




Problems of Managing and Licensing The Apartment

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Article Info	Abstract	
<p>Keywords: Managing; Licensing; Apartment.</p>	<p>Introduction: The fulfillment of the right to housing is a national problem that must be resolved. Jakarta is the capital city of Indonesia which faces problems in fulfilling the right to housing. The apartment area has been built to respond to these problems.</p> <p>Purposes of the Research: The purpose of this study is to analyze the management and licensing of apartments in Jakarta City.</p> <p>Methods of the Research: This research is a normative juridical research. It uses several approaches, namely the statute approach, the conceptual approach, and the comparative approach. The type of data used consists of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2011 concerning Housing and Settlement Areas, Law Number 20 of 2011 concerning Apartments.</p> <p>Results / Findings / Novelty of the Research: Based on the results of the study, it was found that there were many cases, for example the case in Decision concerning the Privatization of SPAM and the unilateral determination of BPPL between the Sentul City against PT Sentul City. Based on this case, there was a legal uncertainty regarding the management and licensing of the apartment area in Jakarta.</p>	

1. INTRODUCTION

Issues about democracy and gender, enrich the repertoire of developments world of law in the global era. The same goes for human rights, which cannot be separated from issues of democracy and gender, occupies separate place in the philosophical, theoretical and practical dimensions. Human rights be issues that are timeless, to be peeled from various perspectives studied, including: (1) legal aspects which include the General Declaration of Human Rights Man/UDHR (Universal Declaration of Human Rights), International Covenant on Economic, Social and Cultural Rights/Ecosocial Rights (International Covenant on Economic, Social and Cultural Rights/ICESCR), and the International Covenant on Civil and Political Rights/Sipol Rights (International Covenant on Civil and Political Rights/ ICCPR), as well as from other human rights perspectives and instruments at international and national levels; and (2) socio-legal aspects covering fields history, sociology, anthropology, and international relations.¹

¹ Lukman Hakim and Nalom Kurniawan, "Developing Paradigm of Indonesian Human Rights Law Based on Human Rights Obligation," *Jurnal Konstitusi* 18, no. 4 (2021): 871.

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In Indonesia, arrangements regarding human rights already exist since the inauguration of Pancasila as the basis Indonesian state guidelines, although implied. Both concerning the relationship human beings with God Almighty, as well as human to human relationship.² Rights can be interpreted as something serious, authority, authority when practicing material, proper power over material or when you want to suppress something. Likewise, the word human rights has various definitions, some of which can be meant by using things that are primary, absolute along with principles, the most basic, as a result human rights mean rights that have a basic spirit or primary rights that are owned by the individual himself, biological rights, the right to express opinions, as well as the right to obtain the right to be protected.³

Provisions of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia clearly guarantee that everyone has the right to live in physical and spiritual prosperity, have a place to live, and get a good and healthy living environment.⁴ Thereby as in the preamble letter b of Law no. 1 of 2011 concerning Housing and Settlement Areas (UU-PKP) states that the state is responsible for protecting the entire nation of Indonesia through the organization of housing and residential areas so that people are able to live as well live in decent and affordable housing in healthy, safe, harmonious, and sustainable throughout Indonesia.⁵

Worldometers data states that Indonesia is the fourth country that has the most densely populated population in the world.⁶ As time goes by and the population increases, so does the increase request for the availability of land used for the provision of infrastructure facilities.⁷ In big cities like Jakarta, land is getting narrower and more expensive. Place needs live close to the office or in the middle of the city to support productivity work performance. The solution to this is an apartment.⁸

The fulfillment of the right to housing is one of the national problems due to the limited amount of land available in the densely populated urban areas.⁹ Efforts that can be adopted to fulfill the right to housing in the midst of the existing land crisis is the construction of apartments. The construction of apartment is an alternative solution to the problem of

² Bambang Heri Supriyanto, "Penegakan Hukum Mengenai Hak Asasi Manusia (HAM) Menurut Hukum Positif Di Indonesia," *Jurnal Al-Azhar Indonesia Seri Pranata Sosial* 2, no. 3 (2014): 156.

