

NEW CONDOMINIUM LAW IN INDONESIA: A DEVELOPER'S PERSPECTIVE

Recently, the House of Representatives has approved the draft of new condominium law. This law takes into consideration Article 20, Article 21, and Article 28H paragraph (1), paragraph (2), and paragraph (4) of the Indonesian Constitution Law 1945 as well as Law No. 1 of 2011 on the Housing and Tenancy. With this new approved draft, the previous Law Number 16 of 1985 on Condominium is revoked since it is no longer in accordance with the development of law, the people's needs, and the participation of the society as well as the responsibility and the state's obligation with regards to the condominium matters. This article is made based on the perspective of the developers of property in Indonesia.

General Definition

There are some defined terms used in the new law. It would be easier for the readers to understand the meaning of some of the principle defined terms.

A condominium is a multilevel building which is built in an area that is divided into sections which are structured functionally, whether horizontally or vertically that constitutes as units in which each can be owned and used separately, mainly for housing complemented with common equipment, common facilities and common land.

A certificate of condominium unit (*sertifikat hak milik atas satuan rumah susun*) is an evidence of ownership on the condominium unit over right of ownership, right to build or right of use over state's land, and right to build or right of use over right of management.

A certificate of condominium building ownership is an ownership evidence of condominium unit built over state government or regional government's land or waqf land through lease.

Common land means a plot of land or leased land for building that is used as the basis of inseparable common rights where a condominium is built over that land and its boundaries are determined in the requirements of licenses to build. Common equipment means a part of condominium that is inseparably owned for joint use in one integrated function with condominium units. The examples of this are foundation, column, wall, floor, block, roof, stair, lift, pipes, electricity system, gas, and telecommunication. Common facilities mean a property that is not part of condominium but inseparably

and jointly owned for joint use. The examples of this are meeting room, park, landscaping, social building, religious building, parking space, playground, separate or integrated parking space with condominium building structure.

Condominium Owner and Tenant Association (*Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun - PPPSRS*) is a legal entity having owners or tenants of condominium units as its members.

Party Who Can Develop A Condominium

The development of the commercial condominium can be implemented by any parties and may also be conducted through foreign investment in accordance with the law and regulations. Any parties mean an individual or legal entity. In the new law, it is stated clearly that a condominium development can be implemented through foreign investment in accordance with the prevailing laws. At this moment, there is no foreign ownership limitation for a foreign investment company having its business on real estate.

The Obligation to Provide Public Condominium

It has to be noted that the developer of commercial condominium is required to provide a public condominium (*rumah susun umum*) minimum of 20% (twenty percents) from the total area of the commercial condominium area that is built. The obligation to build a public condominium can be conducted outside the commercial apartment area location in the same regency/city. Further stipulation on public condominium will be regulated in the Government Regulation.

Type of Lands for Condominium

A condominium can be built over land with (i) right of ownership (*hak milik*), (ii) right to build (*hak guna bangunan*) or right of use over state land (*hak pakai atas tanah Negara*), and (iii) right to build (*hak guna bangunan*) or right of use (*hak pakai*) over right of management (*hak pengelolaan*).

Land Availability

The availability of land for construction of condominium may be implemented through:

- a. Granting of right of land over land that is directly controlled by the State;
- b. Consolidation of land by the land owner. Consolidation of land means reorganization of control, ownership, use, and utilization of land according to the regional urban planning to obtain land for the purpose of construction of condominium.
- c. Transfer or release of right of land by the land owner. This includes sale and purchase, bequest, or land exchange. Where, the release of right of land means a release performed by the land owner before the authorized official, so that the land will be directly controlled by the state.
- d. Utilization of state's or regional government's land;
- e. Utilization of waqf land;

- f. Utilization of some parts of state land of former unutilized land; and/or
- g. Land procurement for public interest. Just recently, there is a new law enacted this year of 2011 in relation to the land procurement.

If the construction of condominium is implemented over the right to build (or right of use over the right of management, the developer has to finish the status of right to build or right of use over right of management in accordance with the prevailing laws prior to selling the respective condominium.

Requirements of Construction of Condominium

The requirements for construction of condominium include (i) administrative requirements, (ii) technical requirements and (iii) ecological requirements.

Administrative requirements refer to required licenses to construct a condominium. The examples of administrative requirements are the status of land, license to build, and land use license. The application for land use license is submitted by attaching the following requirements:

- a. Certificate of right of land;
- b. Letter of information of district/city's planning;
- c. Site plan;
- d. Architecture plan comprising the layout, look, and division of condominium describing clear horizontal and vertical boundaries;
- e. Architecture plan with its calculation;
- f. Plan layout describing the common equipment, common facility and common land; and
- g. Public utility plan and its installation including its equipments.

If the condominium is built over rented land, the developer has to submit the utilization agreement in writing to the regional government. The land use license must be approved by the Mayor or Regent. For DKI Jakarta, the capital of Indonesia, the land use must be approved by the Governor of DKI Jakarta. The implementing regulations for applying the land use license will be governed by the regional regulations.

