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The Juridical Study of the Implementation of Hotel Condominium Agreements

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Abstract. *Hotel condominiums are accommodations that can be used as an alternative to support the high mobility of today's society. This has made Condotel grow rapidly in Indonesia, however, this development is not in line with the existence of clear legal regulations. The approach method used in this qualitative legal research is a sociological juridical approach, which is an approach by seeking information through direct interviews with informants empirically first and then followed by conducting research on secondary data found in literature studies through theoretical steps. Based on the research conducted, it can be seen that the implementation of hotel condominium agreements so far has not had a legal footing in Indonesia, this has resulted in many developers and builders often seeking large profits without heeding the principles of good ethics in buying and selling agreements and managing hotel condominiums. The weaknesses that make the condo hotel agreement policy in Indonesia not fair are the weaknesses in the laws and regulations in the form of non-regulation of the contents of the condo hotel agreement and the position of the condo hotel in Act No. 20 of 2011, the weakness in law enforcement in the form of the lack of oversight regarding the sale agreement purchase and management of hotel condos, and the habit factor of hotel condominium development and construction actors who mostly seek profit through sale and purchase agreements and management of hotel condominiums by setting aside consumers or hotel condo owners. The solution that can be done is to make legal regulations specifically related to hotel condos, considering that hotel condos are different from condos in general.*

Keywords: Agreement; Condominium; Hotel; Juridical.

1. Introduction

Commercial Flatsfactually, among other things in the form of a condominium hotel (hereinafter abbreviated as Condotel), which is managed by a Limited

Liability Company by entering into a management agreement with The Association of Flat Owners and Occupants, hereinafter referred to as PPPSRS, is a legal entity consisting of flat owners or occupants, however, the Flats Law does not further regulate the condotel management agreement.

As a result of the non-stipulation of the agreement regarding the Condotel in Act No. 20 of 2011 concerning Flats, oftentimes the Condotel agreement only prioritizes the interests and profits of the developer, not the party who is the Owner and Tenant of the Flats Unit or the owner of the Condotel. This can be seen in the case of apartment building ownership in East Java which was carried out by PT. Indonesia Main Board, where the price of the apartment offered with the area offered in the agreement made by PT. Main Board of Indonesia with the fact that the area and price of buildings are very different. In the agreement made by PT. Indonesian Main Board, the agreed building area is 30m2, but with a price of IDR 750,000,000

Such case withclearly shows that the non-stipulation of agreements and legal consequences resulting from default in agreements regarding hotel condominiums in Act No. 20 of 2011 concerning Flats has opened up opportunities for fraud under the guise of hotel condo investment. This clearly can be detrimental to the buyer of the building which includes a hotel condominium, such a situation is clearly contrary to the First, Second, and Fifth Precepts of the Pancasila and Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 31 of Act No. 39 of 1999 concerning Human Rights.

Until now the making of all kinds of agreements, both special agreements (benoemd) and general agreements (onbenoemd) are still guided by the agreement of the Civil Code, Book Three, concerning Contracts. Based on the provisions of Article 1233 of the Civil Code, an agreement is one that creates a legal agreement.

The existence of this difference is intended to determine the legal terms of each of these agreements. The legal requirement for a consensual agreement is that there is an agreement between the parties who make it as stipulated in Article 1320 of the Civil Code. The legal requirement for a real agreement is that certain actions have been carried out, for example in the goods safekeeping agreement as stipulated in Article 1697 of the Civil Code. The legal requirement for a formal agreement is that certain formalities have been fulfilled, for example on grants as stipulated in Article 1682 of the Civil Code.

When looking at the contents of the provisionsArticles 1313 and 1314 of the Civil Code, there are two types of agreements, namely unilateral agreements and reciprocal agreements. One-sided agreement, namely an agreement in which

one party provides an advantage to another party, without receiving a benefit for himself. While reciprocal agreements, namely agreements that give rise to basic obligations for both parties. For reciprocal agreements, as a juridical consequence the two parties making the agreement are as determined by Article 1338 of the Civil Code. All agreements made legally apply as laws to those who make them. These agreements cannot be withdrawn other than by agreement of both parties, or for reasons stated by law as sufficient for this.

