



## ***Reconstruction of Ownership Rights of Apartment Unit Built on Land with Building Rights***

### **Rekonstruksi Hak Kepemilikan untuk Kepemilikan Unit Rumah Susun yang Dibangun di Atas Lahan dengan Hak Bangunan**

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#### **Keyword:**

*Building Rights  
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#### **Abstract**

*This article examines the legal complexities of apartment units constructed on Building Rights (Hak Guna Bangunan, HGB) land in Indonesia, especially where HGB overlays State Land (Hak Pengelolaan Lahan, HPL). The current legal regime, grounded in Law No. 20 of 2011 on Flats and Government Regulation No. 18 of 2021, exposes vulnerabilities in the Horizontal Ownership of Strata Rights System (HMSRS) due to HGB's temporal limitations. These constraints undermine strata ownership security, complicate land administration, and erode investor and occupant confidence. Using doctrinal and comparative methods, the study analyzes statutory frameworks, including Government Regulations No. 4 of 1988 and No. 40 of 1996, alongside post-Omnibus reforms. It situates the discussion within Indonesian agrarian law, property theory, and international apartment scholarship, highlighting tensions with constitutional mandates on social justice and equitable land use (Articles 28D(1), 28H, 33(3), and 34, 1945 Constitution). The article proposes a legal reconstruction model separating apartment units from underlying building rights via independent building certificates and a dedicated cadaster, enhancing legal certainty and aligning with modern land administration principles. This framework addresses gaps in strata governance, promoting legal resilience, investor protection, and social equity amid Indonesia's agrarian reforms and urbanization.*

#### **Kata Kunci:**

Hak Bangunan  
Hak;  
Kepemilikan  
Strata;  
Hak Milik;  
Kepastian  
Hukum;  
Asas Pemisahan  
Horizontal;

#### **Abstrak**

Artikel ini mengkaji kompleksitas hukum unit satuan rumah susun yang dibangun di atas tanah *Hak Guna Bangunan* (HGB) di Indonesia, khususnya di mana HGB tumpang tindih dengan Tanah Negara berupa Hak Pengelolaan Lahan (HPL). Rezim hukum saat ini, yang berlandaskan pada Undang-Undang No. 20 Tahun 2011 tentang Rumah Susun dan Peraturan Pemerintah No. 18 Tahun 2021, menunjukkan kerentanan dalam Sistem Kepemilikan Horizontal *Hak Milik Satuan Rumah Susun* (HMSRS) karena keterbatasan waktu HGB. Kendala ini melemahkan keamanan kepemilikan unit satuan rumah susun, mempersulit administrasi tanah, dan mengikis kepercayaan investor dan penghuni. Dengan menggunakan metode doktrinal dan komparatif, studi ini menganalisis kerangka hukum, termasuk Peraturan Pemerintah No. 4 Tahun 1988 dan No. 40 Tahun 1996, bersamaan dengan reformasi pasca-Omnibus. Artikel ini menempatkan diskusi

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dalam kerangka hukum agraria Indonesia, teori properti, dan kajian kondominium internasional, menyoroti ketegangan dengan mandat konstitusional tentang keadilan sosial dan penggunaan lahan yang adil (Pasal 28D(1), 28H, 33(3), dan 34, Konstitusi 1945). Artikel ini mengusulkan model rekonstruksi hukum yang memisahkan unit strata dari hak bangunan yang mendasarinya melalui sertifikat bangunan independen dan kadaster khusus, meningkatkan kepastian hukum dan selaras dengan prinsip-prinsip administrasi lahan modern. Kerangka kerja ini mengatasi kesenjangan dalam tata kelola strata, mendorong ketahanan hukum, perlindungan investor, dan keadilan sosial di tengah reformasi agraria dan urbanisasi Indonesia.

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## INTRODUCTION

### Background of Problem

Indonesia’s constitutional framework provides a critical lens for examining the complexities of its property rights regime, particularly concerning apartment units erected on land governed by building rights (*Hak Guna Bangunan*, the next mention is HGB). The 1945 Constitution enshrines the state’s sovereign control over land and natural resources under Article 33(3), mandating their use for the “greatest prosperity of the people” (Lehavi, 2015; Paasch & Paulsson, 2021). Concurrently, Articles 28D(1) and 28H recognize adequate housing and a decent standard of living as fundamental human rights, embedding housing within the constitutional mandate for social justice (Chen & Kielsingard, 2014; Rolnik, 2013). This constitutional backdrop frames the legal and policy challenges arising from Indonesia’s acute housing shortage and the rapid proliferation of vertical housing developments.

Urban centers like Jakarta face a severe housing deficit exacerbated by land scarcity and high acquisition costs, prompting reliance on vertical housing solutions such as apartments and flats (Oldfield et al., 2017; Tekavec et al., 2018). While vertical housing addresses spatial constraints, it introduces complex legal challenges regarding tenure and ownership structures. Law No. 20 of 2011 on Flats (the next mention is “Law on Flats”) was enacted to regulate apartment ownership and management, facilitating horizontal division of property rights within multi-unit buildings (Paasch & Paulsson, 2021; Sari & Sabirin, 2025). However, the interaction between apartment ownership and underlying land rights—especially when land is subject to time-limited HGB or layered over *Hak Pengelolaan Lahan* (the next mention is HPL)—exposes doctrinal weaknesses that undermine legal certainty and tenure security.

The HGB regime, established under Law No. 5 of 1960 on Basic Agrarian Principles (the next mention is UUPA), grants holders the right to build and use land for a limited term, typically 30 years with possible extensions, but does not confer perpetual ownership. This temporal limitation is compounded when HGB rights overlay HPL land, a management right granted to government agencies or state-owned enterprises for specific purposes (Government Regulation No. 18 of 2021). Such layering creates a complex tenure structure inadequately accommodated by the existing Horizontal Property Rights System (*Hak Milik Satuan Rumah Susun*, the next mention is HMSRS), which presumes stable, perpetual land tenure underpinning apartment units. The time-limited nature of HGB, coupled with renewal uncertainties, renders HMSRS legally

precarious, exposing unit owners to tenure disruption upon expiry or non-renewal (Krisnantoro et al., 2024; Rahmawati et al., 2025).

This fragility manifests acutely in Jakarta, where disputes over apartment units on HGB land layered over HPL have proliferated. Commercial complexes such as ITC Mangga Dua, Roxy Mas, and ITC Cempaka Mas exemplify legal ambiguities and tenure insecurities, resulting in protracted conflicts over land renewal, ownership, and management authority (Dwiyatmi et al., 2025; Permadi & Herlindah, 2023). Residential developments like Apartemen Mediterania Palace and Rusun Kebon Kacang further illustrate how unit owners' rights hinge precariously on uncertain HGB renewal (Krisnantoro et al., 2024; Teklemariam & Cochrane, 2021). The Apartemen Taman Rasuna dispute highlights tensions among developers, owners, and authorities, underscoring the need for a robust legal framework reconciling apartment ownership with Indonesia's temporal and layered land rights (Permadi, 2023).

