

Legal Semiotics Hotel Condominium as a Property Investment Legal Practice in Indonesia

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Abstract

This paper examined the legal existence of condominium-hotel (“condotel”), by analyzing the existence of Property Law in Indonesia. The preparation of this paper uses a philosophical approach in legal research, by analyzing the prevailing flats regulations in Indonesia. In this case, there is no single regulation that is the legal umbrella of condotel. The implication of this is that it creates legal uncertainty for owners and parties who want to invest through condotel. In addition, Constitutional Court from Decision No. 62/2022 concerning the transformation of apartment into the condotel is the misusage of the Apartment, in addition, there is the punishment, it is could be revoke the SHMSRS as its property right. So, reform is needed in providing legal certainty for condotel. In this case, both to provide a basis for legal certainty for condotel and a prohibition on their existence in Indonesia.

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1. INTRODUCTION

In the absence of a legal regulation that serves as a basis for certainty for unit owners or investors in the Hotel Condominium sector (“**Condotel**”), the flow of investment and ownership of Condotels in Indonesia is unclear and has no legal certainty. The condition of the law that is lagging behind the progress of investment / business practices is actually in line with the legal adage that reads the *law lags behind the fact* which basically explains that the Law is always struggling to catch up with the developments of the times. In this study, there is a discussion of legal regulations related to Property Law, namely the position of Condotel in Indonesia. Currently, there is no legal regulation that provides a regulatory umbrella regarding Condotel, either for owners or investors who want to take steps to invest through Condotel. Moreover, the Constitutional Court Decision No. 62 / PUU - XX / 2022 (“**MK Decision 62/2022**”) emphasizes that Condotel is a practice of utilizing Flats that has gone beyond the main function of Flats as regulated in Law No. 20 of 2011 concerning Flats (“**Flats Law**”) and various derivative regulations. Thus, a basis for legal certainty is needed that can be used as a guideline for Business practices or Condotel Ownership in Indonesia.

The practice of Condotel actually started from the utilization of commercial Flats which were made into a business innovation. Initially, flats themselves were formed as a Guarantee for the provision of decent housing for the community, and were a reflection of the Government's efforts to fulfill the humanitarian aspects in a country. In Indonesia, as Pancasila as a philosophical *background nation* and state has outlined an order to the State through its 5th Principle to always achieve Social Justice for All Indonesian People. This commitment was then formulated into Article 28 H Paragraph 1 of the 1945 Constitution

of the Republic of Indonesia, one of which guarantees the right of every person to live in physical and spiritual prosperity, to have a place to live, and to obtain a good and healthy living environment and to have the right to obtain health services.

Plus, *Fact Sheet Number 21 United Nation Centre for Human Settlement ("UNCHS Habitat")* requires guarantees against the *Right to Adequate Housing* which basically states that a House is a Basic Human Right and everyone has the right to live in a comfortable and affordable residence. Furthermore, Article 40 of Law No. 39 of 1999 concerning Human Rights has also provided a guarantee to everyone to have a place to live and have a decent life to live. Thus, guaranteeing adequate housing for the community has a substantial role in fulfilling the fundamental needs of every person.

The implementation of the entire construction of the rules is realized, one of which is by fulfilling and guaranteeing the Right to Own Property by every Citizen. In Indonesia, the fulfillment of this is realized, one of which is through the Ownership Rights of Apartment Units ("HMSRS"). HMSRS is the strongest and most complete right to ownership of a condominium in Indonesia. Based on Article 47 of Law No. 20 of 2011 (Condominium Law), HMSRS can be formed from various land rights. Thus, although HMSRS is a Substantial Right, the validity period of HMSRS follows the Land Rights beneath it. In Indonesia, as the owner of HMSRS, the related party will receive a proof in the form of a Certificate of Ownership of a Strata Title Unit ("SHMSRS"). The certificate is the strongest proof of ownership of a Strata Title Unit on freehold land, building use rights or use rights on state land, and building use rights or use rights on management rights land.

