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Legal Protection for the Holder of Strata-Title Certificate on Shared-Land from the Perspective of Legal Certainty

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ABSTRACT

This study uses the normative juridical method with secondary data as the main source which is supported by primary data. Primary data is data obtained directly from resource persons who are considered to know all the necessary information in research. Interview method is used in collecting primary data by interviewing some respondents about the facts that exist and opinions of respondents. Sources of data are grouped into three materials include primary legal materials, secondary legal materials, tertiary legal materials. The data collection techniques are completed through library research (books and information) that discuss the issues being studied and some court decisions. The results of this study indicate that Law no. 20 of 2011 concerning apartment has not set firmly and detailed, regarding the subject of the transfer of shared-land titles. Thus, in this study, it can be concluded that the transfer of the shared-land titles does not have legal certainty to whom to switch, whether on behalf of the Association of apartment resident, or under the name of developer. The suggestion is that an amendment to Law no. 20 of 2011 should be carried on as a form of explicit regulation for the shared-land title transfer procedure to create legal certainty for SHMRS holders regarding the land transition process.

Keywords: apartment, legal certainty, legal protection, shared-land certificate, strata-title holder.

1. Basic consideration

Legal protection for the holder of strata title certificate on a shared-land is one of the aspects in its relation with how a country fulfills the prosperity of its residents from a law perspective. A resident as an individual and member of society lives among others and socializes with other humans.

Aristotle, a Greek philosopher, mentioned this reality in Utrecht's Introduction to Indonesian Law. He argued that human is "zoon politikon",[2] which means human as a social being has to live prosperously. This is in accordance with Indonesia philosophy and vision in *Pembukaan UUD 1945* (the Opening of the 1945 Constitution), and also in Jokowi and Jusuf Kalla's program in 2014 about NawaCita (Jokowi's nine programs) which affirmed:

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[2] Utrecht, *Pengantar Dalam Hukum Indonesia* (an Introduction to Indonesia Law), Jakarta: Ichtiar 1996, p. 8.

> "Jati diri dan identitas kita sebagai sebuah bangsa yang merdeka dan berdaulat. Pembukaan UUD 1945 dengan jelas mengamanatkan arah tujuan nasional dari pembentukan Negara Kesatuan Republik Indonesia (NKRI) untuk melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia, memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan melaksanankan ketertiban dunia berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial". The passage translates literally as "our identity as an independent and sovereign nation. The Opening of the 1945 Constitution clearly mandates the national mission from the establishment of *Negara Kesatuan Republic Indonesia* (Unitary State of the Republic of Indonesia) (NKRI) to protect the whole nation and the people, and to develop general prosperity, educate the nation, and enforce world order based on freedom, eternal peace and social justice[3]".

That vision, the way to Indonesian sovereignty, independence, and personality, is based on mutual cooperation will be achieved through its mission, such as on the 4th point: a way to achieve the high, advance, and prosperity life quality of Indonesia citizens.[4] The effort of Jokowi-Jusuf Kalla is in accordance with article 28H section (1) and section (4) of the 1945 Constitution. The article 28H section (1) of the 1945 Constitution states that

> "setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan". ("Every individual has the s to live prosperously, s to have a home, good and healthy living environment, and also s to have a health care and services").

Meanwhile, section (4) of the 45 Constitution states that: *"setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapapun"*. ("Every individual has right to own a private property and that not to be arbitrarily taken"). Public welfare through housing development is dealing with some challenges. Those are: the increase of population growth, and urbanization in some regions, such as: in urban areas.

Direct effect faced by the government is the decrease of available lands for residents which leads to competition over houses that becoming another issue. Because of the incapability of low-income community to afford a house, slum areas develop and social problems as well. From the aspect of convenience and health, those places are inhabitable, but due to economic condition, they have to stay and survive at those places.

Government as leader of the state, determine public welfare in politics of law related with housing development to overcome that issue. Housing is built vertically such as apartment and condominium. It will double-up land supportive capacity in urban areas. This is suggested by the experts that apartment development is an effective way to solve housing problems in populated areas where the population increases and the land area is limited.[5]

Fulfilment on housing is a national problem affecting all regions in Indonesia. It can be seen from the high amount of Low-Income Citizens (*Masyarakat Berpenghasilan Rendah*) and is referred to here as MBR, who cannot afford to live in decent housing, especially in urban area that leads to the growth of slum area. The fulfilment of demand for housing succeeded through apartment development as part of housing development considering the limitation of land in urban areas. The development of an apartment is expected to be a booster for urban development and also to become a solution for housing quality development. To guarantee the right responsibilities in apartment development, Law No. 20 of 2011 concerning apartment was enacted. This law was passed based on the consideration,[6]