### Identification of Problems

Based on previous findings and studies, several problems were found, including:

1. The legal framework governing apartment units on Building Rights (HGB) land in Indonesia reveals critical vulnerabilities undermining property rights security. Unlike perpetual freehold rights (*Hak Milik*), HGB confers possession for a limited term—typically 30 years with possible extensions—rendering strata ownership inherently subordinate and contingent on the HGB's validity.
2. This temporal limitation exposes strata holders to precarious tenure, as expiration or non-renewal of the HGB may extinguish their rights despite registered ownership.
3. The problem intensifies when HGB is granted over State Land (HPL), layering state control and constitutional public interest considerations (Article 33(3), 1945 Constitution).
4. Compounding this is the one-time registration system under Government Regulations No. 24 of 1997 and No. 18 of 2021, which registers apartment only upon issuance without updating to reflect HGB renewal or expiration.
5. This static registry disconnects strata ownership from the underlying land rights, exposing owners to legal uncertainty when HGB lapses.
6. The National Property Registry system further exacerbates this by lacking capacity to integrate vertical apartment units with temporal land rights, perpetuating legal fragmentation amid outdated regulatory frameworks.
7. Legal dualism between strata ownership under Law No. 20 of 2011 and land rights governed by the Basic Agrarian Law creates a disjointed regime, subordinating strata owners to land rights holders and complicating enforcement and dispute resolution.
8. This bifurcation undermines constitutional property guarantees (Articles 28D(1) and 28H, 1945 Constitution)

### Research Questions

This study interrogates the doctrinal and practical tensions between Indonesia's strata title regime (HMSRS) and the underlying time-limited Building Rights (HGB) layered on Land Rights (HPL).

1. How the current legal framework accommodates—or fails to accommodate—the temporal constraints of HGB vis-à-vis the ostensibly perpetual nature of apartment, as framed by the Basic Agrarian Law (Law No. 5 of 1960) and Government Regulation No. 18 of 2021?
2. How legal and administrative reforms to ensure legal certainty and constitutional compliance (Articles 28D(1), 28H, 33(3) of the 1945 Constitution) by reconciling horizontal property rights with layered land tenure complexities?
3. What mechanisms are identified as absent in managing apartment units independently from Building Rights (HGB), and what statutory measures are needed to prevent dispossession risks?

## Objectives and Significance

### *Objectives*

This study addresses the complex legal challenges arising from the intersection of Indonesia's strata title regime and the temporally limited Building Rights (HGB) on State Land (HPL). It critically reconstructs the property rights framework governing apartment units on HGB land to enhance legal certainty, institutional coherence, and operational robustness. The current Horizontal Property Rights System (HMSRS) is fragile due to HGB's temporality and renewal uncertainties, especially when layered on HPL. The study advocates horizontal separation of rights, independent building certificates, a building cadaster, and a Public Property Rights Registry System (PPRS) with statutory renewal safeguards to establish a resilient regime aligned with Indonesia's constitutional mandates.

### *Significance*

Theoretically, it advances property theory by framing rights as dynamic, multi-dimensional constructs accommodating temporal and spatial complexities (Ho et al., 2013; Oldfield et al., 2017). Practically, it addresses institutional deficiencies under Law No. 20 of 2011 and Government Regulation No. 18 of 2021, proposing reforms to mitigate tenure discontinuity and bolster investor confidence (Permadi & Herlindah, 2023; Rahmawati et al., 2025). Institutionally, it promotes integrated, technologically advanced registration systems consonant with global cadaster trends. Constitutionally, it harmonizes property rights with Indonesia's social function of land and sustainable development principles enshrined in the 1945 Constitution and Law No. 5 of 1960 (Zainal et al., 2024). Ultimately, the study seeks to resolve legal fragilities, enhance tenure security, and foster sustainable urban development in Indonesia's evolving property landscape.

## THEORETICAL AND CONCEPTUAL FRAMEWORK

### **Legal Certainty (*Rechtszekerheid*)**

Legal certainty (*rechtszekerheid*) is a cornerstone of property law, ensuring stability, predictability, and trust in land tenure systems. In Indonesia, this principle is constitutionally enshrined in Articles 28D(1), 28H, and 33(3) of the 1945 Constitution, which protect individual rights, access to justice, and mandate state control over land for public welfare (Krismantoro et al., 2024; Rahmawati et al., 2025). The Basic Agrarian Law (Law No. 5 of 1960) operationalizes these mandates by harmonizing customary and statutory land rights, embedding legal certainty within the agrarian framework.

Legal certainty demands a coherent land registration system, as reflected in Government Regulations No. 24 of 1997 and No. 18 of 2021, which govern land rights including apartment (Paasch & Paulsson, 2021; Permadi & Herlindah, 2023). The cadastral system functions as a transparent, enforceable registry of rights and restrictions, crucial for apartment units built on time-limited rights such as *Hak Guna Bangunan* (HGB) over *Hak Pengelolaan Lahan* (HPL), where temporal limitations introduce legal fragility (Krismantoro et al., 2024).

Classical jurisprudence (Radbruch, Fuller) emphasizes law's clarity and justice (Lehavi, 2015), while contemporary scholarship stresses adapting legal certainty to evolving property forms and digital cadastral innovations (Drobež et al., 2017; Ho et al., 2013; Paasch & Paulsson, 2021). In Indonesia, the mortgageability of apartment units under Law No. 4 of 1996 is undermined by HGB's temporal nature, impairing credit access and investment (Chen & Kielsingard, 2014; Sari & Sabirin, 2025; Zhu & Simarmata, 2015). Addressing this requires reconciling temporal building rights with durable, enforceable property interests (Dwiyatmi et al., 2025).

Enhancing legal certainty involves issuing independent building certificates and establishing a building cadaster that horizontally separates apartment units, overcoming limitations of the HMSRS regime (Permadi, 2023).

In Indonesia, the property rights attached to apartment units built on land subject to Building Rights (HGB) are shaped by three foundational civil-law attributes: *droit de suite*, *droit de préférence* and *droit de levering* (Khairi & Martin, 2018). These principles underpin the security, transferability, and certainty of property rights but are compromised by the temporal limitations inherent in HGB, which conflict with the ostensibly perpetual nature of strata ownership under the horizontal multi-unit strata regime (HMSRS).

*Droit de suite* ensures the owner's claim remains attached to the property regardless of possession changes (Paasch & Paulsson, 2021). Indonesian law implicitly recognizes this through the Basic Agrarian Law (Law No. 5 of 1960) and the strata title regime (Law No. 20 of 2011). Yet, when the underlying HGB expires, the foundational land right ceases, severing the continuity of the apartment unit's ownership and undermining the immutability and enforceability of the right (Drobež et al., 2017; Ilgar et al., 2024).

