



Intervention of Apartment Developers in the Management of Apartments in Indonesia

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Abstract

The existence of flat is a solution to fulfill the housing needs of citizens considering the limited land to build landed house. Each flat consists of common property, common share, and common land. The management of the flats is carried out by owner corporation, either by forming their own building management or by appointing an external building management. The current problem is the intervention by developer in the management of flats that occurred in several flats in Indonesia. In fact, there several cases regarding the formation of owner corporation that should be facilitated by developers, but have not been carried out consistently and optimally by developers. The intervention by developer in flat management will have potential for privatization and management monopoly, which will be detrimental to flat's owner. Therefore, the local government and the department of housing should supervise developer's performance and ensure that developers are aware of and carry out their obligations under the law. To examine this problem, I apply normative juridical methods with qualitative analysis techniques. I also use several approaches in conducting the analysis, such as case approach, conceptual approach, and statute approach.

Introduction

The existence of apartments (rusun) is one alternative to meet housing needs for the people, given the current limited availability of land in urban areas, which makes the development of landed houses suboptimal. One of the activities in apartment management involves operational activities, maintenance, and care of common parts, common property, and common land. According to Article 75 of Law Number 20 of 2011 on Apartments (Apartment Law), the responsibility for managing apartments falls to the P3SRS (Association of Owners and Occupants of Apartment Units).

The implementation of this provision differs from the facts on the ground, which show that some apartments are still managed by the developer or are not managed by P3SRS. For example, in the case of Green Pramuka City Apartment, which is managed by PT Mitra Investama as the developer (Caesario, 2016), the issue began with residents' criticism of the increase in environmental management fees (IPL). Since the completion of construction, the developer has not facilitated the establishment of P3SRS. Without P3SRS, the provisions for transferring the management of common parts, common property, and common land from the developer to P3SRS are not met (Rosana, 2019).

In addition to the case of Green Pramuka City Apartment, several other cases can be found, such as the management of The Lavande, Mediterania Palace Residence, and Mediterania Marina Residence apartments. In the case of The Lavande, management is conducted by P3SRS formed by the developer. However, the P3SRS formed by the developer does not consist of apartment residents. According to a group of residents of The Lavande, the current

P3SRS is suspected of siding with and colluding with the developer, resulting in policies that disadvantage the residents.

Another case is the management of Mediterania Palace Residence. Before P3SRS was established, this apartment was managed by the apartment residents' association (P2RS) formed by the developer. However, during the transition of P2RS management, there was abuse of power by the manager, including shutting off electricity and water supplies to residents (Lani Diani Wijaya, 2019). A similar case occurred at Mediterania Marina Residence, where, from the completion of construction until 2013, the apartment was managed by a P3SRS originating from the developer. This management caused losses to owners and residents due to alleged fraud in electricity tariff determination (Anwar, 2013).

These cases of developer-managed apartments show that the implementation of the Apartment Law is not optimal. Developer management practices demonstrate the potential for arbitrary policy issuance that harms apartment owners and residents. The background of these issues, both the normative and practical aspects of apartment management, will be the focus of this journal, investigating whether the root of the problem lies in the legal structure—namely the weak supervision of regional heads and local housing agencies—or in the legal substance—namely legal gaps in the law and implementing regulations for apartments.

Several previous studies related to the topic of this journal include:

A journal titled “Legal Consequences of Failing to Form an Association of Owners and Occupants of Apartment Units”, *Mulawarman Law Review* 4 (1), June 2019. This journal discusses the legal consequences of failing to meet Article 74 (1) of the Apartment Law, which involves the failure to establish P3SRS by the developer. The legal consequence is that residents lose their right to enjoy comfort, convenience, security, orderliness, and regulation that are the principles of apartment management. Legal actions that residents can take include reporting to local government authorities (Mahmoud et al., 2019).

A journal titled “The Existence of the Association of Owners and Occupants of Apartment Units (PPSRS) in the Management Authority of Rental Apartments”, *Jurnal Wajah Hukum* 5 (1), April 2021. This journal examines three issues: (1) the management of apartments by management bodies, (2) the existence of P3SRS, (3) voting rights in apartment management, and (4) a comparison of the management of rental apartments versus commercial apartments. Developers hold responsibility for managing apartments during the transition period when P3SRS has not yet been formed. The formation of P3SRS should be based on a legitimate deed by the mayor/regent as the local government head, except for DKI Jakarta, which requires gubernatorial approval (Zachman & Fauzia, 2021).