Based on the provisions of Article 1338 of the Civil Code, reciprocal agreements contain two legal principles, namely the principle of the binding force of the agreement, and the principle of freedom of contract, in addition to the principle of precedence which is called the principle of consensualism (Article 1320 of the Civil Code). The principle of the binding force of an agreement adopted by civil law countries is also called pacta sunt servanda, which means that with a promise, there is a will or will of the parties to achieve each other, and there is a willingness to bind themselves to each other. While the principle of freedom contract which implies that everyone is recognized as having the freedom to make a contract with anyone and is free to determine the contents of the contract, the form of the contract and choose the applicable law.

This is in accordance with the open system adopted by the Third Book of the Civil Code, which means that the law of agreements gives the widest possible freedom to the parties to enter into any agreement, as long as the contents do not violate the law, public order and decency (causa that is not prohibited). So it is clear that outside the Third Book of the Civil Code, various kinds of agreements have emerged, including standard agreements such as agreements in the banking sector, construction services, intellectual property rights such as licenses, agencies, and others, which sometimes contain clauses of rights and obligations that are unequal and unfair to either party. In essence, the principle of balance is closely related to the issue of justice in an agreement, and means it is related to issues of justice and law

Regarding the types of special agreements and general agreements, Salim HS, put forward the terms nominal contracts and innominate contracts. 5 Nominal contracts are contracts or agreements known in the Civil Code, such as buying and selling, exchange, leasing, civil partnerships, grants, safekeeping of goods, lending, borrowing, granting of power of attorney, suspension of debts, chancy agreements, and peace.

Innominate contracts are contracts that arise, grow, and develop in practice. The emergence of this contract is due to the freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code. Apart from the Civil Code, various new contracts have now developed, such as production sharing contracts, joint ventures, contracts of work, construction contracts, leasing, buying leases,

franchises, surrogate mothers, management contracts, technical assistance contracts, and others.

These various innominate contracts are generally standard contracts that contain unequal rights and obligations of the parties. Black's Law Dictionary, states that formal standard contracts with the principle of "take it or leave it" are offered to consumers in the field of goods and services that do not provide opportunities for consumers to negotiate, where consumers are forced to agree to the form of the contract. The characteristics of this contract, the weak party does not have a bargaining position.

According toSutan Remy Sjahdeini, what is meant by a standard agreement, is an agreement that all the clauses have been standardized by the user and the other party basically has no opportunity to negotiate or ask for changes. There are only a few things that have not been standardized, for example regarding the type, price, quantity, color, place, time, and several other things that are specific to the object being agreed upon. In other words, it is not the form of the agreement that is standardized, but the clauses

Yusuf Sofie, emphasized that what is standardized in a standard agreement is the model, formulation, and size. The essence of a standard agreement, according to Hondius, is the contents of the agreement without being discussed with the other party, while the other party is only asked to accept or reject it. The standard agreement in its implementation often lead to disputes between managers and PPPSRS. The standard agreement made unilaterally by the manager was more motivated by economic benefits, while the PPPSRS was on the aggrieved party, both regarding rights and obligations, agreement clauses and profit sharing. Settlement of disputes between managers and PPPSRS is resolved either through non-litigation legal institutions (negotiations, mediation, conciliation) or through litigation legal institutions (courts) which contains consensual, proportional, and good faith principles from the making of the agreement to the implementation of the agreement by both parties.

Problems related to the condotel hotel agreement also occurred in the condotel management case between PT. Banua Anugerah Sejahtera (PT. BAS) with the owner of the Grand Banua condotel. In this case it is clear that PT. BAS, which was handed over the right to manage the Grand Banua condotel by the owner of the Grand Banua condotel, has handed over the right to manage the Grand Banua condotel to PT. Banua Megah Sejahtera (PT. BMS), then PT. BMS with the approval of PT. BAS handed over the rights to manage the condotel to PT. Archipelagic International Indonesia, during the two transfers of management, the owner was never informed and never received the profit sharing that had been agreed with PT. BAS.