*Droit de préférence* confers priority in claims, notably for mortgage holders under Law No. 4 of 1996. The mortgage's preferential status depends on the continuity of the land right; HGB expiry extinguishes this security interest, destabilizing lenders' confidence and the apartment unit's viability as collateral (Roestamy, 2020; Treffers & Lippert, 2020).

*Droit de levering*, the right to possess and control property, is complicated by strata's horizontal ownership and common property interests. Although apartment demarcate ownership, HGB's temporal limit threatens possession rights upon expiry, disrupting owners' exclusive control and undermining transactional certainty (Boyack, 2022; Mandič & Filipovič Hrast, 2019; Tang, 2024).

Together, these attributes reveal a critical tension between HGB's temporality and strata ownership's intended perpetuity. While the Basic Agrarian Law and the 1945 Constitution emphasize land's social function and state regulation (Articles 28D(1), 28H, 33(3), and 34), the current legal architecture fails to reconcile the finite nature of Building Rights with the permanent character of strata title ownership. Resolving this tension requires a fundamental reconstruction of property rights through the adoption of horizontal separation, the establishment of an independent building cadaster, and the introduction of statutory HGB renewal safeguards—reforms that would align Indonesia's

housing regime with constitutional mandates of legal certainty, social justice, and the right to adequate housing.

### **Horizontal Separation vs. Vertical Accession**

The doctrinal tension between horizontal separation and vertical accession in Indonesian property law is central to governing apartment units, especially those erected on land subject to Building Rights (HGB). This conflict reflects Indonesia's pluralistic legal heritage, juxtaposing adat-based horizontal separation—which treats units as discrete, alienable parcels (Ho et al., 2013; Oldfield et al., 2017)—against the Civil Code's vertical accession principle, whereby buildings are inseparable from the land (Civil Code, Arts. 500, 571). Law No. 20 of 2011 on Flats attempts to reconcile these views by recognizing units as independent property objects while describing the building as an “inseparable unit” (Art. 1), a phrase that engenders ambiguity and legal uncertainty (Tekavec et al., 2018; Treffers & Lippert, 2020).

Adat law's horizontal separation aligns with Law No. 20 of 2011's aim to treat apartment units as distinct legal entities, facilitating ownership, transfer, and mortgage rights (Rahmawati et al., 2025; Sari & Sabirin, 2025). Conversely, vertical accession, rooted in Roman-Dutch law, subsumes buildings under land ownership, complicating strata title regimes by precluding independent alienation of units (Chen & Kielsgard, 2014). This tension is exacerbated when apartment units rest on time-limited HGB land, introducing temporal fragility that undermines marketability and legal clarity (Krismanoro et al., 2024; Permadi & Herlindah, 2023).

Comparatively, jurisdictions embracing horizontal separation employ robust mechanisms—such as separate certificates and building cadastres—to ensure unit independence and market efficiency (Ilgar et al., 2024; Liu & Yang, 2025). Indonesia's hybrid regime, retaining vertical accession alongside ambiguous statutory language, perpetuates legal disputes and administrative complexity (Dwiyatmi et al., 2025; Effendi & Setiawan, 2023). Moreover, horizontal separation better fulfills constitutional mandates under Articles 28D(1), 28H, and 33(3) of the 1945 Constitution, promoting individual rights, social justice, and sustainable resource management (Bakri et al., 2024; Zainal et al., 2024).

### **Welfare State and Housing as a Constitutional Right**

Indonesia's 1945 Constitution enshrines a welfare-state ethos that fundamentally shapes housing rights, mandating state responsibility for social and economic welfare. Article 28H(1) guarantees every person the right to an adequate standard of living, explicitly including housing as integral to human dignity and well-being. This constitutional framing elevates housing beyond a market commodity to a fundamental right requiring proactive state policies.

Article 33(3) reinforces this by vesting state control over land and natural resources to maximize public prosperity, underpinning a redistributive land policy prioritizing social welfare over market interests. This principle is critical in addressing urban housing demands, especially for strata-titled units, ensuring land governance reduces inequality and enhances affordable housing access (Lehavi, 2015; Tekavec et al., 2018). Complementing these, Article 34 obliges the state to provide social welfare, including housing assistance for vulnerable populations, aligning domestic law with international human rights norms (Ho et al., 2013; Oldfield et al., 2017).

However, tenure security for apartment units built on time-limited Building Rights (HGB) or Building Use Rights (HPL) remains constitutionally precarious. The temporal nature of HGB—typically 20 to 30 years with discretionary renewals—undermines long-term housing security, a fragility intensified when HGB overlays HPL, itself subject to administrative discretion (Krismantoro et al., 2024; Zhu & Simarmata, 2015). This instability conflicts with the constitutional mandate to secure housing rights, necessitating legal reforms that reconcile tenure arrangements with welfare-state obligations.

Moreover, housing financialization, through mortgage rights (Law No. 4 of 1996) and strata property stratification (Law No. 20 of 2011), risks exacerbating inequality and undermining affordable housing goals (Bright, 2021; Rolnik, 2013). The state's regulatory role is pivotal to curb speculative practices and align financial instruments with social welfare imperatives (Jepma et al., 2025; Tang, 2024). The integrated land registration system (Government Regulation No. 18 of 2021) offers a platform to enhance tenure security, contingent on harmonizing strata regimes with underlying land rights frameworks and establishing statutory safeguards for HGB renewal and independent building certification.

## RESEARCH METHOD

This study employs a juridical-normative methodology centered on doctrinal analysis of Indonesian agrarian and apartment law concerning apartment units constructed on HGB land. This approach is essential to unravel the intricate legal nexus among statutory provisions, regulatory frameworks, and judicial interpretations governing Horizontal Property Rights on Strata Title Units (HMSRS) erected over time-limited HGB, particularly when such HGB overlays HPL land. The doctrinal method systematically examines primary legal sources, including the 1945 Constitution, Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), Law No. 4 of 1996 on Mortgage Rights, Law No. 20 of 2011 on Flats, Government Regulation No. 24 of 1997 on Land Registration, and the integrated Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flats Units, and Land Registration.

Complementing this is a conceptual analysis interrogating the doctrinal coherence and normative foundations of property rights vis-à-vis horizontal separation and independent building certificates. Drawing on property rights theory and land administration scholarship, this lens underscores the necessity of legal certainty and sustainability in property regimes (Ho et al., 2013; Oldfield et al., 2017). The study critically assesses HMSRS's legal construction, exposing vulnerabilities arising from HGB's temporal limits and HPL's administrative overlay, thereby advocating a property rights reconstruction consonant with constitutional mandates—particularly Articles 28D(1), 28H, 33(3), and 34—which enshrine property rights, social justice, and state stewardship of natural resources.

