

# When Permits Are Missing: Legal Impacts on Apartment Buyers in Non-Compliant Buildings

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## Abstract

The rapid growth of urban areas has driven significant changes in people's housing patterns, especially through the choice of multi-storey housing. This phenomenon emerged as a response to land limitations and high population mobility in urban areas. Behind all the conveniences conveyed in commercial offers, vertical housing is not free from complex problems, both in the legal realm and in daily management practices. Disputes between residents and managers, imbalances in the enforcement of rights and responsibilities, and weak guarantees of legal certainty in unit ownership transactions are issues that often arise. This article attempts to examine the normative framework and the reality of its implementation in the context of multi-storey housing in Indonesia. With a juridical-empirical approach, the discussion focuses on the aspect of legal relations between the parties involved and the urgency of policy reformulation in order to create a more inclusive and equitable management system.

## Keywords

*Apartments, flats, legal protection*

## A. Introduction

Indonesia is known as one of the countries with a large population and a fairly high density, especially in urban areas. Since the beginning of the Republic of Indonesia, the government has paid great attention to efforts to improve people's welfare, including in meeting the basic needs of society. One of the needs that is a major focus is providing decent, safe, and affordable housing for all levels of society.<sup>1</sup>

Living in an apartment or condominium certainly sounds practical and promises convenience, especially amidst the hustle and bustle of big city life. However, the reality is not always as easy as imagined. Behind the comfort of modern facilities and strategic locations offered, there are many things that need to be considered, ranging from its advantages and disadvantages, to the rights and obligations inherent to each resident.<sup>2</sup> A condominium is a multi-storey building located within one area and divided into units arranged functionally, both horizontally and vertically. Each unit in this building can be owned and utilized separately, usually as a residence, and is equipped with parts, objects, and land used jointly.<sup>3</sup>

Policies in housing development and settlement areas are intended to guarantee the fulfillment of basic human needs. As a basic need, housing should be accessible to every family, especially for low-income communities or those living in densely populated urban areas. To increase the effectiveness of land use, especially in large cities where land availability is increasingly limited, housing development is directed in the form and system of condominiums. The rapid population growth in urban areas is disproportionate to the availability of land which is

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<sup>1</sup> Zerlina, Z. (2020, November). Perlindungan Hukum Terhadap Pemilik Hak Atas Satuan Rumah Susun Tanpa Sertifikat (Studi Kasus Apartemen Casa Grande Residence). In *National Conference on Law Studies (NCOLS)* (Vol. 2, No. 1, pp. 509-538).

<sup>2</sup> Hidayatullah, F. G., & Fatmawati, N. (2024). Kepemilikan Apartemen (Hgb) Hak Guna Bangunan Yang Dibangun Di Atas (SHM) Sertifikat Hak Milik Pihak Ketiga. *CERMIN: Jurnal Penelitian*, 8(2), 630-638.

<sup>3</sup> Rahmawati, A. (2018). Hukum apartemen dalam prakteknya di Indonesia. *Justitia et Pax*, 34(1)

fixed and cannot be expanded. This condition also drives a significant increase in land prices.<sup>4</sup>

In large cities such as Jakarta, Surabaya, or Bandung, open space is getting smaller and smaller. Many people who dream of owning a house eventually start looking at condominiums or apartments as the most realistic choice. Moreover, vertical housing is often promoted as a contemporary solution that is cheaper, strategic, and efficient. However, behind all these sweet promises, there is actually one big problem that often escapes the attention of prospective buyers regarding the legality of the building and permits. This seemingly technical issue turns out to have serious consequences, even potentially causing residents to lose their legal rights. The construction of condominiums should follow strict rules. Its location must comply with the Regional Spatial Plan (RTRW) or the Detailed Regional Spatial Plan (RDTR), and then the construction of the building itself must obtain government approval in the form of a Building Permit (PBG). After the building is completed, there must also be a Certificate of Function Eligibility (SLF) as proof that the building is suitable and safe for habitation. Unfortunately, not all developers comply with this procedure. Some build low-cost apartments in zones that should not be for settlements. There are also those who directly sell units to the community, even though they do not yet have a PBG or SLF.

