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Reconstruction of Regulation for Establishment of the Owners and Residents Association of Strata Title

Syafrizal[1], Suhariningsih[2], Istislam[3], Iwan Permadi[4]
[1]PhD. Candidate, Faculty of Law, Brawijaya University, Malang
[2]Professor of Agrarian Law, Faculty of Law, Brawijaya University, Malang
[3]Associate Professor of Administrative Law, Faculty of Law, Brawijaya University, Malang
[4]Associate Professor of Administrative Law, Faculty of Law, Brawijaya University, Malang
Email of Correspondence: tflaw28@yahoo.com

Abstract**—***The need for strata title development in urban areas that lack land, but not accompanied by adequate regulation. Indonesia has issued law Number 16 of 1985 concerning the Strata Title, and has been replaced with Law Number 20 of 2011 concerning the Title of the Strata. However, until now there are no laws relating to the management of strata titles, so that matters relating to the management of strata titles are only inserted only in the strata title law, and even then only a few articles, so the law is clearly inadequate. This research is intended to analyze and find the rules for the establishment of Strata title Owners and Residents Associations, which protect the rights of strata title owners and citizens, as well as future regulations. This research is normative juridical research, and using several approaches, namely the approach is conceptual approach, philosophical approach and legal compliance approach between countries. The method of collecting legal materials is done through the Library Research and Analysis of legal materials carried out analytically prescriptively. The results of the study show that the establishment of the Strata title Owners and Residents Association which protects the rights of owners and residents of the strata title, currently there are multiple interpretations so that they do not have legal certainty so that they can eliminate the rights of owners and citizens. In addition, solutions to resolving norms that are vague are difficult to overcome because in strata title law there is no agency that is fully responsible and there is no special court (Tribunal) that can resolve these vague norms in a brief, professional, and final manner finished. Even if there is a general court, but it is not professional, the process is quite long and only casuistic, so it cannot be applied to other cases*.

Keywords— *Development of strata title, adequate regulations, management of strata title*.

I. INTRODUCTION

In the Guidelines of State Policy as stated in the Republic of Indonesia People's Consultative Assembly Decree No. IV / MPR 1999 concerning GBHN year 2004, it was stipulated that housing development is an effort to fulfill one of the basic human needs (Alif, 2009), while improving the quality of the living environment, expanding employment and driving economic activities in the framework of increasing and equitable distribution of people's welfare (Hamzah, 2006). The Housing Law Number 1 of 2011 states that the form of a house consists of a single house, row house and strata title. However, because the strata title is built vertically which has its own form and characteristics, it is necessary to make a separate regulation for this purpose through a special law, namely Law No. 20 of 2011 concerning Strata title, which are contained in the State Gazette of the Republic of Indonesia of 2011 Number 108 (hereinafter referred to as the Srata Title Law).

As with houses, strata title based on usage are classified into: (a) residential strata title, namely strata title that are entirely aimed at and functioning as dwellings, (b) non-residential strata title, namely strata title which entirely function as places of business, and (c) mixed strata title which are strata title which partially function as dwellings and some as place of business (Murhaini, 2015). However, unlike in neighboring countries that have adop ted the form of strata title system model which is a solution to building new buildings that can accommodate many residents / businesses with limited land, while in our country it is precisely with the emergence of strata title, especially those that built by private developers, raises a new problem, namely the occurrence of prolonged and massive conflicts between owners / residents and development actors as developers (Abdulsalam, 2016). The legal uncertainty is related to the absence of management laws, but only the strta title law. One example of a small problem is regarding the regulation for the formation Owners and Residents of a Strata title as regulated in Article 74 paragraph (1) of Law No. 20 of 2011 which states that owners of strata title must form an Association of Owners and Residents.

