

The Impact of Granting Building Use Rights to Foreign Citizens Living in Indonesia

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Abstract

This study aims to analyze the legal implications of granting building use rights to foreign nationals under the Job Creation Law. The main problem that currently occurs is the limited availability of land in Indonesia, while development is progressing rapidly, especially in urban areas. To meet the needs of the community, including foreign citizens, for housing, the government then took the path of building flats as part of housing development, considering the limited land in urban areas. In its development, the government then enacted the Job Creation Law, which turned out to be inconsistent with previous regulations. This is interesting to study regarding the impact that will occur if Building Use Rights are granted to Foreign Citizens living in Indonesia, so that the problems that arise can be in the form of legal certainty of the Job Creation Law regarding ownership of Building Use Rights by Foreign Citizens and ownership of flat units by Foreign Citizens according to the Job Creation Law linked to the principle of nationality. This study uses a normative legal approach method by reviewing library materials or secondary data, and the nature of this research is descriptive and analytical. The results of the study concluded that the legal certainty of ownership of Apartment Ownership Rights on land with building use rights by foreigners based on the Job Creation Law is still not guaranteed, because in the UURS and UUPA, foreigners can only have usage rights, while in the UUCK, they can have HGB. The novelty of this study lies in its normative analysis of conflicting regulations and the identification of legal gaps in the implementation of foreign ownership of apartment units.

Keywords: Building Use Rights; Flat; Foreign Citizens

1. INTRODUCTION

Indonesia is known as an agricultural country, so land is one of the important factors for the lives of the Indonesian people. According to Article 4, paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA), legally, what is meant by “land” is the surface of the earth. Meanwhile, land rights are the rights to own a certain part of the earth's surface, which is limited by two dimensions, namely length and width.¹ In the Indonesian legal system, land ownership and use are regulated by UUPA concerning land rights, including ownership rights, use rights, business use rights, and lease rights. Land ownership as an inseparable part of human rights has a very important role in fulfilling basic needs for self-development and social needs.² The 1945 Constitution of the Republic of Indonesia in Article 33 paragraph (3) states that “the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.” This means that every Indonesian citizen has the right to benefit from the lands

¹ Rachmayuni, Patawari, and Lisa Mery, “Analisis Hukum Transaksi Jual Beli Tanah Oleh Warga Negara Asing Di Provinsi Bali, Indonesia,” *Petitung* 9, no. 2 (2021): 171–79.

² C Tresnoputri, “Peranan Hukum Adat Dalam Sistem Hukum Tata Negara Indonesia,” *Archipelago: Jurnal Ilmu Sosial* 10, no. 5 (2023): 2333–41.

in Indonesia, including to fulfill the need for a place to live.³ Housing has a strategic role in forming the character and personality of the nation, and as an effort to develop complete Indonesian people, who are authentic, independent, and productive.⁴ Regulations regarding housing are also regulated in the 1945 Constitution of the Republic of Indonesia in Article 28 H paragraph (1), which emphasizes that “everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment.” This means that the right to live and to have a good and healthy living environment are basic needs that must be respected, protected, and upheld by the government.⁵ Therefore, the state is responsible for ensuring the fulfillment of the right to housing in the form of decent and affordable housing.⁶

However, there are still many people who do not have decent housing, and the increasing population has resulted in the need for housing as a place to live being increasingly needed. In addition, the presence of foreign citizens working in Indonesia is also a consideration for the government, so the main problem that occurs currently is the limited availability of land that can be utilized, while development is progressing rapidly, especially in urban areas. This population growth will have an impact on increasing the need for housing for the Indonesian people, while the land area is not increasing, but the population is increasing.⁷ This is interesting to study regarding the impact that will occur if Building Use Rights are granted to Foreign Citizens living in Indonesia. Thus, the government then took the path through vertical or upward development, in this case, flats as part of housing development, considering the limited land in urban areas. The development of flats can also be a solution to improve the quality of housing.⁸ So, one of the efforts made by the government to meet housing needs is to issue Law Number 20 of 2011 concerning Flats (hereinafter referred to as UURS). To provide flats for foreign nationals, the government provides flats built on land with use rights. Ownership Rights for Apartment Units (hereinafter referred to as HMSRS) were born from the theory of ownership of an

³ Meiliyana Sulistio, “Politik Hukum Pertanahan Di Indonesia,” *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan* 8, no. 2 (2020): 105–11, <https://doi.org/https://doi.org/10.37081/ed.v8i2.1590>.

⁴ H. R. Abdussalam, *Permasalahan Hukum Dalam Pembangunan Satuan Rumah Susun Di Jakarta* (Jakarta: Penerbit PTIK, 2016).

⁵ Mimi Rosmidi and Imam Koeswahyono, *Konsepsi Hak Milik Atas Satuan Rumah Susun Dalam Hukum Agraria* (Malang: Setara Press, 2010).

