

Understanding Article 102b of the Governor of DKI Jakarta Regulation No. 70 Year 2021 Regarding the Second Amendment to the Governor of DKI Jakarta Regulation No. 132 of 2018 Regarding the Coaching of the Administration of Owned Apartment

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Abstract

The Governor of DKI Jakarta Regulation No.70 Year 2021 regarding the Second Amendment to the Governor of DKI Jakarta Regulation No.132 Year 2018 regarding the Coaching of the Administration of Owned Apartment, which was issued on September 1, 2021, has made changes in several provisions in the previous Governor's Regulation. One of the changes is Article 102B. This study discusses the meaning of the change, thoughts on the implementation, and its transitions. This research is normative legal research, which uses secondary data. The analysis was carried out qualitatively through a descriptive-analytical approach to find answers to the objectives of this study. As a guide, this research conducts analysis using Gustav Radbruch's perspective.

Keywords

Condominium; revocation of ratification; temporary management



I. Introduction

On September 1, 2021, the Governor of DKI Jakarta issued Governor of DKI Jakarta Regulation No.70 Year 2021 regarding the Second Amendment to the Governor of DKI Jakarta Regulation No.132 Year 2018 regarding the Coaching of the Administration of Owned Apartment (Pembinaan Pengelolaan Rumah Susun Milik) (PerGub70), which replaces and changes several provisions previously regulated in Governor of DKI Jakarta Regulation No.133 Year 2019 regarding the Amendments to the Governor of DKI Jakarta Regulation No.132 Year 2018 regarding the Coaching of the Administration of Owned Apartment (PerGub133). The changes include the following provisions:

1. Article 45, which regulates the conditions to be appointed as the Management and Supervisor of the Association of Owners and Occupants of Apartment (Persatuan Pemilik dan Penghuni Satuan Rumah Susun = PPPSRS);
2. Article 60 regarding the registration and ratification of the Deed of Establishment, Articles of Association and Bylaws of the Association of Owners and Occupants of Apartment;
3. Article 62 regarding the registration and ratification of changes in PPPSRS' Management or Supervisor;
4. Article 102A regulating the formation of the Apartment (Administration) Problem Settlement Team (Tim Penyelesaian Permasalahan (Pengelolaan) Rumah Susun = TP3RS) to resolve issues during the administration of the apartment;
5. Article 102B regulating the legal consequences as the result of the revocation of the decision of the Governor of DKI Jakarta regarding the ratification of the establishment and management of the Association of Owners and Occupants of Apartment, as a result of the imposition of sanctions for violations of Article 102;

6. Article 102C regulating issues in the environment of the owned apartment, the Association of Owners and Occupants of Apartment; and
7. Article 105 regarding the transitional provisions.

Of the many changes made in PerGub70, the crucial thing to observe is the change in the provisions of Article 102B in PerGub70 to the provisions of Article 102B in PerGub133. This needs to be observed in particular, considering that in the provisions of Article 102B PerGub70 creates a Working Group (Kelompok Kerja = POKJA) that carries out (temporary) administration activities of an apartment which replaces the formulation of the word "the party who carries out the administration continues to carry out the administration."

Government is not built to serve its own needs, but aims to serve the needs and interests of the community and create conditions that allow each member of the community to develop their abilities and creativity to achieve common goals (Perdana, 2019).

This study aims to find out and analyze the application of Article 102B of the PerGub70, especially relating to the period after the revocation of ratification of the Association of Owners and Occupants of Apartment as a continuing process with the implementation of Article 102B which has been carried out based on PerGub133 within the framework of Gustav Radbruch's thinking.

II. Review of Literature

Gustav Radbruch is one of the German legal scholars who has influenced the development of law in Germany. Radbruch produced two writings before the second world war. The first was entitled *Grundzuuge der Rechtsphilosophie* (Main Feature of Legal Philosophy) in 1914, which he wrote even before the first world war, and the second *Rechtsphilosophie* (Legal Philosophy) in 1932, which was written before the second world war (Bix, 2011) (Alexy, n.d.).