Comparative insights from Japan and Singapore enrich the analysis, as both jurisdictions have developed sophisticated regimes addressing strata titles amid time-limited land rights and complex tenure systems. Japan's horizontal property rights and Singapore's statutory frameworks exemplify independent unit registration and robust renewal mechanisms, offering instructive models for Indonesian reform, especially regarding horizontal separation, independent building certificates, and a Public Property Registry System (PPRS) to enhance transparency and legal security.

Empirical case illustrations from judicial decisions and administrative practice concretize the doctrinal and conceptual findings, evidencing HMSRS's legal fragility under current law and evidencing HMSRS's legal fragility under current law and

underscoring the urgent need for legislative reform that establishes independent building certificates, a separate cadaster, and statutory renewal mechanisms to secure property rights and uphold constitutional guarantees of legal certainty and housing justice.

## RESULTS AND DISCUSSION

### Result

The legal construction of Horizontal Property Rights on Strata Title Units (HMSRS) established on Building Rights (HGB) land in Indonesia reveals a fundamental tension between the temporal nature of HGB and the ostensibly perpetual character of HMSRS. HGB, a limited real right granted under Law No. 5 of 1960 and Government Regulation No. 18 of 2021, confers building and usage rights for a fixed term, typically 30 years, subject to renewal. In contrast, HMSRS, recognized under Law No. 20 of 2011 on Flats, vests ownership in individual apartment units within multi-unit buildings, effectively creating horizontal subdivisions dependent on the underlying land rights. This dualist framework renders HMSRS precarious, as the expiration of HGB triggers reversion of land rights to the state or original owner, undermining the apartment units' legal foundation.

Empirical evidence (Tables 1 and 2) and case studies by Rahmawati, Samsura, and van der Krabben (2025) and Krismantoro, Hutapea, and Joe (2024) demonstrate that upon HGB expiration, apartment holders face significant legal uncertainty, renewal challenges, and protracted disputes. Judicial analyses by Permadi and Herlindah (2023) confirm courts' prioritization of land rights over strata titles, reinforcing HMSRS's subordinate status. This fragility raises constitutional concerns under Articles 28D(1), 28H, and 33(3) of the 1945 Constitution, which protect property rights and mandate equitable land control, highlighting inadequacies in current statutory safeguards.

Table 1 is retained from the original draft to show the concentration of HGB/HPL exposure among large-scale developers. Source: author fieldwork and BPN-related case documentation retained from the original draft.

**Table 1.** Selected apartment developers in greater Jakarta

No.	Developer	Location	Total Apartment Projects	Total Towers	Built on HGB/HPL
1	Agung Podomoro Group	Jakarta, Bogor	50	66	18 on HGB/HPL
2	Agung Sedayu Group	Jakarta, Tangerang	21	76	12 on HGB/HPL
3	Sinarماس Land	BSD, Tangerang	1,000 units*	40	4 on HGB/HPL
4	Sentul City Tbk	Bogor	3	3	2 on HGB/HPL
5	Summarecon Agung Tbk	Tangerang	8	23	7 on HGB/HPL
<b>Sum</b>	--	--	<b>82 projects</b>	<b>208 towers</b>	<b>43 cases</b>

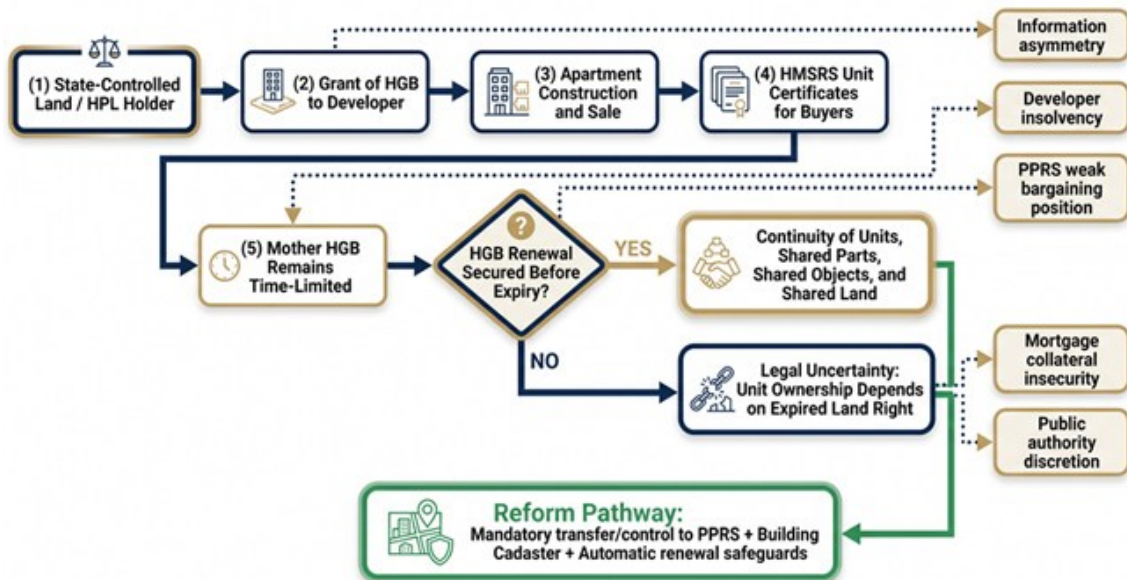
Note: Sinarماس Land reports units rather than projects; included for completeness.

Source: Processed data from Author's fieldwork and BPN-related case documentation.

The table confirms that the problem is systemic rather than episodic. Although it is an indicative fieldwork table rather than a national census, the presence of numerous

HGB/HPL projects among major developers shows that the risk structure is embedded in the dominant model of vertical housing supply in metropolitan Jakarta.

Figure 1 visualizes the doctrinal sequence through which unit ownership becomes dependent on the renewal of the main HGB. Source: author synthesis based on the 1945 Constitution, Law No. 5 of 1960, Law No. 20 of 2011, PP No. 18 of 2021, and the 3D-cadastre and apartment-governance literature.



**Figure 1.** Temporal Fragility of HMSRS Built on HGB over HPL  
 Source: Author's Analysis

The figure demonstrates that HMSRS is not legally fragile because apartment ownership is conceptually impossible, but because the Indonesian register currently ties the apartment object to a land-right clock controlled by actors other than the individual unit owner. The reform pathway at the bottom of the figure therefore shifts the juridical centre of gravity from developer-held land control toward PPRS coordination, building-cadaster recognition, and statutory renewal safeguards.

