

# Demolished and Displaced: Legal Protection for Flat Owners in Uninhabitable Buildings, West Jakarta

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## Abstract

The increasing construction of apartments as a solution to land limitations and housing needs in urban areas, which is not matched by comprehensive legal regulations, particularly regarding demolition and the rights of unit owners. In this context, demolition is part of efforts to improve building quality, but often causes legal uncertainty and losses for unit owners, especially if buildings are demolished due to age without clear compensation. This research uses a normative method with a statutory approach and legal theory to analyze developer liability, apartment unit owners' rights, and the ideal form of legal protection. The study results show a regulatory gap concerning compensation and protection for unit owners post-demolition. Therefore, strengthening the legal system is needed to provide comprehensive guarantees, including technical regulations for demolition, provision of temporary housing, and fair and proportional compensation mechanisms.

## Keywords

*Legal protection, apartment, demolition, developer, compensation.*

## A. Introduction

Generally, the sale of apartment properties is increasingly dominating the property market in various major cities in Indonesia. The growth of the property business in recent years has been driven by several factors, including: population growth, limited available land, high demand for housing, and soaring land house prices. This condition makes apartments an alternative solution to housing problems and congestion in urban areas, while also opening up promising market opportunities for developers.<sup>1</sup>

Besides being a solution to various urban housing problems, apartments are also considered a promising form of future investment, for example, through rental income from units. Therefore, factors such as strategic location, building quality, and complete facilities become the main determinants in assessing the feasibility and profitability of apartment investments.<sup>2</sup> However, this great potential is not proportional to the readiness of existing regulations. Currently, there is still a legal vacuum in Indonesia regarding apartment regulations due to the lack of a comprehensive legal basis. The current applicable provisions refer to Government Regulation (GR) Number 18 of 2021 concerning the Arrangement of Apartment Buildings (PPRS), as well as Law Number 11 of 2020 together with Government Regulation Number 2 of 2022 concerning Job Creation (Omnibus Law), which partially amends provisions within Law Number 20 of 2011 concerning Apartments.<sup>3</sup>

The legal basis currently regulating apartment construction in Indonesia refers to Government Regulation (GR) Number 13 of 2021 concerning the Arrangement of Apartment Buildings (PPRS), as well as Law Number 11 of 2020 together with Government Regulation Number 2 of 2022 concerning Job Creation (UU Cipta Kerja), which also amends several provisions in Law Number 20 of 2011 concerning

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<sup>1</sup> Alif, M.R. *Ownership of Land Rights for Apartment Units within the Framework of Property Law*. Bandung: CV Nuansa Aulia, 2009), p. 23.

<sup>2</sup> *Ibid.*

<sup>3</sup> Indonesia, S.N. Government Regulation No. 18 of 2021 concerning Management Rights. 2021. p. 10.

Apartments and Law Number 1 of 2011 concerning Housing and Settlement Areas. Furthermore, detailed regulations regarding apartments are also found in GR Number 16 of 2021 as the implementing regulation for Law Number 28 of 2002 concerning Buildings.

In the process of improving apartment quality, responsibility for managing the lives of the initial owners lies with the developer. This is emphasized in Article 68 paragraph (1) of the Law on Apartment Development, stating that developers are obligated to provide temporary habitable housing, considering aspects such as distance, public facilities, infrastructure, and financing. After the quality improvement process is complete, PPRS is responsible for restoring ownership rights to the original owners without charging costs related to land or buildings.

Apartment buildings or condominiums can be demolished if their condition is no longer repairable; however, if they are still suitable for repair, quality improvement can be carried out through demolition, arrangement, and reconstruction stages. There is no specific time limit set for this process, as it greatly depends on the physical condition of the building itself and the urgency of repairs. The initiative for quality improvement can come from the apartment unit owners or the government, depending on the type of apartment ownership. If the building is declared non-functional but still repairable, the owners and residents have the obligation to restore its function. Demolishing apartment buildings is part of the quality improvement effort, as explained in GR Number 16 of 2021, which states that apartment management includes operations, maintenance, and care, and is the responsibility of the PPRS (Professional Apartment Management Organization) to guarantee building safety and reliability. If a decline in building quality occurs that endangers residents and the environment, rebuilding through demolition, arrangement, and reconstruction must be carried out by the initiator, while still considering social, cultural, and economic justice.