2. Research Methods

The approach method used in this qualitative legal research is a sociological juridical approach, which is an approach by seeking information through direct interviews with informants empirically first and then proceeding with conducting research on secondary data found in literature studies through theoretical steps.

3. Result and Discussion

3.1. Current Implementation of Hotel Condominium Regulatory Policies in Indonesia

In the previous discussion, it was explained that the condotel is intended as a unit of space in an apartment that is already owned by someone who in Indonesia itself, the form of this condotel is a building consisting of units like apartments. On generally, condotels are then sold to investors with various offers, but then the management of these condotel units will later be managed by the hotel operator whose job is to market and rent out the condotel to guests or tourists who will stay at the condotel.

The legal basis for condotel itself is rooted in various laws and regulations governing flats which are basically based on the right of every person to live in prosperity, physically and mentally, to have a place to live, and to get a good and healthy living environment which is regulated in Article 28H paragraph (1) The 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). This right to live is one of which is embodied in Act No. 20 of 2011 concerning Flats (UU Flats) which regulates various principles in the administration of flats which include in this case the principles of welfare, justice and equity, harmony and balance. . The existence of this principle forms the basis for the management of flats, including in this case the basis for the legal relationship between the manager and the owner of the condotel in the condotel buying and selling process. However, specifically and clearly there is no legal regulation regarding hotel condominiums.

Ownership of this apartment unit is then known as the concept of Strata Title ownership which is intended as ownership of part of the space in a multi-storey building such as an apartment or apartment or in other words the Right to Ownership of an Flat Unit. Thus this concept allows a person as a right-holder to be entitled to a part of the joint, joint object or common land which does not refer to a particular part or location but in the form of a proportion or percentage of ownership whose ownership is proven in the form of a certificate of ownership rights to flats units which allows the right holder uses it for other purposes arrangements regarding the process of buying and selling condominiums themselves are subject to Article 42 of the Flats Law which

regulates:

Article 42

(1) Developers can carry out marketing before the construction of flats is carried out.

(2) In the event that marketing is carried out before the construction of an apartment is carried out as referred to in paragraph (1), the developer must at least have:

(a) certainty of space allotment;

(b) certainty of land rights;

(c) certainty of ownership status of flats;

(d) apartment construction permits; and

(e) guarantee for the construction of flats from a guarantor institution.

(3) In the event that marketing is carried out prior to the construction of the flats as referred to in paragraph (2), everything promised by the developer and/or marketing agent is binding as a binding sale and purchase agreement (PPJB) for the parties."

So it can be concluded that PPJB is an important element in the process of buying and selling condominiums. The importance of this PPJB then prompted the government to issue a regulation which is specifically regulated in the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia number 11/PRT/M/2019 of 2019 concerning the Preliminary Purchase and Sale Agreement System (Permen PUPR 11/2019) . The procedures for making PPJB which are regulated in PUPR Ministerial Regulation 11/2019 are as follows:

1. PPJB is carried out after the development actors meet the following requirements:

a. Certainty over the status of land ownership as evidenced by the certificate of land rights shown to the prospective buyer at the time of signing the PPJB

b. The things that are agreed upon, at least consist of the condition of the house, infrastructure, facilities, and public utilities, an explanation to the prospective buyer regarding the contents of the PPJB, and the status of the land

and/or building in terms of being collateral.

c. Ownership of a main building construction permit or building construction permit which is submitted in accordance with the original copy to the prospective buyer at the time of signing the PPJB.

d. The availability of infrastructure, facilities and public utilities for Flats is proven by a statement letter from the developer regarding the availability of ready-to-build land outside the shared land which will be handed over to the district/city Regional Government or Provincial Government specifically for the Special Capital Region Province of Jakarta.

e. Awakening of at least 20% (twenty percent). For Flats, at least 20% (twenty percent) of the construction volume of Flats being marketed is in accordance with the report from the construction supervisory consultant or construction management consultant.

