

High Rise Building Management in the Perspective of Law: Indonesian Experience



Sudiman Sihotang¹, Adi Sulistiono², Martin Roestamy³

^{1,2} Law Faculty of Universitas Negeri Sebelas Maret, Jl. Ir. Sutami No.36, Kentingan Jebres, Surakarta City, Central Java, Indonesia

³Postgraduate School of Law, Universitas Djuanda, Jagorawi Toll Road No.1 Ciawi, Bogor Regency, West Java, Indonesia

ABSTRACT: There are several communal rights, namely: common parts, shared land, and shared objects in term of high-rise building, which subjected to rights that arise in the form of enjoyment and sustainable use of flats or apartments. The government's attention is still at the stage of how to realize and encourage developers to participate in the provision of houses. Instead, there has not been any serious attention to provide guidance so that housing management can be carried out in sustainable manner. This paper intends to restore the rights of the association of apartment owners and occupants (P3SRS), so that they can carry out their duties as managers of apartments as legal entities of associations mandated by law to provide legal protection, legal certainty and the realization of sustainable management of apartments for end-users. This research conducted by using the statute approach and case approach in the light of normative juridical research, which can propose a solution to the potential turbulence in the life of apartments in Indonesia. The results shows that the developer's neglect of the hand-over of communal rights that can lead to uncertainty about the rights of consumers and the loss of civil rights (*burgerlijk dood*), which are human rights of end-users. In the end, this paper recommends legal actions by reviewing all laws and regulations relating to the establishment of P3SRS as the party who has absolute rights of apartments to achieve legal certainty and legal protection in order to ensure the sustainable management of apartments.

KEYWORDS: Apartment Law, the association of apartment owners and occupants (P3SRS), civil right, sustainability

I. INTRODUCTION

It's found on apartment management that there are many problems and complaints such as design and plumbing issue, delay maintenance work, inadequate public facilities, incompetent security and the defaulter's issue. The cooperation between the management team and the residents is compulsory in lessening the problems to establish the excellent condition of high-rise residential building (Azian et al., 2020). Besides, the other problem of apartment management is relating to the main factors of lack of early planning, ignorance of buyers, lack of regulation on property managers, insufficient legislation and ineffective management practices (Ta, 2009). Eventually, the main goal in the apartment management that all residential buildings should be serving society and presents a framework for the identification of delayed, justified, or premature obsolescence. This framework can be used to decide whether the life of a residential building should be extended or ended. (Wuyts et al., 2019).

Housing and settlements are one of the basic human needs that are very influential in the formation of the nation's personal life. Housing and settlements cannot only be seen as a means of living necessities, but more than that it is a process of human settlement in creating a living order for the community and themselves in revealing their identity (Eade, 2003). Limited land, especially in big cities, does not become an obstacle for business players to develop the property business, the model of flats or apartments get enough attention for the community (Pratomo et al., 2020). Flats development is an alternative solution to the problem of housing and settlement needs, especially in urban areas where the population continues to increase, because the construction of flats can reduce land use, create more space area for urban community and can be used as a means for urban rejuvenation from slum areas.

The problems that arise and when living in the flat are conflicts that occur in the management of the flat, either between the association of apartment owners and occupants (P3SRS) and the developer. The phenomena arose at first, since the law cannot be enforced in order to provide fair legal protection to the community, the owner of the apartment unit due to the tug of interest between the desire to control the developer over the project he has built and the duties and responsibilities of the developer who is the facilitator in the formation P3SRS. There are also cases where the developer's reluctance to form P3SRS is due to the fact that not all of the condominium units have been sold yet, so the developer still has rights. There are also apartment projects, although

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all hand overs have occurred, but developers are still reluctant to strengthen the P3SRS legal entity. This is due to the conflict of interest of the developer who wants to manage the building as well as to manage revenue through service charges or the use of apartment infrastructure to be rented out to third parties. (Wahanisa et al., 2021)

Second, the formation of P3SRS was prevented by the developer. According to Law of Apartment in Indonesia (UURS), P3SRS must be formed no more than one year after the handover of the apartment units. However, in practice the formation of the P3SRS management did not go smoothly due to the disagreements between the manager and the occupants. In that regulation, after P3SRS is formed, then ownership management within the apartment environment is formed. But the reality in fact, the developer inhibits the formation of P3SRS because they want to increase the Environmental Care Fee without discussing with the residents how much the fee should be collected (Maryati et al., 2021). In fact, if the P3SRS is formed, the issue of contributions and all expenses related to the apartment will be discussed together. And third, there is no rule that prohibits developers from becoming members of P3SRS, because of the apartment unit has not been sold.