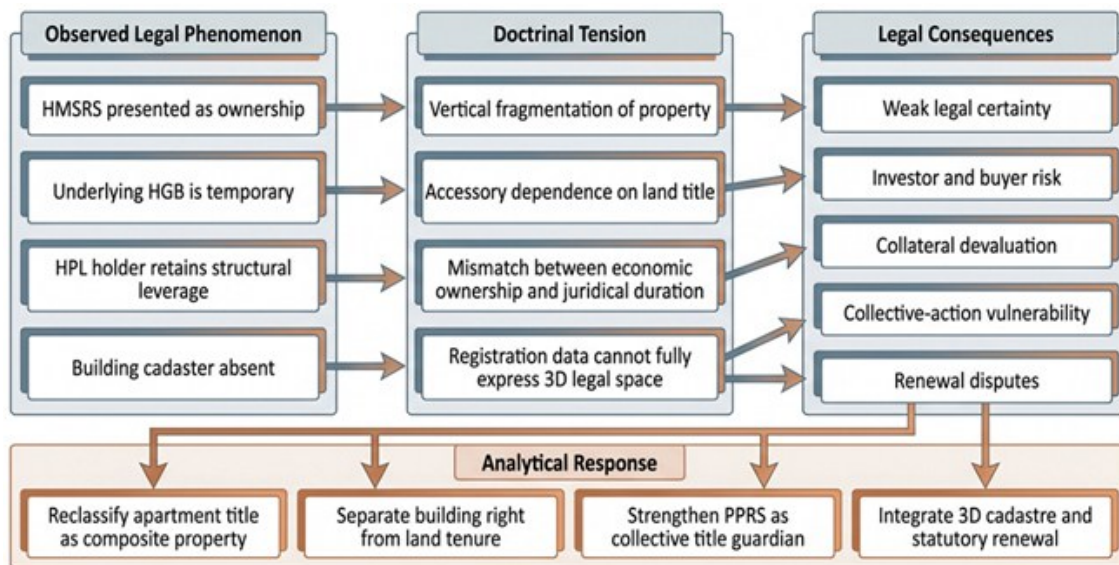
The following emblematic disputes illustrate the systemic vulnerabilities identified in this study

**Table 2.** Emblematic HGB/HPL-related strata-title disputes in greater Jakarta

No.	Case	Core Problem
1	ITC Mangga Dua (PT. Duta Pertiwi)	HGB expired; BPN refused extension because HGB was on HPL held by Pemda DKI without the necessary approval.
2	Roxy Mas	After extension, common area was reduced; the developer had retained undeclared rights over common property.
3	ITC Cempaka Mas	Developer refused to transfer the main HGB to the PPRS for approximately 18 years.
4	Apartemen Mediterania Palace	Large discrepancy emerged between sold and actual unit areas, and HGB-over-HPL status was not adequately disclosed.
5	Rusun Kebon Kacang (PERUM-PERUMNAS)	PERUMNAS, as HPL-holder, denied permission to extend HGB.

Source: processed data

The cases reveal that purchasers often acquire the economic burden of apartment ownership without obtaining equivalent control over the land-right renewal mechanism. This separation between investment and institutional authority is the central pathology of the existing model. Figure 2 converts the case pattern into a doctrinal matrix connecting legal phenomena, conceptual tensions, and juridical consequences. To synthesize the legal fragility patterns identified in the cases above, the following diagnostic matrix maps the interlocking doctrinal tensions:



**Figure 2.** Normative Diagnostic Matrix for Strate-title Legal Certainty

Source: Author synthesis based on Indonesian property law and comparative apartment literature.

The matrix clarifies that the uncertainty does not arise from one defective document; it arises from a misalignment among ownership rhetoric, land-tenure temporality, cadastral representation, and apartment governance. Consequently, legal reconstruction must address all four axes simultaneously.

Addressing these challenges requires legal reconstruction emphasizing horizontal separation of rights, independent building certificates, and a dedicated building cadaster system, as advocated by Ho et al. (2013) and Oldfield et al. (2017). Government Regulation No. 18 of 2021's envisaged horizontal property registry facilitates autonomous recognition of apartment units, mitigating risks from HGB expiration. Complementarily, a robust Property and Property Rights System (PPRS) control mechanism is essential to monitor renewals and enforce statutory safeguards, operationalizing constitutional mandates and addressing administrative gaps identified by Tekavec et al. (2018) and Treffers and Lippert (2020). Integrating PPRS with cadastral innovations enables real-time tracking of HGB status transitions, thereby preventing tenure dispossession and ensuring that strata ownership remains legally secure throughout the building's economic lifecycle. Such structural reforms would transform Indonesia's condominium regime from a fragmented, time-bound framework into a coherent, rights-based system that fulfills constitutional guarantees of legal certainty, social justice, and sustainable housing for all citizens.

## Discussion

### *The Dualist Construction*

The dualist construction of property rights in Indonesia, particularly regarding apartment units erected on land held under Building Rights (HGB), reflects a complex legal architecture grounded in statutory mandates and doctrinal principles. Central to this model is the distinction between land rights and rights to buildings constructed thereon, a bifurcation that is both doctrinally entrenched and practically significant (Paasch & Paulsson, 2021). Article 46 of Law No. 20 of 2011 on Flats (Law No. 20/2011) explicitly conditions the issuance of apartment on the existence of an underlying land right—typically an HGB or HPL—thereby anchoring strata titles to the so-called “parent certificate,” the foundational land right certificate underpinning individual unit certificates within a strata scheme.

This dualist framework entails a legal separation: the land right confers rights over the parcel itself, while the strata title confers rights over individual units within the building. This division is not a mere procedural formality but reflects the core attributes of property rights under Indonesian agrarian law—possession (*penguasaan*), use (*pemanfaatan*), and disposition (*pemindahan hak*)—as codified in the Basic Agrarian Principles (Law No. 5 of 1960, UUPA, Articles 16 and 33). The temporal limitation of the HGB, typically 20 to 30 years with possible extensions, is critical; upon expiry, the land right reverts to the state unless renewed, jeopardizing the legal foundation of the dependent apartment. This temporal fragility is a defining feature of the dualist construction, generating significant legal uncertainty for apartment holders.

An authorial synthesis, visually captures the hierarchical relationship between the parent certificate (HGB/HPL), apartment certificates (*Sertifikat Hak Milik atas Satuan Rumah Susun*, SHMSRS), and the rights and obligations flowing therefrom (Law No. 20/2011; Government Regulation No. 18 of 2021). Figure 1 illustrates how apartment are legally contingent upon the validity of the underlying land right, emphasizing the dependency and potential fragility arising from the time-limited nature of the HGB. It also highlights the role of the National Land Agency (*Badan Pertanahan Nasional*, BPN) in registering both parent certificates and apartment, maintaining a dual registration system that reflects the dualist nature of property rights—separately registered yet legally interdependent.

The legal ramifications of this dualism are profound. The expiry or non-renewal of the HGB can render apartment vulnerable, as the underlying land right ceases or reverts to the state, raising questions about the continuity of possession, use, and disposition rights tied to the parent certificate’s validity. This subordination complicates the horizontal separation of ownership interests, as apartment holders’ rights remain legally subordinate to the land right holder’s interest. This affects tenure security, marketability, and financing, given that mortgage rights (*Hak Tanggungan*) under Law No. 4 of 1996 are typically granted over the parent certificate rather than individual apartment (Easthope et al., 2013).

