

## LEGAL VACANCIES IN THE TRANSFER OF RIGHTS TO CLASS III STATE HOUSES IN THE FORM OF FLATS

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### ABSTRACT

Class III state houses are in the form of flats including those whose rights can be transferred either independently and / or in the form of Apartment Units with or without their land by means of leasing, there are sectoral regulations that regulate these matters such as rules regarding state houses, flats, state property, and land registration have the impact of disharmony and legal vacancies. The research method used is the juridical-normative research method. The final part of this research concludes that the validity of Class III State Houses in the Form of Flats must meet the requirements stipulated in statutory regulations, including the status of land rights, the distribution of apartment elements such as shared land, shared objects, and parts together as regulated in the Law on Flats, the existence of the Association of Owners and Occupants of Apartment Units (PPPSRS) which is formed by the agency concerned, as well as the issuance of the Occupancy Permit of Class III State Houses in the Form of Flats. Holders of occupancy permits have rights, namely SIP Holders of State Houses of Category III can apply for transfer of Class III State Houses to the relevant Minister, protection of efforts to apply for transfer of these rights is preventive based on positive law in Indonesia which regulates the transfer can be carried out. There was a vacuum and disharmony in the Legislation regarding the Transfer of Rights to Group III State Houses in the Form of Flats, seen from the existence of Regulations that govern the transfer as in Presidential Regulation Number 11 of 2008, on the other hand there are no regulations governing the transfer of Class III State Houses. In the form of a Flat with the implications regarding the status of the Flat Ownership Unit (*SHM Sarusun*) as well as the status of joint shares, common objects, and common land, whether it can be transferred and managed by the Association of Owners and Residents of Flats (PPPSRS) or still become State Property.

**Keywords:** Class III State Houses in the form of Flats, Transfer of Rights, Validity, Legal Protection

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### INTRODUCTION

The state through institutions at the executive, legislative, and judicial levels can establish and / or provide official housing for civil servants of the institution, a house which is often referred to as a State House is a house provided by the State which is used for shelter and residence for the civil servants. The categorization of state houses is regulated in such a way as the regulations that form the legal basis for the procurement, status determination and procedures for the transfer of state houses.

Classes of state houses are further regulated in Government Regulation Number 40 of 1994 concerning State Houses which is an implementing regulation of Law Number 4 of 1982 concerning Housing and Settlements, namely that the class of State houses is divided into Class I, Class II, and Class III state houses (Intan Ghina Maurizka and Maurizka Ananda Rahmadhani, 2019)

The division of the classes is intended to make it easier for the arrangement and management of state property, the privileges of each of these classes, as a comparison is that

state houses that can be converted into the property of residents are only class III state houses with a regulated procedure mechanism, whether state houses are in the form of ordinary houses or in the form of flats. The legal regime governing Flats is guided by Law Number 20 of 2011 concerning Flats so that there is a need for harmony in statutory regulations so that there is certainty and justice for residents of class III state houses who wish to process applications for transfer of their rights.

The importance of harmonization of statutory regulations governing the transfer of rights to class III state houses in the form of flats is important considering that today many state institutions / ministries carry out the procurement of state houses in the form of flats, so that the process of transferring rights and the basis of rights for residents is clear and recognized and its validity.

The existence of a legal vacuum can of course result in legal uncertainty and legal protection for residents who wish to take care of the application process for the transfer of rights to class III state houses in the form of flat.

## **MATERIALS AND METHODS**

The form of research used in this paper is to use normative juridical research methods, namely research conducted on positive law or laws currently in force in Indonesia, both in writing and not in writing. (Sri Mamudji, 2005). The data used in this study, namely secondary data that is not obtained directly from the field but through the process of searching for library materials, and in the form of secondary legal material in the form of theories taken from various literature works, the 1945 Constitution of the Republic of Indonesia and laws and regulations.

Researchers used data collection tools in the form of document studies and theories and existing regulations. The data analysis method used in processing the data related to this research is a qualitative method because data processing is not done by measuring the secondary data related to it, but descriptively analyzing the data. In a qualitative approach, research procedures produce descriptive analytical data.

