FLAT

By

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### ABSTRACT

*Property rights in the ownership of residential apartment units are primarily low-income communities (MBR) as one manifestation of the state's responsibility to provide the necessities of shelter for citizens who are less able. Government in this case as the State's executive constantly strive to fulfill the responsibility in order to meet as it has been mandated in legislation such as the Law of 1945, Law No. 20 of 2011 on flats. In this paper the authors try to explain the issues are: with regard to who has the right to own and occupy the flats then the ownership of flats and remedies, issues related to the ownership of flats. It can be concluded with regard to the ownership of residential apartment units not only be owned by the private but also by legal entities that are qualified and applicable regulations and that has been determined, then in the process of ownership the government has given laws and regulations in order to become a reference in making ownership of the residential apartment units later in the execution occur the problems that arise then the government gives space settlement efforts both litigation and non litigation, known as a win-win solution that is expected mantinya not detrimental to both sides especially to low-income people who harmed*

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## 1. INTRODUCTION

In implementing the national development of the Indonesian nation which aims to realize a social order that is expected and aspired to as mandated in the 1945 Constitution which is united, sovereign, just and prosperous for all Indonesian people, both materially and spiritually based on the philosophy of the Indonesian nation, namely Pancasila.

One area that is currently still being implemented and continues to receive serious priority attention from the government is providing adequate clothing, food and housing facilities that are affordable and can be enjoyed by Indonesian people with low incomes. In human life in this world, there are always and forever 3 (three) primary needs that will cover their lives, namely: (Ridwan Halim, 1995, 283)

- 1.the need for adequate and adequate clothing or clothing;
- 2.the need for healthy and sufficient food or food;
- 3.the need for decent and adequate shelter or housing;

Housing has an important meaning, therefore everything related to the provision of housing needs as mentioned above, considering that housing facilities are one of the very basic basic needs that are always inherent in the life of every human being, in other words it can be said that housing is a supporting factor. in realizing the development ideals of the Indonesian nation. (Boedi Hasono, 1995, 1)

Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment, which is a basic human need, and which has a very strategic role in forming the character and personality of the nation as an effort to develop the Indonesian human being as a whole, true self-

sufficient, independent and productive, the state is responsible for protecting the entire Indonesian nation in providing housing through flats that are suitable for a healthy, safe, harmonious and sustainable life throughout Indonesia.

So based on the importance of decent, adequate and affordable housing for all people with low incomes, the government promulgated a statutory regulation, namely Law Number 20 of 2011 concerning Flats on November 10 2011. This need for housing It is a must for everyone, from the upper class to the lower class.

Law Number 20 of 2011 concerning Flats in Article 1 point (1) states: "A flat is a multi-storey building built in an environment which is divided into functionally structured parts, both in horizontal and vertical directions and is units that can each be owned and used separately, especially for residential premises that are equipped with shared parts, shared objects and shared land.

The government continues to gradually and continuously carry out the construction of flats, especially in various big cities, although it is not yet felt to be commensurate with the growth in the existing population. This imbalance can be seen in the presence of several slum housing scattered in big cities such as DKI Jakarta as the Special Capital Region. Republic of Indonesia.

Limited land and land for housing will be increasingly felt with the pressure for development in the form of building strategic business places in addition to building residential facilities and infrastructure, building or constructing new roads and widening roads including flyovers to overcome traffic jams. traffic, the need for land for cemeteries or cemeteries is clearly increasing day by day. (Koran Tempo, 2003, 23)

The existence of illegal settlements cannot be separated from urbanization people who migrate to Jakarta in order to get adequate work and earn income. The presence of urbanization or migrants who generally come from areas on the island of Java or other islands is due to the lack of adequate employment opportunities in these areas to fulfill their daily needs.

A situation like this is very worrying if it is not immediately pursued with various appropriate methods or solutions, especially in terms of providing flats that can be reached by all levels of society without leaving behind adequate facilities and facilities. For middle to lower class people, owning an apartment is very difficult. With the construction of these flats, it is hoped that the problem of flat ownership can be reached by the lower middle class.