Legal Effects of the Dualist Construction under Indonesian Law further explicates by categorizing possession, use, and disposition rights within the dualist framework (UUPA; Law No. 20/2011; Government Regulation No. 18/2021). Possession is exercised by apartment holders over their units but remains contingent on the parent certificate’s validity. Use rights are similarly circumscribed, bounded by the land use rights granted under the HGB or HPL. Disposition rights—including transfer, mortgage, or encumbrance—are constrained by the legal dependency on the parent certificate, limiting strata holders’ autonomy in exercising full proprietary control.

This derivative nature of strata ownership, while recognized under Law No. 20/2011, is neither absolute nor autonomous. Instead, it exists within the legal envelope created by the parent certificate, introducing a legal fragility absent in systems where apartments are independent of land rights or where land rights are perpetual or renewable without significant uncertainty (Martin et al., 2019). The practical implications for land administration and property transactions are significant: HGB expiration disrupts property rights continuity, rendering strata titles economically unviable and legally unenforceable, thereby undermining the constitutional guarantee of legal certainty and exposing unit owners to dispossession without adequate recourse.

### *Case Evidence*

The legal challenges confronting apartment units constructed on Building Rights (HGB) land in Indonesia are elucidated through five pivotal cases, revealing the inherent fragility of the HMSRS when applied to apartment units on time-limited HGB, particularly where HGB overlays HPL land. These cases underscore the imperative for legal reconstruction embracing horizontal separation, independent building certificates and cadastral registration, institutionalized Property Rights Registration System (PPRS) control, and statutory renewal mechanisms, all situated within the constitutional and statutory framework including the 1945 Constitution, Law No. 5 of 1960 on Basic Agrarian Principles, Law No. 20 of 2011 on Flats, and Government Regulation No. 18 of 2021.

The first case addressed the validity of apartment certificates issued for apartments on HGB land nearing expiration. The court emphasized the legal uncertainty caused by HGB's temporal limitation, which undermines strata ownership security. This aligns with Paasch and Paulsson's (2021) analysis that the absence of horizontal separation in land registration exacerbates legal fragility in such contexts. The second case involved HGB granted over HPL land, highlighting the tension between apartment unit holders' proprietary interests and the HPL holder's management rights under Government Regulation No. 18 of 2021. Paulsson and Paasch (2013) argue that this intersection demands recognition of stratified property rights rather than subsuming apartment units under a single HGB title.

The third case exposed the absence of statutory renewal safeguards for HGB, with the court confronting the consequences of HGB expiration on apartment continuity. This lacuna leaves strata owners vulnerable to title extinction, corroborating Ho et al. (2013) and Oldfield et al. (2017), who stress the necessity of robust renewal provisions to maintain legal certainty and protect investment. The fourth case underscored the importance of independent building certificates and cadastral registration, with the court recognizing that lacking a distinct cadastral system for building units undermines clarity and enforceability of apartment. This supports calls by Drobež et al. (2017) and Ilgar et al. (2024) for horizontal separation in land administration to enhance transparency and reduce disputes.

The fifth case highlighted deficiencies in PPRS control mechanisms overseeing apartment units on HGB land. The court identified weaknesses in registration and monitoring processes that hinder effective governance, reinforcing the need for institutional reforms embedding PPRS control within the strata title regime, as advocated by Liu and Yang (2025) and Tekavec et al. (2018). Table 2 synthesizes these cases, categorizing them by thematic concerns—temporal HGB limitations, HPL rights intersection, renewal safeguards, cadastral deficiencies, and PPRS weaknesses—offering a structured jurisprudential overview.

Collectively, these cases reveal systemic vulnerabilities in Indonesia's property rights regime for apartment units on HGB land. The temporal limitation of HGB creates precarious ownership conditions absent statutory renewal mechanisms. The overlay of HGB on HPL land complicates ownership structures, necessitating explicit horizontal separation of apartment units from underlying land rights. The lack of independent building certificates and a dedicated building cadaster exacerbates ownership ambiguities, while inadequate PPRS control impairs governance and protection of strata titles. Table 2 preserves the case evidence from the original draft and arranges it as doctrinal proof of recurring failure points. Source: author doctoral fieldwork and original draft case documentation.

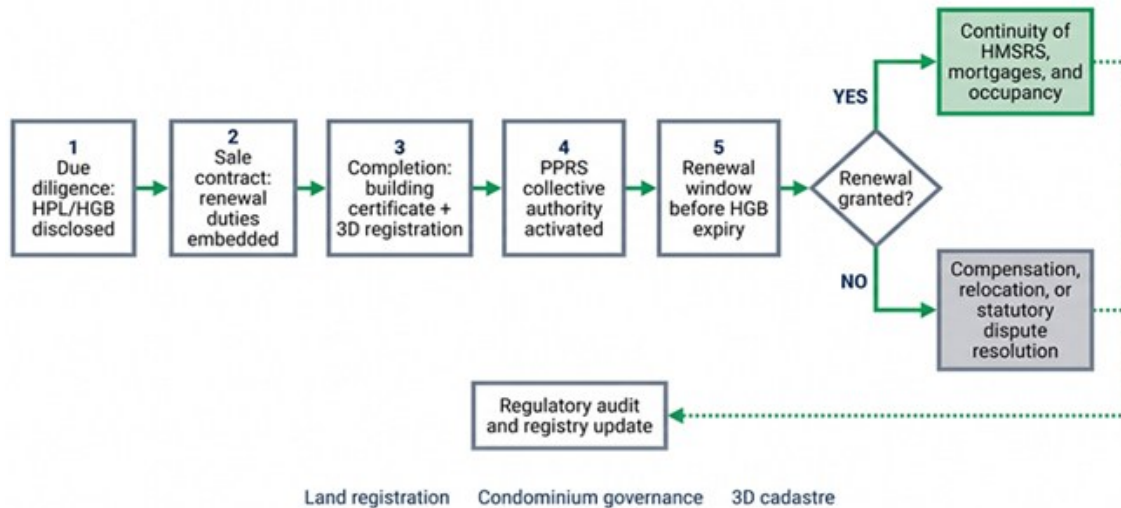
### *Reconstruction of Property Rights for HMSRS Towards Legal Certainty and Justice*

Reforming property rights for Horizontal Multi-Storey Residential Structures (HMSRS) in Indonesia requires a fundamental shift from the fragmented, temporally fragile regime based on time-limited Building Rights (HGB) over State Land (HPL) to a coherent, equitable system ensuring legal certainty and justice. The inherent vulnerabilities of HGB-based rights demand alignment with modern cadastral innovations and comparative apartment governance models to secure stakeholders' long-term interests.

A pivotal reform is adopting a three-dimensional (3D) cadastre system, which transcends traditional two-dimensional land registration by incorporating vertical spatial delineations. This enables precise demarcation of apartment units, common areas, and underlying land rights, facilitating horizontal separation of property interests in multi-storey developments (Paasch & Paulsson, 2021; Paulsson & Paasch, 2013).