However, before the owner can form the legal entity, it must first go through the stage as stipulated in Article 75 paragraph (1) of Law No. 20 of 2011 which states that the developers must facilitate the establishment of the Association of Owners and Residents at the latest before the transition period as referred to in Article 59 paragraph (2) ends. Where the word "facilitate" contained in Article 75 paragraph (1) is not clear the meaning and limits, whether the word facilitate is a right or obligation for developers, what if the developers is not willing to facilitate it, can the legal entity still be formed, then what is the sanction if the developers is late or unwilling to facilitate it, then what is the meaning of the word "facilitating" in terms of the formation of a legal entity, is it the same as the grammatical meaning of the word, and many other questions that the explanation is not met.

Especially if we look at the full contents of Article 75 paragraph (1), it also leaves more questions, wherein there is a said transitional period, where if we read the explanation states that the transition period is calculated as one year since

the first handover to the owner, also raises more questions, what if the developers and consumers have not made a Sale and Purchase Act, whether consumers can be said to be the owner, given the absence of rules that require developers to immediately submit a Buy and Sell Deed after consumers pay off the sale and purchase of the strata title who did not immediately make a sale and purchase deed, as in the case of the North Jakarta Robinson Apartment, which had been completed since 1993, but until now there has been no such sale and purchase deed. The dispute can be seen from cases such as the Decision of the Constitutional Court Number 21 / PUU-XII / 2015, and the Constitutional Court Decision Number 85 / PUU-XII / 2015 between developers and owners of strata title.

II. RESEARCH METHOD

This type of dissertation research is normative juridical research (legal research) that rests on the nature of legal science whose objects are norms that are based on vague norms, with legislative considerations, conceptual approaches, philosophical approaches and legal compliance approaches between countries. The legal ingredients used are primary legal materials, secondary legal materials and tertiary legal materials. Secondary Legal Materials, namely materials in the form of legal text books, legal articles and written works of lawyers for strata title. Tertiary Legal Materials, are materials that provide guidance on primary and secondary legal sources such as legal dictionaries, Indonesian dictionaries and others (Soekanto and Mamuji, 2005).

The method of collecting legal materials is carried out through Library Research. In this library study what is done is by reading, studying, then grouping it into groups to be discussed and distinguishing between primary and secondary legal material. After legal materials have been collected, the next step is to analyze the primary legal materials and secondary legal materials. Analysis of legal material in this study was conducted in analytical prescriptive, which aims to produce prescriptions about what should be the essence of legal research that adheres to the character of legal science as applied science. The results of the analysis are legal logic, legal arguments, and legal principles that will produce conclusions in response to the formulation of the problem that must be answered.

III. RESULTS AND DISCUSSSION

Generally, what is a problem in our country is the issue of strtata title management disputes, because there are so-called common property in strata title, so a legal entity called the Association of Owners and Residents of Strata Title needs to be formed (hereinafter called a legal entity), (Santoso, 2014). Many conflicts occur in the management of strata title because the regulations governing the management of strata title do not yet exist, and even if they exist, they are generally multi-interpretations and without legal certainty. The legal uncertainty is mainly regarding the unclear between the rights and obligations of the developers and the owners who have purchased the strata title and are the owners at the next stage as outlined in the articles of law which gives rise to multiple interpretations in its implementation. One of the legal uncertainties is related to the regulation of the formation of the Strata title and Owners Unit of the Strata title as regulated by Article 74 paragraph (1) of Law 20 of 2011 which reads as follows: "Owners of strata titlea must form the Association of Owners and Residents. However, before the owners can form the legal entity, it must first go through the stages as stipulated in Article 75 paragraph (1) of Law No. 20 of 2011 which reads as follows: " developers are obliged to facilitate the formation of the Association of Owners and Residents of Strata title no later than before the transition period as referred to in Article 59 paragraph (2) ends.

We can see the different interpretations of the developers and the owners regarding the word "facilitating" from the many reports and complaints to agencies both the central government and the local government, civil cases including the case of a request for a judicial review of the Law Number 20 of 2011 concerning Strata title that is deemed not to provide legal certainty as referred to in the 1945 Constitution of the Republic of Indonesia so that it must be tested in the Constitutional Court through the Constitutional Court Decision Number 21 / PUU-XIII / 2015 conducted by the Owners, and Decision of the Constitutional Court Material Test Number 85 / PUU-XIII / 2015 conducted by developers.