In terms of ownership of flats, Law Number 20 of 2011 concerning flats, article 47 paragraph (1) states that as proof of ownership of the flat, a Certificate of Ownership of the Flat (SHM sarusun) is issued. Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) in Article 20 paragraph (1) states: Property rights are hereditary, strongest and fullest rights that people can have over land. (Sudikyo Mertokusumo, 2011, 136)

The characteristics of flats, namely strata title, is a system that allows the division of land and buildings into units called parcels, each of which has separate rights, but apart from individual ownership, it is also known as land, objects and parts. which is common property. (Maria S.W, 2001, 113).

Ownership of apartment units (Sarusun) is an important part that must be understood by consumers and developers alike. This is because the issue of ownership and management of flats in Indonesia has often given rise to polemics. The emergence of various problems regarding ownership is due to the ignorance of the owners/occupiers and developers regarding the rights and obligations that each party must carry out.

This is intended so that the owner/occupier can know their position in the ownership of the flat. Property rights are the right to enjoy the use of an object freely, and to act freely with that object with complete sovereignty, as long as it does not violate the laws or general regulations established by a power that has the right to determine it, and does not interfere with the rights of other people. , all of which does not reduce the possibility of revocation of this right in the public interest based on the provisions of the law and with the payment of compensation." (R. Subekti, R. Tjitrosudibio, 2004, 171).

Regarding the size of the apartment, buyers must pay close attention to it when receiving offers from apartment sellers. Because at the time of the sales offer, which is usually done by marketers through pre-project selling, the size of Sarusun is not yet known with certainty. What needs to be understood is that the actual ownership of the condo unit is not only the right to own the unit but also the ownership right to the common parts, joint objects and joint land proportionally.

Referring to the background description above, several main problems can be found as follows:

1. Who has the right to own and occupy an apartment?
2. What is the process of owning an apartment?
3. What are the efforts to resolve problems related to flat ownership?

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## II. DISCUSSION

### A. Ownership and Law of Apartments

#### 1. Ownership of Flat Units

Flats can only be built on land with ownership rights, building use rights, use rights and management rights. Article 8 PP Number 4 of 1988 states that those entitled to own an apartment unit are individuals or legal entities who meet the requirements as holders of land rights, as intended in the provisions of article 21, article 36, article 42 of the UUPA.

Shared land has ownership status, so those who can own flats are limited to individual Indonesian citizens who do not have dual citizenship, while legal entities that can own flats built on freehold land are legal entities that are designated by the government based on Government Regulation Number 38 of 1963, including government banks, social and religious bodies, and cooperatives.

Legal entities or private business entities can only own apartment units built on land with building use rights in accordance with and based on the provisions in article 2 paragraph (2) of Government Regulation Number 41 of 1996 concerning ownership of residential or residential houses by resident foreigners. in Indonesia, LN.59, TLN. 3644, that foreigners, including foreign legal entities, can only own apartment units built on land with the right to use state land.

Ownership rights to apartment units include individual ownership which is used separately, such as for residence or business premises, joint rights to parts of the building, house structure and equipment such as electrical installations, lights which are used for common purposes. Individual property rights that are used separately are rooms that have a certain area and height limit that separates individual property rights from other people's property rights which are not always limited by walls.

In the event that it is limited by a wall, the inner surface of the dividing wall, the lower surface of the ceiling of the structure, and the upper surface of the floor of the structure are the boundaries of ownership. If part of the room is not limited by walls then the top part at the level of the bottom surface of the ceiling of the structure is the ownership limit, whereas if the entire room is not limited by walls such as an open business place (los) then the ownership limit is clearly marked which cannot be removed.

As proof of ownership of an apartment unit, the owner is given a "certificate of ownership rights to an apartment unit" where the procedures for issuing a certificate and making a land book of ownership rights to an apartment unit are regulated in the Regulation of the Head of the National Land Agency Number 4 of 1989. Every Ownership rights to condominium units are registered in 1 (one) land book of ownership rights to condominium units.

