UNRAVELING THE EXISTENCE OF THE CONDOMINIUM
POST-ENACTMENT OF LAW NUMBER 20 YEAR 2011

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Abstract
The function of condominium which were formerly in the form of residential functions, non-residence and mix-use functions now only has two functions, they are residential functions and mixed functions, it has raised a polemic and anxiety due to the existence of condominium with non-residential functions. The polemic continues after the issuance of the Ministry of Public Housing Letter of the Republic of Indonesia, on 30 December 2014, Number 750a / Hk.01.03 / 12/2014 regarding the function of non-residential condominium. To analyze this problem, the authors tried to deeply study the issue of non-residential condominium, especially concerning the legal norms that were formed. Research begins with the inventory of laws and regulations, government policies and other references related to the regulation of non-residential condominium for later implementation of problems that occur. By using a statute approach and conceptual approach. Furthermore, this is a prescriptive analysis research which the results obtained in this study are intended to provide clarity on the regulation of non-residential regulations in order to guarantee the principle of legal certainty.

Keywords
condominium, non-residential functions, regulation

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**Introduction**

The construction of condominium is an alternative solution to the problem of the need for housing and settlements, especially in urban areas where the population continues to increase, because the construction of condominium can reduce the land use, make the open spaces of the city more spacious and it can be used as urban rejuvenation for slum areas (Arie S Hutagalung, 1998;2). Through the construction of condominium, optimization of vertical land use to multi-level will be more effective than the optimization of horizontal land use (Ridwan Halim, 1990: 299).

Based on its function, condominium are divided into 3 types, which are residence, non-residence or mix-use functions. The division of functions of this condominium has differences in its regulations. Article 50 Law Number 20 Year 2011 Republic of Indonesia regarding Condominium (hereinafter abbreviated as Law 20 of 2011) states that the function of condominium is residential or mixed-use. The law does not mention non-residence functions. Whereas in Article 7 of Government Regulation (Peraturan Pemerintah) Republic of Indonesia Number 4 Year 1988 concerning Condominium (hereinafter abbreviated as PP 4 of 1988) states that the function of condominium consists of residence and non-residence functions.

PP 4 of 1988 is the implementing regulation of the old condominium law, which is Law Number 16 Year 1985 concerning Condominium (hereinafter abbreviated as Law 16 of 1985). It has been declared invalid by issuing the Law 20 of 2011.

Although Law 16 of 1985 was declared invalid, PP 4 of 1988 remains declared valid as long as it is not contradictory or has not been replaced with the new one as stated in CHAPTER XIX The Final Provisions of Article 118 of Law 20 of 2011 stated as follows:

When this law comes into force:

1. Law 16 of 1985 concerning Condominium (State Gazette of Republic of Indonesia Year 1985 Number 75, Supplement to the State Gazette of the Republic of Indonesia Number 3318) is revoked and declared not applicable.
2. All laws and regulations which are implementing regulations of Law Number 16 of 1985 concerning Condominium are declared to remain applicable as far as they are not contradictory or have not been replaced with new implementing regulations based on this Law.

On December 30th, 2014, the Head of Bureau of Legal and Civil Services of the Ministry of Public Housing (Kempera) Republic of Indonesia issued letter Number 750a / Hk.01.03 / 12/2014 concerning the function of Non-residence Condominium as a follow-up to the Letter of Head of National land Agency Regional Office of DKI Province concerning the Request for Explanation of the Function of Condominium. The letter contains the following points: (Internasional Seminar, 2016)

1. By the enactment of Law 20 of 2011 concerning Condominium on November 10, 2011, everyone is considered to know the laws and regulations (Legal Fiction Principle).
2. According to the provisions of Article 118 letter b of Law 20 of 2011 concerning Condominium, all laws and regulations as implementing regulations of Law 16 of 1985 concerning Condominium are declared to remain valid as far as they do not conflict or have not been replaced with the new implementing regulations based on this Law, therefore PP 4 of 1988 concerning Condominium is still valid except the provisions concerning the function of non-resident condominium have not been regulated by Law 20 of 2011, which are interpreted as 'contradictory'.