⁶ Tampil Anshari Siregar, *Pendalaman Lanjutan Undang-Undang Pokok Agrarian* (Medan: Pusaka Bangsa Press, 2005).

⁷ Anonim, “Efektif Menghitung Kebutuhan Rumah: Demografi Atau Backlog?,” <https://perkim.id/perumahan/efektif-menghitung-kebutuhan-rumah-demografi-atau-backlog>, diakses pada tanggal 10 April 2025.

⁸ Adrian Sutedi, *Hukum Rumah Susun & Apartemen* (Jakarta: Sinar Grafika, 2010).

object, namely that an object/building can be owned by one person, two people, or more, which is known as joint ownership.⁹

The government, to protect property ownership owned by foreign nationals living in Indonesia, then issued Government Regulation Number 41 of 1996, which was amended by Government Regulation Number 103 of 2015 concerning Ownership of Residential Homes or Residences by Foreigners Domiciled in Indonesia. Based on PP No. 103 of 2015, foreign nationals can own a residence or a residence with a right of use. However, with the issuance of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK) and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, it has been declared invalid. However, in 2022, UUCK was revoked and declared invalid by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. In the Perpu, Article 144 states that apartment units can be given to foreign nationals who have permits. Although the UUCK has been declared no longer valid, its implementing regulations still apply. In PP No. 18 of 2021, as the implementing regulation of the UUCK, it regulates in more detail the ownership of apartment units for foreign nationals. Research by Putri Maufiroh et al. in 2021, stated that the ownership of HGB by foreigners, as regulated in the provisions of Article 71 paragraph (1) letter b and paragraph (2) of PP No. 18 of 2021, as a further elaboration of the provisions of Article 144 and Article 145 of the UUCK, is contrary to Article 36 paragraph (1) of the UUPA. Article 71 paragraph (1) letter b and paragraph (2) state that foreigners may have HGB which is used for building flats and is located in Special Zones (special economic zones, free trade zones and free ports, industrial areas, and other economic zones) and this is indeed opened up as a possibility by Article 144 and Article 145 of the UUCK. This regulation is contrary to the provisions of Article 36, paragraph (1) of the UUPA, which states that it closes the possibility for foreigners to have HGB for all uses.¹⁰

Furthermore, research by Nanda Soraya Putri et al. in 2021 stated that the land law in force in Indonesia stipulates that foreign individuals or legal entities can own apartment units in Indonesia as long as they meet the requirements as holders of rights to the joint land on which the building stands. The next provision that is still related to the ownership of building use rights is Law No. 4 of 1996 concerning Mortgage Rights. This regulation still refers to the implementation of the UUPA, where in the explanation of Article 4 paragraph (1) it explains that the object that can be burdened with mortgage rights is the Building Use Rights. This object is only intended for legal subjects who are Indonesian citizens and legal

⁹ Alya Nadia Saraswati et al., "Perlindungan Hukum Bagi Warga Negara Indonesia Terhadap Perolehan Hak Milik Atas Satuan Rumah Susun Oleh Warga Negara Asing," *Jurnal Education and Development* 11, no. 2 (2023): 384–90, <https://doi.org/10.37081/ed.v11i2.4905>.

¹⁰ Putri Maufiroh, Bagus Renata Rachman, and Ety Purnaningrum, "Kajian Hukum Terhadap Inkonsistensi Vertikal Peraturan Pemerintah Nomor 18 Tahun 2021," *Jurnal Education and Development* 9, no. 4 (2021): 191–96, <https://doi.org/https://doi.org/10.37081/ed.v9i4.3101>.

entities. Therefore, this article stipulates that the subject of building use rights is limited and may not be given to foreigners.¹¹

Research by Febrianty et al. in 2024 stated that land ownership by foreigners in Indonesia is regulated in Articles 42 and 45 of the UUPA that foreigners domiciled in Indonesia can have use rights and lease rights to land in Indonesia. Meanwhile, in the UUCK, the basic reason foreign citizens are allowed to own flats is that what can be owned by foreigners is limited to space, so that land is not included in ownership when the flat is purchased by a foreigner.¹² Since the beginning of the enactment of the UUCK and its implementing regulations, it has drawn pros and cons in society, because it is considered to benefit foreign citizens. If we look at the formulation of the article, it can be seen that PP No. 18 of 2021 is not in accordance with the provisions contained in the UUPA. UUPA, as the parent of laws and regulations in the land sector that regulates land rights in Indonesia, adheres to the principle of nationality. This needs to be examined because there are differences in the regulations between the two laws, which cause confusion in society due to the inconsistency between the old and new regulations. This study aims to analyze the legal implications of granting building use rights to foreign nationals under the Job Creation Law.