As for the Decision of the Constitutional Court Number 21 / PUU-XIII / 2015, it is as follows: "That, if the Petitioners' petition is constructed together with the facts revealed in the trial, then the real problem of the a quo petition is the difficulty the owner of the strata title formed the Association of Owners and Residents of a Strata title whereas, according to Article 74 paragraph (1) of the Strata Title Law, the establishment of legal entities is an obligation for owners of strata title which, if not implemented, according to Article 107 of the Strata Title Law, are threatened with sanctions administrative type determined in Article 108 of the Housing Law.

That it is difficult for the owner of the strata title to form association of owners and residents due to disputes or differences of opinion between the owners of strata title and developers in interpreting and implementing Article 75 paragraph (1) of the Strata Title Law which requires developers to facilitate the formation of Strata title. Article 75 paragraph (1) of the Strata title Law states, " Developers must facilitate the formation of the Association of Owners and Residents of Strata title no later than the transition period as stipulated in Article 59 paragraph (2) ends" In practice, as explained by witnesses The Petitioner, the notion of "facilitating" is no longer merely meant to provide all the facilities and assistance needed for the establishment of the legal entity but rather the intervention of developers so far in the process and election of the management of the association, not even to the point of conflict.

Therefore, the provision constitutes a guarantee of constitutional rights to protection and guarantees of fair legal protection [vide Article 28D paragraph (1) of the 1945 Constitution], constitutional rights to property protection [vide Article 28G paragraph (1) of the 1945 Constitution], constitutional rights to have private property [vide Article 28H

paragraph (4) of the 1945 Constitution], even the constitutional rights to reside [vide Article 28H paragraph (1) of the 1945 Constitution].

That in order to protect and guarantee the constitutional rights of owners / consumers through the Petitioners for commercial strata title products, including the rights of consumers / owners to form and ratification of legal entities legal entities can function as legal subjects and private legal entities (rechts persoon), and has legal capacity to act on behalf of legal entities inside and outside, …… and so on …… While the material test verdict Number 21 / PUU-XII / 2015 reads as follows: "Results of judicial review decisions at the Constitutional Court it states that based on the description in number 1 to number 4 above, it has become clear to the Court that the arguments of the Petitioners stating that they did not obtain fair legal certainty by the enactment of Article 75 paragraph (1) of the Strata title Law are reasonable but things it is not caused by the phrase " developers " in Article 75 paragraph (1) of the Strata title Law, as argued by the Petitioners, allow by the conflict between Article 59 paragraph (2) of the Strata Title Law and its explanation in defining the definition of "transition period".

Therefore, the Constitutional Court disagrees with the arguments of the Petitioners stating that Article 75 paragraph (1) of the Strata title Law contradicts the 1945 Constitution insofar as it does not mean that "developers " in Article 75 paragraph (1) of the Strata title Law are interpreted as "Government " because, the new Government can be held accountable if it relates to public strata title, special strata title, and state strata title, as stipulated in Article 15 paragraph (1) of the Strata title Law, while the enactment of Article 75 paragraph (1) of the Strata title Law is towards commercial strata title. While the results of the decision on the Constitutional Court Number 85 / PUU-XII / 2015 requested by other applicants stated that they refused the test because the material test Number 21 / PUU-XII / 2015 had decided on the issue regarding the provisions of Article 75 paragraph (1) of the Law The number 20 of 2011 requested by the applicant.

