

Legal Protection for Ownership Rights Holders of Apartment Units Due to the Abolition of Building Use Rights Above the Management Rights of the Kliwon Kudus Market

Muhammad Dhiyaa Rizqi

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: dhiyaarizqi871@gmail.com

Abstract. *Ownership Rights of apartment units built on Building Use Rights whose establishment is based on a Build, Operate, and Transfer (BOT) Agreement have the potential for disputes in the future if the agreement ends. The legal consequences that occur if the term of the Agreement ends, then the Ownership Rights of the Apartment Units are legally revoked. This study aims to identify and analyze these problems. This study uses a qualitative approach of an empirical legal type. The data sources for this study were taken from primary and secondary data, primary data were taken from related agencies and parties, namely, the BPN of Kudus Regency, Pasar Kliwon Kudus. While secondary data consists of Certificates, books, journals, scientific articles related to the research. The results of the study obtained are: (1) The Legal Position of Ownership Rights of apartment units in Pasar Kliwon Kudus is on Building Use Rights land with the rights holder being PT Karsa Bayu Bangun Perkasa. PT Karsa Bayu Bangun Perkasa is the holder of Building Use Rights Based on a Build, Operate, and Transfer (BOT) Agreement with the Kudus Regency Government, as the holder of Management Rights. (2) Legal protection for holders of property rights to flats includes: Cancellation of Building Use Rights Certificates and Enforcement of Lease Agreements.*

Keywords: *Apartment; Ownership; Protection; Rights.*

1. Introduction

Housing and settlements are basic human needs besides clothing and food. One of the fulfillments of these human needs is due to the increasing need for housing and the increasing population and the lack of land supply being a problem in

Indonesia. One alternative way to deal with this problem is the construction of flats.¹

Flats can be built on land with Right of Use, Ownership Rights, Building Use Rights. The types of flats are commercial flats which can be interpreted as flats that can be bought and sold. Commercial flats are flats that are built to gain profit or advantage for their owners, usually built by the Government or Limited Liability Companies or other Legal Entities.²

In the Development of Flats, One alternative that can be used is through the Build, Operate, Transfer (BOT) Agreement. In this agreement, the government cooperates with the private sector to carry out a development or infrastructure without the need for state budget expenditures.³

In many facts in the field, the agreement made between the landowner and the private party through the Build, Operate, Transfer (BOT) Agreement gives the party the authority for a certain period of time to transfer the Rights granted to him, whether it is the Right to Build or the Right to Use to be divided and transferred to a third party. For example, one of the cases that had become the center of attention was the Kudus Regency Government in collaboration with the Private Party, namely PT Karsa Bayu Bangun Perkasa for the construction of the Kliwon Kudus Market. The agreement between the Regency Government and PT. Karsa Bayu Bangun Perkasa Number 6 of 1995 concerning the Construction of Market Renovation discusses the ownership of flats and kiosks that are rented at the Kliwon Kudus Market.

This raises a problem if the Build, Operate, Transfer (BOT) Agreement expires, then the land status changes to Management Rights, so that the Ownership Rights of the Apartment Unit will automatically be revoked, as regulated in Article 17 of Law Number 20 of 2011 concerning Apartments, that apartments can only be built on land that has the status of Ownership Rights, Building Use Rights or Usage Rights on State Land, and Building Use Rights or Usage Rights on Management Rights.

However, in the implementation of the agreement at Pasar Kliwon Kudus, there was a problem with the Building Use Rights Certificate by the National Land Agency for the ownership rights of the Pasar Kliwon flats. In the Issuance of Ownership Rights for Flat Units, there was an error when issuing the Building Use Rights Certificate. The certificate brought by the Kudus Regency Government started in

¹Arie S. Hutagalung, *Condominiums and Their Problems*, Revised Edition (Depok: Publishing Agency of the Faculty of Law, University of Indonesia, 2007), p. 2.

