

# The Regulations for the Formation of the Association of Owners and Residents of Flat Units (PPPSRS) Create Justice

Bonar P. Krisnanto<sup>1\*</sup>, Basuki Rekso Wibowo<sup>2</sup>, Fauzie Yusuf Hasibuan<sup>3</sup>

<sup>1,2,3</sup>Department Doctor of Law Program, Universitas Jayabaya, Indonesia

\*Corresponding Author

DOI: <https://dx.doi.org/10.47772/IJRISS.2024.802020>

Received: 12 January 2024; Revised 24 January 2024; Accepted: 29 January 2024; Published: 01 March 2024

## ABSTRACT

The formation of the Association of Owners and Residents of Flats Unit (PPPSRS) has an important role in encouraging a fair and equitable legal mechanism for Owners and Residents of Flats Units. However, in terms of the formation of the Association of Owners and Residents of Flats Unit (PPPSRS), the implementation of Law No. 20 of 2011 concerning Flats is still not optimal, as evidenced by the rampant conflict between owners and residents of flats with developers caused by developer interference in terms of formation and decisions made by the PPPSRS dispatcher. The weak supervision of apartment developers makes it freer to master the management of flats where it has been regulated that developers manage temporary flats, which is a maximum of 1 (one) year starting from the handover of apartment units. The research method used in writing this dissertation is the normative juridical research method, which is research that focuses and examines the application of rules and norms in positive law. Using the theory of Justice by John Rawls as the grand theory, the Organ Theory by Otto von Gierke as the middle range theory and the theory of Agreement by Subekti as the applied theory. The results showed that the implementation of the agreement between the owners and residents of the current apartment units in practice is not in accordance with what is regulated in Law No. 20 of 2011 concerning Flats because each interprets a rule based on its importance, as stipulated in Article 59. The transition period is calculated from where the handover is first, because many have received units for more than 5 (five) years, however, PPPSRS has not yet been formed due to the reluctance of developers to facilitate the formation of PPPSRS. For this reason, the author suggests that the government needs to be present to overcome the problems in the Agreement of the Association of Owners and Residents of Flats Unit (PPPSRS) both in its formation and implementation, so that a special institution is needed under the Minister of Public Works and Public Housing which oversees PPPSRS called the Flats Protection and Supervision Agency (BPPRS). For this reason, it is necessary to change the construction of Article 5 paragraph (2) of Law No. 20 of 2011 concerning Flats which stipulates the Flats Protection and Supervision Agency (BPPRS) as the Government representative responsible for the implementation of Flats.

**Keywords:** Justice, Association of Owners and Residents of Flats Unit (PPPSRS), Regulation.

## INTRODUCTION

The essence of national development is the development of the Indonesian human being as a whole and the development of the entire Indonesian society based on Pancasila and the 1945 Constitution. In Indonesian society, housing as one of the basic human needs is an embodiment of the human self, both as an individual and as a unit with each other and the natural environment.[1] Problems that arise along with the

development of a city are housing and settlement problems. Settlement problems in Indonesia, especially in urban areas, are generally caused by population.[2] Settlement problems are a common problem faced in developed and developing countries. The number of housing units built yearly cannot accommodate the fast population growth rate. Housing problems will not be separated from environmental problems where there are low quality/temporary houses, high density, irregular, and having minimal infrastructure or slum areas will affect the decline in environmental value, both physically and from the social perspective of its residents. Flats (Rusun) have become the primary alternative for meeting housing needs in densely populated urban areas. Flats offer various benefits, including efficient land use, centralized facilities, and security. However, the construction and management of condominiums face multiple challenges, including welfare and justice for the owners and residents of the condominium units. Looking at the trend, the construction of flats tends to be cumulative from 2015-2022. Meanwhile, most of the flats were constructed in 2017, namely 13,251 units. A total of 10,497 apartment units were built in 2015. Then, apartment construction increased to 7,740 units in 2016 and 13,251 units in 2017. After that, apartment construction decreased to 11,670 units in 2018 and 5,634 units in 2019. Likewise, in 2020, The construction of flats fell during the COVID-19 pandemic. The total number of constructions was recorded at only 823 flats. In 2021, the Ministry of Public Works and Public Housing (PUPR) recorded building 7,075 flats. (Rusun) in 2021. With this addition, Indonesia's number of flats (Rusun) has reached 56,690 units.[3] In Law no. 20 of 2011 concerning Flats, Chapter 1 Article 1 states that flats are multi-story buildings built in an environment that is divided into functionally structured parts, both in horizontal and vertical directions, and are units that each can be owned and used separately, especially for residential premises which are equipped with standard parts, joint objects, and joint land. So, an apartment is a juridical definition of a multi-story building that always contains a system of individual ownership and joint rights and whose use is residential or non-residential. Independently or integrated as a unified development system. The construction of flats or apartments is new for the Indonesian people. For this reason, it is necessary to support legal regulations that specifically regulate flats or apartments, which can protect consumers on the one hand and, on the other hand, make it easier for developers to market their property business.[4] According to Article 1 paragraph (1) PUPR Ministerial Regulation number 23/PRT/M/2018 concerning the Association of Owners and Residents of Flats is: "a multi-storey building built in an environment which is divided into functionally structured parts, both in horizontal and vertical directions and are units that are each -each can be owned and used separately, especially for residential premises equipped with shared parts, shared objects and shared land". Meanwhile, according to Article 1 paragraph (2), PUPR Ministerial Regulation number 23/PRT/M/2018 concerning the Association of Owners and Residents, Flat Units (PPPSRS) which is called a flat unit is: "a flat unit whose main purpose is to be used separately with the main function as a residence and has a means of connecting to a public road ". Article 58 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning implementing Flats and transferring SKBG rights. Practices in the community show that most developers or actors building flats have marketed the flats before the flats were built and are still in planning. In reality, in the implementation of apartment management, differences of opinion often arise between the apartment management and the apartment owners/occupants. One example is a dispute between residents and developers: The Green Pramuka Apartment, Gading Resort Residences Apartment, Kalibata City Apartment, Lavande Residences Apartment, etc. Paying close attention to the phenomena and legal issues as described above, the author is interested in conducting research with the dissertation title, namely: "Agreement between Owners and Residents of Flats on the Formation of the Association of Owners and Residents of Flats (PPPSRS) to Realize Justice".

