



Legal Standing of Condominium Owners Association Independently Established During Developer Bankruptcy

Rateh Nyimas Intan¹, Aslan Noor² dan Petra Bunawan³.

^{1,2,3} Magister Kenotariatan Universitas Pasundan Bandung

¹ ratehnyimasintan@gmail.com, ² anooraslan@gmail.com, ³ not_petra@hotmail.com

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ABSTRACT

This study examines the legal standing of condominium owners' association establishment deeds created independently by unit owners and residents when the developer company is declared bankrupt. The research also identifies appropriate dispute-resolution mechanisms for resolving disputes between residents and bankrupt developers regarding association formation. This study employs a normative juridical method, drawing on statutory and case law. Law Number 20 of 2011 concerning Condominiums mandates developers to establish owners' associations within a specified period. However, in practice, developers fail to fulfil this obligation, leaving residents without legal representation in collective property management. In such circumstances, unit owners may independently form their association through deliberation, documented in a notarial deed. The findings demonstrate that association establishment deeds created independently by residents possess valid legal standing and binding force, provided they satisfy the requirements under Article 1320 of the Indonesian Civil Code and comply with applicable procedural regulations. The developer's bankruptcy status does not invalidate a previously established association, as the association constitutes an independent legal entity separate from the developer. Dispute resolution should prioritise mediation to achieve mutual agreement among the parties. However, when mediation fails due to the developer's bad faith or unwillingness to transfer management authority, residents may file lawsuits to obtain legal certainty and compensation for damages incurred. Additionally, developers who neglect their obligation to facilitate association formation may be subject to administrative sanctions under condominium regulations.



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INTRODUCTION

Law Number 20 of 2011 concerning Condominiums requires developers to establish a legal entity for condominium management, namely the Condominium Owners and Residents Association. Article 1, paragraph 21, of this regulation defines the association as a legal entity whose members are condominium owners and residents (Izzattisselim, 2019). The association plays a crucial role in regulating and managing collective interests, including the use of common facilities, joint fund management, and maintenance of shared components. This organization plays a central role in maintaining order and comfort within collective residential environments (Setiawati, 2023).

The establishment of a condominium owners' association must be recorded in a deed prepared by a Notary and validated by the technical agency of the district or city government responsible for housing affairs. This deed provides the legal basis for the association to carry out its functions and authorities, ensuring that all decisions bind all members, both owners and residents of the condominium (Ramelan, 2015). The establishment deed has strong legal force against all parties involved in the condominium. This force applies not only to association members but also to third parties connected with the condominium, including the developer company. Therefore, all stakeholders must respect and implement decisions and policies established by the association (Sutedi, 2010).

The association establishment deed plays an essential role in maintaining order, discipline, and justice in condominium management. This deed also provides necessary legal protection for owners and residents in various situations, including when the condominium developer is declared bankrupt (Gunawan, 2020). Bankruptcy is a condition in which a debtor cannot make payments to creditors. This

inability to pay commonly results from financial distress in the debtor's business that has experienced a decline (Subhan, 2008).

Practical problems arise when developers fail to fulfil their obligation to establish the association within the mandated period. Minister of Public Works and Housing Regulation Number 14 of 2021 concerning Condominium Owners and Residents Association states that the association must be formed no later than 6 months before the transition period ends. When developers neglect this responsibility, unit owners and residents experience difficulties in legal transactions, particularly in condominium management (Setiawati, 2023). This situation forces owners and residents to take the initiative to form the association independently through deliberation, which is subsequently documented in a notarial deed.

The legal complexity increases when developers enter bankruptcy status while still refusing to transfer management authority to the independently formed association. Curators appointed in bankruptcy cases often do not engage in communication regarding condominium management. This situation creates uncertainty for owners and residents in managing the condominium because they cannot access data, documents, movable and immovable property, finances, and other essential materials for proper management (Odilia Adi, 2021).

