

Mortgaging the Skies? Legal Status of Apartment Ownership in South Sumatra's Financial Practices

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Abstract

The development of vertical housing needs such as apartments in big cities, including in South Sumatra Province, encourages the importance of legal certainty over ownership and utilization of apartment units within the national financing system. The Certificate of Ownership Rights for Apartment Units (SHM Sarusun) is recognized as a property right that can be used as an object of debt collateral by being burdened with Mortgage Rights. This provision is regulated in Law Number 20 of 2011 concerning Apartments and Law Number 4 of 1996 concerning Mortgage Rights (UUHT), and is an implementation of Article 51 of the Basic Agrarian Law (UUPA). Article 27 of the UUHT explicitly states that the imposition of collateral rights on apartments and ownership rights on apartment units is possible and legally valid. This study highlights the implementation of these provisions in South Sumatra, emphasizing how banks in this region utilize SHM Sarusun as credit collateral in the form of Apartment Ownership Credit (KPRS). In practice, financial institutions consider aspects of ease of binding, certainty of value, ease of execution, as well as supervision and

maintenance of collateral objects. Therefore, apartments built on shared land, with legal individual ownership rights, have become an effective collateral alternative in the financing system in South Sumatra. This study shows that SHM Sarusun not only has a social function as a residence, but also has a strong and relevant economic value in supporting legal and guaranteed financing access.

Keywords

Apartment, Apartment Unit Ownership Rights, Mortgage Rights, South Sumatra, Material Collateral.

A. Introduction

Palembang city serves as the center of economic and urban activities, significant in terms of infrastructure and population size. As one of the largest cities in Sumatra, Palembang faces major challenges related to housing needs that match the continuously increasing population growth rate. According to demographic data from the Palembang City Government, the city's population has reached a very large number, estimated at over 2 million people by mid-2025. Alongside this high population figure, the need for affordable and strategic housing is becoming increasingly urgent, making apartments one of the primary choices for property development.

Apartments in Palembang are starting to become a popular choice for both private property developers and the government, serving as a solution to meet the growing housing demand amid limited land availability. In Palembang itself, there are two types of apartments: owned apartments offering housing with ownership status that can be acquired by residents, while simple rental apartments focus on long-term rentals with more affordable costs, usually targeted at low to middle-income communities.¹ Both types of apartments offer their respective advantages, especially in terms of efficient land use and easy access to various public facilities. The development of apartments in

¹ Gama Wastara, Joshua. "Flexibility of Social Space: Collective Housing Design with Riverbank Lifestyle." *Master's Thesis*, Institut Teknologi Sepuluh Nopember, 2020.

Palembang is crucial to address the challenge of housing provision in increasingly dense urban areas. Apartments can also assist the government in managing and organizing urban growth more structurally, reducing social inequality, and improving the quality of life for urban communities.

These apartments are a key strategy in realizing the nation's aspirations as stated in the Preamble to the 1945 Constitution, namely creating a just and prosperous society based on Pancasila. In this context, the development of the housing sector, including apartments, plays a vital role. This aligns with the mandate of Article 33 Paragraph (2) of the 1945 Constitution, which emphasizes that land, water, and natural resources are controlled by the state and utilized to the greatest extent for the welfare of the people. Apartment development is a concrete step towards guaranteeing the fulfillment of every citizen's basic right to obtain decent and humane shelter. Adequate housing availability is one of the main indicators of welfare, as housing is a basic necessity for every individual and family. Apartments, as a form of multi-story housing efficient in land use, are believed capable of becoming a solution to land limitations, especially in densely populated and continuously developing urban areas like Palembang City.²

Apartment development is not only related to providing shelter but is also an integral part of regional development strategy. This development will support the creation of an orderly and sustainable environment, as well as strengthen the social and economic structure of society. Furthermore, apartment development, as part of the national housing policy, is closely related to various demographic, economic development, and social life aspects. The provision of affordable and decent apartments will improve community quality of life, reduce social inequality, and provide opportunities for low-income groups to own decent shelter. Additionally, apartments can also be a solution to rapid urbanization by providing housing in strategic city centers close to public facilities such as workplaces, schools, and hospitals. In the

