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LEGAL CERTAINTY FOR BUILDINGS WITH BUILDING USE RIGHTS STANDS ON LAND WITH LAND MANAGEMENT RIGHTS

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Abstract

Land Management Rights (HPL) are the authority granted by the government to landowners to manage part of state land, as regulated in Article 2 Paragraph (4) of the Basic Agrarian Law. Generally, HPL is valid for 30 years so that the holder can utilize government land efficiently. However, there are still weaknesses in HPL regulations related to the legal consequences when Building Use Rights (HGB) are established on land that has HPL. This weakness has the potential to create legal uncertainty, such as the possibility of building removal or land rent increases that can be carried out by the landowner at any time. This condition can hinder investment in the property sector. Therefore, a revision is needed in the legislation that regulates both HGB and HPL to ensure legal clarity regarding buildings with HGB that are established on land managed using HPL. This research is expected to provide important contributions in the legal field and provide benefits to all parties involved, including HGB holders, landowners, and the government.

Keywords: Building Use Rights (HGB), Land Management Rights (HPL), Legal Certainty

INTRODUCTION

Understanding human interaction with land in Indonesia has significance in the legal context referred to as Rechtsfeiten, namely legal events that are regulated and produce legal consequences. Before independence, Indonesia regulated this relationship through two legal systems: customary law and Dutch colonial land law originating from the Agrarische Wet Staatsblad 1870 No. 55.

Land plays an important role as a place to live and a natural resource that supports human life. As a national wealth bestowed by God, land plays a central role in community activities.

The legal basis for the relationship between humans and land in Indonesia is regulated in Article 33 paragraph (3) of the 1945 Constitution, which stipulates that the earth, water and natural resources therein are controlled by the state for the greatest prosperity of the

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people. Further details regarding this are regulated in the 1960 UUPA.

Article 2 paragraph (1) of the UUPA confirms that the state has the highest authority over the earth, water, space, and natural resources therein as part of the organization of the power of all the people. This shows that the state does not own land, but has the responsibility to regulate, organize the use, and maintain the land. The state's responsibility also includes regulations related to legal acts related to land, with the aim of ensuring management that is in accordance with the needs of the community and national development, and takes into account the principles of national agrarian law.

Understanding human interactions with land in Indonesia holds significance in the legal context known as Rechtsfeiten, which encompasses regulated legal events that have an impact on legal consequences. Before independence, Indonesia managed this relationship through two legal systems: customary law and Dutch colonial land law derived from the Agrarische Wet Staatsblad 1870 No. 55.

Land plays a central role as a place to live and a natural resource that supports human life. As a national wealth bestowed by God, land plays an important role in people's lives.

The legal basis for the relationship between humans and land in Indonesia is regulated in Article 33 paragraph (3) of the 1945 Constitution, which states that the earth, water and natural resources therein are controlled by the state for the greatest prosperity of the people. Further details regarding this are regulated in the 1960 UUPA.

Article 2 paragraph (1) of the UUPA stipulates that the state has the highest authority over the earth, water, space, and natural resources therein as part of the organization of the power of the entire people. This confirms that the state does not have direct ownership of land, but is responsible for regulating, organizing the use, and maintaining the land. The state's responsibility also includes regulations related to legal acts related to land, with the aim of ensuring management that is in accordance with the needs of the community and national development, and taking into account the principles of national agrarian law.

Article 2 paragraph (4) of the UUPA confirms that the State has the authority to grant land control rights to regional governments and customary law communities if necessary and does not conflict with national interests. This right can also be granted to authority bodies, state-owned companies and regional companies through the granting of Management Rights.

Although the UUPA does not regulate Management Rights in detail like other land rights that are described in detail, the concept of Management Rights is implied in the General Explanation of Part II of the UUPA. This explanation explains that the State can grant rights or permit land management to legal entities or individuals for certain purposes.

Reforms in land legislation are very important considering the high economic value and its relationship to property rights, and to reduce existing conflicts. One approach to addressing these conflicts is to clearly regulate land rights, including the authority to grant permits and use land to individuals, individuals, or legal entities for development or other activities.

Building Use Rights (HGB), regulated in Article 35 of the UUPA, is the right to construct and own buildings on land that is not one's own, with a maximum duration of 30 years. HGB can be granted for state land, land with Management Rights, or land with Ownership Rights in accordance with Government Regulation Number 40 of 1996.

Land Management Rights (HPL), although not regulated in detail in UUPA Number 5 of 1960, are mentioned in the General Explanation of Part II paragraph 2 of UUPA. This explanation confirms that the State can grant HPL to individuals or legal entities according to their needs and objectives.

The concept of "right to control from the State" in the context of HPL shows that this is not ownership but rather the authority to regulate and manage land according to the needs of society and national development. In this case, national agrarian law regulations and principles play an important role in regulating the relationship between individuals and land, including in the context of the transfer or extension of rights.

Field experience shows that legal certainty related to land rights that have been certified is often questioned and can be disputed in court. A case study on the transfer of Management Rights from the Surabaya City Government to PT. MANDIRI for housing development highlights the complexity in managing state land.

When the HGB validity period expired, PT. MANDIRI submitted an extension of the HGB for Management Rights to the Surabaya City Government, which then caused a dispute due to different interests between the parties involved. This emphasizes the importance of careful analysis and in-depth understanding of applicable laws and regulations in dealing with this kind of conflict.

