

# Legal Gaps in Apartment Law: The Gading Nias Case and Urban Spatial Planning Challenges

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## Abstract

This paper investigates the legal complexities in implementing the Apartment law within the Gading Nias Residence, one of the largest and densest vertical housing complexes in North Jakarta. The Apartment law, which distinguishes between individual ownership of apartment units and collective ownership of common areas and land, has faced significant challenges in this context. These challenges include delays in the formation of the Association of Apartment Owners and Occupants (PPPSRS), conflicts between residents and developers, and ambiguity surrounding land rights, which has left many residents without legal certainty regarding their units. Through a normative legal approach, combined with empirical case studies, this research examines the relevant laws and regulations, as well as the practical legal issues encountered on the ground. The study also explores the broader implications of these legal challenges on urban spatial planning, with particular emphasis on zoning inconsistencies, infrastructure strain, and the relationship with the Agrarian Reform policy under Presidential Regulation No. 62 of 2023. The analysis identifies weak government

oversight and legal indecisiveness in the implementation of collective land rights as key contributors to the legal issues in Gading Nias. The paper concludes by recommending enhanced government oversight, accelerated land rights certification, and increased legal awareness among residents as critical solutions. This research contributes to the development of more effective legal frameworks and governance structures for vertical housing in Indonesia, highlighting the urgency of addressing these gaps amid rapid urbanization.

**Keywords** *Spatial Planning, Apartment Law, Urban Planning, Legal Framework, Agrarian Reform*

## A. Introduction

The rapid growth of urban populations, particularly in metropolitan areas such as North Jakarta, has induced significant changes in housing patterns.<sup>1</sup> As urban land becomes increasingly scarce, the demand for vertical housing solutions—particularly apartment complexes—has surged.<sup>2</sup> Kelapa Gading, a strategically located and economically prosperous area in North Jakarta, has experienced a marked increase in apartment developments, spurred by its accessibility, infrastructure improvements, and escalating property values. One of the most prominent examples of such development is the Gading Nias Residence, a large-scale apartment complex consisting of 14 towers and over 5,000 units, home to a diverse range of residents,

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<sup>1</sup> See Goldblum, Charles, and Tai-Chee Wong. "Growth, crisis and spatial change: a study of haphazard urbanisation in Jakarta, Indonesia." *Land Use Policy* 17.1 (2000): 29-37; Rustiadi, Ernan, and Dyah Retno Panaju. "Spatial pattern of suburbanization and land-use change process: case study in Jakarta suburb." *Land Use Changes in Comparative Perspective*. CRC Press, 2002. 33-52.

<sup>2</sup> Graham, Stephen. "Luxified skies: How vertical urban housing became an elite preserve." *City* 19.5 (2015): 618-645; Yusuf, Muhiuddin Bahauddin, and Islam H. Elghonaimoy. "Housing dilemma and vertical dimensions." *Civil Engineering and Architecture* 8.5 (2020): 1107-1118.

including lower-middle-class families, urban workers, and property investors.<sup>3</sup>

While the proliferation of vertical housing reflects a modern adaptation to urbanization, it also raises significant legal challenges, particularly in relation to the management and ownership of shared spaces within these complexes.<sup>4</sup> In Indonesia, apartment law, as defined under Law Number 20 of 2011 concerning Flats, establishes a dual ownership model: individual ownership of apartment units and joint ownership of common areas, such as land, public facilities, and shared infrastructure. This legal framework aims to provide clarity regarding the rights and responsibilities of apartment owners, managers, and developers. However, the practical implementation of these provisions has encountered considerable obstacles.<sup>5</sup>

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<sup>3</sup> See Ling, Loa Mei. "Institusi sosial: Perannya dalam keberlangsungan ruang publik terpadu ramah anak di Jakarta." *Jurnal Muara sains, Teknologi, Kedokteran dan Ilmu Kesehatan* 3.2 (2019): 193-200.

<sup>4</sup> Nethercote, Megan. "Theorising vertical urbanisation." *City* 22.5-6 (2018): 657-684. See also Jones, Paul. "Formalizing the informal: Understanding the position of informal settlements and slums in sustainable urbanization policies and strategies in Bandung, Indonesia." *Sustainability* 9.8 (2017): 1436; Liong, Ju Tjung, et al. "Space grabs: Colonizing the vertical city." *International Journal of Urban and Regional Research* 44.6 (2020): 1072-1082; Zhu, Jieming, and Hendricus Andy Simarmata. "Formal land rights versus informal land rights: Governance for sustainable urbanization in the Jakarta metropolitan region, Indonesia." *Land Use Policy* 43 (2015): 63-73.

