

LEGAL ENTITY STATUS OF APARTMENT OWNERS AND OCCUPANTS' ASSOCIATION; CONTROVERSIES AMONG REGULATIONS IN INDONESIA

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Abstract

In principle, for an organization to be able to perform its activities as a human being, it must be acknowledged as a legal entity. The same applied to the Apartment Owners and Occupants' Association. This research aims to discuss the historical development and the controversies about the legal entity status of the Apartment Owners and Occupants' Association in Indonesia. The research is normative legal research using secondary data. Analysis was conducted qualitatively by examining the disputing legal norms on the legal entity status of Apartment Owners and Occupants' Association among several relevant regulations of the apartments in Indonesia. The research finds that there was some inconsistency in the lower regulations, especially local government regulations, in interpreting the legal entity status of the apartment. However, further, development proves that the latest lower central government regulations have already in line with the instruction provided in the law of apartments. The research suggests that local government shall amend their regulations about the apartment to make it consistent with the latest central government regulations.

Keywords: Owners and Occupants of Apartment Association, PPPSRS, legal entity, legalization, registration

I. RESEARCH BACKGROUND

The legal entity status of an institution or organization or any other kind of association has become an unfinished debate from a legal point of view. They are corporations, foundations, cooperatives, and community organizations that are legally known to have a status of a legal entity. The legal entity status of a corporation is regulated in Law No.40 of 2007 regarding Corporation as amended by Law No.11 of 2020 regarding Work Creation (the Law of Corporation). The legal entity status of a foundation is regulated in Law No.16 of 2001 regarding Foundation as amended by Law No.28 Of 2004 regarding the amendment of Law No.16 of 2001 regarding Foundation (the Law of Foundation). The legal entity of Community Organization is regulated in Law No.17 of 2013 regarding Community Organization as amended by Law No.16 of 2017 regarding the Stipulation of Government Regulation in Lieu of Law No.2 of 2017 regarding the Amendment of Law No.17 of 2013 regarding Community Organization into

Law (the Law of Community Organization). Meanwhile, the legal status of cooperative is regulated in Law No.25 of 1992 regarding Cooperative as amended by Law No.11 of 2020 regarding Work Creation (the Law of Cooperative). Besides those laws that were made after the independence of the Republic of Indonesia, there is also regulation on association (*Vereenigingen* in Dutch) which was established based on State Gazette 1870 No.64 (the 1870 Regulation) with the title *Rechtspersoonlijkheid van Vereenigingen* (the legal personability of associations).

In September 2021, there was news about disputes happening in one apartment located in North Jakarta. From the preliminary research, the researcher found that one of the main reasons or legal sources of the disputes is the revocation of the legal entity status of the Apartment Owners and Occupants' Association (*Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun = PPPSRS*), by the Governor of DKI Jakarta Province, which caused

mismanagement and administration of the PPPSRS after the revocation took place.

Further research showed that in the year 2018, the Governor of DKI Jakarta issued the Governor of DKI Jakarta Regulation No. 132 of 2018 Regarding the Coaching of the Administration of Owned Apartment (GDKI R 132). One among other matters raised by the GDKI R 132 is the provision of Article 54 paragraph (4) that the Deed of Establishment, the Articles of Association, and Bylaws of the Apartment Owners and Occupants' Association (*Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun* = PPPSRS) must be registered and obtained legalization from the Governor of DKI Jakarta (the DKI Governor). In the same Regulation (the GDKI R 132), Article 60 paragraph (1) states that the Deed of Establishment, the Articles of Association, and Bylaws of PPPSRS must be registered and legalized by the Head of the Department of Public Housing and Residential Areas of Special Capital Region Province Jakarta (Head of PHR DKI) evidenced by the registration number, known, and copied to the Mayor, where the PPPSRS domiciled. The two mentioned provisions are self-conflicting and shall not happen. There is no clear and straight provision concerning the legal entity status of the PPPSRS. However, there is a provision that provides authority to the Department of Public Housing and Residential Areas of Special Capital Region Province Jakarta to revoke the registration and legalization of the Management structure of PPPSRS. There was also no provision about the revocation of the legal entity status or the legalization of the PPPSRS. The only related provision is on the revocation of the registration and legalization of the Management of PPPSRS.

