

**THE LEGAL SUBJECT OF NON-RESIDENTIAL CONDOMINIUM
MANAGEMENT ACTIVITIES:
UJUNG PANDANG CENTRAL MARKET**

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Abstrak. *This study examines and analyzes the legal subject of the Ujung Pandang Central Market management activities, which are treated as Non-Residential Condominium buildings based on Law No. 20 of 2011. This research combines normative juridical and empirical research methods. The primary data were collected using direct interviews, while the secondary data was collected using literature study techniques. The data obtained in this research were then analyzed qualitatively. The results show that the legal subject of the Ujung Pandang Central Market management activities, which are treated as Non-Residential Condominium buildings, must be held by PPPSRS based on Article 59 of Law No. 20 of 2011. In this case, if PPPSRS has not been established, then PT. MTIR must establish PPPSRS no later than one year from the first delivery of the condominium unit to the owner. However, until now, PPPSRS has not been established and established by PT. MTIR. So strictly speaking, PT. MTIR deviated from its obligations in implementing Law No. 20 of 2011. Therefore, it is recommended that the Makassar Municipal Government re-evaluate the involvement of PT. MTIR as Holder of The Right to Build for Ujung Pandang Central Market. In addition, it is recommended to PT. MTIR to comply with Article 59 of Law No. 20 of 2011 by establishing PPPSRS. Furthermore, it is hoped that law enforcement and the Regional House of Representatives of Makassar Municipal will protect the interests of traders so that PPPSRS is established as a legal subject for the Ujung Pandang Central Market management activities.*

Keywords:
*Central Market;
Condominium;
Local government;
Management Rights;
PPPSRS.*

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INTRODUCTION

The introduction of the condominium concept has various terms: apartment, flat, and strata title.¹ At the same time, the term apartment or flat refers to the ownership of residential units in vertical buildings. Erwin Kallo considered that the provisions in Law of the Republic of Indonesia Number 20 of 2011 on Condominium (hereinafter referred to as Law No. 20 of 2011) had confused the concept of the condominium with

¹Febriani, A. F. (2019). Kebijakan Kepemilikan Rumah Susun di Indonesia. *Lentera Hukum*, 6(1), p. 18.

strata title regarding the right of ownership to condominium units.² In this case, the concept is not concreted by providing further explanation. On the other hand, Law No. 20 of 2011 also includes two types of evidence of the right, including:

1. Certificate of the Right of Ownership to Condominium Units (SHMSRS); and
2. Certificate of Ownership to Building Units (SKBG).

The two types of evidence of right above have differences. SHMSRS is a type of right enacted by the National Land Agency (NLA) based on the legal relationship of sale and purchase. SKBG is a type of right enacted by the Department of Investment and One Stop Service based on the legal leasehold relationship. SHMSRS and SKBG as based on Article 17 of Law No. 20 of 2011, regulate that the condominium can be built on the land:

- a. right of ownership;
- b. right to build or right to use on the state land; and
- c. right to build or right to use on the management right.

On the other hand, SHMSRS on the Right to Build. So not a few experts think that the SHMSRS is not a type of Land Right. Is it possible for an NLA enactment to be a type of right that does not explain a Land Right?

Ultimately, these different perspectives and understandings raise the issue of land rights ownership. One of the exciting problems in Makassar to analyze related to the Condominium issue is the Ujung Pandang Central Market. Ujung Pandang Central Market was built based on the instrument granting the Right to Build on the Land Management Right. Judging by its use and function, Ujung Pandang Central Market is classified as a Commercial Condominium or Non-Residential Condominium.

The development of Ujung Pandang Central Market is the object of a Memorandum of Understanding (MoU) on land utilization. In this case, the Memorandum of Understanding between the Second Level Municipal Government of Ujung Pandang and PT. Melatitanggal Intiraya Number 44/511.2/SP/HK on Renovation and Development of Ujung Pandang Central Market (hereinafter referred to as MoU No. 44/511.2/SP/HK). The MoU was enacted on July 26, 1991. Second Level Municipal Government of Ujung Pandang (Makassar Municipal Government) is obliged to grant the Right to Build and Building Construction Permit on behalf of PT. Melatitanggal Intiraya (PT. MTIR). While the procedures for its implementation are contained in several Addendum to MoU No. 44/511.2/SP/HK, including:

1. MoU Number 140/511.2/SP/HK on Addendum to MoU Number 44/511.2/SP/HK was enacted on December 28, 1991 (hereinafter referred to as MoU on Addendum No. 140/511.2/SP/HK);

²Kallo, E. (2009). *Panduan Hukum untuk Pemilik/Penghuni Rumah Susun: Kondominium, Apartemen, dan Rusunami*. Jakarta: Minervha Athena Pressindo, p. 14.