Complementing spatial reform, robust Property and Property Rights System (PPRS) control mechanisms must regulate issuance, renewal, and transfer of strata titles, manage common property, and enforce compliance, thereby safeguarding unit owners and stakeholders. Crucially, statutory renewal safeguards addressing HGB's temporality are essential; explicit provisions must guarantee renewal contingent on regulatory compliance and public interest protection, consistent with Articles 28D(1), 28H, and 33(3) of the 1945 Constitution. This mitigates ownership disruption and stabilizes strata investments.

Decoupling building certificates from land rights further recognizes buildings as distinct immovable property, enabling independent registration and transfer of units, consistent with comparative property theory and Government Regulation No. 18 of 2021, which supersedes fragmented prior regulations. Figure 3 presents the proposed reconstruction as an administrable legal-policy sequence. Source: author synthesis based on Law No. 20 of 2011, PP No. 18 of 2021, and comparative 3D-cadastre literature.



**Figure 3.** Reform Workflow for Durable Apartment Tenure

Source: Author’s Analysis

The workflow is preventive because it intervenes before sale, at completion, and during the renewal window; it is also corrective because it provides a dispute-resolution and registry-audit loop when renewal fails. It therefore translates doctrinal reconstruction into a governance architecture capable of being implemented by legislators, land offices, developers, financiers, and PPRS bodies.

### Core Principles of the Reconstruction

Reconstructing property rights for apartment units erected on building rights land in Indonesia demands a fundamental reassessment of the legal principles governing the interface between horizontal property regimes and underlying land tenure. The prevailing HMSRS framework proves precarious when apartment units rest on HGB rights, particularly those granted over state land (HPL). This fragility stems from the temporal limitation of HGB—typically 20 to 30 years with possible renewal—which conflicts with the ostensibly perpetual nature of strata titles, generating legal uncertainty and undermining ownership security. The reconstruction must therefore address this tension through three core principles: abolishing the inseparable-unit fiction, instituting independent building certificates and a dedicated building cadastre, and legislating statutory extension or automatization of HGB renewal. These principles draw on comparative insights from Japan and Singapore and advances in three-dimensional cadastral theory to establish a coherent, resilient legal framework.

The first principle challenges the entrenched dogma treating apartment units as inseparable from the underlying building rights. Currently, strata titles are conceptually tethered to the time-bound HGB, creating a paradox: apartment purport perpetual ownership, yet the underlying HGB may expire, jeopardizing tenure security. Abolishing this fiction entails legally disentangling apartment units from HGB’s temporal constraints, recognizing them as autonomous property interests independent of land rights. This shift aligns with constitutional guarantees under Articles 28D(1) and 28H of the 1945 Constitution, protecting property rights and human dignity, and Article 33(3), mandating state stewardship of natural resources for public welfare (1945 Constitution). Severing apartment units’ legal dependency on HGB enhances owners’ rights, marketability, and mortgageability, fostering economic development and social equity (Chen & Kielsgard, 2014; Lehavi, 2015).

The second principle proposes establishing an independent building certificate (*Surat Kepemilikan Bangunan Gedung*, SKBG) alongside a dedicated building cadastre, creating a cadastral infrastructure tailored to strata developments' unique verticality. The SKB would certify the building's existence, boundaries, and ownership independently of land title, addressing the current land-centric registration's inadequacy in capturing volumetric complexity (Drobež et al., 2017; Ho et al., 2013). Complementing this, the building cadastre would spatially register apartment units three-dimensionally, reflecting their spatial relationships and ownership shares. This approach resonates with Japan and Singapore's advanced cadastral models, which integrate volumetric property rights into land administration for dense urban environments (Liu & Yang, 2025; Treffers & Lippert, 2020). Together, the SKB and cadastre enhance legal clarity, administrative efficiency, dispute resolution, and mortgage enforcement under Law No. 4 of 1996 and Government Regulation No. 18 of 2021. This principle aligns with contemporary theory advocating volumetric registration to accommodate urban land use realities.

The third principle addresses the temporal limitation of HGB by legislating statutory extension and automatised renewal. Presently, HGB renewal is discretionary and administratively burdensome, causing legal uncertainty and risk of rights loss upon expiration (Government Regulation No. 24 of 1997; Government Regulation No. 4 of 1988). Automatic or presumptive renewal would safeguard against arbitrary termination, stabilizing tenure for apartment units. This safeguard is crucial where HGB is granted over HPL land, subject to state management and policy shifts (Law No. 5 of 1960; Government Regulation No. 18 of 2021). Comparative practice, notably Singapore's leasehold system, supports renewal mechanisms preserving strata property value (Harris, 2016; Sherry, 2010). This principle also harmonizes with Article 33(3)'s constitutional mandate to balance individual property rights with sustainable, equitable land use for public welfare (1945 Constitution).

Together, these principles form a coherent framework for reconstructing strata property rights on building rights land. Abolishing the inseparable-unit fiction liberates strata ownership from HGB's temporal constraints

#### *Transfer of the Main HGB to the PPRS*

The transfer of the main *Hak Guna Bangunan* (HGB) to the Certificate of Ownership of Apartment marks a crucial legal development in Indonesia's governance of strata developments on land held under Building Rights. This transfer transcends procedural formality, addressing the inherent tension between the time-limited nature of HGB—typically granted for up to 30 years with extensions—and the perpetual ownership envisaged under Law No. 20 of 2011 on Flats (the Flats Law) and the Basic Agrarian Law (Law No. 5 of 1960). The conventional HMSRS regime proves fragile when applied to apartment units on HGB, especially over HPL land, necessitating a statutory mechanism to vest the main HGB in the collective strata owners via the PPRS.

Under the prevailing framework, developers initially hold the main HGB, which underpins the apartment units. However, retaining the HGB throughout sales creates legal dissonance, as the temporal limitation of HGB conflicts with the indefinite strata ownership rights. The Flats Law and Government Regulation No. 18 of 2021 (PP No. 18/2021) mandate transferring the main HGB to the PPRS once at least 60% of units are sold. This threshold safeguards collective strata owners' interests by aligning land rights with unit ownership, effectuating a horizontal separation of rights that mitigates risks from unilateral developer acts.

A critical procedural element is the partial roya (release) of the main HGB corresponding to sold units, extinguishing the developer's rights over those land portions and enabling the PPRS to hold the HGB free from encumbrances. Mortgage encumbrances, common as developers secure financing by mortgaging the main HGB, require discharge or creditor-approved assignment to the PPRS to preserve title integrity and strata owners' tenure security. Developers bear statutory duties to coordinate with mortgagees and facilitate orderly transfer, preventing legal uncertainty.