² Mubarrak, Muhammad Zaki, Thalia Christine Marchsyeldi Putri Deanouva Matutu, and Joko Susilo. "Formation of Regional Regulations on Apartments: National Resilience Based on Sustainable Development Study City of Yogyakarta." *Jurnal Adijaya Multidisplin* 3, no. 02 (2025): 198–216.

context of economic development, the presence of apartments will create job opportunities in the construction sector and increase community purchasing power by providing more affordable housing compared to landed houses. Apartment development also plays an important role in driving related sectors such as transportation, trade, and public services. Overall, through apartment development, the state can implement the principles of people's economy outlined in Article 33 of the 1945 Constitution, simultaneously strengthening the pillars of social and economic welfare for all Indonesian people.³ These objects are considered an integral part of the land and can legally become objects of guarantees. Law Number 4 of 1996 also provides a legal basis stating that elements inherent to land, such as buildings and plants standing on it, can be mortgaged together with the land under a unified Mortgage Right, although the main focus of the guarantee remains on the land rights itself.⁴

Debt secured by a Mortgage Right, known as the object of a Mortgage Right, can only be charged against specific types of land rights, namely Ownership Rights (Hak Milik), Right to Cultivate (Hak Guna Usaha - HGU), and Right to Build (Hak Guna Bangunan - HGB).⁵ The execution of a Mortgage Right is important because if the debtor defaults or fails to meet debt payment obligations, the creditor has a strong legal basis to sell the secured object through an auction. This auction process must go through procedures established by the competent authorities, such as the land office, to ensure the validity and legality of the execution of land rights burdened with a Mortgage Right.

Publication serves to provide legal certainty to third parties regarding the status of land used as debt collateral, as well as preventing disputes or overlapping claims in the future [footnoteRef:6]. Charging a Mortgage Right on land rights such as Ownership Rights, Right to Cultivate, and Right to Build is an important step in Indonesia's debt guarantee system. This not only provides protection for lenders but also

³ Mochtar, Zainal Arifin. *Politics of Law Formation Act*. Buku Mojok, 2022.

⁴ da Santo, Maria Fransiska Owa, Liani Sari, Anita Kamilah, and Frans Reumi. *Introduction to Civil Law: Theory & Comprehensive Reference to the Fundamentals of Civil Law in Indonesia*. PT. Sonpedia Publishing Indonesia, 2024.

⁵ *Ibid.*

provides legal certainty and ease in implementing mortgage rights, thereby facilitating the circulation and utilization of land rights for the economic interests of the community.⁶

Based on the background description above, the authors formulate the problems to be studied in this research, namely: What is the legal relationship between HMSRS as the object of a Mortgage Right and the shared land rights of the apartment? And How is the burden of the Certificate of Ownership Rights over Apartment Units (HMSRS) as credit collateral within the provisions of national land law?

Research is one of the precise and systematic ways to solve a problem, especially in the scientific and academic realm. Through research, someone can examine, analyze, and discover solutions or explanations for an issue based on data, facts, and accountable scientific approaches. In this context, the research method plays a very important role because it is the tool or path used to achieve research objectives, namely obtaining a deep understanding of the object being studied. The research approach used in this study is a juridical empirical approach, which is a research method that combines the study of written legal norms (*das sollen*) with the reality or legal practices occurring in society (*das sein*). This approach was chosen because it is considered most relevant to answer the research problems related to the application of Ownership Rights over Apartment Units (HMSRS) as objects of Mortgage Rights and the mechanism of burdening them as credit collateral. In a juridical empirical approach, law is not only viewed as normative rules contained in regulations but also as social behavior that can be observed and analyzed through empirical realities in the field.