2. MoU Number 511.2/024/SP/HK on the Second Addendum to MoU Number 44/511.2/SP/HK was enacted on May 5, 1993 (hereinafter referred to as MoU on the Second Addendum No. 511.2/024/SP/HK);
3. MoU Number 511.2/118/SP/HK on the Third Addendum to MoU Number 44/511.2/SP/HK was enacted on September 8, 1993 (hereinafter referred to as MoU on the Third Addendum No. 511.2/118/SP/HK);
4. MoU Number 511.2/039/S.Perja/HK on the Fourth Addendum to MoU Number 44/511.2/SP/HK was enacted on March 20, 1995 (hereinafter referred to as MoU on the Fourth Addendum No. 511.2/039/S.Perja/HK);
5. MoU Number 511.2/349/VI/S.Perja/PD.Psr/2012 on the Fifth Addendum to MoU Number 44/511.2/SP/HK was enacted on June 21, 1995 (hereinafter referred to as MoU on the Fifth Addendum No. 511.2/349/VI/S.Perja/PD.Psr/2012).

MoU No. 44/511.2/SP/HK was enacted with the Build-Operate-Transfer (BOT) concept, which has been applied for 25 years. Ujung Pandang Central Market, treated as a Non-Residential Condominium building, is also enacted by the SHMSRS as evidence of Kiosk Ownership.

Over time, the Ujung Pandang Central Market experienced a fire in 2014. The fire was considered a force majeure, state of coercion, or beyond the control of the parties concerned. Meanwhile, to be said to be force majeure, it must contain clear boundaries: sourced from nature (natural disasters) and unpredictable.³ Unpredictable in the sense that it is not negligence or there is an element of sabotage to the incident.

Ujung Pandang Central Market previously consisted of four floors, each kiosk which had enacted the SHMSRS. After the fire, Ujung Pandang Central Market was demolished and then rebuilt. The development remains under the authority of PT. MTIR is the holder of the Right to Build. The development of Ujung Pandang Central Market was completed in mid-2018 and reinhabited by traders. Ujung Pandang Central Market also consists of seven floors. In addition, Ujung Pandang Central Market is known as New Makassar Mall.

On the other hand, there was a polemic between the traders and PT. MTIR is related to Kiosk Ownership status. Until now, all matters relating to the control, use, and utilization of the new building of Ujung Pandang Central Market are only marked with evidence from the Lottery Result Sheet. Andi Parenrengi stated that “*the SHMSRS held by traders is no longer applicable after demolishing the building.*”⁴

In addition, some things have never been the attention of traders and even the local community for the existence of Ujung Pandang Central Market. In this case, Article 1 point 20 and point 21 Law No. 20 of 2011, which explains that:

³Simanjuntak, P. N. H. (2017). *Hukum Perdata Indonesia*. Jakarta: Kencana Prenada Media Group, p. 295.

⁴Interview Results with the Chairman of the Makassar Mall Central Market Traders Association. Andi Parenrengi, on April 16, 2020.

"The manager is a legal entity on duty to manage the condominium. The association of owner and occupant of condominium units hereinafter referred to as PPPSRS is a legal entity consisting of owners or occupants of condominium units."

Ideally, the existence of PPPSRS is to accommodate all the interests of the owner and occupant of the kiosk in Ujung Pandang Central Market. Is it possible that the economic activities in Ujung Pandang Central Market are under the management and hegemony of the oligarchy? On the other hand, it can be seen that the intended latent conflict is the management of condominium units on the Right to Build. In this case, there was a struggle for legal subjects between the traders and PT. MTIR in carrying out management activities in Ujung Pandang Central Market.

Several previous studies have a discussion theme similar to this research. Ernawati concluded that PPPSRS must establish a structure for the condominium management activities. However, the existence of PPPSRS has not reflected the optimal implementation of its duties and authorities based on Law No. 20 of 2011.⁵ Mantaiborbir & Arsy concluded that the supervision carried out by the Department of Housing and Building of the Provincial Government of the Special Capital Region of Jakarta was not running effectively, especially in supervising the establishment of PPPSRS. In addition, the Provincial Government of the Special Capital Region of Jakarta only provides administrative sanctions as a warning to unscrupulous Graha Cempaka Mas Condominium Developers.⁶ Zachman concluded that the condominium units are privately owned and managed by the owners. Meanwhile, parts, objects, and land, which are collective property, must be managed collectively by PPPSRS.⁷ The similarity of previous studies with this research is to position PPPSRS as a legal subject of condominiums management activities. However, previous studies have focused more on the existence of PPPSRS in condominium units with a residential function. In contrast, this study focuses more on the existence of PPPSRS in condominium units with a non-residential function.

Based on the description above, this study examines and analyzes the legal subject of the Ujung Pandang Central Market management activities, which are treated as Non-Residential Condominium buildings based on Law No. 20 of 2011.

METHOD

This research combines normative juridical and empirical research methods. Normative juridical research analyzes legal problems by referring to and originating from

⁵Ernawati, E. (2019). Kedudukan dan Peran Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) dalam Penyelesaian Sengketa Penetapan Biaya Pengelolaan di Rumah Susun Sederhana Milik (RUSUNAMI) (Studi Kasus: Rusunami Kalibata City Jakarta). *Selisik: Jurnal Hukum dan Bisnis*, 5(2), p. 44.