<sup>5</sup> The dual ownership model introduced by Law Number 20 of 2011 concerning Flats in Indonesia presents several significant problems. It allows individuals to own apartment units separate from the land, which creates complexities in property rights, particularly for foreign nationals who can own apartments but not the land beneath them. This model raises concerns over the marginalization of low-income communities, as the influx of foreign investments may overshadow affordable housing initiatives. Additionally, issues related to lease contracts, cooperation agreements, and the duration of foreign ownership rights (up to 80 years) further complicate legal frameworks. Disputes over multiple certificates for the same property, coupled with legal uncertainties and inconsistencies with national principles, highlight the need for clearer regulations and harmonized legal systems to prevent conflicts and ensure equitable distribution of housing. See Maksum, Muhammad. "Building flats through waqf land: legal breakthrough and obstacles." *AHKAM: Jurnal Ilmu Syariah* 17.1 (2017): 47-64; Solehuddin, Solehuddin. "The proprietary rights status of the apartment units held by foreign

The Gading Nias case exemplifies several of these issues, particularly the inadequate formation and functioning of the Apartment Unit Owners and Occupants Association (PPPSRS), which is legally required to manage the common areas of the apartment complex.<sup>6</sup> In the absence of a legitimate and active PPPSRS, control over the management of the apartment complex remains with the developer, even after the construction process is completed. This situation not only undermines the residents' ability to manage their shared living spaces but also exacerbates legal uncertainties regarding the status of ownership and land rights. Many residents, for instance, possess a strata title to their individual apartment units but lack clarity on the legal status of the land on which the complex is built, which raises concerns about long-term legal security.<sup>7</sup>

Furthermore, inadequate oversight by local government authorities has compounded these issues. Despite the legal requirement

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nationals in Job Creation Law." *Legality: Jurnal Ilmiah Hukum* 30.1 (2022): 88-102; Salain, Made Suksma Prijandhini Devi, I. Palguna, and I. Widiatedja. "The Regulation of the Ownership of Flats by Foreigners after the Enactment of the Job Creation Law." *Indonesia Law Review* 12.1 (2022): 1-16; Sudiro, Amad. "Measuring the openness of land investment policy related to housing or residential ownership by foreigners in Indonesia." *European Research Studies* 21.2 (2018): 165-177; Teguh, Pri Pambudi. "Role of The Supreme Court in Legal Dispute Settlement Against Property Certificate Holders with Multiple Certificate Issuance." *Wseas Transactions on Business and Economics* 20 (2023): 1439-47; Bangsawan, Mohammad Indra, Arief Budiono, and Dewi Kusuma Diarti. "Prophetic Law-based Land Bank Policy Reformulation in Indonesia." *WSEAS Transactions on Systems* 21 (2022): 304-311.

<sup>6</sup> See Zachman, Nuraini. "Rumah Susun Komersial yang Komprehensif dengan Prinsip Pengelolaan yang Ideal yang Memberikan Perlindungan Hukum Bagi Pemilik Dan Penghuni Satuan Rumah Susun." *Legalitas: Jurnal Hukum* 12.1 (2020): 137-157; Vatiza, Regina Bunga. "Crossing Regulation Peraturan Pelaksana PPPSRS." *Indonesian Notary* 3.3 (2021): 29; Izzattisselim, Azisyiah. "Pembentukan Perhimpunan Pemilik Dan Penghuni Satuan Rumah Susun Menuju Kepastian Hukum Penghuni Rumah Susun." *Law Review* 18.3 (2019): 366.

<sup>7</sup> Gunawan, Christina Herawati, and Hasni Hasni. "Problematisa Pembentukan Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun (PPPSRS) Ditinjau dari Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun (Contoh Kasus Putusan Pengadilan Negeri 553/Pdt. G/2016/PN. JKT. UTR.)." *Jurnal Hukum Adigama* 3.1 (2020): 46-70.

for developers to transfer infrastructure, facilities, and utilities (PSU) to residents within one year of the handover of units, many developers fail to meet this obligation without facing significant sanctions. This deficiency in regulatory enforcement contributes to the ongoing legal and administrative challenges faced by apartment residents.

The Gading Nias case thus serves as a critical example of the broader issues surrounding the application of apartment law in Indonesia, highlighting the legal gaps that hinder effective spatial planning, fair housing access, and the protection of residents' rights. This paper seeks to critically assess these legal deficiencies, with particular focus on the Gading Nias case, and to propose recommendations for more robust policy and regulatory frameworks. By addressing these issues, this study aims to contribute to the development of a more effective and sustainable legal structure for managing urban vertical housing in Indonesia.