The construction of condominium is implemented based on the calculation and determination of coefficient of building floor (*koefisien lantai bangunan*) and coefficient of building foundation (*koefisien dasar bangunan*) that is adjusted with the capacity of environmental according to the urban planning. Coefficient of building floor means the comparison between the total area of building floor and the area of plot of land. Where, coefficient of building foundation means the comparison between the area of building foundation and the area of plot of land. The coefficient stipulation is exempted in the matter of limitation of building height with regards to the national flight regulation and/or local culture. The coefficient of building floor and coefficient of building foundation is determined by the regional government of each area.

Technical requirements consist of:

- a. Building structure that includes location use requirement and intensity and building architecture.
Location use means types of function or combination of function of condominium that may be built on certain location or area. Where, a building intensity means technical requirement on density and building height of condominium that is required on certain location or area, that includes coefficient of building foundation, coefficient of building floor, and total of building's floors.
- b. Building reliability that includes safety, health, comfort, and practical requirement. Safety requirement means the capacity of condominium to support the weigh and to avoid and to manage fire and lightning potential event. Health requirement includes light, airing, sanitation and use of building materials system. Comfort requirement includes moving space, inter relationship between spaces, the air condition, view, and noisy rate. Practical requirement includes the practical relation to, from, and in the condominium including its facilities.

Ecological requirements include the synchronization and harmony of environment function. This means the synchronization of made-up environment, natural environment and social culture, including the cultural values that need to be preserved. The construction of condominium that has important impact to the environment must be supplied with the environmental impact analysis according to the prevailing laws.

In constructing a condominium, the developer has to separate the condominium with the condominium unit, common equipment, common facility, and common land. Common facility will become common equipment if it is built as part of condominium building. The separation as previously mentioned will make clear the following:

- a. Boundaries of condominium unit that is separately used for each owner;
- b. Boundaries and detail of common equipment and common facility that become the right of each condominium unit; and
- c. Boundaries and detail of common land and the scale of part that become the right of each condominium unit.

Title of Division

The division on the condominium must be made in the detailed picture. This detailed picture will be used as the basis to determine the proportional comparison value (*Nilai Perbandingan Proporsional – NPP*), certificate of condominium unit or certificate of building ownership of condominium unit and conditional sale and purchase agreement. A major change is made under this new law stating that the detailed picture must be made before the construction of condominium. After obtaining the land use license, the developer must apply for legalization by the regional government on the title of division showing the clear boundaries of each condominium unit, common equipment, common facilities and common land, together with NPP. Further stipulation on the title of division will be regulated in the Government Regulation.

Certificate of Good-Use

The developer has to apply for certificate of good-use to Mayor or Regent after the completion of all or part of the construction of condominium as long as it does not conflict with the building permit. Especially for DKI Jakarta, the application must be submitted to the Governor. The meaning of “good-use” is the functioning of all or part of condominium building that may guarantee the fulfillment of building requirement and building reliability according to its function as stipulated in the building permit.

Facilities and Public Utilities of Condominium

A developer must supply the condominium environment with facilities and public utilities. The facilities are among others road network, drainage, sanitation, clean water, garbage location, green area, recreation area, and sport facilities. Where, public utilities mean electricity network, telephone network and gas network.

Marketing Prior Construction

Developer can market the condominium prior to the construction of condominium. However, a developer must at least own the following:

- a. Certainty of land use. This certainty is shown by the letter of information of city’s planning that has been approved by the regional government.
- b. Certainty of right of land. This is shown by the certificate of land.
- c. Certainty of control of condominium. This must be explained to the prospective buyers evidenced by the title of division that is legalized by the regional government.
- d. Building permit of condominium. This is evidenced by the building license; and
- e. Guarantee of construction of condominium from guarantor institution. This is shown by the guarantee of construction of condominium from bank or non bank institution

All of the promises by the developer and/or by marketing agent are binding as the conditional sale and purchase agreement between the parties.

Conditional Sale and Purchase Agreement (Perjanjian Pengikatan Jual Beli)

Prior to completion of construction of condominium, conditional sale and purchase agreement (the “CSPA”) can be signed before the Notary. The CSPA is made after fulfilling the certainty requirements of:

- a. Land ownership status;
- b. Obtainment of building permit;
- c. The availability of facilities and public utilities;
- d. The completion of 20% of construction. This means 20% of construction volume of condominium that has been marketed; and
- e. The agreed provisions. This means the condition of condominium unit that is built and sold to the customers, including through promotional media, inter alia, condominium location, type of condominium, building specification, condominium price, facilities, public utilities, and hand over date of condominium unit.

The construction of condominium is declared completed if the certificate of good-use has been issued and the certificate of condominium unit has been issued.

Control over Commercial Condominium Unit

Control over commercial condominium unit may be through ownership or lease. If through lease, then it must be made with written agreement made before authorized officer in accordance with the prevailing laws. That written agreement must be registered to PPPSRS.