⁶Mantaiborbir, R. S. & Arsy, M. (2022). Efektivitas Pengawasan Pembentukan Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun oleh Pemerintah. *Pleno Jure*, 11(1), p. 28.

⁷Zachman, N. (2020). Rumah Susun Komersial yang Komprehensif dengan Prinsip Pengelolaan yang Ideal yang Memberikan Perlindungan Hukum Bagi Pemilik dan Penghuni Satuan Rumah Susun. *Legalitas: Jurnal Hukum*, 12(1), p. 156.

legal norms.⁸ In this case, laws and regulations are positive laws, and the Memorandum of Understanding is the law for the parties making it.⁹ In contrast, empirical is research whose object of study includes the provisions of laws and regulations (*in abstracto*) and their application to legal events (*in concreto*).¹⁰ Furthermore, this type of empirical legal research focuses on legal practice as a social phenomenon in terms of the reciprocal relationships caused by social phenomena, including economic, political, social, psychological, and anthropological aspects.¹¹ This research was conducted from June 2019 to May 2022 at Ujung Pandang Central Market, Makassar City, South Sulawesi Province. The informant in this study consisted of traders and trade associations selected with a purposive sampling technique. The types and sources of data used in this research are as follows:

1. Primary Data is data obtained directly from informants based on sample determination;
2. Secondary Data is data obtained from searching legal literature, including laws and regulations, references, legal scientific journals, legal encyclopedias, and texts or official publications.

The primary data were collected using direct interviews with three informants. While the secondary data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The data obtained in this research were then analyzed qualitatively to conclude the relationship between applicable positive law and the Ujung Pandang Central Market management activities.

RESULTS AND DISCUSSION

A. Position of Other Parties to State Controlling Right, Management Right, and Right to Build

State Controlling Right is the foundation and source of the political constellation of land law in Indonesia, simplified by the term “state land.” The term state land is a manifestation of Article 1 of Colonial Regulations, Staatsblad Number 118 of 1870 on *Agrarische Aangelegenheden*/Agrarian Affairs, which regulates that:

“Behoudens opvolging van de tweede en derde bepaling der voormelde Wet, blijft het beginsel gehandhaafd, dat alle grond, waarop niet door anderen regt van eigendom wordt bewezen, domein van den Staat is.”

“Subject to the observance of the second and third provisions of the Act mentioned above, the principle is maintained that all land whose ownership rights are not proven by others is the domain of the State.”

⁸Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group, p. 12.

⁹Soemitro, R. H. (1990). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia, pp. 97-98.

¹⁰Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), p. 5.

¹¹Irwansyah. (2021). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Revision Edition). Yogyakarta: Mirra Buana Media, p. 257.

From the provision above, it can be understood that a principle explains that if other parties cannot prove ownership of the land, then the land becomes state property.¹² The State Controlling Right is also contained in Article 33 section (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which regulates that:

“The land and the water as well as the natural resources therein are controlled by the state and utilized for the optimal welfare of the people.”

Furthermore, Article 2 section (1) of Law of the Republic of Indonesia Number 5 of 1960 on Basic Agrarian Principles (hereinafter referred to as Law No. 5 of 1960) regulates that:

“On the basis of the provisions contained in Article 33 section (3) of the Constitution and of the matters as referred to in article 1, the land, water, and airspace, including the natural resources contained therein, are at the highest hierarchical level controlled by the State in its capacity as the whole people’s organization of powers.”

From the provision above, it can be interpreted that the State Controlling Right is an attempt to instill a new paradigm in which the state is the land owner. Meanwhile, the notion of state land or controlled by the state does not mean that it is owned personally but is an authority derived from laws and regulations.¹³ Article 1 point 2 of Government Regulation of the Republic of Indonesia Number 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration (hereinafter referred to as Government Regulation No. 18 of 2021) explains that:

“State Land or Land Controlled Directly by the State is Land that is not attached with any land rights, is not waqf land, is not ulayat land, and or is not an asset belonging to the state/regional property.”

From the provision above, it can be understood that the definition of State Land is different from government asset land. Government asset land is land controlled by the government, both central and regional.¹⁴ Land assets of the government are included in the class of land rights and are state assets whose physical control is in the relevant agencies. While juridically, the control lies with the Minister of Finance.¹⁵ Article 4 section (1) of Government Regulation of the Republic of Indonesia Number 28 of 2020 on Amendment to Government

¹²Saleng, A. (2004). *Hukum Pertambangan*. Yogyakarta: UII Press, p. 53; Ayudiatrini, S. & Cahyono, A. B. (2022). The Legality of Grants by Foreign Citizens on Land Objects in Indonesia: Case Studies of Court Decisions. *SIGn Jurnal Hukum*, 4(1), pp. 36-37.

¹³Stevenson, J. & R., M. I. F. (2020). Pemberlakuan Sistem Satu Orang Satu Suara (One Man One Vote) dalam Pemilihan Pengurus dan Pengawas Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun. *Jurnal Hukum & Pembangunan*, 50(4), p. 854.