Based on those facts, it can be concluded that the regulation regarding the P3SRS legal entity management system has departed from the basic principle of forming a community in the form of an association with a legal entity because the substance of the regulation on the formation of legal entities is not legal where a stronger law can be overridden by a law that is below it hierarchically. Indirectly, legal uncertainty has had a negative effect on the comfort of civil rights which should be protected and enjoyed by the occupants and owners of apartment. Starting from this situation, the question that arises in this research is how to build a fair legal system for the formation of associations of occupants and owners of apartment (P3SRS) to gain a sustainable management?

II. METHODOLOGY

The research method used is normative juridical which refers to the thoughts of Peter Mahmud (Hartono, 2021). The doctrinal legal concept studied is regarding the problem of P3SRS as a legal entity, how the provisions of the legislation do not work in accordance with the mandate of the Law of Apartment (UURS). Then, how it affects the basic rights that should be owned by P3SRS as the holder of communal rights which consequently has an impact on comfort.

This study uses a qualitative research method with a normative (Hopman, 2021) or doctrinal legal approach (Taekema, 2021) by looking at aspects of legal principles and rules, including legal institutions and processes to map out conflicts of interest of property law stakeholders, such as; Developers, Land Offices (BPN), Notaries and Land Deed Making Officials (PPAT), the banking, including the Judiciary. By describing the legal aspects that exist in the legal norms under study, then linking them with principles, rules, institutions, and processes to find methods or ways to optimize the P3SRS legal entity as the neglected host of the development and the implementation process of apartment management.

At the technical analysis stage, three approaches are carried out, namely: *first*, the statute approach as primary legal material in the form of laws and regulations relating to the core substance of research within the legal scope of apartments and legal entities associations, namely relating to with arrangements that have an impact on the weakening of P3SRS as a result of the dominance of the developer as the first right holder; *second*, the case approach where empirical data is used as primary data by presenting several cases that have been selected which then become tertiary legal materials to build prescriptions from research results; and *third*, to be able to produce a concept of thought and a model for the development of P3SRS legal entities in the legal system of legal entities in Indonesia with a conceptual approach (Marzuki, 2017).

III. RESULTS

A. Comparison of Residential among Malaysia, Singapore and Indonesia

In Malaysia, the house construction has been to apartments form, although there are still many landed houses. These apartments or flats are intended for the people with lower middle income. As for ordinary houses (landed houses) are usually intended for people with upper middle income. In implementing the housing program, the government does not only involve the public sector but also the private sector. The public sector plays a role in implementing housing programs, especially for low-income groups (Lin-Heng, 2020). While the private sector is more focused on housing development, especially for the simple and high-income groups. This is different from what happened in Indonesia, where the social housing provision system is almost 70 percent owned by the private sector, which ultimately causes house prices to rise sharply. So that prospective home owners feel unable to own the house (Rolnik, 2020).

Singapore has an apartment system that is well-organized. Approximately 80% of Singapore's population live in flats built by the government known as Housing Development Board Flats (HDB Flats) (Hin, 2020). HDB Flat can be equated with high rise building (Rumah Susun, RUSUN) in Indonesia. There are various interesting policies made by HDB. For example, to overcome social conflicts due to racial differences, an Ethnic Integration Policy is made. This is a policy that ensures there is a diverse mix of ethnic communities within the flats area.

Both Indonesia and Singapore have a form of land right that has an indefinite period of time, namely right of ownership (Yuniyanti, 2020) in the Indonesian legal system and freehold in the Singapore legal system (Dell'Anna & Bottero, 2021). In

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In addition to land rights which are not limited in term, there are also land rights for flats which are limited in term in the two countries, namely leasehold in Singapore (Lin-Heng, 2020) and building right in Indonesia, although there are indeed differences in the validity period.

In addition to the above similarities, Indonesia and Singapore have a concept of ownership of flats for foreigners which is quite different philosophically. This is due to the difference between Indonesian land law and Singapore land law. Indonesian land law does not recognize a Strata Title system because it adheres to European Continental law inherited from the Netherlands (Gultom et al., 2020), while Singapore land law recognizes a Strata Title system derived from English law or Common Law as well as in Malaysia (Jhaveri, 2020).