Previous studies have provided valuable insights into the various legal and socio-economic challenges surrounding apartment law and urban housing development in Indonesia. A substantial body of research has addressed issues related to ownership rights, particularly the complexities introduced by the Job Creation Law, which allows foreign nationals to own apartment units but excludes ownership of the land beneath these buildings.<sup>8</sup> Scholars have pointed out the inherent contradiction between this provision and national principles enshrined in the Basic Agrarian Law (BAL) and the 1945 Constitution, which traditionally restrict land ownership to Indonesian citizens. This contradiction has raised concerns about the potential exclusion of low-income communities from the housing market, exacerbating socio-economic divides.<sup>9</sup>

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<sup>8</sup> Salain, Made Suksma Prijandhini Devi, I. Palguna, and I. Widiatedja. "The Regulation of the Ownership of Flats by Foreigners after the Enactment of the Job Creation Law." *Indonesia Law Review* 12.1 (2022): 1-16.

<sup>9</sup> Solehuddin, Solehuddin. "The proprietary rights status of the apartment units held by foreign nationals in Job Creation Law." *Legality: Jurnal Ilmiah Hukum* 30.1 (2022): 88-102. See also Mahfud, Muh Afif. "Progressive Agrarian Law as a Concept to Attain Social Justice." *Pandecta Research Law Journal* 17.1 (2022): 158-166.

Studies on affordability in Indonesia's apartment sector have emphasized the persistent challenges low-income communities face in accessing affordable housing. Rachmawati et al.<sup>10</sup> highlight that despite the development of low-cost apartments, rent regulation remains a significant issue, with many tenants paying below the regulated rental prices. This situation leads to a shortfall in income required to cover maintenance costs, forcing developers or local governments to subsidize these expenses. These findings point to the need for regulatory reforms to balance affordability with the financial sustainability of housing projects targeting low-income residents.

In terms of residential standards, research by Raslanas et al. has drawn attention to the widespread failure of many apartments to meet established design standards. Issues such as the inadequate provision of essential spaces—like laundry rooms, ironing areas, and storage—are commonly reported, raising concerns about the quality of life for apartment residents. These deficiencies underscore the need for stricter enforcement of residential standards to ensure that apartments offer adequate and sustainable living conditions for their inhabitants.<sup>11</sup>

The implementation of Indonesia's Balanced Housing Policy (BHP), which aims to integrate low-income communities into commercial apartment developments, has also been the subject of scholarly investigation. Studies by Quigley and Rosenthal have highlighted several barriers to the effective realization of this policy, including high land costs, insufficient government incentives, and weak law enforcement. These challenges complicate the goal of achieving inclusive and affordable housing, suggesting the necessity of a multi-

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<sup>10</sup> Rachmawati, Farida, Connie Susilawati, and Ashantha Goonetilleke. "An affordability review for low-cost apartment rent." *Proceedings of the 2018 Joint Asia-Pacific Network for Housing Research (APNHR) Conference and the Australasian Housing Researchers Conference (AHRC)*. Griffith University, 2018.

<sup>11</sup> Raslanas, Saulius, Jurgita Alchimovienė, and Nerija Banaitienė. "Residential areas with apartment houses: analysis of the condition of buildings, planning issues, retrofit strategies and scenarios." *International Journal of Strategic Property Management* 15.2 (2011): 152-172.

stakeholder approach involving developers, government agencies, and local communities to overcome these obstacles.<sup>12</sup>

In addition, the role of notaries in ensuring the legal compliance of apartment developments has been critically examined by Natasari et al.<sup>13</sup>, who found that despite their involvement, problematic apartment projects still emerge, pointing to deficiencies in notarial oversight and accountability. This issue calls for enhanced training and supervision of notaries to ensure that legal processes in apartment construction and transactions are properly executed.

While these studies have made significant contributions to understanding the challenges of apartment law in Indonesia, there remains a gap in comprehensive analyses that integrate these legal, economic, and socio-spatial issues. Specifically, previous research has not fully explored the intersection of ownership rights, affordability, housing standards, and the management of shared spaces within the context of real-world cases. This study seeks to address this gap by examining the Gading Nias Residence case, offering a more holistic analysis of the legal and practical challenges faced in Indonesia's apartment law and urban spatial planning. By combining these diverse elements, this research aims to propose targeted legal reforms and policy adjustments that can address both the gaps in existing laws and the complexities of managing urban housing developments in Indonesia.