¹⁴Putri, D. A. M. & Silviana, A. (2022). The Transfer of Land Rights through Oral Grants: A Case Studies of Court Decision. *SIGn Jurnal Hukum*, 4(1), pp. 99-100.

¹⁵Nur, S. S. (2015). Aspek Hukum Pendaftaran Tanah Bekas Milik Asing sebagai Aset Pemerintah Daerah. *Hasanuddin Law Review*, 1(1), p. 88.

Regulation Number 27 of 2014 on Management of State/Regional Property (hereinafter referred to as Government Regulation No. 28 of 2020) regulates that “*the Minister of Finance as the state general treasurer is Management of State Property.*” Furthermore, Article 2 section (2) of Government Regulation No. 18 of 2021 regulates that:

“State land ... by the State may be granting a person or legal entity with a Land Right in accordance with allotments and utilities, or granting with a Management Right.”

Article 1 point 3 of Government Regulation No. 18 of 2021 explains that:

“Management Right is the right of control from the State whose implementation authority is partially delegated to the holder of the Management Right.”

From the provision above, it can be understood that the Government as the holder of land rights, has the same obligations as other rights holders. Article 5 section (1) of Government Regulation No. 18 of 2021 juncto Article 30 section (1) of Regulation of Minister of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia Number 18 of 2021 on Procedure for Determination of Management Rights and Land Rights (hereinafter referred to as Regulation of Minister of AASP/NLA No. 18 of 2021), regulates that Management Rights originating from State Land may be granted to:

- a. Central Government Agencies;
- b. Regional Governments include Provincial and Regency/Municipal Governments as well as Village Governments;
- c. State-Owned Enterprises/Regional-Owned Enterprises;
- d. State-Owned Legal Entity/Regional-Owned Legal Entity;
- e. Land Bank Agency; or
- f. A legal entity appointed by the Central Government based on a Presidential Regulation delegated a particular assignment by the Central Government to develop certain regions or areas.

The legal subjects mentioned in the provision above can make utilization and management of land based on the intent of the allotments proposed for the first time.¹⁶ Article 27 of Government Regulation No. 28 of 2020 regulates that:

- (1) Forms of Utilization of State/Regional Property including:
 - a. Leases;
 - b. Borrow Use;
 - c. Utilization Cooperation;
 - d. Build-Operate-Transfer or Build-Transfer-Operate; or
 - e. Infrastructure Provision Cooperation.

¹⁶*Ibid.*

(2) In addition to the form of Utilization as referred to in section (1), the form of Utilization of State Property is also in the form of Limited Cooperation for Infrastructure Financing.

From the provision above, Bakri stated that according to nature and in principle, the State's authority originating from the State Controlling Right is in the hands of the Central Government.¹⁷ The Regional Government only has the authority if it has received a delegation of implementation authority from the Central Government.¹⁸ The boundaries of the authority to use and utilize land with management rights are inseparable from the political discourse of agrarian law.¹⁹ Furthermore, Mahfud M. D., explained that legal politics includes the process of making and implementing laws that can indicate the nature and direction in which the law will be built and or enforced.²⁰

Furthermore, the transfer of management rights based on Article 12 section (2) of Government Regulation No. 18 of 2021 regulates that "*Management Rights cannot switch and transferred to other parties.*" However, the relinquishment of management rights based on Article 12 section (3) of Government Regulation No. 18 of 2021 regulates that:

"Management Rights can only be relinquished in terms of granted rights of ownership, relinquished for the public interest, or other provisions regulated in laws and regulations."

As for the involvement of other parties in the utilization of land with management rights, as based on Article 8 section (1) point b of Government Regulation No. 18 of 2021, regulates that:

"Management Rights that use and utilize all or part of the land for their own use or in collaboration with other parties ... may be granted Land Rights in the form of rights to cultivate, build, and or use on Management Rights according to their nature and function, to other parties, if the land management rights have cooperated with a land utilization agreement."

Article 38 section (2) of Government Regulation No. 18 of 2021 regulates that:

"Right to Build on the Land Management rights are granted with a decision on granting rights by the Minister based on the approval of the holder of the Management Right."

Furthermore, based on Article 26 section (4) of Regulation of Minister of AASP/NLA No. 18 of 2021 regulates that:

¹⁷Bakri, M. (2007). Hak Menguasai Tanah oleh Negara (Paradigma Baru untuk Reforma Agraria). Yogyakarta: Citra Media, p. 37.

¹⁸Fitri, R. (2018). Hukum Agraria Bidang Pertanahan Setelah Otonomi Daerah. *Kanun: Jurnal Ilmu Hukum*, 20(3), p. 429.

¹⁹Christian, Y. & Desmiwati, D. (2018). Menuju Urbanisasi Pulau Kecil: Produksi Ruang Abstrak dan Perampasan. *Journal of Regional and Rural Development Planning (Jurnal Perencanaan Pembangunan Wilayah dan Perdesaan)*, 2(1), p. 56.

²⁰D., M. M. M. (2001). Politik Hukum di Indonesia. Jakarta: LP3ES, p. 9.