²Sumardji, *Sale and Purchase of Ownership Rights of Apartment Units in Indonesia*, *Yuridika FH UNAIR Magazine*, Vol. 20, September-October, p. 387

³Nataria, Rizky Ayu, *Ownership Rights of Apartment Units for Shops Originating from Build Operate Transfer Agreements for Land Management Rights*. *Jurnal Yuridika* Vol. 28 No. 1, January-April 2013, p. 120

1996 to 2016, while the one brought by the Traders was from 1996 to 2026. At that time, Pasar Kliwon should have returned to being a regional asset. However, the traders did not agree with this because they still felt entitled to occupy the flats for the next 10 years based on the Certificate they had. Until the Kudus Regency Government also felt disadvantaged because it experienced difficulties in withdrawing funds for the Use of Regional Assets (PKD).

The formulation of the problem in this study concerns the legal status and legal protection of holders of ownership rights over apartment units due to the revocation of building use rights over the management rights of the Kliwon Kudus Market.

2. Research Methods

This study uses a qualitative research approach that is carried out directly in the field. This research was conducted at the National Land Agency of Kudus Regency and the Kliwon Kudus Market Management Office. This study describes an object in detail, systematically and comprehensively regarding the Legal Review and Legal Protection of Ownership Rights Holders of Flats due to the elimination of Building Use Rights above the Kliwon Kudus Market Management Rights with the aim of obtaining the necessary data and obtaining information to support the research results that will be obtained and adjusted to the existing theories and regulations related to its implementation.⁴

The research used is empirical legal research on the effectiveness of law, which discusses how law operates in society. Legal research can also be called field research, namely studying the applicable legal provisions and what happens in reality in society. Or in other words, it is a study conducted on the actual situation or real conditions that occur in society with the intention of knowing and finding the facts needed, after the required data is collected then leading to the identification of problems that lead to problem solving.⁵

3. Results and Discussion

3.1. Legal Review of Ownership Rights for Pasar Kliwon Kudus Apartment Units

Law is a system of norms which emphasizes the aspect of what should be by including several regulations that must be carried out. These regulations consist of laws, government regulations, regional regulations and so on. Laws containing general rules are guidelines for each individual to behave in society. These rules

⁴Moleong, Lexy J. 2007. *Qualitative Research Methodology*, Publisher PT Remaja Rosdakarya. Offset, Bandung, p. 6

⁵Soerjono Soekanto, *Introduction to Legal Research*. UI-Press, Jakarta, 2010, pp. 21, 66 and 201

become limitations for society in taking action against individuals. With the existence of rules and their implementation, these rules create legal certainty.⁶

To obtain legal certainty over a land area, a written, complete, clear legal instrument is required, and implemented consistently in accordance with the spirit and content of the applicable provisions. The true essence of legal certainty lies in the strength of the land ownership certificate as proof of ownership. Therefore, the Building Use Rights Certificate No. 125/Desa Rendeng was issued in the name of the rights holder PT. Karsa Bayu Bangun Perkasa. In Indonesia, the legal protection provided by the government through Article 31 paragraph (1) of Government Regulation Number 24 of 1997 states, "A certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the land rights book concerned."⁷

The relationship between the issuance of land certificates and legal certainty is a causal relationship. Government Regulation Number 24 of 1997 has established better legal certainty compared to PP No. 10 of 1961. If in PP No. 10 of 1961, there is no time limit for third parties to sue the owner of a land certificate, then Article 32 paragraph (2) of PP 24 of 1997 determines the time limit for third parties to sue, namely 5 (five) years since the certificate was issued. Only when the certificate is less than 5 years old are other parties given the opportunity to sue the ownership or control of the land rights of the certificate holder, if they have evidence that also has the same legal force.⁸

Above the Management Rights, Building Use Rights can be granted as stipulated in Article 36 of PP No. 18 of 2021, Granting of Building Use Rights above Management Rights must be registered in the land book at the Land Office. Building use rights are granted for a maximum period of 30 years and can be extended for a maximum period of 25 years and the rights can be renewed if the period has expired.⁹

As implemented by the Kudus Regency Government which provides Land Ownership, namely Building Use Rights to PT. Karsa Bayu Bangun Perkasa as an investor in the construction or renovation of the Kudus Kliwon Market. The Kudus Regency Government in collaboration with PT. Karsa Bayu Bangun Perkasa made an agreement discussing the ownership of land owned by the Kudus Regency Government, in order to help with the cost of building the market. This agreement is intended to fulfill services to the Kudus Regency community in the economic and social fields.