³ Yulita Erika and Suryaningi, "Kajian Deskriptif Tentang Kesetaraan Dalam Hak Asasi Manusia Di Lingkungan Masyarakat," *Nomos: Jurnal Penelitian Ilmu Hukum* 2, no. 2 (2022): 61, <https://journal.actual-insight.com/index.php/nomos/article/view/910/1115>.

⁴ Azisyah Izzattisselim, "Pembentukan Perhimpunan Pemilik Dan Penghuni Satuan Rumah Susun Menuju Kepastian Hukum Penghuni Rumah Susun," *Jurnal Law Review* 18, no. 3 (2019): 348.

⁵ Caecilia Waha and Jemmy Sondakh, "Pemenuhan Hak Atas Perumahan Yang Layak Bagi Masyarakat Miskin Di Perkotaan (Suatu Kajian Dalam Perspektif Hak Asasi Manusia)," *Jurnal LPPM Bidang EkoSosBudKum* 1, no. 2 (2014): 87, <https://media.neliti.com/media/publications/108372-ID-pemenuhan-hak-atas-perumahan-yang-layak.pdf>.

⁶ Utami Puspaningsih, Aam Suryamah, and Agus Swandono, "Tanggung Jawab Hukum Pengelola Apartemen Atas Penarikan Biaya Pengelolaan Yang Tidak Transparan," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 1 (2021): 2.

⁷ Octasya Yusrindita Devi and Wisnu Pradoto, "Keberadaan Apartemen Dan Pengaruhnya Terhadap Aktivitas Sosial Dan Ekonomi Kawasan Seturan, Yogyakarta," *Jurnal Teknik Perencanaan Wilayah Kota* 6, no. 2 (2017): 86.

⁸ Utami et al., "Pengolahan Elemen Pada Fasad Bangunan Apartement Cosmo Terrace Terhadap Tema Back To The City," *Jurnal Reka Karsa* 4, no. 1 (2015): 2.

⁹ Yusuf Saepul Zamil, "Perlindungan Hukum Pembeli Apartemen Atau Rumah Susun Di Atas Tanah Hak Pengelolaan," *Jurnal Arena Hukum* 10, no. 3 (2017): 442, <https://doi.org/10.21776/ub.arenahukum.2017.01003.6>.

housing and settlement needs, especially in the urban areas where population continues to increase since the construction of apartments can reduce land use, make urban open spaces more spacious, and rejuvenate the city for slum areas.¹⁰ The development of apartments aims to meet the community's need for housing, both in quantity and quality in a healthy residential environment as well as the need for an atmosphere of life that provides a sense of security, peace and prosperity.¹¹ Apartments are regulated in Law No. 20 of 2011 concerning Apartments, which regulates the procurement of rights to apartments and their management.

The term apartment in Indonesia has many various terms, among others¹²: first, *Strata Title*, is the right to apartments being on different levels which is essentially a new institutional role in apartment law in Australia. The right to the different level is the right of a person to fully own one or several rooms which are the contents of one or several apartments he/she owns in cubic dimensions obtained from three-dimensional calculations.¹³ The strata title system is a system that allows the division of land and buildings into units called units, each of them has a separate right.¹⁴ Second, flat, in Dutch called "*flatgebou*" can be interpreted as a flat or terraced house with a roof or attic, occupied by people as a separate place to live. The use of the word flat is used for four-story residential flats which are usually designated as official residences.¹⁵ Third, according to the Big Indonesian Dictionary, an apartment is a residence consisting of a sitting room, bedroom, bathroom, kitchen, and so on which are located on one floor of a large and luxurious multi-story building equipped with various facilities. In Dutch, the apartment comes from the word "apartment" which in Indonesian is defined as a place of residence/dwelling in the form of a room or chamber. Fourth, condominium, in Latin consists of two words, namely "*co*" which means together and "*dominium*" which means ownership. A condominium has the meaning as a building ownership consisting of other parts of the building and the land above the building which, because of its shared function, is jointly owned by individual owners.¹⁶ Fifth, regardless of the variation in the term of apartment in Indonesia, in its essence, whether it is a condominium, apartment, or flat, it is referred to the term "apartment". Accordingly, the term "apartment" is used this study.