One year later, in the year 2019, the GDKI R 132 was amended by the Governor of DKI Jakarta Regulation No.133 of 2019 Regarding the Amendment of the Governor of DKI Jakarta Regulation No. 132 of 2018 Regarding the Coaching of the Administration of Owned Apartment (GDKI R 133). The GDKI R 133 amended Article 54 paragraph (4) GDKI R 132. One of the main points of the amendment is to delete the self-conflicting provisions. It is stated that the Deed of Establishment, the Articles of Association, and Bylaws of PPPSRS must be registered and legalized by the

Department of Public Housing and Residential Areas of Special Capital Region Province Jakarta. Meanwhile, the provision of Article 60 paragraph (1) of GDKI R 132 remained unchanged in GDKI R 133.

Following the amendment of Article 54 GDKI R 132, GDKI R 133 also amended Article 102 by providing the right to the Department of Public Housing and Residential Areas of Special Capital Region Province Jakarta to revoke the Decree of DKI Jaya Governor regarding the legalization of the Deed of Establishment/ the formation of PPPSRS, or the Decree of Head of PHR DKI regarding the registration and legalization of the Deed of Establishment of PPPSRS; which is not in GDKI R 132. The amendment of Article 102 GDKI R 132 by GDKI R 133 has raised the issue of the revocation of legalization of the Governor DKI Jakarta Decree of the Deed of Establishment/ formation of PPPSRS or the revocation of registration and legalization Department Head of Public Housing and Residential Areas of Special Capital Region Province Jakarta Decree of the Deed of Establishment of PPPSRS. In line with the provisions that allow revocation of registration and legalization of PPPSRS, GDKI R 133 added Article 102B. Article 102B of GDKI R 133 provided the transition provision after the revocation.

In case of the chaos that happened in the North Jakarta Apartment, as mentioned above, it is the revocation of the decree that legalized the formation of the PPPSRS that created the first legal problem in the apartment. The revocation was caused by the mismanagement and maladministration of the PPPSRS by the administrator appointed by the Management at that time. The re-appointment based on the GDKI R 133 has created further chaos, in view that the "temporary" administration of the "revoked legal entity" is given to the previous administrator, that never fulfilled the requirements to become an administrator of PPPSRS based on the law, government regulation and Governor of DKI Jakarta Regulations (the GDKI R 132 and GDKI R 133).

GDKI R 133 was then amended by Governor of DKI Jakarta Regulation No. 70 of 2021 regarding the Second Amendment of Governor of DKI Jakarta Regulation No. 132 of 2018

Regarding the Coaching of the Administration of Owned Apartment (GDKI R 70). GDKI R 70 even makes further problems by creating Teamwork (*Kelompok Kerja*) as the transitional management/ administrator, which needs a lot of additional work, compared to GDKI R 133, after the revocation of the legalization/ legal status of PPPSRS. Further research also found that the reference and existence of Teamwork were never found in the law of apartments as well as in the central government regulations.

The research aims to elaborate the historical framework on the legal entity status of PPPSRS as the association of owners and occupants of an apartment in Indonesia. It will also analyze and prove that there has been a legal misconception in the determination of the legal entity status of PPPSRS in the lower level regulations in central government and local government, which is inconsistent and in violation of the spirit of the content of the law of apartments.

2. METHODOLOGY

The research is juridic normative research because it discusses the normative issues of the legal status of the Apartment Owners and Occupants' Association (PPPSRS) in Indonesia. It uses a descriptive-analytical approach. Descriptive means that the research will describe and elaborate the historical development of the concept of the legal entity status of PPPSRS. Analytical means that the research will analyze and compare the development of legal entity status norms from different levels of regulations, either from central government or local government, especially in this research is the apartment regulations issued by Governor of DKI Jakarta.