For ownership rights to apartment units that have been recorded, certificates can be issued by:

- a. Make a copy of the relevant land book;
- b. Make a copy of the measurement letter for joint land;
- c. Make a plan drawing of the apartment unit in question.

Copies of the land book, measurement letters and floor plans are then bound together in one document cover, which is called a certificate of ownership of the apartment unit, which must be completed by the company organizing the apartment construction before the apartment unit is sold. With the issuance of a certificate of ownership of an apartment unit, the certificate of title to the shared land on which the housing units are built must be kept at the local land office as a document.

#### 2. Legal Basis for Flats.

Meanwhile, according to the legal basis for ownership of condominium units, it is stated that the laws and regulations concerning condominiums that apply in Indonesia, the statutory provisions in Indonesia that regulate condominiums at this time are Law Number 20 of 2011 concerning Condominiums regarding these laws. It is still relatively new at the time of writing this thesis, so there are no further provisions governing government regulations, so we still use Government Regulation Number 4 of 1988 concerning Flats.

Regulations regarding flats in particular and condominiums generally refer to Law Number 20 of 2011 and other provisions relating to flats. These provisions do not only apply to the construction of flats, but also apply to the construction of multi-storey buildings in general, whether residential or non-residential business premises. The broader and deeper sources of law that underlie or form the basis of condominium law in Indonesia today include:

##### a. General

- 1) Article 28 H paragraph (1) Fourth Amendment to the 1945 Constitution;
- 2) Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) regulated in CHAPTER II UUPA, regarding land rights;
- 3) Law Number 8 of 1999 concerning Consumer Protection, namely Article 6 regulates the rights of business actors;
- 4) Law Number 1 of 2011 concerning Housing and Settlement Areas;

- 5) Government Regulation Number 24 of 1997 concerning Land Registration;  
 b.Special
- 1) Law Number 20 of 2011 concerning Flats;
  - 2) Government Regulation Number 4 of 1988 concerning Flats;
  - 3) Regulation of the Head of the National Land Agency Number 2 of 1989 concerning Forms and Procedures for Filling Out and Registration of Deeds of Separation of Flats;
  - 4) Regulation of the Head of the National Land Agency Number 4 of 1989 concerning Forms and Procedures for Making Land Books and Issuing Certificates of Ownership Rights for Flats;
  - 5) Regulation of the Minister of Public Works Number 60/PRT/1992 concerning Technical Requirements for the Construction of Flats.

### 3. Valid Conditions for an Agreement.

A valid agreement is an agreement that meets the requirements stipulated by law. A valid agreement is recognized and given legal effect (Legally Concluded Contract) according to the Civil Code (Civil Code), the legal requirements for an agreement are:

1. There is an agreement of will between the parties making the agreement (consensus). Consent of will is an agreement, the parties are in agreement regarding the subject of the agreement, what is desired by one party is also desired by the other party.
2. The parties have the ability to make an agreement (capacity). So the party entering into the agreement is a person who is competent according to the law.
3. The existence of a certain object (object). Based on article 1332 of the Civil Code, it states that goods or things can be traded without specifying whether the goods are material or immaterial.
4. There is a lawful cause. Because in the sense of "the contents of the agreement itself" which describes the goals to be achieved by the parties, whether they conflict with public order and morality or not (article 1337 of the Civil Code).

As long as the parties acknowledge and comply with the agreement they have made, even if they do not fulfill the terms, the agreement applies to them. If there comes a time when a party does not acknowledge this, giving rise to this, the judge will cancel or declare the agreement void. (Abdul Kadir, 1990, 228).

### B. Who has the right to occupy the flat.

#### 1. Who has the right to own and occupy an apartment unit.

The basic legal guidelines for carrying out the construction of flats according to Law Number 20 of 2011 in article 2 consist of 13 principles, namely based on the principles of welfare, justice and equality, nationality, affordability and convenience, efficiency and usefulness, independence and togetherness, partnership, harmony and balance, integration, health, preservation and sustainability, safety, comfort and convenience and security, order and regularity.