Indonesian regulations clearly establish the obligation to form an association. Before the official establishment of the association, developers bear responsibility for temporary management. This responsibility is a mandatory duty under applicable laws. In addition to their responsibility to form the association, developers also temporarily assume responsibility for maintenance, tax management, and other activities related to the condominium (Ramelan, 2015). If developers fail to fulfil their obligations, they may face sanctions or penalties for improper conduct.

Once the association forms, the developer who previously served as the temporary association must immediately transfer management to the newly established association. Developers do not have the authority to manage the condominium permanently. All management transfers to the association, which then holds the rights and obligations and represents owners and residents in condominium management. Under the law, the association constitutes a legal entity whose formation is documented in the establishment deed, accompanied by articles of association and bylaws prepared before a notary (Izzattisselim, 2019).

The association's legal standing as a legal entity enables it to act in its own name, independent of the developer who previously served as the temporary association in managing the condominium. This independence becomes particularly significant when developers face bankruptcy proceedings, as the association's separate legal personality protects the collective interests of owners and residents regardless of the developer's financial condition (Sutedi, 2010).

This study addresses two main issues. First, this research analyses the legal standing of condominium owners' association establishment deeds issued when the developer company is in bankruptcy. Second, this study examines dispute resolution mechanisms between condominium residents and bankrupt companies regarding association formation. Through normative juridical analysis, this research aims to provide legal clarity for condominium owners and residents facing similar circumstances.

RESEARCH METHODS

This study employs a normative juridical research method to examine the legal standing of condominium owners' association establishment deeds issued by unit owners when the developer company is in bankruptcy. Normative juridical research focuses on reviewing legal norms contained in legislation and analysing their application to specific legal issues (Soekanto & Mamudji, 2015). This method proves appropriate for analysing the intersection between condominium law and bankruptcy law in the context of association formation.

The research adopts two primary approaches. First, the statutory approach involves examining all relevant legislation related to the research problem (Marzuki, 2017). This study analyzes Law Number 20 of 2011 concerning Condominiums, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Minister of Public Works and Housing Regulation Number

14 of 2021 concerning Condominium Owners and Residents Association, and the Indonesian Civil Code, particularly Article 1320 regarding contract validity requirements. Second, the conceptual approach utilizes legal doctrines and principles developed in legal scholarship to construct arguments addressing the research questions (Marzuki, 2017). This approach helps in understanding the legal concepts of legal entity formation, notarial deed authority, and the effects of bankruptcy on contractual obligations.

The study utilizes both primary and secondary legal materials. Primary legal materials consist of binding legal sources, including the 1945 Constitution of the Republic of Indonesia, relevant statutes, government regulations, and ministerial regulations on condominium management and bankruptcy proceedings (Soekanto & Mamudji, 2015). Secondary legal materials provide explanations of primary legal materials, including legal textbooks, journal articles, research reports, and scholarly publications on condominium law, bankruptcy law, and notarial practice (Marzuki, 2017). This study also employs tertiary legal materials, including legal dictionaries and encyclopedias, to clarify terminology and concepts used throughout the analysis.

The researcher collects legal materials through library research techniques. This process involves identifying, inventorying, and classifying relevant legal provisions and scholarly literature on the formation of condominium owners' associations and developer bankruptcy (Soekanto & Mamudji, 2015). The researcher systematically reviews legislation, court decisions, legal journals, and academic publications to gather comprehensive data addressing the research questions.

This study analyzes collected legal materials using qualitative methods. The analysis process begins by describing applicable legal norms regarding the formation of condominium owners' associations and bankruptcy proceedings. Subsequently, the researcher systematically interprets these norms to understand their meaning and scope. The interpretation employs grammatical, systematic, and teleological methods to comprehend the legislative intent and purpose behind the regulations (Marzuki, 2017). Grammatical interpretation examines the ordinary meaning of words used in legal texts. Systematic interpretation considers the relationships among legal provisions within a single statute or across different statutes. Teleological interpretation focuses on the purpose and objectives that the legislation aims to achieve.

The researcher then applies the interpreted norms to analyze the legal standing of independently formed condominium owners' associations when developers face bankruptcy. This application involves examining whether such associations satisfy the formal and material requirements for the establishment of a valid legal entity under Indonesian law. The analysis also evaluates the appropriate dispute-resolution mechanisms available to condominium residents when developers fail to transfer management authority.

