Article

Status and Position of the SHM of Condominium Units After A Fire: Makassar Mall Shopping Center

Status dan Kedudukan SHM Satuan Rumah Susun Pasca Kebakaran: Pusat Perbelanjaan Makassar Mall

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ABSTRACT

This study will examine and analyze the status and position of the SHM of Condominium Units in the building Blok-A of Makassar Mall after a fire. This research combines normative juridical and empirical research methods. The primary data were collected using direct interviews, while the secondary data was collected using literature study techniques. The data obtained in this research were then analyzed qualitatively. The results show that the SHM of Condominium Units in building Blok-A of Makassar Mall is still in the status quo. Meanwhile, the fire phenomenon and implementation of the construction of the new building Blok-A of Makassar Mall cannot be qualified as a requirement for the removal of the SHM of Condominium Units. In this case, implementing that construction is a form of PT. MTIR's obligation to the Makassar Municipal Government based on the agreement held under the BOT system. In contrast, PT. MTIR made efforts to usurp the rights owned by traders as holders of SHM of Condominium Units in the building Blok-A of Makassar Mall. Therefore, it is recommended that the Makassar Municipal Government re-evaluate the involvement of PT. MTIR as the Holder of the Right to Build for Makassar Mall Shopping Center. In addition, it is recommended that PT MTIR register for the transfer of the right based on Government Regulation No. 24 of 1997 if they continue to impose their will to become the holder of the SHM of Condominium Units in building Blok-A of Makassar Mall. Furthermore, it is recommended that law enforcement agencies conduct investigations related to the Collaboration Agreement No. 44/511.2/SP/HK along with the accompanying addendums. In this case, traders must get legal certainty and protection as holders of SHM of Condominium Units in the building Blok-A of Makassar Mall.

Keyword: Fire Phenomenon; Right to Build; SHM of Condominium Units; Usurp the Rights.

INTRODUCTION

Evidence of ownership of condominium units in Indonesia is often juxtaposed with the term "strata title" (Suharto et al., 2019). The term strata title in the Statutes of the Republic of Singapore on the Sale of Commercial Properties Act 1979 is a legal construction of lot ownership on property with "leasehold" status (Easthope et al., 2013). Meanwhile, what is meant by leasehold in the English dictionary is a building/land for rent (Ayudiatri & Cahyono, 2022). Furthermore, leasehold is defined as a form of property ownership in which one of the parties buys the right to use and occupy space on the land for a specific and relatively long period (Merrill, 2020). In the Indonesian context, leasehold is synonymous with the principle of granting the Right to Build.

PENDAHULUAN

Tanda bukti kepemilikan atas sarusun di Indonesia sering disandingkan dengan istilah "strata title". Istilah strata title dalam Statutes of the Republic of Singapore on the Sale of Commercial Properties Act 1979 merupakan konstruksi hukum kepemilikan lot pada properti dengan status "leasehold". Sedangkan yang dimaksud dengan leasehold dalam kamus Inggris adalah bangunan gedung/tanah yang disewakan. Lebih lanjut, leasehold didefinisikan sebagai suatu bentuk pemilikan properti di mana salah satu pihak membeli hak untuk menggunakan dan menempati ruang di atas tanah untuk jangka waktu tertentu dan relatif lama. Dalam konteks Indonesia, leasehold identik dengan prinsip pemberian Hak Guna Bangunan (HGB).
On the other hand, evidence of ownership of condominium units in Indonesia is still reaping polemics. This condition is caused by two types of evidence of ownership issued by different agencies. In this case, Law of the Republic of Indonesia Number 20 of 2011 on Condominium (hereinafter referred to as Law No. 20 of 2011) includes two types of evidence of ownership, namely:

1. Certificate of the Right of Ownership to Condominium Units (SHM of Condominium Units) issued by the Land Agency in Regency/Municipal; and
2. Certificate of Ownership to Building Units (SKBG) issued by Regency/Municipal technical agency who is in charge and responsible for building development.

Furthermore, some experts still argue that the SHM status of Condominium Units on the Right to Build is not a type of Land Right (Syam et al., 2022). In contrast, Elucidation Article 44 section (1) of Law No. 20 of 2011 explains that:

"AJB is made before the Notary of Land Deed Official for SHM of Condominium Units and Notary for SKBG of Condominium Units as evidence of the transfer of rights."

Article 47 section (5) of Law No. 20 of 2011 regulates that:

"SHM of Condominium Units as referred to in section (1) issued by the Land Agency of Regency/Municipal."

From the polemics and different experts’ perceptions, it can trigger a conflict of ownership and management status between the Owner of the Condominium Units and the Developer as the holder of the Right to Build (Yani & Badriyah, 2022). In addition, conflicts can occur due to implementing Developer policies contrary to applicable laws and regulations (Gumansing, 2019). On the other hand, fire beyond the Developer’s control can also cause conflict between the parties.

One of the conflicts that can be studied on the legal relationship between the Developer and the Owner/Occupant, namely what occurred in building Blok-A of Makassar Mall Shopping Center (hereinafter referred to as Makassar Mall), which is treated as a Non-Residential Condominium building. In this case, several owners with evidence of SHM of Condominium Units had to buy back the kiosk in Blok-A of Makassar Mall, with a new building due to fire. Andi Parenrengi stated that:

"The SHM of Condominium Units held by traders is no longer applicable after the building was torn down."

Several previous studies have a discussion theme similar to this research. Zachman (2020) explained that:

Di sisi lain, tanda bukti kepemilikan atas sarusun di Indonesia masih menuai polemik. Kondisi ini disebabkan oleh dua jenis bukti kepemilikan yang diterbitkan oleh instansi yang berbeda. Dalam hal ini, Undang-Undang Republik Indonesia Nomor 20 Tahun 2011 tentang Rumah Susun (selanjutnya disebut UU No. 20 Tahun 2011) memuat dua tanda bukti kepemilikan, yaitu:

1. Sertifikat Hak Milik Satuan Rumah Susun (SHM Sarusun) diterbitkan oleh Badan Pertanahan di Kabupaten/Kota; dan
2. Sertifikat Kepemilikan Bangunan Gedung (SKBG) diterbitkan oleh instansi teknis Kabupaten/Kota yang bertugas dan bertanggung jawab di bidang bangunan gedung.

Lebih lanjut, sebagian ahli masih berpendapat bahwa status SHM Sarusun di atas Hak Guna Bangunan (HGB) bukan merupakan jenis Hak Atas Tanah. Sebaliknya, Penjelasan Pasal 44 ayat (1) UU No. 20 Tahun 2011, menjelaskan bahwa:

"AJB dibuat di hadapan notaris PPAT untuk SHM sarusun dan notaris untuk SKBG sarusun sebagai bukti peralihan hak."

Pasal 47 ayat (5) UU No. 20 Tahun 2011 mengatur bahwa:

"SHM sarusun sebagaimana dimaksud pada ayat (1) diterbitkan oleh kantor pertanahan kabupaten/kota."

Dari polemik dan perbedaan persepsi para ahli tersebut dapat memicu terjadinya konflik kepemilikan dan status pengelolaan antara Pemilik Sarusun dengan Pelaku Pembangunan sebagai pemegang HGB. Selain itu, konflik dapat terjadi karena penerapan kebijakan Pelaku Pembangunan yang bertentangan dengan peraturan perundang-undangan yang berlaku. Di sisi lain, kebakaran di luar kendali Pengembang juga dapat menyebabkan konflik di antara para pihak.

Salah satu konflik yang dapat dikaji mengenai hubungan hukum antara Pelaku Pembangunan dengan Pemilik/Penghuniya di antara di bangunan Blok A Pasar Perbelanjaan Makassar Mall (selanjutnya disebut Makassar Mall) yang diperlakukan sebagai bangunan Rumah Susun Bukan Hunian. Dalam hal ini, beberapa Pemilik dengan bukti SHM Sarusun harus membeli kembali kios di Blok A Makassar Mall pada bangunan baru karena kebakaran. Andi Parenrengi menyatakan bahwa:

"SHM Sarusun yang dimiliki pedagang sudah tidak berkait lagi setelah bangunan dirbohkan."