The data used in this research is secondary data, obtained through library studies or reviews of legal documents and other relevant literature that supports the research focus. The use of secondary data aims to provide a strong juridical and theoretical basis for answering the problem statements, especially regarding the relationship between Ownership Rights over Apartment Units (HMSRS) as objects of Mortgage Rights against the land where the apartment stands, as well as the burden of HMSRS as credit collateral. Secondary data becomes the

⁶ Suwasta, Asep Dedi, Ujuh Juhana, Temmy Fitriah Alfiany, and Asti Sri Mulyanti. *Introduction to Civil Law*. Tohar Media, 2024.

main source in the normative juridical approach combined in this juridical empirical research.

B. Legal Relationship Between Ownership Rights Over Apartment Units as Objects of Mortgage Rights and Shared Land Rights of the Apartment

Ownership, etymologically, means control or possession of something legally recognized by law. In a legal context, ownership indicates a legal relationship between a person and an object or asset, granting the owner full power to use, enjoy, and utilize the object, including performing legal actions such as selling, renting, pledging, or inheriting. Ownership is not merely a physical relationship between a person and an object, but also a legal relationship protected by regulations, so that other parties cannot arbitrarily interfere or seize the right without a valid legal basis. In Indonesia's national agrarian law system, the definition of land ownership rights is explicitly regulated in Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), particularly in Article 20 paragraph (1) which states: "Ownership Rights is an inheritable, strongest, and fullest right that a person can hold over land, taking into account the provisions of Article 6."

This provision emphasizes that ownership rights are the type of land right with the strongest position among other types regulated in the UUPA, such as Right to Cultivate (HGU), Right to Build (HGB), and Right to Use (*Hak Pakai*). It is called inheritable because this right can be passed down; it is called the strongest because it grants the owner full power without time limits; and fullest because it encompasses all forms of land utilization as long as it does not conflict with legal provisions and general interests. Nevertheless, the UUPA also provides limitations on the use of ownership rights. In Article 6, it is stated that "All land rights have a social function." This means that although ownership rights grant very broad powers to the owner, their implementation must still consider the general interests of the community and the state. Ownership rights cannot be used arbitrarily or contrary to social interests, such as ignoring spatial planning, harming the environment, or hindering development. Land ownership rights can

also be used as an object of guarantee in the form of a Mortgage Right, according to the provisions of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.⁷

Legal provisions regarding Ownership Rights over Apartment Units are explicitly stated in Article 46 paragraph (1) of Law Number 20 of 2011 concerning Apartments (UURS), which states:

"Ownership rights over an apartment unit are personal ownership rights over a separate apartment unit distinct from the shared rights over common areas, common objects, and common land."

Thus, the law has explicitly distinguished between private ownership of a specific unit and collective ownership of other parts of the building and land that are integral parts of the apartment complex. However, although these rights are legally recognized and protected, their implementation is not without limits. For example, the unit owner cannot freely alter the facade or structure of the building that is part of the common area without collective agreement, as such actions concern collective interests. Furthermore, in terms of land aspects, the SHM Sarusun also cannot stand without a legal basis for the land where the apartment building is located. Usually, apartment buildings stand on land with the status of Right to Build (HGB) or Right to Use, which is jointly controlled by the owners of the apartment units [footnoteRef:8]. In this case, the land rights are also collective and cannot be separated from unit ownership.