Fulfilling inspection requirements in the building demolition process is important to ensure the safety and security of both the community and the surrounding environment. Demolition of old

buildings must be carried out carefully to avoid damaging other buildings nearby. Before starting the work stages, contractors are required to clear the area of materials such as debris, weeds, rocks, and other objects that could hinder the demolition process. There are several important stages that must be considered before carrying out building demolition, which will be explained in more detail in the following section.

Apartments are one of the alternative solutions to accommodate rapid population growth, which ideally should be supported by adequate land availability. However, in practice, apartments often face various consumer-detrimental issues. Based on reports and complaints received by several institutions such as the Directorate General of Consumer Empowerment and Business Competition Supervision of the Ministry of Trade, the National Consumer Protection Agency (BPKN), the Consumer Dispute Resolution Board (BPSK Jakarta), the Indonesian Real Estate Association (DPD REI Jakarta), the Indonesian Consumer Foundation (YLKI), and Indonesia Property Watch (IPW), various common problems in purchasing apartments have been found. These issues include discrepancies between developer promises and the apartment conditions received, lack of transparent information regarding infrastructure, land or building status, and unclearness regarding certificates and building permits. Furthermore, many consumers are not given the freedom to choose credit schemes as they are predetermined by the developer, experience delays in receiving certificates, get trapped in installment payments without a valid sales agreement, and even face cases of unit sales through images (pre-sale) before obtaining a building permit, even though payments have already been received by the developer.<sup>4</sup>

Problems with apartments in Indonesia are still quite complex and frequently occur in the field. One of the main causes is the lack of public understanding regarding legal provisions related to apartments, a

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<sup>4</sup> Renti Maharaini Kerti. "Implementation of Law Number 20 of 2011 concerning Apartments in the Perspective of Consumer Protection Law". *Jurnal Legislasi Indonesia*, 2018. p. 15.

gap often exploited by irresponsible developers.<sup>5</sup> This situation often leads to disappointment among buyers, who eventually resort to filing complaints through media, consumer protection agencies, and even legal processes in court. However, the resolution obtained is often not in line with expectations due to clauses in sales agreements that are not consumer-friendly but instead benefit the developer. Moreover, Indonesia still lacks regulations that clearly stipulate the legal certainty of ownership for demolished apartments due to uninhabitable conditions. Therefore, this research aims to examine the legal essence of agreements and ownership rights in the context of demolishing uninhabitable apartments in the future. A study on the concept of fair and ideal legal certainty is highly necessary to formulate a comprehensive new legal product capable of addressing these issues comprehensively.<sup>6</sup>

Based on the explanation in the previous introduction section, the problem statements that can be raised are: i. How is the demolition of uninhabitable apartment buildings carried out? ii. What forms of legal protection exist for apartment owners whose units are demolished due to uninhabitable conditions?

Legal research aims to find solutions to legal problems faced. Therefore, the ability to identify legal issues, conduct juridical reasoning, analyze problems, and formulate solutions is needed.<sup>7</sup> Based on the theme discussed, this research falls into the category of normative research, as it focuses on the study of the content and substance of laws and regulations, as well as analysis of key issues aligned with legal principles. This normative legal research emphasizes the analysis of positive law, encompassing three main aspects of jurisprudence, namely legal dogmatics, legal theory, and legal philosophy.<sup>8</sup>

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<sup>5</sup> Faisal Afriandi., Nasaruddin, N., Firzhal Arzhi Jiwantara. "Legal Protection and Legal Standing of Victims of Narcotics Abuse According to Law No. 35 of 2009 concerning Narcotics". *Jurnal Ilmiah Ilmu Pendidikan*, 5 (5), 2022.

<sup>6</sup> *Ibid.*

<sup>7</sup> Firzhal Arzhi Jiwantara. "The Executorial Power of PTUN Decisions and Implications in Their Implementation". *Commerce Law Journal*, 1 (1), 2020.

<sup>8</sup> Mahmud Marzuki. *Legal Research*. (Jakarta: Kencana Prenada Media Group, 2014), p. 23.

