

CHAPTER I

INTRODUCTION

1.1 Background

A dwelling is an object that is categorised as a basic or fundamental need of a person. It is further emphasised as a fundamental right in article 28H paragraph 1 of the 1945 Constitution of the Republic of Indonesia which stipulates that:

“Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan”;

in article 25 paragraph 1 of Universal Declaration of Human Rights which stipulates that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”;

in article 40 of Law No. 39 of 1999 regarding Human Rights where it is stipulated that *“Setiap orang berhak untuk bertempat tinggal serta berkehidupan yang layak”*; and in article 11 paragraph 1 of Law No. 11 of 2005 regarding Ratification of International Covenant on Economic, Social and Cultural Rights whereby it is stipulated that:

“Negara mengakui hak setiap orang atas standar kehidupan yang layak bagi keluarganya, termasuk cukup pangan, sandang dan papan yang layak, dan atas perbaikan kondisi yang berkelanjutan...”

The Indonesian government has the obligation to support the construction of housing for the people,¹ not only for the purpose of fulfilling their fundamental needs but also to enhance their quality of life, and to ameliorate the economy for their welfare.²

Considering that Indonesia ranks as the fourth most populated country with a population of 252,200,000 in 2014 according to the Badan Pusat Statistik,³ while the size of the land designated for housing remains the same; the demand for housing will constantly rise as the population grows. The law of supply and demand illustrates that the price of a product shall be affected by the availability and the demand of a product.⁴ This means that when a product is in low supply but has a high demand rate, the price of the product will inevitably increase. According to Sofyan Djalil, Indonesian Minister of Agrarian and Spatial Planning, the significant increase in land price is not parallel to the millennia's wages increase; hence the continuing difficulty to purchase land in Indonesia.⁵

¹ Hj. Ina Budhiarti Supyan, "Perlindungan Hukum Bagi Penghuni Satuan Rumah Susun Dibidang Pengelolaan Rumah Susun Di Bandung Dihubungan Dengan Undang Undang Nomor 20 Tahun 2011 Tentang Rumah Susun", *Jurnal Wawasan Hukum* Vol. 34, No. 1, Februari 2016, Sekolah Tinggi Hukum Bandung, 2016, p. 88.

² Arie Sukanti Hutagalung (1), *Serba Aneka Masalah Tanah Dalam Kegiatan Ekonomi*, (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2002), p.161.

³ Badan Pusat Statistik, "Perkiraan Penduduk Beberapa Negara 2000-2014", <<https://www.bps.go.id/dynamictable/2015/10/07/960/perkiraan-penduduk-beberapa-negara-2000-2014.html>>, accessed 8 May 2018.

⁴ Michael Parkin, Melanie Powell and Kent Matthews, *Economics*, 11th ed, (Harlow: Pearson Education Limited, 2014), p. 57.

⁵ Eduardo Simorangkir, "Milenial Susah Beli Rumah, Menteri ATR: Harga Tanah Naik Berlipat, Gaji Tidak", Detik.com, <<https://finance.detik.com/properti/d-3749786/milenial-susah-beli-rumah-menteri-atr-harga-tanah-naik-berlipat-gaji-tidak>>, accessed 23 February 2018

As the supply of housing lands in big cities decreases, one of the methods to overcome this is by constructing residences that are built vertically in the form of a tall building which comprises of many residential suites that is popularly referred to as apartment/condominium/flat/*rumah susun*.⁶ Such phenomenon is especially evident in the capital city of Indonesia, DKI Jakarta, which leans toward vertical construction. The vertical construction of housing proves to be a solution as further horizontal construction will only result in the problem of land scarcity especially agricultural lands.⁷ The availability of an apartment unit in different classes and sizes supports the fundamental need for housing. Nowadays, living in an apartment unit does not only meet a fundamental need, but has also become a common lifestyle of Jakarta residents.

