

## **LEGAL CERTAINTY OVER OWNERSHIP CERTIFICATES OF BUILDING BUILDINGS OF APARTMENT UNITS BASED ON LAW NO. 20 OF 2011 CONCERNING APARTMENT HOUSES. 20 OF 2011 ON FLATS**

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### **Abstract**

Legal certainty in property ownership is crucial for protecting the rights and interests of property owners. This study examines the legal certainty provided by ownership certificates for flats under Indonesia's "Law No. 20 of 2011" (UURS). It also explores the legal implications of constructing flats on land with building use rights, a status that differs from full ownership rights. Using a normative research method, the study analyzes relevant laws, regulations, and academic literature to understand how legal frameworks govern flat ownership and ensure the legitimacy of ownership certificates. The findings reveal that ownership certificates for flats confer private ownership of specific units and related common areas, but legal challenges arise when flats are constructed on land with building use rights, especially concerning the renewal of these rights. The study underscores the importance of continuous legal oversight and clear legislative guidelines to maintain and strengthen legal certainty over ownership certificates. Additionally, it highlights the potential legal risks and uncertainties that flat owners may face if the underlying land rights are not properly managed or renewed. The study concludes that while ownership certificates offer significant legal protection, the dependence on building use rights for the underlying land introduces potential vulnerabilities. Future research should explore the legal and practical implications of the expiration and renewal of building use rights, the impact on flat ownership, and alternative legal frameworks that could provide greater security for property owners.

**Keywords:** Legal Certainty, Flats, Legal

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### **INTRODUCTION**

Legal certainty over ownership certificates of buildings is fundamental to ensuring the rights and interests of property owners are protected. Ownership certificates serve as official documentation that legally recognizes an individual's or entity's ownership of a property, providing a clear and enforceable claim to the building and associated land (Firmanda et al., 2023; Margareta & Huda, 2023; Safitri, 2020; A. Saptomo & Sihombing, 2020; Yubaidi et al., 2022). This legal recognition is crucial as it helps prevent disputes, facilitates transactions, and provides assurance to owners, buyers, and financial institutions. Legal certainty is achieved when the ownership certificates are issued and recognized in accordance with established laws and regulations, ensuring that the rights conferred by the certificates are secure, unambiguous, and immune from future challenges or disputes (Abraham, 2023; Anifalaje, 2022; Cottrell, 2021; Kamara & De Hert, 2018; Maume & Fromberger, 2018).

However, legal certainty can be complicated by factors such as land tenure systems, regulatory changes, or inconsistencies in the application of laws. For example, buildings constructed on land with building use rights rather than full ownership rights may face challenges in maintaining legal certainty, especially when the rights are subject to renewal after a specific period. In such cases, the ownership of the building may become uncertain if the underlying land rights are not properly renewed or if regulatory frameworks change. Therefore, continuous legal oversight, clear legislative guidelines, and effective enforcement mechanisms are necessary to maintain and strengthen legal certainty over ownership

certificates, ensuring that property rights remain clear and secure for all stakeholders involved.

The development of flats has offered another solution to meet the demand for residential housing in urban locations with a constantly growing population. The construction of flats, helping the use of land can be minimized because vertical buildings make efficient use of space. Additionally, flats can help create more open space in cities, which is essential for quality of life. Flats can also play a role in repairing or renewing areas that are no longer maintained, helping the urban rejuvenation process and improving environmental conditions in poor areas. The regulation "Law No. 20 of 2011 (hereinafter referred to as UURS)" regulates all aspects related to the construction and management of flats in Indonesia. The regulation compiles the basics that must be obeyed to ensure that the construction of flats not only meets housing needs but also supports the welfare of the community in a fair manner. These principles include various aspects such as affordability, efficient use of space, and safety and comfort for its occupants. In addition, this law also emphasizes the importance of environmental sustainability and regularity in the management of flats, so that it can create a healthy and harmonious housing environment.

Referring to the situation described, two main problems have been identified. The first issue is about how legal certainty is applied to certificates that show the ownership of flats units referring to the provisions in "Law No. 20 of 2011 or UURS". The second problem is related to the legal impact of the construction of flats that use the property rights system on land whose status is the right to use the building.

The research aims to examine the extent to which legal certainty can be given on certificates that show the ownership of flats in accordance with the provisions of the UURS, as well as to explore the legal impact that arises due to the construction of flats that use property rights on land whose status is building use rights. The research contributes by examining the extent of legal certainty provided by certificates of ownership for flats under the provisions of the UURS (*Undang-Undang Rumah Susun*). It also explores the legal implications of constructing flats on land with property rights where the land's status is classified as building use rights (*Hak Guna Bangunan*). This study is valuable in clarifying the legal framework and addressing potential conflicts or ambiguities related to property ownership and land use rights in the context of flat construction.