Therefore, the SHM Sarusun is not an ownership right that stands alone in an individualistic sense, but rather an ownership right inherent in a complex shared ownership system. When someone owns an apartment unit, legally they also become a co-owner of the stairs, corridors, gardens, parking areas, and the land where the building stands. This provision carries very important legal consequences, especially regarding the burden of material guarantees such as Mortgage Rights. Providing guarantees over apartment units must not only consider the ownership status of the unit but also take into account the shared rights inherent in it. For example, banks or financial institutions

⁷ Sutedi, Adrian. *Implementation of the General Interest Principle in Land Procurement for Development*. Sinar Grafika (Bumi Aksara), 2020.

as creditors must understand that the secured object does not stand alone but is part of a structure unified with collective land rights and other common facilities.⁸

In banking practice, not all types of goods or collateral objects can be accepted by banks in the context of lending activities. Each bank has specific policies regarding the types of objects that can be used as collateral, which are often regulated in credit agreements between customers and banks. These policies are based on several important considerations concerning the bank's interests in protecting the certainty and security of lending. Some of the underlying reasons for this policy include:⁹

1. **Ease of Binding:** Banks prioritize collateral objects that are easy to bind with a Mortgage Right or other forms of guarantees. This means the object used as collateral must have characteristics that allow the bank to easily and quickly take legal action if the debtor fails to fulfill their obligations.
2. **Certainty of Value or Price:** The collateral object accepted by the bank must have a relatively stable and predictable value or price. This is important so that the bank can clearly know the value obtainable from the collateral object if execution occurs. Collateral objects with unstable values or difficult to predict can add risk for the bank.
3. **Ease of Liquidation:** Banks prefer collateral that can be easily liquidated through auction or sale if the debtor cannot fulfill their obligations. Goods or objects that are difficult to liquidate or require a long time to process are often considered less ideal as credit collateral.
4. **Ease of Supervision and Maintenance:** Banks also prefer collateral objects that are easy to supervise and maintain.

⁸ Umami, Allan Mustafa, and Muhammad Farid Alwajdi. "Review of the Authority of Notaries in Creating Fiduciary Guarantee Deeds on Ownership of Apartment Unit Building Structures in Indonesia." *Jurnal Risalah Kenotariatan* 4, no. 2 (2023).

⁹ Nuraini, Hanifah, Dauri Dauri, and Ricco Andreas. "Interpretive Paradigm of the Concept of Abuse of Circumstances (Misbruik van Omstandigheden) in Banking Credit Agreements." *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2020): 259–280.

Collateral objects such as houses or land are relatively easier to monitor and maintain compared to movable goods that may not be easily traceable.

Therefore, material guarantees, whether in the form of movable goods (such as motor vehicles, machines, or inventory) or immovable goods (such as land, buildings, or houses), are prioritized by banks. These material guarantees have distinctive characteristics of materiality, namely: Right of Priority: Material guarantees grant creditors the right to receive debt repayment first if the debtor fails to pay their obligations. In this case, creditors have the right to auction or sell the collateral object and use the proceeds to settle the debtor's debt. Inherent and Following Nature of Objects: Material guarantees are attached to the object used as collateral. This means the rights over the object remain attached to the object even if it changes hands. Thus, creditors can maintain their rights against the collateral object even if the debtor sells or transfers the object. This guarantee with absolute rights over an object provides legal certainty for banks to maintain their rights over the collateral object used as collateral.

This certainty is one of the guarantees that in the event of a breach of agreement, the bank party can claim the collateral object and use it to cover losses arising from unpaid credit. For these reasons, banks tend to prioritize guarantees with clear legal status, easily identifiable, and having stable value. For example, land and buildings are the objects most frequently accepted as collateral, especially if the land has valid Ownership Rights or Right to Build registered clearly. Likewise, Ownership Rights over Apartment Units (HMSRS) are becoming increasingly popular in the context of vertical housing in large cities, as this right offers legal certainty, transferability, and clear economic value in the property market. In relation to guarantees in the form of apartments or condominium units, the process of imposing a Mortgage Right over HMSRS has a clear procedure, ensuring that creditors have a legitimate right to execute an auction or sale of the apartment unit if the debtor fails to fulfill their credit obligations. Therefore, this system provides legal protection for both the debtor and creditor parties, so that banking transactions with HMSRS collateral can run safely and reliably.