In order to ensure the proper establishment and management of apartments, Law No. 16 of 1985 on Apartments was enacted, and later amended by Law No. 20 of 2011 regarding Apartments (*Rumah Susun*) 'UURS', and Government Regulation No. 4 of 1988 on Apartment 'PPRS'. The UURS provided that each apartment unit can be owned. The ownership of an apartment unit may be obtained and/or transferred through a sale and purchase agreement, trade, grant or even gift. Through ownership, one shall obtain the individual property right that is limited to the apartment unit itself

⁶ Arie Sukanti Hutagalung (2), *Condominium Dan Permasalahannya*, (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2007).

⁷ Imam Kuswahyono, *Hukum Rumah Susun: Suatu Pengantar Pemahaman*, (Jakarta: Bayumedia Publishing, 2004).

as depicted in detail of apartment division (*pertelaan rumah susun*).⁸ Detail of apartment division, as regulated in article 31 of PPRS, lays out clear details of the borders of each apartment unit, common areas, common utilities, common land, as well as proportional comparison value (*nilai perbandingan proporsional* 'NPP').

It is important to differentiate property right (*Hak Milik*) of land from Strata Title (*Hak Kepemilikan Atas Satuan Rumah Susun*). According to Boedi Harsono, property right is:

“hak yang turun-temurun, terkuat dan terpenuh yang dapat dipunyai orang atas tanah dan memberikan kewenangan untuk menggunakannya bagi segala macam keperluan selama waktu yang tidak terbatas, sepanjang tidak ada larangan khusus untuk itu.”⁹

Whereas property right of an apartment is defined by article 46 of UURS as:

“Hak Milik Atas Satuan Rumah Susun yang bersifat perseorangan yang terpisah dengan hak bersama atas bagian bersama, benda bersama, dan tanah bersama.”

This implicates that the strongest and fullest ownership of apartment unit is only limited to the actual unit itself while communal right, a subsidiary right to the apartment ownership right, covers common areas, common utilities and common land which shall be shared with other apartment unit owners.

Due to the continuous growth of the population, the demand for housing also increases which leads to the construction of many apartment buildings. Apartment buildings are separated into apartment units that can be legally owned by individuals and legal entities. According to article 43 of

⁸ Erwin Kallo, *Panduan Hukum Untuk Pemilik/Penghuni Rumah Susun (Kondominium, Apartemen Dan Rusunami)*, (Jakarta: Minerva Athena Pressindo, 2009).

⁹ Boedi Harsono, *Hukum Agraria Indonesia*, (Jakarta: Djambatan, 1997)

UURS, apartment unit may be marketed and sold to consumers prior to construction. A transaction that is made prior to construction means that the consumer pre-orders the apartment unit and does not legally own the apartment unit yet as the apartment unit has yet to exist. This has been the common practice in sale and purchase of apartment units whereby the developer prepares a presale contract or in Indonesian terms referred to as *Perjanjian Perikatan Jual Beli* 'PPJB' which lays out the rights and obligations of the apartment developer as a seller and the apartment consumer as a buyer. To purchase the apartment unit, both parties are required to sign the PPJB, therefore, agreeing to the terms of the PPJB.

After the orders for the apartment unit have been placed, the apartment developer shall continue with the construction of the apartment building and manage the necessary documents for apartment ownership including Strata Title Certificate. Stipulated in article 44 of UURS, change of apartment unit ownership may only be conducted after Strata Title Certificate and Certificate of Feasible Function (*Sertifikat Laik Fungsi* 'SLF') have been issued. In this step, the apartment developer and the consumer will enter into a sale and purchase agreement witnessed by a Land Deed Official (*Pejabat Pembuat Akta Tanah* 'PPAT'). The agreement that is made in a PPAT deed shall be registered with the regional Land Office who will record the transfer of ownership in the Land Book and the Strata Title Certificate. Then, the name of the Strata Title holder will be changed in the certificate from the name of the apartment developer to the name of

the new apartment owner. This marks the juridical handover of the apartment unit.