3. Based on what mentioned above, the request for the detail of division of condominium for the Codominium unit (Sarusun) Right to Own certification for non-residentice functions is carried out as follows:
   a. The Request before November 10th, 2011 (marked by the date of issuance of Occupancy Worthiness Permit before that date) which until now has not been completed, can still be completed, the SHM can be issued for the function of non-residential condominium.
   b. The Request after November 10, 2011 (marked by the date of the issuance of Occupancy Worthiness Permit after that date) cannot be served for issuance of a Right to Own Certificate with a non-residence function.

The Point is the contents of the letter stated that the non-residence function of condominium unit in PP 4 of 1988 is contrary to Law 20 of 2011, therefore the certification process for the codominium unit with non-residence functions could not be processed after the issuance of Law 20 of 2011.

Policy of the Head of Bureau of Legal and Civil Services of Ministry of Public Housing (Kempera) Republic of Indonesia has made various parties worried, for example, buyers are threatened that they cannot have Right to Own certificates for the units that have been legally purchased (office units, retail and trade centers) meanwhile, this is a disadvantage for banks for loosing the mortgage even though the construction credit and ownership credit for the units ownership have been disbursed.

Unraveling the Existence of the Condominium Post-Enactment of Law Number 20 Year 2011

The construction of condominium in urban areas is based on the concept of sustainable development, which places humans as the center of development. In its implementation, using the principles of good governance and good corporate governance.

Regarding The existence of the condominium themselves, the basic principles of the construction include: (Subekti, 2015: 46)

1. Integration: Condominium construction is carried out by the principle of integration of regions, sectors between actors, and integration with urban systems;
2. Efficiency and Effectiveness: utilizing available resources optimally, through increasing the intensity of land use and other resources;
3. Law enforcement manifests the existence of legal certainty in settling for all parties, and honoring the values of wisdom that live in the community;
4. Balance and sustainability: heeding the balance of ecosystems and the sustainability of existing resources;
5. Participation: encouraging cooperation and partnerships between the Government and business entities and communities to be able to participate in the planning, development, supervision, operation and maintenance, and management of condominium;
6. Equality: guaranting equality of opportunity for middle-lower income earners to be able to inhabit adequate condominium that are suitable for increasing their welfare;
7. Transparency and Accountability: creating mutual trust between the government, business entities and the society through the provision of adequate information, and being able to be responsible for the performance of the construction to all stakeholders.

As a State law for this reason, considering the potential for developing condominium, thereof it needs to be followed by legal regulation. The legality regulation of condominium was previously legislated through Law Number 16 of 1985 concerning condominium that was promulgated on December 31, 1985 in the Republic of Indonesia State Gazette number 75/1985. This law can be called the Indonesian condominium law, which is the legal basis for managing condominium. Furthermore, the implementing regulations of Law Number 16 of 1985 are contained in Government Regulation Number 4 of 1988. Starting from that date the legal issue regarding condominium has a legal certainty.

Over time, with the consideration that the Law Number 16 of 1965 concerning Condominium is not in accordance with the evolution of the law, the people’s needs, and society participation and the responsibilities and obligations of the State in the implementation of condominium so that they need to be replaced. To answer the law development and the needs of the people who have not been accommodated by Law 16 of 1985, on November 10th, 2011 through the plenary session of the House of Representatives (DPR) officially ratified Law Number 20 Year 2011 on Condominium.

The Definition of condominium based on Article 1 number 1 of Law 20 of 2011 is a multilevel building which is built in an environment divided into functionally structured parts, both in horizontal and vertical directions and are units that each can have and used separately, especially for residential areas equipped with shared parts, shared objects, and shared land.