⁶Peter Mahmud, Marzuki, 2008. Introduction to Legal Science. Jakarta: Kencana, p. 58

⁷Government Regulation No. 24 of 1997 concerning Land Registration

⁸Results of Interview with Acmad Yunus, A.Ptnh as Coordinator of the Substance Group for Determination of Land and Space Rights on May 20, 2024).

⁹Ibid.

The agreement was made on December 4, 1995 containing the rights and obligations of both parties, namely Regent Soedarsono as the Kudus Level II Regional Government as the First Party and T. Susiolo Handoko as the Director of PT Karsa Bayu Bangun as the Second Party in carrying out its functions and roles in the implementation of the granting of Building Use Rights, which contains a permit for renovation construction, land area, time period, facilities.¹⁰

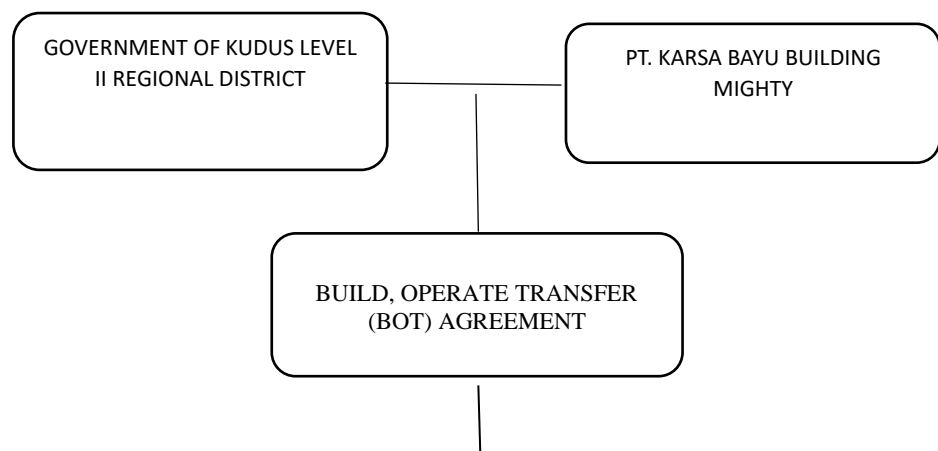
Based on the above data obtained during research at the Kliwon Kudus Market Management Office, it can be concluded that PT. Karsa Bayu Bangun Perkasa, which is domiciled in Jakarta, has a plot of land with Building Use Rights status Number 125/Rendeng Village, with an area of 27,863m², registered in the name of PT. Karsa Bayu Bangun Perkasa, with a term of 20 (twenty) years and ending on 27-06-2026, which stands on Management Rights Number 1/Rendeng Village, with an area of 27,863m², registered in the name of the Kudus Regency Government, located in Rendeng Village, Kudus City District, Kudus Regency.

After obtaining the Building Use Rights, PT Karsa Bayu Bangun Perkasa is working on the construction of flats that will be built on the Building Use Rights land originating from the Management Rights land. In the implementation of the construction of these flats, a Building Construction Permit is required. This is in accordance with Article 28 of Law No. 20 of 2011 concerning Flats

Proven by the existence of Building Permit Number 02216 of 1997 in the name of PT. Karsa Bayu Bangun Perkasa to build flats in Pasar Kliwon Kudus. The construction of this flat has been known and approved by the Kudus Regency Government.¹¹

