



LEGAL PROTECTION FOR HOLDERS OF BUILDING USE RIGHTS ON LAND MANAGEMENT RIGHTS

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Abstract: Legal protection for the community is essential to maintain harmony and integrity in the life of the nation and state. The existence of transparent laws and regulations that are by the wider community's needs is one of the foundations for the community to protect the existing and future land. Management rights are the right to control land from the state whose implementation authority is partially delegated to its holders. Land management rights can be given to other parties as Building Use, Property, or Use Rights. For the Building Use Rights above the management rights, if this will be used as collateral, the dependent rights are installed for the benefit of creditors with the approval of the management right holders. The method used in this study is a *socio-legal research approach*, which is sourced from collecting primary and secondary data and then analyzed using qualitative analysis methods. The results of the researcher's findings show that the Building Use Rights that stand on the management rights can be burdened with dependent rights but must obtain approval from the holder of the management rights.

Keywords: *Legal Protection; Building Rights, Land, Management Rights*

I. INTRODUCTION

The problems related to land in Indonesia seem endless. The increasing population causes the need for land to increase, for example, for developing residential areas, industry, tourism, or other purposes. In contrast, the land available for it stays the same or is permanent. The state lands in question are directly controlled by the state, including customary rights lands from customary law communities. Meanwhile, title lands are lands that individuals and legal entities already own with a right to land in the form of Ownership Rights, Business Use Rights, Building Use Rights, and Use Rights. These rights lands come from the Government's grant and are obtained because of government determinations such as the land rights

mentioned above; there are also land that is sourced from land rights belonging to other parties, for example, land for Building Rights, Right to Use, Right to Rent, Right to Mortgage, Right to Profit Sharing, Right to Ride.

Several regulations outline the meaning of management rights, including Regulation of the Minister of State Agrarian Affairs/National Land Agency No. 9 of 1999 concerning Procedures for the Grant and Cancellation of State Land Rights and Management Rights in Article 1 paragraph 3, which states that: "Management Rights are the right of control from the state whose implementation authority is partially delegated to the holder." According to the Regulation of the Minister of Agrarian Affairs No. 9 of 1995, the first Management Rights that existed at the time of the entry into force of the UUPA were those whose land, in addition to being used for the benefit of the agency concerned, was also intended to be given to a third party with a right. The Head of the Agrarian Office organizes the implementation involved. If the land has yet to be registered, it will only be carried out after the right holder comes to register it at the local agricultural office. The right holder is then given a certificate.

Building Rights (HGB) is one of the land rights in the National Land Law (HTN), which provides opportunities for the community to use land without owning it for an unlimited period. The Right to Use Business (HGU) and HGB are held to meet the needs of modern society, which do not yet exist in the rural community, according to Article 35 paragraph (1) of Law (UU) Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) HGB is the right to establish and own buildings on land that is not their own, with a maximum period of 30 years. Furthermore, in paragraph (2) of the article, it is stated that at the request of the right holder and by considering the condition of the buildings, the HGB can be extended for a maximum of 20 years. Because of its nature, for a certain period, HGB holders must extend their land rights if the HGB will expire or renew if the HGB has expired. Article 27 paragraph (1) of Government Regulation (PP) Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights states that an application for an extension of the HGB term or its renewal is submitted no later than two years before the expiration of the HGB term or its extension. According to these provisions, the extension of the HGB term or its renewal must have been carried out two years before the end of the HGB term or its extension. HGB holders are obliged to apply for an extension or renewal before the HGB expires or apply for an extension or renewal simultaneously when applying for

HGB for the first time. If the HGB is not extended or renewed, the HGB will be deleted because the term has expired.

Article 36 of Government Regulation Number 40 of 1996 states that: (1) the abolition of HGB on State land will result in the land becoming State land; (2) the abolition of the HGB on the Land of the Management Rights will result in the land returning to the control of the holder of the Management Rights; (3) the abolition of the HGB on the Hak Hak land resulted in the land returning to the control of the Hak Hak holder. This has consequences for the certainty of the ownership of the building on the HGB and the former HGB land, if the extension or renewal is not carried out because the landowner and the building owner are different subjects of rights.

The condition of the land that is not managed and utilized by the government has given rise to ideas and ideas from several developers who feel able to empower the land to be used as a settlement or for other social purposes, such as being used as a market, school or other public facilities that are considered necessary for the community. Communities or organizations or legal entities that have owned HGB that have long inhabited land on government-managed land have certainly carried out development, both semi-permanent and permanent buildings. Adaptation and occupation of the management rights area make the sense that building use rights can be turned into ownership rights; this is not only a hope but is also contained in the provisions of the law.