## **RESULTS AND DISCUSSION**

State institutions that procure state houses by way of sale and purchase, exchange, build exchange and / or grant must pay attention to the basis of land rights. Flats can be built on land with the use of state property on the condition that the land title certificate has been issued. (Fandy Japto, 2014)

The status of this land right serves to legitimize if in the future the occupants apply for a transfer of rights because a class III state house is one of those whose rights can be transferred in accordance with the provisions of Article 16 of Government Regulation Number 40 of 1994 concerning State Houses.

In the process, a Class III State House will only occur if there is a change in status from the Class II State House stipulated by the Minister of the relevant Ministry, the transfer of this status must pay attention to the land rights holder because the chief of the related institution must first obtain permission from the land rights holder land is another party.

The growing needs for house and home and the current limitations of land have made the construction of flats as an alternative, as is the case with state institutions that procure state houses with this vertical stacked building model. There are requirements that must be fulfilled so that the state house is included in the category of flat, namely the fulfillment of the elements of the apartment such as the existence of *tanah bersama*, *bagian bersama*, and *benda bersama* because of their characteristics and functions are used and enjoyed collectively and are prohibited from being owned individually (Pandelaki et al, 2015).

Arrangements regarding *tanah bersama*, *bagian bersama*, and *benda bersama* must have been determined at the time of construction of a country house in the form of flats, this aims to ensure that the division of boundaries of joint ownership with occupant ownership is certain and clear. There is a fundamental difference regarding the meaning of a Flat, so that it will bring out a double meaning, namely whether the State Flats and the Class III State Houses in the form of Flats are the same thing. Based on the definitions that can be found in the Laws and Regulations, we can find the meaning of both with a comparison of meanings as follows:

<p><b>Law Number 20 of 2011 about Flats</b></p>	<p><b>Government Regulation Number 40 of 1994 concerning State Houses in conjunction with Presidential Regulation Number 11 of 2008 concerning Procurement Procedures, Status Determination, Status Transfer, and Transfer of Rights to State Houses</b></p>
<p>Article 1 paragraph 9 states that: State flats is a flat which is owned by the state and functions as a residence or domicile, a means of fostering a family, as well as supporting the implementation of duties of functionary and / or civil servants.</p>	<p>Article 1 paragraph 7 PP No. 40 of 1994 states that: Class III State Houses are State Houses that are not included in class I and class II which can be sold to residents.</p> <p>Article 1 paragraph 8 of Presidential Decree No. 11 of 2008 states that: Flat is a multi-storey building built in an environment, which is divided into sections that are functionally structured in horizontal and vertical directions and are units that each can be owned separately, especially for a dwelling place, which is equipped with <i>bagian bersama</i>, <i>benda bersama</i> dan <i>tanah bersama</i></p>

Table 1. The differentiation between Law Number 20 of 2011 about Flats and Government Regulation Number 40 of 1994 concerning State Houses in conjunction with Presidential Regulation Number 11 of 2008 concerning Procurement Procedures, Status Determination, Status Transfer, and Transfer of Rights to State Houses

The definition above indicates the existence of similarities and differences, as for the similarities that can be seen that a state house in the form of a flat and a state flat is a building owned by the state which has a function as a place to live and occupy as well as a means of fostering a family that supports the implementation of functionary and / or civil servants. The element of state ownership becomes absolute and its function is clearly regulated for its purpose.

The fundamental difference is that state flats are indeed purely as flats subject to the Law on Flats, whereas state houses of category III are in the form of flats, which are state houses whose building forms are in the form of flats, so that the arrangement of procedures and procurement is based on implementing regulations that can be identified from the existence of Government Regulations and Presidential Regulations that specifically regulate it.

The validity of class III state houses in the form of flats is not only subject to the Implementing Regulations which govern them, but also is bound to the rules of the flat in

general based on the Law concerning flats. Occupancy of a State House can only be granted to functionary or Civil Servants with a Occupancy Permit (*SIP*) issued by an authorized official at the relevant agency.