At the latest one year after the physical handover of the apartment unit, the apartment developer shall also facilitate the formation of Apartment Owners and Tenants' Association (*Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun* 'P3SRS'). The association consists of owners and tenants with power of attorney with the purpose of organising the communal interest of apartment owners and tenants including the common areas, common utilities and common land. The apartment owners and tenants' association has the authority to form or appoint apartment's managing body who is in charge of administering the management of, overseeing the use of, maintaining as well as restoring the common areas, common utilities and common land. Regulated under article 74 paragraph 1 of UURS, all apartment buildings must have its own P3SRS. The developer of the apartment shall assist the establishment of apartment owners and tenants' association prior to the end of the transition period when the developer hands over the apartment unit to its owner. Once the association has been formed, the management over common property shall be transferred from developer to the P3SRS. The management of the apartment includes the operational and maintenance activities over common areas, common utilities and common land that are performed by a legal entity registered with and licensed by the regent, mayor or governor.

Before all of the apartment units are sold out, the developer shall perform the management activities during the transition period in lieu of the P3SRS prior to the P3SRS's establishment. The transition period is defined in article 59 UURS as a maximum of one year after the first handover of the apartment unit to its owner. As regulated in the law, management fees that incur during the transitioning period shall be borne by the apartment developer and apartment unit owners based on proportional comparison value.

The abovementioned elaboration on the process of sale and purchase of apartment unit up to the management of the apartment building is based on the applicable laws and regulations which are the UURS and PPRS. In reality, however, there are legal issues which arise in the process of sale and purchase, the transfer of ownership, the formation of P3SRS and the management of apartment building.

The first issue in the sale and purchase process is related to the PPJB. The existence of pre-sale exposes the apartment consumer to high risks such as the failure of the developer to construct apartment building, the failure of the developer to deliver Strata Title Certificate, the bankruptcy of apartment developer and more. The common issue related to PPJB is its non-negotiable standard format. PPJB is prepared by the developer which suggests that the stipulations in such contract are made in the interest of the developer. According to Henry P. Panggabean, the party who is in a higher position has the tendency to misuse the condition in his favour (*misbruik*

van omstandighegen).¹⁰ In this case, the developer who is in a higher position has the opportunity to include clauses that benefit the interest of the developer and to exclude clauses that may be harmful to its interest. This practice is evident in PPJB which usually stipulates a high interest rate as penalty for apartment buyer in the event of a late payment, whereas there is a lack of penalty for the apartment developer in the event of a late handover. As a result of such misuse, the rights of the consumers are being curtailed for the benefit of the developer. More often than not, apartment pre-sale agreements are entered into in the presence of the buyer and marketing officer without the presence of a notary. The marketing agent will read through the contract and provide simple explanations of the PPJB. Consumers are rarely provided with a thorough explanation and they may not even know of their right to negotiate the terms of PPJB as it has been prepared in a standard format. Thus, it is common for apartment consumers to hastily sign the PPJB without understanding the terms of the contract which is unfair to the consumers especially if the contract contains clauses that may disadvantage the consumer. Moreover, some apartment developers only provide a reservation letter and a receipt of payment for the pre-order of an apartment unit and only enter into a PPJB until nearing the date of physical handover.¹¹

¹⁰ Henry P. Panggabean, *Penyalahgunaan Keadaan (Misbruik van Omstandigheden) sebagai Alasan (Baru) untuk Pembatalan Perjanjian: Berbagai Perkembangan Hukum di Belanda*, (Yogyakarta: Kanisius, 1992), p. 5.

¹¹ Based on the information gathered by the author at Pantai Indah Kapuk Marketing Office in 2016. The author talked with a marketing agent who explained the terms and conditions on the

The second issue which will be discussed in this paper is related to the absence of Strata Title Certificate. There are many complaints filed by the consumers regarding the Strata Title Certificate which has yet been handed over by the apartment developer. One of the consumers who was faced with this issue is an apartment building owner in Kalibata, South Jakarta who stated that he has performed his obligation to make payments as a buyer and yet five years after the date of purchase, the developer still fails to deliver the Strata Title Certificate of his apartment unit.¹² Without the existence of Strata Title Certificate, the apartment owner does not legally own the apartment unit despite the fact that he/she is currently residing in the apartment unit.