Based on this legal relationship, apartment unit owners, either individually or collectively, can do something with the apartment units they own. Meanwhile, economic or economic law itself, if we look at its relationship with civil law, is where the legal side of condominium is part of its ranks, which turns out to be a combination of civil law, partly, but not entirely, along with civil law and criminal law. The authority of the apartment unit owner is:

- a. Use or occupy as a residence or non-residential according to the intended use;
- b. Can rent out residential or non-residential portions to other parties;
- c. Can provide credit or debt guarantees to the bank to obtain credit, by submitting a certificate of ownership of the apartment unit to the credit granting bank or by granting a mortgage or mortgage.
- d. Can be handed over to the heirs of ownership of the apartment unit by the owner of the apartment unit if he dies.

In matters relating to the ownership of condominium units, apart from an individual who can be the owner of an apartment unit, it can also be a legal entity provided that the legal entity meets the requirements as the owner or holder of rights to land, which definition is in accordance with the contents of article 1 paragraph 16 Law Number 20 of 2011 concerning flats, namely every person, namely an individual or legal entity. In article 1 paragraph 18: "The owner is every person who owns an apartment unit (sarusun)," so the owner of an apartment unit can be an individual or a legal entity. What is meant by fulfilling the requirements as a holder of land rights is if the legal entity is a legal subject that meets the requirements to be a holder of rights to the land on which the apartment stands.

According to article 17 of Law Number 20 of 2011 concerning flats, it is stated that the construction of flats can be carried out or can only be carried out on land ownership rights, building use rights or use rights over state land and building use rights or use rights above management rights.

The ownership of the apartment unit is for an unlimited period of time because it is hereditary, therefore of course the ownership of the apartment unit is not only for the owner who already owns the apartment unit but continues



to the descendants of the heirs in the future who own it. with respect to ownership of the apartment unit. Land use rights can be owned or owned by individual Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia. (Budi Harsono, 1994, 280)

These provisions are regulated in the Basic Agrarian Law Number 5 of 1960, specifically in article 36 paragraph 1, namely for owners of apartment units built on land with building use rights, the ownership period is 30 years and can be extended and renewed. when the period of use of land rights expires.

Meanwhile, with regard to the use of land rights for apartment units in an environment where the apartment stands on land whose rights have the status of pakah rights over state land, they can also be owned by foreigners residing in Indonesia and legal entities that who may be the holder of these rights are:

- a. Legal Entity established under Indonesian law and domiciled in Indonesia;
- b. Legal Entity that has a representative body in the territory of Indonesia.

If the condominium in question is built on a location, namely on land with management rights, then the construction organizer is obliged to complete the building use rights above the management rights in full in accordance with the applicable legislation, namely in Law Number 20 of the Year. 2011 in article 22 paragraph 3.

In order for the common land which is part of the ownership rights to the apartment units in question to obtain building use rights status, the granting of building use rights status must be completed before the apartment units in question are sold. This provision is intended to protect buyers of apartment units. It is an inseparable unit between one and the other in relation to the apartment unit in question as based on the area or value of the apartment unit at the time the unit was acquired by the first owner of the apartment unit.

So, apartment unit owners must fulfill the requirements as holders of rights to shared land with ownership status. As stated in the Basic Agrarian Law Number 5 of 1960 article 21 paragraph 1 which states that only Indonesian citizens can have property rights. Then those who can have building use rights are:

- a. Indonesian citizens;
- b. Legal Entity established under Indonesian law and domiciled in Indonesia.

After the parties have fulfilled all the requirements outlined above relating to the terms of ownership of the condominium unit, the parties can own the condominium units in accordance with the applicable laws and regulations relating to the condominium. Ownership rights are hereditary, strongest and fullest rights that can be owned by land so that these ownership rights can be transferred and transferred to other people. Property rights are absolute rights that are owned by the owner in order to use these rights as the right owner wishes.