This is where the problem begins. The community as buyers actually does not understand much about these licensing technicalities. They trust the developer, especially when they see advertisements, brochures, or even marketing who says "legality complete." But once the apartment is built and they start occupying the unit, it turns out that the certificate cannot be processed, the PPPSRS cannot be formed, the facilities do not match the promises, and sometimes even electricity and water are not permanently installed because the building is considered not to meet standards. Even worse, many buyers feel confused about whom to complain to. To the developer? They often disappear or claim that the permits are still "being processed." To the

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<sup>4</sup> Rubiati, B. (2023). Kepemilikan rumah susun umum yang dibangun di atas tanah barang milik negara/daerah. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, 6(2), 206-220.

government? Not a few feel that the government turns a blind eye or shifts responsibility. Ultimately, the community becomes the victim, trapped in a legally uncertain situation. They have made considerable financial expenditures, but do not receive commensurate legal protection. This is not only about losing the right to a certificate, but also concerns residential security, the certainty of ownership status, and the right to manage the living environment independently through PPPSRS.

The Association of Owners and Residents of Apartment Units, abbreviated as PPPSRS, is a legal entity consisting of people who own or occupy apartment units. In the past, this body was known as the Residents' Association. Although the names are different, the functions of both are actually not much different. Essentially, both PPPSRS and the Residents' Association are formed to manage the common interests of owners and residents. However, PPPSRS has a broader scope of duties because it is officially responsible for managing things related to joint ownership, such as parts of the building used together, the land where the building stands, and all matters concerning the use and management of shared facilities in the condominium environment.<sup>5</sup>

Problems like this have actually occurred quite frequently, even appearing several times in media reports. However, until now, there has been no law enforcement that truly gives a deterrent effect to rogue developers. Meanwhile, the laws and regulations governing this matter are actually clear. Law Number 20 of 2011 concerning Condominiums states that every condominium development must comply with permits and spatial regulations. Then there is Law Number 11 of 2020 concerning Job Creation, which introduces a new system for building permits, namely the Building Permit (PBG), replacing IMB. Government Regulation Number 16 of 2021 even explains the technicalities and requirements for submitting PBG and SLF in detail.

On the other hand, consumers who are harmed should also receive protection based on Law Number 8 of 1999 concerning Consumer Protection. This law states that consumers have the right to

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<sup>5</sup> Butar, D. A. B., & Salam, A. (2024). Perbuatan Melawan Hukum Dalam Pengurusan Perhimpunan Pemilik Dan Penghuni Satuan Rumah Susun. *Journal of Syntax Literate*, 9(10).

obtain correct and non-misleading information, as well as the right to comfort, safety, and security in using goods and/or services. Unfortunately, in practice, these provisions are often not strong enough to deal with developers who operate in the legal gray area, especially when coupled with weak supervision from local governments.

This phenomenon shows that the issue of condominium construction legality is not merely an administrative or technical matter. This is a legal problem that concerns citizens' rights to live in a decent, safe place with legal certainty. When permits are ignored and spatial violations are allowed, what occurs is not only an administrative violation, but also the potential for civil rights violations. And unfortunately, the biggest victims are the communities who are actually trying to find a decent place to live for themselves and their families. Therefore, this article tries to discuss more deeply how the legal provisions regulate the construction of condominiums related to spatial planning and permits, such as PBG and SLF, as well as analyzing how the impact is for the community that has purchased units under problematic legality conditions.

This research uses a normative juridical approach, which is a method that focuses on the study of applicable legal norms. The main sources used in this research include laws and regulations related to condominiums and apartments, legal documents, and various other scientific literature and references. This approach was chosen because it is able to provide an overview of how the legal arrangement for the rights and obligations of residents and the problems that often arise in practice. Data analysis is carried out qualitatively and descriptively, to describe and understand the legal issues that arise in the management of these condominiums.