2. PPJB is carried out as a sale and purchase agreement between the development agent and the prospective buyer at the stage of the house construction process which at least contains, the identity of the parties, a description of the PPJB object, the price of the house and the procedure for payment, the guarantee for the developer, the rights and obligations of the parties, the time of handover building, building maintenance, building use, transfer of rights, cancellation and expiration of PPJB, dispute resolution.

3. Prospective buyers are entitled to study the PPJB before it is signed for at least 7 (seven) working days.

4. The PPJB is signed by the prospective buyer and the developer made before a notary.

From the substance of the law above, it can be concluded that initially the legal relationship occurred between individuals as prospective condominium owners and development actors. This legal relationship occurred until the buying and selling stage occurred, meaning that there was a transfer of ownership rights previously held by the developer to the owner of the condominium. In essence, PPJB only regulates prices and payment procedures, guarantees for development actors, rights and obligations of the parties, time of handing over the building, building maintenance, building use, transfer of rights, cancellation and expiration of the PPJB, dispute resolution. Building maintenance in this case is during the construction period, not sustainable management. Regarding the management process of the condominium,

The formation or appointment of managers is carried out no later than 3 (three)

months after the formation of PPPSRS. Where managers formed or appointed by PPPSR must meet requirements such as Legal Entity status and have a business permit from the regent/mayor, for the Province of the Special Capital Region of Jakarta the permit is granted by the governor. The management formed by the PPPSRS will later become a separate management organization from the PPPSRS management organization and is the result of selection from several managers which is carried out in a transparent manner. Further arrangements regarding this management by law are left to the regional government to make arrangements in the form of regional regulations (Perda) and governor regulations (Pergub).

This can be seen, one of them, in DKI Jakarta Governor Regulation number 132/2018 concerning Development of Management of Owned Flats (Pergub DKI 132/2018) as material for discussion. In Pergub DKI 132/2018 stipulates provisions in the operational activities of Flats management which at least include socialization of condotel utilization, shared parts, shared objects, shared land, and occupancy, operation of technical equipment and building equipment inside and outside the Flats building, as well as the management of environmental order and cleanliness. In addition to maintenance and maintenance activities and management. As mandated by the regulations above, the management of the condotel here must be carried out by managers who are legal entities who must register and obtain business licenses and operational permits and the Governor. This legal entity must be a legal entity that can carry out work and has competence in accordance with the provisions of laws and regulations.

Both managers formed by PPPSRS and appointed by PPPSRS have several criteria that must be met. For example, if the manager is formed by PPPSRS, then the manager is a legal entity that is separate from the PPPSRS organization and has competent management and human resources, has the ability to manage Flats, and has a business license in accordance with statutory provisions. And if the manager is appointed by the PPPSRS, then the appointment of the manager is carried out by means of an open and transparent bidding process and is followed by the business entity providing the Flats management service. The manager appointed by PPPSRS must at least have a business permit and operational permit for the management of Flats in accordance with statutory provisions,

Furthermore, Pergub DKI 132/2018 stipulates that managers who are formed or appointed carry out tasks based on a cooperation agreement for a certain period, with the administratorPPPSRS signed by the management on behalf of PPPSRS for at least 1 year or a maximum of 2 years. In carrying out the task, the manager is responsible to the PPPSRS in implementing the management and utilization of the Shared Parts, Joint Objects and Common Land. Of course, in this case the