The Definition of condominium units “satuan rumah susun” in bahasa, hereinafter referred to as sarusun based on Article 1 number 3 of Law 20 of 2011 is an apartment unit whose main purpose is used separately with the main function as a residential place and has a connecting means to public roads.
In the Explanation of Article 1 number 1 of Law 20 of 2011 affirms that condominium intended in this Condominium Law are terms that provide legal understanding for multilevel buildings which always contain a system of individual ownership and joint rights, which are used for residence or non-residence as one integrated development system.

Further explanation of Law No. 20 of 2011 states that Law no. 12 of 2011 creates a firm legal basis relating to the implementation of condominium based on the principles of welfare, justice and equity, nationality, affordability and convenience, efficiency and expediency, independence and togetherness, partnership, harmony and balance, integration, health, preservation and sustainability, safety, comfort, and convenience, as well as security, order and regularity. In this law, the implementation of condominium aims to ensure the realization of worthy and affordable condominium, improve the efficiency and effectiveness of spatial use, reduce area and prevent the emergence of slum housing and settlement, direct the development of urban areas, meet social and economic needs, empower stakeholders, and provide legal certainty in the provision, occupancy, management and ownership of condominium. The regulation in this law also shows the state's bias in meeting affordable housing needs for low income people (MBR) as well as people”s participation in the implementation of condominium.

However, the birth of Law No. 20 In 2011 has caused a specific polemic as previously, there were three function of condominium and now there were only two, which is based on Article 50, the use of condominium is carried out according to the functions: a. residence; or b. mix-use. Then further in Article 52 states that "Every person who occupies, inhabits, or has a condominium unit (sarusun) is obliged to sarusun in accordance with his function".

This polemic arose due to the new Law which is Law No. 20 Year 2011 the function of non-residence condominium is no longer regulated in legally formal in fact that there are still non-residence condominium in practice, moreover the new implementing regulation has not been formed until this day and still refers to Government Regulation (PP) No. 4 of 1988.

The Position of Decree of Head of Bureau of Legal and Civil Services of the Ministry of Public Housing (Kempera) of the Republic of Indonesia Issuing Letter Number 750a / Hk.01.03 / 12/2014 Regarding the Non-Residence Function of Condominium in Relation with Non-Residence Condominium Regulation

Anxiety has come to the buyers of strata office, strata trade center and strata malls who are threatened not being able to have right to own certificates (SHM) for condominium unit (Sarusun). This happened following the issuance of government policy regarding the function of condominium through the Letter of Acting Head of Bureau of Legal and Civil Services of the Ministry of Public Housing (Kemenpera) Republic of Indonesia, dated on December 30th 2014, Number 750a / Hk.01.03 / 12 / 2014 concerning the function of Non-Residence Condominium. In the end of the day, the Minister's Letter caused anxiety to the developers, especially consumers and the banks
regarding the fate of their certificates, from the consumer side, there was worryness related to the fate of their property, then from the banks themselves they were threatened to lose their mortgage right, whereas the construction credit and ownership credit had been disbursed.

The Minister Decree initially aimed to answer the decree of the Head of the DKI Province Regional Office of the National Land Agency, number 3375 / 11-31.300 / XI / 2014 dated 28 November 2014 concerning Request for Explanation of the condominium Function. Furthermore, in the Kemenpera decree stated, for the explanation request of condominium for the freehold title certification of condominium unit for non-residence functions, after November 10th, 2011 (marked by the date of issuance of occupancy permits before that date), the issuance of social SHM with non-residential functions could not be served.

But apart from the problems of the pros and cons and the positive and negative effects that arise from the issuance of the Ministerial Decree of Public Housing, dated on December 30th 2014, Number 750a / Hk.01.03 / 12/2014 concerning the function of Non-Residence Condominium. Hence through this research, the authors try to examine the position of the Ministerial Decree in relation to the applicable law in Indonesia.