B. Legal Entity of The Association of Apartment Owners and Residents

A legal entity is a legal entity that has assets regardless of its members, is considered a legal subject, has the ability to carry out legal actions, has responsibilities and has rights and obligations as possessed by a person. This legal person has his own wealth, has a manager and can act alone as a party to an agreement. The occupancy policy is regulated in Law Number 1 of 2011 concerning Housing and Settlement Areas Article 34 paragraph (1) which states that legal entities that carry out housing development are obliged to realize housing with balanced occupancy. The government and/or local governments can provide incentives to legal entities to encourage the development of housing with balanced occupancy.

The Development Model for the Establishment of a Legal Entity for the Association of apartment Owners and Occupants associated with the legal optimization of a sustainable apartment management can be described in the following framework:

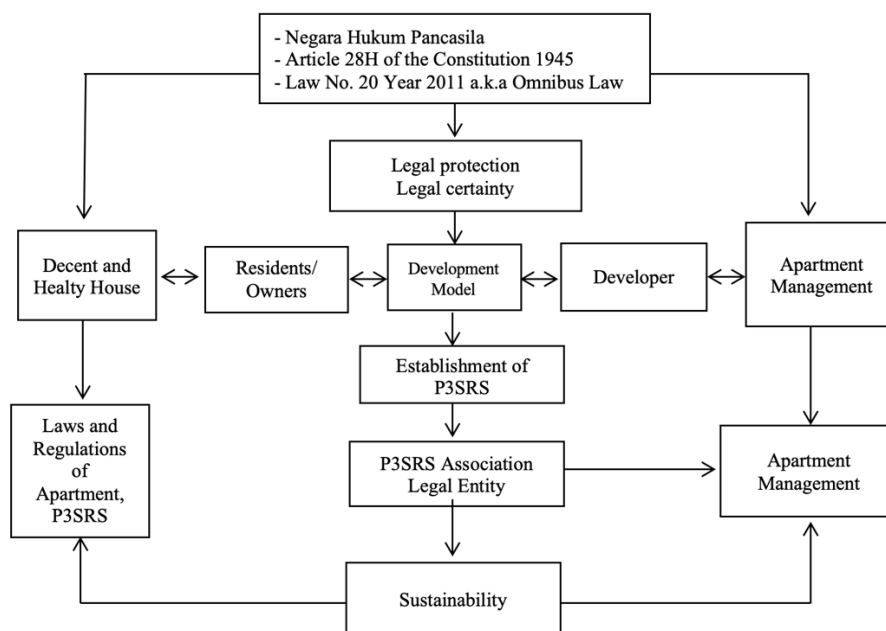


Figure 1. The Framework of P3SRS Development Model

In every apartment development, it is undeniable that there will be developer interests in the buildings they build that will be maintained. Apartment Law in Indonesia introduces a new ownership institution as a property right, namely “flat or apartment ownership”, which consists of individual rights to the unit and joint rights to land, shared objects and common parts, all of which are inseparable with the units concerned. Owners of flats, notaries, local governments as supervisors at both regional and national levels, building developer, P3SRS as well as ministers who administer government in the housing and residential areas should be able to synergize to take actions that are within their respective powers so that there are no adverse consequences for the residents.

C. Sustainability

The construction of apartments cannot be separated from three laws and regulations, namely The Settlement Law (No. 1/2011), The Building Law (No. 28/2002) and the Apartment Law (No. 20/2011). Article 2 of The Settlement Law contains the implementation of housing and settlement areas based on the following principles: a. well-being; b. justice and equity; c. nationalism; d. efficiency and expediency; e. affordability and convenience; f. independence and togetherness; g. partnership; h. harmony and balance; i. cohesiveness; j. health; k. sustainability and preserving; and l. safety, security, order and tidy.

Regarding the sustainability of management, the occupancy of a building is not without a limit on the age of the material property, and therefore the sustainability of its residential function will be more determined by joint decisions of occupants or apartment owners through an organization called the association of occupants, which called P3SRS. Therefore, P3SRS as a legal

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entity for the management of apartment based on legal certainty and legal protection in order to ensure sustainability, especially for consumers or end-users as apartment or flat owners.