Shared ownership of flats according to Law Number 20 of 2011 concerning flats consists of:

- a. Shared parts;
- b. Shared objects;
- c. Common land;

In an apartment unit, the pattern of togetherness is a characteristic and central point of the arrangement and structure of the lives of its residents, therefore the happiness of living in an apartment complex is of course very dependent on cooperation, tolerance, and obedience to the rules of living in an apartment.

Residents' rules and regulations for maintenance or improvement of the apartment environment are the duties of the residents' association, but if the residents' association has not yet been formed, the construction organizer acts temporarily to handle the duties of the residents' association of the apartment unit, including in terms of the rules and regulations, the applicable residential regulations. follow the regulations prepared by Perumnas as the development organizer.

After the requirements for the owner or occupant have been met and they are able to own an apartment unit, the occupant must then comply with the regulations made either by the National Housing Authority or by the DKI Jakarta regional government department in order to maintain security and order in the apartment environment.

## **2. The Government's Goal of Building Flats.**

Housing and residential development is primarily carried out based on urban regional spatial plans and comprehensive and integrated non-urban spatial planning plans implemented by the government by taking into account related aspects as well as plans, programs and priority scales for housing and residential development.

The government guarantees the creation of flats that are livable and affordable in a healthy, safe, harmonious and sustainable environment and creates integrated settlements to build economic, social and cultural resilience. Increasing the efficiency and effectiveness of space and land use, providing green open space in urban areas in creating residential areas that are complete, harmonious and balanced, taking into account the principles of sustainable and environmentally sound development. Reducing the area and preventing the emergence of housing and slum settlements. Directing the development of harmonious, balanced, efficient and productive urban areas.

Fulfilling social and economic needs that support the lives of residents and the community while still prioritizing the goal of meeting the needs for adequate housing and settlements, especially for MBR. Empowering stakeholders in the field of apartment construction. Ensure the fulfillment of the need for decent and affordable flats, especially for MBR, in a healthy, safe, harmonious and sustainable environment in an integrated housing and settlement management system. Providing legal certainty in the provision, occupancy, management and ownership of flats.

The objectives of the construction of flats by the government are to meet the needs of adequate housing for the people, especially low-income people, guarantee legal certainty in their use, create harmonious and balanced settlements, rejuvenate slum areas, optimize urban resources, encourage sustainable settlements. high population density, fulfills other needs (which are not for habitation) which are useful for people's lives in obtaining conveniences in accordance with the intended residential function.

Based on this fact, because the construction of flats is aimed at solving state problems related to people's housing problems, the organizers of the construction of flats and the land that will be built for the purpose of building flats must be clearly regulated so that problems occur.

In Article 15 paragraph 2 of Law Number 20 of 2011 concerning Flats, it is stated that the construction of flats by non-profit institutions and business entities is carried out by:

- 1.State or regional owned enterprises (BUMN or BUMD);
- 2.Cooperative;
- 3.Privately owned business entities operating in that field;
- 4.Community self-help.

As long as the privately owned business entity (BUMS) meets the requirements as an Indonesian legal entity. It further requires that the opportunity given to build flats should be guided by the principles of equity and affordability. Apart from that, it is stated that the government can also build flats in the context of pioneering trial research or for the government's own needs.

Article 17 of Law Number 20 of 2011 concerning flats stipulates that flats can only be built on land that has the status of ownership rights, business use rights, use rights over state land and use rights over management rights in accordance with applicable laws and regulations. in the Indonesian jurisdiction.

This means that on top of the management there is already a building use right in the name of the organizer which is obtained from the government in accordance with the laws and regulations regarding flats when carrying out a flat construction. In fact, all of this aims to protect the interests of buyers of flats at the time they have purchased the flat and in the future regarding the existence of the flat they already own, if the land used for the flat has the status of management rights and can only be given to Perum Perumnas.