## **RESEARCH METHOD**

Normative research is applied in this study, focusing on the analysis and interpretation of applicable laws and regulations. This method relies on legal materials such as laws, related regulations, literature, and academic references relevant to the issue. The goal is to understand and explain how existing legal regulations govern the ownership of flats and ensure their legitimacy. This study examines the law from a normative point of view, based on existing rules and regulations, to determine how the law can be applied or understood in a particular case study.

## **RESULT AND DISCUSSION**

### **Legal Certainty on the Certificate of Ownership of Flats**

The UURS in article 1 paragraph 1 has provided a definition of the definition of the term flat. In short, a flat is a construction that has several floors and is built in a certain environment. The building is divided into various units or sections designed to fulfill a specific function, either on one floor (horizontal) or on multiple floors (vertical). Each unit in the building can be quasi-owned and used for the independent use of rights holders. The flats are also equipped with facilities that are shared by the residents, including common facilities, common goods, and common areas. According to this definition, not all multi-storey

buildings can be categorized as flats. However, not all flats are interpreted as multi-storey buildings if referring to Law Number 16 of 1985 (Sitorus & Sebayang, 2008).

According to Parlindungan (2001), the term "flats" is a concept created by law to describe a type of housing that has several units owned separately by individuals or legal entities. Flats can be used for a variety of purposes, including residence, office, or business activities. The structure of the flats facilitates each unit to have direct access to the main road, as well as having rights and obligations related to ownership and use. The ownership of units in flats is evidenced by official documents, and the design of flats utilizes space vertically and horizontally.

There are special rules regarding the status of land rights that can be used for the purpose of building flats. This development can only be carried out on land with the status of property rights, building use rights, use rights over state land, or management rights. If using land with the status of management rights, all matters related to the land must be completed before the unit is sold.

The Certificate of Property Rights (SHM) for flats is issued by the land agency in the district or city, in accordance with the provisions of the law. This certificate can be used as collateral in a loan by including the right of dependents, following the applicable legal rules. Ownership of a flats unit privately means that the ownership is limited to the space owned in the unit, and does not include other parts of the building or common land that exist in the flathouse environment (Triyanto & Adjie, 2018). Unit ownership in flats can be proven by the existence of SHM for flats. This certificate can be obtained through the transaction of buying and selling flats. The procedure for issuing this certificate is regulated by "Government Regulation No. 24 of 1997 concerning Land Registration", which explains that the process of issuing SHM for flats units is not particularly different from the process of issuing land rights in general. This means that the administrative procedures and legality in registering the ownership of apartment units follow the same rules as other land rights registrations. However, although the basic principle of issuing title certificates for flats follows the same rules as the registration of land rights in general, there are special differences in the process. Specifically, before SHM is issued on behalf of the individual owner who buys a flat, the certificate is first issued on behalf of the developer who built the flat. Once the developer issues the certificate, the next process is to change the name to transfer ownership to the buyer who has purchased the unit (Widodo & Octarina, 2020).

In order to ensure that the ownership rights of the flats unit (SRS) are legally recognized and ordered, the owner must have valid evidence showing the ownership rights to the land on which the flats are located. Hutagalung (2009) explained that to prove ownership of a flat, an official evidence device is needed in the form of a certificate of ownership of a flats unit (HMSRS). The procedure and details of making a land register and issuing an HMSRS certificate are regulated according to the "Regulation of the Head of the National Land Agency No. 4 of 1989". The HMSRS certificate and its bookkeeping depend on the information contained based on the separation deed after obtaining approval from the Regional Government.

HMSRS is part of the licensing process that involves several previous stages, such as obtaining a location permit and a Building Permit (IMB). Based on Government Regulation No. 4 of 1988 and the UURS, this licensing process must be further regulated by the Regional Government through the Regional Regulation. The Minister of Home Affairs' efforts to ensure that the Regional Government has clear guidelines in making Regional Regulations on flats issued Permendagri No. 3 of 1992. This regulation aims to provide guidance to the Regional Government in formulating appropriate regulations for the arrangement of flats.

Based on the previous explanation, the certificate functions as an official document that proves the right to a property, both in terms of physical and legal information. The certificate

is only valid as valid evidence if the data contained in it matches the information on the relevant measurement documents and land records. If the certificate has been officially issued to an individual or organization with a legal entity that owns the land, then with good behavior and controlling it concretely, so that the certificate is seen as a sign of official and strong ownership. Therefore, if there are other parties who have a sense of ownership of the rights to the land, then that party does not have the opportunity to sue if within five years since it was issued and there are other parties who feel that they have the right to the land, then they cannot claim their rights if within five years starting from the issuance of the certificate no one has applied for its existence in writing in accordance with Article 32 paragraphs (1) and (2) of Government Regulation No. 24 of 1997.