Beberapa penelitian sebelumnya memiliki tema pembahasan yang mirip dengan penelitian ini. Zachman

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1Interview Results with the Chairman of the Makassar Mall Central Market Traders Association. Andi Parenrengi, on April 16, 2020.

1Hasil Wawancara dengan Ketua Asosiasi Pedagang Pasar Sentral Makassar Mall. Andi Parenrengi, pada 16 April 2020.
the partisanship of law enforcers to developers seemed
very one-sided, with no further processing of conflicts
in the management of flats. The conflict referred to in
Zachman’s research is between the Developer and The
Association of Owners and Occupants of Condominium
Units (PPPSRS). Meanwhile, this research will describe
the conflict between the Developer and the Owner/Occupant.

Furthermore, Masrofah (2016) explained that
the Owners of Condominium Units did not get SHM of
Condominium Units because the Right to Build had been
encumbrance by Mortgage Rights. The legal certainty
in Masrofah’s Research is that the Developer cannot
provide SHM of Condominium Units to the Owner due
to the encumbrance of Mortgage Rights. Meanwhile, this
research will describe the problem of legal certainty
where the Developer withdraws SHM of Condominium
Units from the Owner due to a fire incident.

In addition, Mokodompit et al. (2021) describe
that prospective owners can purchase Condominium
Units through credit based on Law No. 20 of 2011.
The purchase process by way of credit is done through
banks. Meanwhile, this research will describe that the
prospective Owner purchases Condominium Units
through credit through installment payments to the
Developer.

Based on the description above, this study will
examine and analyze the status and position of the
SHM of Condominium Units in the building Blok-A of
Makassar Mall after the fire.

METHOD

This research combines normative juridical and
empirical research methods. Normative juridical
research analyzes legal problems by referring to and
originating from legal norms (Diantha, 2017). In this
case, laws and regulations are positive laws, and the
Collaboration Agreement is the law for the parties
making it (Soemitro, 1990). In contrast, empirical is
research whose object of study includes the provisions
of laws and regulations (in abstraco) and their application
to legal events (in concreto) (Qamar & Rezah, 2020).
Furthermore, this type of empirical legal research focuses on legal practice as a social phenomenon in
terms of the reciprocal relationships caused by social
phenomena, including economic, political, social,
psychological, and anthropological aspects (Irwansyah,
2021). This research was conducted from June 2019
to September 2022 in the building Blok-A of Makassar
Mall, Makassar City, South Sulawesi Province. The
informant in this study consisted of traders, and trade
associations, PT. MTIR employees, and the NLA officials
of Makassar Municipal were selected with a purposive
sampling technique. The types and sources of data used
in this research are as follows:

menjelaskan bahwa keberpihakan penegak hukum
terhadap pengembang terkesan sangat berat sebesar,
tanpa adanya penanganan lebih lanjut dari konflik
pengelolaan rusun. Adapun konflik yang dimaksud
dalam penelitian Zachman adalah antara Pelaku
Pembangunan dengan Perhimpunan Pemilik dan
Penghuni Satuan Rumah Susun (PPPSRS). Sementara
itu, penelitian ini akan menguraikan konflik antara
Pelaku Pembangunan dengan Pemilik/Penghuni.

Lebih lanjut, Masrofah menjelaskan bahwa
Pemilik Rumah Susun tidak mendapatkan SHM
Sarusun karena HGB telah dibebani Hak Tanggungan.
Adapun kepaatan hukum dalam penelitian Masrofah
adalah Pelaku Pembangunan tidak dapat memberikan
SHM Sarusun kepada Pemilik karena dibebani Hak
Tanggungan. Sementara itu, penelitian ini akan
menguraikan masalah kepastian hukum dimana Pelaku
Pembangunan menarik SHM Sarusun dari Pemilik
karena terjadi kebakaran.

Selain itu, Mokodompit et al., menjelaskan
bahwa calon Pemilik dapat membeli Sarusun melalui
kredit berdasarkan UU No. 20 Tahun 2011. Adapun
proses pembelian dengan cara kredit dilakukan
melalui perbankan. Sementara itu, penelitian ini
akan menggambarkan bahwa calon Pemilik membeli
Sarusun secara kredit melalui pembayaran angsuran
tepat serta pembayaran SHM Sarusun kepada Pelaku
Pembangunan.

Berdasarkan uraian di atas, penelitian ini akan
mengkaji dan menganalisis status dan kedudukan SHM
Sarusun pada bangunan Blok A Makassar Mall pasca
kebakaran.

METODE

Penelitian ini menggabungkan metode penelitian
yuridis normatif dan empiris. Penelitian yuridis
normatif menganalisis permasalahan hukum dengan
mengacu dan bersumber dari norma hukum. Dalam
hal ini, peraturan perundang-undangan adalah hukum
positif, dan perjanjian kerja sama adalah undang-
undang bagi para pihak yang membuatnya. Sedangkan
empiris adalah penelitian yang objek kajianya
meliputi ketentuan peraturan perundang-undangan
(in abstraco) dan penerapannya pada peristiwa hukum
(in concreto). Lebih lanjut, jenis penelitian hukum
empiris ini memfokuskan pada praktik hukum sebagai
fenomena sosial dalam hal hubungan timbal balik yang
disebabkan oleh fenomena sosial, termasuk aspek
ekonomi, politik, sosial, psikologis, dan antropologis.
Penelitian ini dilaksanakan pada bulan Juni 2019 hingga
September 2022 di bangunan Blok A Makassar Mall,
Kota Makassar, Provinsi Sulawesi Selatan. Informan
dalam penelitian ini terdiri dari pedagang, asosiasi
perdagangan, Karyawan PT. MTIR, dan Pejabat BPN
Kota Makassar yang dipilih dengan teknik purposive
sampling. Jenis dan sumber data yang digunakan dalam
penelitian ini adalah sebagai berikut:
1. Primary Data is data obtained directly from informants based on sample determination;

2. Secondary Data is data obtained from searching legal literature, including laws and regulations, references, legal scientific journals, legal encyclopedias, and texts or official publications.

The primary data were collected using direct interviews with six informants. While the secondary data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The data obtained in this research were then analyzed qualitatively to conclude conclusions and answer research purposes.

RESULTS AND DISCUSSION

Collaboration Agreement Renovation and Development of Makassar Mall Shopping Center: Non-Residential Condominium

The Renovation and Development of Makassar Mall is an object of the Collaboration Agreement on land utilization. In this case, the Collaboration Agreement between the Second Level Municipal Government of Ujung Pandang and PT. Melatitunggal Intiraya Number 44/511.2/SP/HK on the Renovation and Development of Ujung Pandang Central Market (hereinafter referred to as the Collaboration Agreement No. 44/511.2/SP/HK). The Collaboration Agreement No. 44/511.2/SP/HK contains several types of activities that are part of the object of the agreement, including:

1. Construction of a market with two types of buildings: Blok-A (kiosks and stalls) and Blok-B (shop fronts and offices);
2. Management and operation of Blok-A and Blok-B buildings; and
3. Other types of activities.

PT. MTIR is obliged to carry out the above activities because it is part of the processes of the Renovation and Development of Makassar Mall. The Collaboration Agreement No. 44/511.2/SP/HK was enacted on July 26, 1991, with the Build-Operate-Transfer (BOT) concept. In this case, based on Article 10 section (2) of the Collaboration Agreement No. 44/511.2/SP/HK, regulates that:

"After the end of the cooperation period, directly without any process and claim for compensation or any claims, the land and buildings and their facilities will become the property of the FIRST PARTY in excellent and well-maintained condition."

On the other hand, Collaboration Agreement No. 44/511.2/SP/HK has undergone five addendums, including:

1. Data Primer, adalah data yang diperoleh langsung dari informan berdasarkan penentuan sampel;
2. Data Sekunder, adalah data yang diperoleh dari penelusuran bahan hukum kepustakaan, berupa peraturan perundang-undangan, referensi-referensi, jurnal ilmiah hukum, ensiklopedia hukum, maupun dari teks atau terbitan resmi.