Apartments are a model a place to stay that just takes a fraction of the space of a building. An apartment building can have dozens or even hundreds apartment units.¹⁷

¹⁰ Syahmardan, "Kedudukan Hukum Rumah Susun Di Indonesia," Media Publikasi Peraturan Perundang-Undangan dan Informasi Hukum, accessed February 8, 2022, https://ditjenpp.kemendikham.go.id/index.php?option=com_content&view=article&id=1424:kedudukan-hukum-rumah-susun-di-indonesia&catid=108&Itemid=161&lang=en.

¹¹ Eddy Marek Leks, "Analisis Dan Evaluasi Peraturan Perundang-Undangan Tentang Perumahan Rakyat," *BPHN*, 2013.

¹² Fatini Justini Omas, "Aspek Hukum Dalam Pembangunan Rumah Susun Dan Jual Beli Satuan Rumah Susun: Analisa Pada Rumah Susun Yang Dikembangkan Oleh Pengembang A" (Universitas Indonesia, 2009).

¹³ Halim A Ridwan, *Sendi-Sendi Hukum Hak Milik, Kondominium, Rumah Susun Dan Sari-Sari Hukum Benda (Bagian Hukum Perdata)* (Jakarta: Puncak Karma, 1995).

¹⁴ Maria S W Sumardjono, *Kebijakan Pertanahan: Antara Regulasi Dan Implementasi* (Jakarta: Kompas, 2005).

¹⁵ Muhyanto, *Analisa Dan Evaluasi Hukum Tentang Kedudukan Hukum Dan Sertifikat Pemilikan Rumah Susun* (Jakarta: Departemen Kehakiman, 1994).

¹⁶ Arie S Hutagalung, *Kondominium Dan Permasalahannya Edisi Revisi* (Depok: Penerbit Fakultas Hukum Universitas Indonesia, 2007).

¹⁷ Jumratul Akbar, Eddy Prianto, and Erni Setyowati, "Apartemen Mahasiswa Terpadu Di Tembalang," *Jurnal IMAJI* 1, no. 6 (2012): 1142.

In the apartment concept, there are also shared facilities or spaces, which are parts, objects, or land that are jointly owned that function as public spaces (parks, fields, swimming pools, etc.). To manage the shared facilities/space, the Law mandates this task to the Association of Tenants and Apartment Owners Unit (*Perhimpunan Penghuni dan Pemilik Satuan Rumah Susun/P3SRS*), which has the obligation to take care of the interests of the Owners and Tenants related to the management of ownership of shared objects, joint shares, joint land, and occupancy. In addition to the duty to maintain and protect the rights and obligations of the occupants of the apartments along with the management of their facilities, based on Government Regulation no. 4 of 1988 concerning Apartment also assigned the P3SRS to oversee the implementation of the rules and regulations for the occupancy of apartments.

The establishment of the P3SRS which is mandated by the Law and its implementing regulations, tasks the P3SRS in accordance with these requirements a legal entity that can act externally and internally on behalf of the owner (and his/her proxies) of the apartment to carry out its rights and obligations to create the orders regarding the interests of the management of apartments. The establishment of the P3SRS is indeed the obligation of the apartment owner, but in the process of establishing it, in accordance with Article 75 paragraph (1) of Law Number 20 of 2011 concerning Apartment stipulates that developers are obliged to facilitate the establishment of P3SRS no later than the end of the transition period, namely it is no later than 1 (one) year since the delivery of the apartment unit for the first time without being allowed to link the delivery with the sale of the apartment unit as a whole, and the costs of the establishment from the beginning to the end of the P3SRS shall be borne by the developers.¹⁸

Based on the Decision of the Constitutional Court in the Case No. 21/PPUXIII/2015, the meaning of the transition period is a maximum of 1 (one) year should not be considered as handing over of the entire apartment unit, which is often used by developers to delay the establishment of the P3SRS with the assumption that the apartment has not been fully handed over because it is still under construction. Thus, there is no owner or the sale of the apartment has not been fully sold, even though by referring to Ministerial Regulation no. 23/2018 concerning the Association of Owners and Occupants of Apartment and their implementing regulations as well as the said Constitutional Court Decision, developers should have an obligation to facilitate the establishment of the P3SRS from the beginning of preparation to its establishment from the time the apartment is handed over to the owner through the correct mechanism (the transfer of apartment units rights through the Deed of Sale and Purchase and submission of the Certificate of Ownership to the Apartment Unit) within a period of 1 (one) year).

