

Juridical Study of Ownership Rights over Apartment Units on Land with Building Use Rights for Foreign Citizens

Anang Muhammad Rizaldi^{1*}, Ida Bagus Agung Mahesora Mas¹,
Christian Isacc Alexander Alianto¹, Nur Imam¹

1. Universitas Airlangga, Indonesia

*Email: anang.muhammad.rizaldi-2024@fh.unair.ac.id

How to cite:

Rizaldi, A, M., *et al.* (2025). Juridical Study of Ownership Rights over Apartment Units on Land with Building Use Rights for Foreign Citizens. *Jurnal Notariil*, 10(2), 64-70. Doi. <https://doi.org/10.22225/jn.10.2.2025.64-70>

Abstract. Indonesia has great potential in the field of tourism, especially in Bali, which encourages foreign nationals (WNA) to own residences in Indonesia. However, land ownership by foreign nationals is restricted by provisions in the Basic Agrarian Law (UUPA). This study aims to examine the ownership status of apartment units built on Land Use Rights (HGB) for foreign nationals, as well as to trace the normative conflicts arising between the UUPA and the provisions in Law Number 6 of 2023 and Government Regulation Number 18 of 2021. The research method used is normative legal research with a legislative and conceptual approach. The results show that although the latest provisions allow foreign nationals to own apartment units on HGB land, this contradicts Article 36 of the UUPA, which restricts HGB subjects only to Indonesian citizens and Indonesian legal entities. The conclusion from this study is that foreign ownership of apartment units on HGB land creates a conflict of norms, and such ownership should only be permitted on use-right land in accordance with the provisions of the UUPA.

Keywords: flat; foreign citizen; right to build

1. INTRODUCTION

Indonesia is a country that has a lot of natural beauty and cultural diversity. (Robiah et al., 2023), The beauty and diversity in each region have their own differences and uniqueness, and the beauty and diversity they possess become a very valuable asset for Indonesia. (Yunisa et al., 2024). The beauty and diversity of Indonesia make it a country that attracts foreign attention, which also makes Indonesia a must-visit tourist destination for international travelers, one of the areas chosen as a place for tourism and investment by foreign nationals is Bali.

The beauty and diversity offered by the island of Bali makes foreign nationals interested in being able to have a residence or stay for a long period of time on the island of Bali. Regarding foreign nationals who wish to have a residence in an area in Indonesia, it is clearly regulated in Law Number 5 of 1960 on Basic Agrarian Principles (hereinafter referred to as UUPA).

The birth of the UUPA as an umbrella over the rights of control over natural resources which includes land, water, natural wealth, and outer space, as mandated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. (Nugroho & Utama, 2022). However, the narrow meaning of the UUPA

is a regulation that governs the control over land surfaces, which in a narrow sense, this agrarian law is the same as land law. (Alimuddin, 2021; Gaol, 2020). Based on that explanation, if a Foreign National (hereinafter referred to as WNA) wishes to have a residence, the WNA is required to meet the conditions stated in the UUPA.

The division of land ownership rights is regulated in Article 16 Paragraph 1 of the UUPA, which includes 7 land rights and several rights that are of a temporary nature or have a short duration. Ownership of these land rights can be acquired or owned by all Indonesian citizens, which is due to the principle adopted in the UUPA, namely the principle of nationalism. (Hassanah & Wahyudi, 2022).

This principle of nationalism grants the most special rights to Indonesian citizens, and these very special rights are ownership rights to the land. (Muskur & Susilo, 2023). According to Article 20 paragraph 1 of the Basic Agrarian Law (UUPA) it states "Ownership is a hereditary right and has full authority that can be possessed by a person over land", and it has been regulated in Article 21 paragraph 1 of the UUPA regarding ownership. In addition to this right, Indonesian citizens also have rights to other land rights, namely the right to build (hereinafter referred to as HGB). The explanation regarding HGB and its subjects has been outlined in Article 35 and 36 of the UUPA.