It was found from research in the field including in-depth interviews with several officials from the housing office, the National Land Agency (BPN) DKI Jakarta, banks, developers and notaries as authorized officials to issue the articles of association of the establishment of P3SRS, that there is no one institution specifically by law. The law is mandated to initiate the establishment of the said institution.

Recently, an omnibus law or Job Creation Law subjected to Employment policy, promotion of employment and employment services (No. 11/2020) has been enacted which provides many changes to the apartment law, but there are no significant changes to the formation of P3SRS. Changes to the apartment law in the Job Creation Law are regulated in Article 51. Based on the law, there are 24 changes, but the regulation regarding P3SRS does not include the amended provisions. Thus, the regulation of The Apartment Law Articles 74 – 78 related to the association of apartment owners and occupants still applies.

The amendments to The Apartment Law Article 107 which regulates administrative sanctions which include the threat of administrative sanctions against owners of apartment who do not carry out the establishment of P3SRS as referred to in Article 74 paragraph (1), do not change the threat of administrative sanctions against owners of flats.

The Minister of Public Works and Public Housing Regulation Number 14 of 2021 concerning the Association of Apartment Owners and Occupants regulates the entire process of establishing a P3SRS legal entity starting from the preparation facilitated by the developer to the hand-over of ownership to P3SRS as the manager of the apartment. In this regulation, matters concerning the establishment of P3SRS, member meetings, discussion of AD/ART, membership of the organizational structure, deed of establishment, management, guidance and supervision have been regulated. However, there is no threat of sanctions to developers if they do not facilitate the formation of the P3SRS legal entity as intended. Whereas the main key to the establishment of a P3SRS legal entity is the facilitation initiated by the developer as the initial HGB holder along with all administrative requirements that are archived by the developer in the construction of the apartment for the first time, without exception the data of the owner of the apartment unit who has made a purchase transaction.

Table 1. Legislative Provisions Related to P3SRS

No.	Laws and regulations	Article that regulates	Clauses
1	Law Number 20 of 2011 concerning Apartment (Rumah Susun) - UURS	Article 74–78	Obligations to establish P3SRS, Membership, legal entity status, facilitation of formation, handover of management of communal (communal) ownership rights, P3SRS obligations, and governance.
2	Law Number 11 of 2020 concerning Job Creation (Omnibus Law)	Article 51 amendments to UURS	There are 24 changes to UURS by the Job Creation (Omnibus Law)
3	Government Regulation Number 13 of 2021 concerning Implementation of Apartment	Article 86-103	Owners of condominium units owned by public and commercial condominium units are required to form PPPSRS. The provisions of this obligation are slightly different from the provisions in UURS, which do not limit the owner of certain condominium units to be required to form P3SRS.
4	Regulation of the Minister of Public Works and Public Housing Number 14 of 2021 concerning the Association of Apartment Owners and Occupants.	All of articles	Formation of P3SRS, member meeting, discussion of AD/ART, membership of organizational structure, deed of establishment, management, guidance and supervision.

Related to the formation of P3SRS is mandatory, the emphasis is only on the owner of the apartment unit, because of administrative sanctions to the owner of the apartment unit in the form of threats about services from the government either through written warning letters, verbal warnings, or termination of services. As for the developer, even though it has a mandatory nature as a facilitator for the formation of the said P3SRS legal entity, it's just that the provisions of the legislation do not threaten sanctions if the developer does not carry out the duties and responsibilities as described in the chapter above, owners of different backgrounds, both ethnicity, race, or class, initially did not know each other which gave the developer an opportunity to ignore the obligation to facilitate it. And this is evident from the findings of researchers in the field, where there are still 50 apartment projects in DKI Jakarta that do not yet have P3SRS as a legal entity.

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This situation is very contrary to the principles of legal certainty and legal protection as expressed by Radbruch (2006) that legal certainty has an impact on legal protection as an elaboration of the opening of the fourth paragraph of the Indonesian 1945 Constitution concerning the purpose of the state, one of which is the protection of the homeland and the entire nation, which is further emphasized by the constitution of the Republic of Indonesia article 28D paragraph (1) regarding the constitutional basis for the right to recognition, guarantees, protection and legal certainty that is fair and equal treatment before the law for all Indonesian people. So that in the formation of legislation, from the Act stage to its implementing regulations, it must be subject to the state legal system adopted by the Indonesian nation and state, namely the constitution and the legislation under it. And according to Stufenbau theory (Bobbio & Zolo, 1998), the principle of *Lex superior derogate lex inferior* (Vranes, 2005) applies in evaluating the existence of laws and regulations if sorted down, then all regulations that contradict and are not in line with the Constitutional (UUD 1945) and the juridical basis, namely higher laws and regulations, in this paper it is recommended by the author to be adjusted, whether to improve the substance in the legislation by adding certain substances or forming new laws and regulations to replace the old regulations, in this case the author means how to develop a model of the regulations described above into at least government regulations become the juridical basis for the establishment of the P3SRS legal entity as referred to in this paper.