Before discussing more about the position of the Ministerial Decree of Public Housing on non-residence condominium, it is necessary to discuss in advance how the establishment of law in Indonesia. As it is known that Indonesia is a state law as stated in the formulation of Article 1 paragraph (3) of the 1945 Constitution which states that "the state of Indonesia is a state law". In a general meaning, a state based on law is that in the country, there is mutual trust between the people and the government. The people believe the government will not abuse their power and vice versa, the government believes that in carrying on its authority, the government will be obeyed and recognized by the people. Whereas in a special meaning, a state based on law means that all state or government actions must be based on legal provisions or can be legally responsible (Chrisdianto Eko Purnomo, 2008:32-33).

As a logical consequence, the order of life of the people, nation and state must be guided by legal norms. Law is placed as a "commander" above other fields such as politics, economics, socio-culture and others. The distinctive features of a rule of law are:

1. Recognition and protection of human rights that contain equality in the political, legal, social, economic and cultural fields.
2. Free and impartial judiciary and not influenced by any authority or power
3. Legality in the meaning of all forms (Bambang Sutiyoso and Sri Hastuti Puspitasari, 2005:9).

Affirming the first key point can be seen as the official perspective or the main basis of national politic of law. With this affirmation, based on official perspective, it clearly shows that Indonesia is a state law. Therefore it must play a role that determines or becomes central in the life of society, nation, and state in Indonesia.
The simple definition of the rechtsstaat is a state that puts the law as the basis of state power and the implementation of the power in all its forms are carried out under the rule of law. In *rechtstaat*, the bond between state and law does not take place in a loose or accidental relation, but an essential bond (Abdul Latief, 2005 :15).

In the State Law, laws is placed as the rules of the game in the state administration, government and state, while the purpose of the law itself is “…opgelegd om de samenleving vreedzaam, rechtvaardig, en doelmatig te ordenen” (placed to organize society to be peaceful, just and meaningful). It means that the goal of the rule of law is the creation of state, government and society, which are based on justice, peace and benefit or meaningfulness. In a state law, the existence of law is used as an instrument in managing the life of the state, government and society (Ridwan HR, 2006 :20).

According to the M.C Burkens the terms of a law state rechstaatn are (Philipus M hadjon, 1996 :78-79):

1. The legality principle, every act of government must be based on the rule of law *(werrelijke grondslag)*. On this basis, the law in the formal meaning and the Constitution itself is the foundation of government action. In this action, the formation of laws is an important part of state law.
2. Division of power, this condition implies that state power must not only rest on one hand.
3. Basic rights *(grondrechten)*, basic rights are targets of legal protection for the people and at the same time limit the power of law formation.
4. Supervision of the court, for the people, there is a channel through a free court to test the legitimacy of government actions *(rechtmatigheids toetsing)*.

For this reason, in the state law, this concrete action is realized through legislation. When talking about the order of legislation Theoretically, the order of laws can be associated to the Hans Kelsen teaching about *Stufenbau des Recht* or The Hierarchy of Law, which means that the rule of law is a tiered arrangement and each lower law principle is derived from a higher principle. To understand *Stufenbau des Recht’s* theory better, it must be connected to other Kelsen teachings, named Reine Rechtslehre or The pure theory of law (mummy theory of law) and that law is nothing but the "command of the sovereign" the will of the ruling. Hans Kelsen said that the law is included in the dynamic norm system because the law is always made and removed by institutions or authorities which are competent to form it, so that in this case, we do not see in terms of the contents of the norms but in terms of enactment or its formation (Ni’matul Huda, 2006: 29).

Furthermore, Hans Kelsen said that relating to the basic functions of the state or power in a country suggests:

“As we have seen, there are not three but two basic function of the state: creation and request (execution) of law, and these function are not coordinated but sub-and
supra-ordinated. Further, it is not possible to define boundary line separating these function from each order, since the distinction between creation and request of law-under lying the dualism of legislative and executive power (in the broadest sense)-has only a relative character, most act of state being at the same time law creating and law applying acts.


