



# Arrangements for Submission of Building Usage Rights in Land Transfer

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**Abstract.** This article examines the use of Building Use Rights in land conversion. The purpose of this study is to identify and examine the rule about the presence of a maximum threshold in the application of construction rights for land conversion, as well as the legal ramifications of this arrangement. This paper's research employs a normative technique with a descriptive research focus. This paper results in research that the regulation regarding the application of building use rights in land conversion has indeed been regulated through laws and regulations according to the hierarchy, but there is still the possibility of exploitation of the regulations on the application of building use rights in land conversion within the maximum application limit, because only the maximum amount of area and time is regulated in one application, so that it can lead to repeated applications which eventually exploit the regulation regarding the conversion of the land itself.

**Keywords:** Building Use Rights · Submissions · Land Conversion

## 1 Introduction

Law is a series of rules regarding the behavior of people as members of a society, with the aim of the law being to provide safety, happiness and order in that society. As a result, everything done in a society must be suited to legal aims and carried out in line with the values or principles stated in Pancasila and the 1945 Constitution, with these two concepts serving as the foundation for carrying out the lives of society, country, and state of Indonesia.

In an agricultural country like Indonesia, land is a very vital production factor because it determines the welfare of the people living in that country. There are at least three basic human needs that use land. First, land as an economic source as a supporter of life. Second, land as a place to build a house or building for residence. Third, the land that functions as a cemetery. Although land in agrarian countries is a basic need, the structure of land ownership in agrarian countries is usually very unequal. On the one hand, there are individuals or groups of people who own and control land excessively, on the other hand there are groups of people who do not own land at all. This inequality in land ownership makes the frequent land problems in agrarian countries become one of the main sources of political interest.

According to Article 33 paragraph (3) of the 1945 Constitution, the state owns and exploits the soil, water, and natural resources for the benefit of the people. The state, according to this article, controls whatever that is above the land or enclosed inside it. The powers granted to this state do not come without repercussions. The state has the ability to make use of and distribute natural resources held by all Indonesians. The above-mentioned provision may also limit the parties' rights to land. In addition to the provisions stipulated in the 1945 Constitution, provisions on natural resources in Indonesia are also regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles: "On the basis of the provisions in Article 33 paragraph 3 of the Constitution and other as referred to in Article 1, the earth, water, and space, including the natural resources contained therein, are at the highest level controlled by the state, as an organization of the people."

In actuality, power is divided in order to accomplish state goals, and the existing authority, especially the executive or the President, has considerable responsibility for carrying out state goals in line with the terms of the fourth paragraph of the 1945 Constitution. However, the administration of the state has not altered, for example, by allowing the Government tremendous authority, it does not create commensurate provisions for the recognition and preservation of Indonesian residents' property rights on land. The rights of Indonesian people are revoked for the advantage of foreign investors, and the lack of legal proof becomes a target for initiating rights revocation.

Legal relations between Indonesian citizens (WNI) and foreign citizens (WNA), as well as legal actions involving land in Indonesia, are governed by Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and Government Regulation (PP) Number 46 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights. Furthermore, foreign persons can only hold Use Rights, Rental Rights to Buildings, Building Use Rights, Business Use Rights, and Temporary Land Rights in Indonesia. The community then uses these land rights in a variety of areas, including residential development, industry, and investment. The island of Bali is one of the most popular places for international investment.

The process of investment from legal entities that have foreign investors in them generally requires land that supports its activities such as constructing buildings, so that an application for Building Use Rights is made, at this stage there are various problems such as the occurrence of land conversion from for the benefit of the community as land for farming to land for the benefit of foreign investors and in the end there is continuous erosion of community farming land. Further examination finds that one of the laws governing the grant of land rights is the Regulation of the Head of the BPN of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority for the Granting of Land Rights and Land Registration Activities. In the context of the district regulation, it is stated that the land for which the building rights are being applied for by a legal entity does not exceed 150,000 m<sup>2</sup>, but there is no submission limit, which means that a legal entity can submit multiple applications as long as it does not violate the land area being applied for, given the ongoing debate in the area. The purpose of this study was to identify the arrangement of the application of building use rights in the conversion of land, as well as to discover and evaluate the legal consequences of the arrangement of the application of building use rights in the conversion of land. The purpose of this study

is to identify and examine the rule about the presence of a maximum threshold in the application of construction rights for land conversion, as well as the legal ramifications of this arrangement.

## **2 Method**

The research utilized to investigate the aforementioned issues employs two approaches: the legislative approach and the conceptual method. This approach is used to investigate the rules and regulations controlling building use rights in land conversion, which still have numerous flaws, particularly with the maximum limit of a legal body in applying for building use rights.

## **3 Result and Discussion**

### **3.1 Arrangements Regarding the Application of Building Use Rights in the Transfer of Land Functions by Legal Entities**

The existence of land in Indonesia has been considered as self-esteem and a symbol of the prosperity of the people in it. So it is not surprising that everyone struggles to own land and defend it. Article 33 of the Republic of Indonesia's 1945 Constitution, which serves as the fundamental framework for land law in Indonesia, governs land control. The Basic Agrarian Law and other land-related implementing rules further develop land law.