The existence of two petition requests submitted to the Constitutional Court is clear evidence that it is true that the provisions of Article 75 paragraph (1) of Law Number 20 Year 2011 have caused multiple interpretations in their implementation resulting in legal uncertainty for owners and of course potentially detrimental to both owners and residents of strata title. The Regulation of the Establishment of the Association of Owners and Residents of the Strata title which is part of managing the strata title, especially the maintenance of common property, was originally regulated by Law No. 16 of 1985 concerning Strata title. In Law Number 16 of 1985, there are 2 (two) articles governing the management of strata title, namely Article 18 and Article 19. Whereas the rest of the regulations are regulated in implementing regulations, namely Government Regulation Number 4 of 1988 concerning Strata title, where there are 19 articles relating to the management of strata title (from article 54 to article 72). Whereas the more complete provisions as technical instructions and implementation instructions are regulated in the Articles of Association and By-Laws of the Association of Owners and Residents of the Strata title.

The 1945 Constitution of the State of the Republic of Indonesia is a basic law in the laws and regulations in Indonesia mandating Article 22A that further provisions regarding the procedure for making a law are regulated by law. Provisions regarding the establishment of the law are regulated by Law Number 10 of 2004 concerning Establishment of Legislation, then replaced with Law Number 12 of 2011. The principle of establishing good legislation is the legal principle that provides guidance and guidance for pouring out the contents of the regulations, in the appropriate form and arrangement, appropriate in the use of the method, and following the determined process and procedure.

Before being regulated in Law Number 10 of 2004 the principle relating to the formation of norms in legislation has been known in the theory put forward by experts, among others, I.C. Van der Vlies in his book entitled “Het wetsbegrip en begislen van behoorlijke regelveving”, 1984, and A. Hamid S. Attamimi in his dissertation entitled The Role of Indonesia's Presidential Decree in the Implementation of State Government, in 1990. Since the enactment of Law No. 10 of 2004, the principle has been respected in Article 5 and Article 6. According to Sudikno Mertokusumo, the legal principle is a basic and general mind or is contained in or behind legal regulations, but it is not impossible to express the legal principle or set forth in legal regulations. For example, the principle of the presumption of innocence in Article 8 paragraph (1) of law Number 18 of 1970 concerning Judicial Power, principle of “nullun delicium nulla poena sine praevia legi poenlai” in Article 1 paragraph (1) of the Penal Code, and the principle of “equality” or “audi et alterium partem” in Article 4 paragraph (1) Law Number 7 Year 48 Year 1970, and Article 8 paragraph (1) Law Number 16 Year 1985 which has been replaced with Law Number 20 Year 2011.

The development of the regulation of the establishment of good legislation in the formation of laws in Indonesia for the first time explicitly included in Law Number 10 of 2004, then replaced with Law Number 12 of 2011 promulgated on August 12 Year 2011. According to I.C. Van der Vlies, the principle of establishing good legislation can be divided into two categories, namely the formal principle and the material principle. The formal principle relates to the format, nature, organization, role, technical formulation, and so on. While the material principle relates to the material that must be contained in the laws and regulations. The principle of the formation of good legal regulations is regulated in Article 5 with the term the establishment of good legislation. While the principle of the formation of good legislation that is material in nature is regulated in Article 6 of the Law with the terms that the contents of thirsty legislation reflect the principle.

The principle of establishing legislation that is good in Article 5 of Law Number 12 Year 2011 is affirmed as follows: In forming legislation regulations must be carried out based on the principle of the formation of good legislation, which includes: objectives, institutions or forming officials right, suitability between type, hierarchy, and material content, can be implemented, usefulness and usability, clarity of formulation, and openness. The content of the laws and

regulations must reflect the principle as formulated in Article 6, namely (1). The content of the legislation must reflect the principles: guidence, humanity, nationality, kinship, bhinneka tunggal ika, justice, equality of positions in law and government, law and order, balance, harmony. (2) In addition to reflecting the principle as referred to in paragraph (1) certain laws and regulations may contain other principles in accordance with the legal field of the relevant laws and regulations.

The affirmation of the word "must" in Article 5 with the formulation "In establishing legislation must be carried out based on the establishment of good legislation, and in Article 6 paragraph (1) with the formulation" the material content of legislation must reflect the principle, then it shows the existence of the rule of law. The order is an obligation for something so that it is the obligation of the legislators to form legislation based on the principle of establishing good legislation. Likewise, the order for the legislators to realize material principles in the material content of legislation.