“The statement that law is an order of human behavior does not mean that the legal order is concerned only with human behavior; that nothing but human behavior enters into the content of legal rules...facts which are not facts of human behavior may enter into the contents of a legal rule. But they may do so only as related to human behavior, either as its condition or as its effect.”

From what was stated by Hans Kelsen above, actually there are only two functions (not state organs or political institution) of power that exists in a country, which are the function of legal formation and the request of law. The two functions are not in an equal position, meaning that the two functions of power are based on sub-ordinations and some are functioned as super-ordinations. The meaning by the function of power that is super-ordinated is the function of state power in the making of law, while those that have a sub-ordinate function are functions of State power in the implementation of law. The simple reason is that it is not possible to implement or apply the law if there is no law to be implemented which means that the function of legal formation must first work (there are laws formed by organs that carry out legislation functions) and the organ which function implements the laws works afterwards.

In the case of to the formation of legal norms, those can be done in two different ways. first, the first higher norms can determine the organ and procedure of formation and the contents of the lower norms; second, They can determine the formation procedure and the contents of the lower norms at their own discretion. A higher norm at least determines the organ that makes the norm lower. A norm which formation is not determined by another norm at all, (Yohanes Golot Tuba Helan, 2006 :113).

For this reason, the task of legislation will be successful if it reaches a certain level by taking into account the following requirements: (Yohanes Golot Tuba Helan, 2006 :39)

1. The law must be stated in general rules.
2. The law must be announced and those who have an interest in the rule of law must know the contents of the rules.
3. The law must be understood, that people will be able to know what they do.
4. The law must be intended for future events, and not for past events.
5. The law must not conflict one another.
6. The law may not put a burden / requirement that cannot be fulfilled by relevant parties.
7. Law can not change one another
8. The authority / government must obey the rules of the law it forms.
A norm is not a statement about reality. Norm validity is not due to its request. As a unified system, the legal system is tiered, the validity of the laws is an absolute requirement for the enactment of laws. Validity is the specific existence of norms. A valid norm is a statement that assumes the existence of these norms and they have a binding force on the person whose behavior is regulated. Rules are laws and valid laws are norms (Imam Soebech, 2010:135).

Talking about the establishment of the applicable legal norms in Indonesia, then it is indeed in accordance with what was stated by Hans Kelsen related to tiered legal norms, this can be seen in Article 7 of Law Number 12 of 2011 concerning the Legislation of Law which are:

(1) Types and hierarchies of Laws and Regulations consist of:
   a. Constitution of the Republic of Indonesia of 1945;
   b. People's Consultative Assembly Decree;
   c. Law/government Regulation in Lieu of Law Pemerintah Pengganti Undang-Undang;
   d. Government regulations;
   e. Presidential decree;
   f. Province Regulation; and
   g. Regency / Municipality Regulation

(2) The legal force of the Rules in accordance with the hierarchy as referred to in paragraph (1).

Each type of Rules has its own function according to the authority. Furthermore, based on provisions above, it is automatically assumed that lower laws, will not violate or contradict the higher law.

Therefore, according to the hierarchy of Laws, the position of the Ministerial Decree of Public Housing (Kemenpera) of the Republic of Indonesia, dated December 30th 2014, Number 750a / Hk.01.03 / 12/2014 concerning the function of Non-Residence Condominium is weak and does not have a strong legal basis, it is said to be because the Kemenpera’s Circular Letter itself is not part of the hierarchy of applicable Rules in Indonesia. In addition, if we observe and analyze based on the applicable Rules, PP 4 of 1988 concerning Condominium is still valid today, although PP 4 of 1988 which is actually an implementing regulation of the old condominium law, Law Number 16 Year 1985 concerning Condominium, but it is still valid as long as the new government Regulation has not been issued based on Law No. 20 Year 2011. For that matter, anyone also can not deviate the valid higher Rules.