Pengumpulan data primer dilakukan dengan wawancara langsung dengan enam informan. Sedangkan data sekunder dikumpulkan dengan teknik studi kepustakaan terhadap bahan hukum primer, sekunder, dan tersier. Data yang diperoleh dalam penelitian ini kemudian dianalisis secara kualitatif untuk menyimpulkan kesimpulan dan menjawab tujuan penelitian.

HASIL DAN PEMBAHASAN

Perjanjian Kerja Sama Peremajaan dan Pengembangan Pusat Perbelanjaan Makassar Mall: Rumah Susun Bukan Hunian

Peremajaan dan Pengembangan Makassar Mall merupakan objek Perjanjian Kerja Sama pemanfaatan lahan. Dalam hal ini, Perjanjian Kerja Sama antara Pemerintah Daerah Kotamadya Tingkat II Ujung Pandang dan PT. Melatitunggal Intiraya Nomor 44/511.2/SP/HK tentang Peremajaan dan Pengembangan Pasar Sentral Ujung Pandang (selanjutnya disebut Perjanjian Kerja Sama No. 44/511.2/SP/HK). Perjanjian Kerja Sama No. 44/511.2/SP/HK memuat beberapa jenis kegiatan yang menjadi bagian dari objek perjanjian, antara lain:

1. Pembangunan pasar dengan dua jenis bangunan: Blok A (kios dan los) dan Blok B (front toko dan kantor);
2. Pengelolaan dan pengoperasian bangunan Blok A dan Blok B; dan
3. Jenis kegiatan lainnya.

PT. MTIR wajib melaksanakan kegiatan di atas karena merupakan bagian dari proses Peremajaan dan Pengembangan Makassar Mall. Perjanjian Kerja Sama No. 44/511.2/SP/HK ditetapkan pada tanggal 26 Juli 1991, dengan konsep Bangun, Guna, Serah (BGS).

Dalam hal ini, berdasarkan Pasal 10 ayat (2) Perjanjian Kerja Sama No. 44/511.2/SP/HK, mengatur bahwa:

"Setelah berakhirnya masa kerja sama secara langsung tanpa proses dan tuntutan ganti rugi atau tuntutan apapun juga, maka tanah dan bangunan berikut fasilitasnya menjadi milik PIHAK PERTAMA dalam keadaan baik dan terawat."

Di sisi lain, Perjanjian Kerja Sama No. 44/511.2/SP/HK telah mengalami lima kali addendum, antara lain:
1. Collaboration Agreement between the Second Level Municipal Government of Ujung Pandang and PT. Melatitunggal Intiraya Number 140/511.2/SP/HK on Addendum to Collaboration Agreement Number 44/511.2/SP/HK on the Renovation and Development of Ujung Pandang Central Market;

2. Collaboration Agreement between the Second Level Municipal Government of Ujung Pandang and PT. Melatitunggal Intiraya Number 511.2/024/SP/HK on the Second Addendum to Collaboration Agreement Number 44/511.2/SP/HK on the Renovation and Development of Ujung Pandang Central Market;

3. Collaboration Agreement between the Second Level Municipal Government of Ujung Pandang and PT. Melatitunggal Intiraya Number 511.2/118/SP/HK on the Third Addendum to Collaboration Agreement Number 44/511.2/SP/HK on the Renovation and Development of Ujung Pandang Central Market;

4. Collaboration Agreement between the Second Level Municipal Government of Ujung Pandang and PT. Melatitunggal Intiraya Number 511.2/039/S.Perja/HK on the Fourth Addendum to Collaboration Agreement Number 44/511.2/SP/HK on the Renovation and Development of Ujung Pandang Central Market (hereinafter referred to as the Collaboration Agreement No. 511.2/039/S.Perja/HK).

5. Collaboration Agreement between the Greater Makassar Market Regional Company of Municipal Makassar and PT. Melatitunggal Intiraya Number 511.2/349/VI/S.Perja/PD.Psr/2012 on Addendum to Collaboration Agreement Number 44/511.2/SP/HK on the Renovation and Development of Ujung Pandang Central Market (hereinafter referred to as the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012).

Furthermore, the management and operation period, as based on Article 7 section (2) of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012, regulates that:

“This agreement is calculated based on Article 5 plus the remaining time of the Collaboration Agreement Number 44/511.2/SP/HK dated 26 July 1991 and the fourth Addendum Number 511.2/039/S.Perja/HK dated 20 March 1995 Article 10 section (1).”

Article 5 of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012, regulates that:

“This Collaboration Agreement period was extended by 25 (twenty-five) years.”

Article 10 section (1) of the Collaboration Agreement No. 511.2/039/S.Perja/HK, regulates that:

1. Perjanjian Kerja Sama antara Pemerintah Daerah Kotamadya Tingkat II Ujung Pandang dan PT. Melatitunggal Intiraya Nomor 140/511.2/SP/HK tentang Addendum Atas Perjanjian Kerja Sama Nomor 44/511.2/SP/HK tentang Peremajaan dan Pengembangan Pasar Sentral Ujung Pandang;

2. Perjanjian Kerja Sama antara Pemerintah Daerah Kotamadya Tingkat II Ujung Pandang dan PT. Melatitunggal Intiraya Nomor 511.2/024/SP/HK tentang Addendum Kedua Atas Perjanjian Kerja Sama Nomor 44/511.2/SP/HK tentang Peremajaan dan Pengembangan Pasar Sentral Ujung Pandang;

3. Perjanjian Kerja Sama antara Pemerintah Daerah Kotamadya Tingkat II Ujung Pandang dan PT. Melatitunggal Intiraya Nomor 511.2/118/SP/HK tentang Addendum Ketiga Atas Perjanjian Kerja Sama Nomor 44/511.2/SP/HK tentang Peremajaan dan Pengembangan Pasar Sentral Ujung Pandang;

4. Perjanjian Kerja Sama antara Pemerintah Daerah Kotamadya Tingkat II Ujung Pandang dan PT. Melatitunggal Intiraya Nomor 511.2/039/S.Perja/HK tentang Addendum Keempat Atas Perjanjian Kerja Sama Nomor 44/511.2/SP/HK tentang Peremajaan dan Pengembangan Pasar Sentral Ujung Pandang (selanjutnya disebut Perjanjian Kerja Sama No. 511.2/039/S.Perja/HK).

5. Perjanjian Kerja Sama antara Perusahaan Daerah Pasar Makassar Raya Kota Makassar dengan PT. Melatitunggal Intiraya Nomor 511.2/349/VI/S.Perja/PD.Psr/2012 tentang Addendum Perjanjian Kerja Sama Nomor 44/511.2/SP/HK tentang Peremajaan dan Pengembangan Pasar Sentral Ujung Pandang (selanjutnya disebut Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012).

Selanjutnya, jangka waktu pengelolaan dan pengoperasian, sebagaimana berdasarkan Pasal 7 ayat (2) Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012, mengatur bahwa:

“Perjanjian ini dihitung berdasar Pasal 5 ditambah sisa waktu perjanjian kerja sama Nomor 44/511.2/SP/HK tanggal 26 Juli 1991 dan Addendum keempat Nomor 511.2/039/S.Perja/HK tanggal 20 Maret 1995 Pasal 10 ayat (1).”

Pasal 5 Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012, mengatur bahwa:

“Jangka Waktu Perjanjian Kerja Sama ini diperpanjang 25 (dua puluh lima) tahun.”

Pasal 10 ayat (1) Perjanjian Kerja Sama No. 511.2/039/S.Perja/HK, mengatur bahwa:
“The FIRST PARTY and the SECOND PARTY agree that this Collaboration Agreement period is enacted 25 (twenty-five) years from the date of the inauguration of the Management and Operation of the Ujung Pandang Central Market (Makassar Mall), according to the Decree of the FIRST PARTY Number 505/S. Kep/511.2, namely from 22 September 1994 to 22 September 2019.”