The practice of establishing apartments which is carried out in a broad and strategic area so that its management uses the concept of area management. Apartment area is an area consisting of several apartment and the P3SRS that manage each asset together with apartments in their respective areas and have the same area that will be used for the benefit of the surrounding community as a manifestation of social functions. Some examples of apartments in Jakarta are Sudirman Central Business District (SCBD) and Podomoro City. Apartment Developer or Area Manager is an individual or business entity that works in the context of developing a residential area into housing that is livable and has economic value so that it can be sold to the public. The problems arising from the practice of implementing

¹⁸ Juneidi D. Kamil, "Pembentukan P3SRS Pasca Judicial Review," *Persatuan Perusahaan Real Estat Indonesia*, 2020, <https://www.rei.or.id/newrei/berita-pembentukan-p3srs-pasca-judicial-review.html>.

the regulation of Apartment Areas are caused by 2 (two) models of implementing Apartment Area Management and 2 (two) types of development of Apartment Area Management which lead to the very different legal consequences. They are outlined as follows:

The first model (I) of the Management of the Apartment Area is managed by the Regional Government including the management of facilities, infrastructure, and public utilities at the provincial/district/city level. The implementation of the management of facilities, infrastructure, and public utilities carried out by the Regional Government has many shortcomings, one of them is the provision of facilities and infrastructure that are not completed in the procurement process or the maintenance and management of facilities and infrastructure is not sustainable so that it ends with greater damage without any follow-up. Hence, this condition causes more and more damage. The result that appears is that the surrounding community, which is none other than P3SRS, make efforts to resolve both in the form of funding to repair and manage the facilities, infrastructure, and public utilities. This is done because basically the facilities, infrastructure, and public utilities are directly related to the daily life of all residents in the area.

The second model (II) of the management of the apartment area is the manager of the apartment area. This implementation means that in practice the Apartment Area Manager manages public facilities, infrastructure and utilities from the beginning of development to the present. Such management is not in accordance with applicable regulations, but on the other hand it produces more benefits for the community and residents of the apartments. The consequence of such a practice is that it allows the Apartment Area Manager to carry out policies that are oriented towards their interests which may override the public interest. In addition, this practice is contrary to legal provisions. The implementation that is not in accordance with legal provisions and continues to lead to legal uncertainty and injustice. One example of this practice is the Sudirman Central Business District (SCBD). The implementation of the SCBD Area Management is carried out by the Apartment Area Manager which in its arrangement should be submitted to the Regional Government, but due to the condition of the management of the apartment area by the government it is not always in good implementation so that the area manager is decided to be carried out alone, while in other areas it is owned and/or owned. or managed directly by the area manager. When public facilities such as roads, for example, are owned by the area manager, conceptually the land rights of the area manager can apply their rights to the said road, this practice continues until now, and becomes an unprofitable practice for the area around the area.

Based on this background and practice in the application of provisions and disputes that arise in court, the purpose of this study is to explore and analyze the causes that are the supporting and inhibiting variables for the occurrence of legal uncertainty in the management of the Apartment Area.

2. METHOD

This research is a normative juridical research. It uses several approaches, namely the statute approach, the conceptual approach, and the comparative approach. The type of data used consists of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2011 concerning Housing and Settlement Areas, Law Number 20 of 2011 concerning Apartments, Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 13 of 2021 concerning the Implementation of Apartments,

Regulation of the Minister of PUPR Number 14 of 2021 concerning P3SRS, Governor of DKI Jakarta Regulation Number 132 of 2018 concerning Guidance on Management of Owned Apartments, DKI Jakarta Regulation Number 70 of 2011 concerning Second Amendment to Regulations Governor of DKI Jakarta Number 132 of 2018 concerning Guidance on the Management of Owned Apartments. In addition, it is also used secondary legal materials consisting of books and articles related to the law of apartments.