In his 1932 article, entitled "*Rechtsphilosophie*," as quoted by Alexy (n.d.), Radbruch (1932) explained, "Law is the reality whose sense is to serve the value of law, the idea of law." Alexy (n.d.) states that Radbruch's philosophy of legal values and legal ideas consists of a triad. The triad is justice, expediency, and legal certainty. In Radbruch's view, justice is an absolute, formal, and universal concept. What is fair to one person is fair to everyone. While the concept of expediency refers more to needs at the individual level, which may differ from general justice. Furthermore, the concept of legal certainty is intended to provide a sense of security and order in society (Leawoods, 2000). Alexy (n.d.) explains that justice is a general concept. Benefit refers to a goal that must be achieved, whether a person, group, or human goal in general. Legal certainty complements the existing shortcomings of the two existing concepts, namely justice and expediency. Furthermore, Bix (2011), in his writings, quotes Radbruch (1932) which states:

However unjust the law in its content may be, by its very existence.., it fulfills one purpose, viz., that of legal certainty. Hence, while subservient to the law without regard to its justice, the judge nevertheless does not subserve mere accidental purposes of arbitrariness. Even when he ceases to be the servant of justice because that is the will of the law, he remains the servant of legal certainty. We despise the parson who preaches in a sense contrary to his conviction, but we respect the judge who does not permit himself to be diverted from his loyalty to the law by his conflicting sense of the right.

Based on the above explanation, many legal scholars then refer to Radbruch as a positivist who prioritizes legal certainty over justice and expediency. In his subsequent developments after the second world war, Radbruch wrote a change in his views on the value of law and legal ideas (Wolf, 1958). In the Fourth Minute in Five Minutes of Legal Philosophy, Radbruch (1945) states:

Of course, it is true that the public benefit, along with justice, is an objective of the law. Furthermore, of course, laws have value in and of themselves, even bad laws: the value of securing the law against uncertainty. Moreover, of course, it is true that owing to human imperfection, the three values of the law—public benefit, legal certainty, and justice—are not always united in laws harmoniously, and the only recourse, then, is to weigh whether validity is to be granted even to bad, harmful, or unjust laws for the sake of legal certainty, or whether validity is to be withheld because of their injustice or social harmfulness. One thing, however, must be indelibly impressed on the consciousness of the people as well as of jurists: There can be laws that are so unjust and so socially harmful that validity, the indeed legal character itself, must be denied them.

A year later, in his writings "Statutory Lawlessness and Supra-Statutory Law," published in 1946, he introduced the Radbruch Formula. In the formula, Radbruch states that "an unjust law is no law." (Alexy, n.d.) This was stated by him in addressing the problem between legal certainty and justice, where Radbruch (1946) stated:

The conflict between justice and legal certainty may well be resolved in this way: The positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as 'flawed law,' must yield to justice.

From the explanation stated above, Radbruch believes that the laws made must have a sense of justice for humankind, benefit in general and exclusive or specific, and provide legal certainty, which in the end creates order for all members of society. In the author's view, there is no change in Radbruch's perception of the triad of justice, expediency, and legal certainty in Radbruch's philosophy before and after the second world war. Radbruch's view of a fair legal paradigm aligns with the mechanism that the laws made must not conflict with higher rules. In the context of the hierarchy of laws and regulations in force in Indonesia, the laws made must not conflict with human rights regulated in the 1945 Constitution and the legal philosophy of Pancasila. It is just that before the second world war, the understanding of human rights has not developed rapidly, so there are still perspectives that are not fully visible.

III. Research Method

This research is normative legal research. This study uses secondary data, namely data that is already available to the public. The data used mainly consists of applicable laws and regulations, especially those related to the Governor of DKI Jakarta Regulation, which regulates the coaching of the administration of an owned apartment, which is regulated in the Governor of DKI Jakarta Regulation Number 132 Year 2018 regarding the Coaching of the Administration of Owned Apartment (PerGub132), PerGub133 and PerGub70, as well as several laws and regulations relevant to government administration activities, including Law No.30 Year 2014 regarding Government Administration (Government Administration Law).

This research is applied research that aims to explain and solve the phenomenon of changes in Article 102B PerGub133 with PerGub70. Its implementation is in a transitional period where Article 102B PerGub133 has been implemented but remained to be continued with PerGub70. The analysis was carried out qualitatively, namely by reviewing the meaning of the legal principles contained in Article 102B of the two regulations and synchronizing them as a unitary implementation based on legal concepts and views according to Gustav Radbruch.

