

Omnibus Law

Legal Insight

New Legal Certainty for Investors on Balanced Housing Requirements, Multi Storey Housing Ownership Rights, and Housing Supply Acceleration Agency

As the Government's response to the challenges of overlapping policies and regulations in various sectoral and regional regulations, the Government of Indonesia has enacted Law No. 11 of 2020 concerning Job Creation ("**Job Creation Act**") to support the simplification of investment mechanisms and provide more certainty for investors in Indonesia. With regard to housing matters, the Job Creation Act has amended Law No. 1 of 2011 concerning Public Housing ("**Law 1/2011**") and Law No. 20 of 2011 concerning Multi-storey Housing ("**Law 20/2011**"). Such amendments are required to speed up the licensing process by making adjustments to regulations on public housing areas, land procurement by foreigners, public housing licenses and obligations, and Multi-storey Housing. Another matter which has concerned Indonesia's public housing industry in past years is how the Government of Indonesia will provide certainty for the continuation of the implementation and operation of the construction of public housing in Indonesia.

Public Housing and Multi-storey Housing play a crucial role in the national economy as these sectors contribute large amounts of funding in Indonesia. In order to encourage a good investment environment in the public housing industry, as mandated under the Job Creation Law the Government has promulgated one Presidential Regulation ("**PR**") and a number of Government Regulations ("**GR**") as follows: (i) PR No. 9 of 2021 concerning Housing Supply Acceleration Agency ("**PR 9/2021**"); (ii) GR No. 12 of 2021 concerning the Amendment of GR No. 14 of 2016 concerning The Organization of Housing and Residential Areas ("**GR 12/2021**") (iii) GR 13 of 2021 concerning the Organization of Multi-storey Housing; ("**GR 13/2021**") and (iv) GR No. 18 of 2021 concerning Management Rights, Land Rights, Multi-storey Housing Units, and Land Registration ("**GR 18/2021**").

In this article, we will highlight the main policies introduced in PR 9/2021, GR 12/2021, GR 13/2021, and GR 18/2021.

What's New?

1. Housing Supply Acceleration Agency

With PR 9/2021, the Job Creation Act introduces a new non-structural administrative body to accelerate the provision of proper public housing affordable to low-income groups, the Housing Supply Acceleration Agency ("**Housing Agency**"). Further PR 9/2021 contains provisions which elaborate the tasks, objectives, functions, and composition of the Housing Agency. Apart from speeding up the administration, the objective of forming the Housing Agency was to implement various policies in the scope of public and special housing as well as to assure 2 (two) main things, that public housing would only be owned by the low-income groups and the principle of public house benefit would be achieved. In performing its function, the Housing Agency also manages the funds for the construction of simple housing and public Multi-storey Housing, coordinates the licensing process and ensures public housing eligibility, enables the transfer of ownership of public houses with the facilities provided by the government, and so forth.

Additionally, the Housing Agency consists of three main boards, which are the Council of Trustees, the Implementing Board, and the Council of Supervisors.

a. The Council of Trustees

The Council of Trustees guides and gives advice on the acceleration of the Housing Supply and its tasks are to arrange the long term plan, provide recommendations and approvals for the Housing Agency, apply sanctions, and conduct monitoring and evaluation of the implementation of the policy of acceleration of Housing Supply.

b. The Implementing Board

The Implementing Board creates long term and strategic plans and technical policies, executes the licensing coordination process and the transfer of ownership of public housing with the facilities provided by the government, implements cross-sectoral operational coordination, develops cooperative relations in the field of Multi-storey Housing with various agencies both inside and outside Indonesia.

c. The Council of Supervisors

The Council of Supervisors has the task of supervising the implementation of the acceleration, which includes supervision on the implementation of strategic policies, performance, budget and also providing advice to the Implementing Board as well as reporting the results of the supervision to the Council of Trustees.

Conclusively, the Housing Agency is a new institution that acts as a replacement of the Implementing Agency, which was previously established under Law No. 20 of 2011 concerning Multi-storey Housing. The tasks and function of the Housing Agency have also become clearer and hence it provides better supervision or monitoring in this sector. Thus, we can expect that there will be more projects and more job opportunities due to the proper supervision.

2. Changes to the Provision on Balanced Housing Requirements

GR 12/2021 has made quite significant amendments to the previous regulation regarding balanced housing for large scale residential areas. Previously the developer was required to develop housing which was affordable for low-income groups as part of its balanced housing program requirement (**"Balanced Housing Requirement"**).

Article 21F of GR 12/2021 stated that the balanced housing concept was the development of residential areas with luxury, middle class, and low-income group residential areas in a ratio of 1:2:3, which meant a developer had to balance the development of 1 (one) luxury residence by developing 2 (two) middle class and 3 (three) low-income residences, located in the same plot of land or in different plots of land but in the same regency or city.

Now with the enactment of GR 12/2021, a developer has the option of not fulfilling the above Balanced Housing Requirement but instead (i) paying a certain amount of conversion funds which will be managed by the government, or (ii) developing public multi-storey housing in the same plot of land as the residential area. The government has also formed the Housing Supply Acceleration Agency to manage the conversion funds as the alternative fulfilment of the Balanced Housing Requirement.

Like the previous regulation, GR 12/2021 has retained the concept of Conditional Sale and Purchase Agreement System (previously, preliminary sale and purchase agreement), which is a system covering agreements between anyone who would like to purchase a house or multi-storey housing and the developer during the marketing of public housing, flats or other residences after the developer has fulfilled certain conditions.

