

Model of Legal Protection for Condominium Hotel Owner in Surabaya

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Abstract

This research aims to provide legal protection for condotel owners in case of loss or lawsuit in the future, provide a model of legal protection for the owner of condotel if his rights are not met by the condotel manager, provide legal remedies for the owner who harmed by condotel manager, and provide the method of dispute settlement between the owner of condotel and condotel manager. Characteristics Condotel has its own specialties that are built in big cities like Jakarta and Surabaya are widely used as a means of business. Not only in big cities but also developed in tourism areas such as Lombok, Bali, Malang, Surabaya. Condotel has advantages that is with the income for better life insurance. Therefore, many people are interested plus the operation system was done by third parties ranging from maintenance and interior design was adjusted with international standard by paying the mandatory contribution fee to the condotel's owners and condotel owner and housing association (Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun or abbreviated as PPPSRS). For marketing purposes, the developer has several concepts to market a flat (condominium) by way of operating the apartment into a condo hotel and can be formed for a rental agency. If this marketing is aimed for lower middle class, it's hard to reach the current developments. Condotel has a similar concept with condominium, usually sold by strata title to the buyer and then directly submitted to the operator and operated as hotel.

Keywords: Flats, Condotel, Condominium

1. Introduction

The development of condominium that are in great demand by the public make the investors want to develop the condominium into a classier shape like condominiums and more. A condominium or condo is a form of the right to use housing in which certain parts of real estate (generally unit of condominium) are privately owned while the use and access to facilities such as aisles, heating systems, elevators, exteriors are under law connected with private ownership and controlled by owner and housing associations that describe the ownership of the entire section.¹

Today, the condominium business in Indonesia has grown not only as a residential, but has grown as one of the investment model in the property sector, starting from the development of condominium and then collaborated with the hotel business, so the term 'condotel' which stands for condominium and the hotel is basically a condo that functioned as a hotel.

Condotel units have the same concept with apartment units, usually sold with strata title to the buyer and then directly submitted to the operator and operated into the hotel. Condotel has advantages that is with the income for better life insurance. Therefore, the individual buyers are interested and the operating system is done by third parties starting from the maintenance and interior design that is adjusted to international standard by paying the mandatory contribution fee to the Owner and Housing Association of the Condotel's Unit (PPPSRS). Condotel is included in the new business strategy and interesting in Indonesia because indirectly investors are not too large in spending funds, because it will be purchased by individual buyers.

Condotel operation performed by the manager. Managers are a legal entity assigned to manage condotel. The manager who will carry out the condotel management and receive all payments from the guest condotel. The legal basis for the appointment of managers is the management agreement by and between the owner of the condotel unit and the manager appointed by the condominium owner and housing association. The management agreement regulates the rights and obligations of both the condotel manager and the owner of the condotel unit, and also regulates the related profit sharing of the condotel operation. Management agreements in practice are often in the form of standard clauses, namely agreements that have been provided by the manager condotel and cannot be changed so that potentially harm the interests of condotel unit owner primarily related to the division of profit. Big profit earned by the manager is based on financial statements made by condotel managers which often cause problems related to whether or not the financial statements.

Based on the matters described above, a reference is needed for the community regarding the model of legal protection for condotel owners to enable the public to better understand its rights as the owner of the condotel unit and what remedies it can do if the manager does not fulfill the rights of the owner condotel unit.

¹ Adrian Sutedi, *Hukum Rumah Susun & Apartemen*, Sinar Grafika, Jakarta, 2010, hlm. 138.

2. Concept of Condotel in Indonesia

Condotel concept in Indonesia is like the concept of condominium and it's arranged by Law Number 20 on Condominium. The condotel ownership system as well as the condominium's ownership system are divided into functionally structured sections, either horizontally or vertically and are units that each can be owned and used separately, especially for shelter equipped with shared parts, shared objects, and shared ground.¹

The difference between the condotel concept and condominium is the distribution of profit from the operation of cadmium as a hotel. The concept of condotel began to become a trend nowadays, the concept of profit sharing is not known in Law No. 20 of 2011 on Condominium. The profit sharing between the condotel managers and the owners of apartment units is fully regulated in the management agreement signed by the owner of the condotel unit with the condotel manager.

3. Condotel Manager and Management Agreement

Condotel managers are the parties who perform condotel management and receive the entire amount paid by the guests who stay at Condotel. Implementation of duties and obligations of managers started from the delivery of condotel units from condotel unit owners to the management of condotel. Each condotel owner carries out a management agreement with a condotel manager that has been appointed by PPPSRS condotel. Condotel management agreement is a general agreement subject to the principles and provisions set forth in the Civil Code. Interestingly, based on questionnaires conducted by researchers on condotel unit owners in Surabaya, it was found that management agreements are generally in the form of standard clauses, meaning that the terms of the agreement have been determined by the management of the condotel.