Regarding assets, of course, juridically normatively, the local government that owns the HPL can take the land by dismantling the existing building; of course, this needs to be clarified, reflects a sense of justice, and tends to ignore the rights of citizens. Permanent buildings inhabited for a long time by the community on the land will undoubtedly become a new polemic if the government, as the owner of the HPL, carries out eviction or demolition of the building. The hope of decency and the public interest is undoubtedly one of the footholds for the government to make efforts to evict or take over the land. Solving problems wisely and wisely is certainly expected so that there will be no chaos in the life of the nation and the country. The extension of the HGB is the prerogative of the relevant agencies to extend or not. However, one thing that needs to be noted is that citizens are protected by law to have a decent place to live. The 1945 Constitution Article 28H Paragraph (1) states that everyone has the right to live a prosperous life in birth and mind, live and have a good and healthy living environment, and receive health services. If the HGB ends and is not extended or renewed, then the land is back under state control, and the original HGB

holder owns all buildings and plants on the HGB land. If there is no effort to solve the problem of building ownership on HGB land, other disputes will arise, such as the absence of certainty in creating ownership of former HGB holders.

II. RESEARCH METHODS

The type of research that will be used in this study is normative juridical research. This type of research is carried out using library research, which studies theories and concepts. It seeks to obtain secondary data by linking written regulations in law books closely related to the problems in this research.¹

III. DISCUSSION

a. Efforts to Protect The Legal Protection of The Holder of The Right to Build on The Land of The Right to Manage

Legal Protection Efforts that can be carried out by the holder of the Building Rights (HGB) to get legal protection for the Building Rights (HGB) on the land of the Management Rights (HPL) that cannot be extended are legal remedies through the court/Litigation or outside the non-Litigation court. Considering that it is stated in articles 1266 and 1267 of the Civil Code, Holders of Transitional HGB can sue HPL holders and Initial HGB holders who do not fulfill their obligations to provide holders of Transitional HGB with the Right of Use as stated in the agreement and can claim the central priority right of extension as agreed based on applicable provisions/regulations In article 1267 of the Civil Code, it is also said that:²

“The party to whom the agreement is not fulfilled may choose whether, if it is still practicable, it will compel the other party to comply with the agreement, or whether it will demand the cancellation of the agreement, accompanied by reimbursement of costs, losses, and interest.”³ Laws that are written, complete, transparent, and implemented consistently following the spirit and content of the applicable provisions. The essence of legal certainty lies in the strength of the certificate of ownership of land rights as proof of ownership, including in court. Still, legal certainty with a negative system is relative, with the understanding that by laws and regulations, legal certainty is guaranteed as long as it is not proven otherwise. In Indonesia, the legal protection provided by the government through Article 31

¹ Soerjono Soekanto. *Op., Cit*, p. 7

² Gautama, Sudargo & Ellyda T. Soelistyarto. 1997. *Komentar Atas Peraturan Pelaksana UUPA*. Bandung: PT. Citra Aditya Bakti.

³ Hutagalung, Arie Sukanti & Markus Gunawan. 2008, *Kewenangan Pemerintah di Bidang Pertanahan*. Jakarta: PT. Raja Grafindo Persada.

paragraph (1) of Government Regulation Number 24 of 1997 states;

“The certificate is a certificate of proof of rights that is valid as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are by the data contained in the survey letter and the land book of the rights concerned.”⁴ The relationship between the issuance of land certificates and legal certainty is causal. Government Regulation No. 24 of 1997 has stipulated better legal certainty than Government Regulation No. 10 of 1961. If in Government Regulation No. 10 of 1961, the time limit for a third party to sue the owner of the land certificate has not been determined, then Article 32 paragraph (2) of Government Regulation 24 of 1997 stipulates a time limit for a third party to sue, namely 5 (five) years from the issuance of the certificate. Only at the age of the certificate under 5 years is the other party allowed to sue for ownership or control of the land rights of the certificate holder if there is evidence that is also legally enforceable.

The above provisions are affirmed in Article 32 of Government Regulation No. 24 of 1997, which:⁵

- 1) The certificate is a sign of proof of rights that applies as a vital proof tool regarding the physical and juridical data contained in it, as long as the physical and juridical data follow the data in the survey letter and the land book of the fitting concerned.
- 2) The certificate is a sign of proof of rights that applies as a vital proof tool regarding the physical and juridical data contained in it, as long as the physical and juridical data follow the data in the survey letter and the land book of the fitting concerned.