“After the application file is complete, the applicant is given a receipt of the required documents and a deposit order for non-tax state revenue in accordance with the provisions of laws and regulations.”

From the provision above, it is understood that other parties can be granted the Right to Build if they are involved in utilizing the Management Rights. The period of Right to Build, as based on Article 37 section (1) of Government Regulation No. 18 of 2021, regulates that:

“Right to Build on the State Land and Land Management Rights are granted for a maximum period of 30 (thirty) years, extended for a maximum period of 20 (twenty) years, and renewed for a maximum period of 30 (thirty) years.”

While the benefits for other parties as the holder of the Right to Build on the Management Rights, as based on Article 13 section (2) of Government Regulation No. 18 of 2021, which regulates that:

“Every legal action, including being used as collateral for debt, is encumbered with mortgage rights on Land Rights on the Management Rights, requires a recommendation from the holder of the Management Right, and is included in the Land utilization agreement.”

On the other hand, the holder of the Right to Build must relinquish land rights if development is needed for the public interest. In this case, based on Article 42 point e of Government Regulation No. 18 of 2021, which regulates that:

“The holder of the Right to Build is obliged to relinquish the Land Rights either in part or in whole if it is used for development in the public interest.”

From the description above, it can be understood that Management Rights originating from State Land cannot switch and transferred to other parties. However, the holder of the management rights can involve other parties in using and utilizing their land.²¹ In this case, the holder of Management Rights grants Land Rights to other parties. Land rights are rights to cultivate, build, and or use. As the holder of the Right to Build, other parties can take legal action by collateralizing the object of Land Rights on Management Rights. On the other hand, the holder of the Right to Build must also relinquish the Land Rights if it is intended for development in the public interest.

B. Position of Holder of the Right to Build on the Building Included with Collective Parts, Collective Objects, and Collective Land

As previously described, the Right to Build is a type of right used to construct or own a building on land that does not belong to him. The holder of the Right to Build can only carry out business activities based on Article 85 section (1) of Regulation of Minister of AASP/NLA No. 18 of 2021, which regulates that the Right

²¹Masrofah, M. (2016). Pemberian Hak Milik Satuan Rumah Susun di Atas Beberapa Hak Guna Bangunan Perorangan. *Badamai Law Journal*, 1(1), p. 113.

to Build granted for non-agricultural business activities, including:

- a. residential;
- b. offices;
- c. industry;
- d. warehousing;
- e. shops;
- f. hospitality;
- g. condominium;
- h. power plants;
- i. harbor; or
- j. other uses in the form of buildings.

From the provision above, it can be understood that the Holder of the Right to Build can carry out legal actions according to private and public legal relations based on the building used. Hadjon, *et al.*, explained that the authority in private law has different characteristics from that in public law.²² Authority in private law is more of a right and power based on applicable law (*bevoegdheid*). In this case, the legal subject gets the authority based on the provisions on rights and obligations. Meanwhile, authority in public law is described as a legal power (*rachtmacht*). In this case, formal power comes from the applicable laws and regulations. For example, legal relationships arising from condominium business activities. Article 1 point 1 of Law No. 20 of 2011 explains that:

“The condominium is a multi-story building built in an environment divided into functionally structured parts, both horizontally and vertically, and are units, each of which can be owned and used separately, especially for residential areas equipped with collective parts, collective objects, and collective land.”

From the provision above, it is understood that a private legal relationship exists based on the functional parts with units, each of which can be owned and used separately, especially for residential areas. Meanwhile, a public legal relationship exists based on the functional parts included with collective parts, collective objects, and collective land.

On the other hand, the Holder of the Right to Build in conducting condominium business activities is entitled to a certificate of ownership other than the right to build. Article 1 point 11 of Law No. 20 of 2011 explains that:

“Certificate of the Right of Ownership to Condominium Units hereinafter referred to as SHMSRS is evidence of ownership of Condominium Units on the land right of ownership, right to build, or right to use on the state land, as well as the right to build or right to use on the land management rights.”

²²Hadjon, P. M., et al. (Eds.). (2000). *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: UGM Press, p. 130.

Article 47 section (1) of Law No. 20 of 2011 regulates that:

“As evidence of ownership of Condominium Units on the land right of ownership, right to build, or right to use on the state land, right to build, or right to use on the land management rights, enacted the SHMSRS.”

Article 42 section (1) and section (3) of Government Regulation of the Republic of Indonesia Number 13 of 2021 on Organizing of Condominium (hereinafter referred to as Government Regulation No. 13 of 2021) regulates that:

“The Developer submits applications for the enactment of SHMSRS to government agencies that carry out government affairs in the land sector. SHMSRS is enacted first on behalf of the Developer.”

From the provision above, it can be understood that before entering into a private legal relationship, the Holder of the Right to Build must ensure the existence of SHMSRS. In addition, if the condominium units have not been sold, the NLA will enact all SHMSRS on behalf of the Holder of the Right to Build. Meanwhile, collective parts, collective objects, and collective land are separated from SHMSRS because these functional parts are not personal. Article 46 section (1) of Law No. 20 of 2011 regulates that:

“The ownership rights to condominium units are the right of ownership to the condominium units, which are personal and separate from the collective rights to collective parts, collective objects, and collective land.”

