



Legal Policy on the Utilization of Air Space Above Property Land towards Flat

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Abstract

The need for space for development is very high while the land supply is limited, resulting in the use and utilization of above and below ground being unavoidable, both for infrastructure, trade, services, housing and so on. Broadly speaking, there are 6 (six) content materials that have changed in the Flats Law. First, the regulation of obligations of development actors who build commercial flats to provide at least 20% (twenty percent) of public flats. Second, setting the conditions for the construction of flats. Third, pictures and descriptions of flats. Fourth, the function and utilization plan. Fifth, the authority of the central government to issue a Function-worthy Certificate. Sixth, changes to the terms and conditions can be made into a Preliminary Sale and Purchase Agreement. Purpose, legal entity management of flats. The entire scope of changes to the content material, in the Draft Employment Creation Act, is grouped into the “Business Licensing Simplification” cluster. The Employment Creation Act needs to be studied more deeply involving academics and practitioners in the apartment sector as well as community involvement in general for better structuring of regulations in the housing sector, especially Flats.

Keywords: *Legal Policy; Property Land; Rights*

Introduction

Earth, water and space, including the natural resources contained therein, are controlled by the state as an organization of power for the entire people, as stipulated in Article 2 paragraph (1) of the Basic Agrarian Law as an elaboration of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia. Indonesia in 1945. The phrase controlled by the state gave birth to the concept of the State's Right to Control over agrarian resources, which is to achieve the greatest prosperity of the people in the sense of nationality, welfare and independence in an independent, united, sovereign, just and independent Indonesian society and legal state. prosperous. The definition of being controlled in Article 2 paragraph (1) of the Basic Agrarian Law is not in the sense of owning, because the state according to the legal conception of land does not act as the owner of the land.(Soetiyarto, 1997) The definition according to Article 2 paragraph (1) is an understanding that authorizes the state to: a). Regulating and administering the designation, use, supply and maintenance of land; b). Determine and regulate legal relations between people and land; c). Determine and regulate legal relations between people and legal actions regarding land.

Land rights stem from state control rights over land that can be granted to individuals, both Indonesian citizens and foreign nationals, and a group of people together, as well as legal entities, both

private legal entities and public legal entities. Land rights are only for the surface of the earth. If the use of land differs between the use of land on the earth's surface and the use of the land above and below the ground, then the authority of the holder of land rights on the surface of the earth cannot reach his control over the use of land in the above-ground and underground spaces.

Along with legal developments, in 2020 the government established Law Number 11 of 2020 concerning Job Creation (*Omnibus Law*). On the basis of improving the investment ecosystem and business activities the government is planning to change several laws. The government argues below. *First*, there are problems caused by the unfavorable business climate in Indonesia and low and uneven investment in Indonesia. On the other hand, Indonesia has a lot of potential that can be exploited by investors.(BPHN, n.d.) *Second*, the complexity or difficulty of investing in Indonesia has implications for Indonesia's low competitiveness compared to neighboring countries. The complexity or difficulty of investing, one of which can be seen from the licensing aspect. *Third*, the complexity or difficulty of doing business in Indonesia is caused by so many regulations in the licensing sector whose substance is not harmonious, overlaps and even contradicts one another. Such regulations create a long and complicated licensing system that results in the investment climate in Indonesia being ineffective, inefficient and not providing legal certainty.

The legal politics of the Job Creation Act also has implications for the Flats Law. The Job Creation Law changes some of the content in the Flats Law. The amendment to the Flats Law, in the Job Creation Law, is included in the "Simplification of Business Licensing" cluster. As is known, the job creation law is divided into 10 clusters, namely: 1). Simplification of Licensing 2). Investment Requirements 3). Employment 4). Ease, Empowerment, and Protection of Micro, Small and Medium Enterprises 5). Business Ease 6). Research & Innovation Support 7). Government Administration 8). Imposition of Sanctions 9). Land Acquisition 10). Government Investments and Projects 11). Economic Zone.(Harjono, 2021)

Based on the description above, it is interesting to study and examine how legal policy seen from the perspective of the Job Creation Law is related to the use of air space above property rights, especially flats. Has a positive or negative impact on the provision or use of flats.

Research methods

The type of research used in this research is normative legal research.(Fajar Sugianto, Denny Ardhi Wibowo, n.d.)

Discussion

Space Utilization and Land Management Rights

The implementation of spatial planning is a spatial planning activity that includes regulation, guidance, implementation, and supervision. Spatial planning is carried out in order to realize a safe, comfortable, productive, and sustainable national territory space. In order to achieve the objectives of implementing spatial planning, a space utilization permit is required, as a form of control, so that every space utilization is carried out in accordance with the regional spatial layout plan that has been prepared. Thus, a permit can be obtained if the suitability of space utilization has been confirmed, which can be achieved by fulfilling certain conditions, namely 1). Availability of detailed spatial plans/ detailed spatial plans or Regional Spatial Plans that accommodate aspects of environmental carrying capacity in detail; 2). The spatial plan has been in the form of digital data so that it can be directly accessed and applied *online*; and 3). There are institutional arrangements that stipulate confirmation of conformity with the

spatial plan, which is carried out in accordance with the authority and is integrated with the Online Single Submission.

If and as long as the three conditions above are met, confirmation of the suitability of space utilization can be made, so that a permit for space utilization can be granted. This provides flexibility in licensing the use of space, and for the Central Government in making policies to keep up with community and global dynamics. To accommodate this, the nomenclature of "permit to use space" in Law Number 26 of 2007 concerning Spatial Planning was changed to "Agreement on the Suitability of Spatial Utilization Activities" which is general in nature. These changes can be seen in the changes to the formulation of Article 1 paragraph (32), Article 35, Article 37, and others. The same is true for the licensing nomenclature in the Law on the Management of Coastal Areas and Small Islands, the Marine Law, and the Geospatial Information Law. By changing the permit into an approval, the Job Creation Law consolidates the spatial utilization permit so that it becomes part of the requirements for obtaining a Business Permit as an Approval for the Suitability of Spatial Utilization Activities.