Governor Regulation of DKI 132/2018 stipulates that the management cooperation agreement must not harm the common interests of Owners and/or Occupants. How can this management agreement not harm the mutual interests of the owner and/or the penguins which is then submitted by the Governor's Regulation to both parties as part of the principle of freedom of contract. Basically the manager is given the mandate to carry out the task of carrying out the management of Flats and their environment in shared parts, shared objects and shared land, carry out the operation, maintenance and maintenance of shared parts, shared objects and common land, supervise order and security as well as the use and utilization of shared parts, shared objects and shared land according to their designation, carry out other tasks given by the management PPPSRS in accordance with the agreement, and prepare standard procedures for operation, maintenance and maintenance of Flats to be approved by the PPPSRS Management. Managers also have the obligation to carry out management as well as possible in accordance with the Management Cooperation Agreement, assist PPPSRS management to submit management fee bills to each Owner and/or Tenant to be deposited into the PPPSRS account, carry out other tasks given or authorized by the PPPSRS Management as stated in the management agreement, submit management performance reports, annual financial reports, and accountability reports to PPPSRS, and publicly announce the Annual Financial Report. By carrying out these duties and obligations, the manager in carrying out management has the right to receive an amount of management fees paid by PPPSRS to the manager in accordance with the agreement on the management of Flats.

So to ensure that this is carried out properly, Pergub 132/2018 regulates the role of the Regional Government to provide technical guidance and control over the management of Flats. Technical guidance and control as intended is carried out by the Service together with the Mayor which includes the implementation of socialization of laws and regulations, providing guidelines and standards for PPPSRS implementation, and conducting guidance, supervision and consultation of PPPSRS administrators. The regional government, in this case, has the authority to exercise control by giving warnings and warnings, imposing administrative sanctions, and revoking management registration and approval letters from the Office. The warning referred to in this case can be given if PPPSRS administrators and/or PPPSRS supervisors violate or take actions that are contrary to the provisions of the laws and regulations and if the managing legal entity violates or takes actions that are contrary to the provisions of the laws and regulations. In the event that the construction actors, PPPSRS administrators and PPPSRS supervisors as well as the managing legal entity do not heed the warning, the local government will issue the first and second warning letters within a certain period of time. If it is still not heeded, then the service in this case can give administrative sanctions in the form of revoking the registration and

validation of PPPSRS management,

This regulation in Pergub DKI 132/2018 has actually placed an equal position between the manager and PPPSRS both regulating the rights and obligations for both, as well as the threat of strict sanctions which are not only imposed on managers but also on PPPSRS. It's just that the statutory regulations in essence do not regulate the standard format of the agreement or guidelines regarding what content material is included in the condo hotel management contract at a minimum.

3.2. Weaknesses Resulting in Unclear Arrangements for Hotel Condominium Agreements in Indonesia

1. Weaknesses in Legal Substance Aspects

It has been clearly explained above that the laws and regulations in essence do not regulate the standard format of the agreement or guidelines regarding what content material is included in the contract for the management of a hotel condominium, even in the relevant legal regulations it has not been clearly formulated regarding the meaning and hotel condo criteria.

This has clearly resulted in many problems in the development agreements and management of hotel condominiums today. The absence of regulation regarding hotel condominium agreements in the Housing Law, Flats Law and PUPR Regulation 11/2019 resulted in the management agreement between PPPSRS and the condotel manager only being guided by the article regarding agreements of the Civil Code, Book Three, regarding Engagement. When referring to the Civil Code, at least there are consensual agreements, real agreements, and formal agreements where this distinction is intended to determine the legal terms of each of these agreements. For example, the legal requirement for a consensual agreement is that there is an agreement between the parties who make it as stipulated in Article 1320 of the Civil Code. The legal requirement for a real agreement is that certain actions have been carried out, for example in the goods safekeeping agreement as stipulated in Article 1697 of the Civil Code. The legal requirement for a formal agreement is that certain formalities have been fulfilled, for example on grants as stipulated in Article 1682 of the Civil Code14.

Then the Civil Code in articles 1313 and 1314 of the Civil Code also sparked two kinds of agreements, namely unilateral agreements, namely an agreement in which one party provides an advantage to the other party, without receiving a benefit for himself and a reciprocal agreement, namely an agreement that creates major obligations for both parties. For reciprocal agreements, as a juridical consequence the two parties making the agreement are as determined by Article 1338 of the Civil Code.

