

REAL ESTATE

## Indonesian Constitutional Court Decision No. 198/PUU-XXIII/2025: Bridging the Regulatory Gap for Non-Residential Apartments



On 19 January 2026, Indonesia's Constitutional Court (*Mahkamah Konstitusi*) issued Decision No. 198/PUU-XXIII/2025, marking a significant development for developers and owners of non-residential apartment buildings (*rumah susun bukan hunian*).

The decision addresses the classification of apartment use under Article 50 of the Apartment Law (Law No. 20 of 2011), which currently recognises only two categories: (i) residential apartments and (ii) mixed-use apartments (a combination of residential and non-residential use). As a result, the Constitutional Court ordered the lawmakers to amend the Apartment Law or issue new implementing regulations within two years from the date of the decision to specifically govern non-residential apartments.

While the decision does not immediately alter the existing legal framework, it sends a clear signal that Indonesia's apartment regime requires reform to address the regulatory gap affecting non-residential apartment developments. Until the Apartment Law is amended or new regulations are issued, standalone non-residential apartments remain unrecognised under Article 50, and the practical and transactional risks associated with such projects, particularly relating to ownership certification and financing, will continue to apply.

## Background

The judicial petition was filed by PT Pasaraya International Hedonisarana ("**Petitioner**"), the developer of Menara Sentraya, challenging the constitutionality of Article 50 of the Apartment Law, which does not expressly recognise non-residential apartments.

At the time the petition was submitted, Article 50 of the Apartment Law provided (unofficial English translation):

"The use of apartment buildings shall be carried out in accordance with their function:

- a. Residential; or
- b. Mixed-use."

The elucidation of Article 50 explains that "mixed-use" refers to "a combination of residential and non-residential functions." As such, the provision only accommodates developments that include a residential component and does not recognise standalone non-residential buildings.

In its petition, the Petitioner argued that the absence of a recognised non-residential function (*fungsi bukan hunian*) under Article 50 has resulted in practical legal consequences, namely:

- The inability to obtain approval for the delineation (*pertelaan*) and the deed of separation (*akta pemisahan*) for non-residential apartment units; and
- As a result, the inability to issue Certificates of Ownership of Apartment Units (*Sertifikat Hak Milik Satuan Rumah Susun* or "**SHM Sarusun**").

## The Constitutional Court's Legal Reasoning

In its decision, the Constitutional Court acknowledged that under the previous apartment law (Law No. 16 of 1985 ("**1985 Apartment Law**")), apartment development was primarily intended for residential purposes, particularly to support low-income communities. Nevertheless, the Court noted that apartment development was also expected to support the creation of complete and functional settlements, which may require multi-storey buildings for non-residential purposes that support communities with limited economic means.

However, under the current Apartment Law, the definition of an apartment building expressly emphasises its residential purposes. An unofficial English translation of Article 1(1) of the Apartment Law reads as follows:

"An apartment building is a multi-storey building constructed within a designated area that is divided into parts structured functionally, both horizontally and vertically, and consists of units that may be individually owned and used separately, **primarily for residential purposes**, and which are equipped with shared parts, shared objects, and shared land."

The Constitutional Court reaffirmed its reasoning in Decision No. 62/PUU-XX/2022, which involved the same provision, namely Article 50 of the Apartment Law. In this decision, the Court observed that the Apartment Law no longer distinguishes between residential and non-residential apartments, but instead classifies them as residential or mixed-use. Under this framework, non-residential use is treated only as a supporting function of the primary residential function. According to the Constitutional Court, this confirms that the Apartment Law is mainly designed to regulate residential apartments, while creating a regulatory gap for apartments used exclusively for non-residential apartments.

The Constitutional Court considered that this regulatory gap gives rise to several potential legal consequences, including:

### 1. Inability to obtain SHM Sarusun

The absence of a recognised non-residential function prevents the approval of the delineation (*pertelaan*) and the deed of separation (*akta pemisahan*), thereby preventing the issuance of SHM Sarusun for non-residential units. This situation exposes developers to potential lawsuits for breach of contract, as well as potential criminal reports.

### 2. Inability to mortgage, transfer, or register apartment units

Without SHM Sarusun, owners of apartment units are unable to register ownership with the land office as a state-recognised property right. As a result, such units cannot be mortgaged or transferred, and financial institutions are unable to accept them as collateral.

### 3. Inconsistent application of Article 50

The Constitutional Court noted that inconsistencies may arise in the application of Article 50, as in certain cases the government has continued to issue approvals for delineation (*pertelaan*) and deeds of separation (*akta pemisahan*) for non-residential apartment buildings, despite the absence of a clear legal basis.