3. RESULTS AND DISCUSSION

3.1 Cases of Apartment Management in Jakarta City

The Practice arising from the cases based on Decision Number 285/Pdt.G/2016/PN.Cbi concerning the Privatization of Drinking Water Supply System (*Sistem Penyediaan Air Minum/SPAM*) and the unilateral determination of Environmental Management and Improvement Costs (*Biaya Pengelolaan Dan Perbaikan Lingkungan/BPPL*) between the Sentul City Citizens Committee (*Komite Warga Sentul City/KWSC*) against PT Sentul City. The dispute case began with PT Sentul City, a housing developer in the Sentul City area located in Bogor Regency, appointing PT Sukaputra Graha Cemerlang based on Appointment Agreement number 022/PJJ-SC-CL/XII/2011 (addendum to V) to manage and collect the BPPL in the Sentul City area. KWSC is a legal entity that was established based on Deed Number 13 dated June 13, 2016 concerning Ratification of Legal Entities of the Sentul City Citizens Committee Association which was ratified through the Decree of the Minister of Law and Human Rights Number AHU-0061131.AH.01.07 Year 2016 dated June 16, 2016. PT Sentul City cooperates with PDAM Tirta Kahuripan Bogor as stated in the Agreement dated May 17, 2001 regarding the Implementation of SPAM, in which PT Sentul City basically has the authority to manage the availability of drinking water in the Sentul City area since 2001.

Based on the Agreement Chapter V of Code of Conduct and Design Guidelines in the Sentul City Special Residential Area which applies to owners and residents in the Sentul City area, PT Sentul City is authorized to withdraw the BPPL whose amount is determined by the developer and/or manager. PT Sentul City has not submitted infrastructure, facilities, and utilities as well as management to the Regional Government of Bogor Regency, consequently the management of the Sentul City area is still the responsibility of the appointed developer and manager. The problem that arises in this case is that KWSC and several other Sentul City residents refuse to pay the water bill and BPPL to the management. According to PT Sentul City, KWSC has instigated Sentul City residents not to pay water fees and BPPL, therefore PT Sentul City filed a lawsuit on tort (*Perbuatan Melawan Hukum/PMH*) against KWSC to the Cibinong District Court.

The decision of the panel of judges decided as follows (a) Stating that the Defendants had committed an unlawful act; (b) Punish PT Sentul City to pay for the maintenance of facilities, infrastructure, and utilities in the Sentul City Area until it is handed over to the Regional Government in accordance with applicable laws and regulations; (c) Ordering the Defendants to set water tariffs to residents of the Sentul City Area in accordance with the rates determined by the Regional Government; (d) Sentencing the Defendants to pay penalty payment (*dwangsom*) of IDR 1,000,000 for each negligence per day. As for the consideration of the Judge in the decision, as follows: (a) The Plaintiffs do not have a legal basis to file a lawsuit against the Defendants. This is because the Defendants are not bound by the appointment of management agreement between PT Sentul City and PT Sukaputra Graha Cemerlang; (b) PT Sentul City operates the SPAM without having a SPAM license.

The argument put forward by the plaintiff regarding the SPAM in Article 19 paragraph (2) of Law Number 1 of 2011 is wrong; (c) PT Sentul City sets the water tariff unilaterally and does not follow the water tariff provisions determined by the Regent of Bogor; (d) The appointment of a manager by PT Sentul City is a form of transfer of responsibility and violates the laws and regulations because PT Sentul City has not yet handed over facilities, infrastructure, and utilities to the local government.

The conclusion and analysis based on the case of SPAM privatization and BPPL tariffs violate the rules carried out by PT Sentul City as the developer and PT Sukaputra Graha Cemerlang as the manager of the Sentul City Area causing losses to the residents of Sentul City. The KWSC as a legal entity which is an association of Sentul City residents several times sent letters of demands and warnings to PT Sentul City for violations committed by developers and managers which ultimately caused material losses to Sentul City residents. The next development is that several Sentul City residents did not pay water tariffs and the BPPL, which resulted in the termination of the water network from the management.

