

Overview of Condotel Sale Agreements in Indonesia and Its Relation to Consumer Right Protection



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ABSTRACT: The process of buying and selling condotel is carried out based on PPJB in the form of a standard agreement as an important element in the process of buying and selling Condotel. However, standard agreements often lead to disputes between managers and PPPSRS. The standard agreement made unilaterally is more motivated by economic benefits, while PPPSRS is on the side of the disadvantaged, both regarding rights and obligations, agreement clauses and profit sharing. Type of legal research used is non-doctrinal and the approach method used in this research normative juridical method. This research found that it is necessary to update the existing regulations that regulate in detail how the sale and purchase agreement and condotel management should be carried out.

KEYWORDS: Agreement; Condotel; Consumer Right; Protection; Indonesia

I. INTRODUCTION

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hence referred to as UUD NRI 1945) declares that the formation of the Indonesian State Government is intended to advance public welfare. The mandate of the 1945 Constitution of the Republic of Indonesia was carried out through Article 28 H paragraph (1) and Law Number 39 of 2000 on Human Rights Article 31, which affirms that everyone has the right to physical and spiritual prosperity, to have a residence, to have a good and healthy living environment, and to health services.

This means that each citizen has the right to a home, private or shared. Thus, according to Article 46 of Law No. 1 of 2011 concerning Housing and Settlement Areas, the government published Law No. 20 of 2011 concerning Flats, which regulates, among other things, many definitions of Commercial Flats and their management. Commercial activities involve operations, maintenance, and care of shared parts, shared items, and shared land carried out by a legal entity registered with the Regent/Mayor and holding a business permit.

According to Article 1233 of the Civil Code, Concerning the agreement itself, it results in a legal engagement. Indonesian contract law distinguishes between consensual, real, and formal agreements. This distinction is meant to serve as a determining factor in deciding the legal terms of each agreement. Additionally, as specified in Article 1320 of the Civil Code, the criterion for the legitimacy of a consensual agreement is an agreement between the persons who made it. A real agreement requires the performance of specified actions, for example, in an agreement for the safety of goods as defined in Article 1697 of the Civil Code. A formal agreement's legitimacy is contingent upon fulfilling specific formalities, such as those specified in Article 1682 of the Civil Code regarding a grant (Widjaja, 2004):

A reciprocal agreement, according to the provisions of Article 1338 of the Civil Code, contains two legal principles: the principle of binding force on the agreement and the principle of contract freedom, in addition to the precedence principle known as the principle of consensual (Article 1320 of the Civil Code). Additionally, the Civil Code recognizes the notion of an agreement's binding power, also known as *pacta sunt servanda*, which states that when a promise is made, a will or desire of the parties to attain each other and a desire to bind themselves arises. Meanwhile, contract freedom implies that everyone is recognized as having the right to form a contract with anyone and is free to define the contract's substance, form, and applicable law. This is consistent with the open system established by the Third Book of the Civil Code, which means that contract law allows parties to engage in any agreement they like, as long as the terms do not violate the law, public order, or morals. (which is not prohibited) (Subekti, 2004). Thus, outside of the Third Book of the Civil Code, various types of agreements have established, including standard agreements in the banking sector, construction services, intellectual property rights such as licenses and agencies, and others, which occasionally contain unbalanced and unfair clauses of rights and obligations for one of the parties.

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In essence, the principle of balance is inextricably linked to the question of fairness in a contract, which means it is connected to both justice and law (Rawls, 2011). Salim HS introduced the phrases nominee contract and innominate contract when discussing the various forms of special and general agreements (HS, 2010). Contracts or agreements referred to as nominee contracts are defined in the Civil Code, such as buying and selling, exchanging, leasing, civil partnerships, grants, safekeeping of goods, borrowing, granting authorization, suspending debt, agreements of profits, and peace. While innominate contracts are those that emerge, evolve, and grow in practice. This contract was formed due to the contract flexibility guaranteed by Article 1338 paragraph (1) of the Civil Code. Numerous new contracts have been formed outside of the Civil Code, including joint ventures, production sharing contracts, work contracts, construction contracts, leasing, buying leases, franchises, surrogate mothers, management contracts, and technical assistance contracts. These varied innominate contracts are typically standard contracts with unequal parties' rights and obligations.