That said, the Constitutional Court emphasised that because the core purpose of the Apartment Law as reflected in Article 1(1) is residential, interpreting Article 50 as directly including non-residential functions would create disharmony within the statutory framework.

Ultimately, to bridge the gap between the absence of a recognised non-residential function under Article 50 and the statutory definition of an apartment, the Constitutional Court mandated that lawmakers must, within two years from the date of the decision (19 January 2026), amend the Apartment Law or enact a new regulation to establish a legal framework governing non-residential apartments.

In light of the inconsistent application of Article 50 identified by the Constitutional Court, there may be instances in which local governments have issued approvals, particularly approvals of delineation (*pertelaan*) and deeds of

separation (*akta pemisahan*), that expressly refer to non-residential apartment units, despite the absence of a clear or consistent legal basis for such units under the Apartment Law.

## Key Takeaways

- **No immediate change, but a clear regulatory signal**

While the decision does not immediately change the current legal framework, it opens the path for lawmakers to introduce specific regulations governing non-residential apartments. Until such amendments or regulations are issued, Article 50 of the Apartment Law continues to recognise only residential and mixed-use apartments, and does not yet accommodate standalone non-residential apartments, notwithstanding potential inconsistencies in the application of Article 50.

- **Legal and transactional risks remain**

Non-residential apartment projects continue to face legal risks, including the inability to obtain SHM Sarusun. This may result in potential disputes between the developers and unit purchasers, as well as practical difficulties in registering, mortgaging, or transferring apartment units, which in turn prevents financial institutions from accepting such units as collateral.

- **Heightened caution for future developments**

Developers planning standalone non-residential apartment projects should carefully assess the risks outlined above, as the current legal framework will remain unchanged until lawmakers amend the Apartment Law or enact new regulations to expressly govern non-residential apartments.

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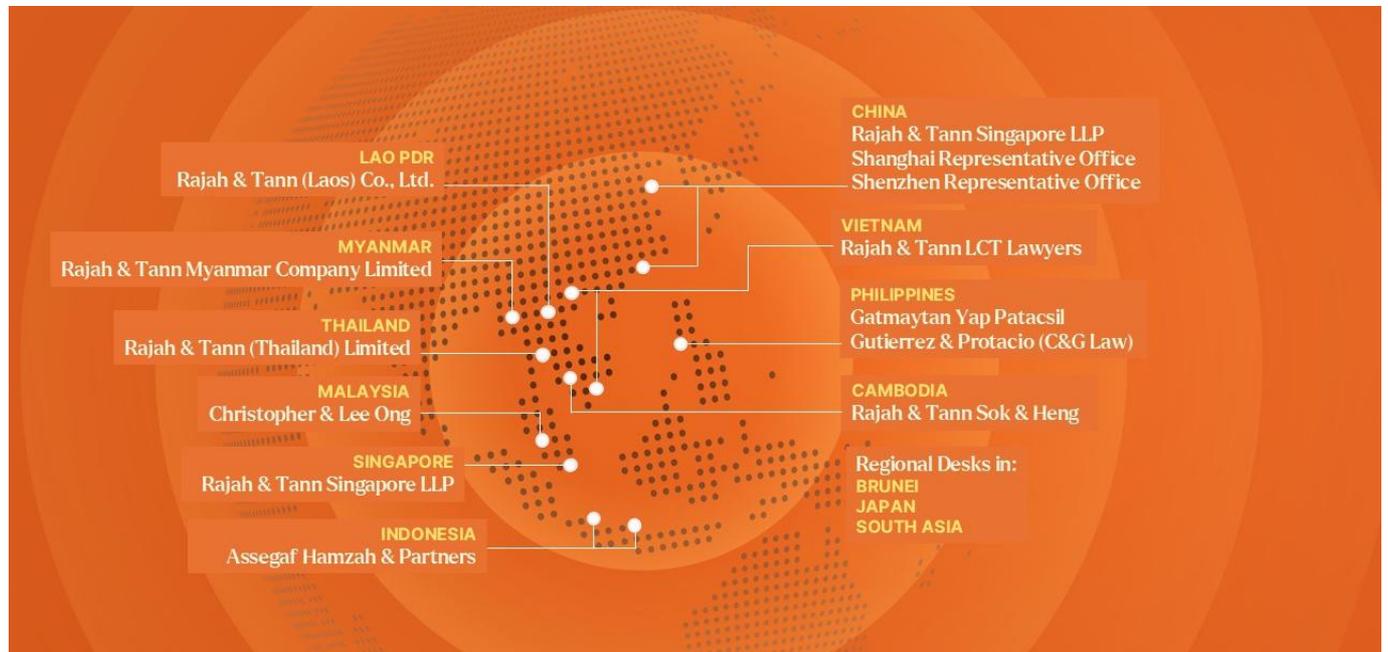
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