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Reconstruction of Management Cost Allocation During the Transitional Period of Apartment Housing Based on Justice and Legal Certainty

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Abstract: The development of apartment housing in Indonesia represents a strategic initiative to provide decent housing amid the scarcity of urban land. However, regulations governing the transitional period before the establishment of the Association of Owners and Occupants of Apartment Units (PPSRS) remain inconsistent, leading to legal uncertainty and injustice, particularly in the allocation of management costs. This study aims to analyse weaknesses in existing regulations, evaluate their implementation in practice, and propose a legal reconstruction that guarantees fairness and legal certainty for both developers and occupants. The research employs a normative and empirical juridical approach through the analysis of laws, court decisions, case studies, and comparative studies with practices in other countries. The findings reveal that Government Regulation No. 13 of 2021, which fails to recognize the Sale and Purchase Binding Agreement (PPJB) as valid interim ownership evidence, imposes a disproportionate financial burden on developers. The proposed legal reconstruction includes recognizing fully paid PPJB as a temporary proof of ownership, implementing proportional cost-sharing based on the Proportional Comparison Value (NPP), and strengthening government oversight during the transitional period. In conclusion, a new regulatory framework is required to establish an apartment management system that is fair, transparent, and legally certain, in accordance with the principles of a responsive rule of law.

Keywords: Apartment Housing, Transitional Period, Management, Justice

INTRODUCTION

The development of apartment housing in Indonesia represents a strategic policy direction aimed at ensuring access to adequate housing amidst the scarcity of urban land. The rapid growth of Indonesia's urban population—estimated by the Central Statistics Agency (BPS) to exceed 281 million people by 2024—has exerted immense pressure on land use, particularly in metropolitan centers such as Jakarta, Surabaya, and Medan. Consequently, the construction of vertical housing has become not only an architectural solution but also a legal and policy obligation within the framework of the Indonesian welfare state.

According to the 1945 Constitution of the Republic of Indonesia, particularly Article 28H paragraph (1), the right to adequate housing and a healthy environment constitutes part of

the broader human right to live prosperously in both physical and spiritual well-being. The state bears the responsibility to establish the regulatory and institutional framework necessary to ensure equitable access to housing. However, the existing legal regime governing the management of apartment housing—especially during the transitional period before the establishment of the Association of Owners and Occupants of Apartment Units (PPPSRS)—remains fragmented and inconsistent.

The transitional period refers to the interim phase between the initial handover of apartment units by developers and the formal establishment of PPPSRS as a permanent management body. As stipulated in Article 59 paragraph (1) of Law No. 20 of 2011 on Apartment Housing, this period shall not exceed one year from the first unit handover (*Berita Acara Serah Terima – BAST*). In practice, however, the period often extends indefinitely due to administrative delays, unresolved land status, and disputes between developers and owners concerning management responsibilities and financial contributions. This has led to legal uncertainty and imbalances in financial obligations, particularly concerning operational management costs (service charges).

Article 82 paragraphs (5) and (6) of Government Regulation No. 13 of 2021 on the Implementation of Apartment Housing stipulate that all management costs during the transitional period must be borne entirely by the developer if owners have not yet obtained a Deed of Sale and Purchase (AJB) or a Certificate of Ownership of Apartment Unit (SHM Sarusun). This narrow definition of ownership excludes the Sale and Purchase Binding Agreement (PPJB)—a widely used legal instrument in practice—thus creating inequitable financial responsibilities. Consequently, developers are legally required to bear all operational expenses, even when buyers have already occupied their units and enjoy shared facilities under a valid PPJB and BAST.

This structural weakness has led to recurring disputes, as illustrated by cases such as Kalibata City Apartment (South Jakarta), Puri Garden Apartment (West Jakarta), and Mangga Dua Court (Central Jakarta). Developers have been forced to cover operational costs reaching hundreds of millions of rupiah per month, while occupants refuse to contribute due to the absence of formal ownership documents. The lack of explicit legal recognition of fully paid PPJB as interim proof of ownership, coupled with the absence of standardized transitional mechanisms, has exacerbated tensions and undermined both justice and legal certainty.