According to Black's Law Dictionary, formal standard contracts based on the "take it or leave it" principle offered to customers in products and services do not allow for consumer negotiation, as consumers are compelled to accept a particular type of contract. This contract is characterized by the weak party's lack of bargaining power (Ibrahim, 2004):

According to Sutan Remy Sjahdeini, a standard agreement is when the user has standardized all the clauses and other parties are essentially barred from negotiating or requesting changes. Meanwhile, only a few items remain unstandardized, such as the type, price, amount, color, location, time, and several other items specific to the object of the agreement. In other words, what is standardized are the clauses, not the structure of the agreement (Remy Sjahdeini, 1993).

According to Yusuf Sofie, the standard agreement standardizes the model, formulation, and measurement (Sofie, 2000). According to Hondius, the essence of a standard agreement is that the agreement's content is not discussed with the other parties, and the other party is merely asked to accept or reject it (Zakiyah, 2011). Standard agreements frequently conflict between managers and the Association of Owners and Occupants of House Units in practice. The manager's unilateral standard agreement is motivated by economic gain. However, the Association of Owners and Occupants of House Units is on the side of the aggrieved party in terms of rights and obligations, agreement clauses, and profit-sharing. Disputes between the manager and the Association of Owners and Occupants of House Units are settled by non-litigation legal mechanisms (negotiation, mediation, and conciliation) or legal litigation mechanisms (courts). Considering the foregoing facts, it is critical to conduct a study on how the condotel agreement between the manager and the Association of Owners and Occupants of House Units is currently structured and what needs to be done to ensure that the agreement contains consensual, proportional, and good faith principles from its beginnings to its implementation by both parties and reflects consumer protection.

II. RESEARCH METHOD

This study employs a normative legal method. Normative legal research uses secondary data sources, and in this study, the law is conceptualized and evolved following the doctrines adopted by drafters and/or developers (Shidarta, 2013). The statutory approach is used in this study.

III. RESEARCH RESULTS

Condotel is supposed to be a unit of space within an apartment owned by an individual in Indonesia. This condotel takes the shape of a building composed of units similar to apartments. In general, condotel units are sold to investors with a variety of benefits. However, they are later maintained by a hotel operator whose duty is to promote and rent out condotel units to visitors or tourists who stay.

The right to reside is embodied in the Flats Law, which regulates the administration of flats on a variety of principles, including welfare, justice and equity, harmony and balance. The existence of this principle serves as the foundation for the operation of flats, including, in this case, the legal relationship between the condotel management and the condotel owner during the process of purchasing and selling condotels.

The notion of Strata Title ownership refers to the ownership of a section of the space in a high-rise building, such as an apartment or flat, or in other words, the Ownership of the Flat Unit. Thus, this concept entitles a person as a right holder to a portion of the shared part, shared object, or shared land that does not refer to a specific part or location but instead to a proportion or percentage of ownership that is established through the use of a flat unit certificate of ownership. This enables the rightful owner to utilize it for different purposes (Sari, 2018):

The procedure for purchasing and selling condotel units is regulated by Article 42 of the Flats Law, which states:

(1) Development agencies may perform marketing before constructing a flat building.

(2) If marketing is conducted prior to the construction of flats as specified in paragraph (1), the development agencies must at the very least have the following:

- a. certainty of space allocation;
- b. certainty of land rights;
- c. certainty of flat ownership status;

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- d. permits for flat construction; and
- e. guarantee for flat construction from the guarantor institution.

(3) If marketing is conducted prior to the flat being built, as described in paragraph (2), everything is done by the development agencies and/or marketing agencies is binding on the parties as a Sale and Purchase Binding Agreement.