From the provision above, it can be seen that apart from acting as a Developer, PT. MTIR also obtained the right to manage Makassar Mall for 50 years, from 22 September 1994 to 22 September 2044. In contrast, at the time of signing the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012 with the BOT concept, actually against Article 29 section (1) of Government Regulation of the Republic of Indonesia Number 38 of 2008 on Amendment to Government Regulation Number 6 of 2006 on Management of State/Regional Property, which regulates that:

“The period of build-operate-transfer and build-transfer-operate is a maximum of thirty years since the agreement was signed.”

On the other hand, PT. MTIR as the holder of the Right to Build, uses and utilizes the Makassar Mall based on Article 19 of the Collaboration Agreement No. 511.2/039/S.Perja/HK, which is regulated that:

“For the aim of selling the Ujung Pandang Central Market (Makassar Mall) in the Acquisition of Business Places and business development, the new Ujung Pandang Central Market (Makassar Mall) buildings are treated as Non-Residential Condominium buildings whose regulation is adjusted to the applicable law provisions on Condominiums, especially Regional Regulation of the Second Level Municipal of Ujung Pandang on Condominium.”

From the provision above, it can be understood that PT. MTIR has even carried out business activities in the form of a condominium since 20 March 1995. In addition, the management and operation of the building Blok-A of Makassar Mall from 20 March 1995 to 9 November 2011 is also based on Law of the Republic of Indonesia Number 16 of 1985 on Condominium (hereinafter referred to as Law No. 16 of 1985). Therefore, if PT. MTIR makes use of in the form of transfer of rights to the Condominium Unit to the owner, it must be based on Article 9 section (1) of Law No. 16 of 1985, which regulates that:

“As evidence of ownership rights to condominium units, as referred to in Article 8, issued the certificate of the right of ownership to condominium units.”

“PIHAK PERTAMA dan PIHAK KEDUA sepakat, jangka waktu Perjanjian Kerja Sama ini ditetapkan 25 (dua puluh lima) tahun sejak tanggal peresmian Pengelolaan dan Pengoperasian Pasar Sentral (Makassar Mall) Ujung Pandang, sesuai Surat Keputusan PIHAK PERTAMA Nomor 505/S.Kep/511.2 yakni dari tanggal 22 September 1994 s/d 22 September 2019.”

Dari ketentuan di atas, terlihat bahwa selain bertindak sebagai Pelaku Pembangunan, PT. MTIR juga memperoleh hak pengelolaan Makassar Mall selama 50 tahun, terhitung sejak 22 September 1994 hingga 22 September 2044. Sebaliknya, pada saat penandatanganan Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012 dengan konsep BGS, justru bertentangan dengan Pasal 29 ayat (1) Peraturan Pemerintah Republik Indonesia Nomor 38 Tahun 2008 tentang Perubahan Atas Peraturan Pemerintah Nomor 6 Tahun 2006 tentang Pengelolaan Barang Milik Negara/Daerah, yang mengatur bahwa:

“Jangka waktu bangun guna serah dan bangun serah guna paling lama tiga puluh tahun sejak perjanjian ditandatangani.”

Di sisi lain, PT. MTIR sebagai pemegang Hak Guna Bangunan, menggunakan dan memanfaatkan Makassar Mall berdasarkan Pasal 19 Perjanjian Kerja Sama No. 511.2/039/S.Perja/HK, yang mengatur bahwa:

“Untuk kepentingan Penjualan Pasar Sentral (Makassar Mall) Ujung Pandang dalam Perolehan Tempat Usaha dan Pengembangan usahanya, maka bangunan baru Pasar Sentral (Makassar Mall) Ujung Pandang diperlakukan sebagai bangunan Rumah Susun Non Hunian yang pengaturannya disesuaikan dengan ketentuan Perundang-undangan yang berlaku mengatur Rumah Susun, khususnya Peraturan Daerah Kotamadya Daerah Tingkat II Ujung Pandang tentang Rumah Susun.”

Dari ketentuan di atas, dapat dipahami bahwa PT. MTIR bahkan telah melakukan kegiatan usaha dalam bentuk Rumah Susun sejak 20 Maret 1995. Selain itu, pengelolaan dan pengoperasian bangunan Blok A Makassar Mall dari tanggal 20 Maret 1995 sampai dengan 9 November 2011 juga berdasarkan pada Undang-Undang Republik Indonesia Nomor 16 Tahun 1985 tentang Rumah Susun (selanjutnya disebut UU No. 16 Tahun 1985). Oleh karena itu, apabila PT. MTIR memanfaatkan dalam bentuk peralihan hak atas Sarusun kepada pemiliknya, maka harus didasarkan pada Pasal 9 ayat (1) UU No. 16 Tahun 1985, yang mengatur bahwa:

“Sebagai tanda bukti hak milik atas satuan rumah susun sebagaimana dimaksud dalam Pasal 8 diterbitkan sertifikat hak milik atas satuan rumah susun.”
Meanwhile, the transfer of rights to the Condominium Unit conducted by PT. MTIR from 9 November 2011 until now must be based on Article 47 section (1) of Law No. 20 of 2011. The following is a photocopy of the SHM of Condominium Units page as evidence of ownership rights from one of the traders in the building Blok-A of Makassar Mall, which can be seen in the figure below.

**Figure 1. Photocopy of the SHM of Condominium Units Page: Physical Data and Juridical Data**

Gambar 1. Fotokopi Lembar Laman SHM Sarusun: Data Fisik dan Data Yuridis
From the figures above, it can be understood that the transfer of rights to the Condominium Unit was carried out before the signing of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012. In this case, the SHM of Condominium Units is located in building Blok-A of Makassar Mall with four floors, which have not been torn down. Torn down Makassar Mall building was carried out due to the fire incident of 2011.

**Fire Incident in the Building Blok-A of Makassar Mall: Not Part of Force Majeure**

Along with the ongoing management and operation carried out by PT. MTIR, there have been four fire incidents right at the location of the Makassar Mall building, including:
1. The first fire occurred on June 27, 2011;
2. The second fire occurred on November 6, 2013;
3. The third fire occurred on January 13, 2014; and
4. The fourth fire occurred on May 7, 2014.

Darigambardiatas, dapat dipahami bahwa peralihan hak atas Sarusun dilakukan sebelum penandatanganan Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012. Dalam hal ini, SHM Sarusun terletak di bangunan Blok A Makassar Mall berlantai empat yang belum dirobohkan. Pembongkaran bangunan Makassar Mall dilakukan akibat insiden kebakaran tahun 2011.

**Insiden Kebakaran pada Bangunan Blok A Makassar Mall: Bukan Bagian dari Force Majeure**

Seiring dengan berjalannya pengelolaan dan pengoperasian yang dilakukan oleh PT. MTIR, telah terjadi empat kali insiden kebakaran tepat di lokasi bangunan Makassar Mall, antara lain:
1. Kebakaran pertama terjadi pada 27 Juni 2011;
2. Kebakaran kedua terjadi pada 6 November 2013;
3. Kebakaran ketiga terjadi pada 13 Januari 2014; dan
4. Kebakaran keempat terjadi pada 7 Mei 2014.
From the description of the incident above, the first fire was one of the considerations for signing Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012. Meanwhile, one of the other considerations is the transfer of the First Party from the Second Local Municipal Government of Ujung Pandang (Makassar Municipal Government) to the Greater Makassar Market Regional Company of Municipal Makassar.

On the other hand, it is well known that every Collaboration Agreement must contain a clause regarding incidents beyond the control of the parties concerned or force majeure. However, there is a difference in the content of the force majeure clause between Collaboration Agreement No. 44/511.2/SP/HK to Collaboration Agreement No. 511.2/039/S.Perja/HK with Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012. In this case, Article 8 section (2) of the Collaboration Agreement No. 44/511.2/SP/HK regulates that:

“What is meant by incidents beyond the control of the SECOND PARTY is Force Majeure (overmacht), which is a condition resulting from, among others, earthquake, flood, volcanic eruptions, windstorm, and others caused by natural forces, riots, strikes, wars (whether announced or not), amendments to Government Regulations, Government Policies, and mainly monetary reasons (devaluation).”