Ownership of the rights to the land is not only held by Indonesian citizens, but also foreign nationals can have rights to the land, namely the right to use and the right to lease. (Permatadani & Irawan, 2021; Sitohang et al., 2024). Regulations regarding the ownership of use rights and lease rights granted to foreign citizens are also governed by Articles 42 and 45 of the Basic Agrarian Law (UUPA). Based on this, it creates opportunities for foreign nationals to have residences or housing, which is one of the necessities for foreigners who will be residing in Indonesia. The regulation on residential ownership is stated in Article 71 paragraph (1) letter a of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Strata Title, and Land Registration (hereinafter referred to as PP 18 of 2021) where foreign nationals can own residential houses, where

such landed houses are situated on land with use rights.

Ownership of residential places by foreign nationals has certain restrictions. These ownership restrictions are outlined in Article 72 of Government Regulation No. 18 of 2021, which includes criteria such as minimum housing prices, land size, the number of land units or apartment units, and the intended use of the residence. Apartments can be used by foreign nationals as their residence. The presence of vertical housing or apartments makes land use more efficient, especially in densely populated urban areas. The construction of these apartments opens up urban spaces more broadly, thus aiding urban renewal, where slum areas are diminished, resulting in a cleaner and more orderly environment. (Sutedi, 2010; Watumlawar, 2022).

According to Article 1 Number 1 of Law Number 20 of 2011 concerning Apartments (hereinafter referred to as Law Number 20 of 2011), it explains that an apartment or condominium is a multi-storey building in a single environment whose functions are separated both horizontally and vertically, and its ownership can be held in units primarily for residential purposes and has common parts, shared objects, and shared land. The government provides ease of ownership of residential houses, especially apartments, to foreign nationals, one of which is regulated in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as Law (hereinafter referred to as Law Number 6 of 2023).

Article 145 paragraph (1) of Law Number 6 of 2023 states "Apartments can be built on land: Use rights or building use rights on state land; or Use rights or building use rights on management rights land." This is also similarly regulated in Article 71 paragraph (1) letter b of Government Regulation Number 18 of 2021.

In addition to the development of apartment buildings, Law No. 6 of 2023 also explains that foreign nationals are one of the subjects of ownership rights to apartment units, as stated in Article 144 Paragraph (1) letter c, which outlines that ownership of apartment units can be held by foreign nationals who obtain the required

permits, in accordance with existing regulations.

The state policy in regulating Law Number 6 of 2023 and Government Regulation Number 18 of 2021 has redefined the rights of foreign nationals in owning apartment units. Prior to Law Number 6 of 2023 and Government Regulation Number 18 of 2021, regulations regarding the ownership of apartment units by foreign nationals were only granted if the apartments were built on land with the status of use rights and lease rights.(Hermawan & Setyo Wibowo, 2023). The existence of Law Number 6 of 2023 and Government Regulation 18 of 2021 allows foreign nationals to own apartment units built on land with HGB status, or indirectly, they can have HGB.

This can occur because of the understanding of apartment buildings as stated in Article 1 number 1 of Law Number 20 of 2011, which explains the definition of apartment buildings. This definition clarifies that there are parts that are joint ownership rights contained in every apartment building, namely common areas, common objects, and common land. The regulation regarding the ownership of HGB by foreign nationals, which is indirectly stated in Law Number 6 of 2023 in conjunction with Government Regulation Number 18 of 2021, has deviated from Indonesian land law, which is clearly regulated in the UUPA. The UUPA is the highest law or regulation that is binding and mandatory regarding land in Indonesia.

Based on the explanation above, there is a Conflict of Norms occurring in Article 144 Paragraph (1) and Article 145 Paragraph (1) of Law Number 6 of 2023 in conjunction with Article 67 Paragraph (1) and Article 71 Paragraph (1) of Government Regulation Number 18 of 2021, which explains that one of the subjects of ownership of apartment units is foreign citizens, and the construction of apartment buildings can be built on land with usage rights or building rights on state land, management rights land, and private property land. This contradicts Article 36 of the UUPA, which states that the subjects of building rights can only be Indonesian citizens and legal entities established under Indonesian law and based in Indonesia. The conflict arises due to the contradiction of

norms regarding ownership of apartment units constructed on land with HGB granted to foreign citizens.