Thus, the Sale and Purchase Binding Agreement is a critical component of the Condotel sale and purchase procedure. The significance of this Sale and Purchase Binding Agreement then prompts the government to issue regulations, which are specifically addressed 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 Agreement System for the Sale and Purchase of Houses (Ministerial Regulation of Public Works and Public Housing 11/2019). The procedure for executing the Sale and Purchase Binding Agreement, as outlined in the Minister of Public Works and Public Housing's regulation 11/2019, is as follows:

1. After the development agencies have met all requirements, the Sale and Purchase Binding Agreement is performed.
2. The Sale and Purchase Binding Agreement is performed as a sale and purchase agreement between development agencies and prospective buyers at an early stage of the house construction process that includes the parties' identities, a description of the object of the Sale and Purchase Binding Agreement, house prices and payment procedures, guarantees for construction operators, the parties' rights and obligations, the time of building handover, and maintenance.
3. Prospective buyers have at least 7 (seven) working days to read the Sale and Purchase Binding Agreement before it is signed.
4. The prospective buyer and development agency sign the Sale and Purchase Binding Agreement before a notary.

The condotel management agreement is drafted in writing, either as an authentic deed before a notary or as a private deed signed by the parties. Generally, the condotel management agreement will include the following:

1. The Agreement's Subject

In this instance, the party is the owner or resident of the condotel, as represented by the Association of Owners and Occupants of Home Units and the management.

2. The Agreement's Object

This activity aims to manage the rental of condotel units to third parties referred to as guests using Rental Pooling following the industry standard for condotel unit management through the collection of rent.

3. Rights and Obligations

Through Rental Pooling, in which the Association of Owners and Occupants of House Units appoints and authorizes the manager to rent, run, and manage condotel units exclusively. The management party has the authority to grant constitutional rights to others. However, the manager must conduct Rental Pooling, which results in income distribution in the form of money from unit rental rates and unit rental income. Finally, it is regulated in terms of the agreement's duration.

From the legal substance outlined above, it is clear that the legal relationship began with individuals acting as prospective condotel owners and development agents. This legal relationship exists until the time of purchase and sale. This means that ownership rights previously held by development agencies are transferred to the condotel owner. In essence, the Association of Owners and Occupants of House Units regulates only prices and payment procedures, guarantees for development actors, the parties' rights and obligations, the timing of building handover, building maintenance, building use, rights transfer, cancellation and expiration of Sale and Purchase Binding Agreement, and dispute resolution. In this situation, building maintenance occurs during the construction phase, not on a long-term basis. Concerning the condotel's management procedure, the Flats Law also regulates the formation of the Association of Owners and Occupants of House Units, a legal entity organization comprised of condotel owners and occupants, through which an agreement for the condotel's management would be reached between this organization and the management.

According to Article 75 of the Flats Law, development agencies must promote the formation of the Association of Owners and Occupants of House Units no later than the transition period's end. To establish the Association of Owners and Occupants of House Units, the Minister of Public Works and Public Housing issued Regulation 23/PRT/M/2018 of 2018 regulating the Association of Owners and Flats, which regulates data collection on Owners and/or Occupants first, which must be conducted by development agencies following the principle of legal ownership or proof of condotel occupancy. Once the Association of Owners and Occupants of House Units is formed, the construction operators shall immediately transfer management of shared objects, shared parts, and shared land to the Association of Owners and Occupants of House Units. Additionally, the obligation to protect the owners' and occupants' interests concerning managing shared objects, shared parts, and shared land is transferred to the Association of Owners and Occupants of House Units.

The manager is formed or appointed no later than three (3) months after the Association of Owners and Occupants of House Units is formed. Managers formed or appointed by the Association of Owners and Occupants of House Units must meet certain conditions, including having legal entity status and a business license from the regent/mayor, except for the Province of the Special Capital City Region of Jakarta, from the governor. The manager founded by the Association of Owners and Occupants of

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House Units will eventually become a separate management organization from the association's management organization and result from a transparent selection process among numerous managers.

The regional government is responsible for further regulating this management by law through Regional Regulations and Governor Regulations. As a starting point for discussion, the Jakarta governor Regulation number 132 of 2018 regarding the Guidance of Management of Owned Flats will be used.

The Jakarta Governor Regulation 132/2018 regulates the provisions in the operational activities of the management of flats, which at the very least include socialization of the use of condotel, shared parts, shared objects, shared and residential land, operation of technical and building equipment both inside and outside the flats, as well as the implementation of the order and environmental cleanliness management. Additionally, as stated by the regulation above, condotel management must be carried out by managers who are legal companies needed to register and get business and operating licences from the governor. This legal body must be capable of performing work and have competence following applicable legislation. Managers may collaborate with individuals or other legal entities to carry out their responsibilities, but this must be specified in a written cooperation agreement and approved by management.