All agreements made legally apply as laws to those who make them. These agreements cannot be withdrawn other than by agreement of both parties, or for reasons stated by law as sufficient for this. These agreements must be executed in good faith.

So that in a reciprocal agreement contains two legal principles, namely the principle of the binding force of the agreement (pacta sunt servanda), and the principle of freedom of contract, in addition to the principle of precedence which is called the principle of consensualism (Article 1320 of the Civil Code). In Previously, it has been explained that civil law countries usually apply the principle of pacta sunt servanda and the principle of freedom of contract in making an agreement. This is evidenced by the open system adopted by the Third Book of the Civil Code as a consequence of Indonesia as a country that implements civil law. This open system means that contract law gives the widest possible freedom to the parties to enter into any agreement, as long as the contents do not violate the law, public order and decency (causa that is not prohibited).

As happened between Faisal (the plaintiff) against PT. ANEMAS VILLAS & HOTELS (defendant 1) and PT. ANEMA MANAGEMENT (defendant 2) in the Mataram District Court decision number 78//Pdt.G/2020/PN Mtr. This case began with a condotel sale and purchase transaction carried out by the plaintiff by completing and signing the Condotel Unit Order Confirmation Form at the Anemalou Villa & Condotel Project provided by the defendant 1 it turns out that the plaintiff never obtained it so that the actions of Defendant 2 which intentionally did not provide the results of these benefits can be categorized as acts of default because they have violated Article 3 of PPK. This lawsuit was also caused by a problem in the agreement clause regarding force majaure where at that time an incident occurred which resulted in the destruction of the condotel unit building due to a natural disaster, namely an earthquake. :

…events and things that occurred beyond the limits of the PARTIES' ability to handle them and were not events or things caused by the intention and/or negligence of THE PARTIES such as natural disasters, riots, fires, floods, explosions, wars, sabotage, community uprisings, epidemics, mass strikes, embargoes, changes in laws and regulations, changes in government policies, and other events that can directly disrupt or result in the non-performance of this Agreement.

However, regarding responsibility if the Force Majeure is not conveyed or fails to be conveyed from the party experiencing it to the other party so that the party who neglects to convey it must be responsible for the Force Majeure because the Force Majeure is deemed not to exist.

This agreement only stipulates that all losses suffered by parties experiencing Force Majeure cannot be sued against other parties including deliberations to seek consensus on these losses. However, as a result of the ambiguity in this arrangement in the agreement, the defendants actually asked the plaintiff to bear or finance all damages caused by the earthquake with details of Rp. 706,649,109.- (seven hundred six million six hundred forty nine thousand one hundred and nine rupiah) deducted from the money that is the plaintiff's right to receive in the first year of management of the condotel by the defendant which is termed Return Of Investments (ROI) so that the plaintiff is asked to refinance all damages of Rp. 637,529. 109 (six hundred thirty million five hundred twenty nine thousand one hundred and nine rupiah) within a period of 3 (three) payments or 3 (three) months from 5 November 2018 to 5 January 2018. In the end the panel of judges agreed that Defendant 2's actions as the manager especially when Defendant 2 asked the Plaintiff to refinance the damages was a mistake. From this case we can conclude that the management agreement in the form of a standard agreement can in fact cause injustice to condotel owners and has the potential to be detrimental. In fact, this imbalance in position and the principle of take or leave it closes the access of one of the parties to fight for what is his right.