The research used secondary data, which mainly consists of primary legal sources, secondary legal sources, and tertiary legal sources. Data were collected through library research, using the internet as a tool. Data were obtained using google search with relevant keywords such as legal entity, apartments, regulations to get the required data that can be used for further analysis. The analysis will be conducted using the qualitative method by using a conceptual approach to explain the (historical development, controversies, and

resolution over) legal entity concept of PPPSRS in Indonesian laws and regulations.

3. CONCEPT OF LEGAL ENTITY UNDER INDONESIAN LAW

In general, the existence of a legal entity in Indonesia can be traced back to the Indonesian Civil Code (ICC) (State Gazette 1847 No.23), which become enforceable in 1848. ICC acknowledges that there are two kinds of civil (private) organizations. They can be found in Article 519 ICC, which is further explained in Article 526 ICC and 527 ICC. Based on Article 519 ICC, there are properties with owners and properties without owners. Concerning ownership, there are three kinds of ownership of a property. There are properties owned by State (Government) (Article 520-525 ICC), properties owned by a legal entity (Article 526 ICC), and properties owned by individuals (Article 527 ICC). Article 527 ICC further states that "individuals" means owned by one person or more persons.

The provision of legal entity can be found in Article 1653 to Article 1665 Chapter IX Book III ICC. The term "legal entity" was used as the translation of "*zedelijke lichamen*." Purbacaraka (1986) suggests using the term "legal person" instead of "legal entity" as the translation of "*zedelijke lichamen*." The Researcher found that both terms "legal entity" and "legal person" refer to the same meaning and concept and will be used interchangeably in this research report. Black's Law Dictionary (2009) defines legal entity by referencing it to "artificial person." The same was also referred to in defining "legal person."

Article 1653 ICC stated that the law acknowledges the existence of a legal person, which consisted of a collection of people, whether it is instituted or recognized by authority (government) or permitted as lawful or founded for a certain purpose, as long as it is not contrary to the law and morality. According to Ali (1987), the legal entity instituted by authority refers to local governments, meanwhile, the legal entity recognized by the government is foundations. It should be noted that Ali's opinion was given before the promulgation of the Law of Foundation. Other legal entities that were permitted or founded for

a certain purpose are political organizations and commercial organizations. In current practice, the legal entity that is founded for a certain purpose can be found in the establishment of a Special Purpose Vehicle (SPV).

Under the 1870 Regulation, an association can only be acknowledged as a legal entity when the Deed of Establishment which contained the Article of Association is legalized by the competent authorities. Under the current situation, the appointed competent authority in Indonesia is the Minister of Law and Human Rights. The legalization by the Minister of Law and Human Rights applies to a corporation based on the Law of Corporation, a foundation based on the Law of Foundation, and for a community organization based on the Law of Community Organization. The same also applies to cooperatives. The Law of Cooperative stated that the legal entity status of cooperative will be obtained after the deed of establishment of the cooperative is legalized by the Government. Under the Minister of Law and Human Rights Regulation No.14 of 2019 regarding the Legalization of Cooperative, the appointed authorized government institution is the Minister of Law and Human Rights. Further, for associations that have their purpose in the field of social, religious, and humanistic activities and do not share their profits with their members, the legalization as a legal entity is also given by the Minister of Law and Human Rights based on the Minister of Law and Human Rights Regulation No.3 of 2016 regarding Procedure for Submission of Legalization of Legal Entity and Approval for Amendment of the Association's Articles of Association.