Therefore, the Holder of the Right to Build must emphasize separating these functional parts. Article 26 section (1) of Government Regulation No. 13 of 2021 regulates that:

“Developers who build their own Public Condominium and Commercial Condominium are required to separate the Condominium of Condominium Units, Collective Objects, Collective Parts, and Collective Land.”

Article 30 section (1) of Government Regulation No. 13 of 2021 regulates that:

“The deed of separation becomes evidence of the separation of the Condominium of Condominium Units, Collective Parts, Collective Objects, and Collective Land.”

In addition, all the functional parts above are unitary of the Condominium, which must be appropriately organized. Article 1 point 2 of Law No. 20 of 2011 explains that:

“Organizing of Condominium is an activity of planning, development, mastery and utilization, management, maintenance and care, control, institutional, funding and financing systems, as well as community roles are carried out in a systematic, integrated, sustainable, and responsible manner.”

From the provision above, it can be understood that organizing consists of several activities, namely:

1. The activity of planning, development, mastery, and utilization;
2. The activity of management, maintenance, and care;
3. The activity of control, institutional, funding and financing systems; and
4. Community roles are carried out systematically, integrated, sustainable, and responsibly.

The position of Holder of the Right to Build for the above activities is not comprehensive. In this case, there are activities whose authority must be delegated to other legal subjects. In addition, the delegation is explained in Article 1 point 20 and point 21 of Law No. 20 of 2011. From these provisions, it can be understood that there is a new understanding of management. In this case, it must be understood that there is a difference between management rights and management activities on Condominium buildings. The management rights referred to are the rights as previously described that arise from the State Controlling Right. Meanwhile, management activities are activities carried out by PPPSRS based on the functional parts included with collective parts, collective objects, and collective land. Article 56 section (1) of Law No. 20 of 2011 regulates that:

“Condominium Management includes operational activities, maintenance, and care for collective parts, collective objects, and collective land.”

Meanwhile, the holder of the Right to Build is obliged to establish the association based on Article 75 section (1) of Law No. 20 of 2011, which regulates that *“the Developer must establish PPPSRS no later than before the transition period, as referred to in Article 59 section (2).”* Article 59 section (2) of Law No. 20 of 2011 regulates that:

“The transition period as referred to in section (1) is regulated no later than 1 (one) year from the first delivery of the condominium unit to the owner.”

From the description above, it can be understood that the holder of the Right to Build can carry out private and public legal actions based on the type of building object. In addition, the Condominium as a building object for business activities in *mutatis mutandis* also accommodates the legal relationship. In this case, the functional part, especially for residential apartments for individual condominiums, presents a private legal relationship. Meanwhile, the functional parts, included with collective parts, collective objects, and collective land present a public legal relationship.²³ On the other hand, the holder of the Right to Build in conducting the Condominium’s business activities is obliged to manage and be entitled to all SHMSRS on behalf of its Legal Entity. Furthermore, the holder of the Right to Build position on organizing Condominiums is not comprehensive. In this case, the holder of the Right to Build must ensure the establishment of PPPSRS to

²³Zainuddin, Z. (2022). The Legal Due Diligence of Land Acquisition for the Public Interest: A Critical Review. *SIGn Jurnal Hukum*, 4(1), p. 49.

carry out management activities for the existence of functional parts, included with collective parts, collective objects, and collective land.²⁴ Therefore, the position of the holder of the Right to Build on the management of functional parts included with collective rights must end after the PPPSRS has been established.²⁵

C. The Legal Subject of Non-Residential Condominium Management Activities: Ujung Pandang Central Market

As previously described, the PPPSRS is a legal subject established by the holder of the Right to Build to manage the functional parts of the Condominium included with collective rights. Article 75 section (2) and section (3) of Law No. 20 of 2011 regulates that:

“In the event that PPPSRS has been established, the Developer immediately delegates the management of collective objects, collective parts, and collective land to PPPSRS. PPPSRS, as referred to in section (1), is obliged to manage the interests of the owners and occupants related to the management of ownership of collective objects, collective parts, collective land, and occupancy.”

Article 75 section (1) of Government Regulation No. 13 of 2021 regulates that:

“PPPSRS is obliged to manage the interests of the owners and occupants related to the management of ownership of collective objects, collective parts, collective land, and occupancy.”

From the provision above, it can be understood that every Condominium in Indonesia must establish PPPSRS. One of the condominiums in Makassar that is interesting to analyze regarding the existence of PPPSRS is the Ujung Pandang Central Market.