### **3. How to Own a Flat.**

There are many ways for a human being to have and own something, namely among the many ways, one of which is for someone to own and possess something, is by carrying out a sale and purchase transaction of an object or material object. Article 1457 BW states that sale and purchase is an agreement in which a party binds itself to be obliged to hand over an item and the other party is obliged to pay the price agreed upon between the two of them.

This means that in buying and selling there is something called an agreement between one party and another party in an agreement that they have bound together. Buying and selling is a reciprocal agreement in which one party, namely the seller, promises to hand over the ownership rights to an item, while the other party, the buyer, promises to pay a price consisting of a certain amount of money in return for having the ownership rights. (Joko Prakoso, 1987, 1)

In order to guarantee certainty of rights for apartment unit owners, they are given strong evidence in the form of a certificate of ownership (SHM) for the apartment unit, where the certificate between the apartment unit and the ordinary house certificate are not the same. This apartment unit certificate is a provision for management rights over the apartment with an agreement between the holder of management rights and a person to issue parts of the unit. Therefore, before the apartment unit is sold, a certificate of ownership of the apartment unit must be in place because a certificate of ownership rights to the apartment unit is a requirement to be able to sell the apartment unit in question, where this certificate is issued by the local district or municipal land office on behalf of development organizer. (Arie S Hutagalung, 1998, 55)

Articles 43 and 44 of Law Number 20 of 2011 regarding the process of buying and selling flats state that there are two ways in the process of buying and selling flats, the first is using PPJB, namely the buying and selling process before the flat is completed and AJB when the flat is finished, both ways. This must be done through a notary or PPAT. Furthermore, the sale and purchase, namely the transfer of ownership rights to an apartment unit, which occurs between the organizer of the apartment construction and the buyer, must be carried out by means of a Notarial deed or PPAT whose working area includes the location of the apartment.

Article 46 to Article 49 of a sale and purchase that has been carried out so that the act binds a third party and meets publicity requirements, the deed must be registered at the local district or municipal land office. Registration is

carried out by affixing a note regarding the sale and purchase that has been carried out in the land book and a copy of the land book which is part of the certificate of ownership of the apartment unit concerned. A certificate containing a registration record is handed over to the buyer as the owner of the apartment unit concerned as proof of ownership.

Based on these provisions, to be able to sell apartment units, the organizer of apartment construction must obtain a habitable permit from the regional government. Meanwhile, for buying and selling before a notary or PPAT, you must first fulfill the requirements for a deed of separation of the apartment units for the production of a certificate of ownership of the apartment units by the relevant district or municipal land office. Even though it is required by the applicable laws and regulations regarding flats, they can be bought and sold if they have obtained a habitable permit from the regional government and the certificate for the flat units has been completed.

In fact, the habit of marketing property, especially flats, has developed before the flats being marketed have been built and this often happens while the land is still being planned and prepared as required by Articles 43 and 44 of Law Number 20 of 2011. To anticipate this problem then the steps that must be taken by the housing and consumer settlement development companies mentioned above are made to give rise to a preliminary sale and purchase which is then outlined in the deed of sale and purchase agreement for the apartment units.

In the MENPERA decision in the form of decision letter number: 11/KPTS/1994 concerning guidelines for sales and purchase agreements for condominium units, instructions are given regarding procedures for sales and purchase agreements for condominium units. of the sale and purchase agreement are:

1. Flats that are still in the construction stage can be marketed through an ordering system by buying and selling flats;

2. On the day of the order, those interested in ordering can receive and sign the order letter prepared by the development and settlement company

3. The order letter is accompanied by a picture showing the exact future apartment units ordered along with provisions regarding payment stages;

4. Within a period of no later than 30 calendar days after signing the order letter from the housing and settlement development company, they must sign the sale and purchase deed and then both parties must fulfill the obligations as stipulated in the agreement for the sale and purchase of ownership of the apartment unit.