In contrast, Article 7 section (4) of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012 regulates that:

“SECOND PARTY in constructing a new building and managing the Blok-A Building within the period as referred to in Article 3 section (1), Article 5, and Article 7 section (2), unless there are things beyond the control of the SECOND PARTY (Force Majeure/Over Macht), which is a condition resulting from, among others, earthquake, fire, volcanic eruptions, windstorm, and others caused by natural forces, riots, strikes, wars (whether announced or not), amendments to Government Regulations, and Government Policies on devaluation, then the obligations of the SECOND PARTY shall be null and void without any demands from any party.”

From the provision above, it can be understood that there is the sentence “… others caused by natural forces, riots, strikes, wars (whether announced or not) …”. The fundamental difference from the provision above lies in the absence of the term “fire” in Article 8 section (2) of the Collaboration Agreement No. 44/511.2/SP/HK. In contrast, Article 7 section (4) of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012 contains the term “fire”, which is qualified as force majeure or overmacht.

Dari uraian kejadian di atas, kebakaran pertama menjadi salah satu pertimbangan ditandatanganimnya Perjanjian Kerja Sama No.511.2/349/VI/S.Perja/PD.Psr/2012. Sementara itu, salah satu pertimbangan lainnya adalah pengalihan Pihak Pertama dari Pemerintah Daerah Kotamadya Tingkat II Ujung Pandang (Pemkot Makassar) kepada Perusahaan Daerah Pasar Makassar Raya Kota Makassar.

Di sisi lain, diketahui bahwa setiap Perjanjian Kerja Sama harus memuat klausul tentang insiden di luar kendali pihak yang bersangkutan atau force majeure. Namun, terdapat perbedaan muatan klausul force majeure antara Perjanjian Kerja Sama No. 44/511.2/SP/HK hingga Perjanjian Kerja Sama No. 511.2/039/S.Perja/HK dengan Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012. Dalam hal ini, Pasal 8 ayat (2) Perjanjian Kerja Sama No. 44/511.2/SP/HK mengatur bahwa:

“Yang dimaksudkan dengan keadaan diluar kemampuan PIHAK KEDUA adalah Force Majeure (overmacht) yaitu keadaan sebagai akibat terjadinya antara lain gempa bumi, banjir, gunung meletus, angin ribut, dan lain-lain yang dikarenakan kekuatan alam, huru-hara, pemogokan, perang (baik diumumkan atau tidak), perubahan Peraturan Pemerintah, Kebijaksanaan Pemerintah, khususnya alasan moneter (devaluasi).”

Sebaliknya, Pasal 7 ayat (4) Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012 mengatur bahwa:

“PIHAK KEDUA dalam membangun gedung baru, dan mengelola Bangunan Blok A dalam jangka waktu sebagaimana Pasal 3 ayat (1) dan Pasal 5 serta Pasal 7 ayat (2), kecuali terjadi hal-hal diluar kemampuan PIHAK KEDUA (Force Majeure/Over Macht) yaitu keadaan sebagai akibat terjadinya gempa bumi, kebakaran, gunung meletus, angin ribut, dan lain-lain dikarenakan kekuatan alam, huru-hara, pemogokan, perang (baik diumumkan atau tidak), perubahan Peraturan Pemerintah, Kebijaksanaan Pemerintah tentang devaluasi, maka kewajiban PIHAK KEDUA menjadi gugur tanpa tuntutan dari pihak manapun.”

Dari ketentuan di atas, dapat dipahami bahwa terdapat kalimat “… lain-lain dikarenakan kekuatan alam, huru-hara, pemogokan, perang (baik diumumkan atau tidak) ….”. Perbedaan mendasar dari ketentuan di atas terletak pada tidak adanya kata “kebakaran” dalam Pasal 8 ayat (2) Perjanjian Kerja Sama No. 44/511.2/SP/HK. Sebaliknya, Pasal 7 ayat (4) Perjanjian Kerja Sama Nomor 511.2/349/VI/S.Perja/PD.Psr/2012 memuat kata “kebakaran” yang dikualifikasikan sebagai force majeure atau overmacht.
Fire incidents are generally caused by three factors, namely human actions, building electrical installation, and natural disasters. Meanwhile, the threat of fires in buildings and residential areas is often caused by human carelessness in buildings or housing that does not follow the applicable building safety standards (Indra, 2015). Furthermore, BNPB (2009) describes that an electric short circuit, an exploding stove, or a candle flame/oil lamp striking a mattress are common causes of fires in buildings and settlements. Areas in Indonesia that need to be watched for this threat include DKI Jakarta, Bogor, Depok, Tangerang, Bekasi, Bandung, Surabaya, Makassar, Medan, Denpasar, Semarang, Pekanbaru, Palembang, Padang, and other cities. In this case, areas with high population density and industrial areas that use fuel and other hazardous materials.

Fire incidents can only be qualified as force majeure if natural forces and unpredictable factors cause them (Simanjuntak, 2017). Unpredictable in the sense that it is not negligence or there is an element of sabotrage to the incident. Meanwhile, the first incident that occurred on 27 June 2011 is related to natural disasters, then it is essential to describe the context of the incident at that time.

Fires caused by natural factors include lightning, earthquake, volcanic eruptions, windstorm, droughts, and others caused by natural disasters (Heryati, 2020). Muh. Syam Abd. Rasyid stated that:

“The weather at that time was typical. It was also impossible for lightning to occur because it was not raining at that time.”

Meanwhile, climate conditions based on the history of BMKG (2022a) monitoring at the Paotere Maritime Meteorological Station can be seen in the following table.

Table 1. Climate Report for Makassar on 27 June 2011
Tabel 1. Laporan Iklim Makassar pada 27 Juni 2011

| Indicator                          | Value   |
|-----------------------------------|---------|
| Minimum Temperature/Suhu Minimum  | 25.0°C  |
| Maximum Temperature/Suhu Maksimum | 31.6°C  |
| Average Temperature/Suhu Rata-rata| 27.6°C  |
| Sunshine Duration/Durasi Penyinaran Matahari | 5.8 Hour |
| Maximum Wind Speed/Kecepatan Angin Maksimum | 8 m/s  |
| Average Wind Speed/Kecepatan Angin Rata-rata | 2 m/s  |

Source: Database Center, BMKG (2022a)
Sumber: Pusat Database, BMKG (2022a)
The table above shows that the values of the temperature and wind speed indicators in Makassar are not included in the category of natural disasters. Furthermore, the depth and magnitude based on the history of BMKG (2022b) monitoring in Indonesia can be seen in the following table.

Table 2. Earthquake Report for Indonesia on 27 June 2011
Tabel 2. Laporan Gempa Bumi Indonesia pada 27 Juni 2011

| Time    | Latitude  | Longitude    | Depth  | Magnitudo |
|---------|-----------|--------------|--------|-----------|
| 11:15:49| -7.97°    | 107.42113°   | 35.3 Km| 2.90 SR   |
| 16:47:15| 1.36°     | 128.22958°   | 80.8 Km| 4.74 SR   |
| 20:20:12| -9.28°    | 122.46221°   | 139.4 Km| 5.65 SR  |
| 23:25:51| -2.38°    | 136.64931°   | 90.4 Km| 4.86 SR   |

Source: Database Center, BMKG (2022b)
Sumber: Pusat Database, BMKG (2022b)

The table above shows the location based on the coordinates and time of the earthquake in Indonesia on 27 June 2011. Meanwhile, there is no earthquake report at the coordinates of the Paotere Maritime Meteorological Station based on the history of BMKG (2022b) monitoring.

Based on the data and information above, it can be concluded that natural disasters were not the cause of the first fire in building Blok-A of Makassar Mall on 27 June 2011. Therefore, the first fire cannot be qualified as force majeure. In this case, the incident does not meet the elements of the sentence “... others caused by natural forces...” as regulated in Article 8 section (2) of the Collaboration Agreement No. 44/511.2/SP/HK.

While the second to fourth fire incidents have no legal relationship with the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012. In this case, the object of the fire was not the new building Blok-A of Makassar Mall but the emergency kiosk built by the traders after the first fire. In addition, the fire is qualified as force majeure in Article 7 section (4) of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012 is the new building Blok-A of Makassar Mall. In this case, the new building Blok-A of Makassar Mall, started operating for the first time on 5 July 2017 (Basri, 2017).