The law does not regulate the mandatory nature of stakeholders to establish P3SRS to the government or developers. The existing laws and regulations leave it to the developers and end-users. Due to the weakness of the legislation, there is a surplus of 132 apartment projects which as of 2021 do not yet have P3SRS.

In principle, the construction of flats that have been carried out needs to be given a function-worthy certificate and a certificate of ownership of the condominium unit and a certificate of ownership of the apartment building. The control of both simple flats and commercial flats must be done by making deeds made before an authorized official, be it a Notary or Land Deed Making Officer (PPAT). Based on the Apartments Law, it must have P3SRS. This is based on Article 74 (1) which provides for the obligation to establish a P3SRS that has a legal entity. The formation of the P3SRS is facilitated by the developer.

The new norm that was not previously regulated in The Apartment Law is the obligation of developers to provide public flats (Rusun for low-income communities/MBR) 20 percent of the construction of commercial flats, and not to be handed over to local governments. As a rule, there is indeed a Decree of the State Minister of Public Housing Number: 06/KPTS/BKP4N/1995 concerning Guidelines for Making Deeds of Establishment, Articles of Association and By laws of Associations of Occupants of Flats which was later upgraded to Minister of PUPR Regulation Number 23/PRT/M/2018 Regarding the Association of Apartment Owners and Occupants, which specifically discuss P3SRS either as an association legal entity or other legal entity, but in the implementation stage it can be optimized by establishing a supervisory agency or a special institution that will manage P3SRS in a certain area, for example managed by DKI Jakarta Regional Government. This is in order to reduce the number of complaints and legal cases for inconvenience in the process of financing apartments managed by building management which is also an extension of the developer as the first owner of the building, which should have occurred hand-over or transfer of ownership to P3SRS. The existence of this regulation finally provides certainty for buyers and is able to maintain their rights.

Regarding these institutions, as the person in charge of the region, of course, an institution is needed that will carry out law enforcement, supervision, and implementation of the provisions referred to, so that there is no overlapping of authorities and interests of irresponsible parties.

Regulation and guidance on P3SRS which is the responsibility of the Government (Regional) so that it gets more attention and is carried out in compliance with regulations. Between relevant agencies, it is hoped that they will not make or issue conflicting regulations regarding P3SRS, thus confusing the Developer, or even creating an opportunity for the Developer to commit violations in the field.

To optimize P3SRS institutionalization in the fair management of apartment, it can be seen from the legal objectives. According to Roestamy (2017), the purpose of law includes order, justice, peace and prosperity. This must be a product of rational law, to be able to become a foothold for P3SRS as a legal entity recognized by laws and regulations.

IV. CONCLUSION

Based on this research, it is revealed that the role of P3SRS as a legal entity for the management of apartment has not been optimal, as evidenced by cases that create legal uncertainty which ultimately harms end-users. Management of apartment cannot be separated from conflicts of interest with the economic motives, so that building management becomes the object of a power struggle between the developer and P3SRS. The weakening of the status and authority of P3SRS has a negative impact on the sustainable management of apartment and is detrimental to consumers. In addition, the transfer of communal rights and the management of building management are not in line with the principles of good corporate governance. The formation of P3SRS as a continuation of the developer's tasks in initiating apartments in the early stages has not been followed by good faith by the developer to accept the consequences of losing rights due to hand-over units to end-users. This lack of good faith has the potential to cause turbulence in the management of apartment which can be calculated from the start because the initiation of the formation of P3SRS by law is borne by the buyer, not the developer. This proves that the legislators in drafting laws and regulations are

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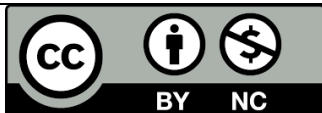
inconsistent and unfair because they impose sanctions on end-users, not on developers, so that most developers ignore the principle of good faith.

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