The formulation of the problem in this study is the regulation of the establishment of legal entities referring to Article 75 paragraph (1) of Act No.20 of 2011 viewed from the principles of legislation both in terms of type, hierarchy, content and principles of law and order as stipulated in Article 5 and Article 6 of Law Number 12 Year 2011 in accordance with the formulation of the problem, this study will not discuss these principles as a whole, but will discuss one of the formal principles, namely the principle of conformity between types, hierarchies, and material content, and one the material principle is the principle of openness and legal certainty, but what is discussed is the formulation of the problem regarding the clarity of the formulation and the principle of order and legal certainty. According to Law Number 12 Year 2011 in Article 5 states that there are several principles in the formation of good legislation including the principle of "clarity of formulation" in its explanation stating that the clarity of the formula means that every statutory regulation must meet technical requirements preparation of legislation, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation.

The language of legislation is basically subject to the rules of Indonesian grammar, both concerning word formation, sentence compilation, writing techniques and spelling, but the language of legislation has its own style characterized by clarity or clarity of understanding, innocence, rigidity, harmony, and principle obedience in accordance with legal requirements both in formulation and method of writing. Law Number 12 Year 2011 in Article 6 stipulates that the laws and regulations must reflect the principle of, among others, the principle of order and the principle of legal certainty. The purpose of this principle is explained further in Article 6 letter I that what is meant by the principle of law and certainty is that every material contained in the laws and regulations must create order in the community through legal certainty. According to the Indonesian Language dictionary, the word order means that things are well organized and good. The word certainty means definite matter (condition), while legal certainty means a legal instrument of a country that is able to guarantee the rights and obligations of every citizen. The purpose of this principle is correlated with the meaning of the word order and legal certainty. It can be explained again that every material contained in the laws and regulations must be able to realize a well-organized situation in the community through a state legal instrument that guarantees the rights and obligations of every citizen.

The content of the laws and regulations must reflect the principle of order and legal certainty as stipulated in Article 6 of Law Number 12 Year 2011. The purpose of the article is "every material contained in the laws and regulations must be able to achieve order in the community through guaranteed legal provisions. Mochtar Kusumaatmadja explained that the main purpose of the law was for order. The need for order is a basic requirement and fundamental for the existence of a regular society. Although there are other objectives, namely justice, which has different content and size according to society and its time. Order as the main goal of law is an objective fact that applies to society. To achieve order in society requires certainty towards order. According to Utrecht, the law is in charge of ensuring legal certainty (rechtzekerheid) in human life. Legal certainty must guarantee justice and expediency. Legal certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Law without certainty will lose meaning because it can no longer be used as a behavioral guide for humans. Legal certainty is part of the theory of legal goals, namely legal justice, legal benefits, and legal certainty. The content of the laws and regulations reflects legal certainty if it is made and promulgated for certain because it regulates clearly and logically. Obviously, the meaning does not cause multiple interpretations, and logically means to be part of the norm system so that it does not cause conflicts or norm conflicts.

Regulations for the establishment of legal entities contained in Article 75 paragraph (1) of Law No.20 Year 2011 in the establishment of management bodies (legal entities), starting from the issuance of the old Strata Title Law until replaced with the new Strata Title Law, always caused conflicts, especially about the interpretation of words - words in the articles between developers and owners. The owners assume that the word compulsory "facilitating" is certainly the obligation of the developers as the business actors to build the strata title in order to help and facilitate the owners in forming the management body. But on the other hand, the developer as the original owner interprets that the compulsory word "facilitating" is the right and authority of the developer, where when the developer is pleased, the formation of the management body is facilitated, but if it is not pleasing nothing can be formed unless facilitated by the developer as intended by article 75 paragraph (1) of Act No.20 of 2011. The existence of Article 75 paragraph (1) of Law No. 20 Year 2011 has caused prolonged legal uncertainty since Law No. 16 of 1985 to be replaced with Law No. 20 Year 2011. Lawmakers do not seem to have the political will to provide an interpretation of the provisions of Article 75 paragraph (1), making it difficult for owners of strata title to form legal entities which of course affect not protected and insured rights