2. METHOD

This research uses normative legal research. (Arnawa et al., 2024). The use of normative legal research in this case is based on the alignment between relevant theory and research methods. Specifically, it addresses the conflict of norms occurring in Article 144 Paragraph (1) and Article 145 of Law Number 6 of 2023 in conjunction with Article 67 Paragraph (1), Article 71 Paragraph (1) of Government Regulation Number 18 of 2021 with Article 36 of UUPA. The type of approach used in this research is the Legislative Approach and the Conceptual Analysis Approach. This research utilizes various legal sources, including primary legal materials consisting of legislation, secondary legal materials including legal publications, and tertiary legal materials are non-legal materials that provide explanations for primary and supporting legal materials. The technique for collecting legal materials employs document study and is analyzed using descriptive analysis, evaluative analysis, and argumentative analysis techniques.

3. RESULT AND DISCUSSION

The construction of apartments built on land with a land use title perspective of the Basic Agrarian Law.

Article 1 number 1 of Law Number 20 of 2011 provides the definition of "Apartment is a multistory building constructed in an environment divided into parts that are functionally structured, both horizontally and vertically, and are units that can be owned and used separately, especially for residential purposes equipped with common areas, shared objects, and shared land."

The definition of common land, common parts, and common objects in the explanation of apartments above is also regulated in Law Number 20 of 2011. An apartment or residential building consists of several rooms or units that can be owned by individuals or personal entities, which are referred to as apartment units (sarusun).(Santoso, 2017). The definition of a cluster in Law Number 2011 is contained in Article 1 number 3. The definition of property rights over clusters is not only

outlined in Law Number 20 of 2011 but is also included in Law Number 6 of 2023 as stated in Article 143.

The apartment building has several types where these types of apartment buildings are based on target groups, actors, and building resources, including special apartments, public apartments, state apartments, and commercial apartments, as stated in Article 13 paragraph (2) of Law Number 20 of 2011.

The construction of public residential complexes, special residential complexes, and state residential complexes is directly accountable to the government and can be implemented by non-profit organizations and business entities, as outlined in Article 15 paragraphs (1) and (2) of Law Number 20 of 2011. The construction of commercial residential complexes can be carried out by anyone, and must provide public residential complexes of at least 20% (twenty percent) of the total floor area of the commercial residential complex being built, which is stipulated in Article 16 paragraphs (1) and (2) of Law Number 6 of 2023. Regarding the obligation to provide public residential complexes with a minimum of 20% within commercial residential complexes, this does not have to be in one building; it can be constructed in another location within the same district/city, or it may be converted into funds for the construction of public residential complexes, which will be managed by the housing acceleration agency. This is stated in Article 16 paragraphs (3), (4), and (5) of Law Number 6 of 2023.

Article 17 of Law Number 20 of 2011 contains provisions regarding the development of apartment buildings on land:

Ownership Rights

Building Use Rights or use rights over state land;

Building Use Rights or rights to use on management rights.

In addition to Law Number 20 of 2011 which regulates the basis for rights in the construction of apartment buildings, Law Number 6 of 2023 and Government Regulation Number 18 of 2021 also regulate this matter where Article 71 letter b of Government Regulation Number 18 of 2021 states:

The apartment building that is built on the land area:

Use rights or building use rights on state land.

Usage rights or building rights on managed land.

rights of use and rights of building on owned land.

The construction of the apartment building is not only based on the land ownership rights but also the construction can utilize state/ regional-owned land in the form of land or the utilization of waqf land can also be developed into apartment buildings that are of a public or special nature as stated in Article 18 of Law Number 20 of 2011.