## **B. Legal Basis and Legal Concept of Apartment**

The legal concept of Apartment is the main pillar in the legal system of flats in Indonesia. This law in principle regulates the separation between individual ownership of a unit of flats (*Sarusun*) and collective ownership of a shared part of the building and the land on which it stands. The goal is to provide clarity and legal protection for the ownership status of vertical residential units, while ensuring

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<sup>12</sup> Quigley, John M., and Larry A. Rosenthal. "The effects of land use regulation on the price of housing: What do we know? What can we learn?." *Cityscape* (2005): 69-137.

<sup>13</sup> Natasari, E., et al. "Professional and moral responsibilities of notaries in supporting development in Medan City." *IOP Conference Series: Earth and Environmental Science*. Vol. 452. No. 1. IOP Publishing, 2020.



collective responsibility for the use and maintenance of common areas that are shared by all occupants. Juridically, the main legal basis governing this concept includes:

Law No. 20 of 2011 concerning Flats replaces Law No. 16 of 1985 and clarifies the regulation on the ownership of flats which are equipped with a certificate of ownership of flats (SHMSRS). Article 1 number 1 states that flats are multi-storey buildings built in an environment that are divided into structural and functional parts that can be owned separately, and can be used together. This law establishes the principle of strata title, namely horizontal as well as vertical ownership: residents have exclusive rights to their own units, and joint rights to land, facilities, and joint building structures.

Government Regulation Number 13 of 2021 concerning the Implementation of PP Flats is a derivative of Law No. 20 of 2011 and provides a more technical explanation of the implementation of flats, starting from the construction process, licensing, marketing, handover, to post-handover management<sup>14</sup>. One of the important provisions in this PP is the requirement for developers to hand over the shared share and management of public facilities to the Association of Owners and Occupants of Flats (PPPSRS) after construction is completed. This handover must be carried out within a period of no later than 1 (one) year from the handover of the unit to the occupants.<sup>15</sup>

Regulation of the Minister of Public Works and Public Housing (Permen PUPR) Number 14 of 2021 concerning the Association of Owners and Occupants of Flats Units of the Ministry regulates the technical formation and work procedures of PPPSRS. PPPSRS is a legal entity in the form of an association that is a collective representation of

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<sup>14</sup> Ariq, Muhammad, and Elsi Kartika Sari. "Perbandingan Peraturan Pemerintah Nomor 4 Tahun 1988 Tentang Rumah Susun dengan Peraturan Pemerintah Nomor 13 Tahun 2021 Tentang Penyelenggaraan Rumah Susun." *Metrik Serial Humaniora dan Sains* 2.2 (2021): 84-89; Wongso, Sinta, Yuhelson Yuhelson, and Bernard Bernard. "Perlindungan Hukum Bagi Penguni Apartemen Terkait Dengan Dualisme Pembentukan Perhimpunan Penghuni Rumah Susun." *Jurnal Multidisiplin Indonesia* 2.8 (2023): 2073-2089.

<sup>15</sup> Chandranegara, Ibnu Sina, and Syaiful Bakhri. "Tindakan Hukum Pemerintah Dalam Pembinaan Pengelolaan Rumah Susun Milik Sebagai Pemenuhan Hak Atas Tempat Tinggal." *Jurnal Ius Constituendum* 6.2 (2021): 269-283.



owners and residents to manage, maintain, and represent the legal interests of the common share. In the legal context of Apartments, PPPSRS functions as a manager of collective parts that cannot be owned by one individual, such as parks, elevators, corridors, parking lots, and shared land. This Ministerial Regulation emphasizes the principle of active participation of residents in decision-making regarding collective ownership.<sup>16</sup>

Civil Code (KUHPerdata) Articles 499 to 504, these articles explain objects and joint ownership. In the case of flats, this arrangement is a general basis for joint ownership (*medebezit*) which also applies in the context of vertical buildings. Each unit owner has a proportional share of the land and a shared share calculated based on the Comparative Value (NPP). That is, ownership not only of the physical unit, but also of proportional rights to all the collective parts that are shared together.<sup>17</sup>

The Concept of Apartment Law in Practice Although normatively apartment law is designed to create clarity and justice, in practice it often becomes a source of conflict between residents and developers, or between fellow residents. This is generally caused by:

1. Lack of understanding of residents regarding the legal status of their ownership—many think that buying an apartment unit automatically means owning the land as well, even though the land rights are only jointly owned through PPPSRS.
2. Delay or absence of the formation of PPPSRS that causes the management of the general part to remain controlled by the developer unilaterally.
3. Developers who are reluctant to hand over management for financial or business reasons (e.g. related to the management of parking, billboards, or commercial facilities).

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<sup>16</sup> Salipu, Amir, et al. *Pengantar Perumahan dan Permukiman Tinjauan tentang Standar dan Aturan dalam Perencanaan Pembangunan Permukiman Modern dan Tradisional*. Deepublish, 2023.