4. HISTORY OF APARTMENTS, AND DEVELOPMENT OF LEGAL ENTITY STATUS OF THE APARTMENTS OWNERS AND OCCUPANTS' ASSOCIATIONS (PPSRS)

The idea of building apartments in Indonesia has been initiated by Sudiro, the Mayor of the city of Jakarta for the period from 1953 to 1959. The existence of apartments in Indonesia can be found in Jakarta in 1981 (Hanggoro, 2017). The apartment was inaugurated by Soeharto, the second President of the Republic

of Indonesia (Republika, 2020). However, the first law that regulate apartments was only promulgated in 1985, the Law No.16 of 1985 regarding Apartment (the 1985 Law of Apartment). To implement the 1985 Law of Apartment, the Government of the Republic of Indonesia issued Government Regulation No.4 of 1988 regarding Apartment. It was then further implemented by the issuance of the Decree of State Minister of Public Housing as Chairman of Policy and Control Body for National Housing and Residential No.06/KPTS/BKP4N/1995 regarding the Guidance of Making the Deed of Establishment, Articles of Associations, and Bylaws of Association of Occupants of Apartment (*Perhimpunan Penghuni Rumah Susun* (PPRS)).

The apartment has two main parts. The first is the part that belongs to every person or individual, where it can be privately owned, known as Unit of Apartment (Satuan Rumah Susun = SRS). The Unit of the Apartment is managed and maintained by the owner. The ownership of the SRS is called Ownership of Unit of Apartment (Hak Milik atas Satuan Rumah Susun = HMSRS). The other is known as a common area, which consists of the shared part, shared property, and shared land. This common area, which does not belong to any ownership, needs to be maintained and managed. The common area of the SRS is the place where all owners and occupants share the functions and utilities. Therefore to manage the common area the Association of the Occupant (*Perhimpunan Penghuni* (PP)) must be established (Hutagalung, 2004). For easy reference, the terms Association of Occupants of Apartment (PPRS), Association of the Occupant (PP), and PPSRS have the same meaning and refer to the same object and therefore are used interchangeably in this research report.

According to Article 19 paragraph (2) of the 1985 Law of Apartment, the PP is given the status of legal entity. The status of the legal entity gives the authority to the PP to represent the owners and/ or the occupants of the apartment inside and outside the court of law. The General Elucidation of the 1985 Law of Apartment states that the status of the legal entity of the PP is (given) with (the existence of the) Articles of Association and Bylaws that

make the PP can represent the owner of the apartment. The 1985 Law of Apartment does not entitle or provide authorization to any government institution or ministerial to legalize the Deed of Establishment, and/ or the Articles of Association of the PP. This means that the status of a legal entity of the PP exists at the time the PP is established. Theoretically, the legal entity status of PP is obtained when the owners/ occupants of the apartment, which attend the meeting/ forum held to establish the formation of PP, approve the Deed of Establishment that contains the Articles of Association and Bylaws of the PP. Based on Article 19 paragraph (5) 1985 Law of Apartment, further provisions on the PP will be regulated in government regulation.

Following the instruction, which is given by the 1985 Law of Apartment, the Government of the Republic of Indonesia issued Government Regulation No.4 of 1988 regarding Apartment (GR 4-1988) in 1988. Article 54 paragraph (2) GR 4-1988 states that the establishment/ formation of PP was made in a deed that will be legalized by the District Head (Bupati) or Mayor (Walikota) representing the Second Level Regional Head of local government in Indonesia; and for DKI Jakarta Capital Special Region to be legalized by the Governor (the First Level Regional Head of local government in Indonesia). The elucidation of Article 54 paragraph (2) GR 4-1988 explained that to provide legal certainty, all rights and obligations, and responsibilities of all owners and/ or occupants in the apartment, the (establishment) must be made in writing in a form of a deed and be legalized. Point 7 of the General Elucidation of GR 4-1988 states that the legal entity status of the PP was obtained after the deed of establishment of the PP was legalized by the District Head or Mayor for Second Level Region; or Governor for DKI Jakarta Capital Special Region. The statement given by GR 4-1988 that the legal entity status of the PP can only be obtained after being legalized by the District Head/ Mayor or Governor was indeed a "new interpretation" given by GR 4-1988, that cannot be found in the 1985 Law of Apartment. This was indeed the beginning of the conditions that for PP (PPPSRS) to be a legal entity, legalization must be obtained.