The obligation to register a state house must be carried out by the official authorized by the agency concerned to the Minister who manages the field of Public Works, the purpose of registering a state house as outlined in the elucidation of Article 13 paragraph (2) of Government Regulation Number 40 of 1994, includes:

1. Knowing precisely and specifically the amount of State assets in the form of houses
2. Compiling a program for the need for the construction of a state house
3. Knowing the amount of financial income to the State from the proceeds from rents, sales, write-offs and taxes on land and buildings
4. Develop a standard of maintenance and take care of costs.

#### **Legal Protection For The Holder Of A Residential License (*SIP*)**

There was an amendment to the Regulation on State Houses in 2005, the amendment was then contained in Government Regulation Number 31 of 2005 concerning Amendments to Government Regulation Number 40 of 1994 concerning State Houses. In the amendment determined that the party who could occupy and inhabit the State House was an functionary or Civil servants who already have a residential permit. (Aprilia, 2015)

Provisions regarding the Occupancy of State Houses are based on the existence of a Occupancy Permit (*SIP*) which is proof of the rights granted to residents of a state house to occupy / occupy granted by the Official / Head of the relevant agency based on Minister of Public Works Regulation Number: 22 / PRT / M / 2008.

The function of law is to provide protection for the interests of humans in the form of legal norms or legal principles. Law as a codification of rules or principles in which there are normative and general (common) terms, the general meaning because it applies to everyone, and the normative meaning because it regulates what is allowed and cannot be done, and determines how to implement compliance with the rules itself. (Mertokusumo, 2003)

Legal protection is divided into 2 (two), namely:

a. Preventive legal protection.

Legal protection in the preventive sense provides an opportunity for the people to raise an objection (*inspraak*) against their opinion before a government decision changes its form definitively. Thus, legal protection in the preventive sense has the objective of preventing disputes and is of great significance for government actions based on freedom of action. And the existence of this preventive legal protection encourages the government to be careful in making decisions related to the *freies ermesen* principle, and the people can raise objections or be asked for their opinions regarding the planned decision.

b. Repressive legal protection

Legal protection in the repressive sense has a resolution function in the event of a dispute. Currently in Indonesia there are various bodies that separately handle legal protection for the community, this division can be grouped into 3 (three) bodies, namely:

- a) The court within the scope of the General Court, in practice a way has been taken to submit a case that occurred to the General Court as an act against the law by a competent authority.
- b) Government institution as administrative appeals institutions that focus on handling legal protection for the people through government agencies which are appellate-level institutions in administrative matters are appeal requests against an action taken by the government by parties who feel their rights have been harmed by the government's actions. Government that have the power to change can even cancel these government actions.

- c) Specialized institution which are bodies that have links and powers to be able to resolve a dispute. (Philipus M. Hadjon, 1987)

Holders of *SIP* Category III State Houses are recognized as entitled to occupy house, including state houses in the form of flats and *SIP* as well as being a condition for being able to apply for the transfer of rights to a class III state house. So that if it meets these requirements the efforts made by the owner of the *SIP* who are gathered in the Association of Flats Residents must be protected by law.

Legal protection for the efforts taken is to ensure that the application process is in accordance with the provisions of the applicable laws and regulations and the relevant Ministries / Institution together with the Minister of Public Works and the Minister of Finance must be open and carry out the General Principles of Good Governance.

### **Transfer Of Rights To Class III State Rights in Flats Form**

Transfer of rights is a legal action of transferring rights to land which is deliberately transferred to another party, as for the form of transfer of rights known in the Basic Agrarian Law, which can be through sale and purchase, carried out by means of exchanges, giving grants, giving according to custom, share in the company (*inbreng*), and grants. (Boedi Harsono, 2008).