2. METHOD

The research entitled *The Impact of Granting Building Use Rights to Foreign Citizens Living in Indonesia* uses the type or type of normative legal research, legal research that emphasizes the use of library materials or secondary data.¹³ The purpose and use of literature studies is basically to show the way to solve research problems.¹⁴ The nature of this research is descriptive analytical, namely reviewing or analyzing existing legal data, such as concepts, definitions, and provisions written in laws and regulations. Data analysis is carried out qualitatively, and conclusions are drawn using deductive logic.

3. RESULTS AND DISCUSSION

3.1 Legal Certainty of the Job Creation Law Regarding Ownership of Building Use Rights by Foreign Citizens

Based on Law No. 20 of 2011 concerning Flats, flats can only be built on freehold land, building use rights, and use rights on state land, building use rights, and use rights on management rights land. Anyone who can own a flat unit must buy the rights to the land where the flat is built and established. Flat units are inseparable from the Ownership Rights

¹¹ Nanda Soraya Putri, Nia Kurniati, and Elis Nurhayati, "Kepemilikan Satuan Rumah Susun Diatas Tanah Hak Guna Bangunan Oleh Orang Asing," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021): 20–32, <https://doi.org/https://doi.org/10.23920/acta.v5i1.622>.

¹² Yenny Febrianty, Ariyanto, and Sari Mayzara, "Status Hukum Kepemilikan Rumah Susun Di Atas Hak Guna Bangunan Oleh WNA Dalam Hukum Positif (Legal Status Of Flower Ownership Above Building Use Rights By Foreigners In Positive Law)" 10, no. 03 (2024): 15–27, <https://doi.org/10.33751/palar.v10i3.10240>.

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: PT Raja Grafindo Persada, 2015.

¹⁴ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Rajagrafindo, 2005).

of Flat Units, namely, where there are individual rights and joint rights in them.¹⁵ So to be able to own flat units that are individual and separate, there are also joint rights such as parts, objects, and joint land. Ownership of a condominium unit is known as the Certificate of Ownership of an Apartment Unit (SHMSRS). SHMSRS is closely related to joint rights to land, objects, and common parts. Therefore, individual ownership rights are the ownership rights of someone who has purchased a condominium.¹⁶ The special characteristics of SHMSRS are stated by R. Soeprapto, namely that the certificate of proof of ownership of this condominium unit is not bound by the type of land rights.¹⁷

Therefore, it applies to condominium units that stand on freehold land, building use rights, or use rights over state land by using the term certificate of proof of ownership of a condominium unit. The construction of flats is strongly supported by the government because the land in urban areas is very limited in number, so that in PP No. 18 of 2021, as the implementation of Law No. 11 of 2020 concerning Job Creation provides an opportunity for foreigners to own apartment units that stand on building use rights. This is due to the increasing number of foreigners working in Indonesia, and one of the reasons is the impact of the growing flow of economic globalization and modernization, which has led to the entry of foreign investors into Indonesia.¹⁸ Another reason is to improve multilateral cooperation with other countries, so it is felt necessary to provide easy access for foreigners to visit or live in Indonesia. The entry of foreign parties will also automatically support economic growth. Thus, the amount of funds or capital entering the government's pocket will automatically be significant.¹⁹ Many of these foreigners work for a long time in Indonesia until they finally decide to settle in Indonesia so that a house or residence becomes one of their needs.²⁰

In the Job Creation Law, it is stated that foreigners are allowed to own apartment units built on land with building use rights. Prior to this regulation, the government had also enacted the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Granting, Releasing, or Transferring Ownership Rights of Residential Houses or Dwellings by Foreigners Domiciled in Indonesia (hereinafter referred to as

¹⁵ Zaenal Arifin, Aisah Nur, and Purnama Shonia Hugeng, "Kesadaran Masyarakat Terhadap Bukti Kepemilikan Hak Atas Tanah," *Journal Juridisch* 1, no. 1 (2023): 1–9, <https://doi.org/http://dx.doi.org/10.26623/jj.v1i1.6762>.

¹⁶ Erwin Kallo, *Panduan Hukum Untuk Pemilik Atau Penghuni Rumah Susun (Kondominium, Apartemen, Dan Rusunami)* (Jakarta: Minerva Athena Pressindo, 2009).

¹⁷ Gatot Supramono, *Hukum Orang Asing Di Indonesia* (Jakarta: Sinar Grafika, 2012).

¹⁸ Agung Torang Sitohang et al., "Kepemilikan Tanah Bagi Warga Negara Asing Di Indonesia" 2, no. 1 (2024), <https://doi.org/https://doi.org/10.51903/jaksa.v2i1.1533>.

¹⁹ Seftia Arizanti, "Tinjauan Yuridis Kepemilikan Rumah Susun Oleh Warga Negara Asing Di Indonesia (Menurut UU No.20 Tahun 2011 Tentang Rumah Susun)," 2013, 2, <https://doi.org/https://doi.org/10.33373/dms.v4i1.66>.