## LITERATUR REVIEW

### Theory of Justice by John Rawls

Talking about justice cannot be separated from the theory put forward by John Rawls, an American

philosopher considered one of the leading political philosophers of the 20th century. In his book “A Theory of Justice,” he states that justice is the first virtue (virtue) of social institutions, just like truth in systems of thought.” [5] Justice is a moral value in social life, which every human being always dreams of having in this world because it is a value that can regulate good relationships between individuals. Relationships, in this case, are respecting and respecting the rights of each individual, seeing other people as fellow creatures of God who deserve to be treated equally; there is no intervention towards others but providing freedom to work and be creative, the absence of discrimination, and so on so that justice is useful and beneficial for all members of society. According to John Rawls, Rawls justice is a guarantee of the stability of human life and balance between personal life and collective life.[6] Rawls believes that the structure of society A just ideal is the original basic structure of society in which basic rights, freedom, power, authority, opportunity, income, and welfare are fulfilled. This category of ideal societal structure is used to 1) Assess whether existing social institutions are fair or not and 2) Make corrections to social injustice.[7]

## RESEARCH METHOD

Research methods function as tools or guidelines for conducting research, while research is a method based on certain methods, systematics, and thinking which aims to solve a scientific problem. So that researchers can be scientifically accountable, a correct research method is needed so that researchers can proceed well according to plan. The type of research carried out in this research is normative juridical. The type of legal research carried out in a normative juridical manner is normative juridical, where law is conceptualized as what is written in statutory regulations (law in books), or law is conceptualized as rules or norms that are benchmarks. Human behaviour that is considered appropriate<sup>40</sup>. This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations. [8]

## DISCUSSION

### Justice In the Context of Flat Owners and Residents

Normatively, it is regulated in the Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Flats, while those related to management rights, land rights, apartment units, and land registration are regulated in the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration. By the provisions of Article 75 paragraph (1) of Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Flats, it is emphasized that PPPSRS is obliged to take care of the interests of Owners and Occupants relating to the management of ownership of Joint Objects, Joint Parts, Joint Land and occupancy. In managing, the Association of Owners and Residents of Flats (PPPSRS) can form or appoint managers. Based on these provisions, it can be understood that PPPRS can manage the apartment environment by forming a manager or appointing another party. It is hoped that the legal relationship between PPPSRS, managers, owners, and residents of apartments in managing the apartment environment can run smoothly; however, in reality, it is not uncommon for disputes to arise in managing the apartment environment. One of the triggers for disputes is the increase in Environmental Management Contribution (IPL) rates carried out by the management without any consultation with the owners or residents of the flats. The emergence of disputes in the management of the apartment environment needs to be an effort to resolve them. Law of the Republic of Indonesia Number 20 of 2011 concerning Flats provides rules regarding dispute resolution in managing the apartment environment. The process of resolving disputes over apartment environmental management by the provisions of Article 105 of Law of the Republic of Indonesia Number 20 of 2011 concerning Apartments includes:

### **Deliberation to reach consensus**

Suppose dispute resolution through Deliberation to reach a consensus has yet to be achieved. In that case, the aggrieved party can sue through a court in a general court environment or outside the court based on the choice agreed by the parties to the dispute through alternative dispute resolution.