In 2016, PT Sentul City then filed a lawsuit against KWSC to the Cibinong District Court with the argument that KWSC had committed an unlawful act. Based on this lawsuit, the panel of judges rejected the petition from PT Sentul City and in essence determined that PT Sentul City had committed an unlawful act for privatizing drinking water and setting BPPL rates arbitrarily without regarding to the existing laws and regulations. Whereas PT Sentul City does not have a water concession permit from the government based on Article 1 paragraph (4) jo. Article 11 paragraph (2) of the Irrigation Law jo. Ministerial Decree No. 409/2002. Although the SPAM is allowed to be carried out by business entities, the management is limited according to Article 56 paragraph (3) of PP No. 122/2015. Business entities may carry out SPAM for their own needs based on Article 52 of PP 122/2015 but in reality, the SPAM pipeline network managed by PDAM Tirta Kahuripan, Bogor Regency has reached the Sentul City area, hence the SPAM management must be carried out by PDAM. The SPAM rates are set by the Central Government/Local Government based on Article paragraph (1) letter b of the Minister of Public Works and Public Housing 25/2016.

The previous explanation elaborates that the concrete conditions related to the problems that arise in the practice of the Apartment Area Management model which has not been able to provide justice and legal certainty which is a legal ideal that should be presented in every regulation. On the other hand, the need for housing continues to increase and the availability of housing is very urgent, so the need for regional development continues to increase. This also affects the emergence of 2 (two) types of development patterns for the apartment area.

First Pattern (I) of the Development of Apartment Area is an area consisting of several apartments and P3SRS which manage each asset together with apartments in their respective areas, and have the same area which will be used for the benefit of the surrounding community as embodied of social function. The First Development Pattern (I) is a model that often appears and applies to the Apartment Area Management model as in the First Model and Second Model in Apartment Area Management.

Second Pattern (II) of the Apartment Area Development Pattern is an area consisting of several apartments and the P3SRS that manage each asset together with apartments in their respective areas, but do not have the same area that will be used for the benefit of the surrounding community other than the road or public access that surrounds the area. Accordingly, the logical consequence is how the obligation to hand over land for

infrastructure from this area will be accommodated as the embodiment of an ideal social function. This condition occurred in the development of the Thamrin Nine Apartment area. Thamrin Nine Apartment area which has been developed since 17 July 2013 by PT Putragaya Wahana. The Thamrin Nine area is an integrated property area that is mixed or mixed used consisting of offices, retail, hotels, residences and facilities located on Jl. Kotabumi, Martapura Dalam and Jl. Baturaja, Kebon Melati, Tanah Abang, Central Jakarta. In the development of the Thamrin Nine area, PT Putragaya Wahana is required to provide 284 square meters of land for infrastructure with a certificate of ownership in the name of the DKI Jakarta Provincial Government without compensation, excluding other matters as public facilities. In its implementation, the violation is in the development of the Apartment Area which does not own land outside of the joint area belonging to the P3SRS.

3.2 Problems with the Regional Development and Implementation of Permits in Providing Apartment Area Development

The apartment sales business is increasing. There are several reasons business in the real estate sector growing rapidly in recent years finally, namely: 1) the human population that continues to grow, 2) limited land, 3) high demand for housing, 4) the price of a landed house the higher so, the apartment be a solution to overcome stress traffic jams in big cities, and 5) market potential for developers.¹⁹

Development management is carried out as part of the supervision and management of land use, so that urban areas can be utilized efficiently and developers do not harm the urban environment. Urban planning prepared by the government with the participation of the city government contains an agreement on the contents of the plan for the use of urban space in the future. Thus, urban spatial planning can be used as a means of managing and monitoring development implementation by issuing building permits.²⁰ Based on the existing controls,²¹ community land use in urban areas is often inefficient and prone to conflict because each development implementer tries to optimize his interests or groups. To achieve an effort to carry out urban spatial planning, efficient and synchronous prevention efforts are needed as well as comprehensive. To achieve this, it is necessary to determine thoroughly regarding the guidelines in spatial planning in order to avoid conflicting interests of spatial users. The developing practice shows different implementations in which the implementation of spatial planning is still very sporadic, causing permanent spatial violations still occur. This explains that the performance of spatial planning has not been maximized.

