



COLUMN
Legal View

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Condominium Confusion

There were two essential laws governing housing development in Indonesia that were promulgated in 2011, i.e., the housing and residential area law and the condominium law. These two laws engendered much debate when they were introduced to the public, but the latter was more controversial than the former. Notably, the latter revokes the previous law promulgated in 1985.

From its pronouncement, one of the controversial issues of the condominium law is the stipulation that condominiums should be for residential or mixed-use. This stipulation has been discussed as well as disregarded. The new law prevents the construction of stand-alone non-residential condominiums after November 2011. On the other hand, even though the law was clear, developers are still constructing and selling stand-alone non-residential condominiums such as trade centers or offices.

This condominium law carries a time bomb that can explode when the government starts to implement the law regardless of the controversy. The time bomb exploded just recently, triggered by a letter from the Chief Bureau of the Ministry of Public Housing (now the Minister of Public Works and Public Housing) in late 2014. The letter was to explain a condominium's function, particularly for non-residential condominiums such as strata shopping centers, offices and trade centers.

This writer did not read the contents of the letter but through information from Kompas.com, one can see that the letter created debate and confusion among those handling land title transfers and particularly the buyers of non-residential condominiums. There were also rumors that the DKI Jakarta government doesn't want to approve the title of division of standalone non-residential condominiums any longer.

The letter from the Chief Bureau was a wake-up call that the provision on residential or mixed-use actually existed and cannot be disregarded. While the particular provision can be seen as illogical, the law is a law and should be followed. Even though the implementing regulations may regulate otherwise, the legal principle of *lex superior*



derogat legi inferiori, means the higher-ranked law waives the lower-ranked law, if conflicting. Thus the higher-ranked law, the condominium law of 2011, should prevail.

So what happens next? There are two alternatives. One, the government may consider the problem as urgent and issue a regulation in lieu of the law. The government may however feel the issue does not necessarily involve the public-at-large, but only those who purchased stand-alone non-residential condominium units. Second, any party can file a claim through the constitutional court to nullify or to amend the provision on residential or mixed-use. The second alternative is more elegant and complies with channels already provided by the law.

Sometimes there is controversy about this or that law, not only on the condominium law. That raises the question on how the draft bill was prepared and decided. Is the procedure already proper? The particular provision on a condominium's function raises reasonable doubt on whether there was sufficient discussion over the draft bill.

Although lawmakers may have had valid reasons when

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promulgating the condominium law, especially on a condominium's function, it is logical that there should have been a transition period before the provision was operative. This event calls on all stakeholders to improve the existing system of forming laws to prevent a similar situation in the future. 