The new Law provides clarity regarding the process of imposing a Mortgage Right over apartments and the units within them, simultaneously strengthening the legal position of SHM Sarusun as a valid object to be used as credit collateral. This is very important in banking practice, as it provides a stronger basis for creditors to provide credit with apartment units as collateral, which is expected to facilitate credit transactions and increase public access to financing facilities. The existence of a Mortgage Right on SHM Sarusun provides legal certainty for both apartment owners applying for credit collateral and for credit providers (banks or financial institutions). This is important to ensure that the apartment owner's rights over the mortgaged unit remain protected, while bank or financial institution parties also obtain collateral that can be maintained and transferred if the debtor fails to fulfill their obligations. Therefore, with this provision, banks can be more open to accepting apartments as collateral objects, which in turn will boost the property sector, especially in urban areas needing vertical housing solutions.

As the holder of Ownership Rights over Apartment Units (HMSRS) evidenced by the Certificate of Ownership Rights for Apartment Units (SHM Sarusun), the owner has the right to apply for credit using the apartment unit they own as a collateral object. This facility allows apartment owners to access financing, such as Home Ownership Credit (KPR), to settle the price of the purchased apartment unit. Thus, apartments, which were initially considered only personal property, can be used as a legally bound collateral object. This opens up opportunities for owners to obtain the financing needed for personal purposes or other investments. Provisions regarding the utilization of HMSRS as a collateral object are closely related to the concept of Mortgage Rights, which is a legal instrument regulating debt guarantees. Holders of ownership rights over apartment units can burden their ownership rights with a Mortgage Right as collateral for the loan applied for.

Although the land where the building stands may be shared land collectively owned by all apartment residents, the owner of an apartment unit still has the right to provide a mortgage right over the unit they own. This provides important legal certainty for creditors in

the credit provision process. The existence of a Mortgage Right on apartments provides certainty for creditors, because even though the land is shared, the ownership rights over apartment units still have clear legal value. The imposition of this mortgage right grants creditors the right to execute the apartment unit if the debtor fails to fulfill their obligations. Even though the apartment is located on collectively controlled land, the ownership rights over the apartment unit remain a valid object and can be used as debt collateral. The process of binding a Mortgage Right on an apartment unit must consider applicable provisions, so it does not only involve the individual rights over the apartment unit but also the shared parts, shared objects, and shared land connected to the building. This ensures that any legal action taken against the apartment unit, whether in the form of buying and selling, transfer, or burdening with a mortgage right, will involve all components forming a legal unity.

This also applies to various apartment projects that have been built in South Sumatra, especially in cities like Palembang as the province's economic growth center. The presence of simple owned apartments (Rusunami) as well as rental apartments (Rusunawa) built by the government as well as private developers shows an increase in the need for vertical housing. Amidst limited land and high urbanization, apartments become a strategic solution that can simultaneously be optimized as financial assets by their owners. For example, in apartment projects built in areas such as Jakabaring or Seberang Ulu, where owners have obtained SHM Sarusun, they are entitled to utilize the unit as credit collateral.

The Certificate of Ownership Rights over Apartment Units allows its owner to have rights over the apartment unit separately from its land rights, but still connected to shared rights over common facilities and shared land in the apartment complex. The relationship between Ownership Rights over Apartment Units as objects of Mortgage Rights and the land rights where the building stands is very important to understand, because although the land where the building stands is jointly owned by all apartment owners, individual owners can still use their ownership rights over the apartment unit as collateral. In practice, although the land and other shared parts are collective rights,

the Mortgage Right is only imposed on the apartment unit owned individually by the unit owner.

Thus, apartment owners can obtain the necessary loans or financing, while the credit provider has a clear and valid collateral over the apartment unit that can be executed if there is a breach of contract. Overall, this arrangement provides benefits for both apartment owners and credit providers, because there is legal certainty in using SHM Sarusun as a collateral object, even though it is associated with a complex that has shared land. This enables apartment owners to more easily obtain KPR or other forms of financing, which in turn can drive property sector growth and facilitate public access to decent housing.