Even though there is a statement in Article 71 GR 4-1988 that states that the Article of Association and Bylaws of PP was made by the first Management and then legalized by the General Meeting of the PP. However, there is no further explanation concerning the (purpose of) the legalization of the Article of Association and Bylaws of PP by the General Meeting of the PP. Given those two provisions, Article 54 paragraph (2) dan Article 71, it seems that the GR 4-1988 differentiate between the legalization of the formation (in the form of Deed of Establishment) of the PP by the District Head/ Mayor or Governor for DKI Jakarta Capital Special Region and the legalization of the Articles of Association and Bylaws of the PP by the First General Meeting of the PP. The legalization by the District Head/ Mayor or Governor for DKI Jakarta Capital Special Region is the moment when the PPPSRS gets its legal entity status. Therefore, it can be said that GR 4-1998 is the first regulation below the 1985 Law of Apartment that significantly deviates from the concept of legal entity status of PPPSRS as regulated in the 1985 Law of Apartment.

Further implementation regulation can be found in Decree of State Minister of Public Housing as Chairman of Policy and Control Body for National Housing and Residential No.06/KPTS/BPK4N/1995 regarding the Guidance for Making the Deed of Establishment, Articles of Association, and Bylaws of Association of Occupants of Apartment (the 1995 Decree). The Decree which contents mainly consists of three Attachments never explains when the PP obtains its status as a legal entity. The three attachments consist of the Meeting to Establish the Association of Occupants (Attachment I), the draft of Articles of Association (Attachment II), and the draft of Bylaws (Attachment III). The only Attachment that refers to a (notarial) deed is Attachment II, which must be made before a public notary in the form of a notarial deed. Attachment I is a Minute of Meeting with the content similar to the Articles of Association. It is the Minute of Meeting of the owners and/ or occupants of the apartment that establish the PP. Following the Meeting of Establishment, the first appointed Management will go to Public Notary to make the Articles of Association. There is no mention of the Deed of Establishment, however, following GR 4-

1988, it is the Deed of Establishment that will be legalized by the District Head/ Mayor or Governor for DKI Jakarta Capital Special Region.

There are several other provisions in the Attachments of the 1995 Decree that create ambiguity of when the status of the legal entity of the PPRS is obtained. They can be found in:

1. Attachment I

Point III.3 on the establishment date of the Association of Occupants (PP), which states that it shall start when it is founded and, on the date, when the Articles of Association is legalized by the Local Government and has obtained a status of legal entity.

Point IV.3. on the main duties of the Association of Occupants (PP), which among them is to legalize the Articles of Association and Bylaws of the PP, made by the Management during the General Meeting.

Point V on the Status of PP, which states that the Association of Occupants (PP) has the legal entity status per Article 19 paragraph (2) 1985 Law of Apartment.

Point XVII. 1., which states that as long as the Articles of Association and Bylaws of the PP have not been legalized by the General Meeting, then Occupants In-House set by the Developer of the Apartment shall be in force.

2. Attachment II

Recital of the notarial deed that mentions the consensus reached during the Meeting to establish the PP, which is written down in a Minute of Meeting (which indeed acknowledges that the General Meeting of the owners and/ or occupants has been done, meanwhile in Article 29 of the draft of the Articles of Association it is stated that before the Articles of Association and Bylaws of the PP has been legalized by the General Meeting, then Occupants In-House set by the Developer of the Apartment shall be in force.

Article 4 of the draft of the Articles of Association mentions that the PP shall start on the date it is established and after obtaining the status of legal entity and legalized by Local (Government). The article indicated that the legalization by the Local Government does not qualify for the legal entity status of the PP.

Article 7.1. of the draft of the Articles of Association on the duties of the PP, that is to legalize the Articles of Association and Bylaws made by the Management in the General Meeting of PP of Apartment "XX".