### **Legal Consequences of the Construction of Flats with Property Rights Status Above Building Rights**

Houses that have gone through the sale process, then processed by the sale and purchase deed by PPAT. The certificate of ownership for the unit passes to the buyer. This certificate includes the right to the flats unit as well as the rights to the common parts, common objects, and associated common areas. These rights are regulated based on the NPP listed in the certificate. Registration of the sale and purchase deed can be done at the local Land Office with a mandatory nature. Registration includes records about transactions added to the Land Book and certificates.

The sale and purchase deed must be registered at the local Land Office, where a record of the transaction is added to the Land Book and certificate. The name of the old holder is crossed out, and the buyer's name is listed as the new holder. This process makes the buyer the official owner of the flats unit.

The UURS stipulates that flats can be built on land that has the Right to Use Building or Right to Use, and this land can be on the Right of Management according to article 17 letter c. Management Rights are the rights granted by the state to control and manage land, part of the authority can be delegated to the right holder. Therefore, the holder of the Management Right is authorized to grant the Right to Use the Building or the Right to Use to other parties through a written agreement.

Before a flats built on Management Rights land can be sold, the construction organizer must complete several administrative steps. The manager must ensure that the status of the Building Rights located above the Management Rights is clear and sets the boundaries of the land appropriately. These measures are important to protect the rights and interests of buyers. Once the process is complete, an official certificate called a Certificate of Ownership of the Flats Unit will be issued to confirm the legal ownership of the flats unit.

Land with the status of management rights can be used as building use rights with an agreement of "use handover and building handover". In the agreement, the third party who receives the right is responsible for building and developing the property for a set period of time. After the agreement period is completed, the third party must hand over the land, buildings, and related facilities to the local government.

Land with the status of management rights can be built flats by having to obtain the Right to Build or Right to Use the land, this is in accordance with article 17 letter c of the UURS. Therefore, these rights need to be obtained before the start of development. The procedure for obtaining Building Use Rights, as stipulated in the Regulation of the Minister of State Agrarian Affairs/Head of BPN Number 9 of 1999, requires the applicant to obtain approval or appointment through a land use agreement with the owner of the Management Rights first. This ensures that land rights have been properly regulated before construction begins.

Land with the status of management rights built by flats is not permanent because there is no limit on the time of use of the flats. The existence of the status and legality of the flats is highly dependent on the regulations and legal status of the land under the Management Right. If the Management Rights are no longer valid or have legal problems, then the status of the flats built on them will also be affected. Land that is granted management rights has a certain period of time limit, if the management right period expires, the extension of the right requires approval from the management right holder. So, the extension of the building use right and the continuity of the existence of the flats are highly dependent on the decision and approval of the Management Rights holder. The application to extend the Building Use Right is not guaranteed to be approved by the Management Rights holder, as stipulated in the Law. If the Building Use Rights are not renewed after the validity period expires and the application for extension is rejected, then problems will arise for the rights to the building and the ownership of the flats located on the land. The status of the land rights that were originally granted can be returned to the first right holder, whether it is the holder of Property Rights or the holder of Management Rights. As a result, the Title to the Flats Unit can become legally invalid, especially if the land is land with Management Rights. According to Article 17 of the UURS, the flats should be above the Building Rights granted on the land of the Management Rights, not directly above the Management Rights themselves.

Conditions where the Right to Build on the Land of the Management Rights cannot be extended may raise doubts about the status of the Right of Ownership of the Flats located on it. According to the law, a flat cannot simply be erected on land with the status of a Management Right if the Building Rights attached to it are exhausted and cannot be extended. However, based on the Principle of Horizontal Separation, which states that the right to land and the right to the building or objects on it are separate, the refusal to extend the Right to Use Building does not affect the ownership rights of the flats. This means that the Right to Ownership of Flats Units remains valid and is not erased even if the Right to Use Buildings is not extended, because the right to land and the right to buildings are considered two legally separate things.

## CONCLUSION

Certificates for flats provide private ownership rights not only to the flats themselves but also to related areas, objects, and common areas, treating them as an inseparable unit. These rights are distinct from other units and are particularly significant when the flats are built on land with building use rights, which are granted for a maximum of 30 years, extendable for another 20 years. After this period, the building use rights can be renewed, allowing continued ownership and use of the land. Future research could examine the legal and practical implications of the expiration and renewal of these rights, the impact on flat ownership, and potential challenges during the renewal process. Additionally, exploring different land tenure systems and alternative legal frameworks could provide greater security and protection for flat owners.

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**First publication right:**

**INJURY: Journal of Interdisciplinary Studies**



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