The study presents findings through prescriptive analysis, a characteristic of normative legal research (Marzuki, 2017). This analysis provides recommendations on the legal standing of association establishment deeds and on appropriate dispute-resolution approaches. The prescriptive nature of this research means that conclusions not only describe existing legal conditions but also suggest what the law ought to be in addressing the identified problems.

RESULTS AND DISCUSSION

a. Legal Standing of Condominium Owners Association Establishment Deeds Created During Developer Bankruptcy

The formation of a condominium owners' association constitutes a mandatory obligation that developers must fulfil to guarantee legal certainty for unit owners and residents. Legal certainty relates closely to law, particularly written legal norms (Izzattisselim, 2019). Minister of Public Works and Housing Regulation Number 14 of 2021 concerning Condominium Owners and Residents Association specifies that the association represents owners and residents in their residential, ownership, and management interests. This regulation establishes the association's fundamental role in protecting collective rights within condominium environments.

Indonesian regulations clearly govern the formation of condominium owners' associations. Before the official establishment of an association, developers bear responsibility for temporary management. This responsibility is a mandatory duty that developers must fulfil in accordance with applicable laws (Setiawati, 2023). The law imposes this temporary management role to ensure the continuous administration of condominium affairs until owners and residents can assume control through their own association. Article 2, paragraph 2, of the Minister of Public Works and Housing Regulation Number 14 of 2021 mandates that associations be formed no later than 6 months before the transition period ends.

Developers must conduct temporary management with attention to applicable norms, ethics, and morals as a result of fulfilling their obligations. When developers fail to perform their responsibilities, they may receive sanctions or penalties for improper conduct (Ramelan, 2015). This regulatory framework demonstrates the legislature's intent to protect condominium owners and residents from developer negligence or misconduct in fulfilling their statutory duties.

Once an association forms, the developer who previously served as the temporary association must immediately transfer management to the newly established organisation. Developers do not have the authority to manage condominiums (Sutedi, 2010) permanently. All management functions transfer to the association, which then holds the rights and obligations and represents owners and residents in condominium management. The law establishes the association as a legal entity, whose formation is documented in an establishment deed, accompanied by articles of association and bylaws, all executed before a notary.

The association's legal standing as a legal entity enables it to act in its own name, independent of the developer who previously served as the temporary manager. This separation of legal personality has significant implications for developers facing bankruptcy proceedings (Gunawan, 2020). The association's independent legal status means that developer bankruptcy does not automatically affect the association's ability to function and represent the collective interests of owners and residents.

Practical situations demonstrate that some developers do not act in good faith in performing their obligations and responsibilities to form associations. Developers may misuse their power and authority during the temporary management period (Odilia Adi, 2021). Unit owners and residents suffer losses when developers fail to form associations because they lack transparency in management, and their rights remain unprotected, even when developers continue to manage the condominium in practice. Examining applicable regulations, developers who fail to form associations within the mandated period commit unlawful acts.

When developers neglect their formation obligations, unit owners and residents may take the initiative to form associations independently through deliberation, which is subsequently documented in notarial deeds. Although the practical implementation should ideally occur at the initial handover of condominium units to their respective owners and residents, the law does not prohibit owners from exercising their collective rights to establish the association when developers fail to do so (Izzattisselim, 2019).

The establishment deed of a condominium owners' association achieves valid and perfected legal standing when it satisfies several requirements. First, the establishment deed must appear in the form of an authentic deed in accordance with governing regulations, and a notary must prepare it as a public official authorised to make deeds according to statutory provisions (Sutedi, 2010). The notary's involvement ensures that the deed meets formal requirements for authentic documents under Indonesian law.