The third issue is regarding the P3SRS formation. P3SRS decides who manages the apartment building. This indicates that P3SRS has an economic value, especially since the management of an apartment building requires fees. The UURS stipulates that prior to the existence of P3SRS, the developer shall manage the apartment building. It is not uncommon for the apartment developer as a profit-driven entity to refuse to facilitate the formation of P3SRS by claiming that not all of the apartment units are sold out as required by the elucidation of article 59 paragraph 2 UURS. Apartment developers were also reported to intimidate apartment owners in

purchase of PIK 2 properties and who stated that “Jujur ngomong kalau di sedayu ini PPJB lama sekali, bisa mau dekat dekat serah terima baru PPJB. Pegangan customer berupa surat pemesanan dan kwitansi pembayaran.”

¹² Detik Finance, “Sertifikat Tak Kunjung Terbit, Tinggal di Rusun Bak ‘Anak Kos’”, Detik.com, <<https://finance.detik.com/properti/d-2705053/sertifikat-tak-kunjung-terbit-tinggal-di-rusun-bak-anak-kos>>, accessed 27 November 2018.

order to stop the apartment owners from forming P3SRS. One of the apartment developers is PT Graha Rahyan Tri Putra who hired goons in an attempt to intimidate owners of Pancoran Riverside Apartment.¹³ The developer then publicly defended that the formation of P3SRS by the owner and tenants is only valid when it is facilitated by the developer.¹⁴

The last issue is related to the management of the building apartment. As an example, the building management of Green Pramuka City Apartment, PT. Mitra Investama Perdana, exploited the opportunity to make unilateral decisions in regard to facility fee collection.¹⁵ PT. Mitra Investama Perdana charged an absurd amount of money to the tenants which should not have been there in the first place. The facility fee included parking fee in the amount of Rp. 200,000 per month,¹⁶ environmental management fee (*Iuran Pengelolaan Lingkungan 'IPL'*) of Rp. 18,700/m² ¹⁷ and fitting out fee of Rp. 300,000 over 33m². Furthermore, the building management collected building tax (*Pajak Bumi Bangunan 'PBB'*) without transparency.¹⁸ Similarly, Pancoran Riverside Apartment also had its share of unfair

¹³ Ibid.

¹⁴ Latief, "Pengembang Apartemen Pancoran Riverside Bentuk Perhimpunan Rusun", Kompas.com, <<http://properti.kompas.com/read/2015/06/12/195903221/Pengembang.Apartemen.Pancoran.Riverside.Bentuk.Perhimpunan.Rusun>>, accessed 24 February 2018.

¹⁵ Poskota News, "Penghuni Apartemen Green Pramuka Demo", Poskotanews.com, <<http://poskotanews.com/2015/02/16/penghuni-apartemen-green-pramuka-demo/>>, accessed 24 February 2018.

¹⁶ Disna Harvens, "Warga Green Pramuka Protes Kenaikan IPL 43%", Beritasatu.com, <<http://www.beritasatu.com/megapolitan/250184-warga-green-pramuka-protes-kenaikan-ipl-43.html>>, accessed 24 February 2018.

¹⁷ Poskota News, Loc. Cit.

¹⁸ Muhadkly Acho, "Apartemen Green Pramuka City dan Segala Permasalahannya", Muhadkly.com, <<http://muhadkly.com/2015/03/apartemen-green-pramuka-city-dan-segala-permasalahannya/>>, accessed 24 February 2018.

dealings from the developer i.e. parking fee and lack of transparency in regard to the cash expenses of the building management.¹⁹

The aforementioned dispute between the developers in conjunction with the building managers and apartment unit owners are not uncommon as many apartment owners face the very same issues throughout Indonesia. According to Sularsi, the head of Indonesia Consumer Organisation (*Yayasan Lembaga Konsumen Indonesia* 'YLKI'), the second highest number of complaint that YLKI has been reported to is related to the construction and management of apartment.²⁰ Sularsi stated that YLKI received 780 complaints regarding the construction and management of properties in the year 2016, 39% of which were regarding apartment management. Therefore, it can be further inferred that UURS lacks legal protection in terms of ensuring that apartment owners are not exploited by developers and managers. Such legal protection should have been provided by the law for the interest of justice and fair dealings.