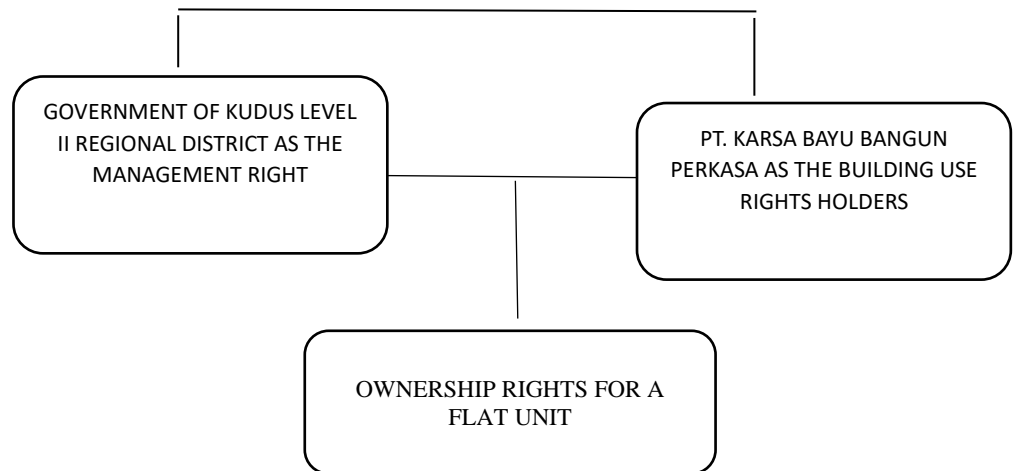
So, it can be concluded that the position of the land in the Kliwon Kudus Market is in accordance with the chart below,

Land Position in Kliwon Market, Kudus



¹⁰The results of the interview with Sugianto as part of the Kudus Kliwon Market Management Coordinator on February 19, 2024.

¹¹Ibid.



Based on Law No. 20 of 2011 concerning Flats regarding the process of transferring ownership rights through the sale and purchase process which states that the sale and purchase process of flats is generally carried out through the following stages, namely payment for the purchased unit, Flats in Pasar Kliwon are sold for around 40,000,000 to 50,000,000, then the Transfer of Flats is regulated in Article 43 and Article 44.

The Term of the Right to a Condominium Unit is in accordance with the Term of the Building Use Rights of PT. Karsa Bayu Bangun Perkasa, which is only until 2016 (twenty years). This Building Use Rights itself can actually be extended or renewed no later than two years before the end of the term or its extension.¹²

Such conditions have resulted in uncertainty regarding the Ownership Rights Status of Apartment Units located above Building Use Rights above Management Rights because no Apartment can be built above Management Rights if the Building Use Rights expire and cannot be extended.

This is the same as the problem that occurred in Pasar Kliwon Kudus where the expiration of the Building Use Rights period of 20 (twenty) years or after 2016, PT. Karsa Bayu Bangun Perkasa should have handed over the building and Management Rights in full to the Management of the Pasar Kliwon Kudus Government that has been sold or not sold. As written in the Land Book of Building Use Rights No. 125 PT Karsa Bayu Bangun Perkasa in Figure 4.1.5 Land Book of Building Use Rights No. 125 PT Karsa Bayu Bangun Perkasa obtained at the Pasar Kliwon Kudus Management Office

However, in its implementation, the agreement between PT Karsa Bayu Bangun Perkasa and the Kudus Regency Government encountered a few obstacles, namely the difference in the Building Use Rights Certificate between the Regency Government and the Traders or Entrepreneurs of Kliwon Market. The certificate

¹²Law Number 20 of 2011 concerning Apartments

brought by the Kudus Regency Government clearly expired in 2016 in accordance with the master agreement ratified by the Minister of Home Affairs, while the Building Use Rights Certificate received by the Traders expired in 2026 in accordance with the Decree of the Head of the Kudus Regency Land Office which was valid from June 26, 1996 to June 27, 2026. So there is a difference of ten years.

3.2. Legal Protection for Ownership Rights Holders of Apartment Units Due to the Abolition of Building Use Rights Above the Management Rights of the Kliwon Kudus Market

Legal protection for handling cases that occurred in Pasar Kliwon Kudus where the Owners of Flats in Pasar Kliwon felt disadvantaged due to the inconsistency of the Building Use Rights Certificate owned by PT. Karsa Bayu Bangun Perkasa with the Kudus Regency Government. The error in the administration of the Kudus Regency National Land Agency was the difference in the Building Use Rights Certificate between the Regency Government and the Pasar Kliwon Traders. The certificate brought by the Kudus Regency Government clearly expired in 2016 in accordance with the master agreement ratified by the Minister of Home Affairs while the Building Use Rights Certificate received by the Traders expired in 2026 in accordance with the Decree of the Head of the Kudus Regency Land Office which was valid from June 26, 1996 to June 27, 2026.

