



Legal Protection of Right Holder of Building Usage Rights that Have Ended the Extension Period in Accordance with the Provisions of Government Regulation of the Republic of Indonesia Number 18 Year 2021

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Abstract. The regulations of the Government of the Republic of Indonesia Number 18 of 2021 have expired the legal protection of land use rights, according to this paper. The analysis in this article focuses on the legal protection of land rights of buildings whose certificates of right to use have expired because the owner of the certificate of right to use the building is too late to extend the certificate of right to use the structure. The objective and advantages of this research are to investigate more fully the variations in the substance of the legislation surrounding the execution of the expansion of building use rights, and it is intended to give theoretical and practical benefits for the advancement of science. The normative legal research approach was applied in this study. According to statutory laws, the legal position of building use rights whose validity time has ended is to return to the original legal status of land rights, meaning to return to state land or property with specific rights held by private legal subjects or civil legal organizations. The National Land Agency can provide legal protection to holders of Building Use Rights whose extension time has ended by renewing the Building Use Rights Certificate. In the application procedure, the government should be allowed to grant a certificate to the holder of an expired certificate of building use rights.

Keywords: Legal Protection · Building Use Rights · Government Regulations

1 Introduction

People, groups of people, and legal entities can all be given and keep land. Individuals, whether Indonesian citizens or foreigners domiciled in Indonesia, as well as public and private legal entities, legal entities established under Indonesian law and domiciled in Indonesia, and foreign legal entities with representation in Indonesia, are all subject to the authority of the state to determine various land rights granted to and owned by the state [1].

The basic elements of the Indonesian National Land Law were included into Law No. 5 of 1960 on Core Regulations on Agrarian Principles, also referred to as the Basic

Agrarian Law. Although most articles recognize the need of land rights protection, many more extensive regulatory components must be implemented. The demand for more extended provisions of 30 (thirty) years is met by less detailed operational and technical procedures than the Government Regulation. However, with the increasing complexity of land issues and the greater need for order in land management, there is a need for higher-level implementation regulations for the Basic Agrarian Law, specifically in the form of a Government Regulation, which implements additional provisions on land rights. Article 16 of the Basic Agrarian Law governs the rights to cultivate, develop, and use land, specifically the right to produce, build, and use land.

Cultivation Rights, Building Utilization Rights, and Use of Use Rights all require clarification on a variety of issues, including the means of acquisition, the holder's authority and responsibility, and the status of the land and objects on it once the rights are awarded. There is no more time. This clarity is required to give rights holders, the government as the Basic Agrarian Law's implementer, and third parties with some legal certainty. To reinforce the present provisions in the Basic Agrarian Law, additional legislation covering Cultivation Rights, Building Use Rights, and Use Rights is necessary.

The origin of the Hak Guna Bangunan land is land that is not his own. According to the UUPA, unowned land is State land and Hak Milik land. Meanwhile, Government Regulation No. 40 of 1996 distinguishes between State land, property with management rights, and property with ownership rights. According to the UUPA and Government Regulation Number 40 of 1996, those who qualify for Building Use Rights include:

1. Indonesian citizen;
2. An Indonesian-based legal entity constituted under Indonesian law.

The existence of Building Use Rights can be explained by the provenance of the land, namely:

1. Right to Use Building on State Land
Building use rights are frequently given on state land as part of a National Land Agency decision to award rights. This structure was created after the applicant's decision to award the HGB was issued and validated by the local Regency/City Land Office. Concurrently, Minister of the method is outlined in Agrarian Affairs/Head of BPN No. 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights. This Right to Build has a maximum tenure of 30 years, can be extended for a maximum of 20 years, and can only be renewed once for a maximum of 30 years.
2. Building Use Rights on Land Management Rights
HGB on land with Management Rights happens as a result of the National Land Agency's decision to give management privileges holders' sought rights. This sort of Building Use Right happens when the applicant files the grant decision with the local Regency/Municipal Land Office and gets it entered in the land book as documentation of the issuing of the Building Use Rights Certificate (Article 22 and Article 23 PP Number 40 of 1996). The procedure is governed by the Minister of Agrarian Affairs/Head of BPN No. 9 of 1999. This use-right has a maximum lifespan

of 30 years, which can be extended for up to 20 years and renewed once for a total of 30 years. One of the components addressed by Legislation No. 11 of 2020 on Job Creation is likewise connected to the omnibus legislation system, namely revisions incorporating land-related laws, one of which includes HPL. The HPL is governed by paragraph II of Articles 136 to 147 of the Job Creation Law. The Job Creation Law's HPL regulation aims to offer legal clarity and strengthen HPL regulation in order to promote the investment ecosystem and accelerate the government's national economic growth.

3. Right to Use Building on Ownership

HGB on land with ownership rights occurs as a gift from the property rights holder to the Land Deed Making Officer (PPAT). This PPAT deed must be registered with the Head of the local Regency/City Land Office before it can be published in the Land Book (Article 24 PP Number 40 of 1996). This HGB has a 30-year term limit with no term extension. The Right to Build, on the other hand, can be renewed if the landowner and the holder of the Right to Build reach an agreement.