Second, the establishment deed must satisfy the validity requirements for agreements as contained in Article 1320 of the Indonesian Civil Code. These requirements include consent of the parties who bind themselves, capacity to enter into contracts, a specific subject matter, and a lawful cause (Ramelan, 2015). When owners and residents deliberate and reach consensus on association formation, they demonstrate mutual consent. The participants' status as legal owners or authorised residents establishes their capacity. The formation of an association for condominium management constitutes the specific subject matter. The purpose of managing collective property in accordance with statutory requirements represents the lawful cause.

Third, the establishment deed must comply with the procedural requirements outlined in the condominium regulations. This compliance includes proper deliberation among owners and residents, documentation of the meeting and decisions, and preparation of articles of association and bylaws (Setiawati, 2023). The articles of association and bylaws govern the association's internal operations and establish rules for member participation, decision-making, and fund management.

The association establishment deed possesses three dimensions of evidentiary power. External evidentiary power means that an authentic deed proves itself as such based on its physical appearance and formal characteristics (Marzuki, 2017). Formal evidentiary power means that the deed demonstrates the truth of statements contained within it, including the date, location, and identity of the parties involved. Material evidentiary power means that the deed proves the truth of the legal acts recorded in the document (Sutedi, 2010). These three dimensions collectively establish the strong legal position of properly executed association establishment deeds.

An association establishment deed created by owners and residents when the developer is in bankruptcy remains valid and legally binding, provided that the formation complies with applicable statutory procedures. The timing of formation relative to bankruptcy proceedings requires careful analysis. When owners and residents form the association before the court declares the developer bankrupt, the association exists as a separate legal entity unaffected by the subsequent bankruptcy (Subhan, 2008). The association's assets, rights, and obligations remain distinct from the developer's bankruptcy estate.

When the association is formed after the bankruptcy declaration, the legal analysis becomes more complex but still reaches a similar conclusion. The right to form an association derives from ownership status, not from any contractual relationship with the bankrupt developer (Gunawan, 2020). Unit owners hold property rights over their respective units and shared ownership rights over common areas. These property rights survive developer bankruptcy and include the ancillary right to participate in collective management through an association.

The bankruptcy status of a developer does not eliminate the statutory obligation to form an association or the right of owners and residents to establish one. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations governs the treatment of debtor assets and obligations during bankruptcy proceedings (Subhan, 2008). However, the right of condominium owners to form an association does not constitute a debt or asset of the bankrupt developer. Instead, this right inheres in the property ownership that unit owners acquired through their purchase transactions.

Curators appointed in bankruptcy cases manage the bankrupt debtor's assets and affairs. However, curators do not possess the authority to prevent unit owners from exercising their statutory rights to form associations (Odilia Adi, 2021). The curator's role is to collect, manage, and distribute the debtor's assets to satisfy creditors' claims. The collective rights of condominium owners to self-governance through an association fall outside the scope of assets subject to curator administration.

The association's establishment deed also satisfies the three essential elements of an agreement under contract law. The essential elements refer to the essential parts that must exist for an agreement to form, namely the subject matter and cause (Ramelan, 2015). The *naturalia* element concerns issues that the law automatically includes in agreements without requiring an explicit statement by the parties. The *accidentalia* element refers to parts that the parties explicitly add to the agreement beyond what the law provides by default (Marzuki, 2017). The establishment deed satisfies all three elements through its statement of purpose, incorporation of statutory requirements, and inclusion of specific operational provisions in the articles of association.

b. Dispute Resolution Mechanisms Between Condominium Residents and Bankrupt Developers

Dispute resolution is the method used to find a middle ground or solutions for parties resolving existing problems. Parties may pursue dispute resolution through non-litigation processes outside the courts or through litigation in the courts (Junaidi, 2011). Non-litigation dispute resolution is an alternative dispute resolution conducted with the parties' agreement. This alternative approach is commonly referred to as Alternative Dispute Resolution. The outcome of non-litigation dispute

resolution is a win-win solution. Available methods include arbitration, negotiation, mediation, conciliation, expert assessment, and fact-finding (Hanifah, 2016).