²⁰ Cholid Ibrahim, "Kepemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia," n.d.

Permen ATR/Ka. BPN No. 13/2016) which is the implementation of the provisions of Article 11 of PP No. 103 of 2015 because in practice new problems have arisen in terms of ownership of apartment units by foreign nationals in Indonesia, because many apartments are built on land with building use rights. Permen ATR/Ka. BPN No. 13/2016 was considered less than optimal by the government, therefore it was amended again by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 29 of 2016 concerning Procedures for Granting, Releasing, or Transferring Ownership Rights of Residential Houses or Dwellings by Foreigners Domiciled in Indonesia (here in after referred to as Permen ATR/Ka. BPN No. 29/2016), which allows foreigners in Indonesia to own apartment units built on building use rights by crossing out the Ownership Rights of Apartment Units (HMSRS) to Use Rights of Apartment Units (HPSRS). This regulation cannot be realized until now, and there has not been a single certificate issued by the National Land Agency (BPN). In practice, Notaries/PPATs cannot implement Permen ATR/Ka. BPN No. 29/2016 because the BPN has not been regulated in detail regarding the status of the Right to Use of Apartment Units, and has not formed the institution, even though the regulation has been enacted. So, in order to use the Regulation of the Minister of ATR/Head of BPN No. 29/2016, the government must revise or create technical instructions related to the HPSRS. Since the enactment of the UUCK until the enactment of PP No. 18 of 2021, many practitioners feel that this regulation is still insufficient for them to implement these provisions.

A ministerial regulation is needed that provides further explanation regarding the ownership of HMSRS, which can be owned by foreigners. In addition, what needs to be considered is the conflict of norms that this regulation does not revoke or change Article 36 of the UUPA, which has been in effect for a long time. Article 36 paragraph (1) of the UUPA states that “those who can have building use rights are Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia”. The article prohibits the ownership of building use rights by Foreign Citizens. Furthermore, paragraph (2) explains that “a person or legal entity that has building use rights and no longer meets the requirements stated in paragraph 1 of this Article within a period of 1 year is required to release or transfer those rights to another party that meets the requirements. This provision also applies to the party that obtains building use rights if it does not meet the requirements. If the building use rights in question are not released or transferred within the said period, then those rights are revoked by law, with the provision that the rights of other parties will be respected, according to the provisions stipulated by Government Regulation.”²¹ In addition to the UUPA, there is also Article 47 of the UURS, which has also not been

²¹ Rizka Zahra Kemalasari, Syafruddin Kalo, and Rudy Hapasan Siahaan, “Hak Guna Bangunan Yang Diperoleh Warga Negara Asing Berdasarkan Hibah Wasiat Dikaitkan Dengan Pasal 36 Undang-Undang Pokok Agraria,” *Locus Journal of Academic Literature Review* 1, no. 3 (2022): 143–52, <https://doi.org/10.56128/ljoalr.v1i3.62>.

changed. In this provision, it is clearly stated that the requirements for ownership of apartment units must meet the requirements for ownership of land rights. This creates a conflict or inconsistency between UUPA and UURS with UUCK. Furthermore, Article 144 paragraph (2) of UUCK states that it gives the right to foreign nationals to impose mortgage rights on HMSRS on building use rights.²² From the contents of the article, if viewed from Law No. 4 of 1996 concerning Mortgage Rights (hereinafter referred to as UUHT), it is not in line. The subjects in UUHT are not limited to Indonesian citizens only, but foreigners are also included in the subjects and have the same rights. Based on Article 4 paragraph (1) of UUHT, which states that building use rights cannot be owned by foreigners and only usage rights can be the object by foreigners.

If UUHT is associated with UUCK, regarding the subject and object of related land rights, then a conflict of norms will arise. This is because the condominium given to foreigners is only the right to the room, but if it can be guaranteed, then it will be related to the object of land rights, namely, building use rights. Until now, UUHT is still valid and has never been changed or revoked. In addition, the contents contained in UUHT are still based on the rules contained in UUPA, so that the government, before issuing UUCK, should make adjustments first so that there is synchronization between the one laws. A conflict of norms can occur if, in a problem or case, there are 2 (two) conflicting rules, so that for the problem or case, only one of the 2 (two) rules can be used, which results in the other rule having to be set aside. When examined in terms of legal principles, what applies between UUCK and UUPA is the Principle of *Lex Specialis Derogat Legi Generali*. This principle means that the special law in this case, UUPA, overrides the validity of the general law, namely UUCK.²³ UUPA is a special law because UUPA is the basis or guideline for every regulation that regulates National Land, as well as UURS, which comes from Article 4 of UUPA. While UUCK is a general law, it not only regulates land, but it also regulates changes to 82 other laws and regulations. The provisions in UUCK cannot be implemented if the regulations still conflict with previous regulations. Basically, legal certainty is a guarantee that the law can be implemented, and every law and regulation must provide legal certainty. This means that the regulations that are made and enacted must be regulated clearly and definitely. So that it does not cause confusion or multiple interpretations due to conflict or discontinuity. According to Subekti, the law serves the purpose of the state, which is to bring prosperity and happiness to its people.²⁴ Foreigners who come to Indonesia have the right to a decent place to live and housing, but regulations that aim to