Managers formed or appointed by the Association of Owners and Occupants of House Units must meet several conditions. For instance, if the manager is formed by the Association of Owners and Occupants of House Units, the manager is a distinct legal entity from the Association of Owners and Occupants of House Units. It possesses competent management and human resources, the ability to manage flats and a business license following applicable legislation. If, on the other hand, the manager is appointed by the Association of Owners and Occupants of House Units, the appointment is made through an open and transparent auction procedure, which is subsequently followed by the corporate entity providing management services for the flats. Managers appointed by the Association of Owners and Occupants of House Units must possess a business license and an operating license to manage flats in compliance with applicable rules and regulations, as well as sufficient business capital and human resources to carry out the management and holds a certificate of professional competence issued by the authorized agency in the field of expertise, has experience managing high-rise structures, and possesses credibility and a high level of public trust.

Additionally, Jakarta Governor Regulation 132/2018 regulates managers to perform their duties following a cooperation agreement for a specified period with the board of the Association of Owners and Occupants of House Units, signed by the management on behalf of the Association of Owners and Occupants of House Units for a minimum of one year and a maximum of two years. The manager is accountable to the Association of Owners and Occupants of House Units for administering and using shared parts, shared objects, and shared land in carrying out their tasks. In this scenario, Jakarta Governor Regulation 132/2018 specifies that the Management Cooperation agreement must not jeopardize the owner's and/or occupant's mutual interests. To ensure that this management agreement does not jeopardize the owners' and/or occupants' shared interests, the governor's regulation leaves this decision to both parties as part of the principle of contract freedom.

Essentially, the manager is charged with carrying out the duty, which includes managing the flats and their environment, operating, maintaining, monitoring security and order, and using shared parts, shared objects, and shared land, as specified. Additionally, the manager performs other duties as assigned by the board of the Association of Owners and Occupants of House Units following the agreement and develops standard operating procedures, maintenance, and care for the flats for approval by the Association of Owners and Occupants of House Units. Additionally, the manager is responsible for carrying out management following the Management Cooperation Agreement, assisting the board of the Association of Owners and Occupants of House Units in submitting a management fee bill to each owner and/or occupant for deposit into the Association of Owners and Occupants' account, and carrying out other tasks assigned or authorized by the board of the Association of Owners and Occupants of House Units. By fulfilling these duties and obligations, the manager is entitled to earn a portion of the management fees given to the manager by the Association of Owners and Occupants of House Units in line with the cooperation agreement for the management of the flats.

To guarantee that this is done appropriately, Jakarta Governor Regulation 132/2018 establishes the Regional Government's duty in providing technical guidance and oversight of flat management. The agency, in collaboration with the mayor, provides technical guidance and control, which includes socializing laws and regulations, developing guidelines and standards for the Association of Owners and Occupants of House Units' implementation, and advising, supervising, and consulting the Association of Owners and Occupants of House Units' board. The regional government is empowered to enforce control in this scenario by issuing cautions and warnings, applying administrative sanctions, revoking registration letters, and ratifying the service's management. The warning in this situation may be issued if the management and/or board of the Association of Owners and Occupants of House Units violates or takes actions in violation of the legislation's provisions. Suppose development agencies, managers, and the board of the Association of Owners and Occupants of House Units and managing legal entities disregard the warning. In that case, the regional government will send the first and second warning letters within a specified period. If it is not followed, the government service may impose administrative sanctions in the form of revoking the business licenses of the management of the Association of Owners and Occupants of House Units or recommending to the licensing agency that development actors' business licenses be revoked, as well as the managing legal entity's business license/operating license.