## **B. What are the Legal Impacts Experienced by the Community that Buys Condominiums That do not Meet the PBG and SLF Requirements?**

Building Permit (PBG) is a form of official permit issued to building owners to carry out building construction, renovation, expansion, reduction, or maintenance activities, with the provision that all these activities must follow the applicable technical provisions in the

implementation of building construction.<sup>6</sup> Referring to Law Number 28 of 2002, the Certificate of Function Eligibility (SLF) is a document issued by the local government as a form of recognition that a building has met the eligibility for function, both technically and administratively. The issuance of SLF is carried out by the local government, except for buildings intended for the interests of the central government. This certificate functions as a monitoring and assessment tool to ensure that the building is suitable for use and meets safety and comfort standards for its users.<sup>7</sup>

Laws and regulations in Indonesia clearly require buildings to have formal permits before being erected and a certificate of fitness for function after construction is completed. Article 7 of Law No. 28/2002 concerning Buildings requires every building to have a building permit (IMB, now PBG) as an administrative requirement. In the context of vertical housing development in Indonesia, specifically condominiums (apartments), the legality of the building becomes an important foundation that cannot be ignored. Two main documents that become indicators of the legality and suitability of a condominium for habitation are the Building Permit (PBG) and the Certificate of Function Eligibility (SLF). However, the reality on the ground shows that many condominiums are built without meeting these two requirements, and ironically, they are still sold to the community.

In a situation like this, the community as consumers who buy condominium units without PBG and SLF are actually in a weak legal position, even vulnerable to becoming victims of the developer's non-compliance with laws and regulations. PBG, as regulated in Article 1 number 17 of Government Regulation Number 16 of 2021, replaces the role of the Building Permit (IMB) as a technical permit for constructing buildings that must be fulfilled by the developer. Meanwhile, SLF, according to the same provisions, is evidence that a

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<sup>6</sup> Simbawa, A. (2022). Prosedur Perolehan Persetujuan Bangunan Gedung. *Lex Privatum*, 10(4).4

<sup>7</sup> Nasution, R. A., Barus, M. A. A. G., & Arif, M. (2024). Analisis Dampak Penerbitan Sertifikat Laik Fungsi (SLF) Terhadap Nilai dan Kinerja pada Perusahaan DPD REI Sumatera Utara. *Profit: Jurnal Manajemen, Bisnis dan Akuntansi*, 3(1), 37-45.

building has been examined and declared safe and in accordance with its building function. If these two conditions are ignored, the legal consequences will be cascading and serious.

First, from the building legality aspect, a condominium without PBG and SLF is technically not legally valid for habitation. It is stated that buildings without SLF are considered illegal buildings that are not fit for function, therefore the local government has the authority to impose administrative sanctions in the form of sealing or even demolition. This is not a trivial matter. Communities who have already occupied such apartments are in danger of losing their homes without strong enough legal protection. The impact of not fulfilling these requirements directly touches the residents' ownership rights. The Certificate of Function Eligibility is a prerequisite for the issuance of a deed of partition and the Certificate of Ownership of Apartment Units (SHSRS), which is proof of legal ownership of the apartment unit. This means that without an SLF, the developer cannot process the partition and registration of ownership rights for the apartment units.

SLF is one of the absolute requirements for developers to be able to sell apartment units and obtain certificates of ownership rights for those units. In practice, many problems are caused by incomplete unit handover documents. As Tarsis noted, the handover of apartments is often not accompanied by copies of the SLF or the certificate of ownership rights for apartment units. This condition causes buyers to only hold a Sale and Purchase Agreement (PPJB) or Deed of Sale only, without officially registered ownership proof at the land office. The Sale and Purchase Agreement Binding Agreement (PPJB) emerged due to several requirements set by the laws regarding the sale of land rights which sometimes cause the transaction process to be delayed or hindered. Due to this condition, PPJB is used as a solution so that the sale and purchase agreement can be made first before all requirements are fully met. As a result, the ownership rights of residents become legally uncertain. They have difficulty obtaining credit facilities (KPR), transferring ownership rights, or correcting administrative errors because the unit is not yet certified. In short, the absence of SLF and PBG weakens the legal position of buyers, their ownership status is only

recorded unilaterally and potentially lost if there are legal problems with the developer.<sup>8</sup>

Furthermore, from the aspect of ownership rights, apartment buyers are highly dependent on the completeness of documents from the developer to obtain the Certificate of Ownership Rights for Apartment Units (SHMSRS). If the building does not meet technical requirements such as PBG and SLF. This means that legally, the buyer does not have a strong legal basis for the unit they purchased. Even in certain situations, the buyer only has a Sale and Purchase Agreement Binding Agreement (PPJB) which legally cannot yet be used as a basis for full ownership. This clearly disadvantages the community financially and legally.