2. Weaknesses in the Legal Structure

The existence of problems in the aspect of legislation in the form of not being clearly regulated regarding provisions related to hotel condominiums, has resulted in many abuses of conditions by builders and developers against hotel condominium owners. The term misuse of circumstances in Indonesian law is the equivalent of the term misbruik van omstandigheden and undue influence.16 In the common law system other thanundue influence is also known as unconscionability, both of which are different, although they have similarities, namely that both are based on an imbalance in the bargaining position of the parties. If the contract is formed on the basis of impropriety or injustice that occurs in an unequal relationship between the parties, then it is called undue influence (a one-sided relationship), but if injustice occurs in a situation, then this is called unconscionability (a one-sided situation).). In the decision on the case of Commercial Bank of Australia v Amadio (1983) 151 CLR 447, Deane J. stated that the doctrine of undue influence was seen as a result of the imbalance in the giving of agreement from the affected party,

Then in the case of undue influence there must be some form of exploitation by one of the parties over the weaker party. A party seeking to cancel a transaction on the basis of undue influence must prove that the transaction was dishonest, that he or she is an innocent party who has been harmed. The other party must protect themselves by proving that professional and independent advice has

been given before the transaction is entered into

In its development, Nieuwenhuis always links his discussion with arrestens found in the Netherlands. The inclusion of provisions for abuse of circumstances into the NBW, more or less is based on legal considerations in various judges' decisions

The formation of the teaching about the abuse of circumstances was due to the absence (at that time) of the Burgerlijk Wetboek (Netherlands) provisions governing this matter. In the event that a judge finds a situation that is contrary to custom, then a judge's decision is often found which cancels the agreement in whole or in part. :

1) straying (dwaling);

2) coercion (dwang);

3) fraud (bedrog) (article 1321 of the Civil Code).

In its development, all hotel condominium agreements which are based solely on freedom of contract are mostly made by the builder or developer, in which it is more profitable for the builder or developer. This can be seen in the case of condotel management between PT. Banua Anugerah Sejahtera (PT. BAS) with the owner of the Grand Banua condotel. In this case it is clear that PT. BAS, which was handed over the right to manage the Grand Banua condotel by the owner of the Grand Banua condotel, has handed over the right to manage the Grand Banua condotel to PT. Banua Megah Sejahtera (PT. BMS), then PT. BMS with the approval of PT. BAS handed over the rights to manage the condotel to PT. Archipelagic International Indonesia, during the two transfers of management, the owner was never informed and never received the profit sharing that had been agreed with PT. BAS21 From the existing cases it appears that PT. BAS has actually done misbruik van omstandigheden and undue influence by going astray (dwaling), coercion (dwang), fraud (bedrog) in the condotel management agreement with the owner of the Grand Banua condotel. This is getting worse with the absence of supervision carried out against developers and builders who have malicious intentions to harm their consumers in terms of condotel management.

The case above also does not show an agreement which essentially has a principle of balance which is closely related to the issue of justice in an agreement, and means it is related to issues of justice and law. The principle of freedom of contract should be interpreted not only in terms of the form of the agreement, but also the freedom to determine the content. This means that there is the widest possible freedom through equal opportunities for each party

to enter into an agreement about anything, as long as it does not conflict with laws and regulations, propriety and public order.

3. Weaknesses of Legal Culture

The issue of the Condotel agreement is becoming increasingly complicated with the intrusion of economic globalization in third world countries including Indonesia. Modernization according to Giddens is an event that raises the positive side or progress but on the other hand creates various negative impacts. This is because globalization has changed the way of life on a large scale by internationalizing western culture to all corners of the world. Therefore, the influence of globalization in everyday life is the same as the influence of globalization throughout the world. 23 The existence of a negative side as the impact of globalization is an unexpected result or consequence of modernization. Modernization as a result of globalization forms the uniformity of space and time for the international world through the formation of connections between local authorities and global authorities. According to Giddens, this modernization is with the emergence of "supporting institutions such as capitalism, industrialism and the ability to monitor the activities of citizens and control over the means of violence, including the industrialization of means of war". as a result of capitalism. Modern capitalism directs its adherents to direct people to think profit and loss about something they will get. 25 This problem results in the loss of good ethics of the parties to the condotel agreement,