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[3] Jokowi's and Jusuf Kalla's vission and mission for presidential election 2014

[4] *Ibid*, p.6, describes the efforts to achieve the vision of Indonesian sovereignty, independency, and personality based on mutual cooperation will be pursued through Mission: 1. Devoting national security that capable to maintain regional sovereignty, sustain economic independence by securing maritime resources, and reflecting the personality of Indonesia as an archipelago 2. Creating a balanced and democratic developed society based on the constitution.3 To achieve a nonaligned foreign policy and to strengthen nation's identity as a maritime nation.4 To achieve the high quality of human life and prosperity of Indonesia 5. Achieve a competitive nation. 6. Promoting Indonesia as an independent, advanced, strong, and a maritime-based nation 7. Promoting a community that have strong personality in local culture.

[5] Ari S Hutagalung, *Condominium dan Permasalahannya*, Jakarta: Badan Penerbit Fakultas Hukum UI, 2002, p. 77.

[6] Pertimbangan dibentuknya Undang-Undang Nomor 20 Tahun 2011 tentang Rumah Susun, huruf a sampai dengan huruf d.

that every individual has the right to live prosperously, right to have a home, good and healthy living environment, and also right to have a health care and services as human basic needs, and play strategic role to form nation's character and personality as an effort to develop Indonesia citizen that is independent, productive, and have self-identity.

That nation has a responsibility to protect Indonesia in housing development through decent apartment development program for sustainable, harmonious, safety, and healthy life in all regions of Indonesia. That every individual can participate to fulfill their needs for housing through the development of decent, sustainable, affordable, and safe apartment that can be fulfilled by the nation as its responsibilities to provide affordable housing for its citizens.

As an underlying implementation, Law No 16 of 1985 concerning Apartment is no longer irrelevant with legal development which is necessary for every individual, citizens' participation, and responsibilities and obligations of the State in the implementation of apartment development. Thus it has to be revoked and replaced with Law No. 20 of 2011 concerning apartment. In the ownership of an apartment, there is a right to own a strata title apartment unit that is known as *Hak Milik Atas Satuan Rumah Susun* (referred to as HMSRS) which is a new form of ownership as a property, which consists of individuals over apartment units and collectives to land, shared objects and common room/shared part as an integral entity.[7]

The ownership of an apartment is based on theories regarding the ownership of an object, as stated by the law that an object or building may be owned by one or more persons that is known by the term: shared ownership. To ensure the separation of ownership between shared ownership and individual ownership, according to the article 25 Law concerning apartment[8]. Fulfilment on housing is a national problem that affects all regions in Indonesia. It can be seen from the high amount of Low-Income Citizens (MBR) who cannot afford to live in inhabitable housing, especially in urban area that leads to the growth of slum area. The fulfilment of demand for housing succeeded through apartment development as part of housing development considering the limitation of land in urban areas.

This law creates a firm legal basis with related to the implementation of apartment development based on the principles of welfare, equity, nationality, affordability and convenience, efficiency and effectiveness, independence and togetherness, partnership, harmony and balance, integrity, health, sustainability, safety, comfort, and regularity. Furthermore, the implementation of apartment development projects aims to ensure the realization of affordable housing, improve the efficiency and effectiveness of space utilization, reduce the extension and prevent the emergence of housing and slums, direct urban development, meet social and economic needs, empower stakeholders, and provide legal certainty in the provision, ownership, management, and the ownership of apartment.

In other words, the developer relinquishes the ownership of common objects, shared ownership and shared the land. In reality, the purpose of the establishment of Law No. 20 of 2011 concerning the apartment has not been achieved optimally. It is caused by the absence of legal certainty due to be subject to various rules, and also by its relation to the strata title ownership.

Originally the property right of apartment units which is built on the shared land and in accordance with *Hak Guna Bangunan* (rights to build), which is referred to as HGB, is held by the developer, but after the transaction between the developer and the buyer, SHMSRS and the HGB title must be title transferred to the buyer or PPRS (*Perhimpunan Penghuni Rumah Susun*) (the Association of Apartment Residents), because *Hak Milik atas Tanah Bersama* as referred to shared-land title become the asset of the Association of Mixed Apartment Residents of ITC Roxy Mas. Holders of strata title certificate on shared-land after the expiry of the period of HGB is unprotected by the law.