According to Law Number 20 of 2011, Law Number 6 of 2023, and Government Regulation Number 18 of 2021 regarding the construction of apartment buildings, they can be built on land based on ownership rights, usage rights, and building use rights on state land, management rights land, and private land. In addition, they can be built on waqf land and the utilization of state/regional property in the form of land. Based on the Basic Agrarian Law (UUPA), the construction of apartment buildings on the aforementioned land rights does not create a conflict if the ownership of the apartments or apartment units corresponds with the entities of the land rights. The ownership of apartment units is regulated in Article 144 paragraph (1) of Law Number 6 of 2023 in conjunction with Article 67 paragraph (1) of Government Regulation Number 18 of 2021 which states:

The ownership of the apartment unit is granted to:

Indonesian Citizen;

Legal Body of Indonesia;

Foreigners who have permission in accordance with the provisions of the laws and regulations.

Foreign legal entities that have representatives in Indonesia; or

Foreign diplomatic missions and international organizations that are located or have representatives in Indonesia.

In addition, the subject of the arrangement given to central government agencies or regional government agencies cannot have ownership rights encumbered

with a mortgage, as stated in Article 67 paragraphs (2) and (3) of Government Regulation Number 18 of 2021.

The subject of ownership of the apartment building relates to the legal basis for the construction of the apartment, as each land right has its own subject. The subjects of land rights are clearly stated in the UUPA and Government Regulation No. 18 of 2021. Relating to the construction of the apartment built on freehold land, based on the UUPA, specifically Article 20 paragraph (1) of the UUPA states that the subject of ownership is "Only Indonesian citizens can own ownership rights." The construction of the apartment based on usage rights, where the subject of usage rights is stated in Article 42 of the UUPA which states:

Those who can have the right to use are
Indonesian Citizen;

foreigners who are based in Indonesia;

Legal entities established under
Indonesian law and located in Indonesia;

Foreign legal entities that have
representatives in Indonesia.

Then regarding the HGB that serves as the basis for the development of apartment buildings, it has subjects outlined in Article 36 paragraph (1) of the UUPA, where the subjects of HGB are "Indonesian Citizens and Legal Entities in Indonesia and based in Indonesia."

Status of Ownership Rights Over Apartment Units Built on Land with Building Use Rights for Foreign Nationals

Foreigners according to Titik Triwulan Titik are citizens who reside in a country that is not their nationality. (Tutik, 2008). Foreigners according to Article 1 number 9 of Government Regulation Number 18 of 2021 provide the understanding that "a foreigner is a person who is not an Indonesian citizen whose presence brings benefits, conducts business, works, or invests in Indonesia." Although a foreign national is someone who does not reside in their country of citizenship, they still have their own rights, particularly in Indonesia where foreigners can own a residence.

The ownership of residences for foreign nationals is not completely free but rather comes with restrictions imposed on foreign

nationals to prevent them from taking rights from Indonesian citizens themselves. Foreign nationals are only allowed to own a residential house with one land right, namely with the Right to Use as stated in Article 42 of the UUPA, and foreign nationals may also own a strata title as stated in Article 144 paragraph (1) of Law Number 6 of 2023 in conjunction with Article 67 paragraph (1) of Government Regulation Number 18 of 2021.

Based on Article 145 paragraph (1) of Law Number 6 of 2023 and Article 71 paragraph (1) letter b of Government Regulation Number 18 of 2021, it explains that ownership rights over apartments for foreigners is an apartment built on land with use rights or HGB on state land, management rights land, and private land. Furthermore, based on Article 71 paragraph (2) of Government Regulation Number 18 of 2021 also explains that apartments built on land with use rights or HGB must be constructed in special economic zones, free trade zones and free ports, industrial zones, and other economic areas. However, foreigners, who are one of the subjects of ownership of apartments built on land with use rights or HGB as referred to in Law Number 6 of 2023 and Government Regulation Number 18 of 2021, indirectly contradict the regulations in the UUPA, because according to Article 36 paragraph (1) of the UUPA, foreigners are not included as subjects of HGB.

Although in the understanding of the ownership of apartments as stated in Article 143 of Law Number 6 of 2023, it states that apartments are '...separate from joint rights, common possessions, and common land' and in Article 188 paragraph (2) of Regulation Number 18 of 2021 it states that apartments owned by foreign citizens built on HGB land are not included as common land, yet the units or apartments are an inseparable part of that apartment complex. This understanding aligns with a principle, namely the principle of attachment.