From a theoretical perspective, this issue reveals a misalignment between the principles of justice (as articulated by Rawls and Sen), legal certainty (Radbruch), and the rule of law (Dicey and Stahl) within Indonesia's legal framework. A state governed by law must guarantee a fair balance of rights and obligations among all parties involved in housing management. When regulations impose unilateral obligations without equitable recognition of ownership status, the law fails to realize substantive justice. Therefore, reconstructing the regulatory framework governing transitional management costs is crucial to ensure the realization of justice and legal certainty in the management of apartment housing in Indonesia.

METHOD

This research employs a normative and empirical juridical approach, combining doctrinal analysis of statutory regulations with field-based findings. The normative juridical component examines the legal framework governing the management of apartment housing, including laws, government regulations, and judicial decisions. Meanwhile, the empirical component complements this analysis through case studies, providing practical insights into how the law is applied in real conditions.

RESULT AND DISCUSSION

Current Legal Framework on Transitional Management

The Indonesian legal framework governing the management of apartment housing is primarily based on Law No. 20 of 2011 on Apartment Housing and its implementing regulation, Government Regulation No. 13 of 2021 on the Implementation of Apartment Housing. Collectively, these two legal instruments aim to ensure sustainable, fair, and legally certain management of apartment complexes.

Article 59 paragraph (1) of Law No. 20 of 2011 obliges the developer to manage the apartment complex during the transitional period, that is, before the establishment of the Association of Owners and Occupants of Apartment Units (PPPSRS). As stipulated in paragraph (2), this transitional period shall not exceed one year from the first handover of units (*Berita Acara Serah Terima – BAST*). During this phase, the developer is responsible for maintaining operational functions, including security, cleaning, utilities, and the maintenance of shared facilities.

However, Government Regulation No. 13 of 2021, particularly Articles 82 to 84, reinterprets this obligation in a narrower and more restrictive manner. Article 82 paragraph (5) recognizes only the Deed of Sale and Purchase (AJB) and the Certificate of Ownership of Apartment Unit (SHM Sarusun) as valid proof of ownership for the purpose of determining management cost responsibilities. Furthermore, paragraph (6) stipulates that if such ownership documents have not been issued, the developer must bear all management costs, regardless of whether the units have already been occupied under a Sale and Purchase Binding Agreement (PPJB).

This provision deviates from the principle of fairness as set out in Article 59 paragraph (4) of Law No. 20 of 2011, which states that management costs should be borne proportionally by developers and owners based on the Proportional Comparison Value (*Nilai Perbandingan Proporsional – NPP*). Consequently, Government Regulation No. 13 of 2021 restricts the legal recognition of ownership and creates financial inequality.

As a result, developers face asymmetrical obligations—remaining financially responsible even after the units are occupied and residents benefit from shared facilities. This legal gap contravenes the principle of justice as affirmed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees every citizen the right to fair legal treatment and legal certainty.

Practical Implementation and Legal Disputes

Empirical findings from field studies and judicial decisions demonstrate that transitional management remains one of the most problematic aspects of apartment governance in Indonesia. Several representative cases highlight the recurring legal and administrative challenges faced by both developers and residents during this period.

a. The Kalibata City Case (South Jakarta)

The Kalibata City Apartment represents a prominent example of a prolonged transitional dispute. Although the PPPSRS had been formally established, the developer, PT Duta Paramindo Sejahtera, continued managing the facilities and collecting service charges, citing incomplete administrative transfers, and pending issuance of Certificates of Ownership of Apartment Units (SHM Sarusun).

Residents objected to the unilateral determination of service charges and demanded financial transparency. The dispute escalated into legal proceedings and extended public protests. This case illustrates the absence of a clear legal deadline and weak enforcement of the one-year transitional limit, leading to overlapping authority and contested legitimacy between developers and residents.

b. The Puri Garden Apartment Case (West Jakarta)

In this case, although most units had been occupied under fully paid Sale and Purchase Binding Agreements (PPJB), the developer remained legally obligated to fund all operational expenses—including security, cleaning, and utilities—since the residents had not yet received their AJB or SHM Sarusun.