Although there are still restrictions, namely to transfer the right to another party and burden it, it must obtain written consent from the first party as the holder of the Management Right. The holder of management rights is obliged to register his land with the Land Office whose working area includes the location of the land concerned, the purpose of registering the management right land to the Land Office is to issue a Management Right Certificate as proof of his rights. With the issuance of this certificate, the authority has been born for the holder of management rights

⁴ *Hukum Agraria Nasional: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya: Jilid I Hukum Tanah Nasional, Cetakan X.*

⁵ Dasar Pokok-pokok Agraria Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah.

to enter into legal relations with third parties and/or cooperate with third parties. The approval from the HPL holder has given the creditor the power to exercise the *preferential* rights he has based on the Deed of Grant of Dependent Rights that has been registered with the Land Office (now called the Agrarian and Spatial Planning Office), namely by issuing a Certificate of Dependent Rights (SHT), if then there is a default by the debtor.⁶

b. Factors inhibiting the extension of the Right to Build that stands on the land of the Right to Manage

The improvement of the status of land rights, from building use rights to property rights, is inseparable from the obstacles related to the parties involved in the implementation process of improving the land status. Many people still have not increased their land rights because there are several things related to meeting the conditions set to carry out the increase in land rights. The factors that inhibit the extension of the Right to Build (HGB) that stand on the land of the Right to Manage are:⁷

1) The legal factor itself,

namely, there needs to be more clarity in regulating land use rights issues. This misalignment refers to where there is an overlap between laws and regulations. This can happen because making and issuing it should be shorter. When the regulation begins to be enforced, the rules are no longer based on the existing societal situation. In addition, in maintaining legal certainty, there is an inconsistency in the Government making rules, so sometimes there is a conflict between higher regulations and implementing rules.

2) Law enforcement and agencies

The Law Enforcement agencies authorized to take care of land issues are the National Land Agency (BPN) and the agencies that handle land dispute problems, namely the courts. According to Soerjono Soekanto, what is meant by "law enforcement factors, namely parties directly involved in the field of law enforcement." Legal officials must serve the mandate appropriately given by their positions organized in their position regulations by-laws and regulations by prioritizing justice and professionalism so that all parties, including all members of society, can trust law enforcement officials and be role models for the community.⁸

⁶ Hutagalung, Arie Sukanti, 2002.

⁷ Peraturan Menteri Negara/Kepala BPN No. 6 Tahun 1999

⁸ *Putusan Mahkamah Agung: Kompilasi Abstrak Hukum Tentang Hukum Tanah.*

3) Economics

Due to the large application fee, the increase in NJOP, and the bankruptcy of the right holder, the right holder cannot extend or renew the right.

4) Institutions

The issuance of new certificates on land that is still in HGU status is because it is rare to check data on land periodically in the HGU land area. Furthermore, regarding the measurement of land maps carried out by the BPN, there are many inconsistencies in the location of the land in the field with the certificate; not a few are also often found where the results of the measurement map and in the field there is an excess of land size, this is one of the problem factors in extending the Right to Use.

IV. CONCLUSION

The efforts made for the legal protection of the holder of the Right to Build on the land of the Management Rights are to increase the status of the right to Ownership. In connection with the expiration of the Community Building Rights, which ended in 2001, juridically, the land automatically returned to the local government Management Rights. As the owner of the Management Right, the local government can evict the owner of the Building Use Right above the Management Right. Still, the government must also prioritize the General Principles of Decent Government, where the government must prioritize the rights of citizens. The community holding the Right to Build can change their rights by increasing the status of the Right to Build to Property Rights, as has been done by several community members totaling 15 certificates of Building Rights based on the Decree of the Minister of Agrarian Affairs / Head of the National Land Agency No. 1 of 1998 dated January 22, 1998 jo. KMNA/KBPN No. 15 of 1997 dated October 22, 1997 jo. KMNA/KBPN No. 9 of 1997, dated July 2, 1997. Suppose the local government needs to upgrade the status of the Building Use Rights to the government's property in relocating the community. In that case, it must be done by the laws and regulations and the principle of decency, and compensation must be provided to the decent and appropriate community. The factors that hinder the improvement of the status of HGB to property rights are the lack of technical services in its implementation, for example, measurements that take a long time, slow bureaucracy both in the office of the National Land Agency and in the bureaucracy of the Bandar Lampung Regional Government as the owner of Land Management Rights. The increase in the status of Building Rights to Property Rights is also greatly influenced by the government's political will, which is significantly related to the government's approval to release regional assets to the broader community.

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