Post-transfer governance responsibilities fall to the PPRS, which must manage the main HGB in line with collective ownership principles, including land maintenance, tax obligations, and statutory reporting. Developers also have comprehensive disclosure and cooperation obligations, providing cadastral and building documentation and coordinating with the National Land Agency (BPN) to ensure proper registration, with non-compliance risking sanctions and title invalidity.

### **Limitations**

This study's examination of property rights reconstruction for apartment units on Building Rights (HGB) land in Indonesia faces inherent limitations that contextualize its findings amid evolving legal frameworks. The recent Government Regulation No. 18 of 2021 (PP No. 18/2021), superseding earlier regulations, introduces complexities yet to be fully integrated into doctrinal and empirical analyses. Doctrinally, reliance on statutory provisions and limited judicial interpretation of PP No. 18/2021 constrains the study, as its practical application remains nascent, particularly regarding horizontal separation of apartment units and issuance of independent building certificates. The proposed legal reconstruction advocating horizontal separation and statutory renewal safeguards thus remains normative, pending empirical validation and judicial endorsement. Ambiguities persist in the interplay between HGB over HPL and strata titles, complicating legal certainty within the Horizontal Multi-Storey Rights System.

Comparatively, the study's scope is limited by insufficient integration of international property theories, as Indonesia's constitutional mandates—Articles 28D(1), 28H, 33(3), and 34 of the 1945 Constitution—and the Basic Agrarian Law (No. 5 of 1960) emphasize social justice and communal land stewardship. This constitutional context restricts the direct applicability of foreign condominium models and Western property regimes. Empirically, data scarcity on apartment transactions, registration, and enforcement under PP No. 18/2021 limits assessment of statutory renewal safeguards and horizontal separation efficacy. Fragmented land records and nascent digitization further hinder robust analysis. Reliance on secondary data and doctrinal methods underscores the need for longitudinal empirical research.

### **Novelty/Contribution**

This study advances Indonesian property law by critically examining the legal complexities of constructing apartment units on land subject to time-limited Building Rights (HGB), often superimposed on State Land (HPL). Its novelty lies in exposing the fragility of the current Horizontal Mortgage Security Rights System (HMSRS) and proposing a comprehensive reconstruction that integrates horizontal separation, independent building certification, and statutory renewal safeguards. This approach reconciles statutory land tenure limits with the intricacies of vertical property subdivision, contributing to both Indonesian legal reform and comparative property theory.

A key innovation is the identification of the mandatory transfer of the “main” HGB as essential for the legal robustness of apartment units, challenging assumptions that apartment units can exist independently of the underlying land tenure. This requirement addresses a critical legal gap undermining apartment security, especially given renewal contingencies and overlays on HPL. It aligns with constitutional mandates on state control and property rights protection (Articles 33(3), 28H; Law No. 5 of 1960; Government Regulation No. 18 of 2021).

The study further proposes an integrated horizontal separation model combining building cadaster registration with the National Land Agency’s controls and the National Property Registration System, superseding fragmented regulations (Government Regulations Nos. 4/1988, 40/1996). This unified system recognizes apartment units as discrete legal entities, enhancing legal certainty and mortgageability, consistent with international best practices.

Legislatively, it advocates targeted amendments to Law No. 20 of 2011 and Law No. 5 of 1960 to codify the main-HGB transfer and integrated cadastral system, informed by comparative reforms in layered property regimes. These reforms align with Indonesia’s constitutional imperatives for equitable land use and social welfare (Articles 28D(1), 33(3), 34) and address tenure insecurity inherent in time-limited HGB.

## CONCLUSION AND RECOMMENDATION

### Conclusion

This study conclusively reveals that Indonesia’s current legal framework for apartment units built on time-limited Building Rights (HGB) over State Land (HPL) is inherently fragile, as the temporality of HGB—granted for fixed periods and subject to renewal—combined with its overlay on administratively contingent HPL, undermines the security and functionality of Horizontal Multi-Storey Rights (HMSRS). The conflation of land and strata rights into a vertically integrated property right fails to shield unit holders from risks tied to HGB expiration, contravening constitutional guarantees under Articles 28D(1), 28H, and 33(3) of the 1945 Constitution. While Law No. 20 of 2011 and Government Regulation No. 24 of 1997 formalize strata rights, they inadequately address the complex overlay of HGB on HPL, perpetuating reliance on Civil Code analogues ill-suited to Indonesia’s land tenure realities. Even the post-Omnibus Government Regulation No. 18 of 2021 offers improved integration but lacks explicit provisions to decouple apartment unit rights from precarious land rights. Therefore, this research advocates a paradigm shift toward horizontal separation, recognizing apartment units as independent real rights supported by autonomous building certificates and a dedicated building cadaster, a structural reform that disentangles proprietary interests in buildings from temporally limited land rights, thereby aligning with international best practices to enhance legal certainty and market fluidity. Complementing this, a robust Public Property Rights System (PPRS) control mechanism is essential to institutionalize statutory renewal safeguards, protecting unit holders’ interests upon HGB expiration and consistently upholding Article 34’s constitutional mandate to promote equitable housing.

### Recommendation

The current legal regime governing apartment units on *Hak Guna Bangunan* (HGB) land in Indonesia presents significant challenges, particularly due to the temporal limitations of HGB and its frequent establishment over *Hak Pengelolaan Lahan* (HPL) land. To ensure legal certainty, equitable ownership, and sustainable land use, a

comprehensive reform agenda is essential, grounded in Indonesian statutory context and comparative property theory.

Foremost, legislative reform must reconcile inconsistencies between the Basic Agrarian Law (Law No. 5 of 1960) and the strata title regime under Law No. 20 of 2011 on Flats. The existing framework inadequately addresses the temporal nature of HGB and its impact on strata ownership, undermining tenure security. Amendments should explicitly recognize horizontal separation of property rights in strata developments on HGB land, aligning with constitutional guarantees under Articles 28D(1) and 33(3) of the 1945 Constitution. Crucially, the law must allow apartment units to exist independently beyond the HGB's lifespan, mitigating legal uncertainty upon expiry or non-renewal.

Second, establishing a dedicated building registration system is imperative. Current land registration under Government Regulations No. 24 of 1997 and No. 18 of 2021 lacks mechanisms for independent registration of apartment units on HGB land. A parallel building cadaster would enable precise delineation of ownership and encumbrances at the unit level, enhancing transparency and dispute resolution. This aligns with international best practices emphasizing spatially accurate, legally recognized building registries. Implementation requires the National Land Agency to develop technical standards and integrate digital cadastral mapping with existing registries.

Third, mandatory transfer of HGB to Property Rights of Strata Title (PPRS) holders upon strata acquisition must be institutionalized. The absence of compulsory transfer fragments ownership and exposes strata owners to loss of rights upon HGB expiration. Mandating transfer consolidates ownership, granting strata owners enforceable rights independent of the original HGB holder, consistent with constitutional protections under Article 28H and principles of legal certainty.

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