Discretion of the Head of the Land Office regarding the Expiration of the Building Use Rights Certificate as the Object of Mortgage Rights

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Abstract. Using discretion, public servants can solve real-world issues that arise in the course of running the government, such as the lack of regulation by statute. According to Article 87 paragraph (1) According to Regulation Number 18 of 2021 by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency regarding the Procedures for Determining Management Rights and Land Rights, building use rights certificates are valid for 30 years, with the possibility of a 20-year extension and a maximum 30-year renewal. The goal of this study is to philosophically examine the rule of law principle, which forbids the application of legal standards in a retroactive manner. On the other hand, contemporary legal theory has examined various elements of exceptions to these broad legal principles. With a philosophical and conceptual perspective, this research is legal normative research. Building use rights certificates (SHGB), one of the items created by government officials, do not have an expiration date, according to the research findings. This implies that the SHGB's validity period may be extended and that creditors holding material guarantees (KPJK) may use the SHGB as collateral. If the extension is not carried out, the HGB will be deleted, along with the mortgage rights that follow. A remedy is provided by Law Number 30 of 2014 regarding Government Administration, as stated in Article 58 paragraph (6). The Head of the Land Office, a government authority, may decide to grant SHGB extensions on land rights for a retroactive period, using this clause. This is to avoid the erasure or cancellation of mortgage rights as a result of breaking legislative requirements.
Keywords: Discretion, building use rights certificate, object of mortgage rights.

1 Introduction

Discretion is the power granted to public servants to address specific issues arising from laws and rules that restrict choices, do not regulate, are unclear or inadequate, or result in government inaction [1]. The discretion used by public servants may take the following forms decision making or in the form of action. Examples of forms of discretion by government officials in the form of decision making will be discussed in this article. Meanwhile, an example of a form discretion in the form of action is what the traffic authority does. police when regulating traffic at a road intersection, even though traffic on the road already has its own rules. The mortgage rights law's provisions, which stipulate that mortgage rights are terminated upon the abolition of

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rights to land subject to mortgage rights, are connected to the discretionary decision-making process in this article [2]. A building use rights certificate's expiry of land rights has a maximum 30-year validity duration, after which it can be renewed for an additional 20 years or extended for an additional 30 years [3]. This means that land rights are still limited by a certain period of time, where this period must be taken into account by the owner of the rights to utilize the building. In order to prevent the abolition of land rights.

Concerning the above-described building use rights certificate's validity period, issues arise when it expires and isn't renewed while the certificate is still being used as collateral for a loan. Do creditors who own mortgage rights still have the ability to execute parate execution in the event that the debtor defaults? However, is it within the authority of the local Land Office Head to decide whether to extend the land's construction use rights certificate retroactively? Actually, the rule of law forbids the application of legal standards in a retrospective manner (retroactive, ex post facto law). This implies that the due process of law principle—which states that all government activities must be founded on legitimate, documented statutory regulations—is a prerequisite for the rule of law. Any administrative action or action conducted must be preceded by written statutory regulations that are in force

2. Method

Because the certificate of building use rights under This study, which is normative legal research, focuses on Law Number 5 of 1960 concerning Basic Agrarian Principles and Law Number 4 of 1996 respecting Mortgage Rights for Land and Objects Related to Land. An intellectual and philosophical approach is used [4]. Experts in state administrative law and civil law are consulted in the conceptual approach regarding the concept of certificates of building use rights and judgment. In the meanwhile, the statutory method looks at legislation's discretion and building use rights certificates. The two main legal laws that were used were Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Law Number 4 of 1996 about Mortgage Rights over Land and Objects Related to Land. Law No. 30 of 2014 Concerning Government Management. Secondary legal materials are legal materials collected through literature studies analyzed descriptively qualitatively. Qualitative research does not formulate hypotheses [5], so in this research no hypotheses were formulated.