<sup>17</sup> Furqon, Muhammad, and Muhammad Habib. "Legal Aspects of Flat Ownership in Indonesia." *International Asia of Law and Money Laundering (IAML)* 1.3 (2022): 181-186; Tanjung, Beatrix, and I. Made Pria Dharsana. "Implications and Validity of the Association of Owners and Residents of Flats Units in Hotel Condominiums." *Legal Brief* 11.4 (2022): 2185-2200.

4. Non-disclosure of the structure of the distribution of NPP, so that residents do not know their share in decision-making or the right to the collective share.

Thus, Apartment law is not only a formal legal concept, but also requires the support of supervision mechanisms, legal education, and active involvement from all parties. This concept is also closely related to urban spatial governance, because the success or failure of its implementation will affect the quality of life of residents and the management of the urban environment as a whole.

### C. Case Study: Gading Nias Residence and Legal Implementation

Problems Gading Nias Residence Apartment is one of the largest and most densely populated apartment complexes in North Jakarta. Located in the strategic area of Kelapa Gading, this apartment consists of 14 towers with more than 5,000 units inhabited by thousands of families from various socio-economic backgrounds. Since it was first built by developer PT Duta Paramindo Sejahtera (a subsidiary of Agung Podomoro Group), this apartment has become a symbol of middle-class vertical housing that promises complete facilities and high accessibility. However, behind this potential, Gading Nias is one of the clear examples of the failure to implement the principles of Apartment law in the management of flats in Indonesia.<sup>18</sup>

#### A. The Problem of Delaying the Establishment of PPPSRS

One of the main problems in the case of Gading Nias is the non-formal formation of the Association of Owners and Occupants of

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<sup>18</sup> Edelman, David J., and Diah Setyorini Gunawan. "Managing the urban environment of Jakarta, Indonesia." *Current Urban Studies* 8.01 (2020): 57; Yuniyanti, Salma Suroyya. "The philosophical foundation of the coherence of regulations concerning apartment in Indonesia." *Journal of Morality and Legal Culture* 1.1 (2020): 18-23; Adianto, Joko, et al. "The complexity of contextuality: A case study on vertical housing facilities in Surabaya, Indonesia." *Environment and Urbanization ASIA* 13.1 (2022): 99-112; Manaf, Asnawi, Lidya P. Ginting, and Mirza Irwansyah. "The Relevance of Vertical Housing to the Socio-Economic Characteristics of Occupants in Semarang City, Indonesia: Particularly the Proximity of Public Facility Aspects." *IOP Conference Series: Earth and Environmental Science*. Vol. 1264. No. 1. IOP Publishing, 2023.

Flats (PPPSRS) within the time specified by law. As stipulated in the Minister of PUPR Regulation No. 14 of 2021, PPPSRS must be formed no later than one year after most of the units are handed over to residents. However, based on various news and complaints from residents circulating from 2016 to 2024, the developer continues to delay the formation of PPPSRS and continue to take over the management function of the area. As a result, the management of the area is carried out unilaterally by the developer without transparent involvement from the owners. This has raised complaints about inappropriate environmental management contribution (IPL) rates, unclear fund management, and parking policies that are detrimental to residents. In the context of Apartment law, this is clearly contrary to the principle that the shared section should be managed collectively by the owner and occupier, not the developer.<sup>19</sup>

B. Unclear Land Rights

The next problem concerns the legal status of land rights. Unit owners in Gading Nias generally only hold a Certificate of Ownership of Flats (SHMSRS), but do not have official information or documents regarding collective rights to the land where the building stands. Supposedly, according to the principle of strata title and apartment law, each owner also has a proportionate share of the land through PPPSRS. However, because PPPSRS was not formed, there is no legal entity that holds these collective rights. Furthermore, the lack of breakdown and recording of the Comparative Value (NPP) per unit makes the legal position of the residents vulnerable. They only have the status of unit owners, without a guarantee of a common share. This can be fatal in the long run, for example if the apartment

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<sup>19</sup> Setiawati, Anda. "Shifting the Concept of Flats Ownership in Indonesia." *3rd Borobudur International Symposium on Humanities and Social Science 2021 (BIS-HSS 2021)*. Atlantis Press, 2022; Patanroi, Berlinaldo. "Addressing Multi-Unit Residential Management Conflicts: A Legal Study." *Rechtsidee* 11.2 (2023): 10-21070.

land is used as collateral by the developer, or if there is a dispute with a third party claiming the land.<sup>20</sup>

C. Conflict and Inequality of Authority Between the Manager and the Occupant

As a result of the absence of the transfer of management authority, various conflicts arise between the developer and the occupiers. Some of the complaints that are often voiced include:

- a. The developer sets the IPL fee unilaterally without accountability.
- b. Residents cannot access management financial statements.
- c. Prohibition of the use of certain facilities without a clear basis (e.g. closure of swimming pools, parking restrictions, etc.).
- d. The actions of developers who rent out shared parts to third parties without the consent of the occupants.