C. Imposition of Certificate of Ownership Rights Over Apartment Units (HMSRS) in South Sumatra as Credit Collateral Under National Land Law Provisions

The process of transferring ownership rights or imposing them with collateral rights must comply with applicable legal provisions, as regulated in the Apartment Law and related regulations concerning mortgage rights. Consequently, owners of apartment units can optimally use their assets to obtain financing or for other lawful purposes. Ownership of apartment units not only grants owners the right to reside in them but also provides rights to conduct other legal transactions, such as transferring ownership rights or imposing them with mortgage rights as credit collateral. This facilitates owners in accessing various forms of financing, whether for personal needs or property development. This legal certainty not only protects the rights of apartment owners but also provides assurance to credit providers or financial institutions accepting such collateral, as they have a clear legal basis to execute the collateral if default occurs.

One type of credit that is developing in the banking sector is the Apartment Ownership Credit Facility (KPRS), which is a credit facility specifically aimed at helping consumers acquire ownership of apartment units. This credit aims to meet housing needs for the community, especially for those who want to own homes in large cities or urban areas with limited land. This KPRS facility allows consumers to own

apartment units through installment payments over a certain period, making it easier for the community to obtain decent housing. KPRS is also referred to as consumer credit, or in some literature, as consumer credit, because this credit is indeed intended for personal consumption, namely for purchasing property used as a place of residence. The use of the term "consumer" refers to the characteristics of credit focused on purchasing goods or property that can be directly enjoyed by consumers. In this case, apartments become products that are sold and can be directly used by owners as a place to live.

The KPRS facility is categorized as a consumer credit facility, distinguishing it from other credit types such as investment credit used for business activities or purchasing productive assets. Apartment Ownership Credit (KPRS) has more specific characteristics, where the credit is aimed at purchasing apartment units that are part of vertical property. Credit payments are usually made in the form of monthly installments agreed upon between the credit provider (bank or financial institution) and the borrower, with competitive interest rates and flexible terms according to the borrower's ability. In practice, KPRS can also be used to purchase apartment units that are under construction or already ready for occupancy. For property developers, KPRS becomes one of the solutions to increase apartment unit sales, while for consumers, KPRS provides easier access to home ownership, especially in large cities facing land limitations and high property prices. However, in its implementation, KPRS applications usually also require collateral, one of which is the Certificate of Ownership Rights over Apartment Units (SHM Sarusun) that can be used as collateral objects. This gives certainty to banks or financial institutions that the credit provided can be protected with a mortgage right over the property. The SHM Sarusun certificate plays an important role in KPRS financing, because with ownership rights over apartment units, banks can take legal action to ensure credit repayment if the borrower cannot fulfill their obligations.

In the context of apartments, particularly in South Sumatra, this principle still applies, although its ownership characteristics differ from regular land. Apartments consist of ownership rights over apartment units (HMSRS) that stand on shared land. Although the land is

collectively owned by the unit owners, each apartment unit has the legal strength of ownership rights that can be burdened with a Mortgage Right. For example, several apartment projects in Palembang, such as Rusun Jakabaring, Rusun Ilir Barat, or Student Dormitories in strategic educational areas, have provided ownership access through the issuance of Certificates of Ownership Rights over Apartment Units (SHM Sarusun). The holders of these SHM Sarusun certificates have the right to burden their units as credit collateral by referring to the procedures regulated in Law No. 4 of 1996 concerning Mortgage Rights.

This shows that in practice, the principle of unity between land and buildings is also applied in the apartment ownership system, although the ownership structure is more complex. With the binding of Mortgage Rights through APHT covering apartment units in South Sumatra, creditors have a strong legal basis if default or non-payment occurs from debtors. The implementation of this principle also strengthens the development of the vertical housing financing sector in South Sumatra, because legal certainty over collateral objects makes financial institutions more confident in channeling credit, including Apartment Ownership Credit (KPRS). Ultimately, this can encourage increased public access to decent housing and support the local government's program in sustainable apartment development.