This study does not analyze the legal vertical synchronization of the Governor of DKI Jakarta Regulations, PerGub132, PerGub133, and PerGub70 with the laws and regulations above them, such as the Minister of Public Works and Public Housing Regulation No.14 Year 2021 regarding the Association of Owners and Occupants of Apartment, Government Regulation No.13 Year 2021 regarding Organizing the Apartments, as well as Law No. 20 of 2011 regarding Apartments, as partially amended by Law No.11 Year 2020 regarding Job Creation. Research on this subject was conducted and discussed separately and published independently.

IV. Results and Discussion

Analysis of Implementation of Article 102b of the Governor of DKI Jakarta Regulation No.70 Year 2021 In Gustav Radbruch's Perspective

One of the amendments that PerGub70 made over PerGub133 is the provision stipulated in Article 102B. Article 102B paragraphs (1), (2), and (3) of PerGub70 regulates the legal consequences revocation of the decision of the Governor of DKI Jakarta regarding the ratification of the establishment and management of PPPSRS, as follows:

- (1) In the event of a revocation of the Governor's Decree or the Decree of the Head of Department (of Public Housing and Residential Area) as referred to in **Article 102 paragraph (6) letter a letter b and letter c** of this Governor Regulation, the Apartment Administration Problem Settlement Team of Administrative City Level facilitates the formation of a Working Group.
- (2) In the event of a revocation of the Governor's Decree or the Decree of the Head of Department (of Public Housing and Residential Area) **based on a court decision or determination**, the Head of Department (of Public Housing and Residential Area) shall facilitate the formation of a Working Group.
- (3) If the Governor's Decree or the Decree of the Head of Service regarding the ratification of the formation or management of the Association of Owners and Occupants of Apartment **is challenged in the Court and there is an interlocutory decision or court ruling** that decides or determines to postpone the implementation of the Governor's Decree or the Decree of the Head of Department (of Public Housing and Residential

Area), the management of the apartment is still carried out by the Developer or the Management of the former Association of Owners and Occupants of Apartment with permission/approval from the Department (of Public Housing and Residential Area) until the decision or determination of the said State Administrative Court has been legally binding.

As a reference, Article 102 paragraph (6) letters a, b, and c referred to in the PerGub70 can be found in the PerGub133, which states:

- (1) If the second warning letter as referred to in paragraph (5) is not implemented by the Developers, Management of the Association of Owners and Occupants of Apartment, Supervisor of the Association of Owners and Occupants of Apartment, and/ or the administrative legal entity, then the Mayor makes a report to the Department (of Public Housing and Residential Area) to be given administrative sanctions in the form of:
- (2) revocation of the Governor's Decree regarding the ratification of the deed of establishment/ formation of the association;
- (3) revocation of the Decree of the Head of Department (of Public Housing and Residential Area) regarding the registration and ratification of the deed of establishment of the Association of Owners and Occupants of Apartment;
- (4) revocation of the Decree of the Head of Department (of Public Housing and Residential Area) regarding the composition of the Management of the Association of Owners and Occupants of Apartment and Supervisor of the Association of Owners and Occupants of Apartment.”

From the above provisions, it can be seen that in the event of a revocation of the Governor's Decree regarding the ratification of the deed of establishment/formation of the association, the Apartment Administration Problem Settlement Team of Administrative City Level (Tim Penyelesaian Permasalahan Pengelolaan Rumah Susun Tingkat Kota Administrasi = TP3RS TKA) facilitates the formation of a Working Group. If this provision is juxtaposed with the provisions previously regulated in Article 102B Governor Regulation 133, which states:

- (1) In the event of a revocation of the Governor's Decree or the Decree of the Head of Department (of Public Housing and Residential Area) as referred to in Article 102 paragraph (7) (**should be (6)**) letters a, b and c, then concerning the Association of Owners and Occupants of Apartment, the owners conduct an Extraordinary General Meeting of Members facilitated by the Apartment Problem Settlement Team.
- (2) In the event of a revocation of the Governor's Decree or the Decree of the Head of Department (of Public Housing and Residential Area) as referred to in Article 102 paragraph (7) (**should be (6)**) letters a, b, and c, then the party carrying out the administration will continue to carry out the administration and services to the owners and occupants of the apartment until the appointment of the Management and Supervisor of the Association of Owners and Occupants of Apartment no later than 3 (three) months.
- (3) The Administrator, as referred to in paragraph (2) is appointed by the Apartment Problem Settlement Team through deliberation agreed upon by representatives of the Owners.”