of owners of unit of strata tilte, because the establishment of legal entities is the beginning of the start of activities, the rights and obligations of the owners and residents of the building and shared assets. Without the existence of a legal entity formed by the owners, it certainly creates legal uncertainty, especially in determining the rights of each owner, tenant's rights or the rights of other parties in the management and maintenance of buildings and common property, especially if natural disasters or other things that cause buildings and property together to be destroyed or collapse which causes the need to build a new building on the shared land, who will be responsible, to whom the owners must ask, while the legal entity does not exist or has not been formed by the owners, and whether the building has been insured, if already who has the right to claim insurance, and of course this is very detrimental to the owners, including the residents who have already paid for a long time but cannot enjoy their rights, or if rebuilt the drum, the building belongs who, and so on.

In the absence of legal certainty that there is Article 75 paragraph (1), it is of course contrary to the 1945 Constitution of the Republic of Indonesia, especially Article 28D paragraph (1) that everyone has the right to recognition, guarantee, protection and fair legal certainty. and the same legal treatment before the law. Law as a norm gives guidance on what must be done and what is not allowed so that something can run in an orderly manner. Law has the character of regulating human behavior and has the characteristic of governing, prohibiting, and being forced to be obeyed by society. The intrinsic purpose of the existence of legislation is to create legal certainty, because legislation can be understood more easily, so that it can avoid speculation between legal subjects about what should be done or not done, about what to do or not do, and about what constitutes rights and obligations.

The word “certainty” comes from the basic word "definite" preposition "to" and the ending "an". The meaning of the word "definite" according to the Indonesian Dictionary is "certainly" "provision", something that is certain ". The word certainty means something that is certain. The concept of legal certainty according to Apeldoorn contains two meanings, namely first, legal certainty will guarantee the interests of individuals, because the first task in a concrete sense is that by law, the parties can determine their position. Second, the law guarantees security and protection to the parties. According to Gustav Radbruch, legal certainty is certainty because the existence of law and certainty in law or from that matter can be achieved if there are laws in the form of laws, and in the law there are no contradictory provisions and there are no terms that can be interpreted differently . Gustav Radbruch points out 4 (four) basic things related to the meaning of legal certainty, namely the first law is positive, meaning that the positive law is legislation. Second, the law is based on facts, meaning it is based on reality. Third, facts must be formulated in a clear manner so as to avoid mistakes in the meaning, besides being easy to implement. Fourth, positive law is not easily changed. Gustav Rabbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically from legislation.

Legal certainty is two dimensions, first, legal certainty in law, and second, legal certainty by law. Legal certainty in law is a law as a system. Laws embodied in norms must be consistent, there should not be inconsistency, contradiction (conflicting), overlapping, and ambiguity. Legal certainty by law, with regard to legal validity. Bagir Manan describes a number of reasons that laws and regulations can cause or influence legal certainty, namely: legal rules that have been missed, such as the rules of the colonial period or the rules of independence made on an invalid basis, rules that contradict one each other or overlap, whether the content or competence is not clear. Rules "depend" without implementation rules so that the basic rules cannot be implemented. Even if carried out solely on the basis of a "policy rule" which often misrepresents the “doelmatigheid notion and overrides” the aspect of “rechmatigeid” or the principle of benefit placed in “contravention with rechmatigeid”. The principle of benefit or “doelmatigheid” is a method of softening legal provisions, but the principle of benefit used as a basis is in accordance with the law.