With the existence of this deed of granting mortgage rights, the grantor of the mortgage rights (debtor) and the recipient of the mortgage rights (creditor) have legal certainty over the object that becomes the credit collateral. Furthermore, the burden of mortgage rights on land and objects attached to it provides benefits for both parties, both the landowner and the credit provider. For the landowner, this becomes one way to obtain financing or credit by providing clear and legally binding collateral. Meanwhile, for the credit provider, mortgage rights provide strong legal protection, because with the existence of mortgage rights, they obtain the right to seize and sell the collateral object if the debtor fails to fulfill their obligations. For example, in the context of apartments, the Ownership Rights over Apartment Units (HMSRS) owned by apartment unit owners can be burdened with Mortgage Rights. Although the land where the apartment stands may have the status of ownership rights, right to build,

or right to use state land, the ownership rights over the apartment unit can still be used as a collateral object, followed by rights over the shared parts owned by other owners in the apartment complex. The object of the Mortgage Right, which can be land and all objects legally attached to it, will become collateral for debt repayment.¹⁰

Each bank has internal policies that clearly determine the types of collateral objects that can be accepted, based on considerations of risk, economic value, and ease of managing the collateral. These policies are not without reason, but are based on various strategic considerations that prioritize the interests and protection of the bank as the creditor.

Some of the main reasons underlying the bank's consideration in determining collateral objects include:

1. Ease of legal binding, i.e., how easily the collateral object can be legally bound in a legal agreement, such as a Mortgage Right for land and buildings, fiduciary transfer for movable goods, or mortgage for ships. Collateral objects that can be legally bound clearly will provide legal certainty for the bank party if default occurs.
2. Certainty of value (economic value), i.e., to what extent the collateral object has a stable market value and can be objectively assessed. Banks tend to choose collateral objects whose value is not easily fluctuating and can be calculated accurately, such as property, land, or motor vehicles.
3. Ease of liquidation, i.e., how easily the bank can execute or sell the collateral object to settle the debt if the debtor does not fulfill their obligations. Collateral with an active secondary market will be more preferred because its liquidation process is faster.
4. Ease of supervision and maintenance, which means the bank can easily monitor the condition and location of the collateral object during the credit period, and does not require significant costs or effort to keep it valuable.

¹⁰ Tambunan, Christin Natalia, and Atik Winanti. "Legal Protection for Auction Winners of Mortgage Right Executions Who Cannot Take Possession of the Auctioned Object (Case Study Decision No. 3/PDT. G/2018/PN. Lgs)." *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 821–829.

Based on these reasons, banks tend to prioritize material guarantees, i.e., tangible objects both movable and immovable. Immovable property, such as land and buildings, becomes the main choice due to its value stability and strong legal protection through the Mortgage Right mechanism. Meanwhile, movable property, such as vehicles or machines, can also be accepted but is usually bound through a fiduciary agreement. The characteristics of these material guarantees make them prominent, namely having the nature of being attached and following the object (*droit de suite*) and providing preferential rights to creditors in the event of bankruptcy or execution. This nature makes material guarantees stronger compared to personal guarantees (personal guarantee), because creditors do not need to depend on the ability or good faith of third parties, but can directly execute the collateral object if default occurs.

The provision stating that the Certificate of Ownership Rights over Apartment Units (SHM Sarusun) can be used as debt collateral by being burdened with a Mortgage Right is an important part of the financing legal system in Indonesia. This is emphasized in various regulations, one of which is Law Number 20 of 2011 concerning Apartments, which explicitly mentions that apartment units can be burdened with a Mortgage Right as debt collateral. This provision is also in line with the regulation in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT), and is an implementation of Article 51 of the Basic Agrarian Law (UUPA). More specifically, Article 27 of the UUHT emphasizes that: "the provisions of this law apply to the burdening of collateral rights over apartments and ownership rights over apartment units."