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The Jakarta Governor Regulation 132/2018 established an equal relationship between managers and the Association of Owners and Occupants of House Units, defining both parties' rights and obligations and punishing both parties with severe sanctions. However, the laws and regulations do not regulate the contract's standard format or how to guide the contract's content material. As a result, the management agreement between the Association of Owners and Occupants of House Units and the condotel manager is regulated only by the Civil Code's Third Book on agreements. According to the Civil Code, there are at least three agreements: consensual, real, and formal. What differentiates the three is the legal terms contained in each agreement. For instance, the condition precedent to the legitimacy of a consensual agreement is agreement amongst the parties to the agreement, as defined in Article 1320 of the Civil Code. A real agreement requires the performance of specified actions, for example, in an agreement for the safety of goods as defined in Article 1697 of the Civil Code. A formal agreement is valid only if certain formalities have been fulfilled, for example, on a grant defined in Article 1682 of the Civil Code.¹

It was explained before that civil law countries used to utilize the principle of *pacta sunt servanda* and the principle of freedom of contract in creating an agreement. This open system indicates that the law of agreement offers the parties the broadest flexibility to engage in any agreement, as long as the contents do not violate the law, public order and morality (*causa*, which is not prohibited).² Based on the basis of treaty law in Indonesia, this then undoubtedly influences and applies in the establishment of the agreement as a legal act. In this case, it becomes the basis of the collaboration agreement between the management and the Association of Owners and Occupants of House Units. However, because there is no legal substance that regulates how this cooperation agreement should be made, the form of the management cooperation agreement and the Association of Owners and Occupants of House Units in its implementation is realized in the form of an innominate contract, namely an agreement that arises, grows, and develops in Indonesia in practice because of the freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code. Unfortunately, these diverse innominate contracts are often ordinary contracts that contain uneven rights and obligations of the parties. This is because the standard contract format with the idea of "take it or leave it" offered to customers in the sector of products and services does not allow an opportunity for consumers to bargain, meaning consumers are obliged to accept the form of the contract.³ The point is if the contract is generally made through a negotiation process between the two parties who want to agree and has content material in the form of the agreed negotiation results, then in this innominate contract generally all the clauses in the agreement have been standardized by the user and the other party has no chance to negotiate or propose modifications. There are just a few elements that have not been standardized, such as the type, price, quantity, color, place, time, and several other elements relevant to the topic of the agreement. In other words, what is standardized is not the form of the agreement but the clauses.⁴ As Hondius mentioned, the terms of the agreement were not discussed with the other party, while the other party was just asked to accept or reject it.⁵

The advantage of this system is efficiency, as it does not require the owner to think much about how to make an agreement, which is especially beneficial for someone who does not understand the law in depth. This advantage, however, introduces new legal complications, as the standard agreement's implementation frequently results in disagreements between managers and the Association of Owners and Occupants of House Units. A standard agreement put into unilaterally by the management is more economically motivated. However, the Association of Owners and Occupants of House Units is on the side of the aggrieved party in terms of rights and obligations, agreement clauses, and profit-sharing. This is not to say that an agreement has a balance principle directly tied to the question of justice in the agreement or that it is in conformity with justice and law.⁶ Concerning the notion of contract freedom, it must be generally recognized. The notion of contract freedom should be construed broadly, not just in terms of the agreement's form but also its content. This means that each party has equal freedom to reach agreements on anything, as long as they do not violate applicable laws and regulations, morality, or public order. The essence of contract freedom should be how individuals develop themselves, both personally and socially, as part of universally recognized human rights (Hernoko, 2008). Jessel M.R. argued in "Printing and Numerical Registering Co. vs Samson" that the idea of contract freedom is intended to be applied as follows (Ropikhin, 2010):

"..men of full age understanding shall have the utmost liberty of contracting, and that contracts which are freely and voluntarily entered into shall be held and enforce by courts..... you are not lightly to interfere with this freedom of contract."

When we discuss law, we will encounter the terms' *das sein*' and '*das sollen*'. (Rhiti, 2016). Similarly, when discussing how the condotel management cooperation agreement is implemented in practice. Suppose it was initially discussed how the law regulates condotel management provisions, the objectives to be achieved, and the assumptions about the arrangement's impact. In that case, the next section will be to observe what occurs in practice. Indeed, the lack of regulation governing creating a cooperation agreement between the manager and the Association of Owners and Occupants of House Units has had a negative