The management agreement regulates the profit sharing between the condotel owner and the condotel manager so that the standard clauses management agreement has the potential to harm the ownership of the condotel unit, especially related to the profit sharing. Big profits earned by the manager is based on financial statements made by condotel managers. Big profits earned by the manager is based on financial statements made by condotel managers. In addition to the profit sharing, the management agreement also regulates other matters such as actions that can be performed by the condotel manager in order to conduct condotel management. The management agreement also provides for dispute resolution procedures in case of a dispute between the owner of the condotel unit with Condotel Management.

4. Legal Protection for Condotel Unit Owners

The problem that is often faced by the owner of condotel unit with the management of condotel is about the division of condotel operation profit. Legal protection of the owner of the condotel in the case of his right as the owner of the condotel is not fulfilled by the condotel manager, refers to the management agreement due to the rights of the condotel owner and the condotel management obligations under the management agreement. The thing to watch out for is if the management agreement is in the form of a standard clause. If it happens and the actual management agreement is found later by the owner of the condotel unit precisely the provisions to the owner of the condotel unit, the legal protection for the condotel unit owner is sourced from Law Number 8 of 1999 on Consumer Protection. Condotel unit owner in this case can be categorized as consumer and condotel managers can be categorized as business actor. The obligations of business managers as business actors are regulated in Article 7 of Law Number 8 Year 1999 concerning Consumer Protection. In addition, the agreement in the form of a standard clause must be in accordance with the provisions of Article 18 of Law Number 8 Year 1999 on Consumer Protection. Management agreements that do not comply with these provisions are null and void.

Legal protection of condotel unit owners is also regulated in Law Number 20 of 2011 on Condominium. Article 111 Paragraph (1) Sub-Paragraph d of Law Number 20 of 2011 on Condominium concerning condominium's criminal act penalties against condotel managers performing deeds of converting public utilities, facilities and utilities, as well as common objects, shared parts and joint land under construction or condotel management.

Legal protection of condotel unit owners is also conducted through supervision of condotel managers. Supervision of condotel managers is done internally and externally, ie internally through audits of financial statements and supervision by PPPSRS, while externally by the government through the National Consumer Protection Agency. The owner of a condotel unit who feels disadvantaged by the condotel manager may lodge a complaint with the national consumer protection body as stipulated in Law No. 8 of 1999 on Consumer Protection.

¹ Pasal 1 angka 1 *Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun*

5. Legal Efforts that can be Conducted Towards Condotel Manager whose Harmed The Rights of Condotel Unit Owners.

Owners of condotel units who feel harmed by the condotel managers have several options of legal action that can be taken. These legal efforts have different legal effects on both the condotel and condotel managers. Condotel owners in choosing legal efforts to be taken should consider the clause of dispute settlement in the management agreement and the type of conduct of the condotel manager that harms the owner of the condotel unit in order to be selected the most effective and efficient legal effort for the condotel unit owner.

The legal effort that can be done by the owner of the condotel unit consists of four models of legal effort, namely:

- Legal efforts based on legal subjects who induce compensation, ie legal remedies may be made by :
 - Legal effort by the owner of the condotel unit itself either individually or in groups, by lawyers or without a legal representative;
 - Legal effort by PPPSRS as the party responsible to conduct supervision on condotel management related to joint objects, shared parts, common ground and condotel residence ;
 - A legal effort through a consumer self-help protection agency if the condotel management violates its obligations Law Number 8 Year 1999 Concerning Consumer Protection ;
- Legal efforts based on the provisions used as legal basis are:
 - Legal effort is done based on the management of facilities and infrastructure ;
 - The legal effort shall be made based on the condotel managers' assessment of the provisions in Law Number 20 Year 2011 regarding Condominium ;
 - The legal effort shall be made based on the condotel managers' assessment of the provisions of Law Number 8 Year 1999 concerning Consumer Protection;
- Legal efforts based on the dispute resolution model are:
 - Legal effort through consensus deliberation ;
 - Legal effort through criminal offense ;
 - Legal remedies through civil liabilities through lawsuits to the District Court or Consumer Dispute Settlement Board (BPSK);
 - Alternative dispute resolution; and
 - Arbitration through the Indonesian National Arbitration Board (BANI) or BPSK.
- Legal efforts based on the dispute settlement institutions are:
 - General Courts ;
 - BANI ;
 - Consumer Dispute Settlement Agency (BPSK); or
 - Direct by the parties / without going through the dispute settlement institution.

6. Dispute Settlement Models for Condotel Unit Owners whose Rights are Impaired by Condotel Managers

Dispute resolution model that can be taken by the owner and manager of the most important condotel is through deliberations for consensus made by and between the owners and managers condotel. If after the deliberation apparently not found settlement or consensus, then can be done other dispute resolution model that is through:

- Alternative dispute settlement which is divided into two namely alternative of dispute settlement pursuant to Law Number 30 of 1999 on Arbitrate and Alternative of Settlement of Dispute and Law Number 8 of 1999 on Consumer Protection. Alternative dispute settlement pursuant to Law Number 30 of 1999 on Arbitrate and Alternative Dispute Settlement consist of consultation, negotiation, mediation, conciliation and expert judgment, while alternative dispute resolution pursuant to Law Number 8 of 1999 on Consumer Protection consists of mediation and conciliation through Consumer Dispute Settlement Board (BPSK). Dispute resolution through prior dispute resolution alternatives should be based on the parties' agreement to resolve disputes through alternative dispute resolution;
- A lawsuit that may be filed in a district court or BPSK when it concerns the provisions of Law No. 8 of 1999 on Consumer Protection. The difference, the decision on the lawsuit filed to the district court can still be legal appeals, appeals and judicial review, while the decision imposed by BPSK is final and binding;
- Arbitrations which may be made through the Indonesian National Arbitration Board or BPSK are subject to prior agreement of the parties;
- Reports of criminal acts to the authorities (eg the National Police of the Republic of Indonesia or BPSK) based on the existence of criminal provisions violated by condotel managers, especially the criminal provisions in Law Number 20 of 2011 on Condominium and / or Law Number 8 of 1999 on Consumer Protection.

7. Conclusions and Suggestion

7.1 Conclusions

Legal protection for condotel owner in the case of his right as condotel owner not fulfilled by condotel manager is sourced from management agreement, Law Number 20 of 2011 on Condominium and also Law Number 8 of 1999 on Consumer Protection. In addition, the legal protection of condotel unit owners is also done through internal and external supervision. Internal is through audits of financial statements and supervision by PPPSRs, while externally by the government through the National Consumer Protection Agency.

Owners of condotel units who feel harmed by the condotel managers have several options of legal action that can be taken. These legal efforts have different legal effects on both the condotel and condotel managers. The legal effort consists of several models of dispute settlement, the most important is the deliberation to consensus. If the deliberation is unsuccessful then the owner of the condotel unit may use other dispute resolution model through alternative dispute resolution as stipulated in Law Number 8 of 1999 on Consumer Protection or Law Number 30 of 1999 on Arbitrate and Alternative of Settlement of Dispute, dispute settlement also can be made through arbitration which may be made through BANI or BPSK, a lawsuit that may be filed in a district court or BPSK and by filing a criminal offense report to the authorities.

7.2 Suggestions

7.2.1 Suggestions for State Officials Formulating the Laws and Regulations.

The rapid development of condominium market gave rise to new commercial condominium including condotel which is a combination of condo concept with hotel so that Law Number 20 of 2011 on Condominium no longer able to accommodate the development of the current apartment, therefore it is necessary to formulate the amendment to Law Number 20 Year 2011 on Condominium which is in accordance with the developments in the field of apartment currently. In addition, until now the implementing regulations of Law Number 20 Year 2011 on Condominium should have been applied, but until now there has been no implementing regulation of Law Number 20 of 2011 on Condominium so that the implementing regulations of Law Number 16 of 1985 on Condominium, hence state officials drafting laws and regulations should scheduling the formulation of implementing regulations Law Number 20 of 2011 on Condominium as soon as possible in order to achieve legal certainty in the field of condominium.

7.2.2 Advice for Condotel Managers

Increasing cases related to condotel investment today is certainly affect the image of business actors in the field of condotel management. In order to capture the confidence of society which is certainly very useful for business actors in running their business, condotel managers must be careful in formulating the provisions in condotel agreement in the form of standard clauses not only prioritize the benefits only but pay attention to the provisions of legislation applicable due to the management agreement that defects the law of course can also result in civil and criminal law that can harm the condotel manager and damage the image of the condotel managers as business actors.

7.2.3 Suggestions for Academics

Investment in the form of condotel unit ownership is currently a trend among the public, but because of the limitations of legislation that has not been enough to regulate in detail and clear about the ownership of condotel units resulted in many cases of fraud related to the sale and purchase and management condotel so that enthusiasts or the owner of the condotel unit becomes an injured victim. In order to help improve the insight of people related to condotel investment, it takes written works that specifically discuss about condotel which is still very rare. The paperwork is required for the public to understand the rights of condotel owners and be careful in investing in condotels.

7.2.4 Suggestions for Indonesian Society

Investment in the field of property is increasingly in demand by the people of Indonesia, but unfortunately there are still many Indonesian people who do not really understand the law of the land let alone the law on condominium. Investment through the purchase of condotel unit is one form of investment that is promising but also can be detrimental if the condotel unit buyers do not really understand the ins and outs of the law of the condominium and not careful when signing agreements related to the sale and purchase and management of condotel units so that in the end buyers of condominium to lose in the future due to the conduct of condotel managers which are allowed in the management agreement that has been agreed by the owner of the condotel unit. Therefore, the people of Indonesia should add insight into the law of condominium and carefully read the agreements related to the ownership of condotel units proposed by the perpetrator of development or condotel manager to him in order to avoid problems in the future because the provisions on agreements related to the ownership of condotel units.

References

Book

Sutedi, Adrian (2010), *Housing & Apartment Law*, Jakarta : Sinar Grafika.

Legislation

- The Law Number 8 of 1999 on Consumer Protection.
- The Law Number 9 of 1999 on Arbitration and Alternative Dispute Settlement.
- The Law Number 20 of 2011 on Condominium.