There is a special characteristic of State Houses, namely that only Class III State Houses with the status of having received approval from the Minister of Finance as the party managing state property can have their rights transferred, including or excluding land, can only be transferred to the occupants at the request of the residents. (Indriani et al 2019)

Government Regulation Number 40 of 1994 *jo.* Presidential Regulation Number 11 of 2008 regulates that the transfer of rights to class III state houses is the sale of Class III State Houses which are independent and / or in the form of Apartment Units and or not along with the land by means of leasing.

Lease and purchase is carried out by means of an agreement so that it must meet the legal requirements of an agreement based on the provisions of Article 1320 of the Indonesia Civil Code, including:

1. There is a binding agreement;
2. The ability to act in terms of making an agreement;
3. There is a certain thing;
4. There is a cause that is lawful. (Kartini Mujadi and Gunawan Widjaja, 2003).

Based on this, class III state houses in the form of flats can be transferred to residents by fulfilling the requirements, namely having the Association of Owners and Occupants of Flat Units (*PPPSRS*) established by the relevant institution based on Minister of Public Works Regulation No: 22 / PRT / M / 2008.

The procedure for transferring the right to a state house is carried out by means of a legal occupant who meets the requirements as evidenced by the existence of an occupancy permit (*SIP*) submitting an application for the transfer of the right to a Class III State House to the Minister of Public Works with a copy to the head of the relevant institution, then the Minister of Public Works submits a request for approval to The Minister of Finance regarding the Transfer of Rights to Class III State Houses along with or not along with the land, both stand alone and / or in the form of Apartment Units, the transfer of rights only occurs when the Minister of Finance approves the Transfer of Rights and the Minister of Public Works issues a decision on the transfer of rights to the state house and stipulates house prices based on appraisal. (Presidential Decree Number 11 of 2008).

The transfer of rights to a state house can be identified by the issuance of a certificate of ownership rights over the state house by the competent official and the release of land rights by the Director General of Human Settlements of the Ministry of Public Works as the basis for the issuance of a Land Certificate by the Land Office. (Kurniati, 2018)

Based on the above procedure, it can be seen that the approval of the Minister of Finance is an absolute requirement for transferring rights to a state house as such has been regulated in Regulation of the Minister of Finance Number 138/PMK.06/2010 which regulates the requirements for submitting proposals for sale of Class III State House which includes:

- a. Declaration of Class III State Houses proposed for sale is not in a dispute;
- b. Decision to determine the status of Class III State Houses;
- c. Approval of transfer and determination of *BMN* usage status;
- d. Occupancy Permit of Class III State House;
- e. drawing / *legger*, location, year of acquisition, area of land and building of Class III State House;
- f. List of recapitulation of Class III State Houses proposed for sale;
- g. Declaration of feasibility of transferring rights to a Class III State House from a Class III House User.

In the event that there is a transfer of rights to class III state houses in the form of flats, there is still no legal basis governing it, this is because there are no rules governing the administration of State Property in the form of Flats which consists of *bagian bersama*, *benda bersama*, and *tanah bersama*, so that residents who hold a Residential Permit (*SIP*) who are also the Association of Apartment Owners and Occupants (*PPPSRS*) find it difficult to transfer their rights to class III state houses in the form of flats.

State Property Arrangement means a series of sustainable activities consisting of bookkeeping, inventory, and reporting of *BMN* in accordance with statutory regulations. (Gubali et al, 2018)

Basically, ownership rights over apartment units are the object of land registration as in Government Regulation Number 24 of 1997 concerning Land Registration. (Harsono, 2008). However, based on Presidential Decree No.11 of 2008, it regulates that Class III State Houses can be transferred to residents with or without their land, but it does not regulate the status of class III state houses in the form of Flats because the Flat Law regulates things that are not regulated in the regulation regarding the state house, so that if a class III state house is in the form of an apartment its rights are transferred to residents, the implication is that there must be clarity regarding the status of the unit of property rights to the flats as well as the status of *bagian bersama*, *benda bersama*, and *tanah bersama* whether it can be transferred and managed by the Association of Owners Occupants of Apartment Unit (*PPPSRS*).