### **Out-of-court settlement**

Resolving disputes outside the court, as referred to, is carried out through arbitration, consultation, negotiation, mediation, conciliation, and expert assessment by the provisions of statutory regulations.

### **Settlement through court**

Law of the Republic of Indonesia Number 20 of 2011 concerning Flats has provided space for resolving disputes between parties in managing flats; therefore, the parties need to resolve disputes Deliberation to reach a consensus by prioritizing common interests. Before filing a lawsuit in court, the parties must truly ensure their legal standing and the strength of the evidence so that the panel of judges can accept the legal reasons from the parties. The existence of a court decision has legal consequences for the parties. Therefore, the parties must consider it before filing a lawsuit.

### **The Role of the Principle of Justice in Realizing the Goals of the Agreement**

Humans use various methods to fulfill their interests, one of which is by making agreements. The Civil Code regulates agreements concerning engagements in Book III (Articles 1233-1864). BW uses the terms contract and agreement to mean the same thing. This can be seen from the title of Chapter II Book III BW: Concerning obligations arising from contracts or agreements. From this title, it can be given the meaning that contracts and agreements are interpreted with the same meaning. The value of justice as a philosophical thought does not mean that the value of justice ceases to be abstract values that cannot be of practical value; the value of justice in the ideals of law, which is a human struggle, has evolved following the rhythm of time, space and time, from the past until now the funds will continue without stopping. It continues until humans are no longer active. Humans, as creatures created by God consisting of spirit and body, have the power of feeling and the power of thinking, both of which are spiritual powers, where feeling can function to control the decisions of reason so that they walk on moral values such as good and bad because that can determine good and bad is taste.[9] The evolution of legal philosophy, inherent in the evolution of philosophy as a whole, revolves around certain problems that continue to arise repeatedly. Among these problems, the most prominent is its relation to law. The law must be fair, but it often is not. Law is related to justice without being fully aware of it. A law cannot be characterized as an unjust law. However, the impossibility of making law and justice as one unit in the minds of positivists is a form of denial of *das sollen* and being trapped in *das sein*. Justice can only be understood if it is positioned as a condition that is intended to be realized by law.[10]

The condition for balance as the fourth goal is achieved through social propriety, immaterial existence achieved in the spirit of balance. In an agreement, the interests of individuals and society will be simultaneously guaranteed by objective law. Agreements from the point of view of substance or aims and objectives that are contrary to morality and public order will be null and void by law, and in essence, the same thing will apply concerning agreements that conflict with the law. The agreement contains the meaning “a promise must be kept” or “a promise is a debt.” With an agreement, it is hoped that each individual will keep their promises and carry them out. 174 With an agreement, it is hoped that the parties involved in it can do business by the agreed agreements, do it with balance, and serve as a basis for resolving if problems arise later. Every agreement the parties make must be implemented voluntarily or in good faith, but the agreements are often violated. Dispute resolution patterns can be divided into two types: court and alternative dispute resolution. Settlement through court is a pattern of resolving disputes between

parties, which the court resolves. The decision is binding. Meanwhile, dispute resolution through alternative dispute resolution (ADR) is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court using consultation, negotiation, mediation, conciliation, or expert assessment.

### **Reconstruction of Agreements between Owners and Residents of Flats on the Formation of Association Agreements on Owners and Residents of Flats to Realize Justice**

Justice is an abstract concept that always attracts human attention; human awareness of justice grows naturally as something that is used as a value and barometer of civilization. Theodore Parker stated:

“Man, naturally loves justice, for its own sake, as the natural object of his conscience. As the mind loves truth and beauty, conscience loves the right; it is truly a beautiful land for the moral faculties. Conscience rests in justice as an end, as the mind in truth. As truth is the side of God turned towards the intellect, so is justice the side of Him whose conscience looks upon. Love of justice is the moral part of piety”.208

This means that Man naturally loves justice for its own sake as the natural object of his conscience. As the mind loves truth and beauty, the conscience loves truth; It is a true and beautiful land for moral abilities. Conscience rests on justice as an aim, as a thought in truth. As truth is the side of God which the intellect turns to, justice is the side of Him which the conscience looks to. Love of justice is the moral part of piety. Justice as part of social values has a broad meaning, and even at some point, it can conflict with law as a social value system. A crime committed is a mistake. However, if this is not greed, it cannot be said to cause injustice. On the other hand, an action that is not a crime can cause injustice. Justice, in literature, is often interpreted as an attitude and character. Attitudes and characters make people act and hope for justice, while attitudes and characters that make people act and hope for injustice are injustice. In general, it is said that an unjust person is a person who does not obey the law (unlawful lawless) and is an unfair person, so a just person is a person who obeys the law (law-abiding) and is fair. Because fulfilling/obeying the law is fair, all acts of making laws by the legislature by existing rules are fair. The aim of making progress towards happiness is a just society.