Based on previous research (state of the art), this journal will address several points differently. First, this research will use legal theories for analysis, not just legislation. Second, it will include real cases as illustrations of the issues. Third, it will propose legal constructions, whether through harmonization, revision, or the creation of regulations, to establish clear, fair, and beneficial apartment management regulations. Given the background of the issues, this journal will explore the following research questions: 1) How is the management of apartments under positive apartment law in Indonesia viewed from the aspects of legal certainty, justice, and utility? 2) What is the ideal legal construction for apartment management that ensures legal protection for apartment owners and residents?.

Methods

In writing this journal, the researcher employs a normative juridical research type with a qualitative-deductive analysis method. The data sources used in the research are legal

materials, including primary, secondary, and tertiary legal sources (Purwaka, 2011). Data collection is conducted through library research. The approaches used for analysis include case approach, conceptual approach, and statutory approach (Marzuki, 2022).

Results and Discussion

Legal Certainty, Utility, and Justice in Apartment Management in Indonesia

According to the theory of legal certainty, law serves to define what is permissible or impermissible for individuals and to ensure legal protection against governmental arbitrariness (Marzuki, 2022). In the context of positive apartment law, apartment management is regulated under several regulations, including:

Law Number 20 of 2011 on Apartments:

Article 56 stipulates that apartment management must be carried out by a legal entity, except for rental apartments, special apartments, and state apartments. The apartment manager is entitled to collect management fees from owners and occupants, which include operational, maintenance, and care costs. Article 74 mandates that apartment unit owners must form P3SRS (Association of Owners and Occupants of Apartment Units). The P3SRS is responsible for managing the interests of owners and occupants concerning common property, common parts, common land, and apartment occupancy. P3SRS can establish or appoint a manager for the apartment (Santoso, 2017).

Government Regulation Number 13 of 2021 on Apartment Administration:

Article 74 regulates that apartment management activities include operational activities, maintenance, and care of common parts, common property, and common land. Managers formed or appointed by P3SRS must be legal entities registered and authorized by the district or municipal head. An exception applies in Jakarta, where the apartment manager must be registered and licensed by the Governor of Jakarta.

Ministerial Regulation Number 14 of 2021 on the Association of Owners and Occupants of Apartments:

This regulation is a derivative of Article 103 of Government Regulation Number 13 of 2021. Article 2 requires that apartment unit owners form P3SRS no later than six months before the end of the transition period. Developers are required to facilitate and finance the initial formation of P3SRS. P3SRS consists of a management team and an oversight team. The management structure includes a chairman, secretary, treasurer, and divisions related to management and occupancy. The oversight structure includes a chairman, secretary, and three members from the unit owners. Article 26 sets the term of office for the P3SRS management and oversight team to three years, with the possibility of reappointment for one additional term.

Article 37 stipulates that the management appointed by P3SRS can be either members or non-members of P3SRS, with the exception that P3SRS management cannot act as the manager. P3SRS can select a manager through an open and transparent selection process. The appointed manager must meet minimum criteria, including expertise, adequate human resources, and competence in the relevant field.

Based on the positive law above, apartment management is the responsibility of P3SRS. Regarding the technical aspects of management, P3SRS can either establish its own legal entity for management or appoint an external legal entity (outsourcing). According to Parlindungan, the task of the association of owners and occupants of apartments is to implement good apartment management, including maintenance, supervision, repairs, and other obligations for shared purposes (Parlindungan, 1997). However, given the practice of management being still

influenced or controlled by developers, there are legal gaps in the enforcement of apartment management that can be exploited by developers, or in other words, there is legal uncertainty.

According to the principle of utility (*zweckmassigkeit*), the law is created for people, and its implementation should benefit society (Margono, 2019). Legal utility can be understood as the optimization of the social objectives of the law, meaning the law is created to serve the interests of individuals and society (Ismail, 2006). Similarly, according to Rawls' theory of justice, justice is fairness, where free and rational individuals are entitled to pursue their interests with equal status (Raharjo, 2000).

When the current state (*das sein*) is the dominance of management activities by developers, there is a high potential for resource privatization and monopolization of management fees. This can be seen in cases where there are policies for increasing IPL without the approval of owners and occupants, and the shutting off of electricity and water. Resource privatization, such as electricity, water, and internet services, will be under the control of developers acting as managers. Such a situation certainly does not meet the criteria of utility and justice for owners and occupants, as they have rights guaranteed by the Apartment Law to manage common parts, common property, and common land. The economic interests of developers, especially considering that an apartment may also serve non-residential functions (mixed-use buildings) for commercialization, are likely the background for their control over management activities.