The monthly operational deficit reached hundreds of millions of rupiah. This case underscores how the narrow interpretation of “ownership” under Government Regulation No. 13 of 2021 places a disproportionate burden on developers, contrary to the principles of fairness and proportionality.

c. The Gateway Ahmad Yani Case (Bandung)

In the Gateway Ahmad Yani Apartment case, as confirmed in Supreme Court Decision No. 423 K/TUN/KI/2017, the absence of a Certificate of Proper Function (SLF) and incomplete pertelaan (unit delineation) documentation delayed the establishment of the PPSRS.

The lack of legal and administrative clarity resulted in the suspension of management authority, demonstrating the interdependence between technical compliance and legal recognition during the transitional phase.

Similar patterns have been observed in Mangga Dua Court, Gading Resort Residences, and Green Pramuka City, where overlapping management claims between developers and residents’ associations have led to persistent disputes and confusion over authority.

These empirical findings confirm that the transitional management mechanism continues to suffer from normative ambiguity, procedural delays, and weak institutional oversight. In all observed cases, residents refused to pay management fees before obtaining formal ownership recognition, while developers faced severe financial pressure from continuously bearing operational expenses without shared responsibility.

Comparative Legal Study: Best Practices in Other Jurisdictions

A comparative analysis of housing management systems in various countries provides valuable insight for addressing Indonesia’s regulatory gaps concerning the transitional management period of apartment housing. Several jurisdictions—particularly Singapore, Australia, and Japan—have established advanced legal mechanisms that link ownership recognition with occupancy and proportional cost-sharing.

| Country | Legal Instrument | Key Features of Transitional Management |
|-----------------------------|-------------------------------------|---|
| Singapore | Building Maintenance and | Developers are required to establish a Management Corporation (MCST) within six months after the first sale. |
| | Strata Management Act (BMSMA), 2004 | Transitional expenses are shared proportionally between developers and owners. Full ownership is recognized upon issuance of a Temporary Occupation Permit (TOP), even before the title registration is completed. |
| Australia (New South Wales) | Strata Schemes Management Act, 2015 | A strata manager is appointed immediately once occupancy begins. Ownership is recognized upon settlement, not title issuance. Management costs are mandatorily shared by all residents based on lot entitlement, effectively avoiding |

the “no title, no payment” dilemma.

| | | |
|--------|-----------------|--|
| Japan | Act on Building | Management responsibilities automatically transfer once |
| Kumiai | Unit Ownership, | two-thirds of the units are occupied. The Kanri |
| | 1962 | (owners’ association) is deemed legally established upon |
| | (Kanri Kumiai) | occupancy, allowing immediate cost-sharing among |
| | | residents and developers. |

Source: Research Data

From this comparison, it is evident that the recognition of ownership and the obligation to share management costs in those countries are linked to possession and actual use of the unit, rather than being solely dependent on formal ownership certificates. Therefore, Indonesia needs to adopt a similar mechanism by recognizing fully paid Sale and Purchase Binding Agreements (PPJB) as valid interim proof of ownership and by implementing automatic cost-sharing arrangements that take effect from the moment occupancy begins.

Doctrinal and Theoretical Analysis

From the perspective of legal theory, there are three interrelated doctrines that collectively support the urgency of legal reconstruction in the management of apartment housing during the transitional period—namely, the Rule of Law (Rechtsstaat), Justice, and Legal Certainty.

a. The Principle of the Rule of Law (Rechtsstaat – A.V. Dicey)

The concept of the *rule of law* emphasizes that every legal act and obligation must be grounded in the principles of equality and protection against arbitrariness. In this context, the provisions of Government Regulation No. 13 of 2021, which impose the entire burden of management costs on developers without recognizing the interim ownership rights of residents, represent a form of legal imbalance.