The principle of adhesion or the principle of accesie exists in colonial land law which was used before the enactment of the UUPA. The principle of adhesion is stipulated in the Civil Code Article 500, Article 571, and Article 601 which states that 'Ownership of land also includes ownership of everything that is above or

within the land'. An example of this principle of adhesion is a building with a tiled roof, doors, and windows which cannot be separated from the building. (Lestari & Resen, 2022). When related to apartment buildings, the apartments or units within the apartment building are inseparable from the building itself, so indirectly the ownership rights to the apartments also receive a portion of the rights to the land that serves as the basis for the construction of the apartment building.

Ownership of an apartment, which also indirectly has a legal basis for the construction of the apartment, is reinforced by evidence of ownership of the apartment itself, specifically the apartment ownership certificate known as SHM Sarusun. Article 1 number 11 of Law Number 20 of 2011 explains the definition of SHM Sarusun as "evidence of ownership of an apartment on land with ownership rights, building use rights, or use rights on state land, as well as building use rights or use rights on land with management rights." Thus, ownership of an apartment is not limited to ownership of the unit of the apartment, but also includes common areas, joint property, and joint land that serve as the legal basis for the construction of the apartment.

So indirectly there is a conflict of norms that occurs between Article 36 paragraph (1) of the UUPA with Article 144 paragraph (1) and Article 145 paragraph (1) of Law Number 6 of 2023 jo Article 67 paragraph (1), Article 71 paragraph (1) of Government Regulation Number 18 of 2021. If related to the Principle of Lex Superior Derogat Legi Inferiori which states that laws with a lower hierarchical level cannot violate laws with a higher hierarchical level, and in case of a conflict, the law with a higher hierarchical level will have greater power and supersede the law with a lower hierarchical level. (Goesniadhie, 2010). Therefore, the UUPA, which is the highest regulation regarding land law in Indonesia, should not be undermined by Law Number 6 of 2023 and Government Regulation Number 18 of 2021, which have a lower hierarchy than the UUPA.

Therefore, the ownership status of the apartment buildings built on HGB land for foreign nationals cannot be granted due to the conflict of norms caused by Article 36 paragraph (1) concerning the subject of

HGB itself with Article 144 paragraph (1) and Article 145 paragraph (1) of Law Number 6 of 2023 in conjunction with Article 67 paragraph (1), Article 71 paragraph (1) of Government Regulation Number 18 of 2021 regarding ownership of apartment buildings by foreign nationals built on HGB land.

4. CONCLUSION

The ownership rights to land for foreign nationals are not the same as the ownership rights to land of Indonesian citizens, where foreign nationals are only allowed to have the right to use and lease land as regulated in the Basic Agrarian Law and Government Regulation Number 18 of 2021, and foreign nationals are also allowed to own vertical housing as regulated in Law Number 6 of 2023 and Government Regulation Number 18 of 2021.

The ownership status of a row house built on HGB land for foreign nationals is in conflict with the norms because it cannot be granted due to the conflict of norms occurring in Article 36 paragraph (1) concerning the subject of HGB itself with Articles 144 paragraph (1) and 145 paragraph (1) of Law Number 6 of 2023 jo Article 67 paragraph (1), Article 71 paragraph (1) of Government Regulation Number 18 of 2021 regarding ownership of row houses by foreign nationals built on HGB land, so the ownership of row houses for foreign nationals that is permitted and in accordance with UUPA is row houses owned by foreign nationals built on use rights land.

REFERENCES

- Alimuddin, N. H. (2021). Implementasi Sertifikat Elektronik Sebagai Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah di Indonesia. *SASI*, 27(3), 335. <https://doi.org/10.47268/sasi.v27i3.509>
- Arnawa, I. M., Kosasih, J. I., & Utama, I. W. K. J. (2024). Pembatalan Land Lease Agreement yang dialihkan kepada Pihak Ketiga. *Jurnal Ilmu Hukum, Humaniora dan Politik*, 4(6). <https://doi.org/https://doi.org/10.38035/jihhp.v4i6.2565>
- Gaol, S. L. (2020). KEAbsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden). *Jurnal Ilmiah Hukum Dirgantara*, 11(1).