In the management realm, the absence of SLF also impacts the invalidity of PPPSRS formation. According to the Ministry of Public Works and Housing Regulation No. 14 of 2021, PPPSRS can only be formed after the apartment has been completed and declared fit for function. The failure to meet this requirement prevents residents from collectively managing the apartment, and internal conflicts between residents and management become more difficult to resolve. The democratic function in apartment management is also neglected.

From the consumer protection aspect, the position of the community becomes very weak when PBG and SLF are not fulfilled from the beginning. Most apartment buyers do not understand or do not have time to verify the legality of the building documents. It is stated that developers tend to shift responsibility with the reason that construction is still in progress, whereas according to Article 36 of Law No. 8 of 1999 concerning Consumer Protection, business actors must provide correct, clear, and honest information. The absence of information or deception regarding the status of PBG and SLF can be categorized as an unlawful act.

Furthermore, legal disputes are very likely to arise between buyers and developers. If buyers feel disadvantaged because their apartment unit cannot be certified or cannot be inhabited because it is

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<sup>8</sup> Rosadi, A. G. (2020). Tanggung jawab notaris dalam sengketa para pihak terkait akta Perjanjian Pengikatan Jual Beli (PPJB) yang Dibuatnya. *JCH (Jurnal Cendekia Hukum)*, 5(2), 243-259.7



considered unfit for function, then buyers can file a lawsuit to the court. However, in practice, proving in court can be complicated because PPJB generally does not contain specific clauses regarding PBG and SLF. Therefore, the lack of contractual protection makes the consumer's position even more fragile. A legal journal published by Jember University (2023) even stated that in several cases, developers actually blamed the local government for the delay in issuing SLF, even though that responsibility fully lies with the developer.

On the other hand, from the perspective of administrative law, the local government has the authority to impose sanctions on developers who build apartments without PBG. In accordance with Article 185 of Government Regulation No. 16 of 2021, the local government can impose administrative sanctions such as fines, suspension of construction activities, revocation of permits, or even demolition. If these sanctions are implemented, the community of apartment unit buyers will clearly be directly affected parties, even though they are not at fault. This raises another aspect that needs to be considered: the urgency of preventive legal education for the community to be more vigilant when buying apartments.

The legal impacts experienced by the community of apartment unit buyers without PBG and SLF are not merely technical administrative matters. This is a systemic problem that leads to legal, economic, and social losses. Not a few communities who end up bearing the burden of apartment ownership credit installments (KPA), but are not legally recognized as owners because the certificate has not been issued. Ironically, many of them do not even know that the building they inhabit does not yet have an SLF. This is where we, as prospective law graduates, have a duty to help build legal awareness in the community.

Ultimately, the problem of apartments without PBG and SLF is not simply an administrative violation by the developer, but also contains elements of negligence towards the principle of legal responsibility towards consumers. Therefore, in the future, synergy is needed between law enforcement, consumer education, and renewal of the building permit supervision system so that similar cases do not continue to recur. Because if not, the community will continue to

become victims of a housing system that has not fully guaranteed justice and legal certainty.

### **C. How is Legal protection for Consumers Who Have Purchased Units Under Problematic Legality Conditions?**

The phenomenon of apartment development in major cities in Indonesia is increasing along with the high demand for housing and limited land. The choice of vertical housing becomes a logical solution, especially in the face of limited space and soaring land prices. However, behind the bustling construction, there are not a few cases showing that many apartment units are sold to the community before the building's legality requirements are met, such as the PBG or SLF not yet being issued. This problem cannot be taken lightly, because it relates to legal certainty, occupant safety, and protection for consumers as the most vulnerable party in transactions.

Legally, an apartment that does not yet have a PBG and SLF cannot yet be categorized as a building that is administratively and technically legal. This means that, in substance, the building has not yet met the standards for habitability and function according to government regulations. In the context of civil law, the relationship between the buyer and the developer is an obligation relationship based on a sales agreement. When the object of the sale is an apartment unit that does not meet the legality requirements, then the agreement can be considered legally problematic. Based on Article 1320 of the Civil Code, an agreement must have a lawful reason and a clear object. If the object of the agreement is a building that is legally not recognized as fit for function and safety, then theoretically, the agreement can be considered legally flawed.

The impact is not only limited to administrative problems. Consumers can experience concrete losses, for example they cannot process SHMSRS, experience delays in unit handover, or even lose access to public facilities that should already be available. Furthermore, if it turns out that the building is declared unfit for function at a later date, then residents could be threatened with safety. This condition

shows that legal protection for consumers is not only about money, but also about the right to decent, safe housing with legal certainty.