In other words, ownership rights over apartment units (HMSRS) have been legally recognized as one of the valid objects of Mortgage Rights. This indicates that apartments, although physically part of a vertical building standing on shared land, still have an independent legal status as individual ownership rights and can legally be used as debt collateral. This provision provides legal certainty for banks and other financial institutions in accepting apartment units as collateral objects in credit agreements. As a form of material guarantee, SHM Sarusun burdened with a Mortgage Right allows the creditor party to execute the

collateral if the debtor experiences default. Thus, the economic value of apartment units lies not only in their residential function but also plays an important role in supporting the financing sector. Besides providing easier credit access for the community, this arrangement also shows that agrarian law and guarantee law in Indonesia have developed following modern society dynamics, especially the need for vertical housing in large cities. The burdening of Mortgage Rights over apartments, including rights over shared parts and accompanying shared land, is regulated limitatively and comprehensively in the law, thus preventing overlapping or disputes over rights in the future.¹¹

D. Conclusion

Ownership Rights over Apartment Units (HMSRS) are legally a valid form of material rights that can be used as objects of Mortgage Rights. This has been explicitly regulated in Law Number 20 of 2011 concerning Apartments and reinforced by Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. These regulations provide legitimacy that apartment units, which include shared parts (corridors, stairs, elevators), shared objects (electrical, water installations, etc.), and shared land where the apartment building stands, can be used as debt collateral through the mechanism of burdening Mortgage Rights. Specifically, in South Sumatra Province, especially in large cities like Palembang, apartments have become an effective housing alternative in dealing with land limitations and rapid population growth. With the increasing need for housing in urban areas, apartment development has become a vertical solution that encourages efficient space utilization. In the context of financing, banking institutions in this region have accepted Certificates of Ownership Rights over Apartment Units (SHM Sarusun) as a form of collateral for the Apartment Ownership Credit (KPRS) facility. This indicates that the practice of burdening Mortgage Rights over

¹¹ Masri, Esther. "Policy on Issuing Electronic Certificates in the Land Registration System in Indonesia to Achieve Legal Certainty." *Krtha Bhayangkara* 17, no. 1 (2023): 157–174.

apartments has run functionally and legally, considering aspects of certificate validity, property economic value, and legal certainty.¹²

The relationship between HMSRS and the land rights where the apartment building stands has an inseparable character. This is because ownership of apartment units automatically includes rights over shared parts, shared objects, and shared land. Therefore, in the implementation of Mortgage Rights, legal binding is not limited only to the unit individually, but also includes all collective rights associated with it. Thus, every burden of HMSRS as debt collateral legally also binds all elements that form an inseparable unity of the apartment, in accordance with the principle of legal certainty and creditor protection in the national land law system.

There is a need for legal socialization and education to the community and banking practitioners in South Sumatra regarding the provisions for using SHM Sarusun as an object of Mortgage Rights to avoid misconceptions in financing practices. Land agencies and financial institutions are expected to strengthen coordination in the process of recording and executing Mortgage Rights over apartments, to guarantee legal certainty and protect the rights of the parties involved. The South Sumatra provincial government, especially in cities experiencing rapid urbanization, needs to encourage apartment development that fulfills legal aspects and is registered with the National Land Agency (BPN), so that its existence can legally be used as collateral in the formal financing system. Additional technical regulations need to be developed that are more specifically regulate the execution of Mortgage Rights over apartments, considering the complexity of shared ownership over land and building parts, to avoid legal problems in the implementation of auctioning collateral objects.

¹² Selinda, Risma. "Legal Protection for Creditors Due to the Cancellation of Deed of Granting Mortgage Rights (APHT) and Power of Attorney to Impose Mortgage Rights (SKMHT) at PT BPR BKK Purwodadi (Perseroda) Based on Court Decision Case Number 41/Pdt. G/2023/PN Pwd." *Thesis*. Universitas Islam Sultan Agung Semarang, 2025.

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