Furthermore, as how Article 8 paragraph (1) and (2) Law No. 12 Year 2011 has stated:

(1) Other kind of Rules than as intended in Article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representatives, Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, agency, institution, or same level commission
established by Law or Government on the instruction of Law, Provincial Regional House of Representatives, Governor, Regency/Municipality Regional House of Representatives, Regent/Municipal Government, the Village Head or the equivalent.

(2) Rules as intended in paragraph (1) recognized and have the force of binding all ordered by higher Rules or established based on authority.

So it is getting clear that the position of the Ministry of Public Housing (MPH) of the Republic of Indonesia, dated 30 December 2014, Number 750a / Hk.01.03 / 12/2014 concerning the function of Non-Residence Condominium has not been stated concretely in the order of Laws.

However, it should also be noted that Indonesia as one of the modern state law not only safeguards security but also actively participates in social affairs for the sake of people's welfare. For the reason that the task of the government in carrying out public interests is really wide. In the case of carrying out all these tasks, the state administration requires independence, the independence which is able to act on its own initiative, especially in resolving the urgent unexpected problems and resolving the regulations that do not yet exist. The regulations which have not been made by state bodies as legislative (Ridwan HR, 2006: 23).

Thus the adoption of the concept of the modern state law or welfare staat does not make the legality principle as characteristic of classic state law or formal state law which requires all government actions to be based on law (wetmatigheid van het bestuur) disregarded or at least the government is possible to carry out certain activities, even though they are not authorized by law, as long as those are intended for the welfare of the people. The meaning of the legality principle which was originally interpreted as government based on the regulation (wetmatigheid van het bestuur), shifted into a government based on law (rechtsmatigheid van het bestuur) (Muhammad Fauzan, 2005:83).

Along with what was mentioned above, if we further examined, the Circular Letter is actually included in the policy rules 'beleidsregels'. The policy rules themselves are based on the 'doelmatigheid' aspect as a form of the Implementation of principle 'freis erassen' or 'beoordelingswijheid', which is the principle of freedom in acting, given to the Government. Based on this principle, the government is given the authority to carry out government tasks which are not always regulated in detailed Rules (Imam Soebech,2010 :147).

The forming of policy rules in the practice of governance practice is a common thing. Therefore, in the implementation of daily governance, it shows how often the state's bodies or state administrative officer often take various measures of policy, including creating what is now often called a policy rule (beleidsregel) ". Thus, it is clear that there is a close relation between the discretion principle or the freis erassen principle with the policy rules. Policy rules are a formal form of policy determined by state administrative officer based on the discretion principle (Arif Christiono Subroto, 2919).
Policy Rules "beleidsregels" are referred to as "rules" because their contents rule, but the form is not stated in the form of certain official rules. The Minister's Letter is one form of quasi-rule or pseudo legislation that cannot be categorized in form, but its contents are regulating or contain regulation (regeling). The Kemenpera Decree is a product of the rules issued along with the authority owned and attached to the Body of state administrative officer or the incumbent of administration to determine policy rules.

If we study further the Ministerial Decree, it can be deciphered by several Position of the Kemenpera Decree, dated on December 30th 2014, Number 750a / Hk.01.03 / 12/2014 concerning the function of Non-Residence Condominium, the Kemenpera Decree, other than described above, is not a regulation because it is clearly not included in the part of the legislation. Secondly, that the Kemenpera Decree is an official script containing announcement, explanations and / or instructions on how to carry out certain things that are considered important and urgent. But presumably the Kemenpera Decree cannot be used as a legal basis for annulling the higher regulations, which is Government Regulations. even though, in the Kemenpera Decree, it is mention that Government Regulation No. 4 Year 1988 is still valid, except that the function of non-residence housing is interpreted as contradictory. It is clear that there is a norm conflict in the Kemenpera Decree because one side acknowledges that PP 4 of 1988 is still valid but on the other side it even states that the rules regarding non-residence houses are no longer valid, meanwhile, it is clearly not the authority of Kemenpera to revoke the validity of PP 4 of 1988 which, other than that, has a higher position in the hierarchy of Rules.