This is reflected in the lawsuit filed by some members of Association of Apartment Residents of the ITC Roxy Mas (PPRS). The PPRS of ITC Roxy Mas legalized by the Governor of DKI Jakarta Number 1240/1999 May 3rd, 1999. This case began when 733 holders of SHMSRS who are the members of the Association of ITC Roxy Mas Resident (*Perhimpunan Penghuni*) (Perhimni) wanted to extend the HGB of shared-land in May 2004. Some owners of the ITC Roxy Mas unit became upset; they felt they were not

[7] Ira Sudjono, *Rumah Susun* (Apartment) Jakarta: GMT Property Management, 2007, p. 18.
[8] Indonesia, Law No 20 of 2011 concerning apartment (Gazette of the State of Republic of Indonesia 2011, Gazette of the State of Republic of Indonesia No 5252).

informed by the management of Duta Pertiwi because when they bought the ITC Roxy Mas unit, Duta Pertiwi never informed potential buyers that the ITC Roxy Mas shared-land could be title transferred to the buyers.

In reality the fact shows that the extension of HGB was given to Duta Pertiwi. This is reflected in the Decision of the Head of Regional Office of the National Land Agency of the Special Capital Region of Jakarta Number 026 / 15-550.2-09.01-2004 concerning the Extension of HGB on behalf of Limited Company, PT. Duta Pertiwi is based in Jakarta, Central Jakarta Municipality.

It is in contrast with another fact with the same issue of the extension of Hak Guna Bangunan, since the National Land Agency of the Central Jakarta Land Office through the Decision of the Head of the Central Jakarta Land Office No. 01/01 / 550.1-09.01-2008 has decided to grant an extension of HGB to 134 holders of strata title ownership. These facts lead to legal uncertainty, to whom the extension of the HGB shall be granted, to the PPRS who represent the owners or to the Duta Pertiwi, as the consequences, the owner or buyer or PPRS who represents them feel unprotected by the law. So based on the matters above, research about **"LEGAL CERTAINTY OF THE STRATA TITLE HOLDER (SHMRS) ON SHARED LAND"** has to be conducted.

1.1 Problem identification

Based on the basic consideration above, the problem identification can be formulated as follow:
How is the legal certainty of the holder of strata title certificate on shared-land that is regulated in Law Number 20 of 2011 concerning apartment?

1.2 Purpose and benefits of this paper

Based on the formulation problem identification above, the purpose of this paper is:

1. To determine how is the legal certainty of the holder of strata title ownership on shared-land that is regulated in Law Number 20 of 2011 concerning apartment?

This study is expected to provide the following benefits:

1. Theoretical Purposes

The results of this study are expected to be a contribution of thought to science in the field of law primarily related to land or property.

2. Practical Purposes

a. Provide some answers to the issues being studied

b. The results of this study are expected to be used as a reference that provides information for apartment developers, apartment buyers and policymakers in the field of apartment projects.

2. Methodology

This research is part of normative legal research; therefore this research will use normative research method.[9] The subject matter will be examined in a juridical normative and empirical juridical. This study consists of the following elements:

2.1 Approach

The approach used to do this research is the juridical approach; the study of laws that regulate the legal protection for the holder of strata title certificate on shared land.

2.2 Nature of study

This research is analytical descriptive.[10] Descriptive research is a study that aims to describe a situation that occurs in a particular place or a symptom and also specific events that occur in society in

[9] Soerjono and Sri Mamuji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (A Research of Normatif Law, a Brief Review) Jakarta: CV. Rajawali, 1990, p. 15.

[10] According to Indonesian Dictionary, "*analitis*" (analisistis) means analytical. Meanwhile the meaning of analysis is "the process of solving problems that begin with the presumption of the truth". See Sulchan Yashin (Ed.) *Kamus Lengkap Bahasa Indonesia (KBI-Besar) Serta; Ejaan Yang Disempurnakan dan Kosa Kata Baru* (Indonesian Dictionary (The Great KBI) also: The Enhanced Indonesian Spelling System and New Vocabulary) (Surabaya: Amanah, 1994), p. 34.

the context of research.[11] This paper thoroughly describes the legal protection of the holder of strata title certificate on shared land.

2.3 Types and data sources

Secondary data is used in this paper as the primary source which is supported by primary data. Primary data is a data obtained directly from informants who are considered to know all the necessary information for this research, in the form of practical experience and opinion of the subject of research about everything related to the legal protection of the holder of strata title certificate from the perspective of legal certainty.