The SHMSRS given as a sign of ownership of the SaFlats is intended for its main function, namely a residential function or mixed function for the owner, and is not intended for a business function, such as making it a condominium. - Hotel ("Condotel"). The prohibition is emphasized through the Constitutional Court Decision No. 62 / PUU - XX / 2022 ("Constitutional Court Decision 62/2022") which essentially confirms that SaFlats based on the Condominium Law has the main function as a residence and mixed. In addition, the Court emphasized in the Constitutional Court Decision 62/2022 that Condominiums are not included in the Condominium Law regime because their functions and purposes are different.

If the owner of a SaFlats unit who has obtained SHMSRS still makes it a Condotel by contracting with a Third Party (in this case usually Hotel Management), then this is no longer within the scope of the Government guarantee in the Condotel Law, because there are no regulations governing Condoteles. Therefore, all consequences arising from it are the responsibility of the owner of the SaFlats unit based on the agreed contract, which in this case, has a risk of default to the point where the SHMSRS in the name of the Owner of the SaFlats Unit can be revoked.

Based on this background, the researcher crystallized the entire configuration in the form of a research problem formulation, namely, what are the implications of legal uncertainty for owners of SaFlats Units that are converted into condo hotels in Indonesia?

To explain this further, this article will analyze the legal aspects of the purpose of Flats, especially Commercial Flats, namely Apartments, Guarantees of Ownership Rights for Flat Units, Certificates of Ownership Rights for Flat Units and the legal implications of misuse of their functions after the Constitutional Court Decision 62/2022 based on the Flat Law in Indonesia.

2. RESEARCH METHOD

This article is analyzed using the doctrinal legal research method. This is intended to determine the legal implications of the applicable Condotel by analyzing the Constitutional

Court Decision 62/2022 as a new interpretation in Property Law in Indonesia. Thus, an implication of this can be seen which creates legal uncertainty for owners and parties who wish to invest through Condotel. Thus, renewal is needed in providing legal certainty for Condotel. In this case, both to provide a basis for legal certainty for Condotel and a prohibition on its existence in Indonesia.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Apartment Buildings and a Brief Genealogy of Their Arrangement

Giving birth to regulations related to Flats is actually a solution to unravel the existence of a population capacity that has exceeded its capacity in the center of the country's economy; currently, in Indonesia. This action, according to Gridle, is included in "*Implementation is That Set of Activities Directed Toward Putting a Program into Effect*", namely analysis of programs or policies (*policy performance*) within a country by allocating existing resources and regulations.

The presence of the Flats Law also creates the basis for ownership of property rights over flat units, namely individual ownership rights over flat units that are used separately, namely joint rights over parts of the flat building, joint rights over objects and joint rights over land.

Legal regulations related to Apartments have developed into various specific ownership rights, one of which is HMSRS, a Right to Ownership of Apartment Units. As the strongest and most complete ownership right to apartments, HMSRS is a Right granted to Apartment Units on land with various applicable Rights bases. So, based on the facts above, there are two rights that actually arise and must be considered. First, HMSRS. Second, Land Rights. Thus, owners of multi-storey building units, developers or Prospective Apartment Unit Buyers are required to ensure their land ownership rights first, which if stronger, the better for obtaining Property Rights with a long term.

Initially, regulations related to Flats were regulated in Law Number 16 of 1985 concerning Flats which was intended to meet the community's need for housing in urban areas, especially for migrants from outside the city.

Developing rapidly to this day, regulations related to Flats have been changed several times, and those that apply and must be observed at present are as follows:

- a. Law No. 5 of 1960 on the Policy Regulation of Agrarian Trees ("AGRARIA LAW");
- b. Law No. 20 of 2011 concerning Flats ("Status Law");
- c. Some provisions of the Flats Law were changed in Law No. 6 of 2023 on Job Creation ("Job Creation Law"); and
- d. Government Regulation No. 13 of 2021 concerning the Implementation of Flats ("PP PRS").

Based on Article 1 Paragraph (1) of the Apartment Law Because Article 1 Paragraph (2) of the PP PRS, Flats are defined as multi-storey buildings constructed in an environment that is divided into functionally structured parts, both horizontally and vertically, and are units that can each be owned and used separately, especially for residential areas equipped with shared parts, shared objects and shared land. This definition actually makes Flats an object in the various regulations mentioned above.