3. Implementation of Multi-Storey Housing

GR 13/2021 was created to replace all the implementing regulations related to Law 20/2011 and GR No. 4 of 1988 concerning Multi-storey Housing (**"GR 4/1988"**). GR 13/2021 introduced several changes to GR 4/1998 to implement Law 20/2011, as amended by the Job Creation Act.

Unlike GR 4/1988, GR 13/2021 specifies the 19 (nineteen) areas this GR deals with:

- a) type and utilization of Multi-storey Housing;
- b) provision of Public Multi-storey Housing;
- c) license for the function and utilization plan of the Multi-storey Housing and modifications of Multi-storey Housing;
- d) standard flat construction;
- e) enhanced utilisation of waqf land for State Multi-storey Housing;
- f) separation of Multi-storey Housing;

- g) minimum service standards for infrastructure, facilities, and public utilities;
- h) possession of Units in Special Multi-storey Housing;
- i) form and procedure for issuing the right of ownership of Multi-storey Housing Unit;
- j) the form and procedure for issuing Multi-storey Housing Ownership Certificates;
- k) lease of single Multi-storey Housing units in public Multi-storey Housing;
- l) transfers, criteria, and procedures for granting easy ownership of public Multi-storey Housing;
- m) management of Multi-storey Housing, transition period, and procedure for first handover;
- n) Business Licensing for Legal Entities for the management of Multi-storey Housing;
- o) Multi-storey Housing Owners and Occupants Associations (PPPSRS);
- p) improvement of the quality of Multi-storey Housing;
- q) control of Flat Management;
- r) forms and procedures for granting incentives to Performers of Construction of Public Multi-storey Housing and Special Multi-storey Housing and assistance and facilities for Low-Income Communities (*Masyarakat Berpenghasilan Rendah*); and
- s) administrative sanctions, procedures, and amounts of administrative penalties.

Under GR 13/2021, Multi-storey Housing is divided into 4 (four) types:

1. Public Multi-storey Housing (*Rumah Susun Umum*)
2. Special Multi-storey Housing (*Rumah Susun Khusus*)
3. State Multi-storey Housing (*Rumah Susun Negara*)
4. Commercial Multi-storey Housing (*Rumah Susun Komersial*)

Law 20/2011 provides that a business developer must “donate” 20% (twenty percent) of the total area of commercial Multi-storey Housing to build public Multi-storey Housing (“**Public Multi-storey Housing Obligation**”). However there were some issues in relation to uncertainty of procedures in the implementation of Public Multi-storey Obligation.

The foregoing issues in the implementation of the provision of Law 20/2011 and GR 4/1988 remain unresolved by the Job Creation Act and GR 13/2021. However, considering that the construction of commercial Multi-storey Housing is generally carried out in densely populated areas with limited land available in each region/city, developers may build public Multi-storey Housing outside the regency or city area in which they construct the commercial Multi-storey Housing as long as it is in adjacent area. GR 13/2021 explains this obligation in more detail.

Another significant change in GR 13/2021 was the introduction of the conversion fund option (“**Public Multi-storey Housing Conversion Fund**”), which provides developers with a less burdensome alternative to the mandatory Public Multi-storey Housing Obligation. Under this option, developers have the option of not implementing the Public Multi-storey Obligation but may pay the Public Multi-storey Conversion Fund to the Housing Agency instead in order to compensate for the land used for commercial Multi-storey Housing. Furthermore, the formulation of the Public Multi-storey Conversion Fund will be determined by the Minister of Public Works and Public Housing.

It is worth noting that as a mandate of the Job Creation Law, GR 13/2021 introduces the concept of a License To Do Business (*Perizinan Berusaha*), which will be given by the regional government (Regent or Mayor) to a legal entity that will manage and operate the Multi-storey Housing. However, for Jakarta-based legal entities the License To Do Business will be given by the Governor. Further, in pursuing the realisation of good construction of Multi-storey Housing, GR 13/2021 particularly provides for licenses for function and utilization plans which developers who want to build Multi-storey Housing must obtain. The benefit of those two licenses is to provide legal certainty to developers.

4. Changes to the Right of Ownership of Multi Storey Housing Units

New provisions in GR 18/2021 state that the Right of Ownership of Multi-storey Housing Units can be divided and can also be merged. It is worth noting, however, that the division and/or the merging of mortgaged Rights of Ownership of Multi-storey Housing Units can only be done after obtaining the consent of the holder of the mortgage (mortgagee).

To attract investors to invest in the economic zones, GR 18/2021 also has provisions on foreigners' right to own Multi-storey Housing in the economic zones, which may be built on Right to Use (*Hak Pakai*) or Right to Build (*Hak Guna Bangunan*) over the State Land (*Tanah Negara*), Right of Management land (*Tanah Hak Pengelolaan*) and Right of Ownership land (*Tanah Hak Milik*). Further,

GR 18/2021 also has answers on questions as to what happens when a foreigner who owns such housing dies and whether the right over the property passes to his/her heirs upon his/her death, which provides a better consideration for foreign investors to invest in property in Indonesia.

The above explanations are an overview of regulations regarding PR 9/2021, GR 12/2021, GR 13/2021, and GR 18/2021. If you need an in-depth study or analysis of the benefits, legal implications, and legal consequences of PR 9/2021, GR 12/2021, GR 13/2021, and GR 18/2021 on your investment plans or development, you can contact **Nashatra Prita, S.H.**, (Dentons HPRP Partner) by email to nashatra.prita@dentons.com.

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