²² Suhaila Bahfelin, Hilda B Alexander, "UU Cipta Kerja Perluas Kepemilikan WNA Atas Apartemen Menjadi Hak Milik", <https://properti.kompas.com/read/2020/10/06/181849921/uu-cipta-kerja-perluas-kepemilikan-wna-atas-apartemen-menjadi-hak-milik?page=all>, diakses pada tanggal 10 April 2025.

²³ Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 313.

²⁴ C.S.T Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989).

attract foreign investors can be off-target or even detrimental. So the government must pay attention to the ownership referred to in HMSRS, which is permitted by UUCK. To attract or increase the interest of foreign investors, at least 2 (two) conditions must be met, namely,²⁵ continuously maintaining economic benefits that can be taken by investors. In other words, foreign investors have economic opportunities that can be used to develop their investments, it is necessary to create legal certainty that reflects truth and justice and is not discriminatory.

Thus, the government must be careful in enacting a regulation, because if not, the contents of the regulation could conflict with previous regulations. This happened in the Regulation of the Minister of ATR/Head of BPN No. 29/2016, which contradicts the UUPA, so the government must firmly announce and make decisions regarding regulations that should be revoked or amended to ensure legal certainty regarding ownership of land rights. The government must be able to determine regulations that guarantee legal certainty so that they are right on target, which aims to attract foreign investors.

3.2 Ownership of Apartment Units by Foreign Citizens According to the Job Creation Law is Linked to the Principle of Nationality

The principle of building ownership adopted in the UUPA is the principle of horizontal separation, namely the principle that separates land and buildings/plants on it. So if someone owns land, the land owner does not also directly own the buildings/plants on his land, because the buildings/plants could be owned by someone else.²⁶ The principle of horizontal separation is regulated in Article 44, paragraph (1) of the UUPA. The implementation of the principle of horizontal separation is the right to rent a building, namely between the landowner and the owner of the building on it, where the land belongs to the landowner while the building belongs to the land tenant. In short, the landowner is not necessarily the owner of the building.²⁷ Ownership of land and buildings on it, including ownership of apartment units by foreign nationals in Indonesia, is subject to the provisions of Indonesian national law, which adheres to the principle of nationality. In principle, the UUPA strictly limits foreigners from having land rights in Indonesia.²⁸ This is proven by the existence of Article 1 of the UUPA which states the relationship of land ownership rights with Indonesian citizens regarding the principle of nationality which regulates that “All land throughout the territory of the Republic of Indonesia is a gift from God Almighty to the Indonesian people, who have united to become the Indonesian Nation.” As well as the

²⁵ Nia Kurniati, *Hukum Agraria Sengketa Pertanahan Penyelesaiannya Melalui Arbitrase Dalam Teori Dan Praktik* (Bandung: Refika Aditama, 2018).

²⁶ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya, Jilid I* (Jakarta: Penerbit Djambatan, 2007).

²⁷ Herman Hermit, *Komentar Atas Undang-Undang Rumah Susun* (Bandung: CV. Mandar Maju, 2009).

²⁸ Irma Devita Purnamasari, *Kiat-Kiat Cerdas Mudah Dan Bijak Mengatasi Masalah Hukum Pertanahan* (Bandung: Kaifa, 2010).

principle of nationality contained in Article 9 paragraph (1) of the UUPA, which emphasizes that “only Indonesian citizens have a full relationship with the earth, water, and space.” This article gives rights to Indonesian citizens in ownership of land rights, and closes the possibility of foreign nationals to be able to own it. It is clear that certain land ownership rights, such as ownership rights, building use rights, and business use rights, are only intended for Indonesian citizens.²⁹ The UUPA explains that if building use rights fall to foreigners, they must be released within 1 year, and only use rights may be owned by foreigners. The principle of nationality in the UUPA is the main principle in the formation of National Land Law, which only gives rights to Indonesian citizens in terms of land ownership rights. This means limiting the possibility of foreign citizens to be able to own certain land rights.³⁰ This is also applied in the condominium system, which is a joint ownership arrangement for a plot of land with a building on it.³¹