3.2. Legal Existence Regarding Condotels over Flats

Further analysis of the legislation related to Flats in Indonesia is actually related to the existence of Flats in Indonesia which is inseparable from its division based on the Laws and Regulations. In this study, it is based on Commercial Flats, which are organized not only as a place to live, but also intended to make a profit. In its control, commercial flats are controlled by means of ownership or rent.

The development of commercial flats is not excluded by The *Original Gene*, namely the type of property itself. In its division, the type of property is divided into residential and commercial property. Residential property is property that is used as a residence. Residential property has investment appeal for individuals and families as a place to live, because it has the potential for value appreciation and tends to have a stable value in the long term.

Another type of property is commercial property which is oriented towards cash flow turnover from all its commercial aspects. The presence of commercial property becomes a non-financial asset that has economic value for its owner. If, associated with the provisions in the Flats Law, commercial property is included in the type of commercial flats, as explained in Article 1 Number 10 of the Flats Law, namely that its management is oriented towards making a profit.

Regarding existence Commercial flats are inseparable from their ownership rights, one of which is HMSRS, which is basically different from Ownership Rights ("HM") on the ground. The explanation is found in Article 20 Paragraph (1) of the Agrarian Law *legalistic* which defines Ownership as a hereditary, strongest and most complete right that people can have on land, as well as attaching social functions to it. From UU Agriculture, HMSRS second *identical can* be classified as other rights that are not included in the classification of rights in the Agrarian Law. Thus, HMSRS is a right that is explicitly issued only for ownership of a condominium. Next, how does HMSRS function?

In contrast to Ownership Rights in general, although the concept of HMSRS is inspired by the construction of Ownership Rights, HMSRS is still a Right that is different from Ownership Rights to Land. Article 46 Paragraphs (1) and (2) of the Flats Law states that ownership rights to a Flats unit are individual ownership rights to a Flats unit that are separate from joint rights to common parts, common objects, and common land that are calculated based on the Proportional Comparison Value (NPP).

In Indonesia, the form of certification from HMSRS is made in the form of a Certificate of Ownership of a Strata Title Unit ("SHMSRS"). Based on the Flats Law, SHMSRS is in the form of a document package that has *Copy* from the Land Book & Measurement Letter, floor plan drawings at the apartment level, and a statement regarding the size of the rights to common areas, common objects, and common land for the person concerned. SHMSRS is also proof of ownership of a condominium unit that can be issued based on land with Ownership Rights, Building Use Rights ("HGB") or Use Rights ("HP") on state land, or HGB and HP on land with Management Rights ("HPL").

The above regulation shows the characteristics of HMSRS (can be built) following the status of the Land Rights underneath. The above-mentioned Condominium Law provides at least four types of land rights to be able to build Condominiums in Indonesia. And each of these Rights has its own validity period. Land ownership rights are the strongest Rights that are valid for an unspecified period. Meanwhile, HGB is valid for 30 Years, can be extended for 20 Years and renewed for 30 Years (Total: 80 Years). The same is true for the Right to Use, where the regulations are the same as the HGB above.

Not only the three rights above, there is also waqf land that has its own special characteristics. The construction of flats on waqf land must be carried out with an agreement, either a lease agreement or a land use cooperation agreement in accordance with the waqf pledge. Although bound by an agreement, the Flats Law also regulates the rental period of waqf land, which is 60 years from the signing of the agreement until it ends. In line with this, Yahya Harahap added, a rental agreement that contains an

expiration period for a contract will have implications for the automatic termination of the contract according to the agreed time.

Thus, four Land Rights with their respective provisions can be used in the construction of Flats in Indonesia. However, three of the four rights options still have a term of expiry of the rights, namely: HGB, Right of Use and Waqf Land. So, the duration of the HMSRS made on the four lands, will be according to the period of validity of their respective Land Rights. After knowing the HMSRS should follow the Land Rights under it. How to publish and change Land Rights into SHMSRS?