The consequence of changing a permit into an approval is that the approval of the suitability of space utilization activities is only part of the requirements to receive a business license, not a permit itself. Thus, the approval of the suitability of space utilization activities is not an object of the State Administrative Court. It means that people who feel aggrieved by the granting of the conformity agreement cannot file a lawsuit with the State Administrative Court. (Eddyono, 2020)

Related to Land Management Rights, where land managed by the land bank is granted Land Management Rights. Regarding land in the land bank that is granted this Land Management Right, the Job Creation Law also strengthens the Land Management Right. Land Management Rights are basically the control rights of the State whose implementation authority is partially delegated to the rights holders. Land Management Rights are not explicitly regulated in the Basic Agrarian Law, and previously in an effort to find out the regulations regarding Land Management Rights, it was necessary to refer to the old laws and regulations, such as: a). Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning the Implementation of Conversion of Tenure Rights over State Land and Provisions on Further Policy b). Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Rights c). Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights.

The right to manage itself is not explicitly regulated in the articles of the Basic Agrarian Law like other land rights. Implicitly the provisions regarding Management Rights are found in the general explanation number II of the Basic Agrarian Law which explains that the state can give land that is not owned by a person or other party with a land right or give it under management to a governing body. (Perangin, 1986)

Provisions on the Law on Flats in the Perspective of the Job Creation Act

Broadly speaking, there are 6 (six) content items that have changed in the Flats Law. *First*, the regulation of the obligations of development actors who build commercial flats to provide at least 20% (twenty percent) of public flats. *Second*, setting the conditions for the construction of flats. *Third*, pictures and descriptions of flats. *Fourth*, the function and utilization plan. *Fifth*, the authority of the central government to issue a Function-worthy Certificate. *Sixth*, changes to the terms and conditions can be made into a Preliminary Sale and Purchase Agreement. *Seventh*, the legality of the legal entity managing the flats. The entire scope of changes to the content of the content, in the Job Creation Act is grouped into the "Business Licensing Simplification" cluster.

If examined in more depth, the concept of regulation based on the *Omnibus Law* framework, adjustments to the Law on Flats are carried out on: 1). General Arrangements and Simplification of the arrangement of authorities; 2). Nomenclature adjustment; 3). Sanction Setting.(Suharto, n.d.)v

Licensing issues in the housing sector have been a constant circle of problems. There is a normative, clearly defined, but in practice it is very difficult to parse. So the problems that occur are "pointing" to each other, namely whether the problem is at the norm or at the level of implementation. The housing entrepreneurs who call themselves development actors claim that existing regulations hinder their business processes. On the other hand, the claim that the problem lies in the implementation was also attended by several other parties. In essence, this problem is often an opportunity that can harm society. It should be remembered, licensing is in the pre-construction and construction process, at the beginning of housing development, when this becomes a problem it will have implications for the next stage, namely post-construction, when housing has been occupied, when ownership rights have been established.(Urip Santoso, 2016) This description is the basis for the question whether the content material formulated in the Job Creation Act which amends the Flats Law is appropriate and has protected the rights of the public interest or not.

Article 24 of the Flats Law stipulates that, in the construction of flats, there are 3 (three) conditions, namely: 1). Technical Requirements. As for what is meant by "technical requirements" are requirements related to building structure, building security and safety, environmental health, comfort, and others related to design and construction, including the completeness of environmental infrastructure and facilities. 2). Flats Construction. Administrative Requirements. As for what is meant by "administrative requirements" are permits required as a condition to perform. 3). Ecological Requirements. As for what is meant by "ecological requirements" are requirements that meet environmental impact analysis in terms of the construction of flats. ecological requirements including environmental impact analysis in housing development.

The status of land rights which is an administrative requirement in the construction of flats is evidenced by a certificate of land rights as proof of certainty of land rights. Land to be used in the construction of flats must have issued a certificate of land rights in accordance with the provisions of the legislation. Thus, the status related to the rights to the land on which the apartment will be built will become clear. The second administrative requirement is related to building permits. Ecological requirements in question are requirements that meet environmental impact analysis in terms of building flats.(Ilham, 2020) Thus, the construction of flats that have a significant impact on the environment must be accompanied by requirements for an environmental impact analysis in accordance with the provisions of laws and regulations.

Conclusion

The need for space for development is very high while the land supply is limited, resulting in the use and utilization of above and below ground being unavoidable, both for infrastructure, trade, services, housing and so on. Broadly speaking, there are 6 (six) content materials that have changed in the Flats Law. *First*, the regulation of obligations of development actors who build commercial flats to provide at least 20% (twenty percent) of public flats. *Second*, setting the conditions for the construction of flats. *Third*, pictures and descriptions of flats. *Fourth*, the function and utilization plan. *Fifth*, the authority of the central government to issue a Function-worthy Certificate. *Sixth*, changes to the terms and conditions can be made into a Preliminary Sale and Purchase Agreement. Purpose, legal entity management of flats. The entire scope of changes to the content material, in the Draft Employment Creation Act, is grouped into the "Business Licensing Simplification" cluster. The Employment Creation Act needs to be studied more deeply involving academics and practitioners in the apartment sector as well as community involvement in general for better structuring of regulations in the housing sector, especially Flats.

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