Parties may resolve disputes outside court through several methods, but in practice, mediation through deliberation is prioritised to reach an agreement among the relevant parties. Mediation is an effort to resolve disputes among parties through mutual agreement with a neutral mediator (Junaidi, 2011). Mediation is a dispute resolution process that uses negotiation or consensus, with assistance from a neutral party, the mediator, who does not have the authority to decide matters. Parties engage in mediation to prioritise peaceful, swift, and mutually beneficial dispute resolution for all parties involved (Hanifah, 2016).

Mediation offers several advantages for disputes between condominium residents and developers regarding association formation. First, mediation involves a consensus or deliberative approach, so all outcomes of the mediation process represent the result of agreement or consent among the parties (Junaidi, 2011). This consensual nature aligns with Indonesian cultural values, emphasising *musyawarah* or collective deliberation in resolving disputes.

Second, mediation provides parties with opportunities to participate directly in resolving existing problems. Unlike litigation, where judges make binding decisions, mediation empowers parties to craft solutions that address their specific needs and interests (Hanifah, 2016). For condominium disputes, this participatory approach allows owners and residents to express their management concerns while developers can explain their constraints and propose transitional arrangements.

Third, mediation can eliminate conflict between parties through agreement and compromise, whereas litigation results in binding judgments issued by judges. The collaborative nature of mediation tends to preserve relationships between parties, which proves particularly valuable in condominium contexts where owners and developers may need to maintain ongoing interactions regarding warranty claims, documentation transfers, and other matters (Junaidi, 2011).

Mediation can succeed when all parties involved in a dispute mutually accept and embrace a sense of compromise in reaching an agreement. Practical experience demonstrates that mediation cannot proceed when the parties lack good faith to resolve existing problems (Hanifah, 2016). Obstacles to mediation implementation include parties who do not cooperate, do not respect one another, and prioritise only personal interests or benefits.

When parties cannot reach a mutual agreement, the process may continue to court to obtain decisions expected by parties who feel harmed and whose rights remain unfulfilled. Additionally, mediation is inappropriate when the core issue of a dispute involves the determination of rights, because such determinations must occur through judicial decisions (Junaidi, 2011).

Litigation constitutes dispute resolution conducted through court proceedings. Courts possess the authority to regulate and decide matters, exercised by judges (Hanifah, 2016). All disputing parties appear and face each other to defend their rights before the court. The outcome of litigation is a win-or-lose solution. Procedures in litigation follow formal and technical rules because regulations already govern them. Resulting agreements also tend to create new problems, require lengthy implementation and resolution time, demand expensive costs, lack responsiveness, and create enmity among disputing parties (Junaidi, 2011). Based on these considerations, disputing parties typically seek other alternatives through dispute resolution outside formal judicial processes.

For disputes concerning the formation of associations between residents and bankrupt developers, parties should prioritise mediation as the initial resolution. This approach involves many parties, so it is expected to minimise time and costs (Hanifah, 2016). However, developers' bankruptcy status adds additional complexity to mediation processes. Curators assume control over the affairs of bankrupt developers and must participate in or authorise any settlement negotiations affecting the bankruptcy estate.

When mediation fails, condominium owners and residents may file lawsuits in court seeking legal certainty, legal protection, and accountability from developers regarding association formation and condominium management (Gunawan, 2020). Lawsuits may include claims for damages resulting from the developer's failure to fulfil statutory obligations. Courts can order specific performance

requiring developers or curators to transfer management documents, data, and authority to the established association.

Legal consequences arise for condominiums that lack properly formed associations. When disputes or claims arise regarding condominium management and maintenance, developers are responsible (Ramelan, 2015). Developers must provide compensation using their own funds. When developers fail to perform their duties, particularly in forming associations, they may also receive administrative sanctions. Law Number 20 of 2011 concerning Condominiums establishes administrative sanctions as a preventive legal protection mechanism for condominium owners and residents who fail to exercise their rights (Setiawati, 2023).

Administrative sanctions available under condominium regulations include written warnings, restrictions on business activities, fines, closure of locations, revocation of permits, and demolition of buildings (Izzattisselim, 2019). Government agencies responsible for housing affairs at the district or city level have the authority to impose these sanctions against developers who violate their statutory obligations. The threat of administrative sanctions provides leverage for owners and residents in negotiations with developers and serves as an enforcement mechanism when voluntary compliance fails.