Until finally in 2016, PT. Karsa Bayu Bangun Perkasa released its agreement because the concession period had expired. At that time, Pasar Kliwon should have returned to being a regional asset. However, the traders did not agree with this because they still felt entitled to occupy the flats for the next 10 years based on the Certificates they had. Until the Kudus Regency Government felt disadvantaged because it had difficulty in withdrawing funds from the Use of Regional Assets (PKD). Then, in 2017 the National Land Agency canceled the Building Use Rights Certificate brought by the Traders on the grounds that the master agreement was only valid for 20 years starting in 1996 and ending in 2016.

In this case, traders or apartment owners are disadvantaged at the end of the expiration period of the Apartment Unit Ownership Rights. Traders who buy stalls, kiosks or shophouses that have Apartment Unit Ownership Rights certificates assume that there are still 10 (ten) years left, and there are even traders who assume that the apartment they bought is valid forever.

Basically, after 20 (twenty) years or after 2016, PT. Karsa Bayu Bangun Perkasa should have handed over the building and Management Rights completely to the Management of the Kudus Kliwon Market Government that has been sold or not sold. So, for third parties in this case traders or apartment owners should have made a new agreement with the Regional Government and be subject to a Regional Asset Utilization (PKD) levy of Rp. 200,-/M2 per day. Because the Building Use Rights issued for 30 (thirty) years, traders still feel they own their place of

business, so the government has difficulty in withdrawing the Regional Asset Utilization (PKD), because most traders do not know what is really happening.

So actually the main problem is the certainty of time in the agreement that is not known by one of the interested parties. If the owner of the apartment does not know that the expiration period of the master agreement concession is 20 (twenty) years, then the trader will still assume that the apartment purchased is still valid for the next 10 (ten) years, namely until 2026. This cannot be blamed on the parties related to the agreement, the Kudus Regency Government as the service user or PT. Karsa Bayu Bangun Perkasa as the service provider, but rather the Kudus National Land Agency which did not look carefully and thoroughly at the master agreement and also the error of the Kudus Regency Government which did not review the contents of the Build, Operate Transfer Agreement with the certificate that will be made for the Building Use Rights owned by PT Karsa Bayu Bangun Perkasa.

The problem that arose due to the error in issuing the Building Use Rights Certificate by the National Land Agency can actually be resolved by the Cancellation of the Building Use Rights Certificate in the name of PT Karsa Bayu Bangun Perkasa by the National Land Agency of Kudus Regency so that there is no loss of the Regional Budget because the Government has the right to withdraw the PKD. The documents made for the cancellation of the Building Use Rights certificate by the National Land Agency of Kudus in Figure 4.1.6 Building Use Rights Release Letter No.125 are the Statement of Release of Land Rights Number 236.2/300.6-33.19/2016 in the name of PT Karsa Bayu Bangun Perkasa which was obtained from the Head of Sub-Division of Administration of the Revenue, Finance and Regional Asset Management Agency of Kudus Regency.

With the existence of the Letter of Release of Land Rights signed by T. Susilo Handoko as Director of PT. Karsa bayu Bangun Perkasa domiciled in Jakarta, Kav. Otorita Block G Number 7 Tanjung Barat, Pasar Minggu South Jakarta, as mentioned in Figure 4.1.6, the Government is not harmed. In addition, the government also provides some Legal Protection for Traders after the cancellation of the Building Use Rights certificate.

The resolution of the problem of the Cancellation of the Building Use Rights Certificate by the National Land Agency of Kudus Regency according to Marinda as a representative of the Kudus Regency Government who knows that the cooperation agreement for the Development of Kliwon Market has been implemented, namely the implementation of a lease agreement between the Kudus Regency Government and Traders. The agreement contains the Utilization of Los, Kiosks and Shophouses of the Kliwon Kudus Market Owned by the Kudus Regency Government on Land with Management Rights Certificate Number 1 of 1996 Located in Rendeng Village, Kota District, Kudus Regency.

The above Lease Agreement was attempted by the Kudus Regency Government in paying attention to the fate of traders who lost their Building Use Rights Certificates after the cancellation of the Building Use Rights Certificate. The Lease Agreement was signed by several related parties, namely Dra. Sudiharti as the Head of the Kudus Regency Trade Service as the first party, the traders concerned as the second party and witnesses represented by each party, namely H. Sulistyanto as the Chairperson of the Kliwon Market Traders Association (HPPK) of Kudus Regency and Andy Imam Santoso S.STP as the Head of the Kliwon Market Division of Kudus Regency.