Ownership of Condominium Unit

The ownership of condominium unit means the ownership of condominium unit that is individually separated with the common rights of common equipment, common facility, and common land. Right over common equipment, common facility, and common land is calculated based on the NPP. As evidence of ownership of condominium unit, a certificate of condominium unit will be issued. Certificate of condominium unit is issued by the land agency of city/regency. The certificate of condominium unit may be encumbered with mortgage right (*hak tanggungan*) in accordance with the prevailing laws.

The Utilization of Condominium and Condominium Unit

The utilization of condominium can be for (i) residence or (ii) mix-use. Mix-use means residence and non residence function. Every person that domiciles, occupies, or owns condominium unit must utilize the condominium unit according to its function. Further, every person may rent a condominium unit. The rent of condominium unit includes individual right over condominium unit and utilization of common equipment, common facility and common land.

The Management of the Condominium

The management of a condominium includes the operational, maintenance, and the treatment activity of the common equipment, common facilities, and common land. Such management should be implemented by a manager in the form of a legal entity, except for the leased public condominium (*rumah susun umum sewa*), special condominium (*rumah susun khusus*), and state condominium (*rumah susun negara*). Especially for the DKI Jakarta, the manager must obtain business license from the Governor.

In implementing the management, a manager has the right to receive service charge. The service charge will be borne by owner and tenant proportionally. "Proportionally" means operational and maintenance expenses will be borne by the tenant, where repair expense will be borne by the owner. The amount of service charge is calculated based on the actual needs of operational, maintenance, and repair expenses.

Prior to the establishment of PPPSRS, a developer must manage the condominium. The transitional period to manage the condominium is at the latest 1 (one) year from the hand over date. A "transitional period" means a duration when not all condominium units have been sold. This is a major change in the part of developer



because there is now a definite time limit to establish a PPPSRS. The developer can cooperate with the manager to manage the condominium. The amount of maintenance expenses during transitional period will be borne proportionally by the developer and owner of condominium, according to the proportional comparison value of each condominium unit.

Condominium Owner and Tenant Association (PPPSRS)

The owner of condominium unit must establish a PPPSRS. The members of PPPSRS are owner or tenant that has obtained power of attorney from the owner of condominium unit. This power of attorney is limited to the tenancy matters such as the determination of service charge for security, cleanliness, or social community. A PPPSRS is given a legal entity status.

A developer has to facilitate the establishment of PPPSRS at the latest prior to the end of transitional period as mentioned above. If PPPSRS has been established, a developer has to immediately deliver the management of common equipment, common facility and common land to PPPSRS. PPPSRS has the obligation to manage the interest of the owners and tenants in relation to the management of common equipment, common facility, common land, and occupancy. A PPPSRS may form or appoint a manager.

The procedure of managing the interests of owner and tenant is regulated in Articles of Association and By-Laws of PPPSRS. If PPPSRS decides something that is related to the ownership and management of condominium, every member has the same right based on NPP. If PPPSRS decides something that is related to the interest of tenancy of condominium, every member has the right to provide one vote.

Criminal Sanctions

A developer is prohibited to fulfill its obligation to provide public condominium at least 20% of total area of commercial condominium. A breach of this provision is convicted of maximum 2 (two) year imprisonment or maximum fine of Rp 20 billion.

A developer who prepares CSPA (a) that is not the same as what was marketed or (b) prior to fulfilling the formal requirements as set out in the new law, is convicted of maximum 4 (four) year imprisonment or maximum fine of Rp 2 billion.

If the criminal conduct has been performed by a legal entity, besides criminal sanction and fine to its directors, the criminal provision can be imposed to a legal entity in the form of three times the fine for a person. Further, besides a criminal sanction in the form of fine, there can be additional criminal sanctions imposed to the legal entity which is (a) revocation of business license or (b) revocation of legal entity status.

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Eddy Leks is the founder and Managing Partner of Leks&Co. He started his experience in general corporate/commercial and general litigation practice area. Afterwards, he joined Hadiputranto, Hadinoto & Partners (HHP), an affiliated law office of Baker&McKenzie. There, he was working in capital market, general corporate/commercial, taxation, foreign investment and customs practice area. He left his position in HHP to join PT Lippo Karawaci Tbk, one of the biggest property and real estate development and investment company in Indonesia, where he rose to become a legal senior manager. His main responsibility is to manage company's general corporate/commercial issues, build-operate-transfer project, and acquisition of shares and assets of property project. At time of joining, he was one of the youngest legal managers of the company.

Mr. Eddy Leks is a recommended attorney by Legal 500 Asia Pacific and Global Law Expert in the field of real estate law in Indonesia. He has also achieved a "Certificate of Introduction to International Commercial Dispute conducted by the Chartered Institute of Arbitrators and Robert Gordon University" which gained him Associate membership in the Chartered Institute of Arbitrators.