In some cases, residents who try to form PPPSRS independently are prevented by developers, including by not providing access to important documents such as unit ownership lists, NPPs, or building blueprints. This condition creates power inequality that is very contrary to the principle of legal justice in flats.<sup>21</sup>

D. The Weak Role of Local Governments

The Regional Government, especially the Jakarta Provincial Public Housing and Settlement Areas Office, has the authority to facilitate the formation of PPPSRS, supervise the handover of management from developers to residents, and provide administrative sanctions to developers who violate. However, in the case of Gading Nias, government intervention is considered minimal and ineffective. Even though there have been reports from residents for many years, the developer is still free to carry out unilateral management. This weak supervision shows that the

<sup>20</sup> See Alden Wily, Liz. "Collective land ownership in the 21st century: Overview of global trends." *Land* 7.2 (2018): 68; Bossuyt, Daniël. "Who owns collaborative housing? A conceptual typology of property regimes." *Housing, Theory and Society* 39.2 (2022): 200-216.

<sup>21</sup> See Winarso, Haryo. *Residential land developers' behaviour in Jabotabek, Indonesia*. Diss. University of London, University College London (United Kingdom), 2000; Firman, Tommy. "Major issues in Indonesia's urban land development." *Land Use Policy* 21.4 (2004): 347-355.

application of the Apartment law does not only depend on regulations, but also on the political will and courage of the apparatus to enforce the rules. Without it, the collective rights of residents will continue to be neglected.<sup>22</sup>

E. Social and Spatial Implications

The irregularities in the management of flats also have an impact on urban spatial governance. With thousands of residents in one area having no say in the planning of public facilities, drainage systems, waste, and security, the area becomes vulnerable to environmental degradation, social conflict, and the potential for urban slums in the long run. This situation is contrary to the goal of building flats as decent housing and integrated with sustainable urban spatial planning.<sup>23</sup>

## D. Juridical Analysis

The Indonesian legal framework concerning flat (apartment) management, as outlined in Law No. 20 of 2011 on Flats, mandates that developers have a multifaceted responsibility not only in the construction and sale of flat units but also in the subsequent handover of infrastructure, public utilities, and management rights to the residents. This obligation, specifically stipulated in Article 75, paragraph (2) of the Flats Law, requires developers to transfer these assets to either the regional government or the Association of Owners and Occupants of Flats (PPPSRS) no later than one year after the units are first occupied. The primary intention behind this provision is to ensure democratic and accountable management by the collective

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<sup>22</sup> Setiaprimeswari, Dwiluna. "Kewenangan Pemerintah Daerah dalam Pelaksanaan Pengawasan terhadap Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun." *Journal Evidence of Law* 2.3 (2023): 1-7.

<sup>23</sup> Salim, Wilmar, and Delik Hudalah. "Urban governance challenges and reforms in Indonesia: towards a new Urban Agenda." *New urban agenda in Asia-Pacific: Governance for sustainable and inclusive cities*. Singapore: Springer Singapore, 2019, pp. 163-181; Hudalah, Delik, and Johan Woltjer. "Spatial planning system in transitional Indonesia." *International Planning Studies* 12.3 (2007): 291-303.

owners through the PPPSRS institution, which is empowered to oversee shared spaces, facilities, and utilities within the residential complex.<sup>24</sup>

However, in the case of Gading Nias Residence, the developer's flagrant disregard of this legal obligation reveals a systemic failure in the enforcement of flat management laws. Despite the complex being inhabited since the early 2010s, the developer has maintained unilateral control over the management, with no formal handover of the infrastructure or formation of the PPPSRS. This situation constitutes a blatant violation of Article 75 of the Flats Law, as well as Minister of Public Works and Housing Regulation No. 14 of 2021, which mandates developers to facilitate the formation of the PPPSRS within one year after at least 50% of the units have been sold. If the developer fails to facilitate this process, the local government is obliged to step in and ensure its realization. In the case of Gading Nias, however, local government intervention has been conspicuously absent, allowing the developer to maintain control over the management structure, thereby preventing residents from exercising their rights to collective ownership and control. This prolonged inaction on the part of both the developer and the local government raises significant questions regarding the practical enforcement of statutory provisions, ultimately undermining the legal principles of democratic governance and accountability in flat management.