The construction of an apartment that has been carried out can be carried out as indicated by a certificate of functional feasibility, a certificate of ownership of the apartment unit, and a certificate of ownership of the building for the apartment unit. Control of commercial flats can be owned by buying and selling or renting. An apartment must be controlled by making deeds before an authorized official, either a Notary or a Land Deed Drafting Officer (PPAT). The agreement must also be registered with the Association of Owners and Residents of Apartment Units (PPPSRS)—article 74 (1), which obligates establishing PPPSRS as a legal entity. The formation of the Association of Owners and Residents of Flats (PPPSRS) is facilitated by development actors/business actors. Before forming the Association of Owners and Residents of Flats (PPPSRS) by Law No. 20 of 2011, development actors/business actors were obliged to manage flats as a transition period. The transition period is only valid for one year from the first handover of the apartment unit to the owner.

It is very clear that development actors, even though they are supported by all their employees, are not legally entitled to form the Association of Owners and Occupants of Flats (PPPSRS) or control the seat of the Management of the Association of Owners and Occupants of Condominiums (PPPSRS). How is it possible that you only have one vote in voting on the formation of the Association of Owners and Occupants of Condominium Units (PPPSRS) or the election of the Management of the Association of Owners and Occupants of Condominium Units? In fact, until now, there are still development actors who form the Association of Owners and Residents of Flats (PPPSRS) and place their employees as Management. This is a violation of the law explained above. The importance of the formation of the Association of Owners and Residents of Flats (PPPSRS) means that its formation needs to be encouraged so that it is natural that Law

no. 20 of 2011 provides a statement that development actors/business actors provide facilities for the formation of Associations of Owners and Residents of Flats (PPPSRS). The Association of Owners and Residents of Flats (PPPSRS) has yet to be formed due to several obstacles resulting in the formation process not being carried out.

## DISCUSSION

In practice, the implementation of agreements between owners and occupants of flats differs from what is regulated in Law No. 20 of 2011 concerning Flats because each person interprets a rule based on their interests, such as the provisions of Article 59 of the transition period. The transition period is calculated from the first handover because many have received the unit for more than 5 (five) years, but the AJB/SHMSR has yet to be issued because there is no explanation yet. The report can be issued if all building functions have an SLF (Certificate of Worthiness). Building Function), so residents cannot form PPPSRS because they have yet to be legal owners. Apart from that, development actors are reluctant to facilitate the formation of PPPSRS, thus giving rise to the main problems between flat owners and developers. To reconstruct the formation of the agreement on the association of owners and residents of flats to realize justice, at least an amendment is needed to the norms contained in Article 5 of Law No. 20 of 2011 concerning Flats, which states that ministers, governors, and regents/mayors are mandated to carry out guidance. Planning, regulation, control, and supervision are considered ineffective in realizing justice for all parties regarding the formation of an agreement on the association of owners and residents of apartment units (PPPSRS). So, more government intervention is needed regarding the Association of Owners and Tenants of Flats (PPPSRS) through the Flats Protection and Supervision Agency (BPPRS).

## REFERENCES

1. Dharmasena, *Menyongsong Hari Esok Yang Lebih Cerah*, Edisi Januari No.42/Th XVI/ 1991, p.77
2. Kasman Jaya dan Ranatwati, *Kependudukan Dan Lingkungan Hidup*, Feniks Muda Sejahtera, Bandung, 2022, p.173
3. <https://indonesiabaik.id/infografis/terus-tambah-rumah-susun-indonesia> [accessed on date 8 November 2023]
4. Richard Eddy, *Aspek Legal Properti: Teori, Contoh, dan Aplikasi*, CV. Andy Offset, Yogyakarta, 2010, p.19
5. John Rawls, *A Theory of Justice*, cet. Ke-23, Massachusetts: Harvard University Press, 1999, p. 3
6. Damanhuri Fattah, *Teori Keadilan Menurut John Rawls*, Jurnal TAPIs, Vol.9 No.2 Juli-Desember 2013, p. 32.
7. *Ibid*
8. Soeryono Soekarto, *pengantar penelitian hukum*, UI Press, jakarta, 1984, p. 20
9. M. Rasjidi dan H. Cawindu, *Islam Untuk Disiplin Ilmu Filsafat*, Bulan Bintang, Jakarta, 1988, p.17
10. Carl Joavhim Frederich, *Filsafat Hukum Perspektif Historis*, Nusa Media, Bandung, 2010, p. 239