3. Law Number 20 of 2011 concerning apartment

Some issues related to land in Indonesia has gained an extensive and deep attention among Indonesian people. Article 19 of the Basic Agrarian Law (*Undang-Undang Pokok Agraria*), referred to as UUPA, instruct the execution of land registration to ensure legal certainty. The land registration is further regulated by Government Regulation No.24 of 1997 on Land Registration throughout Indonesia. The Government of Indonesia has enacted Law no. 20 of 2011 concerning apartment. The UURS (*Undang-Undang Rumah Susun*) that is Law concerning Apartment, has been supplemented by several implementing regulations, including:

1) PP (*Peraturan Pemerintah*) or Government Regulation Number. 4 of 1988 concerning apartment.
2) Government Regulation Number. 24 of 1997 concerning Land Registration
3) Regulations of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 on the Implementation of Government Regulation Number 24 of 1997.
4) Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 9 of 1999 concerning Procedures for the Granting and Cancellation of State Land Title and to Manage.
5) Government Regulation Number. 28 of 1977 concerning *Perwakafan* (endowment).
6) Government Regulation Number. 24 of 2016 concerning PPAT (*Pejabat Pembuat Akta Tanah*) that is Land Deed Official.
7) Government Regulation Number 40 of 1996 concerning (*Hak Guna Usaha*) Right to Exploit referred to as HGU, HGB, (*Hak Pakai atas Tanah*) Right to Use the Land.

After implementing for almost 26 years, on November 10th, 2011 Law no. 20 of 2011 that replace Law No. 16 of 1985.

Law No. 20 of 2011 concerning apartment is a replacement for the previous law which is law no. 16 of 1985. It consists of 120 articles, however in this research I will not describe the entire contents of the law, but some articles are firmly related to this research, such as GENERAL PROVISIONS of CHAPTER I, Article 1. In this Law the meaning of:

1) An apartment is a multi-storey building constructed in a neighbourhood that is divided into functionally structured sections, both horizontally and vertically, and is units that each part can be owned and used separately, especially for shelters equipped with common properties such as: shared room/common area, shared object, and shared land.
2) The shared-land is a plot of land title or leased land for buildings used on the basis of collective titles, on which there are apartments whose borders have been established in the requirements of building permits.
3) Shared room/common area is an indivisibly shared floor for shared use in a functional unit with apartment units.
4) A shared object is an object that is not a part of an apartment but is a shared part indivisibly for shared use.

Article 46

(1) Ownerships of apartment units are the property s of separate individual apartment units with collectives over the common area, shared objects, and shared and.

(2) The s to own common area shared objects, and shared-land as referred in paragraph (1) shall be calculated on the basis of the NPP.

[11] Abdul kadir Muhammad, *Hukum dan Penelitian Hukum* (Law and Research of Law) (Bandung: Citra Aditya Bakti, 2004).

4. The procedures of apartment ownership

Apartment ownership is known as *Sertipikat Hak Milik atas Rumah Susun,* Strata Title Apartment Ownership, (referred to here as SHMRS). SHMRS is a form of ownership granted to the holders of strata title apartment. The type of property should distinguish this form of ownership to homes and land in general. Article 46 Law No 20 of 2011 concerning apartment (UU Rumah Susun) state that:

> *"Hak kepemilikan atas satuan rumah susun merupakan hak milik atas satuan rumah susun yang bersifat perseorangan yang terpisah dengan hak bersama atas bagian bersama, benda bersama, dan tanah bersama."* (Property rights of apartment units is to own of strata title apartment with collectives over the common area, shared objects, and shared land).

In relation to the collective s of common room, shared objects, and shared land that is closely linked to the ownership of these units. Erwin Kallo et al. in a book entitled Legal Guide for Owners / Residents of Apartments (Condominiums, Apartments, and Rusunami), explains that individual ownership is the property of a person who has purchased a unit of apartment units.

Upon the purchase of the apartment by the developer to the interested buyer through the sale and purchase agreement made by PPAT, the sold HMSRS is transferred to its new holder. HMSRS in addition to granting the to own a strata title apartment unit to its holder, also grants the s to common room, shared objects and shared lands as an integral part of the apartment units, which amount are based on the NPP specified and listed in the certificate. The sale and purchase agreement shall be registered to the Regency / Municipal land registry office.

Registration shall be carried out by enclosing notes on sale and purchase which have been recorded on the *Buku Tanah* (Land Record) and the SHMSRS concerned with the deletion of the old HMSRS holder's name, then submitted to the buyer. By deleting the name of the old HMSRS holder and the inclusion of the buyer's name as the new HMSRS holder, the buyer has officially owned the apartment unit. After the apartment units are sold, then the owners and/or the apartment owners must form Perhimpunan Penghuni (the Association of Apartment Residents) as regulated in Article 74 paragraph (1) of Law Number 20 of 2011.