Based on the elaboration of this research paper's background, the author will be addressing the aforementioned legal issues in respect to their causes and discussing the legal protections to those legal issues in this research paper which is titled as "Legal Protection on Issues Related to Apartment Ownership and Management."

¹⁹ Bayu Setyo, "Dihadang Intimidasi, Penghuni Apartemen Pancoran Berhasil Bentuk Perhimpunan", Aktual.com, <<http://www.aktual.com/dihadang-intimidasi-penghuni-apartemen-pancoran-berhasil-bentuk-perhimpunan/>>, accessed 8 May 2018.

²⁰ Septian Deny, "YLKI: Keluhan Properti Terbanyak Soal Pembangunan dan Iuran", Liputan6.com, <<http://bisnis.liputan6.com/read/3050681/ylki-keluhan-properti-terbanyak-soal-pembangunan-dan-iuran>>, accessed 24 February 2018.

1.2 Research Questions

Considering that there has not been a legal framework to solve the aforementioned disputes that potentially result in legal uncertainty, this thesis will discuss the following issues:

1. What are the legal issues related to apartment ownership and management?
2. How does the law protect the apartment owners and apartment tenants from legal issues related to apartment ownership and management?

1.3 Research Purposes

Based on the formulation of questions above, this thesis aims at:

1. Understanding the emerging legal issues related to apartment ownership and management; and
2. Analysing the legal protection provided to apartment owners and apartment tenants from apartment ownership and management related issues.

1.4 Research Benefits

This research is expected to provide both theoretical and practical benefits as follows:

1.4.1 Theoretical Benefits

Theoretically, this research paper will be beneficial for the development of legal studies, especially in agrarian law in relation to apartment law. Legislators should consider this research paper as it analytically criticises the current applicable laws and regulations

regarding apartment unit transaction, apartment owners and tenants' association and apartment management and points out the pertinent issues of legal dispute between an apartment developer as well as an apartment manager and apartment unit owners that the current law does not address. Henceforth, the amending law can be developed by the lawmakers with consideration of legal protection for the apartment owners.

1.4.2 Practical Benefits

This research paper will be practically beneficial for several parties: firstly, the government by considering this research paper as an input to forge apartment law that focuses further on legal protection; secondly, the apartment owners especially in expanding their knowledge with regard to the rights and obligations that bind not only the apartment owners but also the apartment developers, thus, the apartment owners will be more precautions and aware of the scope of duties the apartment developers have to prevent any misconduct that may cause harm or loss unto the owners; thirdly, the apartment developers and managers to further realise that their interest is to serve the consumers, especially after legal protection has been clearly provided to the apartment owners.

1.5 Framework of Writing

Followings are a brief overview of each chapter to map out a clear illustration for the readers in reading the thesis's discussion:

CHAPTER I : INTRODUCTION

This chapter will be introducing the background of the research topic, the research questions, the research objectives, the benefits of the research as well as the framework of writing.

CHAPTER II : LITERATURE REVIEW

This chapter will provide descriptions of theories and concepts that are used as the basis of this research in order to address the questions posed by the author in the first chapter.

CHAPTER III : RESEARCH METHODS

This chapter will discuss the type of legal research, type of data, data analysing method and legal research approach that is utilized for the purpose of conducting this legal research. This research paper utilises the normative research method by gathering and analysing secondary data such as laws and regulations, legal principles, expert opinions, theses and dissertations to answer the formulated questions.

CHAPTER IV : DISCUSSION AND ANALYSIS

This chapter will focus on addressing the research questions based on the theoretical foundation, legal principles, laws and regulations. In this chapter, the

author will analyse:

1. The emerging legal issues related to apartment ownership and management; and
2. The legal protection provided to apartment owners and apartment tenants from apartment ownership and management related issues.

CHAPTER V : CONCLUSION AND RECOMMENDATION

The last chapter will be comprised of the conclusion of the research paper along with some recommendations from the author based on the knowledge and understanding of the formulated problems.