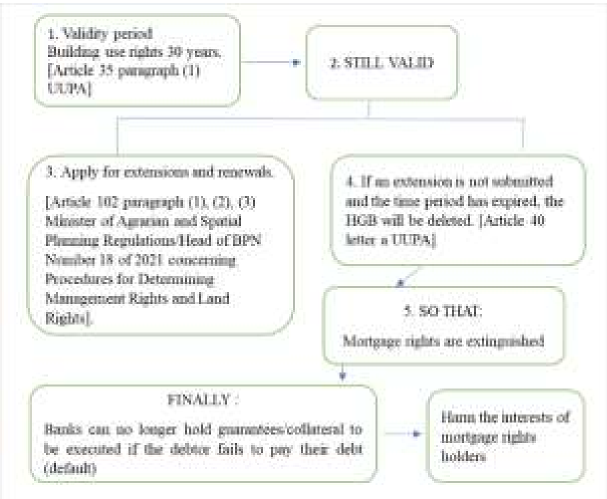
3. Result and Discussion

3.1 Parate Execution of Certificates of Building Use Rights Expiring Their Validity

The execution parate offers the advantage of being able to submit a request for execution to the state auction office's auction official directly, saving the hassle and certainty of going through a judge or court as an intermediary. The mortgage rights law's Article 6 and Article 20 paragraph (1) provide the legal foundation for the execution parate [6]. A legal foundation for the execution parate also exists, specifically as stated in the deed of encumbrance of mortgage rights (APHT), in the form of a power of attorney given by the debtor to sell at auction in the case of failure. Therefore, the APHT's power grant, not the executorial title (known as irah-irah in Indonesia), is the source of authority for the execution apparatus. This is not the same as fiat (order) execution, which is the execution of material guarantees by means of a system that reports the execution of material guarantees to the local court head at the location of the items. The executorial title (base of rights), which derives from irah-irah and Article 224 HIR/Article 258 RBg, serves as the foundation for the fiat of execution.

The mortgage right is destroyed by the annulment of the rights to the land encumbered with the mortgage right, so the execution parate for building use rights whose validity time has expired by reference to the mortgage rights law cannot be carried out. This complies with the terms of the Mortgage Rights Law's Letter d of paragraph (1) of article 18. rules regarding the length of building use rights are found in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration, specifically in Article 37 paragraph (1). These rules are also incorporated in the Mortgage Rights Law.

This problem will have a negative impact on creditors, especially when carrying out execution parate, because the building use rights are no longer valid or have been abolished, so the mortgage rights will also be extinguished. If the mortgage right is removed, the bank can no longer control the collateral as collateral, a situation like this results in losses for creditors. Seen in the image below.



Box number 1 The building use rights' validity period, as specified by Article 35 paragraph (1) UUPA, is explained in the chart above. **Box number 2** affirms the terms of building use rights as specified in the Minister of ATR/Head of BPN Regulation's Article.37 paragraph (1), with a maximum 30-year validity period. Next, **box number 3** Before the building use rights period expires, an application for an extension may be submitted. building use rights for a maximum of 20 years. It is necessary to submit an application for the renewal of building use rights no later than two years after the building use rights period has ended. The maximum time frame for renewing building use rights is thirty years. It appears that in this case, the initial application for a term extension and the application for the renewal of building use rights are not the same.

Box number 4 recounts how Since the building use rights had reached the end of their validity, they were deleted. The absence of an application for a term extension of building use rights led to this. Since the time for which they were awarded has elapsed, land rights are routinely revoked. as specified by the provisions in Article 40 letter a UUPA and Article 46 letter a PP Number 18 of 2021 concerning management rights, land rights, flats, and land registration. If the building's right to occupy is revoked, the mortgage right will be nullified. In actuality, building use rights can be pledged as security for debts by encumbering them with mortgage rights. However, in the event that the debtor defaults and is unable to repay the loan, the bank will no longer be able to retain the collateral if the building use rights are revoked. The bank's interests will be compromised as the owner of the mortgage rights. It should be emphasised that this does not imply that the guaranteed debt will be forgiven in the event that mortgage rights are eliminated. This implies that there would be no assured debt elimination if mortgage rights were eliminated.

One way to foresee the eventual removal of mortgage rights as a means of legal protection for creditors is to do one of two things: first, provide the creditor the power to act as the mortgage right's holder in order to preserve the subject of the mortgage right. Second, the power to independently prolong the validity time of the land rights object that is being encumbered with mortgage rights in order to prevent the loss of land rights ownership [7]. In this manner, the creditor can still execute the collateral object and is not adversely affected in the event of a debtor default.

If the debtor defaults or violates the terms of the agreement, creditors owning mortgage rights have two options. The first right is the ability to sell the mortgage rights object at public auction using one's own authority. Gathering the receivables from the sales revenues is the second right. This is the way the law has to be applied; it has to be put into practice and upheld. One common saying is "fiat justitia et pereat mundu," which means "the law must be upheld even though the world is collapsing" [8].

Apart from the legal safeguard that enables creditors to foresee the termination of mortgage rights resulting from the termination of land rights, debtors are also obligated to provide compensation, either in full or in part. In cases where the government revokes property rights for the benefit of the public and compensates the land rights owner, the compensation must be distributed to creditors in order to settle their debts. The mortgage rights encumbrance deed (APHT) needs to specify this.

If the land parcel's form is lost, the debtor's liability takes on a different form, leading to the loss of both land rights and mortgage rights. Abrasion or tsunamis can result in the loss of land parcels. A land parcel is defined as a plot of land of a specific size (for plantations or homes) in the Big Indonesian Dictionary. If the mortgage's object is insured, the debtor's duty to creditors takes the shape of insurance payments. As is the guarantee in the APHT that the creditor, as the mortgage right holder, will have all or a portion of the insurance money obtained by the debtor, as the mortgage right provider, to settle the creditor's accounts receivable.