The issuance of Flats certificate is determined that before the Flats certificate is issued in the name of the individual owner, then beforehand the Flats certificate must be issued in the name of the developer as the first owner, and can be given a name if the flat unit has been sold to the buyer (Wafi et al 2016). Legal vacancies means an absence of statutory regulations that regulate a certain order, so that a legal vacancies is more accurately described as a statutory vacuum or statutory regulation. (Nasir, 2017)

This legal vacancies resulted in legal uncertainty for residents of Class III State Houses in the form of Flats who wish to apply for a transfer of rights, because the ownership status has not been further regulated and of course they cannot immediately apply the existing rules in the Flats Law, given the status Class III State Houses in the form of Flats are State Property where the procedure for transferring them is subject to the statutory regulations concerning State Property.

In addition to the legal vacancies due to the absence of statutory regulations / positive laws regulating it, it appears that there is disharmony of statutory regulations which results in:

- a. Differences in interpretation in the implementation
- b. Generates legal uncertainty
- c. Not implementing laws and regulations effectively and efficiently

- d. Legal dysfunction, which means that the law is unable to provide guidelines for community behavior, social control, and problem solving (Susetio, 2013).

The rules that allow Class III State Houses in the form of Flats to be transferred to their Occupants, on the other hand the mechanism regarding the transfer of State Property in the form of Class III State Houses in the form of Flats is not yet clear about the status of the rights, the basis for which rights can become Ownership of Flats sharing of land together, common shares, as well as common objects that must be in the apartment which will later be managed by the Association of residents of the Flats.

The rapid development of needs in the life of the nation and state must be balanced so that the law must continue to play a role and become the front line in guaranteeing human rights (Arrizal, 2020). The existence of a vacancies and disharmony in statutory regulations creates a double meaning, namely *bagian bersama*, *benda bersama*, and *tanah bersama* can be owned and given to *PPPSRS*, or it can be interpreted differently that the separate parts are still State Property, so that the residents only have units flat and only granted ownership rights over the apartment unit.

This becomes unusual considering that the rules regarding Flats are clearly regulated in the Law, so that in the future it is necessary to fill in the legal vacuum through the issuance of new regulations that specifically regulate the rights of residents of Class III State Houses in the form of Flats who wish to apply for transfer of rights can protected legally so that legal certainty will be achieved.

## CONCLUSION

The validity of Class III State Houses in the form of Flats must meet the requirements stipulated in statutory regulations, including, among other things, the status of land rights, the distribution of apartment elements such as *bagian bersama*, *benda bersama*, and *tanah bersama* as regulated in the Flat Law. The existence of the Association of Owners and Occupants of Apartment Units (*PPPSRS*) which was formed by the agency concerned, as well as the issuance of the Occupancy Permit (*SIP*) of Class III State Houses in the form of Flats.

Holders of occupancy permits (*SIP*) have rights, namely *SIP* Holders of Class III State Houses can apply for transfer of Class III State Houses to the relevant Minister, protection of efforts to apply for transfer of these rights is preventive based on positive law in Indonesia which regulates the transfer can be carried out .

There was a vacancy and disharmony in the Legislation regarding the Transfer of Rights to Class III State Houses in the Form of Flats as seen from the existence of a Regulation that regulates the transferability as in Presidential Regulation No.11 of 2008, on the other hand there are no regulations governing the transfer of Class III State Houses In the form of a Flat with the implications regarding the status of the Flat Ownership Unit/Flat Certificate (*SHM Sarusun*) as well as the status of *bagian bersama*, *benda bersama*, and *tanah bersama*, whether it can be transferred and managed by the Association of Owners and Occupants of Apartment Units (*PPPSRS*) or are still State Property .

As suggestion, first The Minister of Finance must determine the indicators of the approval / disapproval of the application for the transfer of rights to a state house in the form of an flats, so that there is legal protection for *SIP* owners in the process of transferring their rights involving 3 (three) institution, namely the relevant agency, the Ministry of Public Works, and Ministry of Finance. Second, Filling in the legal void can be done by issuing new regulations, generally related implementing regulations and in particular the administration of State Property in connection with Class III State Houses in the form of Flats, which consist of *bagian bersama*, *benda bersama*, and *tanah bersama*, so that the harmonization of

sectoral regulations will be realized. both in the field of Agrarian Affairs, Flats, State Property (State House).