PT. MTIR’s Obligations to the Object of the Agreement Based on the BOT System: The Building Blok-A of Makassar Mall After A Fire

Makassar Mall is the object of the agreement held under the BOT system based on Article 10 section (2) of the Collaboration Agreement No. 44/511.2/SP/HK. As a Non-Residential Condominium, Makassar Mall also consists of two types of buildings: Blok-A (kiosks and

Kewajiban PT. MTIR terhadap Objek Perjanjian Berdasarkan Sistem BGS: Bangunan Blok A Makassar Mall Pasca Kebakaran

Makassar Mall adalah objek perjanjian yang diselenggarakan dengan sistem BGS berdasarkan Pasal 10 ayat (2) Perjanjian Kerja Sama No. 44/511.2/SP/HK. Sebagai Rumah Susun Bukan Hunian, Makassar Mall juga terdiri dari dua jenis bangunan: Blok A (kios dan
status dan lokasi dan Blok-B (shop fronts and offices). Therefore, PT. MTIR must ensure that Blok-A and Blok-B buildings are always in excellent and well-maintained condition. In this case, that condition is the right of the Makassar Municipal Government after the end of the Collaboration Agreement No. 44/511.2/SP/HK.

On the other hand, it has been described previously that the first fire incident occurred on June 27, 2011, resulting in the must-torn down of the building Blok-A of Makassar Mall. While the analysis of the fire incident on 27 June 2011 cannot be qualified as force majeure. In addition, PT. MTIR has promised, as based on Article 22 section (1) of the Collaboration Agreement No. 44/511.2/SP/HK, which regulates that:

“The SECOND PARTY promises, that all costs for implementing the Renovation and Development of Ujung Pandang Central Market along with all the facilities and equipment in accordance with the mutual agreement will be borne by the SECOND PARTY.”

From the provision above, it can be understood that to avoid default on the agreement held under the BOT system, PT. MTIR bears all costs for implementing the Renovation and Development of Makassar Mall. In this case, it covers the construction, management, and operation process of the Blok-A and Blok-B buildings of Makassar Mall until the end of that Collaboration Agreement period. Therefore, all costs for implementing the construction after the torn down of building Blok-A of Makassar Mall will be borne by PT. MTIR. All costs for implementing the construction of the new building Blok-A of Makassar Mall, as based on Article 4 of the Collaboration Agreement No. 511.2/349/VI/S.Perja/PD.Psr/2012 regulates that:

“PIHAK KEDUA berjanji, berdasarkan Pasal 22 ayat (1) Perjanjian Kerja Sama No. 44/511.2/SP/HK untuk menghindari wanprestasi atas perjanjian yang diselenggarakan dengan sistem BGS, PIHAK KEDUA menanggung seluruh biaya pelaksanaan Peremajaan dan Pengembangan Makassar Mall. Dalam hal ini, meliputi proses pembangunan, pengelolaan, dan pengoperasian bangunan Blok A dan Blok B Makassar Mall sampai dengan berakhirnya masa Perjanjian Kerja Sama tersebut. Oleh karena itu, seluruh biaya pelaksanaan pembangunan setelah diruntuhkannya bangunan Blok A Makassar Mall akan ditanggung oleh PT. MTIR. Seluruh biaya pelaksanaan pembangunan bangunan baru Blok A Makassar Mall, berdasarkan Pasal 4 Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012 mengatur bahwa:

“PIHAK KEDUA berjanji, berdasarkan Pasal 22 ayat (1) Perjanjian Kerja Sama No. 44/511.2/SP/HK untuk menghindari wanprestasi atas perjanjian yang diselenggarakan dengan sistem BGS.”

Dari ketentuan di atas, dapat dipahami bahwa untuk menghindari wanprestasi atas perjanjian yang diselenggarakan dengan sistem BGS, PIHAK KEDUA menanggung seluruh biaya pelaksanaan Peremajaan dan Pengembangan Makassar Mall. Dalam hal ini, meliputi proses pembangunan, pengelolaan, dan pengoperasian bangunan Blok A dan Blok B Makassar Mall sampai dengan berakhirnya masa Perjanjian Kerja Sama tersebut. Oleh karena itu, seluruh biaya pelaksanaan pembangunan setelah diruntuhkannya bangunan Blok A Makassar Mall akan ditanggung oleh PT. MTIR. Seluruh biaya pelaksanaan pembangunan bangunan baru Blok A Makassar Mall, berdasarkan Pasal 4 Perjanjian Kerja Sama No. 511.2/349/VI/S.Perja/PD.Psr/2012 mengatur bahwa:

“PIHAK KEDUA berjanji, berdasarkan Pasal 22 ayat (1) Perjanjian Kerja Sama No. 44/511.2/SP/HK untuk menghindari wanprestasi atas perjanjian yang diselenggarakan dengan sistem BGS.”

Status and Position of the SHM of Condominium Units in the Building Blok-A of Makassar Mall After A Fire

Specific incidents resulting in the torn down of the Condominium building are phenomena that have occurred several times in Indonesia (Setiawati, 2020). These
incidents also often create legal problems, especially the status and position of the SHM of Condominium Units for the Owner (Ariyanti et al., 2019). The owner must accept the consequence that in the event of an incident resulting in the torn down of the Condominium building, the SHM of Condominium Units shall be null and void due to the absence of the building (Budiman, 2022).

However, if the torn down of the Condominium building is not caused by force majeure, then the Developer must be responsible for rebuilding. Therefore, with the rebuilding of the Condominium building, the SHM of Condominium Units will remain valid in the new building.

The explanation above can also explain the status and position of the SHM of Condominium Units in the building Blok-A of Makassar Mall after the fire. In legal reality, PT. MTIR is reselling Condominium Units in the new building Blok-A of Makassar Mall. PT. MTIR held a draw for 1,800 new locations on 23 October 2014 at Hasanuddin Building, Lantamal VI Makassar Headquarters (Basri, 2014). The draw was attended by traders who wanted to buy and own Condominium Units in the new building Blok-A of Makassar Mall. Kahar said that:3

"PT. MTIR invites traders to discuss the price of the new kiosk if they want to continue their trade in the new building Blok-A of Makassar Mall."

Masliang said that:4

"I had to repurchase it because PT. MTIR said that the SHM of Condominium Units in the building Blok-A of Makassar Mall after the fire was no longer valid because the building had been torn down."

On the other hand, Muh. Indra Tahir said that:5

"Physical data and juridical data in SHM of Condominium Units in the building Blok-A of Makassar Mall are different from the site plan in the new building. So the SHM of Condominium Units is declared null and void and must be returned to PT. MTIR."

From the explanation above, it can be understood that the traders do not know the legal facts of the status of the new building Blok-A of Makassar Mall. In this case, the new building Blok-A of Makassar Mall, is a building that cannot be separated from objects in the Collaboration Agreement No. 44/511.2/SP/HK. In addition, implementing that construction is a form of PT. MTIR’s obligation to the Makassar Municipal Government is based on the agreement held under the BOT system.

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3Interview Results with the Ujung Pandang Central Market Trader. Kahar, on May 29, 2022.
4Interview Results with the Ujung Pandang Central Market Trader. Masliang, on June 9, 2022.
5Interview Results with the PT. MTIR employees. Muh. Indra Tahir, on March 24, 2022.

juga sering menimbulkan permasalahan hukum, terutama status dan kedudukan SHM Sarusun bagi Pemilik. Pemilik harus menerima konsekuensi bahwa apabila terjadi insiden yang mengakibatkan runtuhnya bangunan Rumah Susun, maka SHM Sarusun menjadi gugur karena tidak adanya bangunan tersebut.

Namun, jika runtuhnya bangunan Rumah Susun bukan karena force majeure, maka Pelaku Pembangunan harus bertanggung jawab untuk membangun kembali. Oleh karena itu, dengan dibangunnya kembali bangunan Rumah Susun, maka SHM Sarusun akan tetap berlaku pada bangunan yang baru.