The Ujung Pandang Central Market has historically been around since the colonial era and was called the Chinese Market, located on Lombok Street. When H. M. Patompo was Mayor (1962-1978), the market was moved to Irian Street in 1964 and was called the Municipal Market. In 1970, the name of the market was administratively changed to Ujung Pandang Central Market.²⁶ In 1991, Ujung Pandang Central Market experienced a fire, thus requiring renovation and development touches from the local government. In this case, Article 2 of MoU No. 44/511.2/SP/HK regulates that:

“The FIRST PARTY intends to organize, renovate, and develop Ujung Pandang Central Market to create a shopping center that is clean, comfortable, orderly, healthy, and representative, and the SECOND PARTY as Investor are willing and able to fulfill the aims and objectives as desired by the FIRST PARTY mentioned above.”

²⁴Zachman, N. & Fauzia, N. (2021). Eksistensi Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) dalam Kewenangan Pengelolaan Rumah Susun Sewa. *Wajah Hukum*, 5(1), p. 410.

²⁵Mahmoud, A. R., et al. (2019). Akibat Hukum Tidak Membentuk Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun. *Mulawarman Law Review*, 4(1), pp. 2-3.

²⁶Khairunisa. (2019). “Tata Kelola Konflik Relokasi di Pasar Sentral (New Makassar Mall)”. *Bachelor Thesis*. Faculty of Social and Political Sciences, Universitas Muhammadiyah Makassar, p. 32.

Over time, MoU No. 44/511.2/SP/HK has five addendums. As the holder of the Right to Build, PT. MTIR uses and utilizes the Ujung Pandang Central Market based on Article 6 section (4) of the MoU on the Fifth Addendum No. 511.2/349/VI/S.Perja/PD.Psr/2012, which regulates that:

“For the utilization rights referred to in this article, the SECOND PARTY has the right to split/separate and extend and or renew the Certificate of the Right to Build on the Block A Building and the old Building Block B Makassar Mall as referred to in Article 1 which is above the Land Management Rights Number 01 Dated February 6, 1992, on behalf of the Government of Makassar City, with a period not exceeding the term of this agreement and processed in accordance with the provisions of the applicable laws and regulations.”

Article 6 section (5) of the MoU on the Fifth Addendum No. 511.2/349/VI/S. Perja/PD.Psr/2012 regulates that:

“Split/separate Rights and Transfer of Rights and or renewal of the Certificate of the Right to Build on the condominium units (strata title) referred to in this article is carried out either as a whole or separately for each Other Party who obtains the utilization rights as referred to in this article, and implementation can be carried out after this agreement is signed.”

PT. MTIR has even carried out business activities in the form of a condominium since March 20, 1995, based on Article 19 of the MoU on the Fourth Addendum No. 511.2/039/S.Perja/HK, which is regulated that:

“For the aims of selling the Ujung Pandang Central Market (Makassar Mall) in the Acquisition of Business Places and business development, the new Ujung Pandang Central Market (Makassar Mall) buildings are treated as Non-Residential Condominium buildings whose regulation is adjusted to the applicable law provisions on Condominiums, especially Regional Regulation of the Second Level Municipal of Ujung Pandang on Condominium.”

The abovementioned provisions are Law of the Republic of Indonesia Number 16 of 1985 on Condominium (hereinafter referred to as Law No. 16 of 1985) and Regional Regulation of the Second Level Municipal of Ujung Pandang Number 15 of 1994 on Condominium in the Second Level Municipal of Ujung Pandang (hereinafter referred to as Municipal Regulation of Ujung Pandang No. 15 of 1994). Furthermore, the implementing regulations of Law No. 16 of 1985, including:

1. Government Regulation of the Republic of Indonesia Number 4 of 1988 on Condominium (hereinafter referred to as Government Regulation No. 4 of 1988);
2. Regulation of Minister of Internal Affairs of the Republic of Indonesia Number 3 of 1992 on Guidelines for Drafting Regional Regulation on Condominium (hereinafter referred to as Regulation of the Minister of Internal Affairs No. 3 of 1992); and
3. Other Regulations of Minister.

Therefore, it can be understood that PT. MTIR has been conducting business activities in the form of the Condominium since March 20, 1995. In addition, PT. MTIR must also comply with the applicable laws and regulations on the Condominium at that time.

On the other hand, as previously mentioned, a public legal relationship on the functional part of the Condominium is included with collective rights. In this case, a legal subject must carry out the management activities of the Ujung Pandang Central Market. Article 1 point 11 and point 12 of Law No. 16 of 1985 explain that:

“An association of occupants is an association whose members consist of occupants. The Management Agency is an agency that is on duty to manage the Condominium.”

From the provision above, it can be understood that the Condominium must have a legal subject. In addition, this provision has also been amended with the explanation contained in Article 1 point 20 and point 21 of Law No. 20 of 2011. Furthermore, Article 19 section (4) of Law No. 16 of 1985 regulates that:

“An association of occupants may establish or appoint a management agency that is on duty to carry out management, including supervision of the use of collective parts, collective objects, collective land, as well as maintenance and renovation.”

Article 54 section (1) of Government Regulation No. 4 of 1988 regulates that:

“Occupants in a condominium environment for residential and non-residential purposes must establish an association of occupants to regulate and manage the collective interests of ownership, occupancy, and management.”