¹Loc.cit.,

²Loc.cit.,

³ Loc.cit.,

⁴ Sutan Remy Sjahdeini, Op.Cit.,

⁵ Zakiyah, *Op. Cit*,

⁶Loc.cit.,

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impact. This is demonstrated by numerous instances of conflict between managers and condotel owners. According to a study conducted by the Ministry of Trade's Directorate General of Consumer Empowerment and Order of Commerce, the National Consumer Protection Agency, the Consumer Dispute Resolution Agency Jakarta, Real Estate Indonesia (DPD REI Jakarta), the Yayasan Lembaga Konsumen Indonesia (YLKI), and Indonesia Property Watch (IPW), several issues frequently cause problems for apartment consumers, including condotel consumers. Among these issues are the following (N.G.N. Renti Maharaini Kerti, 2018):

1. The mismatch between the developer's promises and the reality of the unit received by the consumer.
2. The developer fails to provide clear and transparent information, particularly on the incompatibility of the promised supporting facilities and infrastructure with reality, the status of the land, the condition of the final physical results of the house, and others.
3. Consumers are not free to choose their bank for house loans or apartment loans.
4. Pre-selling flats (apartments) or images that have not yet secured a development permit, while the consumer's installment money has been transferred to the developer.
5. Certificates that developers do not instantly provide over to consumers.
6. Consumers are frequently attracted by low costs and continue to pay installments. However, there is no legal agreement in the form of a Sale and Purchase Binding Agreement between the consumer and the developer.

Generally speaking, the issues that arise in the field of flats can be classified into three categories as follows:⁷

1. Issues emerge during the purchasing and selling process, particularly during the sale and purchase agreements (signing the Sale and Purchase Binding Agreement). For instance, inaccuracies in the promised period or the inadequacy of the contents of the Sale and Purchase Binding Agreement can impose costs on consumers.
2. When making installment payments, the developer frequently cancels the purchasing arbitrarily, and there is a clause regulating installment payments that are excessively burdensome or detrimental to customers.
3. When becoming an owner, there are issues such as managing residents, unilaterally increasing electricity rates without notifying the occupants, building quality that falls short of what was promised at the beginning, problems with public and social facilities that fall short of what was promised by the developer, and environmental issues.

This is demonstrated in the case between Faisal (plaintiff) and PT. ANEMAS VILLAS & HOTELS (defendant 1) and PT. ANEMA MANAGEMENT (defendant 2) in the Mataram District Court decision 78/Pdt.G/2020/PN Mtr, which began with the plaintiff completing and signing the Condotel Unit Order Confirmation Form on the Anemalou Villa & Condotel Project provided by defendant 1 as this agreement details the plaintiff's and defendant 2's rights and obligations concerning the hotel's management, including the rights that the plaintiff must obtain as the owner of the rights to the unit managed by defendant 2, specifically the profit that must be paid to the plaintiff for a specified period. However, because the plaintiff never received the profit, defendant 2's intentional failure to provide the profit might be classified as an act of default for violating Article 3 of the Condotel Management Agreement.

This case is also a result of a failure of the agreement's force majeure clause, as an incident occurred at the time that destroyed the condotel unit building due to a natural disaster, specifically an earthquake. However, in such conditions, responsibility is not or is transferred irresponsibly to other parties, and those who fail to convey must bear responsibility since force majeure is considered non-existent. This agreement states that the party experiencing force majeure cannot sue other parties for any losses incurred, including deliberation to reach a consensus on the loss. However, due to the agreement's ambiguity, the defendants demanded the plaintiff to bear or finance all of the earthquake's damage.

Finally, the panel of judges concluded that defendant 2's acts as manager, particularly when defendant 2 asked the plaintiff to refinance the damage, were a mistake. We can conclude from this instance that a management agreement in the form of a standard contract may actually create injustice to the condotel owner and may even be harmful. Indeed, this positional imbalance and the take or leave principle prevent one side from defending their rights.

This issue arises with this management system because it is delegated by law to the regional government for regulation. Meanwhile, not all local governments have enacted this legislation, whether through Regional Regulations, Governor Regulations, or Regent/Mayor Regulations. In this case, the management conditions, particularly the management agreement, are still subject to a legal vacuum, which frequently results in problems, most notably losses suffered by the owners/Association of Owners and Occupants of House Units, in which case the consumer position relates.