Former right holders may be granted renewal of Building Use Rights on the same land when the Building Use Rights and their extension referred to in Government Regulation Number 40 of 1996, Article 25 paragraph (1), expire. Furthermore, according to Government Regulation Number 40 of 1996, "applications for renewal of Building Use Rights must be made no later than two (two) years before the Building Use Rights term expires."

Meanwhile, Article 41, paragraph (2) of Government Regulation Number 18 of 2021 states that "applications for renewal of building use rights should be lodged no later than 2 (two) years after the tenure of building use rights has expired."

According to the circumstances provided above, the punishment is imposed no later than two years before the term's expiration under PP Number 40 of 1996. However, while PP Number 18 of 2021 uses the term "grace period," which states no later than two years after ending, article 102 at the end of PP Number 18 of 2021 also states that Government Regulation Number 40 of 1996 is declared to remain valid as long as it does not conflict with PP Number 18 of 2021. *Lex posterior derogate legi prima* is a legal interpretation notion that states that the most current law (*lex posterior*) takes precedence over the preceding legislation (*lex prior*). This concept is prevalent in both domestic and international law [2].

In practice, the existence of two (two) different sentences defining the term for applying for an extension of Building Use Rights may result in varying interpretations and repercussions. This will affect the application of legal certainty. Holders of SHGB whose validity period has expired are unable to instantly renew the Building Use Right (HGB). This is because Building Use Rights (HGB) holders failed to notice that an expired Building Use Rights (HGB) certificate needed to be renewed as soon as feasible.

2 Method

This study employs normative law research methodologies, namely normative case studies in the form of legal commodities. As a result, normative legal studies focus on positive

law inventory, legal principles and doctrines, legal discovery in actual settings, legal systems, synchronization levels, legal comparisons, and legal history [3]. The issue method employed is the Legislative Approach, in which the legislative hierarchy and principles must be understood [4], followed by the conceptual approach [5]. Because there is little or no rule of law in the situation, this strategy is used. The Historical Approach to the Rule of Law's purpose is to identify stages of legal development that may be reduced to legislative history [6]. The primary legal resources used are authoritative legal materials gained from laws and regulations, secondary legal materials obtained from literature and legal practitioners' opinions, and tertiary legal materials obtained through instructions and explanations. Use both main and secondary legal materials. The legal resources for this study were acquired using library research procedures, it can be performed by the acquisition of legal papers from primary, secondary, and tertiary legal sources. The descriptive qualitative analysis, which is non-calculable data analysis, was employed in this study.

3 Result and Discussion

3.1 Legal Protection for Ownership of Buildings on a Plot of Land Right to Build Expired Prior to the Application for Renewal in Accordance with Article 41 Paragraph (2) of PP RI Number 18 of 2021

According to a Government Regulation, holders of registered land rights will be awarded a certificate as solid documentation to ensure legal certainty. The National Land Agency is in charge of this land registration, which is organized at the reGENCY or regional level II by the Land Office. The registration of land by the National Land Agency establishes the state's right to rule, in this case, the executive power [7]. Proof is an action undertaken by litigants in a dispute to get the truth, which has the value of certainty and fairness in the settlement of conflicts in court. For example, in civil litigation, the evidence is [8]:

- a. Letter Proof
- b. Witness Evidence
- c. conjecture
- d. Oath

The certificate's principal role is to provide as solid proof. According to Article 19 of the UUPA Number 5 of 1960. As a consequence, if the name on the certificate is clear, anyone may demonstrate their land rights. The purpose and system used The publication approach is negative, but it has a positive component in that it will produce letters of proof of rights that may be used as strong evidence, as provided in Articles 19 paragraph (2) letter c, 23 paragraph (1) letter c, and 24 paragraph (2) letter c of the Basic Agrarian Law. The legal relationship between land and other goods associated with it is an important aspect of land law. As a result, legal clarity concerning the legal position of things linked to land is critical since it affects all legal linkages involving land and objects attached to it.

The vertical attachment concept establishes ownership of land and all goods attached to it as a unit that is linked together. In nations that use the so-called Accessible Principle

or Attachment Principle, buildings and plants that are above and an integral component of the land are considered part of the land in question. Because the law includes the ownership of structures and plants on the land that become his rights, the right to land becomes his rights in and of itself. The fundamental nature of rights under customary law, the notion of horizontal distribution of land rights, is kept but modified to meet the practical needs of modern society.