The process of issuing SHMSRS, namely the Developer must submit an application to the relevant Land Agency by paying attention to the provisions contained in Article 42 Paragraph (2) of the PP PRS. If all the provisions therein have been met. The relevant Land Agency will issue SHMSRS in the name of the Developer first. Meanwhile, related to the Ownership Rights over the Condominium Units, these are the ownership rights over the Condominium Units which are separate from the joint rights over the Joint Parts, Joint Objects and Joint Land.

Based on Article 45 Paragraph (1) of the PP PRS, the SHMSRS in the name of the Developer can be changed based on a transaction / Sale and Purchase before an authorized official. For example, if a unit of a Flat is sold, the Developer submits an application to the Land Agency regarding the change of the Developer's name on the SHMSRS to the name of the Buyer / Holder of another SHMSRS (which is obtained in a manner that is legal in the eyes of the law).

After the transaction and name change, SHMSRS Owners often try to seek more profit from the units they own. In general, one of the methods used is to rent out their units with a Condotel system. Paul Swider defines Condotel as a Condominium that is formally operated in collaboration with hotel management, but the Condotel is still owned by an Individual. Furthermore, Benioff in Monica Sondang et al. explains, Condotel is a combination of condominium and hotel characteristics that give birth to a concept of lodging managed using hotel management. Thus, Condotel is a flat that applies Hotel management to it.

In its operation, the Condotel has its own agreement regarding it, which means that there is a special contract between the Unit Owner and Management regarding the management of the Apartment, which agreement must still pay attention to Article 1338 Paragraph (1). *together* Article 1339 of the Civil Code. The Condotel Sale and Purchase Agreement must be made and agreed upon based on Article 1457 of the Civil Code regarding the legality of the Sale and Purchase Agreement in Indonesia.

Although the rules related to Condotel are binding through the Sale and Purchase Agreement mentioned above, in the context of legal protection for Condotel, only the related articles in the Civil Code and the articles agreed upon in the related Contract are provided. In fact, the Flats Law does not regulate and does not provide specific protection for Condotel in Indonesia. Since the designation of the Condominium was changed to Condotel, the legal entity of the Condominium has also changed since then. Especially after the issuance of the Constitutional Court Decision 62/2022 which does not classify Condotel as an effort to utilize the Condominium or an object of the Flats Law in Indonesia.

3.3. Legal Uncertainty Condotel as an Investment activity

Functionally, a condotel is a combination of *Condominium* and Hotel. Based on its origin, namely *Condominium* Which comes from Latin, the meaning of the word "*With*" namely together and "*Dominion*" means ownership. In its development, *Condominium* means a building ownership owned individually, including other parts and land above the building. Based on its function, it is used together, owned together by the owners

of the parts owned individually. The condominium hotel concept has been growing rapidly in the United States since the 1960s with ups and downs since.

By using a concept that combines *Condominium* and Hotel, then the unit of the Flats can be rented and equated with a Hotel Room. Based on this definition, its relevance to the definition of flats in the Flats Law, Condotel as a multi-storey building is included in the scope of property, which uses a legal basis based on the Flats Law.

As a property asset, a condotel can also be called *asset non-financial*. Namely, an asset that is included in the classification of wealth or property as a commodity, or is called wealth. *Tangible* or *Tangible Asset* (tangible resources). This wealth can be manifested physically using the five senses, such as buildings, machines, land, facilities, and employees. Other examples include purchasing productive assets, establishing factories, opening mines, opening plantations, gold, silver, diamonds, art objects and others. This form of investment is included in the type of investment real *asset* which is a type of tangible investment, nature heterogeneous and has a special use.

As a rented apartment, especially in a tourist or densely populated area, Condotel has advantages in terms of facilities that are not provided by landed houses. Such as open spaces or sports rooms and shared facilities, to activities organized by the management. The advantages of Condominiums include lower exterior maintenance and care because they are handled by manager, have access to apartment or hotel facilities, have security staff, property taxes also tend to be lower. The part outside the unit is commonly known as joint ownership. In its management, the Condotel is handed over to hotel management and developers, as supporting parties for tourism and investment objects.