Even though in Law No. 20 of 2011 concerning Condominium, the rules regarding non-residence houses are not mentioned but something that is not regulated not necessarily to be contrary to the laws and regulations. In addition, it is clear that the position of the Kemenpera Decree has no authority and validity to declare a non-residence house contradictory because the position of the Government regulation is clearly higher in the hierarchy of laws and regulations in Indonesia compared to the Kemenpera Decree. Considering that the contents of the Ministerial Decree should only be in the form of announcement, then the content material itself is not a legal norm as the norm of a statutory regulation. Therefore, the Circular Letter can not be used as a legal basis for annulling Government Regulations.

The Kemenpera Decree should merely to clarify the meaning of the rules to be informed. It should only contain instructions or explanations about matters that must be carried out based on existing regulations rather than acting beyond their authority by canceling and declaring non-residence houses contrary to Law 20 of 2011. A Decree such as the Kemenpera Decree should only act as an announcement, that is because it is not the norm.

Furthermore, if we see the Kemenpera Decree, it is an order to certain officials to their subordinates / people under their guidance. However, in the Kemenpera Decree, it was directed to external parties outside of the institution instead. In this case it is to the Head of the National Land Agency. Whereas, the one who formally signed the letter
was not the Minister of Public Housing, known as the Ministry of Public Works and Public Housing (PUPR), because the one who signed the letter was in fact only the Head of Bureau of Legal and Civil Services, meanwhile in administrative perspective in general, those who had the right and authority to issue decrees were Ministers or Acting Minister Officials.

**Conclusion**

That according to Law No. 12 Year 2011, the function of condominium which were formerly in the form of residence functions, non-residence and mix-use functions now only has two functions, which are the function of residence and mix-use functions. It has caused a polemic and anxiety among people because it is related to the existence of condominium in non-residence function.

Especially with the issuance of the Ministry of Public Housing (Kemenpera) Letter, dated December 30, 2014, Number 750a / Hk.01.03 / 12/2014 concerning the function of Non-Residential Condominium (Rusun), has increased polemics for the existence of non-residence condominium, especially when looking at the position of the Kemenpera Decree in the Statutory Provisions in Indonesia that has not been stated concretely in the order of the Rules. if we further examine, the Circular Letter of Ministry is actually included in the policy rules 'beleidsregels'. The policy rules themselves are based on the 'doelmatigheid' aspect as a form of the 'freis ermessen' principle or 'beordelingsvrijheid', which is the principle of freedom in acting, given to the Government. The Kemenpera Decree has no authority and validity to state that the non-residence houses are contradictory because the position of Government regulations is clearly higher in the hierarchy of Indonesian Statutory Provisions than the Kemenpera Decree. Considering that the contents of the Kemenpera Decree should only be in the form of announcement, then the content material itself is not a legal norm as is the norm of Statutory Provisions. Therefore, the Kemenpera Decree cannot be used as a legal basis for annulling Government Regulations. Furthermore, if you look at the Kemenpera Decree, it is an order of certain officials to their subordinates / people under their guidance. However, in the Kemenpera Decree, it was directed to external parties outside of the institution, in this case to the Head of the National Land Agency, even though the one who in fact formally signed the letter was not the Minister of Public Housing which is now known as the Ministry of Public Works and Public Housing (PUPR). Instead, it was only the Head of Bureau of Legal and Civil Services of Ministry of Public Housing who signed the letter, meanwhile, in administrative perspective in general, those who had the right and authority to issue decrees were Ministers or Acting Minister Officials.

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