Penjelasan di atas juga dapat menerangkan status dan kedudukan SHM Sarusun pada bangunan Blok A Makassar Mall pasca kebakaran. Dalam realitas hukumnya, PT. MTIR menjual kembali Sarusun pada bangunan baru Blok A Makassar. PT. MTIR menggelar pengundian 1.800 lokasi baru pada 23 Oktober 2014 di Gedung Hasanuddin, Markas Lantamal VI Makassar. Pengundian tersebut diikuti oleh para pedagang yang ingin membeli dan memiliki Sarusun pada bangunan baru Blok A Makassar. Kahar mengatakan bahwa:3

"PT. MTIR mengajak para pedagang untuk mendiskusikan harga kios baru jika ingin melanjutkan perdagangan di bangunan baru Blok A Makassar Mall."

Masliang mengatakan bahwa:4

"Saya harus membeli kembali karena PT. MTIR mengatakan bahwa SHM Sarusun pada bangunan Blok A Makassar Mall setelah kebakaran tidak berlaku lagi karena bangunan sudah dirobohkan."

Di sisi lain, Muh. Indra Tahir mengatakan bahwa:5

"Data fisik dan data yuridis dalam SHM Sarusun pada bangunan Blok A Makassar Mall berbeda dengan site plan pada bangunan baru. Sehingga SHM Sarusun dinyatakan batal demi hukum dan harus dikembalikan kepada PT. MTIR."

Dari penjelasan di atas dapat dipahami bahwa para pedagang tidak mengetahui fakta hukum status bangunan baru Blok A Makassar Mall. Dalam hal ini, bangunan baru Blok A Makassar Mall, merupakan bangunan yang tidak dapat dipisahkan dari objek dalam Perjanjian Kerja Sama No. 44/511.2/SP/HK. Selain itu, pelaksanaan pembangunan tersebut merupakan bentuk kewajiban PT. MTIR kepada Pemkot Makassar berdasarkan kesepakatan yang diselenggarakan dengan sistem BGS.
On the other hand, there is a legal mechanism to qualify the removal of SHM of Condominium Units. Article 52 section (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration (hereinafter referred to as Government Regulation No. 24 of 1997) regulates that the registration of removal of land rights, management rights, and ownership rights to condominium units is carried out by the Head of the Land Office by affixing a note to the land book and measuring document and destroying the certificate of the right in question, based on:

- data in the land book kept at the Land Office, if it concerns rights whose validity period is limited;
- a copy of the decree of the competent authority that the right in question has been canceled or revoked;
- a deed stating that the right in question has been relinquished by the right holder.

Article 55 section (3) of Government Regulation No. 24 of 1997 regulates that:

“The recording of the removal of land rights, management rights, and ownership rights to condominium units based on a Court decision is carried out after obtaining a decision letter regarding the removal of the right in question from the Minister or his appointed Official as referred to in Article 52 section (1).”

From the provisions above, it can be understood that the fire phenomenon and implementing the construction of the new building Blok-A of Makassar Mall cannot be qualified as a requirement for the removal of the SHM of Condominium Units as referred to in Article 52 section (1). Therefore, it is not justified if PT. MTIR conveys to Traders that the removal of the SHM of Condominium Units is due to differences in physical and juridical data between the building Blok-A of Makassar Mall and the site plan in the new building.

In this case, the announcement should be submitted by the National Land Agency (NLA) as the authorized agency. Article 60 section (2) of Government Regulation No. 24 of 1997 regulates that:

“The Head of the Land Office announces that the replacement certificate has been issued for land rights of ownership to land or ownership rights to condominium units as referred to in section (1) and is no longer valid the old certificate in one of the local daily newspapers at the expense of the petitioner.”

At the same time, NLA officials explained that:

Interv

6Interview Results with the NLA officials of Makassar Municipal, on September 7, 2022.

Di sisi lain, terdapat mekanisme hukum yang mengatur hapusnya SHM Sarusun. Pasal 52 ayat (1) Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 tentang Pendaftaran Tanah (selanjutnya disebut PP No. 24 Tahun 1997) mengatur bahwa pendaftaran hapusnya suatu hak atas tanah, hak pengelolaan dan hak milik atas satuan rumah susun dilakukan oleh Kepala Kantor Pertanahan dengan membubuhkan catatan pada buku tanah dan surat ukur serta memusnahkan sertifikat hak yang bersangkutan, berdasarkan:

- data dalam buku tanah yang disimpan di Kantor Pertanahan, jika mengenai hak-hak yang dibatasi masa berlakunya;
- salinan surat keputusan Pejabat yang berwenang, bahwa hak yang bersangkutan telah dibatalkan atau dicabut;
- akta yang menyatakan bahwa hak yang bersangkutan telah dilepaskan oleh pemegang haknya.

Pasal 55 ayat (3) PP 24 Tahun 1997 mengatur bahwa:

“Pencatatan hapusnya hak atas tanah, hak pengelolaan dan hak milik atas satuan rumah susun berdasarkan putusan Pengadilan dilakukan setelah diperoleh surat keputusan mengenai hapusnya hak yang bersangkutan dari Menteri atau Pejabat yang ditunjuknya sebagai man dimaksud dalam Pasal 52 ayat (1).”

Dari ketentuan tersebut di atas, dapat dipahami bahwa fenomena kebakaran dan pelaksanaan pembangunan bangunan baru Blok A Makassar Mall tidak dapat dikualifikasikan sebagai persyaratan untuk hapusnya SHM Sarusun sebagai man dimaksud dalam Pasal 52 ayat (1). Oleh karena itu, tidak dibenarkan jika PT. MTIR menyampaikan kepada Pedagang bahwa hapusnya SHM Sarusun dikarenakan perbedaan data fisik dan data yuridis antara bangunan Blok A Makassar Mall dengan site plan di bangunan baru. Dalam hal ini, pengumuman harus disampaikan oleh Badan Pertanahan Nasional (BNP) selaku instansi yang berwenang. Pasal 60 ayat (2) PP No. 24 Tahun 1997 mengatur bahwa:

“Kepala Kantor Pertanahan mengumumkan telah diterbitkannya sertifikat pengganti untuk hak milik atas tanah atau hak milik atas satuan rumah susun sebagaimana dimaksud pada ayat (1) dan tidak berkakunya lagi sertifikat yang lama dalam salah satu surat kabar harian setempat atas biaya pemohon.”

Pada saat yang sama, pejabat BPN menerangkan bahwa:

6Hasil Wawancara dengan Pejabat BPN Kota Makassar, pada 7 September 2022.
“SHM of Condominium Units in the building Blok-A of Makassar Mall is still in the status quo. However, it is necessary to maintain land registration data due to physical data and juridical data changes.”

From the information above, it can be concluded that the SHM of Condominium Units is still in the status quo. Meanwhile, the fire phenomenon has resulted in the implementation of the construction of the new building Blok-A of Makassar Mall does not have a legal impact on the removal of the SHM of Condominium Units. In this case, Traders must apply for maintaining land registration data for SHM of Condominium Units at the NLA of Makassar Municipal office. Article 36 of Government Regulation No. 24 of 1997 regulates that:

1) Maintaining land registration data is carried out if there is a change in physical data or juridical data on land registration objects which have been registered.

2) The concerned right holder must register the changes referred to in section (1) to the Land Office.

Therefore, the actions were taken by PT. MTIR attempts to usurp the rights owned by traders as holders of SHM of Condominium Units in the building Blok-A of Makassar Mall. In contrast, if PT. MTIR continues to impose its will to become the holder of the SHM of Condominium Units in building Blok-A of Makassar Mall, registration for the transfer of the right must be carried out. Article 36 section (1) of Government Regulation No. 24 of 1997 regulates that:

“The transfer of land rights and ownership rights to condominium units through sale and purchase, exchange, grants, income in the company, and other legal acts of transfer of rights, except the transfer of rights through auction, can only be registered if it is evidenced by a deed made by the authorized Land Deed Official according to the provisions of the applicable laws and regulations.”