Factors that result in the violations of space utilization generally based on the changes in use or transition of space use. The weak forces that support spatial planning and regional management and are under pressure by the authorities or stakeholder officials. The weak development control procedures are one of the obstacles to the implementation of urban spatial planning that needs to be observed. The good planning or shifting of space use always leads to the good spatial planning with the support of development governance and clear governance mechanisms. In addition, it is needed to support the provision of strict sanctions for non-compliance (non-intensive) and remuneration (intensive) for those who comply with regulations. If there is a violation of spatial planning, there are rarely sanctions

¹⁹ Aulia Rahmawati, "Hukum Apartemen Dalam Prakteknya Di Indonesia," *Jurnal Justitia et Pax* 34, no. 1 (2018): 16, <https://doi.org/10.24002/jep.v34i1.1216>.

²⁰ Sutaryono, "Lahan Pangan Berkelanjutan," *Opini Surat Kabar Kedaulatan Rakyat*, 2016.

²¹ Susilo Widiyantoro, "Pengendalian Lahan Pertanian Pada Proses Penyediaan Lahan Perumahan Skala Besar Di Kawasan Perkotaan Yogyakarta" (Universitas Gadjah Mada, 2017).

in the form of warnings, coercion, and even sanctions. Those who comply with the rules and room plans should also be rewarded. As a result, developers tend to ignore the interests of the general public and merely rely upon their own will and interests.²²

In the absence of a system of incentives and prevention, the tendency for space use violations become more common. This discrepancy or violation can be caused by several factors, including pressure from market developments, unclear control mechanisms, and the weak law enforcement. These deviations may occur because of the results of spatial planning do not take into account aspects of implementation (use of space), or conversely the use of space does not take into account space planning.

3.3 The Vague and Inequality Spatial plans Dynamics in Providing Apartment Area Development

The Regional Dynamics and Problems in Regional Development as well as the Effectiveness of Space Utilization Permits as an Instrument for Control of Spatial Utilization in practice have resulted in further consequences, namely that the Spatial Plans (*Rencana Tata Ruang Wilayah/RTRW*) have never provided a clear allocation of the zone position for the Apartments Settlement Area should be, in principle the RTRW should be used as a guideline and a reference in determining and implementing the development of an area. This creates an imbalance in the availability of space and regulations that are the basis for implementing development.

Regulators in governments, developers and tangible financial institutions are the three main pillars of large-scale housing and real estate. From the institutional side, the position is clear, but the implementation remains independent pertaining to the authority, duties, and obligations of each stakeholder. It is unavoidable to speculate about property which is indispensable for the supply of housing as a product, but it forgets its social function. Even though the government's efforts have determined arrangements to prevent such practices, it is known that the availability of emerging housing developments still occupies a less strategic location and does not have adequate access, both to urban centers and centers of economic activity. The Government's commitment to handling this problem is also reflected in Article 50 paragraph (4) of Law Number 11 of 2020 concerning Job Creation. In this regard, the development of balanced housing in large-scale housing can be converted into public apartments, yet it is still required in one area. Furthermore, the results of the conversion in the form of funds are submitted to the Acceleration of Housing Implementation Agency (*Badan Percepatan Penyelenggaraan Perumahan/BP3*) for the construction of public houses. One manifestation of the development of balanced habitation is Bumi Serpong Damai, Summarecon, and Alam Sutera.

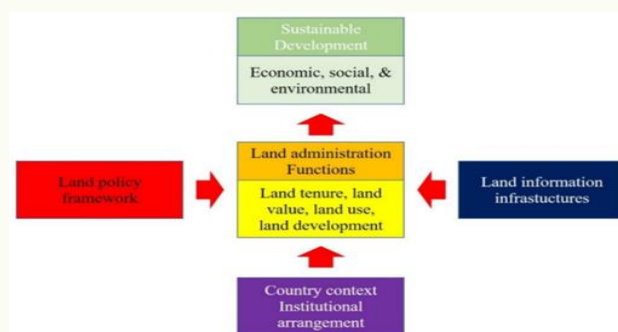
The practice explained above is currently far from sufficient to overcome the Problems in Regional Development and the Effectiveness of Space Utilization Permits as an Instrument for Controlling Spatial Utilization in Providing Development of Apartment Settlement Areas. This condition has not been improved and this is reflected in the following current policy direction taken by the State: 1) The Changes in the direction of the policy which was originally aimed at gradually increasing public access to decent housing and settlements as mandated by Law Number 1 of 2011 concerning Housing and Settlements and Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas. It is shifted due to the Regulation of the Job Creation Act which