It is clear that, in principle, the provisions in Article 102B of PerGub133 are more straightforward when compared to similar provisions in PerGub70. PerGub70 does not recognize the “temporary administrator” as implicitly referred to in PerGub133 because there is no more party that can legally represent the owners and occupants of the apartment. Therefore, PerGub70 begins with the formation of a Working Group, whose arrangements are regulated in paragraphs (6) to (11) as quoted below:

- (1)“The Working Group is determined from the Owners of the apartment, domiciled in their residence and/ or doing business in the apartment, totaling to at least 7 (seven) people and odd consisting of; A Chairman, A Secretary, A Treasurer; and Sections related to the administration and preparation for the establishment of the Deliberation Committee.
- (2)The decision of the Meeting for the Establishment of the Working Group, as referred to in paragraph (1), is taken based on deliberation for consensus. If a decision based on deliberation to reach a consensus is not reached, the Apartment Administration Problem Settlement Team of Administrative City Level is authorized to appoint the member of the Working Group.
- (3)The decision of the Meeting for the Establishment of the Working Group, as referred to in paragraph (2), is taken based on deliberation for consensus. If a decision based on deliberation for consensus is not reached, then the Head of the Department (of Public Housing and Residential Area) can appoint the member of the Working Group.
- (4)Working Group members appointed by the Head of Department (of Public Housing and Residential Area), as referred to in paragraph (8), are reported to the Governor.
- (5)Appointment of Working Group by the Apartment Administration Problem Settlement Team of Administrative City Level or Head of Department (of Public Housing and Residential Area), as referred to in paragraph (7), paragraph (8), and paragraph (9) can be done after the Meeting for the Establishment of the Working Group is held for at least 2 (two) times, but no decision was reached.
- (6)The Working Group as referred to in this Article is obliged to administer the apartment and facilitate the re-establishment of the Association of Owners and Occupants of Apartment or re-election of the management of the Association of Owners and Occupants of Apartment no later than 1 (one) year after the formation of the Working Group.”

With the enforcement of PerGub70, the “temporary administrator” who has administered following the dismissal/ dissolution of the Association of Owners and Occupants of Apartment, de-jure (legally) and de-facto (factually), must be legally dismissed and can no longer exist. Thus, anyone who still claims to be a “temporary administrator” and administers the apartment is an act or action that is against the law, illegal, and can be subject to legal sanctions.

From the provisions of the paragraphs above, it can be further said that the Working Group which was formed because of the revocation of the Governor's Decree regarding the ratification of the deed of establishment/formation of the association, even though it was read to be facilitated by the Apartment Administration Problem Settlement Team of Administrative City Level, but the formation of the Working Group alone is conducted based on the decision of the Meeting for the Establishment of the Working Group by deliberation of the owners (and occupants) of the apartment to reach consensus. Thus, if the Apartment Administration Problem Settlement Team has not yet been formed, then based on the principles of justice, expediency, and legal certainty, basically the determination of the Working Group by deliberation for consensus taken and carried out by the owner of the apartment is legal. It can be accounted for before the law.

The determination of the Working Group and the appointment of members of the Working Group based on deliberation for consensus have demonstrated a sense of justice which is the embodiment of the fourth and fifth Pancasila principles. Every citizen who is the owner and occupant of the apartment will be able to feel the continuity of the administration of the apartment that they own or live in, after the dissolution of the

Association of Owners and Occupants of Apartment, with all its management and supervisory organs, as well as the abolition of the legal relationship with the previous administrator due to the abolition of the legal entity status of Association of Owners and Occupants of Apartment which is no longer able to perform legal actions. These two things are also a reflection of the principle of legal certainty, that in the absence of a legal entity status of the Association of Owners and Occupants of Apartment, no one else has the right to declare acting for and on behalf of the Association of Owners and Occupants of Apartment. All actions on behalf of the Management and Supervisor of the Association of Owners and Occupants of Apartment are wrong-doing, illegal, and against the law and may be subject to sanctions based on the applicable law, both from a civil and criminal perspective. The principle of expediency arises from the benefits of establishing the Working Group for each owner and/ or occupant of the apartment, which cannot be separated from the principle of justice for all owners and occupants of the apartment. It is questionable if there are parties who then question the existence of the Working Group because there is no Apartment Administration Problem Settlement Team has been formed or established.

