



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 62/PUU-XX/2022**

**Concerning  
Flats with Non-Residential Functions**

- Petitioner** : Rini Wulandari, et al.  
**Type of Case** : Judicial review of Law Number 20 of 2011 concerning Flats (Law 20/2011) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)  
**Type of Case** : Article 50 of Law 20/2011 is in contrary to the 1945 Constitution  
**Verdict** : To dismiss the Petitioners' petition entirely  
**Date of Decision** : Monday, October 31, 2022

**Overview of Decision:**

The Petitioners are individual Indonesian citizens (WNI) who are the owners of hotel condominium units (condotels) and already have certificates of ownership to their respective condotels. The Petitioners believe that their constitutional rights have been impaired by the enactment of Article 50 of Law 20/2011 because the *a quo* Article does not accommodate the existence of non-residential functions for flats, which has caused the Petitioners as condotel owners who have non-residential functions to obtain legal certainty for condotels ownership rights and to form a PPPSRS (Association of Flat Unit Owners and Occupants).

With regard to the authority of the Court, because the Petitioners' petitioned for a review of the constitutionality of statutory norms, *in casu* Article 50 of Law 20/2011 against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

Regarding the legal standing of the Petitioners, according to the Court, regardless of whether the argument is proven or not proven in relation to the unconstitutionality of Article 50 of Law 20/2011, the Petitioners have the legal standing to submit the *a quo* petition.

Furthermore, in considering the arguments of the Petitioners' petition, the Court is of the opinion that in accordance with the mandate of Article 28H paragraph (1) of the 1945 Constitution and Article 40 of Law 39/1999, the state is obliged to protect the right of everyone to live and to have a decent life and to guarantee the provision of adequate housing for community, including the protection of property rights and non-discriminatory treatment of everyone's access to fulfil the need for housing. With the development of strategic issues that are currently being faced, namely the increasing need for land for housing in urban areas which tends to be expensive, it is hoped that the implementation of flats based on Law 20/2011 may accelerate the fulfilment of the need for decent and affordable housing and settlements in urban areas for all community levels so that it encourages harmonious, balanced urban development that pays attention to the principles of sustainable and environmentally sound development thus it will reduce social inequality in society, especially in urban areas.

Furthermore, the issue that must be answered by the Court is whether the non-accommodation of the "non-residential" function in the norms of Article 50 of Law 20/2011 is in contrary to the 1945 Constitution. Regarding this problem, the Court is of the opinion that historically, the non-residential function of flats has indeed been applied in Law 16/1985 as stipulated in several explanatory provisions, such as in the General Elucidation, Elucidation of Article 1 point 1, Elucidation of Article 3 paragraph (2), and Elucidation of Article 24 of Law 16/1985. However, after the promulgation of Law 20/2011 which replaced the existence of Law 16/1985, the function of flats as non-residential properties has been replaced with mixed functions. The change in the use of flats to a mixed function in Law 20/2011 is to overcome the lack of availability of public flats for low-middle-income people and to eliminate "ghost-building" where many buildings or flats are found to be without activity at night because it does not have a function as a residence. In this regard, it is important for the Court to emphasize, that the flats with non-residential functions shall not eliminate the main function of flats as residential functions and it may not eliminate the complementary nature of such flats. Therefore, the Court is of the opinion that the non-accommodation of the "non-residential" function in the norms of Article 50 of Law 20/2011 is not in contrary to the norm of Article 28H paragraph (1) of the 1945 Constitution.

The next question is whether the condotels can be included in the regulation regime for flats based on Law 20/2011. The Court is of the opinion that the definition of flats as stipulated in the norms of Article 1 number 1 of Law 20/2011 must be interpreted as a whole, starting from the building structure, ownership to its utilization, namely primarily as a residential function. Therefore, a condotel that has more business activity functions is indeed not in accordance with the meaning of flats based on Law 20/2011 and if by adding a non-residential function to the norms of Article 50 of Law 20/2011 as requested by the Petitioners, this will actually cause disharmony in the provisions of Law 20/2011 as well as the provisions of other legislations which can lead to legal uncertainty because the design of Law 20/2011 places the main function of flats as a place to live. Therefore, the Court is of the opinion that the arguments of the Petitioners are legally unreasonable.

However, the Court understands the existence of condotels as a new type of business or form of investment that will continue to develop along with the increasing need for hospitality services in Indonesia, therefore condotels must have their own legal basis created in accordance with their characteristics. Based on the aforementioned considerations, it is apparent that condotels have the same building structure and ownership model as flats. However, the difference lies in the function of the condotels, namely as a business activity. Such existence of such characteristics is specifically has not been accommodated in any positive law so that there is a legal vacuum in its regulation. Therefore, the Court encourages the legislators to immediately draft the laws as well as any implementing regulations to be used as a legal basis for the implementation of flats which have non-residential functions in Indonesia.

Based on all of the aforementioned legal considerations, the Court is of the opinion that the norm of Article 50 of Law 20/2011 does not cause arbitrary loss of the right to protection of owned property, including in this case ownership rights, as determined in the norms of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Therefore, the petition of the Petitioners is entirely legally unreasonable.

Accordingly, the Court subsequently passed a decision which verdict is to dismiss the Petitioners' petition entirely.