The term abuse of circumstances in Indonesian law is an equivalent of the terms misbruik van omstandigheden and undue influence. 26 In the common law system, apart from undue influence, it is also known as unconscionability, which are both different, although they have one thing in common, namely that both are based on an imbalance in the bargaining position of the parties. If the contract is formed on the basis of impropriety or injustice that occurs in an unequal relationship between the parties, then it is called undue influence (a one-sided relationship), but if injustice occurs in a situation, then this is called unconscionability (a one-sided situation). In the decision of the Commercial Bank of Australia v Amadio (1983)

151 CLR 447, Deane J. states that the doctrine of undue influence is seen from the consequences of the imbalance on the giving of agreement from the affected party, while unconscionability is seen from the behavior of the strong party in trying to impose or take advantage of transactions against weak people, whether in accordance with propriety.

Then in the case of undue influence there must be some form of exploitation by one of the parties over the weaker party. A party seeking to cancel a transaction on the basis of undue influence must prove that the transaction was dishonest,

that he or she is an innocent party who has been harmed. The other party must protect itself by proving that professional and independent advice has been given before the transaction is entered into. In its development, Nieuwenhuis always links his discussions with arrestents found in the Netherlands. The inclusion of provisions for abuse of circumstances into the NBW, more or less, is motivated by legal considerations in various judges' decisions.

The formation of the teaching about the abuse of circumstances was due to the absence (at that time) of the Burgerlijk Wetboek (Netherlands) provisions governing this matter. In the event that a judge finds a situation that is contrary to custom, a judge's decision is often found which cancels the agreement in whole or in part. :

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b. coercion (dwang);

c. fraud (bedrog) (article 1321 of the Civil Code).

In its development, most of the condo-hotel agreements are based solely on freedom of contract the builder or developer in which it is more profitable for the builder or developer. This can be seen in the case of condotel management between PT. Banua Anugerah Sejahtera (PT. BAS) with the owner of the Grand Banua condotel. In this case it is clear that PT. BAS, which was handed over the right to manage the Grand Banua condotel by the owner of the Grand Banua condotel, has handed over the right to manage the Grand Banua condotel to PT. Banua Megah Sejahtera (PT. BMS), then PT. BMS with the approval of PT. BAS handed over the rights to manage the condotel to PT. Archipelagic International Indonesia, during the two transfers of management, the owner was never informed and never received the profit sharing that had been agreed with PT. BAS31 From the existing cases it appears that PT. BAS has actually committed van omstandigheden and undue influence by committing deception (dwaling), coercion (dwang), fraud (bedrog) in the condotel management agreement with the owner of the Grand Banua condotel. This is getting worse with the absence of supervision carried out against developers and builders who have malicious intentions to harm their consumers in terms of condotel management. The case above also does not show an agreement which essentially has a principle of balance which is closely related to the issue of justice in an agreement, and means it is related to issues of justice and law. The principle of freedom of contract should be interpreted not only in terms of the form of the agreement, but also the freedom to determine the content. This means that there is the widest possible freedom through equal opportunities for each party to enter into an agreement about anything, as long as it does not conflict with laws and regulations, propriety and public order. The essence of freedom of contract

should be how individuals develop themselves both in personal life and social life as part of human rights that must be respected. The solution to the problem above can be resolved through legal arrangements specifically related to hotel condos, considering that hotel condos are different from condos in general. This was done by adding the definition of a hotel condominium clearly in Article 1 of Act No. 20 of 2011 concerning Flats, then adding provisions of emphasis related to the application of Articles 42 to 50 the arrangement of hotel condominiums. Then added regarding the supervision of the implementation of hotel condominium agreements and added sanctions for violators of hotel condominium agreements.

4. Conclusion

The implementation of hotel condominium agreements so far has not had a legal footing in Indonesia, this has resulted in many developers and builders often seeking large profits without heeding the principles of good ethics in buying and selling agreements and managing hotel condominiums. The problems that occur indicate that it is necessary to regulate the understanding, position, classification, and agreements related to the sale and purchase and rental of hotel condominiums in Act No. 20 of 2011 concerning Flats.

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