- <https://doi.org/10.35968/jh.v11i1.653>
- Goesniadhie, K. (2010). Harmonisasi Sistem Hukum: Mewujudkan Tata Pemerintahan Yang Baik. *Malang: Nasa Media*, 11.
- Hassanah, H., & Wahyudi, W. (2022). KEdujukan Hak Orang Asing Terhadap Status Kepemilikan Rumah. *Jurnal Hukum Mimbar Justitia*, 8(2), 395. <https://doi.org/10.35194/jhmj.v8i2.2629>
- Hermawan, S., & Setyo Wibowo, D. P. (2023). Kepemilikan Hak Milik Atas Satuan Rumah Susun Warga Asing dalam Undang-Undang Cipta Kerja. *Jurnal Hukum Ius Quia Iustum*, 30(1), 178–199. <https://doi.org/10.20885/iustum.vol30.is1.art9>
- Lestari, M. W. D., & Resen, M. G. S. K. (2022). PEngaturan Asas Perlekatan Dan Asas Pemisahan Horizontal Dalam Kaitannya Dengan Rumah Susun Di Indonesia. *Kertha Desa; Vol 10 No 8 (2022)*. <https://ojs.unud.ac.id/index.php/kerthadesa/article/view/84464>
- Muskur, L. O. M., & Susilo, L. O. H. (2023). Tinjauan Hukum Terhadap Prinsip Nasionalitas Dalam Jual Beli Hak Atas Tanah. *Jurnal Ilmu Hukum Kanturuna Wolio*, 50–58. <https://doi.org/10.55340/jkw.v4i1.1012>
- Nugroho, S. S., & Utama, I. W. K. J. (2022). *Pokok-Pokok HUKUM AGRARIA INDONESIA*. Penerbit Lakeisha.
- Permatadani, E., & Irawan, A. D. (2021). kepemilikan tanah bagi warga negara asing ditinjau dari hukum tanah indonesia. *Khatulistiwa Law Review*, 2(2), 348–358. <https://doi.org/10.24260/klr.v2i2.356>
- Robiah, F., Suhandi, A. M., & Wahyuningsih, Y. (2023). upaya strategis dalam meningkatkan minat belajar pada mata pelajaran ips materi keberagaman budaya di kelas iv sekolah dasar. *Jurnal Guru Kita PGSD*, 7(2), 327. <https://doi.org/10.24114/jgk.v7i2.39675>
- Santoso, U. (2017). *Hak Atas Tanah, Hak Pengelolaan, dan Hak Milik Atas Satuan Rumah Susun*. Kencana.
- Sitohang, A. T., Bangun, D. Y. B., Rumapea, L., Lumbansiantar, R. A., Marbun, T. B., Purba, W. H. A., & Nababan, R. (2024). Kepemilikan Tanah Bagi Warga Negara Asing Di Indonesia:(Studi Di Kantor Badan Pertanahan Nasional Medan). *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, 2(1), 256–264.
- Sutedi, A. (2010). Hukum rumah susun & apartemen. (*No Title*).
- Tutik, T. T. (2008). *Pokok-pokok hukum tata negara Indonesia pascaamandemen UUD 1945*. Cerdas Pustaka Publisher.
- Watumlawar, J. (2022). Pemberian Hak Milik Satuan Rumah Susun Bagi Warga Negara Asing di Indonesia Tinjau Dari Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Al Qodiri: Jurnal Pendidikan, Sosial dan Keagamaan*, 20(2), 110–125. <https://doi.org/10.53515/qodiri.2022.20.2.110-125>
- Yunisa, A., Pratama, I. G. A. S., Ismail, M. R., Nurdinda, N., Rumpaidus, A. S., Asrar, A., Agil, S., Yunus, T., & Fadhilah, S. A. (2024). Cerita Rakyat di Balik Keindahan Taman Nasional Bantimurung: Sebuah Kajian Folklor. *Jurnal Mahasiswa Antropologi*, 3(1), 60–75. <https://doi.org/10.31947/jma.v3i1.34069>