In the year 2011, the 1985 Law of Apartment is replaced by Law No.20 of 2011 regarding Apartment (the 2011 Law of Apartment). In the 2011 Law of Apartment, the term PP or PPRS in the 1985 Law of Apartment is replaced by the term Association of Owners and Occupants of Apartment (*Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun = PPPSRS*). The changing of the term does not change the concept and meaning that it is the association of the owners and/ or occupants of a certain Unit of Apartment.

The status of the legal entity of PPPSRS can be found in article 74 paragraph (3) of the 2011 Law of Apartment. The provision stated that PPPSRS is given legal entity status by this law (the 2011 Law of Apartment). The content in this Article 74 paragraph (3) is exactly similar to Article 19 paragraph (2) 1985 Law of Apartment. This means that the concept and spirit of the legal entity status in both laws of apartment never changed. Even in Article 78 of the 2011 Law of Apartment, the same provision as stipulated in Article 19 paragraph (5) 1985 Law of Apartment is repeated. Article 78 of the 2011 Law of Apartment mentioned that further regulations on PPPSRS will be regulated further in Government Regulation.

GE 4-1988 as the implementation government regulation for 1985 Law of Apartment remained unchanged until the year 2021 when the 2011 Law of Apartment was amended by Law No.11 of 2020 regarding Work Creation (the Law of Work Creation). However, the 1995 Decree was amended in 2018 by the Minister of Public Work and People's Housing Regulation No.23/PRT/M.2018 regarding the Apartment Owners and Occupants' Association (PPPSRS) (the 2018 MPWPH Regulation). The 2018 MPWPH Regulation was replaced by Minister of Public Work and People's Housing Regulation No.14 of 2021 regarding the Apartment Owners and Occupants' Association (PPPSRS) (the 2021 MPWPH Regulation). The 2021 MPWPH Regulation is made to implement the amendment of the 2011 Law of Apartment by the Law of Work Creation in 2020.

2018 MPWPH Regulation clearly stated that the establishment of PPPSRS must be facilitated by the Apartment Developer. One of the facilitating procedures is to set up a Deliberation Committee, which will arrange the whole process of establishing/ formation of the PPPSRS through the meeting of the owners and occupants of the Apartment. From the content, it is clear that PPPSRS is only established once a time for an apartment for the benefit of the owners and occupants of the apartment. It means, as long as the apartment still exists, suitable for living and the owners and/ or occupants remained to stay in the apartment, the PPPSRS may not be dismissed, through revocation, cancellation, annulment, or court decision.

The formation of the PPPSRS itself is conducted by making the Deed of Establishment, including the Articles of Association and Bylaws. The Deed of Establishment, Articles of Association, and Bylaws shall be brought to and be approved by the meeting of the owners and occupants that present during the meeting to be held by the Deliberation Committee (the PPPSRS Formation Meeting). After that, they will be registered to the local District Government/ Municipality technical agency that handles the housing sector, or for DKI Jakarta Capital Special Region the provincial government technical agency that handles the housing sector. There is no legalization required. The only requirement is the registration of the Deed of Establishment, Articles of Association, and Bylaws of the PPPSRS at the latest 14 days after the PPPSRS Formation Meeting.

The 2018 MPWPH Regulation provides two Attachments. The first attachment is the draft of the Deed of Establishment of the PPPSRS which contains the Articles of Association of the PPPSRS. The draft of the contents of the Articles of Association itself can be found in the Second Attachment. There are several points in the draft that need attention:

1. The statement that PPPSRS is established since the date of the PPPSRS Formation Meeting, and on the date when it is registered as a legal entity with the local government. The statement of “the registration” raises the ambiguity as to whether:

a. the registration will provide the legal entity status of the PPPSRS.

b. If so then the Articles of Association need to be made in two steps, the first is after the PPPSRS Formation Meeting and the second is after the registration. However, there is no explanation that the Articles of Association must be made in two steps. Instead, the Deed of Establishment which contains Articles of Association shall only be made once.