## B. Demolition of Uninhabitable Apartment Buildings

Demolition is one of the stages in the building construction process. Generally, demolition means the act of tearing down or destroying. Although it can encompass various types of destruction, the term is more often associated with buildings or facilities. A building itself is a permanent structure consisting of walls and a roof. Therefore, building demolition can be defined as the destruction of a structure that has elements such as ceilings and walls. Although it might seem like rough work at first glance, demolition remains an important and necessary step. This process involves careful planning and controlled execution of destruction. Demolition differs from deconstruction, which is the process of carefully dismantling a building with the aim of preserving components that still hold value for reuse.<sup>9</sup>

The building demolition process carries quite high risks as it involves many parties and can cause various impacts. Therefore, before demolition is carried out, several things need to be considered to reduce potential risks and prevent unwanted incidents. In building demolition activities, there are several important things that need attention to ensure the process runs safely and according to procedures. The initial step begins with ensuring the completeness of documents such as building ownership certificates and building permits. Furthermore, identification of the type of building to be demolished is necessary, including the materials and structural components composing the building. A detailed demolition plan must also be drafted. Before the process begins, all electrical currents leading to the location must be completely disconnected to avoid accident risks. The demolition stages themselves begin with removing metal roof coverings, followed by dismantling wooden structures such as rafters and planks. Next, the inner brick walls are demolished, followed by removing ceramic tiles and floor slabs adjusted to the volume, specifications, and working drawings. The subsequent process includes dismantling split AC units on the first floor, floor tiles on the ground floor, and reinforcing

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<sup>9</sup> Peranginangin, R. *Basic Level Building Demolition Module*. Pusat Pendidikan dan Pelatihan Jalan, Perumahan, Permukiman, dan Pengembangan Infrastruktur Wilayah, 2017, p. 51.

columns in that area. Finally, excavation is carried out in the floor area and around the columns to prepare for re-installation at the predetermined depth.<sup>10</sup>

Materials resulting from demolition must be stored in a safe and protected area, and their placement must obtain approval from the site supervisor or project owner. If there are components or materials from debris that are still suitable for reuse, their use requires further approval from the supervisor. The process of demolishing existing buildings must be carried out in such a way as to avoid damaging or disturbing the structure of other buildings in the vicinity. Before commencing new work, contractors are obligated to clean the site of residual materials, vegetation, rocks, or other objects that could potentially disrupt demolition activities. The implementation stages as explained in the following section should serve as a reference before carrying out the building destruction process, namely:

1. The local government identifies buildings to be demolished based on field inspections and reports received from the community.
2. The identification results are then conveyed to the building owners and users listed in the demolition list.
3. Based on the identification, building owners and users, with the exception of single-family dwellings such as core houses and simple healthy houses, are required to conduct a technical study of the building and submit the results to the local government, unless the building serves an important government function or belongs to community leaders.
4. If the technical study results indicate that the building is suitable for demolition, or if the building does not have a Building Permit (IMB), the local government will determine the demolition through an official designation letter.

Apartments that are no longer habitable also require demolition action. In this study, the criteria for apartments deemed uninhabitable and planned for future demolition are buildings that have experienced significant damage due to old age. This is caused by the decline in structural building quality over time, which can pose safety risks to its residents. Legal provisions regarding building collapse or demolition are

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<sup>10</sup> *Op. Cit.*

regulated in Law Number 28 of 2002 concerning Buildings. In Article 1 paragraph (8), it states that demolition is the process of demolishing or destroying part or all of a building, including building components, materials, and related facilities and infrastructure. Furthermore, Article 39 regulates that a building can be destroyed if it meets certain criteria, namely:

1. Buildings that are no longer suitable for use and cannot be repaired again potentially endanger the safety of owners and users if still used.
2. The presence of the building can pose a danger risk to users or the surrounding environment.
3. Buildings without a building permit also fall into the category that can be demolished.

Before a building is decided to be demolished, a technical study by the competent authority must first be carried out. A technical evaluation of the building's condition is conducted by technical assessors, and the procurement of this study is the responsibility of the building owner. If the building is declared non-functional but still has the potential for repair, then the obligation to restore it lies with the building owners or users. In other words, if an apartment has experienced a significant decline in function and cannot be repaired after being used for several decades, demolition becomes a possible option to take.

### **C. Legal Protection for Apartment Owner Whose Units are Demolished Due to Uninhabitable Conditions**

Legal protection is a form of protection for human rights violations committed by other parties. Its purpose is so that society can feel and enjoy rights guaranteed by laws and regulations.<sup>11</sup> In another sense, legal protection also encompasses various legal actions that must be carried out by law enforcement officers to provide a sense of security, both physically and psychologically, from various forms of threats and disturbances that may arise.<sup>12</sup> Furthermore, legal protection can be

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<sup>11</sup> Satjipto Raharjo. *Legal Science*. (Bandung: PT. Citra Aditya Bakti, 2000), p. 39.