5. The sale and purchase binding agreement includes, among other things, the object being traded, namely the ownership rights to the apartment unit, which also includes common shares, joint land and joint objects along with facilities in accordance with their proportional value, management and maintenance of the common shares, if a dispute arises in connection with the sale agreement Preliminary purchase of apartment units is carried out through arbitration determined in accordance with the rules of the Indonesian National Arbitration Board (BANI) with costs borne by the parties.

### **C. Settlement of Disputes on Condominium Ownership Issues.**

What efforts can be made to resolve problems relating to flat ownership, below we will list several resolution efforts, namely:

1. Out of court;

2. In court;

In resolving problems that arise regarding the ownership of condominium units by means of resolution efforts outside the court or in court, Law Number 20 of 2011 concerning Condominiums has provided a dispute resolution mechanism, especially regarding the issue of condominiums. Article 105 states that:

1. Settlement of disputes in the apartment sector must first be sought based on deliberation to reach consensus.

2. In the event that dispute resolution through deliberation to reach consensus is not achieved, the aggrieved party can sue through a court within a general court or outside court based on the choice agreed by the disputing parties through alternative dispute resolution.

3. Settlement of disputes outside the court as intended in paragraph (2) is carried out through arbitration, consultation, negotiation, mediation, conciliation, and/or expert assessment in accordance with the provisions of statutory regulations.

4. Settlement of disputes outside of court as intended in paragraph (3) does not eliminate criminal responsibility.

#### **1. Dispute Resolution in Court.**

Settlement of disputes relating to condominiums, especially regarding ownership of condominiums, can be resolved using court proceedings in the general court environment, both criminal and civil, as an existing mechanism for seeking legal certainty regarding the owners of condominium units.

In this case, the lawsuit can be carried out either by individuals who feel aggrieved or by associations of residents who own apartment units regarding the issue of ownership of apartment units as stated in article 105 paragraph 2, namely: In the event that resolving the dispute through deliberation to reach a consensus is not reached,

the party The aggrieved person can sue through a court within a general court or outside the court based on the choice agreed by the parties to the dispute through alternative dispute resolution.

That the resolution of disputes relating to the ownership of condominiums is provided for in the applicable legislation in which to seek certainty in the eyes of the law so as not to result in deadlock or uncertainty relating to the ownership of the condominium unit, in accordance with the procedures provided in the general court environment. is in Indonesia. Settlement of disputes regarding ownership of condominium units using public court is the ultimate means of clarifying issues regarding ownership of condominium units because issues regarding ownership of condominium units must have permanent legal force regarding the ownership status of the condominium unit in the future.

The process of resolving disputes in court must go through the stages of existing mechanisms such as through investigation, inquiry, prosecution, trial, decision on problems that will be resolved through litigation. Article 106 states: The lawsuit as intended in Article 105 paragraph (2) can be brought by: a. natural person; b. legal entity; c. public; and/or d. government or related agencies.

So, according to article 106, those who can file a lawsuit relating to problems that occur in an apartment are not only individuals but can also be a legal entity or community or government or related agency if they feel they have been disadvantaged in connection with the ownership of the apartment. In order to seek justice and legal certainty in court, of course it not only requires energy, it also takes a long time, starting from the district court, high court, Supreme Court to having permanent legal force regarding the matter.

In reality, in apartment units there are many problems that often occur, such as problems between apartment unit residents and other apartment residents, apartment residents and the management of the apartment construction, associations of owners of apartment unit residents and apartment unit residents, associations residents who own condominium units with developers or management of the construction of condominium units, associations of residents who own condominium units with the government or related parties.