When viewed through the lens of Law No. 8 of 1999 on Consumer Protection, it is stated in the regulation that consumer rights include the right to comfort, security, and safety when consuming goods and/or services, as well as the right to accurate, transparent, and honest information about the conditions and warranties of goods and/or services. On the other hand, business entities have obligations that include having good intentions when conducting business activities, providing accurate, transparent, and honest information about the conditions and warranties applicable to goods and/or services, as well as explaining

⁷ Ibid.,

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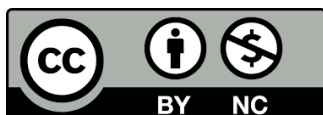
how to use, repair, and maintain the goods and/or services. Thus, one could argue that the condotel management agreement process currently does not reflect the Consumer Protection Act's objectives, particularly in terms of consumer rights to comfort, security, and safety when consuming goods and/or services, as well as the right to accurate, transparent, and honest information. Sincere on the terms and conditions of goods and/or services should be specified in the condotel management agreement. On the other hand, this demonstrates that laws and regulations do not attempt to persuade business owners to prioritize good faith in conducting business activities and always to provide accurate, transparent, and honest information about the conditions and warranties of goods and/or services, as well as to explain their use, repair, and maintenance. As a result, it is necessary to update existing regulations that detail the process of concluding a sale and purchase agreement and managing a condotel.

IV. CONCLUSION

Condotel management agreement process does not reflect what is desired by the Consumer Protection Law, in particular the rights of consumers to comfort, security and safety in consuming goods and/or services as well as the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services. or services that should be clearly stated in a condotel management agreement. On the other hand, this also shows that there is no effort in the legislation to force entrepreneurs in carrying out their obligations to prioritize good faith in carrying out their business activities and to always provide correct, clear and honest information regarding the conditions and guarantees of goods and/or services and provide explanations. use, repair and maintenance. For this reason, it is necessary to update the existing regulations that regulate in detail how the sale and purchase agreement and condotel management should be carried out

REFERENCES

- 1) Hernoko, A. Y. (2008). *Asas Proporsionalitas Dalam Kontrak Komersial*. Laksbang Mediatama.
- 2) HS, S. (2010). *Perkembangan Hukum Kontrak Innominaat di Indonesia*. Sinar Grafika.
- 3) Ibrahim, J. (2004). *Mengupas Tuntas Kredit Komersial dan Konsumtif (Perspektif Hukum dan ekonomi)*. Mandar Maju.
- 4) N.G.N. Renti Maharaini Kerti. (2018). Implementasi Undang-undang nomor 20 tahun 2011 tentang Rumah Susun dalam Perspektif Hukum Perlindungan Konsumen. *Jurnal Legislasi Indonesia, Vol 15 No.*
- 5) Rawls, J. (2011). *A Theory of Justice: Teori Keadilan Dasar-dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara* (U. dan H. P. Fauzan (ed.)). Pustaka Pelajar.
- 6) Remy Sjahdeini, S. (1993). *Kebebasan Berkontrak dan Perlindungan Yang seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*. Institut Bankir Indonesia.
- 7) Rhiti, H. (2016). LANDASAN FILOSOFIS HUKUM PROGRESIF. *Justitia et Pax*. <https://doi.org/10.24002/jep.v32i1.760>
- 8) Ropikhin, E. (2010). *Penerapan Asas Kebebasan Berkontrak dalam Pembuatan Perjanjian Outsourcing dan Perjanjian Kerja Waktu Tertentu*. Universitas Diponegoro Semarang.
- 9) Sari, E. K. (2018). Pemilikan Kondominium Hotel/Kondotel di Bandung, Jawa Barat. *Jurnal Hukum Prioris, Vol. 6 No.*
- 10) Sofie, Y. (2000). *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*. PT. Citra Aditya Bakti.
- 11) Subekti, R. (2004). *Hukum Perjanjian*. Intermasa.
- 12) Widjaja, K. M. & G. (2004). *Perikatan Pada Umumnya*. PT. Raja Grafindo Persada.
- 13) Zakiyah. (2011). *Hukum Perjanjian Teori dan Perkembangannya*. Pustaka Felicha.



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