Legally, protection for consumers in cases like this is guaranteed through several important legal instruments. The Consumer Protection Law emphasizes that business actors must provide correct, clear, and honest information to consumers. When developers do not convey that the units being sold do not yet have SLF and PBG, there is an element of dishonesty that can be qualified as a legal violation. In addition, Law Number 20 of 2011 concerning Apartments also provides a clear legal basis regarding the developer's responsibility in providing apartments that meet technical and administrative standards.

Protection for consumers is not only through legislation, but also can be found in the general principles of civil law, including through provisions regarding breach of contract and unlawful acts. In several cases that have been brought to court, consumers have successfully obtained compensation because they were considered harmed by developers who sold apartment units without complete legal documents. In fact, there are court decisions that state that the developer's actions constitute an unlawful act (*onrechtmatige daad*) because they have ignored consumers' rights to obtain products that are legally valid.

For consumers who have already purchased apartment units without SLF or PBG, there are several legal steps that can be taken. First, they can file a breach of contract lawsuit if the developer is proven to have violated the terms of the sales agreement. For example, if the agreement states that the unit will be delivered complete with permits, but the reality is otherwise. Second, consumers can pursue a lawsuit based on an unlawful act if they feel they have been deceived or not given information that should have been known from the start. Third, consumers can submit complaints to the Consumer Dispute Resolution Board (BPSK), as a relatively faster and less formalistic dispute resolution option. This body was established and given legitimacy to carry out its duties properly. The establishment of this body is a response

to the ineffectiveness of the judiciary in carrying out its functions and responsibilities.<sup>9</sup>

However, the fact is that not all consumers dare to take the legal route. Many of them feel they don't have the time, energy, or even sufficient information to fight big developers. As a result, many such cases end with consumers who resign themselves and continue living in units that are legally incomplete. In the long term, this can be collectively detrimental and worsen the management of apartment development in Indonesia. This condition also shows that the government and related agencies have not been maximal in carrying out supervision. Ideally, apartments should not be marketed or even sold before key permits such as PBG and SLF are issued. However, in practice, this supervision is often weak, thus opening opportunities for rogue developers to act outside the provisions. Whereas, the government's function should not only be as a rule maker, but also as an active and responsive supervisor to business practices that harm the community.

If we relate this to public policy, policy implementation means taking concrete actions to apply the policy through available facilities, with the aim of producing changes or results that are in accordance with the intent of the policy. [10] Ultimately, legal protection for consumers of apartments with problematic legality is not only about giving rights to buyers, but also about building a fair and transparent system in the property sector. Consumers have the right to complete information before purchasing, and the state has the obligation to ensure that every unit sold to the public meets all technical and administrative requirements. Without real legal protection, consumers will continue to be in a weak position in their legal relationship with developers. The resolution of this problem must be done systematically, starting from

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<sup>9</sup> Sitepu, R. I., & Muhamad, H. (2021). Efektifitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia. *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia*, 3(2), 7-14.

community education, regulatory strengthening, to consistent law enforcement.<sup>10</sup>

## D. Conclusion

Legality in apartment construction, especially the presence of PBG and SLF, is a crucial aspect that cannot be ignored because it directly impacts legal certainty and the protection of the rights of the community as consumers. Without PBG and SLF, apartments are considered legally invalid for habitation, and all ownership rights over purchased units become uncertain. Community buyers risk not being able to obtain the Certificate of Ownership Rights for Apartment Units (SHMSRS), not being able to form PPPSRS, and not obtaining public facilities properly.

The absence of these legal documents puts consumers in a very weak position and vulnerable to financial or legal losses, especially because many developers are not transparent or even deliberately ignore legal procedures. Weak supervision from local governments and minimal law enforcement against rogue developers exacerbate the situation. On the other hand, the general public usually does not understand the legal aspects in the process of buying vertical housing, so they often become victims of irresponsible business practices. Therefore, there is a need for strict law enforcement against permit violations, as well as preventive legal education for the community to be more careful and critical when buying apartments. Regulation arrangements and strengthening the government's role in supervising the construction and marketing of apartments are a necessity in order to protect citizens' rights to decent, safe housing with legal certainty.

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