This condition violates the principle of equality before the law, as it fails to ensure proportional treatment between the two parties. Developers are compelled to bear full financial responsibility, while residents enjoy the benefits of shared facilities without corresponding obligations. Such an arrangement indicates that the legal system, which should guarantee both certainty and justice, instead reinforces structural inequality within apartment management.

b. The Principle of Justice (John Rawls & Amartya Sen)

According to John Rawls, justice must be understood as justice as fairness—a conception of distributive justice that balances rights and obligations within a social structure. In the context of apartment housing, legal provisions that disregard the contribution of residents during the transitional period contradict this principle, as they create a tangible imbalance of responsibility among parties who share collective benefits. Meanwhile, Amartya Sen, through his realization-focused comparison approach, stresses the importance of actual outcomes rather than mere conformity to formal norms. If the implementation of a law leads to social and economic injustice in practice, then substantively the law fails to achieve its purpose. Therefore, normative reform must account for factual realities, not only formal legal procedures, to ensure that justice is realized in both substance and practice.

c. The Principle of Legal Certainty (Gustav Radbruch)

According to Gustav Radbruch, an ideal legal system must harmonize three fundamental values: legal certainty, justice, and utility. When the law places excessive

emphasis on formal certainty—such as ownership certificates—while neglecting substantive justice, it loses its essence as a moral and social instrument.

In the case of apartment housing, legal certainty should not be measured solely by the existence of ownership certificates but also by social reality, namely the fact that residents have occupied and benefited from their units. Therefore, genuine legal certainty must be accompanied by substantive justice, achieved through the recognition of fully paid Sale and Purchase Binding Agreements (PPJB) as legitimate interim ownership for the purpose of determining management cost obligations.

Proposed Legal Reconstruction

Based on normative analysis, empirical findings, and comparative studies of international practices, this research proposes a normative legal reconstruction of the provisions contained in Government Regulation No. 13 of 2021 on the Implementation of Apartment Housing, as follows:

a. Recognition of the PPJB as Interim Proof of Ownership

Add a new provision under Article 82 paragraph (5a):

“A fully paid Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli* – PPJB), accompanied by a Handover Minutes (*Berita Acara Serah Terima* – BAST), shall be recognized as valid interim proof of ownership for the purpose of determining management cost obligations.”

Rationale:

This provision aligns positive law with practical realities, as the majority of apartment transactions in Indonesia are conducted through PPJB prior to the issuance of a Deed of Sale and Purchase (AJB). It also harmonizes national regulations with Jakarta Governor Regulation No. 70 of 2021, which already recognizes PPJB as the legal basis for interim ownership registration.

b. Proportional Cost-Sharing Mechanism Based on the Proportional Comparison Value (NPP)
Amend Article 82 paragraph (6) as follows:

“During the transitional period, management costs shall be jointly borne by the developer and the owners proportionally based on the *Proportional Comparison Value (NPP)*, regardless of the form of ownership documentation.”

Rationale:

This amendment restores the principle of distributive justice as mandated in Article 57 paragraph (2) of Law No. 20 of 2011, which stipulates that management costs must be apportioned according to the NPP of each apartment unit.

c. Fixed Transitional Timeframe and Automatic Transfer of Management Authority

Insert a new provision, Article 83A:

“The transitional period shall not exceed twelve (12) months from the date of the first unit handover. If within this period the PPPSRS has not been established, management authority shall automatically be transferred to a temporary residents’ committee under the supervision of the local government.”

Rationale:

This clause provides legal certainty regarding the transitional period, prevents indefinite extensions of developers’ obligations, and strengthens local government oversight in the process of transferring management authority.

d. Government Oversight and Transparency Obligations

Insert a new provision, Article 84A:

“During the transitional period, the developer and the PPPSRS shall submit audited financial statements and management activity reports to the local housing authority every six (6)

months. Failure to submit such reports shall result in administrative sanctions in accordance with prevailing laws and regulations.”

Rationale:

This provision reinforces the principles of public accountability and transparency, which are essential components of good governance in the management of apartment housing.