Ownership of structures on the land is not included in land rights. Unless an agreement to the contrary exists, buildings, plants, and other goods exist on property owned by the person who built or planted them, whether the party owns the land itself or not. Land disputes arising from overlapping grants of land rights to the same object raise the question of how far the state can go to provide land rights holders with legal protection, given that the right to legal protection is understood to be concerned with the duties, roles, and responsibilities that the power of state identity must carry out. Citizens have fundamental rights, including the right to safety, security, and legal protection. Certificate holders have legal protection, as outlined in Article 25 of Government Regulation Number 40 of 1996. According to Article 19 of Law No. 5 of 1960 on Basic Regulations on Agrarian Principles, the government is establishing and implementing land registration across the Republic of Indonesia to offer legal clarity and a sense of security to all holders of property rights.

3.2 Legal Consequences of the Past Time of Application for Renewal of Building Use Rights on State Land

The word “state land” refers to state-controlled land. There is no other party on directly controlled property, often known as free state land. The authority in general, and specifically in this case, is the Right to Build holder’s right. The LoGA’s Article 4, paragraph 1 defines authority in general (2). Simultaneously, the specific power may be found in Article 32 of Government Regulation Number 40 of 1996. Article 30 of Government Regulation 40 of 1996 outlines the requirements of the holder of Building Use Rights. Additional constraints on the obligations of Building Use Rights holders are contained in Article 31 of Government Regulation 40 1996.

The applicant receives HGB on state land after filling out an application form that includes supporting data (KTP, KK, PBB, evidence of rights acquisition recognized by a Notary or Lurah/Camat), measurement, and, if granted, a BPN Decree of the Determination department. Following that, rights and the applicant are required to pay the Land and Building Rights Acquisition Fee (BPHTB) and attach proof of payment of the BPHTB, following that, the applicant must apply to the Head of the local Regency/City Land Office for the registration of the BPN Decision Letter for the Determination of Rights Section in the Land Book and be awarded a certificate as evidence of rights [9].

Even though an HGB on public property has expired, it can still be offered for rights adjustment. Regulation No. 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights was released by the State Minister of Agrarian Affairs/Head of the National Land Agency. Procedures for renewing and extending Building Use Rights. Articles 36 and 37: Abolition of Expired Building Use Rights;

1. The land becomes state land when the Right to Build on State Land is revoked, as stipulated in Article 35.
2. When the Right to Build on the Land with the Management Right is terminated, the land is restored to the authority of the Management Right holder, as stated in Article 35.
3. When the Right to Build on Land with Ownership Rights is terminated, as stated in Article 35, the land is restored to the authority of the Ownership Rights holder. Furthermore, according to Article 37:
 - a. If the Hak Guna Bangunan on state land is invalidated and not extended or renewed, the former holder shall remove the building and objects on it and turn over the land to the state in an empty condition no later than one year after the Hak Guna Bangunan expires.
 - b. If the structures and items mentioned in paragraph (1) are still required, former right holders must be compensated in the manner and amount specified in a Presidential Decree.
 - c. Demolition of structures and things mentioned in paragraph (1) is at the expense of previous Building Use Rights holders.
 - d. If the former Right to Build holder fails to meet the conditions mentioned in paragraph (1), the Government shall destroy the building and objects on the previous holder's land at the former holder's expense.

The four rules and articles described above that govern the Legal Status of Building Use Rights that have expired lead to the following conclusions:

1. With regard to the restricted period of time and Building Use Rights, the laws and regulations give two options for holders of Building Use Rights whose term has ended to continue to possess the Building Use Rights, namely: a) first via rights extension, and b) second through rights renewal.
2. Right extension is the expansion of a right's validity duration without modifying the criteria for awarding the right. While rights renewal is the giving of old rights to the holder of land rights owned with the Hak Guna Bangunan after the duration of the right or its extension ends (Article 1 points 6 and 7 of PP 40/1996).
3. Extension of Building Use Rights (HGB), which is done both before and after the HGB expires.

Because the HGB certificate expired, the state now owns the land (controlled by the state). When the land rights holder dies, the land rights transfer to the heirs. Rather than an extension of property rights, the procedure is known as a "land application."

According to statutory provisions, the legal position of HGB whose validity time has ended is to revert to the original legal status of land rights, meaning to return to state land or land with specific rights held by private legal subjects or civil legal organizations. However, the rules and regulations allow two options for HGB holders whose periods expire to continue holding HGBs: extension of rights and renewal of rights.

4 Conclusion

Holders of Building Use Rights whose extension period has expired can seek legal protection by applying to the National Land Agency for the renewal of the Building Use Rights Certificate, as they still have two years from the expiration date under Article 41 paragraph (2) of Government Regulation No. 18, 2021 of the Republic of Indonesia. The legal consequences of applying for renewal of the Certificate of Building Use Rights under Law Number 40 of 1996 and renewed under Law Number 18 of 2021, namely for the Certificate of Building Use Rights whose validity period has expired according to the laws and regulations, are to return to the legal status of the land rights' origin, that is, to state land. However, two methods have been established in the laws and regulations to allow HGB holders whose term has ended to remain HGB holders, namely by extension or renewal of rights by appropriate circumstances.

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