<sup>12</sup> C.S.T. Kansil. *Introduction to Indonesian Legal Science and Legal System*. Balai Pustaka. 1992. P. 23.



understood as steps to protect or assist legal subjects through applicable legal instruments.<sup>13</sup> This protection reflects respect for human dignity and human rights guaranteed by law, and functions as a set of norms or rules that safeguard a party from being harmed by arbitrary actions from others.<sup>14</sup> In the context of consumer protection, the law plays a role in ensuring that consumer rights remain fulfilled and are not violated by any party.<sup>15</sup>

According to Philipus M. Hadjon, there are two kinds of legal protection tools that can be applied, namely:

1. Preventive legal protection allows legal subjects to submit objections or opinions before a government decision is definitively established. The main purpose of this protection is to avoid disputes that may arise after the decision is issued. This preventive legal protection is very important in the context of government actions based on freedom of movement or discretion. With this protection, the government is encouraged to be more careful in making decisions that can impact individuals or groups.
2. Repressive legal protection aims to resolve disputes that have already occurred. In the Indonesian context, this protection mechanism is carried out through general courts and administrative courts. This protection is based on the recognition and respect for human rights, which according to Western thought history, is the basis for the concept of human rights protection itself.

According to the view of Satjipto Raharjo, the main function of law is to provide protection for individual interests by regulating the distribution of authority in a way that acts to protect those interests. This distribution of power is carried out proportionally, both in terms of scope and depth. Meanwhile, according to Muchsin, legal protection is an effort to maintain individual rights through adjustment between

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<sup>13</sup> Philipus M. Hadjon, et.al. *Introduction to Indonesian Administrative Law*. (Yogyakarta: Gadjah Mada University Press, 2005).

<sup>14</sup> Siti Hasanah, dkk. "Digital Government in Social Sciences Discipline: Mapping Pivotal Features and Proposed Theoretical Model". *Jurnal Ilmiah Peuradeun*, 11(1). 2023.

<sup>15</sup> Philipus M. Hadjon. *Legal Protection for the People in Indonesia: A Study of its Principles, Handling by Courts within the General Judiciary and the Formation of Administrative Courts*. (Surabaya: Bina Ilmu, 1987).

values and norms reflected in behavior and actions, in order to create order in human relationships. In the context of apartment ownership, legal protection becomes a concrete form of guarantees provided by the legal system for individual ownership rights.

The principle in land law (in the narrow context of Agrarian Law) is known as the horizontal separation principle, which is a principle that separates ownership of land from objects located on it. Conversely, before the enactment of the Basic Agrarian Law (UUPA), the accession principle applied, which unified the ownership of land and buildings on it. The concept of apartments as a modern form of housing increasingly needed by society today has been adjusted to the land law principles regulated in the UUPA. Nevertheless, applying the old principles in the legal system still faces several challenges and requires more effort in its implementation.

The concept of apartment ownership in Indonesia, which adopts the apartment system, has given birth to a new form of ownership as the basis for legal protection for its residents, namely the Right of Ownership of Apartment Units (HMSRS). In this system, ownership of a single apartment unit is individual and stands alone, separate from the ownership of other units in the same building. Furthermore, this right includes ownership of common areas, common property, and common land related to it, which legally cannot be separated from the apartment unit. All these rights are based on the principle of proportionality, determined by the size of the unit owned relative to the entire apartment building or apartment complex.

This provision cannot be interpreted as the National Land Law ignoring the horizontal separation principle and replacing it with the accessory principle derived from Western legal systems. On the contrary, national land law adapts customary law principles in responding to the development of modern society's needs. In customary law itself, the principle is known that the customary law community can build structures on ancestral land or customary land (*ulayat*), which is collectively owned land. Thus, buildings standing on this land remain within the framework of the collective rights of the indigenous community.

According to Article 111 paragraph (3) of Government Regulation Number 13 of 2021 concerning the Arrangement of Apartments, the apartment demolition process begins with drafting a technical plan reflecting that a study has been conducted beforehand regarding the building's habitability. If the study results show the building is still habitable, then repairs can be carried out. However, if the building is uninhabitable and cannot be repaired, then demolition becomes the necessary step. The stages of apartment demolition include drafting a technical plan, socializing to residents, and providing temporary housing. The socialization activity becomes a form of legal protection for apartment owners and residents, as through this socialization, they have sufficient time and information to prepare, especially regarding accommodation after the demolition is carried out. Providing temporary housing is an obligation that must be fulfilled by the developer. Therefore, if apartment damage occurs due to age or suitability factors, the developer is responsible for providing temporary replacement housing. In its implementation, owners and developers can also reach agreements regarding the relocation of goods, relocation location, and the costs incurred.