As an additional analysis, that the validity of the provisions of Article 53 paragraph (2) and paragraph (3) No.30 of 2014 REGARDING Government Administration, which reads:

- (1) If the provisions of the laws and regulations do not determine the time limit for the obligations as referred to in paragraph (1), then the Agency and/or Government Officials are obliged to determine and/or make decisions and/or actions within a maximum period of 10 (ten) working days after the application is completely received by the Agency and/or the Government Officials.
- (2) If within the time limit as referred to in paragraph (2), the Agency and/or Government Official does not make a decision and take action, then the application is considered to be legally granted.”

Contribute to the creation of the necessary legal certainty. With the submission of the formation of the Working Group to the relevant agencies such as the Governor of DKI Jakarta, the Mayor, the Head of the Department (of Public Housing and Residential Area), and no response to objections is made, it can be ascertained that the decision of the deliberation for the establishment of the Working Group has been legally recognized.

However, it should be emphasized that there is never an obligation that Working Group members will be appointed by the Apartment Administration Problem Settlement Team of Administrative City Level. Appointment of Working Group membership by the Apartment Administration Problem Settlement Team of Administrative City Level is only made if deliberation to reach consensus is not reached. The provisions of paragraphs (8) to paragraphs (10) of PerGub70 do not apply in this case. The provision of Article 102B paragraph (8) of PerGub70 applies in the case of revocation of a Governor's Decree or a Decree of the Head of Department (of Public Housing and Residential Area) is based on a court decision or determination. Article 102B paragraph (9) of PerGub 70 must be read in conjunction with the provision of Article 102B paragraph (8) of PerGub70. The provision of Article 102B paragraph (10) is a reaffirmation that the appointment of the Working Group by the Apartment Administration Problem Settlement Team of Administrative City Level or the Head of the Department (of Public Housing and Residential Area) can only be made after the Meeting for the Establishment of the Working Group has been conducted at least twice, and no decision has been reached.

If there are already owners' representatives (as referred to in Article 102B paragraph (3) of PerGub133), then, of course, in that case, the representatives of these owners shall

have the same function and authority as representatives of the owners according to Article 102B paragraph (6) of PerGub70 who can make consensus to form the Working Group and appoint its members of the Working Group. Meanwhile, the “temporary administrator” who was appointed based on Article 102B paragraph (2) of PerGub133 shall be annulled by law upon the enactment and enforcement of PerGub70. It was in addition that the “temporary administrator” shall be also removed due to the expiration of his 3-month term based on Article 102B paragraph (2) of PerGub133. This is a logical consequence of the enactment of the provisions of Article 102B paragraph (11) of PerGub70, which expressly states that it is the Working Group that carries out the obligation to administer the apartment and facilitates the re-establishment of the Association of Owners and Occupants of Apartment or the re-election of the Management and Supervisor of the Association of Owners and Occupants of Apartment management for a maximum 1 (one) year period after the Working Group was formed.

V. Conclusion

From the explanations and analysis given above, it can be concluded that the application of Article 102B of PerGub70 regarding the revocation of the ratification of the Association of Owners and Occupants of Apartment must be treated as an integral part of the implementation of Article 102B which has been carried out based on the PerGub133. This has the consequence that as long as the Apartment Administration Problem Settlement Team of Administrative City Level has not been formed, the representatives of the owners and occupants who have been formed can continue with their rights and duties to deliberation to reach a consensus to form a Working Group which will perform administration functions and facilitate the formation of the new Association of Owners and Occupants of Apartment. In the framework of Gustav Radbruch's thought, this has fulfilled the principles of justice, expediency, and legal certainty. The enforcement of Article 53 paragraph (2) and paragraph (3) No.30 of 2014 regarding Government Administration helpfully provides more legal certainty.

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