The Association of Apartment Residents is in charge of maintaining the regularity, security, and tranquillity of the apartment environment because basically, although each unit is owned by different parties but there are parts, objects, and shared land whose management requires the cooperation of all owners and residents of the apartment units. The Association of Apartment Residents was formed by a deed passed by the Regent or Mayor of the Regional Level II, and specifically Jakarta by Provincial Governor I.

The Association of Apartment Residents is a legal entity and may represent residents in committing acts of law both within and outside the Court.[12] All owners and residents of apartment units are members of the Association of Apartment Residents, and their voice should be counted in taking decisions regarding the apartment. The committee of the Association of Apartment Residents is selected on the basis of familial principles by and from members of the Association of Apartment Residents through a special meeting of the Association of Apartment Resident that is held for that purpose. However, during the sale of apartment units, the developer shall act as the board of the Temporary Association of Apartment Resident while assisting in the preparation of the establishment of a permanent Association of Apartment resident as articulated in Article 57 paragraph (4) of Government Regulation Number 4 of 1988.

After the Association of the Apartment, Resident is formed if there are apartment units still owned by the Developer, the status of the Developer shall be the holder of the HMSRS or the occupant, as well as the HMSRS and/or other occupants. The rights and responsibilities of the developer are the same as the rights and obligations of other HMSRS holders. The Developer is obliged to comply with all regulations made by the Association of Apartment Resident and is also bound to pay the management fee for the apartment units that belong to the developer. In order to carry out the management of the whole apartment, the Association of Apartment Resident may appoint the Management Board or establish its own Management Board.

[12] *Government regulation no. 4 of 1988 concerning apartment, article 54 (3).*

If the Association of Apartment Residents appoints a third party as a Management Board, then the Management Board must be a legal entity and a professional. This management board will carry out tasks such as maintaining the regulation of the apartment then periodically reporting to the Association of Apartment Resident. Apartment in Indonesia is built by private legal entities, so the status of the land where the apartment is built is HGB title or Right to Use title. If the term of the land title will expire, according to Article 52 of Government Regulation Number 4 of 1988, the residents through the Association of Apartment residents are the parties who must file a permit for an extension or renewal of rights to own the land. It should also be noticed and prepared by the Association of Apartment Residents in advance.

In the beginning, the right to own a Strata Title Apartment certificate and Land Record of Strata Title Apartment is entirely under the name of the Developer. Meanwhile, the issuance of a number of Certificates and Land Records resulted in the keeping of Shared Land Title certificate in the Land Registry Office, the recording is also done on the Certificate and Land Records of Shared Land, as regulated in Article 8 of KBPN Regulation Number 4 of 1989 which state that:[13]

(1)If the status of the apartment has been separated into strata title, and the certificate has been issued, then the certificate of land title) must be kept in the Land Registry Office as *warkah* (register/waarmerking) (2) The Land Record as well as the certificate of shared land title as referred to paragraph (1): The certificate of shared land title must be kept in the Land Registry Office as *warkah* (register / waarmerking) according to the Head of Legal and Public Relations Centre of the National Land Agency of the Republic of Indonesia, Sri Maharani, intended as a protection so that the developers can not misuse the certificate of shared land title, for example, to make the land as collateral in the bank or to sell the land after SHMSRS is issued, because the developer does not hold a certificate of shared land title as a proof of his juridical control over the land to be transacted or collateralized.

This arrangement is necessary because HMSRS is issued after the land record is created, in addition SHMSRS also includes right to own a land which is proportionally shared for each HMSRS. Thus, after the SHMSRS and its land records are issued, the certificate of shared land title is no longer a proof of the holder of shared land title. The proof of the holder of shared-land title is on SHMSRS which is issued for the land. The issuance of SHMSRS does not cause the termination of the certificate of shared-land title, since the registration number of the certificate will be written on section C of the whole certificate and land records of HMSRS of that land. Therefore, the certificate of shared-land title is used as a reference to prove the existence of the land and the apartment. Based on that matter, with the proof of listing of SHMSRS issuance of the Certificate of shared-land title, the buyer of the apartment unit automatically becomes the holder of the shared-land title and the apartment after the SHMSRS is being transferred under the name of the provider to the buyer's name.

The rights of a buyer as the new holder of SHMSRS of a shared land is equal to *Nilai Perbandingan Proporsional* (Proportional Comparison Value) (NPP) written in the certificate. However, the listing of the certificate of shared-land title after the SHMSRS is issued is not very clear, reflecting the fact that all SHMSRS holders will become holders of shared-land title. As regulated in Article 8 of KBPN Regulation Number 4 of 1989, only a note that indicates that an amount of SHMRS of a shared land with certain registration number has been issued.