Regulations on Apartment Management Ensuring Legal Protection for Owners and Occupants

According to Abdussalam, there are several modes of crime perpetrated by apartment managers who are not part of P3SRS, including: (1) the manager being a puppet of the developer, (2) manipulation of the bylaws, (3) the manager failing to account for management finances, (4) appointment of managers without a tender and with a lump-sum contract, (5) public facilities remaining under the developer's control and used for illegal profit, (6) insurance appointments affiliated with the developer's company, and (7) IPL (common area maintenance fees) payments deposited into the developer's account (Abdussalam, 2016). Given these criminal practices by developers, legal protection for apartment owners and occupants is evidently not being met.

As a rule-of-law state, it is the obligation of the Indonesian Government to ensure the fulfillment of human rights (HAM) for its citizens, consistent with the characteristics of a legal state, whether *rechtstaat* or *rule of law* (Sabon & SH, 2019). Violations of human rights in the context of developer intervention in apartment management manifest as failures to provide legal protection for owners and occupants, especially when there is abuse of control, such as monopolizing IPL, privatizing resources, and commercializing common areas of apartments.

Legal protection is an essential element in the fulfillment of human rights in Indonesia, as outlined in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) (Tampubolon, 2016). As a country that acknowledges human rights, the Indonesian Government is obligated to ensure legal protection for every citizen (Aswandi & Roisah, 2019). According to Philipus M. Hadjon, legal protection involves safeguarding dignity and rights, and recognizing the human rights of every individual against arbitrariness (Hadjon & Djatmayati, 2002). The theory of legal protection adopted by our constitution merits further study regarding the government's authority in the realm of state administrative law, considering that P3SRS and apartment management bodies require valid permits from the government. The government's role in assessing and issuing permits to management bodies and P3SRS determines the implementation of legal protection for apartment owners and occupants.

Reviewing the Apartment Law and its regulations, there are no sanctions, either administrative or criminal, against developers/builders who fail to form P3SRS. The absence of binding sanctions against developers who do not fulfill their obligation to form P3SRS creates a legal gap that can be exploited. When P3SRS is not formed by the developer, apartment management will continue to be handled by the developer.

It is necessary to formulate provisions that include sanctions for developers who fail to meet their obligation to form P3SRS. The government, particularly the legislative body responsible for creating laws, needs to revise Article 75 paragraph (2) and Article 107 of the Apartment Law. Article 75 paragraph (2) should be adjusted to align with Article 100 paragraph (2) of Government Regulation Number 13 of 2021, which states that developers have a period of 3 months to transfer management of common property, parts, and land to P3SRS after its formation. Article 107 should be amended to include Article 75 paragraphs (1) and (2) as administrative violations if not fulfilled by developers. Besides being an administrative violation, the breach of Articles 75 paragraphs (1) and (2) could be considered by the legislature for inclusion in the criminal provisions in the revised Apartment Law. The aim of criminal sanctions against developers who do not form P3SRS and fail to transfer management to P3SRS is to create a deterrent effect and prevent violations of Articles 75 paragraphs (1) and (2) (Hiariej & SH, 2016).

In addition to recommending legal changes regarding apartment management, relevant parties, particularly the community of owners and/or occupants of apartments, need to be actively involved in understanding their rights and obligations under the positive apartment law. When the community understands their rights and obligations as owners and occupants, they can take action to claim their rights if violations, arbitrariness, or non-compliance by developers/builders occur in apartment management. They can seek redress by utilizing available legal avenues according to local regulations. This is because the establishment of P3SRS is determined by the Regent/Mayor, or the Governor specifically for Jakarta, thus the community can request their local authorities or housing office to facilitate their legal claims and needs.

Conclusion

Apartment management is an obligation that must be fulfilled by P3SRS. Initially, P3SRS is established and facilitated by the developer. The formation of P3SRS must be facilitated by the developer within 1 year after the first handover of the apartment unit to the owner. During the formation period of P3SRS, apartment management is the responsibility of the developer. Once P3SRS is established, the developer must transfer management of common property, common parts, and common land to P3SRS. In managing the apartment, P3SRS can establish its own management body or appoint an external management body. However, weak oversight from local authorities and the passive involvement of owners and/or occupants in asserting their rights result in suboptimal implementation of apartment management regulations. This situation reflects an uncertain, unfair, and non-beneficial legal system for apartment owners and occupants.

The suboptimal implementation of apartment management regulations is due to legal gaps that developers can exploit (legal loopholes) to exploit the economic value of apartment management activities. Developer control over apartment management results in a failure to protect the rights of owners and occupants. Therefore, it is necessary to have legal alternatives to prevent developer intervention in apartment management, such as revising Articles 75 paragraphs (1) and (2) of the Apartment Law regarding the formation of P3SRS and the transfer of management of common property, parts, and land to P3SRS. Violations of these provisions

should be subject to administrative and criminal sanctions to ensure they have deterrent effects, utility, and binding force.

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