2. The content in the draft stated, “before the Articles of Association and Bylaws is legalized by the General Meeting, then the Occupants In-House set by the Developer of the Apartment shall be in force.” It is again the confirmation that the Deed of Establishment shall be made once.

These two provisions in the draft contradict the content of the 2018 MPWPH Regulation, that the formation of PPPSRS is conducted by making the Deed of Establishment and drafting the Articles of Association and Bylaws of the PPPSRS, which will be approved during the PPPSRS Formation Meeting.

Besides those two contradictive provisions, the draft of the contents of the Articles of Association in the 2018 MPWPH Regulation, there is also a provision that states PPPSRS cannot be dissolved by the member of PPPSRS (the owners and the occupants) and can only be dissolved only if the HMSRS has expired and cannot be extended. If the HMSRS expired and cannot be extended, an Extraordinary General Meeting must be conducted. This provision shows that there would be no other causes that may revoke, cancel, annul or event terminate the existence of the PPPSRS.

The Law of Work Creation does not change the provision in the 2011 Law of Apartment that regulates the establishment of PPPSRS. The issuance of the Law of Work Creation was followed by the issuance of Government Regulation No.13 of 2021 regarding the Organization of Apartment (GR 13-2021). The GR 13-2021 totally replaced GR 4-1988. There is an interesting provision in Article 98 paragraph (1) dan paragraph (2) of GR 13-2021. Article 98 paragraph (1) stated that the formation of PPPSRS will be conducted by making the Deed of Establishment with Articles of Association and Bylaws. In

paragraph (2), it is stated that the PPPSRS that has legalized the Deed of Establishment including the Articles of Association and Bylaws shall be registered to the local District Government/ Municipality, or for DKI Jakarta Capital Special Region the provincial government. This statement stipulated in Article 98 paragraph (2) GR 13-2021 has the point that the legalization of the legal status of the PPPSRS is given by the owners or occupants of the Apartment during the deliberation event. The result of the deliberation is the draft of the Articles of Association and Bylaws of PPPSRS, the appointment of the Management and Supervisor of PPPSRS, and the creation of the organizational structure of PPPSRS. The appointed Management will then register the legalized Deed of Establishment including the Articles of Association and Bylaws to the local District Government/ Municipality, or for DKI Jakarta Capital Special Region the provincial government.

Following the issuance of GR 13-2021, the Minister of Public Work and People's Housing issued the 2021 MPWPH Regulation. According to the 2021 MPWPH Regulation, the formation of PPPSRS was conducted by making the Deed of Establishment accompanied by the preparation of the draft of the Articles of Association and Bylaws before a public notary. The formation itself is formalized by carrying out the PPPSRS Formation Meeting. It is in line with Article 14 of the 2021 MPWPH Regulation which explains that the meeting for the formation of PPPSRS is conducted to create the organization structure of PPPSRS, choosing the Management and Supervisor of the PPPSRS, drafting, and legalization of Articles of Association and Bylaws of PPPSRS. The PPPSRS Formation Meeting is only conducted once with the assistance of the apartment developer. During the PPPSRS Formation Meeting, the Articles of Association and Bylaws were discussed to be agreed upon by the owners and occupants that present during the meeting. Once the consent of the draft of the Articles of Association and Bylaws is reached, the Articles of Association and Bylaws of the new PPPSRS are legalized. The legalized Articles of Association and Bylaws are incorporated in the Deed of Establishment of the new PPPSRS. The Deed of

Establishment itself shall contain the statement of the owners and occupants, as the founders of PPPSRS that they have accepted, and approved the establishment of PPPSRS. It is the final achievement/ goal after mutual consensus is reached during PPPSRS Formation Meeting. So, in short, the PPPSRS Formation Meeting will come up with the Deed of Establishment of PPPSRS, which incorporates the agreed and legalized Articles of Association and Bylaws of PPPSRS. Besides, the Deed of Establishment also incorporates the organizational structure of PPPSRS, the appointed Management, and Supervisors of PPPSRS. The Deed of Establishment made in notarial deed is the evidence that PPPSRS has the status as a legal entity. No more additional action needs to be taken to make the PPPSRS a legal entity. It is in accordance with Article 74 paragraph (3) the 2011 Law of Apartment. The Deed of Establishment together with the legalized Articles of Association and Bylaws will be registered at the local District Government/ Municipality technical agency that handles the housing sector, or for DKI Jakarta Capital Special Region the provincial government technical agency that handles the housing sector.