²² Bambang Irawan, "Meningkatkan Efektifitas Kebijakan Konversi Lahan," Forum Penelitian Agro Ekonomi 26, no. 2 (2008): 116-131.

nowadays aiming at improving the investment ecosystem and business activities; 2) The division of spatial designation in a certain area based on the original purpose based on the use of space by considering the protection and cultivation function. It is also shifted due to the Job Creation Law, nowadays it becomes the Application of Risk-based Licensing, and the Simplification of Basic Licensing Requirements.

The above-mentioned practice creates a greater gap in regulatory efforts as a mechanism to provide certainty, justice and benefit to the community, especially in the development of Apartment Residential Areas. Based on the problems that occur in the management and licensing of apartments in Jakarta City, it is necessary to make a legal reconstruction to provide certainty regarding the management and licensing of apartments in Jakarta City. According to the Certainty of Law Theory by Sudikno Mertokusumo, Legal Construction is a way to fill the void in laws and regulations with legal principles and norms. The construction consists of 3 (three) forms, namely Analogy (Abstraction), Determination (Refinement of Law) and *Argumentum A Contrario* (Argument from the Contrary).

Reconstruction in the Big Indonesian Dictionary comes from the word 'construction' which means development which is then added with the suffix 're' on the word construction to become 'reconstruction' which means returning to the original state (Departemen Pendidikan Nasional, 2008). Accordingly, Reconstruction means building or returning something based on the original nature. The reconstruction contains primary values that must remain in the activity of rebuilding something according to its original condition. For the sake of rebuilding things, events, past historical phenomena, to the conceptions of thought that have been issued by previous thinkers, the obligation of the reconstructors is to look at all sides. If reconstruction is associated with concepts or ideas or ideas about law, it means that legal reconstruction is interpreted as a process to rebuild or rearrange ideas, or concepts about law. One of the reconstruction results that may be adapted by Jakarta City is the Land Management Paradigm by Enemark. Enemark introduces the Spatial Management Paradigm (the Land Management Paradigm) which in its implementation is based on the fulfillment of 3 things including: socio-cultural, economic, and physical goals as follows:²³



Picture 1. The Land Management Paradigm

Picture 1 shows that spatial planning in its implementation is the result of planning for the procurement of settlements and infrastructure facilities that contribute to the continuity of social activities and economic activities of the community, adjusting the

²³ Stig Enemark, Ian Williamson, and Jude Wallace, "Building Modern Land Administration Systems in Developed Economies," *Journal of Spatial Science* 50, no. 2 (2005): 51–58, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.608.9802&rep=rep1&type=pdf>.

allocation of space utilization by taking into account the function of space as a media for protection and cultivation of the above resources.

4. CONCLUSION

The fulfillment of land rights is one of the national problems that must be resolved. Limited land is a problem in the procurement of these rights, as the results in several big cities in Indonesia, there have been residential houses with the concept of apartments. Jakarta City is one of the big cities in Indonesia which has started to build the apartments. However, there are legal problems related to the management and licensing of the apartments, one of the cases relating to the management the apartments was in Decision Number 285/Pdt.G/2016/PN.Cbi concerning the Privatization of SPAM and the unilateral determination of BPPL between the Sentul City Residents Committee (KWSC) against PT Sentul City. Based on all the legal instruments that regulate the management and licensing of apartments in Jakarta City, it is concluded that it is not yet effective enough to respond the problems of managing apartments in this city, therefore a legal reconstruction is needed. In this regard, Jakarta City may adapt the Land Management Paradigm by Enemark.

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