Condominium owners and residents who initiate independent association formation through deliberation demonstrate one method of resolving formation disputes when developers fail to act. This self-help approach represents an appropriate response to developer negligence and is supported by statutory provisions authorising owner collective action (Setiawati, 2023). The resulting association possesses valid legal standing and can demand transfer of management authority from developers or curators.

However, owners and residents face an unfavourable position in financial claims against bankrupt developers. When developers fail to provide management documents or compensation for losses, owners and residents must submit claims to the curator for inclusion in the bankruptcy estate distribution (Subhan, 2008). Condominium owners and residents typically qualify only as concurrent creditors, whose interests do not receive priority over other creditors, particularly preferred creditors with security interests or statutory priority (Odilia Adi, 2021).

The concurrent creditor status means that condominium owners may receive little or no recovery if the bankruptcy estate proves insufficient to satisfy all creditor claims. Secured creditors with mortgages or pledges over developer assets receive payment first. Tax authorities and employee wage claims also receive priority under Indonesian bankruptcy law (Subhan, 2008). Only after these priority claims are satisfied do concurrent creditors share proportionally in any remaining assets.

This unfavourable position regarding monetary claims underscores the importance of early association formation and proactive management transfer before developers experience financial distress. Owners and residents should monitor the developer's compliance with statutory formation deadlines and exercise their rights to demand the prompt transfer of association establishment and management (Gunawan, 2020). Early action increases the likelihood of obtaining necessary documents and resources while developers remain solvent and operational.

The legal framework provides adequate tools for condominium owners and residents to protect their collective interests even in the event of a developer's bankruptcy. The combination of valid association formation independent of developer cooperation, administrative enforcement mechanisms against non-compliant developers, civil remedies for damages and specific performance, and participation in bankruptcy proceedings as creditors creates multiple avenues for rights vindication (Izzattisselim, 2019). Owners and residents should pursue these remedies strategically, based on their specific circumstances and the stage of the developer's bankruptcy proceedings.

CONCLUSION

This study examines the legal standing of condominium owners' association establishment deeds issued by unit owners when developers are in bankruptcy and analyses available dispute-resolution mechanisms. Based on normative juridical analysis, this study reaches three main conclusions.

First, condominium owners' association establishment deeds created independently by unit owners and residents possess valid legal standing and binding force when they satisfy applicable legal requirements. These requirements include formation through an authentic deed prepared by a notary, fulfilment of validity requirements under Article 1320 of the Indonesian Civil Code, and compliance with procedural provisions established by Law Number 20 of 2011 concerning Condominiums and Minister of Public Works and Housing Regulation Number 14 of 2021. Developer bankruptcy status does not invalidate independently formed associations because the legal basis for formation derives from property ownership rights rather than contractual relationships with developers. The association's status as an independent legal entity separate from the developer ensures that bankruptcy proceedings do not affect the association's ability to function and represent collective owner interests.

Second, dispute resolution between condominium residents and bankrupt developers should prioritize mediation through deliberation to achieve mutual agreement. Mediation offers advantages, including consensual outcomes, direct party participation, preservation of relationships, and efficiency in time and costs. However, when developers or curators refuse to cooperate or when parties cannot reach an agreement, residents may pursue litigation to obtain legal certainty and compensation for damages. Courts can order specific performance requiring the transfer of management documents and authority to established associations. Administrative enforcement through government agencies also provides an important complementary mechanism, as sanctions, including written warnings, business activity restrictions, and permit revocations, can pressure non-compliant developers.

Third, condominium owners and residents should proactively exercise their formation rights before developers experience financial distress. Early organization increases the likelihood of successful management transition and access to essential documentation. The concurrent creditor status of condominium owners in bankruptcy distributions means that monetary claims may receive limited recovery, underscoring the importance of timely action. Future regulatory reforms addressing the specific intersection of condominium law and bankruptcy law could strengthen legal protections for unit owners facing developer insolvency.

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