About the existence of the principle of nationality in the UUPA, Article 47 of the UURS explains that flats can be built on land that has the status of ownership rights, building use rights, or use rights over state land and building use rights or use rights over management rights. So those who are allowed to buy and own flats that stand on land with ownership rights and building use rights in Indonesia are Indonesian citizens and legal entities that meet these requirements.³² Based on UUCK Articles 144-145 in conjunction with PP No. 18 of 2021, Ownership Rights for Flat Units built on land with building use rights granted by the government to foreigners who have permits and foreign legal entities that have representatives in Indonesia, as long as the apartment is built in a special economic zone, free trade zone and free port, industrial area, and other economic zones.³³ Although there are requirements for foreign nationals to be able to own flats above the building use rights, in reality, in Jakarta, there are still many foreign nationals who own flats above the building use rights in locations outside the limits as stipulated in the PP. Thus, the provision is no longer in line with the previous applicable provisions, namely PP No. 103 of 2015, which prioritizes the principle of nationality. In the general explanation section from the first paragraph to the second paragraph regarding ownership of apartment units by

²⁹ Anita D.A. Kolopaking, *Penyelundupan Hukum Kepemilikan Hak Milik Atas Tanah Di Indonesia* (Bandung: Alumni, 2013).

³⁰ Irma Devita Purnamasari, *Loc. Cit.*

³¹ I Wayan Kartika, “Hak Kepemilikan Atas Satuan Rumah Susun Di Atas Tanah Hak Guna Bangunan Yang Berdiri Diatas Tanah Hak Milik Berdasarkan Perjanjian Sewa Menyewa,” *Kertha Wicaksana* 12, no. 2 (2018): 114, <https://doi.org/https://doi.org/10.22225/kw.12.2.2018.112-123>.

³² Farah Herliani, Ida Nurlinda, and Betty Rubiati, “Peralihan Hak Milik Menjadi Hak Pakai Atas Sarusun Di Atas Tanah Hgb Kepada Orang Asing Dihubungkan Dengan Pp No. 103 Tahun 2015 Tentang Pemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia Juncto Permen Atr/Kepala Bp,” *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 2, no. 1 (2019): 69, <https://doi.org/10.24198/acta.v2i1.160>.

³³ Sapto Hermawan and Dimas P. Setyo Wibowo, “Kepemilikan Hak Milik Atas Satuan Rumah Susun Warga Asing Dalam Undang-Undang Cipta Kerja,” *Jurnal Hukum Ius Quia Iustum* 30, no. 1 (2023): 178–99, <https://doi.org/10.20885/iustum.vol30.iss1.art9>.

foreigners, it states that: "... the increasing number of foreigners working and running their businesses in Indonesia has resulted in an increasing demand for housing or residences for foreigners, so it is necessary to create a policy that provides legal certainty and convenience in providing services or permits to obtain land rights for residential houses or residences for foreigners. The convenience provided is carried out while still adhering to land principles, including the principle of nationality, that only Indonesian citizens can have ownership rights, while foreigners can only be given land rights in the form of usage rights and lease rights."

The Job Creation Law is a provision that ignores the principle of nationality contained in the UUPA. This is very unfortunate because so far, the applicable laws and regulations have been in line with the principle of nationality as stated in the background to the formation of PP No. 103 of 2015. As a result, injustice has emerged for the Indonesian people with the enactment of the UUCK which regulates land, because they feel that the rights of Indonesian citizens are no longer fulfilled and foreign nationals can easily obtain flats built on building use rights because when viewed in terms of material, foreign nationals are more capable than low-income Indonesians. So if the government continues to provide HMSRS on building use rights to foreign nationals, it is hoped that in the future the government can emphasize in implementing regulations, ministerial regulations that the flat units given to foreign nationals are only in the form of space on their land or units of the flats that are separate from the land together. Thus, to maintain the principle of nationality, the government must be able to apply the principle of horizontal separation in providing flat units to these foreign nationals. On the other hand, a consequence of adopting the principle of horizontal separation that separates buildings and plants from their land is proof of ownership of objects. So far, proof of ownership of objects is attached to the land as one of the land certificate. So that in the future, buildings or houses must have their own identity that is separate from proof of ownership of the land. So, buildings must be registered separately, and later there will be a building certificate or house certificate that is separate from the land certificate where the building stands. The solution without violating the principle of nationality, then for foreigners, it is better to only be given a Building Ownership Certificate (SKBG), not a Certificate of Ownership of an Apartment Unit (SHMSRS). So it is clear that what is owned is only the unit and does not include the rights to the land together with it. So, foreigners can still own strata titles on HGB land.