The state is the highest level organization for those with the most control over the land. According to article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the authority of the state's right to control land includes regulating and administering the designation, use, supply, and maintenance of earth, water, and space, which then determines and regulates the legal relationship between people and the earth, water, and space, and which then determines and regulates relations between people and the earth, water, and space.

Land rights originated as a result of the state's authority to govern land. According to Article 4 paragraph, the right to control has the authority to determine various rights to the earth's surface and rights to land that can be granted and owned by individual Indonesian citizens, legal entities established under Indonesian law and domiciled in Indonesia, and legal entities domiciled in Indonesia (1). Foreign legislation is present in Indonesia.

Land rights are rights that allow the holder to use and/or benefit from the land to which they are entitled. Today, the most frequent land tenure rights are land ownership rights and building use rights. Ownership rights and building use rights are control rights over a parcel of land that pertain to the right to use and exploit the earth's body and the space above it to construct a structure. The most powerful and all-encompassing right a person may have over land Articles 16 paragraph (1) and 53 paragraph (1) go into detail on the various types of land rights mentioned in Article 4 paragraph (1). (1). (1). According to the types of rights described in the preceding article, they may be divided into three categories: permanent rights, land rights established by legislation, and temporary land

rights. Hak Guna Bangunan is a permanent land right that will continue as long as the Basic Agrarian Basic Regulations Act is in effect.

Regarding the Right to Build, it is regulated in articles 26–40 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, and its derivative rules are Government Regulation Number 40 of 1996 concerning Right to Cultivate, Right to Build, and Right to Land, in which there are matters concerning the Origin of Building Rights Land, Legal Subjects, Term, Obligations Of Building Rights, Rights Of Building Rights, Transfer Of Building Rights, and Deletion Of Building Rights. The follow-up to Government Regulation Number 40 of 1996, namely Regulation of the Head of the Republic of Indonesia BPN Number 2 of 2013 concerning Delegation of Authority for Granting Land Rights and Land Registration Activities, only regulates the delegation of authority for granting use rights in articles 4 and 9. Buildings to legal businesses and persons with a maximum limit of 20,000 m<sup>2</sup>, implying that there is no more stringent control on the number of restrictions on the ownership of business entities on Building Use Rights.

### **3.2 The Juridical Implications of Regulating the Application of Building Use Rights in the Transfer of Land Functions by Legal Entities**

The government has a key duty in regulating legal links between individuals, legal entities, and the land, water, and space, according to Article 2 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. In this regard, the government plays a key role in regulating the control of Building Use Rights for Legal Entities. The government has a role in formulating a policy that is outlined in a general plan that covers all parts of Indonesia which is then regulated in more detail through its derivative policies which are then represented by the National Land Agency with building rights control arrangements for legal entities.

Building rights are governed by the concept of land management contained in Article 33 paragraph (1) of Spatial Planning Law Number 26 of 2007. In this case, the control of construction rights exercised by legal entities should be exercised through regulation by suitable institutions and the use of property as a unified system for the benefit of the community in a fair manner, rather than just producing benefits for the community. The upper middle class and the lower middle class.

If the Regulation of the Head of the BPN of the Republic of Indonesia Number 2 of 2013 concerning the Delegation of Authority for the Granting of Land Rights and Land Registration Activities is observed, it appears that there are rules regarding the limitation of the amount of control over building rights land, but this is not the case; in articles 4 and 9, only the delegation of authority over the application for building rights land is regulated, not the amount of control. The same arrangement applies to legal entities in granting building rights with an area not exceeding 20,000 m<sup>2</sup> which is submitted to the head of the national land agency, while building rights grants of more than 20,000 m<sup>2</sup> and not exceeding 150,000 m<sup>2</sup> are submitted to the head of the BPN regional office. Based on these, a legal entity can have two or more applications for building rights as long as it does not exceed the Limits stipulated in article 4 and article 9. Land tenure building rights does not have a submission limit but only has a maximum limit per submission. This results in injustice to the community which means that it is possible to monopolize

only a few business entities or investors who have stronger and larger funding, which is contrary to the principles of justice for all Indonesian people as aspired by Law Number 5 of 1960 concerning Regulations. Basic Agrarian Principles.

## 4 Conclusion

The Earth, water, and natural resources in it are controlled by the State and used for the greatest prosperity of the people, according to the Republic of Indonesia's Constitution, which is then more strictly regulated in the derivative rules of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Government Regulation (PP) Number 46 of 1996 concerning Cultivation Rights. Building Use Rights and Land Use Rights govern the origin of land for building rights, legal subjects, time period, building rights obligations, building rights, transfer of building rights, and abolition of building rights, whereas the regulation of the head of the bpn of the republic of Indonesia number 2 of 2013 concerning the delegation of authority to grant land rights and land registration activities governs only the maximum amount, but not the number of applicants.

The legal implication of regulating the application of building use rights in the transfer of land functions by legal entities is the possibility of monopoly by several business entities or individuals; the Regulation of the Head of the BPN of the Republic of Indonesia Number 2 of 2013 about the Delegation of Authority for Granting Land Rights and Land Registration Activities, for example, exclusively governs the maximum number of submissions for building use rights. But not the number of submissions for land registration. Articles 4 and 9 simply restrict the maximum limit for submitting building rights per submission, not the number of times a person or corporate organization can apply for building rights, therefore they do not satisfy the ideal of fairness for all Indonesians.

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