In addition, if SHMSRS is transferred to another party, for example, due to sale and purchase of apartment units, the change of the holder's name is only recorded on land records and SHMSRS, not on land titles and certificate of shared-land title, so there will be different names of the holders of shared-land title listed on their certificates with those recorded in SHMSRS.

The inconsistency of regulation can lead to different perceptions by either developer or the officials of Land Registry Office in some Indonesia regions, although logically it should be simply concluded that with the publication of SHMSRS, the shared-land title immediately switches to the HMSRS holder listed in the certificate.

Therefore, after the SHMSRS is transferred under the name of the buyer and the Association of Apartment resident is formed, the association should prompt a request to the local office of Land Registry Office to record the names of the new holders of the HSMRS in the Land Records and the

[13] National Land Agency of Republic of Indonesia, op. cit., Article. 8.

Certificate of shared-land title. This matter is reinforced to make sure that there will be a no different perception that triggers the dispute. As a comparison, the process of title transfer from the apartment developer to its buyers should follow the example of the transfer of the s from a home developer to their buyer.

In the regulation of the apartment, after the SHMSRS is issued, there is no separation of the titles as in the regulation of the house in general, so that the certificate of shared-land title remains in effect. However, because there has been a shared ownership of the land which causes the holder of land title to change from the developer to all SHMSRS holders, it should also be noted that: with the issuance and transfer of a number of SHMSRS to the name of the holder of HGBas stated in the Certificate and the Land Records of the shared-land title is no longer valid, and the new holders of shared-land title are SHMSRS holders as written on their NPP.

Therefore, the Certificates of shared-land title is used only as a proof of some kind of titles which is granted to some lands, in the form of Right-to-Own title, HGB title, or Right-to-Use title. With some clear regulation like this, there will be no different interpretation and confusion either on the side of the National Land Agency or civil society as the buyers of apartment units. Article 52 of Government Regulation Number 4 of 1988 regulates the extension of *hak atas tanah rumah susun* (Land of Apartment title). The article states that:[14]

> (1) Sebelum Hak Guna Bangunan atau Hak Pakai atas tanah Negara yang di atasnya berdiri rumah susun sebagaimana dimaksud dalam pasal 38 haknya berakhir, para pemilik melalui perhimpunan penghuni mengajukan permohonan perpanjangan atau pembaharuan hak atas tanah tersebut sesuai dengan peraturan perundang-undangan yang berlaku. (Prior to the HGB title or Right to Use Land of the State on which the apartment built as mentioned in Article 38 ends, the owners through the association of apartment resident must apply for the extension or renewal of such titles in accordance with the prevailing laws and regulations).
>
> (2) The Issuance of extension or renewal of land title as referred to paragraph (1) is regulated by the Minister of Home Affairs.

Article 47 of Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24 year 1997) regulates that registration to extend the term of *Land title* is completed by recording it on the land records and the certificates of the title, based on the decision of the Authorized Officer to grant the extension of the term of title.[15] In this case, the authorized officer refers to who decides the grant of the title when *Land title* is applied for. The application for extension and its files are submitted to the Land Registry Office of the Regency / Municipality.

An extension for HGB title must be applied no later than two years before the expiry of the period of HGB title, as well as its renewal which must be filed no later than two years before the HGB title renewal period ends as regulated in Article 27 Government Regulation Number 40 of 1996. If shared-land title expires, then it will be terminated, and as such, the HMSRS attached to it will also be terminated. Therefore, it is essential for the Association of Apartment Resident to know when the term of shared-land title ends in order to be renewed soon. Although the issuance of SHMSRS means that the status of shared-land title holders are transferred from the parties listed in the Certificate of shared-land title to the parties listed in the SHMSRS, the extension process for shared-land title still requires the Certificate of shared-land title which is kept in the Land Registry Office.

This is because in column c of SHMSRS on its First Registration page, the proof of shared-land title still refers to the Certificate of shared-land title. In summary, in the case of extension of Land of Apartement Title, the association must submit an Application for Extension of *Land title* to the local Land Registry Office, with the Memorandum of Association and Articles of Association of Apartment resident which have been authorized by the competent authority. Subsequently, the Land Registry Office will collect the required documents such as: application letter, a copy of the Memorandum and Articles of Association of the Apartment Residents, *Risalah Pemeriksaan Tanah* (Report of Land Checking) (*Konstatering Rapport*), photocopy of the Situation Pictures/Photos, photocopy of the certificate of shared-land title, and Certificate of the Status of the Land.

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[14] Government Regulation Number 4 of 1988 regulates the extension of hak atas tanah rumah susun of Indonesia Land of Apartment Title) 52.