4. CONCLUSION

The legal certainty of HMSRS on land with building use rights by foreigners based on the Job Creation Law about other laws, and regulations is still not guaranteed. This is because there are still several laws and regulations that conflict with Law No. 11 of 2020 concerning Job Creation, namely Article 36 paragraph (2) of UUPA, Article 47 paragraphs (1) and (2) of UURS, and Article 4 paragraph (1) of UUHT which states that the Object of

Building Use Rights in question is based on the UUPA. In addition to these articles, the ownership of HGB by foreigners as regulated in the provisions of Article 71 paragraph (1) letter b and paragraph (2) of PP No. 18 of 2021 as a further elaboration of the provisions of Article 144 and Article 145 of the UUCK is in conflict with Article 36 paragraph (1) of the UUPA. The lack of synchronization has made it difficult for the National Land Agency and related agencies to implement the provisions of the Job Creation Law. Legal certainty will be achieved if a regulation is formulated clearly so that it does not give rise to different interpretations and there is no overlap between existing regulations, either vertically or horizontally. Ownership of apartment units on land with building use rights by foreigners according to the Job Creation Law is considered to ignore the principle of nationality in the UUPA. UUPA limits foreign ownership to only having land rights in the form of use rights and lease rights. This limitation is an effort by UUPA to protect Indonesian citizens against land rights so that they are not controlled by foreigners, except those who support the Indonesian economy, such as foreign investors, for certain land rights. Thus, it is hoped that the government will re-examine the substance of these regulations and carry out legal reconstruction so that the old and new regulations do not conflict and are in harmony.

REFERENCES

- Anshari Siregar, Tampil. *Pendalaman Lanjutan Undang-Undang Pokok Agrarian*. Medan: Pusaka Bangsa Press, 2005.
- Arifin, Zaenal, Aisah Nur, and Purnama Shonia Hugeng. “Kesadaran Masyarakat Terhadap Bukti Kepemilikan Hak Atas Tanah.” *Journal Juridisch* 1, no. 1 (2023): 1–9. <https://doi.org/http://dx.doi.org/10.26623/jj.v1i1.6762>.
- Arizanti, Seftia. “Tinjauan Yuridis Kepemilikan Rumah Susun Oleh Warga Negara Asing Di Indonesia (Menurut UU No.20 Tahun 2011 Tentang Rumah Susun),” 2013, 2. <https://doi.org/https://doi.org/10.33373/dms.v4i1.66>.
- Devita Purnamasari, Irma. *Kiat-Kiat Cerdas Mudah Dan Bijak Mengatasi Masalah Hukum Pertanahan*. Bandung: Kaifa, 2010.
- Febrianty, Yenny, Ariyanto, and Sari Mayzara. “Status Hukum Kepemilikan Rumah Susun Di Atas Hak Guna Bangunan Oleh WNA Dalam Hukum Positif (Legal Status Of Flower Ownership Above Building Use Rights By Foreigners In Positive Law)” 10, no. 03 (2024): 15–27. <https://doi.org/10.33751/palar.v10i3.10240>.
- Harsono, Boedi. *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya, Jilid I*. Jakarta: Penerbit Djambatan, 2007.
- Herliani, Farah, Ida Nurlinda, and Betty Rubiati. “Peralihan Hak Milik Menjadi Hak Pakai Atas Sarusun Di Atas Tanah Hgb Kepada Orang Asing Dihubungkan Dengan Pp No. 103 Tahun 2015 Tentang Pemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia Juncto Permen Atr/Kepala Bp.” *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 2, no. 1 (2019): 69. <https://doi.org/10.24198/acta.v2i1.160>.
- Hermawan, Sapto, and Dimas P. Setyo Wibowo. “Kepemilikan Hak Milik Atas Satuan