Article 6 of Regulation of the Minister of Internal Affairs No. 3 of 1992 regulates that:

“The association was established with the aim of regulating and managing the interests, collective rights and obligations of the occupants, in order to create a life in a condominium environment that is safe, orderly, and healthy based on the principle of kinship.”

Article 43 section (1) of Municipal Regulation of Ujung Pandang No. 15 of 1994 regulates that:

“Occupants in a condominium environment for residential and non-residential purposes must establish an association of occupants to regulate and manage the collective interests of ownership, occupancy, and management.”

From the provision above, it can be understood that an association of occupants as legal subjects has a significant role in managing activities based on the functional parts of the Condominium, included with collective rights. In addition, these provisions have also been amended by the regulations contained

in Article 75 section (2) and section (3) of Law No. 20 of 2011 and Article 75 section (1) of Government Regulation No. 13 of 2021. Therefore, an association of occupants should have been established in Ujung Pandang Central Market since the establishment of the MoU on the Fourth Addendum No. 511.2/039/S.Perja/HK. Furthermore, an association of occupants should change to PPPSRS since the establishment of the MoU on the Fifth Addendum No. 511.2/349/VI/S.Perja/PD.Psr/2012. H. Rustam Nur A. P., stated that:²⁷

“My parents have been trading here since they were in China Market. So far as I know, PT. MTIR handles the cleaning and repairing toilets and roads if any are damaged.”

H. Ramli stated that:²⁸

“I have never heard or read about any rules on the association of occupants or PPPSRS. But there are some associations established by traders.”

From the explanation above, it can be seen that the association of occupants or PPPSRS was never established in Ujung Pandang Central Market. While Law No. 16 of 1985 and Law No. 20 of 2011 require such legal subjects' existence. In this case, the resident association or PPPSRS has a significant role in managing activities based on the Condominium's functional parts, including collective rights. In addition, there are also strategic roles that PPPSRS should carry out in the Ujung Pandang Central Market. For example, Article 65 section (1) point a of Law No. 20 of 2011, which regulates that:

“Condominium quality improvement initiatives referred to in Article 61 section (2) are carried out by owners of Condominium Units for their own Public Condominium and Commercial Condominium through PPPSRS.”

Article 65 section (2) of Law No. 20 of 2011 regulates that:

“Condominium quality improvement initiatives originating from the owner, as referred to in section (1) point a, must be approved by at least 60% (sixty percent) of PPPSRS members.”

From the description above, it can be understood that the Ujung Pandang Central Market is on land management rights. Makassar Municipal Government is the Holder of the management rights. On July 26, 1991, Ujung Pandang Central Market was renovated and developed based on MoU no. 44/511.2/SP/HK. MoU No. 44/511.2/SP/HK has five addendums, which on June 21, 2012, was the establishment of the MoU on the Fifth Addendum. PT. MTIR uses and utilizes the Ujung Pandang Central Market, which is treated as a Non-Residential Condominium building. On the other hand, PT. MTIR acts as Developer for a Non-Residential Condominium based on Law No. 20 of 2011. However, since the establishment of the MoU on the Fourth Addendum to date, Pasar Sentral Ujung Pandang has

²⁷Interview Results with the Ujung Pandang Central Market Trader. H. Rustam Nur A. P., on June 7, 2020.

²⁸Interview Results with the Ujung Pandang Central Market Trader. H. Ramli, on June 7, 2020.

not yet established the association of occupants or PPPSRS. Meanwhile, PPPSRS is a new legal subject for the Ujung Pandang Central Market, which is included collective parts, collective objects, and collective land. Therefore, it is hoped that PT. MTIR to comply with Article 59 of Law No. 20 of 2011 by establishing PPPSRS.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the legal subject of the Ujung Pandang Central Market management activities, which are treated as Non-Residential Condominium buildings, must be held by PPPSRS based on Article 59 of Law No. 20 of 2011. In this case, if PPPSRS has not been established, then PT. MTIR must establish PPPSRS no later than one year from the first delivery of the condominium unit to the owner. In contrast, PT. MTIR as a Developer does not comply with these provisions. On the other hand, the existence of traders as kiosk owners in the Ujung Pandang Central Market is not involved in the Condominium quality improvement initiatives as regulated in Article 65 section (2) of Law No. 20 of 2011. In this case, the requirement for involvement must be through PPPSRS. Meanwhile, until now, PPPSRS has not been established and established by PT. MTIR. So strictly speaking, PT. MTIR deviated from its obligations in implementing Law No. 20 of 2011. Based on the description of these conclusions, it is recommended that the Makassar Municipal Government re-evaluate the involvement of PT. MTIR as the Holder of the Right to Build for Ujung Pandang Central Market. In addition, it is recommended to PT. MTIR to comply with Article 59 of Law No. 20 of 2011 by establishing PPPSRS. Furthermore, it is hoped that law enforcement and the Regional House of Representatives of Makassar Municipal will protect the interests of traders so that PPPSRS is established as a legal subject for the Ujung Pandang Central Market management activities.

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