From the explanation given above, it can be understood that PPPSRS is a legal entity. Its legal entity status does not (necessarily) follow the requirement that it must be legalized by a certain government agency or body. PPPSRS has its legal entity status upon the establishment following the PPPSRS Formation Meeting. It is not like the other law that regulates the status of a legal entity, such as a corporation, foundation, community organization, cooperative, and other social religious, and humanistic associations. In common practice, that apply to other legal entity, as mentioned above:

1. status of legal entity is given by legalization of the Articles of Association that is incorporated in the Deed of Establishment by Minister of Law and Human Rights;
2. the Articles of Association is part of the Deed of Establishment and cannot be separated;
3. the Bylaws is never legalized, and some organizations need not have Bylaws;

4. legalization is only given once by the relevant competent authority appointed in the law that governs the establishment of each legal entity;

5. the legalization to become a legal entity by the appointed competent authority provides the right to the authority to revoke, cancel or annul the legalization;

6. the legalization to become a legal entity by the appointed competent authority made the legalization as the State Administrative Decision, which is subject to review for revocation, cancellation, or annulment through State Administrative Court;

7. the law that grants the legalization to become a legal entity by the appointed competent authority will regulate the effect of the revocation, cancellation, or annulment, including the process and procedure for dissolution and the responsibility that arose from such revocation, cancellation, or annulment and the dissolution itself.

Meanwhile, PPPSRS is a legal entity that:

1. need not legalization proses to become a legal entity. Its status as a legal entity is given by law upon establishment;

2. even they are different and made in separated documents, the Articles of Association and Bylaws is one package that cannot be separated discussed during the PPPSRS Formation Meeting and reported to the local District Government/ Municipality technical agency that handles the housing sector, or for DKI Jakarta Capital Special Region the provincial government technical agency that handles the housing sector;

3. the Deed of Establishment shall include among others, is the Articles of Association;

4. The formation of PPPSRS as a legal entity is only once;

5. PPPSRS legal entity cannot be revoked, canceled, or annulled by whomsoever for whatsoever reason;

6. There would be no legal mechanism that can be taken to revoke, cancel, annul, or terminate the legal entity status of PPPSRS;

7. The PPPSRS cannot be dissolved unless the HMSRS is expired and cannot be

extended due to the specific reason of the land and building (apartment);

8. The procedure for dissolution because of the above reason is regulated in the Articles of Association of the PPPSRS.

5. CONCLUSION

From the findings and discussions, it can be said that the mistakes in interpreting the legal entity status of PPPSRS are finally corrected. The thought that to become a legal entity must come from an act of legalization by competent authorities appointed by law, has been the major mistake. It has been clearly defined by the Apartment Law (1985 and 2011) that the legal status of PPPSRS is given upon the formation/ establishment of PPPSRS by the PPPSRS Formation Meeting. Registration is required for administration purposes. Once the appointed management and/ or supervisor of PPPSRS are in default of their duties and obligations, the competent authorities, i.e. the local District Government/ Municipality technical agency that handles the housing sector, or for DKI Jakarta Capital Special Region the provincial government technical agency that handles the housing sector can take action to remove them and reappoint the new one by conducting a General Meeting of the Owners and Occupants of the PPPSRS. No revocation decree must be issued or declared. It can be understood now, why the local government regulations always provide authority to the local government head to legalize the Deed of Establishment, Articles of Association, and Bylaws of PPPSRS before the PPPSRS can have the legal entity status. It is now, the time for the local governments to amend their local regulations to go in line with the GR 13-2021 and the 2021 MPWPH Regulation.

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