Most investors are interested in targeting this property investment because the annual price of the property sector is stable like deposits and gold, where the estimated increase is around 10-20% per year. Investment interest in Condotels has the potential for income that tends to be stable and varied. According to Panangian Simanungkalit, this investment has its own cycle which is influenced by interest rates, government policies regarding property, property indent credit and taxes during property transactions. This investor's orientation is to buy good quality property, manage it for rent, and own it. In this case, the Condotel that is used as an investment object becomes a form of investor commitment for a certain amount of money or other resources with the hope of obtaining benefits in the future.

For comparison, in Germany, based on the *Act on the Improvement of Tenancy Law German Lands* (Act on the Utilization of German Land Lease Law, *the law prohibiting the misuse of residential space* (Law on the Prohibition of Abuse of Residence) and decision *the Federal Constitutional Court* (Constitutional Court of the German Federation) Local governments may adopt regulations prohibiting the use of residential units for non-residential purposes for short-term rental, if there is a shortage of available housing.

Between 2014 and 2016, short-term rentals were completely banned in Berlin. At its peak in 2016, the rule was escalated from a mere ban to an unconstitutional violation. This was proven, since May 1, 2016 the ban was limited to renting entire apartments through online sites. Only studio apartment units (without rooms) can be rented out, provided that the rented units do not exceed 50% of the total units in the apartment. The owner of the apartment unit must also live and be a resident in the apartment, and have a certificate or license to rent out their unit. If they violate this rule, the apartment owner can be subject to eviction or a fine of up to 500,000 Euros.

In other countries, such as in Valencia in 2018, Valencia based *the Act on Tourism and Hotels* ("Ley de Turismo y Hospitalidad") or the Tourism and Hotel Law which imposes restrictions on permits for tourists, one of which is the requirement for apartments to be located on the ground floor or first floor of the apartment. Apartments intended for short-term rentals that are rented to the public, may not be on the same floor as private residential units, and units rented to the public may not exceed 50% of the units in the apartment.

The Digital Republic Law in France gives regional heads the authority to regulate and create regulations related to the formation of short-term rental properties in their cities. This authority can be applied to cities that have more than 20,000 residential or property units in the city, in France one example is the city of Paris. The law governing short-term rental units classifies the categories of apartments that can be rented. This regulation defines three different apartment units based on their purpose: *First*, apartments classified as primary residences. *Second*, apartments that are categorized as secondary residences or apartments that are not used as residences. *Third*, apartments that can be rented for tourists.

Based on the regulation in France, property designated as a primary residence can also be used as a property that can be rented out with a short-term rental period of a maximum of 120 days per year. If the regulation is violated, the property owner will be subject to a fine of up to 10,000 Euros. Based on the regulation, if the apartment owner is proven not to have lived in his apartment unit for a period of at least 8 months, then the apartment unit will lose its status as a primary residence, and will automatically be classified as a non-residential apartment.

Comparison of Condotel policies in several countries, provides an overview of the rapidly growing condotel investment practices that cannot be separated from the existence of regulations that accommodate it. In Indonesia itself, the unpreparedness of regulations in accommodating the development of condotel investment activities has actually made the field investment *fraud*. Like the case of The Kalyana Bandung committing fraud against 1,157 people with a total loss of 806 billion In 2018, 278 condotel unit owners reported to the East Java Regional Police regarding an investment fraud scheme in Kuta, Bali. In 2016 in Bandung, the purchase of condotels was delayed without any clarity for 109 condotel owners at Grand Royal Panghegar.

Another gap, in the more specific Condotel regulations, namely in the Denpasar Mayor Regulation Number 42 of 2007 concerning Condominium Hotel Buildings, explains the meaning of Condotel:

"A multi-storey building constructed in an environment divided into functionally structured parts in horizontal and vertical directions, which are units that can each be owned and used separately, equipped with shared parts, shared objects, shared land and function as a star hotel."