From the provisions above, it can be understood that the first step PT. MTIR must take to become the holder of the SHM of Condominium Units in building Blok-A of Makassar Mall is to ensure the deed made by the Land Deed Official. In contrast, it is not how PT. MTIR conveys information contrary to legal procedures so that traders give up their ownership rights for free.

On the other hand, traders do not understand the legal issues related to the status of SHM of Condominium Units in building Blok-A of Makassar Mall. However, based on Article 39 section (1) point a of Government Regulation No. 24 of 1997 regulates that:

“SHM Sarusun pada bangunan Blok A Makassar Mall masih berstatus quo. Namun demikian, perlu dilakukan pemeliharaan data pendaftaran tanah karena adanya perubahan data fisik dan data yuridis.”

Dari keterangan di atas, dapat disimpulkan bahwa SHM Sarusun masih dalam status quo. Sementara itu, fenomena kebakaran mengakibatkan pelaksanaan pembangunan bangunan baru Blok A Makassar Mall tidak berdampak hukum terhadap hapsnusnya SHM Sarusun. Dalam hal ini, Pedagang harus mengajukan permohonan pemeliharaan data pendaftaran tanah untuk SHM Sarusun di BPN Kota Makassar. Pasal 36 PP No. 24 Tahun 1997 mengatur bahwa:

1) Pemeliharaan data pendaftaran tanah dilakukan apabila terjadi perubahan pada data fisik atau data yuridis obyek pendaftaran tanah yang telah terdaftar.

2) Pemegang hak yang bersangkutan wajib mendaftarkan perubahan sebagaimana dimaksud pada ayat (1) kepada Kantor Pertanahan.

Oleh karena itu, tindakan yang dilakukan PT. MTIR merupakan upaya perampasan hak yang dimiliki oleh pedagang selaku pemegang SHM Sarusun pada bangunan Blok A Makassar Mall. Sebaliknya, jika PT. MTIR tetap memaksakan kehendaknya untuk menjadi pemegang SHM Sarusun pada bangunan Blok A Makassar Mall, maka harus dilakukan pendaftaran peralihan hak. Pasal 36 ayat (1) PP No. 24 Tahun 1997 mengatur bahwa:

“Peralihan hak atas tanah dan hak milik atas satuan rumah susun melalui jual beli, tukar menukar, hibah, pemasukan dalam perusahaan dan perbuatan hukum pemindahan hak lainnya, kecuali pemindahan hak melalui lelang hanya dapat didaftarkan jika dibuktikan dengan akta yang dibuat oleh PPAT yang berwenang menurut ketentuan peraturan perundang-undangan yang berlaku.”

Dari ketentuan di atas, dapat dipahami bahwa langkah awal yang harus dilakukan PT. MTIR untuk menjadi pemegang SHM Sarusun pada bangunan Blok A Makassar Mall adalah dengan memastikan adanya akta yang dibuat oleh PPAT. Sebaliknya, bukan bagaimana PT. MTIR menyampaikan serangkaian informasi yang bertentangan dengan prosedur hukum sehingga pedagang melepaskan hak kepemilikannya secara cuma-cuma.

Di sisi lain, meskipun para pedagang belum memahami permasalahan hukum terkait status SHM Sarusun pada bangunan Blok A Makassar Mall. Namun, berdasarkan Pasal 39 ayat (1) huruf a PP No. 24 Tahun 1997 mengatur bahwa:
“Land Deed Official refuses to make a deed, if regarding the plot of land which has been registered or ownership rights to condominium units, to him not submitted the original certificate of the right in question or the certificate submitted is not in accordance with the lists in the Land Office.”

However, from the series of descriptions above, the legal phenomenon has shown that traders as holders of SHM of Condominium Units in the building Blok-A of Makassar Mall have not received legal certainty and protection. In this case, some traders still fight for their rights by filing a lawsuit up to the cassation stage ([Makassar State Court, 2018]). Several other traders are still holding on to the emergency stalls because they refuse to re-purchase Condominium Units in the new building Blok-A of Makassar Mall. In contrast, several traders have bought back Condominium Units by credit to PT. MTIR to carry out product sales activities in the new building Blok-A of Makassar Mall.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the SHM of Condominium Units in building Blok-A of Makassar Mall is still in the status quo. Meanwhile, the fire phenomenon and implementation of the construction of the new building Blok-A of Makassar Mall cannot be qualified as a requirement for the removal of the SHM of Condominium Units. In this case, implementing that construction is a form of PT. MTIR’s obligation to the Makassar Municipal Government based on the agreement held under the BOT system. In contrast, PT. MTIR made efforts to usurp the rights owned by traders as holders of SHM of Condominium Units in the building Blok-A of Makassar Mall. Based on the description of these conclusions, it is recommended that the Makassar Municipal Government re-evaluate the involvement of PT. MTIR as the Holder of the Right to Build for Makassar Mall Shopping Center. In addition, it is recommended that PT MTIR register for the transfer of the right based on Government Regulation No. 24 of 1997 if they continue to impose its will to become the holder of the SHM of Condominium Units in building Blok-A of Makassar Mall. Furthermore, it is recommended that law enforcement agencies conduct investigations related to the Collaboration Agreement No. 44/511.2/SP/HK along with the accompanying addendums. In this case, traders must get legal certainty and protection as holders of SHM of Condominium Units in the building Blok-A of Makassar Mall.

“PPAT menolak untuk membuat akta, jika mengenai bidang tanah yang sudah terdaftar atau hak milik atas satuan rumah susun, kepadanya tidak disampaikan sertifikat asli hak yang bersangkutan atau sertifikat yang diserahkan tidak sesuai dengan daftar-daftar yang ada di Kantor Pertanahan.”

Namun dari rangkaian uraian di atas, fenomena hukum menunjukkan bahwa para pedagang selaku pemegang SHM Sarusun pada bangunan Blok A Makassar Mall belum mendapatkan kepastian dan perlindungan hukum. Dalam hal ini, sebagian pedagang masih memperjuangkan haknya dengan mengajukan gugatan hingga tahap kasasi. Beberapa pedagang lain masih bertahan di lapak darurat karena menolak membeli kembali Sarusun pada bangunan baru Blok A Makassar Mall. Sebaliknya, beberapa pedagang telah membeli kembali Sarusun secara kredit kepada PT. MTIR untuk melakukan kegiatan penjualan produk pada bangunan baru Blok A Makassar Mall.

KESIMPULAN DAN SARAN

Berdasarkan hasil dan pembahasan di atas, dapat disimpulkan bahwa SHM Sarusun pada bangunan Blok A Makassar Mall masih dalam status quo. Sedangkan fenomena kebakaran dan pelaksanaan pembangunan bangunan baru Blok A Makassar Mall tidak dapat dikualifikasikan sebagai persyaratan untuk hapusan SHM Sarusun. Dalam hal ini, pelaksanaan pembangunan tersebut merupakan bentuk kewajiban PT. MTIR kepada Pemkot Makassar berdasarkan kesepakatan yang diselenggarakan dengan sistem BGS. Sebaliknya, PT. MTIR melakukan upaya perampasan hak yang dimiliki oleh pedagang selaku pemegang SHM Sarusun pada bangunan Blok A Makassar Mall. Berdasarkan uraian kesimpulan tersebut, direkomendasikan kepada Pemkot Makassar untuk mengevaluasi kembali keterlibatan PT. MTIR selaku Pemegang HGB Pusat Perbelanjaan Makassar Mall. Selain itu, direkomendasikan kepada PT. MTIR untuk melakukan pendataan peralihan hak berdasarkan PP No. 24 Tahun 1997 jika tetap memaksakan kehendaknya untuk menjadi pemegang SHM Sarusun pada bangunan Blok A Makassar Mall. Lebih lanjut, direkomendasikan agar instansi penegak hukum melakukan investigasi terkait Perjanjian Kerja Sama No. 44/511.2/SP/HK beserta adendum yang menyertainya. Dalam hal ini, pedagang harus mendapatkan kepastian dan perlindungan hukum selaku pemegang SHM Sarusun pada bangunan Blok A Makassar Mall.
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