From a legal perspective, the developer's actions can be classified as a form of contractual default (*wanprestasi*)<sup>25</sup> and a violation of consumer protection laws under Law No. 8 of 1999, which outlines the rights of consumers to receive accurate, clear, and honest information about the goods and services they purchase, including real estate. Specifically, Article 4 of the Consumer Protection Law guarantees

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<sup>24</sup> Nirwana, Ridwan, and Anita Kamilah. "Overview of Home Ownership Law for Foreigners in the Context of a Second Home in Indonesia." *Journal of Law and Border Protection* 4.2 (2022): 113-124. See also Yuniyanti, Salma Suroyya, and Frency Siska. "Enhancing legal certainty for consumers in apartment unit trade: A comparative analysis of dispute settlement agreements in Indonesia and the Netherlands." *Journal of Law and Legal Reform* 5.1 (2024): 333-360.

<sup>25</sup> Alzamzami, Jefri, and Leli Joko Suryono. "Pelaksanaan Perjanjian Sewa Menyewa Rumah Susun dan Akibat Hukumnya dalam hal Terjadi Wanprestasi." *Media of Law and Sharia* 2.3 (2021): 238-253.

consumers the right to convenience, safety, and security in their transactions, while also ensuring that developers provide essential information regarding the legality of land, ownership structures, and the procedures for managing common areas. In the case of Gading Nias, residents were denied access to critical information about land status, joint ownership, and PPPSRS formation, as well as documents such as building blueprints and Proportional Comparative Value (NPP) calculations. Additionally, residents' attempts to form their own associations were obstructed by the developer, which constitutes a violation of the right to collective action. These actions not only infringe on consumer rights but also raise the possibility of unlawful acts (*perbuatan melawan hukum*) under Article 1365 of the Civil Code, which holds parties liable for damages caused by unlawful actions that harm others.<sup>26</sup>

Beyond civil liability, the developer's failure to hand over management and infrastructure as required by law could also trigger administrative sanctions under Government Regulation No. 13 of 2021 and Permen PUPR No. 14 of 2021, which provide for sanctions such as written reprimands, cessation of development activities, and revocation of the developer's business license. These regulations aim to ensure that developers fulfill their obligations within the stipulated timeframe. Unfortunately, in practice, local governments often exhibit a lack of political will or face institutional challenges in enforcing these sanctions, leaving developers unaccountable for non-compliance. The absence of effective enforcement mechanisms undermines the legal integrity of the regulatory framework and fosters an environment where developers can continue to profit from unsupervised and unregulated management practices, effectively disenfranchising residents.

In addition to breaches of specific statutory provisions, Gading Nias Residence presents a more profound issue regarding the status of land ownership and the issuance of Strata Title Certificates (*Sertifikat*

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<sup>26</sup> Setiawati, Anda. "Upaya Hukum Terkait Masalah Penjualan Rumah Susun Yang Diikat Dengan PPJB." *Hukum Pidana dan Pembangunan Hukum* 1.2 (2019); Pandia, Tri Putra Asa. *Perbuatan Melawan Hukum Dalam Pembentukan Perhimpunan Pemilik Dan Penghuni Satuan Rumah Susun (PPPSRS)*. Diss. Universitas Medan Area, 2016.



*Hak Milik Satuan Rumah Susun* or SHMSRS). The Indonesian Agrarian Law (Law No. 5 of 1960) and the Flats Law (specifically Articles 46 and 47) require that ownership of individual flat units be legally separated from the shared land beneath the complex through the issuance of strata titles.<sup>27</sup> These titles confer individual ownership over the residential unit and pro-rata ownership over the common land. However, in the case of Gading Nias, many residents have not received individual strata titles, and the developer has failed to facilitate the division of the master certificate (*Sertifikat Hak Pengelolaan Bangunan*) into individual certificates for each unit.<sup>28</sup> This lack of legal certainty regarding land rights creates significant risks for residents, including their inability to sell, pledge, or mortgage their units without the developer's involvement. More importantly, the absence of clearly defined ownership rights over shared land increases the potential for horizontal conflicts among residents and hampers collective decision-making regarding the management of common areas. Furthermore, in instances where the land may not be fully titled or legally controlled by the developer, the sale of units becomes questionable, as it may violate the principle of "halal cause" (*sebab yang halal*) required for a valid contract under Article 1320 of the Civil Code. If the land title is not legally sound, transactions involving flat units could be rendered null and void, further compounding the legal risks for residents.<sup>29</sup>

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<sup>27</sup> Hartono, Andy. "Kepemilikan Hak Milik Atas Satuan Rumah Susun." *Jurnal Rechtsens* 2.1 (2013): 1-11; Laksono, Muchammad Agung, Ronny Winarno, and Istijab Istijab. "Tinjauan Yuridis Proses Peralihan Hak Guna Bangunan Menjadi Hak Milik Menurut Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah." *Yurijaya: Jurnal Ilmiah Hukum* 5.2 (2023): 39-54.