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## **REFERENCES**

### **Books**

- Mamudji, Sri. (2005). *Metode Penelitian dan Penulisan Hukum*. Jakarta : Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Mertokusumo, Sudikno. *Mengenai Hukum Suatu Pengantar*. Yogyakarta: Liberty.
- Hadjon, Philipus M. (1987). *Perlindungan Hukum bagi Rakyat Indonesia; Sebuah Studi tentang prinsip-prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum*. Surabaya : Bina Ilmu.
- Harsono, Boedi. (2008). *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Ed.Rev, Cet 12. Jakarta : Djambatan.
- Mujadi, Kartini dan Widjaja, Gunawan. (2003). *Perikatan yang lahir dari perjanjian*. Jakarta: Raja Grafindo Persada.

### **Journals**

- Aprilia, A.P. (2015) *Problematisasi Hukum Pengaturan Rumah Negara (Inkonsistensi Pasal 51 ayat (2) dan (3) Undang-Undang Nomor 1 Tahun 2011 dengan Pasal 17 ayat (1) angka 2 Peraturan Pemerintah Nomor 31 Tahun 2005)*.
- Arrizal, N.Z. (2020). *The Enforceability Force Majeure's Clause in Performance Of Bussiness Contract During Pandemic Covid 19 In Indonesia*. *Atlantis Press*.volume 499
- E.Pandelaki, E.Purwanto, D. Olivia, W. Agung. (2015). *Faktor-Faktor Pembentuk Kinerja Spasial Rumah Susun Kaitannya Dengan Kepuasan Penghuni*. *MODUL*, vol. 15, no. 2, pp. 85-106, Juli.
- Gubali, M., Tinangon, J., Pusung, R. (2018). *Analisis Penatausahaan Barang Milik Negara Melalui Penggunaan Aplikasi SIMAK-BMN Pada Kantor Kementerian Agama Kabupaten Minahasa*, *Jurnal Riset Akuntansi Going Concern* 13 (3).
- Indriani, E.A. ,Santoso, Budi, Irawati. (2019). *Penyalahgunaan Rumah Dinas Berdasarkan Undang-Undang Nomor 1 Tahun 2004 tentang Perbendaharaan Negara*. *Notarius*. Volume 12 Nomor 2.
- Japto, Fandy. (2014). *Tinjauan Yuridis terhadap pembangunan RUmah Susun yang dibangun dengan pemanfaatan Barang Milik Negara Berupa Tanah berdasarkan Undang-Undang Nomor 20 Tahun 2011 tentang Rumah Susun*. *Premise Law Journal*, vol. 1.
- Kurniati, Nia. (2018). *Pengalihan Hak Rumah Negara Kepada Pegawai Negeri Dalam Penerapan Hukum Sewa Beli*. *Jurnal Bina Mulia Hukum*. Volume 2, Nomor 2, Maret.
- Maurizka, I.G., Rahmadhani, M.A. (2019). *Kepemilikan Rumah Dinas Oleh Purnawirawan TNI Berdasarkan Perundang-undangan*. *Law Review* . Volume XIX No. 1 Juli.
- Nasir, G.A. (2017). *Kekosongan Hukum & Percepatan Perkembangan Masyarakat*. *Jurnal Hukum replik* Volume 5 No.2 September
- Susetio, Wasis. (2013). *Disharmoni Peraturan Perundang-undangan di Bidang Agraria*, *Lex Jurnalica*, Volume 10 Nomor 3, Desember.
- Wafi, M.S. Suharto, R., Malikhatun, S. (2016). *Perolehan Sertipikat Hak Milik Atas Satuan Rumah Susun (Studi di Star Apartemen)*, *Diponegoro Law Journal*, Volume 5, Nomor 3