In the Denpasar Mayor Regulation, the meaning constructed regarding Condotel is attempted to be equated with the definition of Flats in Article 1 Number 1 of the Flats Law. However, by eliminating the phrase "especially for residential purposes".

In addition, the function of Guidance, Control and Supervision of the Regulation is carried out by the "Denpasar City Tourism Office". Meanwhile, in carrying out Articles 5 and 6 of the Flats Law together Article 5 and 6 of the Housing and Residential Areas Law, Guidance is carried out by the Minister at the national level, the Governor at the provincial level and the Regent/Mayor at the district/city level. The guidance in question includes planning, regulation, control and "supervision". Meanwhile, the agency that should carry out supervision is the Public Housing and Residential Areas Service under the Regional Government, if the characteristics used are Flats.

In investment practice, the development of the Condotel business needs to comply with the principles contained in Capital Investment. According to Joseph Battat, "*An investment law and its regulations are respectively the codification and administrative implementation of the national investment policy*". This means, in this context, all investment practices must be based on the policies and laws applicable in a country. As stated in Article 3 Paragraph (1) of Law Number 25 of 2007 concerning Investment (hereinafter referred to as the Investment Law). The principle of legal certainty, places the law and provisions of statutory regulations as the basic law in every investment practice. Because basically a law without certainty of value will lose its meaning. So, it can no longer be used as a guideline for behavior for everyone.

Therefore, based on this, the author found a form of disharmony in the laws and regulations regarding Condotels in Indonesia. Thus, in practice there is legal uncertainty regarding legal protection for owners, residents and managers. In addition, in seeking legal protection for parties who wish to choose Condotels as a means of investment, legal certainty is needed, which is called realistic *legal certainty* or actual legal certainty. In this case, by providing or making arrangements related to Condotel. So that it can be in line between regulations and investment needs.

3.4. Potential Legal Violations for Condotel Owners after MK Decision 62/2022

On Wednesday, October 19, 2022, the Constitutional Court of the Republic of Indonesia issued a legal interpretation through Constitutional Court Decision No. 62/2022 regarding the judicial review of Article 50 of the Flats Law which is considered to be in conflict with the norm of Article 28G Paragraph (1) of the 1945 NRI Constitution which states that in principle everyone has the right to protection of themselves, their families, honor, dignity, and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right. And Article 28H Paragraph (4) of the 1945 NRI Constitution which states that everyone has the right to have private property rights and such property rights may not be taken over arbitrarily by anyone.

The Applicants essentially argued:

- The provisions of Article 50 of Law 20/2011 which regulates the use of the function of flats only for residential or mixed functions have harmed the constitutional rights of the Applicants to manage the property under their control (flats units equipped with common areas, common objects, and common land) relating to management, ownership, and occupancy through the establishment of the Association of Owners and Occupants of Flats Units (PPPSRS) in the area of their condotels;
- In addition, the rules governing the use of flats only for residential or mixed functions also harm the constitutional rights of the Applicants to obtain private ownership rights with legal certainty in terms of obtaining SHM Sa Flats.

On the grounds of the Applicants, the Court held that essentially:

- One of the changes in Law 20/2011 is related to the function of flats which are no longer divided into residential or non-residential, but residential or mixed as per the norm of Article 50 of Law 20/2011 which the Applicants have requested for constitutional review. The non-residential function in Law 20/2011 is actually not not accommodated, but is placed as a supporting function of the main function of flats, namely as a residence;
- Therefore, it is clear that the non-residential function for flats constructed in Law 20/2011 does not stand alone as the dichotomy of flat utilization adopted in the regulatory regime of Law 16/1985 and PP 4/1988. The change in the utilization of flats to mixed functions in Law 20/2011 is to address the lack of availability of public flats for middle-low-income communities and to eliminate "uninhabited houses"

(“**ghost building**”) where many buildings or flats are found that are not used at night because they do not function as residences;