Policy Implications

The implementation of the proposed legal reforms will bring several strategic benefits, as outlined below:

a. Enhanced Legal Fairness

The recognition of the Sale and Purchase Binding Agreement (PPJB) ensures a fair balance of rights and obligations between developers and residents, preventing prolonged disputes and fostering cooperative governance.

b. Administrative Certainty and Efficiency

The establishment of a fixed transitional timeframe and automatic transfer mechanism accelerates the formation of the PPPSRS and minimizes legal uncertainty, promoting more efficient administrative processes in housing management.

c. Substantive Legal Certainty

The recognition of factual ownership—based on fully paid PPJB and handover documents (BAST)—provides legal certainty that reflects the real conditions of housing ownership and occupancy in society.

d. Economic Sustainability

Proportional cost-sharing mechanisms maintain the financial stability of developers and the quality of operational services during the transitional period, ensuring the long-term sustainability of apartment management systems.

e. Transparency and Public Accountability

The mandatory auditing and reporting requirements strengthen government oversight and prevent the misuse of management funds, thereby promoting accountability and integrity in the governance of apartment housing.

Summary of Findings

a. The provisions of Government Regulation No. 13 of 2021 contradict the spirit of Law No. 20 of 2011 on Apartment Housing, as they fail to recognize the Sale and Purchase Binding Agreement (PPJB) as valid proof of ownership, thereby creating a disproportionate financial burden on developers.

b. Empirical evidence indicates that this exclusion has led to prolonged disputes, delays in the establishment of the PPPSRS, and inefficient use of operational resources due to unresolved transitional responsibilities.

c. Comparative studies reveal that countries such as Singapore, Australia, and Japan have implemented interim ownership recognition and automatic cost-sharing mechanisms based on occupancy status rather than formal title certificates, resulting in fairer and more efficient management systems.

d. Therefore, legal reconstruction—through the recognition of fully paid PPJB, proportional cost-sharing based on the Proportional Comparison Value (NPP), a fixed transitional timeframe, and enhanced government oversight—constitutes a reform aligned with the fundamental principles of justice, legal certainty, and a responsive rule of law.

CONCLUSION

The findings of this study reveal a structural gap between the law in books and the law in action concerning the management of apartment housing during the transitional period in

Indonesia. Although Law No. 20 of 2011 on Apartment Housing was intended to guarantee justice and legal certainty in joint management, Government Regulation No. 13 of 2021 has, in practice, created new forms of inequality. The regulation's failure to recognize the Sale and Purchase Binding Agreement (PPJB) as valid interim proof of ownership, coupled with the imposition of full management cost responsibility on developers, constitutes a regulatory imbalance that contradicts the principles of justice and the rule of law.

In practice, this imbalance has led to ongoing conflicts between developers and residents, delays in the formation of the Association of Owners and Occupants of Apartment Units (PPPSRS), and weakened enforcement of the one-year transitional limit. Developers are required to bear all operational costs even after residents occupy and enjoy shared facilities, while residents refuse to contribute due to the absence of formal ownership certificates (*Deed of Sale and Purchase – AJB* or *Certificate of Ownership of Apartment Unit – SHM Sarusun*). As a result, many developers experience significant financial losses, and the system of collective management fails to operate effectively.

From a doctrinal perspective, this condition illustrates the failure to harmonize the three fundamental values of law as formulated by Gustav Radbruch—namely, justice, legal certainty, and utility. The overemphasis on formal legal ownership has undermined substantive justice and diminished the social utility of the law for the public.

Therefore, a legal reconstruction is urgently required to bridge the gap between normative ideals and practical realities. The law must not only be formally valid but also substantively just and socially effective. Recognizing fully paid PPJB as interim proof of ownership, implementing proportional cost-sharing based on the Proportional Comparison Value (NPP), and establishing a fixed transitional timeframe with effective government oversight are concrete steps toward achieving an apartment management system that embodies justice, transparency, and legal certainty in accordance with the principles of a responsive rule of law.

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