Philosophically, the regulation for the establishment of a legal entity belonging to the Association of Owners and Residents is intended so that the owners and residents of the strata title are protected by their rights. But theoretically and juridically, both Law Number 16 Year 1985 and Law Number 20 Year 2011, namely each concerning Strata title, meaning that both laws do not meet the requirements to be able to protect the rights of the owners and residents strata title, because the two laws do not regulate the management of strata title, but about the development of strata title, moreover the articles governing the management of strata title consist of only a few articles. As for the Decree of the Minister of Public Housing Number 06 / KPTS / BKP4N / 1995, dated June 26, 1995, which regulates technical and management instructions, in theory, the decision is not part of the order of the laws and regulations as referred to in Article 7 Law Number 12 Year 2011 concerning Establishment of Legislation which consists of (a) 1945 Constitution, (b) Decree of the People's Consultative Assembly, (c) Government Regulation, (d) Presidential Decree, (e) Provincial Regional Regulation , and (f) Decisions of Regency and City Regions. In addition to the Decree of the Minister of Public Housing Number 06 / KPTS / BKP4N / 1995, dated June 26, 1995, it is not a regulation stipulated by Law Number 12 Year 2011, in the closing article the ministerial decree states that the Articles of Association and Bylaws can be changed by the owners with a predetermined quorum, meaning that the minister's decision has the potential to create more serious legal uncertainty, namely a legal vacuum, in addition there is no sanction if it does not use the ministerial decree in the management of strata title.

The Regulation of the Establishment of the Association of Owners and Residents of the Strata title which is part of managing the strata title, especially the maintenance of common property, was originally regulated by Law No. 16 Year 1985 concerning Strata title. In Law Number 16 Year 1985, there are 2 (two) articles governing the management of

strata title, namely Article 18 and Article 19. Whereas the rest of the regulations are regulated in implementing regulations, namely Government Regulation Number 4 Year 1988 concerning Strata title, where there are 18 (nineteen articles) relating to the management of strata title (starting article 54 up to article 72). Whereas the more complete provisions as technical instructions and enforcement instructions are regulated in the Articles of Association and Bylaws of the Association of Owners and Residents of Strata title. The Articles of Association and Bylaws of the Association of Owners and Residents of the Strata title are regulated by a ministerial regulation, namely the Decree of the Minister of Public Housing Number 06 / KPTS / BKP4N / 1995, dated June 26, 1995, concerning Guidelines for Establishing the Deed of Establishment and Bylaws of the Association of Houses Arranging (according to Law Number 20 Year 2011 replaced with the term Association of Owners and Residents of Strata title).

Then Law Number 16 Year 1985 was replaced by Law Number 20 Year 2011 concerning Strata title. In Law Number 20 Year 2011, regarding matters relating to the management of strata title are regulated in article 56 up to article 59 and articles 74 to 77, namely there are as many as 7 articles. Whereas the implementing regulations in the form of government regulations have not yet been issued, so that they still use Government Regulation Number 4 Year 1988. Regarding technical instructions and implementing instructions still use the Decree of the Minister of Public Housing Number 06 / KPTS / BKP4N / 1995. But in contrast to other countries that embrace strata title called the strata title (Australia), (Kuswahyono, 2004), the strata title law is made separately from the Management Act (Law and Butt, 2010), so that it can manage well without multiple interpretations and so on.

IV. CONCLUSION

Establishment of the Association of Owners and Residents of the Strata title that protects the rights of owners and residents of strata title, at present there are multiple interpretations so that they do not have legal certainty so as to eliminate the rights of the owners and Residents of the strata title. This is because Article 75 paragraph (1) of Law Number 20 Year 2011, in theory does not meet the requirements, both the theory of legislation and the theory of legal certainty. The problem globally is not only because of the existence of Article 75 paragraph (1), but in addition to the management law there is no such thing, but only a few articles are inserted into the law on strata title, even though in other countries, such as Malaysia, Singapore and New South Wales, have management laws, which are separate from the apartment law. In addition, the solution to resolving the vague norm problems is difficult to overcome because in the strata title law there is no agency that is fully responsible and there is no special court (Tribunal) that can resolve these vague norms in a brief, professional, and final manner, who completed, such as those in Malaysia, Singapore and New South Wales. Even if there is a general court, but it is not professional, the process is long time and only casuistic, so it cannot apply to other cases.

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