<sup>28</sup> Devita, Seventina Monda. "Perkembangan Hak Pengelolaan Atas Tanah Sebelum dan Sesudah Peraturan Pemerintah Nomor 18 tahun 2021 Tentang Hak pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah." *Jurnal hukum Lex generalis* 2.9 (2021): 870-888; Zamil, Yusuf Saepul. "Perlindungan Hukum Pembeli Apartemen Atau Rumah Susun Di Atas Tanah Hak Pengelolaan." *Arena Hukum* 10.3 (2017): 441-461.

<sup>29</sup> Wibisana, Nicholas Ardy, and Retno Dewi Pulung Sari. "Penggunaan Klausula Eksonerasi dalam PPJB Rumah Susun dalam Perspektif Perlindungan Konsumen." *Jurnal Hukum Ius Publicum* 5.1 (2024): 1-10.

The persistent imbalance of bargaining power between developers and residents exacerbates the challenges faced by flat owners. Developers, as large corporations, hold a disproportionate amount of control over the construction, sale, and management of the property. In contrast, individual residents, who are typically less equipped with legal knowledge and resources, are left at a significant disadvantage. This asymmetry manifests in unilateral imposition of rules and fees, such as maintenance charges, parking fees, and fines, without adequate consultation or transparency. These fees are often arbitrarily set, with little accountability, as there is no functioning PPPSRS to represent the collective interests of the residents. This power dynamic not only violates the principles of equity and fairness inherent in the 1945 Constitution (particularly Article 28H, which guarantees the right to a decent and safe place to live) but also contravenes the spirit of justice embedded in consumer protection laws and the constitutional right to participation in the management of common resources.<sup>30</sup>

In addition, the establishment of a functioning PPPSRS is a key legal solution for addressing the power imbalance and restoring residents' rights to collective management. The PPPSRS is a legal entity that serves as the institutional mechanism for residents to manage and maintain the property collectively, as well as to oversee the financial administration, maintenance, and decision-making processes related to the shared spaces. Minister of PUPR Regulation No. 14 of 2021 requires developers to facilitate the formation of PPPSRS within one year of 50% unit occupancy, and if the developer fails to do so, local governments are mandated to facilitate the process. In the case of Gading Nias, the lack of a legally valid PPPSRS has resulted in undemocratic management and an authoritarian system where residents have little to no control over their living environment. This absence of collective representation further entrenches the developer's unilateral control, exacerbating the legal and social issues facing the residents.

Finally, the case of Gading Nias Residence underscores a systemic failure to enforce legal obligations related to flat ownership,

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<sup>30</sup> Chandranegara, Ibnu Sina, and Syaiful Bakhri. "Tindakan Hukum Pemerintah Dalam Pembinaan Pengelolaan Rumah Susun Milik Sebagai Pemenuhan Hak Atas Tempat Tinggal." *Jurnal Ius Constituendum* 6.2 (2021): 269-283.

management, and residents' rights. Despite robust legal provisions designed to ensure transparent management and collective ownership, the gaps in enforcement, coupled with the failure of both the developer and local government to uphold the law, leave residents vulnerable to exploitation and legal uncertainty. For the system to function as intended, stronger enforcement mechanisms, better legal literacy for residents, and active governmental intervention are crucial to ensuring that developers fulfill their obligations, and that residents' rights to a fair and democratic living environment are fully realized.

## E. Conclusion

The legal gaps in the implementation of the Apartment Law, as demonstrated by the Gading Nias Residence case, reveal significant deficiencies in government oversight, developer accountability, and residents' access to legal certainty regarding land and property rights. The failure to establish a functioning PPPSRS, delays in land rights certification, and developer resistance to the legal transfer of management and common areas underscore the broader challenges in urban spatial planning, particularly regarding zoning inconsistencies and infrastructure pressures. These issues not only violate residents' legal rights but also hinder effective governance and management of vertical housing, exacerbating urban inequality. Therefore, strengthening government oversight, expediting the certification of land titles, and promoting legal literacy among residents are essential steps toward bridging these gaps and ensuring that the Apartment Law can effectively address the complexities of urban development in Indonesia.

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