[15] Government Regulation Number 24 of 1997 concerning Land Registration of Indonesia Article 47.

As regulated in article 130 of PMNA / KBPN Number 3 of 1997, the extension of land title does not change the number of the title. Similarly, in the explanation of Article 47 of Government Regulation No. 24 of 1997, it is said that the extension of the term of a title will not eliminate or terminate the title. In other words, the granting of an extension of the land title along with their records on land records and land certificate will not cause the transfer of land title. There will be a statement on certificate and land records that the period of the land title has been extended.

This is not an issue for the extension of land titles in general, but it is a different case for the land title of SHMSRS. The problem is raised when there is an inconsistency regarding the recording of transferring the holder status after the SHMSRS is issued and converted from developer to the buyer on the certificate of shared-land title.

After the SHMSRS of shared land, land records and, the certificate of shared-land title are issued, then the record is made. However, there is no regulation in any legislation regarding the recording that by transferring the SHMSRS of the shared land, the holder status of the shared-land title is converted from the name listed in the Certificate of shared-land title to the HMSRS holder whose name is listed in the SHMSRS. The absence of strict regulation regarding the recording of shared-land title transition after SHMSRS is transferred can lead to differences in perception, especially with regard to who the holders of shared-land title when the extension of the title should be done.

The preparation of SHMSRS is constrained by the absence of regulation from Law Number 20 of 2011 concerning apartment, which is the lack of Regional Regulation which as a basis in Local Government to legalize the post that shows the clear boundaries of each apartment unit, common room, shared object and shared land along with a description of the comparative proportional ratio. Similarly, with the separation agreement, but the local government has no legal basis to make the ratification because there is no Local Regulation on Apartment. After the Local Regulation is issued, the registration of HM of Apartment Unit still cannot be done. This is due to the separation of ownership of the HGB title, while the registration of *HM Sarusun* (strata title) is required as the core of *Land title*.

To be able to register the certificate of strata title, there must be a certificate of *land title* either in the form of property rights, HGB title or right to use and management title. Especially for management title, its status related to *Land title* must be completed first, which is the HGB title on the land of management title. Some of the things that must be fulfilled are a separation agreement which includes the value of proportional comparison. This agreement must be legalized by local authorities. Also have to include *Ijin Layak Huni* (Occupancy Worthiness Permit), the picture of division, details of division, the decree of division, and separation agreement. Location permit, site plan, reference to city plans. IMB (Building Permit), applicant ID card, and memorandum of association.

The application of the horizontal separation principle in the current legal framework should not be absolutely applied to any cases. Regarding this matter, case by case needs to get special consideration, to determine whether the applicable law provisions on the land also apply to the building on it. Therefore, it is suggested to all related parties, the City Government and the National Land Agency, both municipal level in this case the Land Registry Office to negotiate by establishing a special implementation regulation on this case with regard to all parties so that no one feels harmed. This implementing regulation may be the Regulation of the Head of the National Land Agency of the Republic of Indonesia, the Decree of the Head of the National Land Agency of the Republic of Indonesia or simply a Circular Letter, which may be the basis for all parties to resolve the problems. In principle, the Division and the Separation Agreement are made by the apartment developer, and authorized by the Authorized Officer; however, it is recommended that the Land Registry Office officers provide guidance so as not to cause problems

The provisions concerning the Extension of HGB title may be found in Article 26 of Government Regulation Number 40 of 1996 concerning *Hak Guna Usaha,* HGB title *Dan Hak Pakai Atas Tanah* which state that: HGB title of State Land as referred to Article 22, upon the application of the title holder may be renewed, if eligible:

a. The land is well-used in accordance with the circumstances, nature, and the purpose of the entitlement;
b. The terms of entitlements are well-fulfilled by the title holder;
c. The title holder still is qualified for the holder of the title as referred in Article 19.
d. The land is in accordance with the Regional Spatial Plan.

e. The HGB title on the land of management title is renewed upon the application of the holder of HGB title after obtaining approval from the holder of management title. Furthermore, Section (1) of Article 27 stated that:

> "Permohonan perpanjangan jangka waktu Hak Guna Bangunan atau pembaharuannya diajukan selambat-lambatnya dua tahun sebelum berakhirnya jangka waktu Hak Guna Bangunan tersebut atau perpanjangannya". ("The application for renewal of the HGB title must be filed no later than two years before the expiry of the period of HGB title or its extension").