3.2 Discretion of the Head of Land Office to Extend the Duration of Expired Certificates of Building Use Rights

Discretion can only be used by authorised authorities to support government administration, close legal loopholes, give legal certainty, and, in some cases, end government stagnation for the good of the public interest [9]. The head of the land office's authority to prolong the validity of an expired building use rights certificate is the authority being discussed in this context. The definition of expired, according to the Big Indonesian Dictionary (KBBI) VI Online, is the passage of time (expired). This discretion needs to be exercised if the debtor or creditor is equally negligent in not paying attention to the validity period of land rights so as not to extend the validity period even though it is currently being used as collateral.

In situations like these or when the building rights certificate expires—which is still used as collateral—the creditor, as the owner of the mortgage rights, will lose out. The head of the land office must therefore have authority to give authorization to prolong the certificate of building use rights. This indicates that the idea of retroactivity, or the enactment of legislation before its promulgation, is applicable in this instance. When applying the retroactive principle is forbidden by the principles of the rule of law. Other features of these legal principles' exclusions have been recognised by contemporary legal concepts, though. Wherever it is theoretically conceivable to implement or enforce the retroactive concept through a particular statute or judiciary [10].

One such law is Government Administration Law Number 30 of 2014 of contemporary Indonesian law. The margin of appreciation doctrine, as it is known in nations that are members of the European Union, is modified by this statute. Article 58, paragraph (6), prohibits applying decisions retroactively, with the exception of preventing bigger damages and/or disregarding community members' rights. Based on this legal foundation, creditors may be able to request an extension from the local land office, meaning that an expired construction rights certificate does not necessarily indicate the case's conclusion. The land's certificate of building use rights, which currently acts as a guarantee for the repayment of creditors' receivables as holders of mortgage rights, may be extended, at the head of the land office's discretion, for a retroactive period, such as from three years prior to the certificate's expiration. The head of the land office, for example, issued a letter of authorization for the extension of building use rights (HGB) in 2023, even though the building use rights certificate expires in 2020. In 2043, the building use rights certificate will expire if the 20-year extension is accepted. As a result, the rights related to mortgages will either be restored or preserved. In other words, it is not subject to the regulations included in Article 40 letter a UUPA and Article 46 letter a PP Number 18 of 2021 concerning management rights, land rights, apartments, and land registration.

The land office head's discretion, as previously said, has given debtors who own building use rights legal certainty. in order to protect the interests of the creditors. This aligns with the goals of law, which include ensuring justice, legal certainty, and legal advantages. In general, it can be explained that the concept of the Pancasila legal state in legal activities, which comprise the process of formation and implementation, is carried out by combining the principles of legal certainty in the rechtstaat legal system and the principles of justice in the rule of law system. This results in a legal state that is certain and just due to its prismatic nature. law and other legal theories and frameworks in order to establish the necessary conditions for maintaining legal certainty, which is necessary to maintain social fairness in line with Pancasila's tenets. Truth and justice are at the centre of the rule of law, which ensures certainty, order, and protection of the law [11].

4. Conclusion

From the previous descriptions, it can be summed up as follows:

a. According to the mortgage rights law, the execution portion of building use rights whose time has gone cannot be implemented since the cancellation of the mortgage right results in the loss of the rights to the property it encumbers. One of two approaches can be used to anticipate the eventual loss of mortgage rights as a legal safeguard for creditors: first, provide the creditor the authority to act as the mortgage right's holder in order to protect the subject matter of the mortgage right. Secondly, the authority to independently extend the duration of validity of the land rights object, which is currently subject to mortgage rights, so as to keep land ownership intact. In addition to the legal protection that lets creditors anticipate that the termination of land rights will result in the termination of mortgage rights, debtors also have an obligation to pay compensation, either in full or in part.
b. Authorized officials, specifically the head of the land office, may exercise discretion to authorize the extension of an expired building use rights certificate in accordance with Article 58 paragraph (6) of Law Number 30 of 2014 concerning Government Administration. This law states that decisions cannot be applied retroactively save to prevent greater losses and/or the neglect of community members' rights. As mentioned before, the discretion of the head of the land office has provided debtors with building use rights with legal certainty to safeguard the interests of creditors Additionally, this is consistent with the goals of law, which include ensuring justice, legal certainty, and legal advantages

AUTHORS' CONTRIBUTIONS

Thank God, our research team has completed the research and included it in writing this article using selected references. This article discusses the discretion of the Head of the Land Office in granting permission to extend building use rights certificates that have expired. If there is no discretion, there is no legal certainty for creditors as holders of mortgage rights. Therefore, our writing team tried to write this article, hopefully it will be useful for dear readers. Thank You.

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