Provision of temporary housing, as stipulated in Article 111 paragraph (3) letter c of Government Regulation Number 13 of 2021 concerning the Management of Apartments, must meet the criteria of a habitable house. Several aspects that are requirements for habitability include the location of the temporary housing not being too far from the apartment undergoing improvement or demolition, the availability of adequate basic infrastructure such as public facilities, utilities, and the clarity of funding to support the provision of this housing. These three elements are the main benchmarks to ensure that temporary housing can truly meet the basic needs of residents during the transition period.

The "free temporary housing" referred to means temporary accommodation for apartment owners whose buildings are demolished, which is the developer's responsibility. Meanwhile, damage to apartment buildings due to age is not the developer's obligation, because the developer already has the responsibility for the maintenance, repair, and even reconstruction of uninhabitable apartment buildings for a period of 50 years.

Developers have the obligation to carry out repairs and maintenance of apartment buildings as long as the building's age is still within a reasonable limit, namely up to 50 years. After exceeding this age limit, the responsibility for damage, demolition, or repair fully shifts to the apartment owners. If developers are still burdened with the obligation to demolish and rebuild apartments that have exceeded their service life, this is considered unfair. This is because developers have already calculated all construction and maintenance costs only for a 50-year period. Such an additional burden can cause significant losses for developers and potentially reduce the interest of business actors in developing apartments in the future.

Changes in apartment functions, such as adding space for commercial activities, health facilities like community health centers, or other building functions, are permitted as long as they do not interfere with or violate the rights of apartment unit owners. Violations of these rights can take the form of charging additional fees for repairs or maintenance without the owners' consent, adding buildings or rooms in the surrounding area without consent, or changing the unit building area during the renovation process. Meanwhile, rebuilding demolished apartments still falls under building maintenance activities, which are the developer's responsibility as long as the building age has not exceeded 50 years. The "free temporary housing" referred to means temporary accommodation for apartment owners whose buildings are demolished, which is the developer's responsibility. Meanwhile, damage to apartment buildings due to age is not the developer's obligation, because the developer already has the responsibility for the maintenance, repair, and even reconstruction of uninhabitable apartment buildings for a period of 50 years.

Demolishing apartment buildings is part of the effort to improve building quality, as explained in the General Explanation of Government Regulation Number 16 of 2021, which states that apartment management begins upon the issuance of the occupancy certificate. This management period covers all activities after construction is completed until the building requires quality improvement. These management activities include operations, maintenance, and care, which are the responsibility of the PPRS to

guarantee the building's safety and reliability. However, if building quality declines and endangers residents or the environment, then quality improvement must be carried out. This process is implemented by the initiator through demolition, arrangement, and reconstruction, while considering social, cultural, and economic aspects fairly.

#### **D. Conclusion**

Building demolition is a complex process that not only involves the physical act of tearing down structures but also requires careful planning, fulfillment of legal aspects, and controlled technical implementation to ensure safety and minimize risks. This process must begin with identification and technical studies of the building's condition by the competent authorities, as well as being equipped with legal documents such as building permits. Demolition is carried out if the building is no longer habitable, cannot be repaired, or poses a danger to the surrounding environment. In its implementation, it is important to protect the structures of nearby buildings, store materials safely, and thoroughly clean the work area. Therefore, demolition is not merely an act of destruction but an integral part of the building's life cycle management to ensure safety and environmental sustainability.

Legal protection for apartment owners whose units are demolished due to uninhabitable building conditions reflects a form of respect for human rights and the legal responsibility of the relevant parties, especially the developer. This protection includes providing information through socialization, providing temporary habitable housing free of charge, and compensation mechanisms in certain situations. However, there is a legal gap regarding compensation for apartment owners whose buildings are demolished due to age, considering that the developer's responsibility only applies until the building reaches 50 years of age. Therefore, more comprehensive legal protection and clear regulations are needed to guarantee legal certainty and justice for apartment owners facing the demolition of their residential units.

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