The problems that occur in flats are problems such as:

- a. Ownership rights over flats are separate individual ownership rights over flats with joint rights over common shares, common objects and common land;
- b. Rights to joint shares, joint objects and joint land;
- c. Regarding proof of ownership of the above flat:
  - 1) freehold land,
  - 2) building use rights, or use rights on state land,
  - 3) building use rights or use rights on land with management rights;
- d. With regard to the issuance of SHM sarusun consisting of:
  - 1) copy of the land book and measurement letter for joint land rights,
  - 2) a floor plan drawing at the level of the apartment in question showing the apartment owned,
  - 3) an explanation regarding the size of the share of rights to joint shares, joint objects and joint land
- e. Regarding the SHM for flats, it is issued by the district/city land office;
- f. With regard to the SHM, the sarusun can be used as collateral for debt with the burden of mortgage rights;
- g. With regard to proof of ownership of flats on state or regional property in the form of land or waqf land by way of lease, a SKBG is issued for flats consisting of:
  - 1) copy of the building construction book;
  - 2) a copy of the land rental agreement;
  - 3) a floor plan drawing at the level of the apartment in question showing the apartment owned; And
  - 4) an explanation regarding the size of the share of rights to the joint shares and joint objects in question,
- h. With regard to the SKBG for flats issued by the district or city technical agency in charge and responsible for building construction;
- i. In relation to the SKBG, the flat can be used as collateral for debt with a fiduciary burden;
- j. related to the SKBG of flats that are used as fiduciary debt collateral, they must be registered with the ministry that handles government affairs in the legal sector.

In reality, the apartment environment is a place that can give rise to complex problems if it is not anticipated properly and as early as possible, both individually and collectively, in the procurement of apartment construction, the government, developers and the residents of the housing units must pay attention. arrange it so that there will be no polemics in the future.

## 2. Dispute Resolution Outside of Court.

Settlement of disputes regarding ownership of apartment units can also use dispute resolution outside of court or what is often referred to as alternative dispute resolution in article 105 paragraph 1 of Law Number 20 of 2011, namely: Settlement of disputes in the area of apartments is first sought based on deliberation. to reach consensus. What



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this means is that in resolving apartment problems, including the issue of ownership of apartment units, between the apartment owner and the manager or the government, efforts are made to take the path of deliberation to reach a consensus in accordance with the philosophical culture of the Indonesian state in resolving any problems that arise.

Article 105 paragraph 3 of Law Number 20 of 2011 concerning flats states: Settlement of disputes outside of court as intended in paragraph (2) is carried out through arbitration, consultation, negotiation, mediation, conciliation and/or expert assessment in accordance with the provisions of statutory regulations. invitation. Nowadays, where in all aspects of life it is required to solve all problems quickly, effectively and in a win-win solution, people now tend to use solutions to existing problems more comprehensively and safeguard future possibilities wisely and judiciously. the long term is more profitable. There is no exception in resolving problems relating to ownership of apartment units using dispute resolution facilities which it is hoped that the disputing parties can resolve as well and quickly as possible without incurring large costs.

### **3. CONCLUSION**

1.Ownership of condominium units, apart from individuals, can also own and possess condominium units, they can also be legal entities provided they have fulfilled the requirements as owners or holders of land rights, and the aim of the government in building condominium units is not only to provide comfortable housing. suitable for all levels of society and also a solution to housing problems due to scarcity of land. There is a requirement for apartment unit owners to be able to comply with the rules made by Perum Perumnas or the housing and settlement department in a safe and orderly manner, guaranteeing legal certainty of ownership of apartment units carried out on land owned based on applicable laws and regulations.

2.Efforts to resolve disputes relating to apartments by using dispute resolution in court and outside court or alternative dispute resolution or what is usually called dispute resolution by litigation and non-litigation methods.

### **4. SUGGESTIONS**

1.Regarding the ownership of apartment units, it is hoped that the government will need to provide comprehensive and sustainable policies so that owners do not become parties who are disadvantaged by overlapping policies or changes in policies regarding spatial planning and function in the future. Various facilities must be provided for low-income people (MBR), more and more people can own flats on a priority scale compared to more established groups of people in terms of economy and access.

2.Promote the resolution of disputes regarding flats with a win-win solution to solve problems that are wiser and wiser without ultimately harming any of the parties to the dispute, especially those in low-income communities. Organizers of private apartment housing development and the government must pay attention to socio-cultural, economic and religious aspects so that they can create a concept for an apartment pattern that becomes a vehicle for preserving the local wisdom values of the Indonesian nation.

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