From the provisions described above, it can be seen that basically, the regulation concerning HGB title has a concrete legal basis. The relationship between issuance of land certificate and legal certainty is a causal relationship. Government Regulation No. 24 of 1997 has established a better legal certainty than PP No. 10 of 1961. PP No. 10 of 1961 does not specify a time limit for a third party to sue the owner of the land certificate, while Article 32 paragraph (2) of PP 24 of 1997 prescribes the deadline for a third party to sue, i.e. 5 (five) years after the issuance of the certificate. Only a certificate under 5 years that may be claimed for ownership or control over the land title of the certificate holder, if it has evidence which has legal force. The above provisions are affirmed in Article 32 of Government Regulation no. 24 of 1997 which state that:

1) The certificate is a proof of the title that applies as a strong proof of the physical data and juridical data, as long as the data is in accordance with the data contained in the survey certificate (*Surat Ukur*) and land records of the title.

2) If the certificate of a plot of land has been issued legally on behalf of the person or legal entity obtaining the land in good faith and in actual control, the other party who assumes that land title is his property, can no longer claim that title, if within 5 five years since the issuance of the certificate, he has not filed a written objection to the holder of the certificate and the Head of the Land Registry Office or has not filed a lawsuit with the Court regarding the control of the land or the issuance of the certificate.

Legal protection provided by legislation and cooperation agreements only exist when the term of HGB title on the land of management title is still valid. As stated in Article 32 of Government Regulation Number 40 of 1996 that:

> "Pemegang Hak Guna Bangunan berhak menguasai dan mempergunakan tanah yang diberikan dengan Hak Guna Bangunan selama waktu tertentu untuk mendirikan dan mempunyai bangunan untuk keperluan pribadi atau usahanya serta untuk mengalihkan hak tersebut kepada pihak lain dan membebaninya." ("The Holders of HGB title have the rights to control and use the land granted with HGB title for a specified period of time to establish and own the building for personal or business purposes and to transfer the s to other parties and incur the expenses."

Although there are some restrictions on transferring such titles to other parties and the burden of obtaining written approval from the first party as the holder of management title. Land of HGB title over the land of management title controlled by Local Government after the period of HGB title expired is terminated because the cooperation agreement of Local Government does not give space to the third party to extend or renew its titles.

The conflict occurs when the time period of HGB title on the land of management title ended due to:

1. Lack of the information to third parties on the legal provisions of land titles of HGB title on the land of management title.
2. Lack of understanding of third parties concerning cooperation agreements between Local Government and Developers.
3. When there are a transfer and imposition of the title, there is no recommendation or permission from the local government / municipal government as the holder of management title. This license is not requested to be completed by PPAT or the local Land Registry Office when registering the title transfer or *Hak Tanggungan*.
4. The absence of permission from the local government / City Government, of course, disconnects the information that the land has a period of time as listed in the certificate without a request for renewal, improvement or renewal of the title.

5. In the absence of such information, the third party considers that the land of HGB title on *the* land of management title have the same provision as the land of HGB title on the State Land which may be requested for an extension, and renewal for the title.

From the description above, the cooperation agreement that is undertaken by the Government and the Developer basically only binds both parties. First Party, in this case, is the Regional Government has an obligation to provide land under construction, while the Second Party is the Developer must build, operate and then hand it back to the landowner (in this case the Local Government) after the agreed period has expired. The period of HGB must be calculated by the Land Registry Office since the issuance of the certificate of management title with No. of management title 1/Mangga Dua Selatan on behalf of the Government of the Special Capital Region of Jakarta. In Article 35 Paragraph (1), (2) UUPA, the period of HGB title is set at maximum 30 years and can be extended at maximum 20 years.

5. Conclusion

That legal protection for holders of strata title apartment certificates as regulated by Law no. 20 of 2011 concerning apartment only to the extent that the period of the HGB title has not expired, but when the HGB title has expired, there is no article in Law number 20 of 2011 concerning apartment which regulates to whom the shared land will be transferred, and how the procedure of transfer is not regulated explicitly and in detail, as well as in other regulations related to the apartment, there is no fixed regulation, so it can be concluded there is no legal certainty at the end of the period of HGB title.

6. Suggestions

Based on the conclusions above, some suggestions for the related parties can be formulated as follows:

1) The need for promotion to the public, in this case, is the prospective buyers of the apartment by the Developer at the time of the sale and purchase transaction of the apartment about some legal provisions on the Land status of HGB title. This is necessary as anticipation to prevent problems that usually happen.

2) Strict regulation is necessary on the procedure of strata title land in the form of the national constitution so that it applies to all territories of Indonesia law, because if it is only in the form of regional regulation, that there might be different regulation in each region.

3) Immediately to revise Law no. 20 of 2011 concerning apartment, so that the interested parties immediately get the guidance and also have legal certainty.

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