- Rumah Susun Warga Asing Dalam Undang-Undang Cipta Kerja.” *Jurnal Hukum Ius Quia Iustum* 30, no. 1 (2023): 178–99. <https://doi.org/10.20885/iustum.vol30.iss1.art9>.
- Hermit, Herman. *Komentar Atas Undang-Undang Rumah Susun*. Bandung: CV. Mandar Maju, 2009.
- Ibrahim, Cholid. “Kepemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia,” n.d.
- Irfani, Nurfaqih. “Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum.” *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 313.
- Kallo, Erwin. *Panduan Hukum Untuk Pemilik Atau Penghuni Rumah Susun (Kondominium, Apartemen, Dan Rusunami)*. Jakarta: Minerva Athena Pressindo, 2009.
- Kansil, C.S.T. *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka, 1989.
- Kartika, I Wayan. “Hak Kepemilikan Atas Satuan Rumah Susun Di Atas Tanah Hak Guna Bangunan Yang Berdiri Diatas Tanah Hak Milik Berdasarkan Perjanjian Sewa Menyewa.” *Kertha Wicaksana* 12, no. 2 (2018): 114. <https://doi.org/https://doi.org/10.22225/kw.12.2.2018.112-123>.
- Kemalasari, Rizka Zahra, Syafruddin Kalo, and Rudy Haposan Siahaan. “Hak Guna Bangunan Yang Diperoleh Warga Negara Asing Berdasarkan Hibah Wasiat Dikaitkan Dengan Pasal 36 Undang-Undang Pokok Agraria.” *Locus Journal of Academic Literature Review* 1, no. 3 (2022): 143–52. <https://doi.org/10.56128/ljoalr.v1i3.62>.
- Kolopaking, Anita D.A. *Penyelundupan Hukum Kepemilikan Hak Milik Atas Tanah Di Indonesia*. Bandung: Alumni, 2013.
- Kurniati, Nia. *Hukum Agraria Sengketa Pertanahan Penyelesaiannya Melalui Arbitrase Dalam Teori Dan Praktik*. Bandung: Refika Aditama, 2018.
- Maufiroh, Putri, Bagus Renata Rachman, and Ety Purnaningrum. “Kajian Hukum Terhadap Inkonsistensi Vertikal Peraturan Pemerintah Nomor 18 Tahun 2021.” *Jurnal Education and Development* 9, no. 4 (2021): 191–96. <https://doi.org/https://doi.org/10.37081/ed.v9i4.3101>.
- R. Abdussalam, H. *Permasalahan Hukum Dalam Pembangunan Satuan Rumah Susun Di Jakarta*. Jakarta: Penerbit PTIK, 2016.
- Rachmayuni, Patawari, and Lisa Mery. “Analisis Hukum Transaksi Jual Beli Tanah Oleh Warga Negara Asing Di Provinsi Bali, Indonesia.” *Petitum* 9, no. 2 (2021): 171–79.
- Rosmidi, Mimi, and Imam Koeswahyono. *Konsepsi Hak Milik Atas Satuan Rumah Susun Dalam Hukum Agraria*. Malang: Setara Press, 2010.
- Saraswati, Alya Nadia, Faiz Suroyya, Ian Tri Anugrah, and Mike Ayu Wulandari. “Perlindungan Hukum Bagi Warga Negara Indonesia Terhadap Perolehan Hak Milik Atas Satuan Rumah Susun Oleh Warga Negara Asing.” *Jurnal Education and Development* 11, no. 2 (2023): 384–90. <https://doi.org/10.37081/ed.v11i2.4905>.
- Sitohang, Agung Torang, Desy Yolanda, Br Bangun, Lidia Rumapea, Roselli Anjelina, Tasya Br Marbun, Widya Helen, Anjalina Purba, and Ramsul Nababan. “Kepemilikan Tanah Bagi Warga Negara Asing Di Indonesia” 2, no. 1 (2024). <https://doi.org/https://doi.org/10.51903/jaksa.v2i1.1533>.

- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Persada, 2015.
- Soraya Putri, Nanda, Nia Kurniati, and Elis Nurhayati. "Kepemilikan Satuan Rumah Susun Diatas Tanah Hak Guna Bangunan Oleh Orang Asing." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021): 20–32. <https://doi.org/https://doi.org/10.23920/acta.v5i1.622>.
- Sulistio, Meiliyana. "Politik Hukum Pertanahan Di Indonesia." *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan* 8, no. 2 (2020): 105–11. <https://doi.org/https://doi.org/10.37081/ed.v8i2.1590>.
- Sunggono, Bambang. *Metodologi Penelitian Hukum*. Jakarta: Rajagrafindo, 2005.
- Supramono, Gatot. *Hukum Orang Asing Di Indonesia*. Jakarta: Sinar Grafika, 2012.
- Sutedi, Adrian. *Hukum Rumah Susun & Apartemen*. Jakarta: Sinar Grafika, 2010.
- Tresnoputri, C. "Peranan Hukum Adat Dalam Sistem Hukum Tata Negara Indonesia." *Archipelago: Jurnal Ilmu Sosial* 10, no. 5 (2023): 2333–41.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria.
- Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan.
- Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun.
- Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja.
- Peraturan Pemerintah Nomor 103 Tahun 2015 Tentang Pemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia.
- Peraturan Pemerintah Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 13 Tahun 2016 Tentang Tata Cara Pemberian, Pelepasan, Atau Pengalihan Hak Atas Pemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 29 Tahun 2016 Tentang Tata Cara Pemberian, Pelepasan, Atau Pengalihan Hak Atas Pemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 18 Tahun 2021 Tentang Tata Cara Penetapan Hak Pengelolaan Dan Hak Atas Tanah.
- Anonim, "Efektif Menghitung Kebutuhan Rumah: Demografi Atau Backlog?," Perkim.id, 2021, <https://perkim.id/perumahan/efektif-menghitung-kebutuhan-rumah-demografi-atau-backlog>.
- Suhaela Bahfelin, Hilda B Alexander, "UU Cipta Kerja Perluas Kepemilikan WNA Atas Apartemen Menjadi Hak Milik," Kompas.com, 2020, <https://properti.kompas.com/read/2020/10/06/181849921/uu-cipta-kerja-perluas-kepemilikan-wna-atas-apartemen-menjadi-hak-milik?page=all>.