- c. According to the Court, the definition of flats as regulated in the norm of Article 1 number 1 of Law 20/2011 must be interpreted as a whole, starting from the building structure, ownership to its use, namely primarily as a residential function;
- d. As discussed in the Working Committee Meeting of the Drafting Team for the Bill on Flats, which in essence provides an example, for example, there is a building that has a structure and ownership as defined by the definition of a flat, but out of 10 floors, only 2 or 3 floors are used as residential, then the building is not included in the definition of a flat;
- e. Therefore, **Condotels which have more of a business function do not correspond to the definition of flats based on Law 20/2011**. and if by adding non-residential functions to the norms of Article 50 of Law 20/2011 as requested by the Applicants, this will actually cause disharmony between the provisions in Law 20/2011 and other laws and regulations which could lead to legal uncertainty because the design of Law 20/2011 places the main function of flats as a place to live;
- f. It has been seen that condotels have the same building structure and ownership model as flats. However, the difference lies in the function of condotels, namely as one of the business activities. The existence of such characteristics is apparently not specifically accommodated in positive law so that there is a legal vacuum in its regulation.

Based on all of the Court's considerations above, it can be concluded: 1) the main function of a condominium is only intended for residential and mixed use; 2) Condotels are not included in the Condotel Law because their main function is commercialization; 3) Legal regulations for Condotels are still not regulated in the positive legal framework related to condominiums in Indonesia.

MK Decision 62/2022 essentially provides a constitutional interpretation of Article 50 of the Flats Law. Based on all these considerations, Condotels are not included in the function of flats due to their sole commercialization. Although the definition of commercial flats is intended to gain profit in accordance with the Flats Law, there is no regulation that underlies the practice of Condotel. Meanwhile, according to Article 50 of the Flats Law, this interpretation means that Condotel is not the purpose of the function of the Flats, either as a residence or a mixture. This interpretation actually has serious implications for the owners of Flats units, especially for the Owners of SaFlats units whose SHMSRS has been issued, but who have converted their Flats into Condotels.

In addition, in considering the building characteristics of the Condotel, the Court also stated:

Decision No. 62 / PUU – XX / 2022 Page [91] Point [317] Second Paragraph

*"In this regard, the existence of a condotel as a building that has a business function is emphasized in the Explanation of Article 5 paragraph (3) of Government Regulation Number 16 of 2021 concerning the Implementing Regulations of Law Number 28 of 2002 concerning Buildings (without the Court intending to assess the legality of the PP in question) which states, "What is meant by business **function includes**: e. Hotel buildings, such as guesthouses, inns, hostels, motels, boarding houses, hotels, and condotel."*

In other considerations, the Court stated:¹

¹Constitutional Court, Decision No. 62 / PUU – XX / 2022, p.91

Decision No. 62 / PUU – XX / 2022 Page [91] Point [317]

“... Based on the considerations as described above, it is apparent that condotels have the same building structure and ownership model as flats. However, the difference lies in the function of condotels, namely as a business activity...”

Since the Court stated its considerations in Constitutional Court Decision 62/2022, various potentials have opened up for SHMSRS owners to have their ownership revoked based on the following systematic legal interpretations:

No.	Rules	Article Contents
1.	Article 52 of the Apartment Law <i>juncto</i> Article 5 Paragraph (1) PP PRS	"Every person who occupies, lives in, or owns a condominium unit is obliged to use the condominium unit in accordance with its function";
2.	Article 50 of the Apartment Law <i>juncto</i> Article 4 paragraph (1) PP PRS	"Utilization of Flats is carried out in accordance with residential or mixed functions"; Based on the explanation of Article 4 of the PP PRS, "non-residential functions" are as a life support for residents of the Flats, such as business premises and meeting halls.
3.	Constitutional Court Decision 62/2022	“Condotels are not classified as Flats in the Flats Law due to their commercial function.
4.	Article 107 of the Apartment Law Because. Article 135 Paragraph (1) PP PRS	Stating in essence that anyone who does not utilize the Apartment Unit in accordance with its function as stated in all the rules above will be subject to administrative sanctions in the form of: 1) Written warning; 2) Administrative fine; and 3) Revocation of SHMSRS or ... etc.
5.	Article 108 of the Apartment Law	In imposing administrative sanctions, this is done by giving them 2 (two) times with a period of each written warning of a maximum of 5 (five) working days. subject to administrative sanctions in the form of an administrative fine of at least IDR 50,000,000.00 (fifty million rupiah) and at most IDR 250,000,000.00 (two hundred and fifty million rupiah). And if the owner and/or occupant ignores the administrative fine, they will be subject to administrative sanctions in the form of revocation of the SHM SaFlats or SKBG SaFlats.