Thus, a clear and precise formulation of land rights and consistent implementation of land laws and regulations are very important to achieve the legal certainty required for all parties concerned.

RESEARCH METHOD

This study adopts a normative legal approach, a legal research methodology that

focuses on the analysis of applicable laws and regulations and their relevance to the legal issues that are the focus of the research. This approach involves the analysis of laws and legal concepts. The sources of legal research used include primary and secondary legal materials, collected through literature studies, then analyzed prescriptively to offer solutions to the identified issues.

RESULTS AND DISCUSSION

1. What are the legal consequences for buildings with HGB if the HPL is converted by the land owner?

This study applies normative legal methods to examine legal regulations related to the topic being studied. Initially, the concept of management rights was explained in Article 2 of the Minister of Agrarian Affairs Regulation Number 9 of 1965, which regulates the process of changing state land management rights and its policies. Although the Basic Agrarian Law (UUPA) does not explicitly regulate management rights like other land rights, this concept is implied in the General Explanation of Part II of the UUPA which gives the government the authority to grant land management permits to individuals, legal entities, or other parties.

The Basic Agrarian Law (UUPA) also includes provisions that anticipate the existence of new types of rights in the future, as stipulated in Article 16 paragraph (1) letter h. Prior to the enactment of Government Regulation No. 18 of 2021, regulations on management rights were regulated in Government Regulation No. 40 of 1996, which did not provide sufficient details, especially regarding the termination of Building Use Rights established on Management Rights. Although Article 35 of Government Regulation No. 40 of 1996 states the reasons for the termination of Building Use Rights, this regulation does not specifically regulate the termination of the Building Use Rights if the duration of the land use agreement is different from the Building Use Rights certificate that is the basis for it.

Government Regulation No. 18 of 2021 fills this legal gap by providing details and clarity regarding the legal consequences of the termination of a rights grant agreement or a land use agreement above a management right. Article 46b of Government Regulation No. 18 of 2021 expressly states that if a rights grant agreement or a land use agreement above a Management Right terminates, then the related Building Use Rights will automatically terminate according to law.

Thus, Government Regulation No. 18 of 2021 explains that the termination of the land use agreement above the Management Right will have an impact on the termination of the related Building Use Rights, in accordance with the provisions clearly stipulated in the regulation.

What is the legal certainty regarding buildings with HGB?

This research uses normative legal procedures to examine legal regulations relevant to the points being reviewed. Initially, the draft management rights were defined in Article 2 of the Minister of Agrarian Affairs Regulation No. 9 of 1965, which regulates the method of altering management rights over state land and its policies. Although the Main Agrarian Law (UUPA) does not specifically regulate management rights like other land rights, this draft is implied in the General Description Part II of the UUPA which authorizes the government to grant land management permits to individuals, legal entities, or other parties.

UUPA also includes a proactive determination of the possibility of the existence of new types of rights in the future, as regulated in Article 16 paragraph (1) letter h. Before the enactment of Government Regulation Number. 18 of 2021, regulations regarding management rights were regulated in Government Regulation Number. 40 of 1996, which did not provide sufficient details, especially regarding the termination of Building Rights created on Management Rights. Although Article 35 of Government Regulation Number. 40 of 1996 states the reasons for the termination of Building Rights, this regulation does not specifically regulate the termination of Building Rights if the term of the land use agreement is different from the Building Rights deed that is the basis.

Government Regulation Number. 18 of 2021 contains this law by sharing details and clarity regarding the legal consequences of the termination of the land granting agreement or land exploitation agreement above the management rights. Article 46b of Government Regulation Number. 18 of 2021 clearly states that if the land granting agreement or land exploitation agreement above the Management Rights is completed, the related Building Rights will be terminated legally.

Thus, Government Regulation Number 18 of 2021 explains that the termination of the land use agreement above the Management Rights will result in the termination of the related Building Rights, in accordance with the provisions clearly stipulated in the regulation.

CONCLUSION

Based on Article 35 of the Main Agrarian Law, the Right to Build (HGB) is the right to create and own a building on land that is not owned, with a maximum duration of 30 years which can be extended to 20 years. This right can be transferred to another party in

accordance with legal provisions. Article 36 explains that HGB can only be owned by Indonesian citizens or legal entities created and located in Indonesia. If the owner does not meet these requirements, they must release or transfer the right.

Government Regulation Number 40 of 1996 stipulates that HGB can be transferred over State land, Management Rights, or Ownership Rights, with a method of granting that is further regulated. Before the enactment of Government Regulation Number 18 of 2021, this determination was less clear, which caused uncertainty in the handling of related cases.

Government Regulation Number. 18 of 2021 provides legal clarity regarding the consequences of the termination of the land exploitation agreement above the Land Management Rights (HPL). Article 46b in the regulation states that if the land exploitation agreement above the HPL is completed, the HGB above the HPL will also be automatically terminated. This provides much-needed legal clarity in handling cases related to the termination of the legal period of HGB above HPL.

The application of Government Regulation Number. 18 of 2021 contains the legal void in the Government Regulation Number. 40 of 1996, and provides clarity on the legal impact of the termination of the land exploitation agreement above the HPL to the related HGB. This provides a real principle for all parties involved in the land and building business subject to HGB above HPL.

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