The agreement refers to the basis of Regulation Number 27 of 2014 concerning Management of State/Regional Property; and Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for Management of Regional Property. The agreement states that the First Party is the party using the Goods and Buildings with a Management Rights certificate while the Second Party is the party utilizing the Los, Kios or Kiosks on the land of Management Rights owned by Kudus Regency.

Family deliberation efforts as the main solution after the Cancellation of the Building Use Rights Certificate for the construction work contract have also been taken by the Government as a business actor against the Owners of Flats who in this case are consumers, but according to the Traders who are members of the Pasar Kliwon Traders Association (HPPK) there are still many who are not willing to sign the rental agreement because with the agreement the owners of flats in Pasar Kliwon Kudus still feel disadvantaged, but there are some flat owners who have agreed and signed the agreement while the Cancellation of the Building Use Rights Certificate must be done because of administrative legal defects, Some traders also did not respond with a good solution, even to simply complete the administrative requirements.

4. Conclusion

Legal Position of Ownership Rights for apartment units in Pasar Kliwon Kudus is on Building Use Rights land with the rights holder being PT Karsa Bayu Bangun Perkasa. PT Karsa Bayu Bangun Perkasa becomes the holder of Building Use Rights Based on the Build, Operate, and Transfer (BOT) Agreement with the Kudus Regency Government, as the holder of Management Rights. Ownership Rights for apartment units in Pasar Kliwon Kudus are physically in the form of shophouses that can be owned by Traders by purchasing from PT Karsa Bayu Bangun Perkasa as the manager. Proof of ownership of apartment units is the Ownership Rights Certificate for Apartment Units, in the certificate it must be written that the land is HGB/HPL land in the name of the rights holder. Based on the contents of the Build, Operate, Transfer Agreement, if the Agreement ends, the Building Use Rights return to the Management Rights holder and the Ownership Rights for Apartment Units are automatically revoked by law. However, in the issuance of Ownership

Rights Certificates for Apartment Units there is a difference in the validity period of the Building Use Rights Certificate. Legal protection for the holder of Property Rights over a condominium includes: Cancellation of the Building Use Rights Certificate and Enactment of a new lease agreement where the owner of Property Rights over a condominium unit can still use the shophouse. In the lease agreement, the owner of Property Rights over a condominium unit converts the sale and purchase price of the condominium into the rental price paid in advance.

4. References

- Amirundin, Zainal Asikin,. 2016. *Pengantar Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo.
- Boedi Harsono. *Berbagi Masalah Hukum Bersangkutan dengan Rumah Susun dan* Fakultas Hukum Universitas Negeri Semarang.
- Hutagalung, Arie S. 2002. *Serba Aneka Masalah Tanah Dalam Kegiatan Ekonomi (Suatu Kumpulan Karangan)*. Depok : Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Hutagalung, Arie S. 2010. *Kondominium dan Permasalahannya, edisi Revisi*. Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Marzuki, Peter Mahmud. 2008. *Pengantar Ilmu Hukum*. Jakarta : Kencana.
- Nataria, Rizky Ayu. 2013. *Hak Milik Atas Satuan Rumah Susun Untuk Pertokoan yang Berasal Dari Perjanjian Bangun Guna Serah Atas Tanah Hak Pengelolaan*. Jurnal Yuridika Vol. 28 No. 1, January-April 2013.
- Pemilikan Satuan Rumah Susun*. Majalah Hukum dan Pembangunan.1986.
- Suhadi. 2017. *Aspek Hukum dan Sosial Rumah Susun*. Semarang: Badan Penerbit
- Urip Santoso. 2011. *Hak Guna Bangunan Atas Hak Pengelolaan (Suatu Kajian Perolehan Hak dan Perpanjangan Jangka Waktu)*. Jurnal Fakultas Hukum.Vol.2. No. 3. Universitas Diponegoro.Semarang.
- Wahanisa, Rofi. 2019. *Reforma Agraria Untuk Kesejahteraan Rakyat*. Semarang : Fastindo.