Based on all the legal constructions above, based on the Constitutional Court Decision 62/2022, converting a flat into a Condotel is a form of misuse of the function of a Flat as stated in the Flat Law and PP PRS. Thus, the existence of a Condotel has two main legal implications that affect the owners of the SaFlats units, including:

- 1) The potential for the SHMSRS to be revoked from its owner; and
- 2) Condotel owners are not permitted to issue SHMSRS.

Not only that, it also opens up the opportunity to have an impact that becomes a contractual consequence, namely regarding the valid requirements of the agreement that are not fulfilled in the Condotel cooperation between the hotel management (condotel organizer) and the unit owner, because the Condotel practice is an unlawful act, this fact makes the condotel cooperation agreement violate the halal clause which is one of

the conditions of the agreement as stated in Article 1320 of the Civil Code. Because the condotel cooperation agreement violates the halal clause, making an agreement *quo* become null and void by law.

Thus, based on the Constitutional Court Decision 62/2022 as described above, Condotel is a correct practice of utilizing Flats. Thus, there is a legal vacuum regarding Condotel in Indonesia and in order to maintain the flow of investment and legal certainty for all citizens, it is appropriate for the DPR together with the President to issue a new regulation that provides protection for Condotel owners in Indonesia. In this case, in line with Bagir Manan's thinking that the state must be present in enforcing and guaranteeing legal certainty, where not only the law *in particular* or at the time of law enforcement and application, but also regarding legal certainty *in the abstract*. Investment policies must reflect a country's national goals, reinforced by the fulfillment of rights and obligations that ultimately lead to providing protection to investors and investment practices.

4. CONCLUSION

The elements in the concept of a condotel are the same as the concept of a flat according to the Flats Law, namely in terms of physical aspects, a flat is a building that has more than one floor; in terms of function, it can be used vertically or horizontally, there are parts that can be used and owned separately by its occupants which are called flat units; in terms of ownership, there are joint rights from all owners consisting of joint parts, joint objects and joint land, the main purpose of which is for a place of residence or a house.

HMSRS or SHMSRS is the strongest and most complete right to ownership of a condominium unit in Indonesia. The right / certificate will be issued first in the name of the Developer, and then it is possible to be changed to and in the name of the buyer after making a transaction before an authorized official. The period of validity of SHMSRS legally follows the Land Rights underneath. However, land ownership rights in Indonesia are valid for a minimum of 60 - 80 years. In general, SHMSRS owners want a benefit from owning a condominium unit, one of which is by making it a condotel. However, in Indonesia, the regulations that protect condotel owners are only the related articles in the Civil Code and the related Contract between the Condotel Owner and Management. In addition, the Condotel Law which was previously used as a reference for the regulation (although not explicitly) of condotels, no longer accommodates non-residential functions for condominiums which are increasingly unable to accommodate condotels in them. In addition, there is the Constitutional Court Decision 62/2022 which states that in principle a Condotel is not a Flat and cannot be included in the protection of the Flat Law regime, so that legally, a Condotel is a form of misuse of the function of a Flat in Indonesia because of its commercial function. In simple terms, a Condotel which is a form of misuse of the function of a Flat can be given sanctions in the form of revocation of the SHMSRS for its Owner in Indonesia.

All of the legal syllogisms above show that Condotel is a form of misuse of the function of Flats. In addition, there is a view of the DPR in the decision which emphasizes that the regulation of non-residential buildings is returned to the regulation of Law Number 28 of 2002 concerning Buildings (Building Law). However, there are several things that are not regulated in the Building Law. Regulations regarding the property have not been realized which of course should have been expedited. Thus, it can be said that there is still disharmony regarding the handling of building and building problems in Indonesia.

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