

The Juridical Analysis of the Process of Applying for Expired Building Use Rights in the Concept of Legal Certainty

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Abstract. *This research aims to find out and analyze the legal status of a deed of sale and purchase of building use rights as a condition for extending the term of building use rights that have expired. The approach method in this research is the approach to Legislative Regulations. The research specifications are analytical descriptive, the data required includes secondary data taken using qualitative analysis methods. The data analysis method uses deductive logic based on research. It is concluded that the Sale and Purchase Agreement in the form of a Sale and Purchase Agreement (PPJB) made before a Notary is invalid because the seller does not have the right to carry out a PPJB on land that is already controlled by the State or in other words Building Use Rights. has expired, so the PPJB that was made is null and void by law.*

Keywords: *Agreement; Building; Expired.*

1. Introduction

The right to control the state, especially in the land sector, is a right given to the state for management (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad).¹

Judging from its name, the object of UUPA regulation covers all matters related to natural resources (land, water, forests, mining, etc.), but in reality the UUPA only regulates matters relating to land the 67 UUPA articles, 53 articles regulate

¹Anna Triningsih, Zaka Firma Aditya, Renewal of Control of Land Rights in a Constitutional Perspective, *Recht Vinding Journal: National Legal Development Media*, [Vol 8, No 3 \(2019\)](#)

land.²This UUPA only contains the principles and main questions of agrarian issues. In its implementation, this law still requires various related laws and other statutory regulations.³

Land must have a social function for all Indonesian people, meaning that land control prioritizes collective interests over personal interests.⁴

Land rights are rights that give authority to use land that is given to a person or legal entity. In principle, the purpose of using land is to fulfill two types of needs, namely to cultivate and to build something.⁵

The various land rights mentioned in Article 16 UUPA and Article 53 UUPA are grouped into 3 areas, namely:⁶

1. Permanent land rights.
2. Land rights will be determined by law.
3. Temporary land rights.

The main principles of implementation regulations are Government Regulation No. 40 of 1996, and PMNA/KBPN No. 9 of 1999 must be included in the implementation regulations which explain the specifics of operations. The rules governing the implementation of the extension of HGB over State Land have language that is sound in every sense, including the fact that the term is not legally guaranteed. According to the legal hierarchy, a higher rule or regulation must be applied when there is a difference in regulations between the rule and the more beautiful rule.

However, it turns out that the certificate of the right to use the building expired on the twentieth day of November 2006 (26-11-2006), where the Deed of Sale of Beili in Noitaris was used as the basis for the right to apply for the right to use the building with an expiry period. the seller never implemented it.

²Rosmidah, Ownership of Land Rights in Indonesia, Journal of Land Ownership, Rights, Vol. 6 No. 2 (2013)

³Rugeri Roring, Legal Protection for Land Rights Holders as Proof of Ownership of Land Rights According to PP No. 24 of 1997, Lex Crimen Vol. VI/No. 5/Jul/2017

⁴Indah Sari, Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law, [Vol 9, No 1 \(2017\)](#)

⁵Sulasi Rongiyati, Utilization of Land Management Rights by Third Parties, Vol. 5, no. 1, June 2014

⁶Muhammad, Juridical Review of Land Rights in the Territory of the Republic of Indonesia, Wasaka Law Journal, Vol. 7 No. 2, August 2019

To overcome this problem, legal protection and fairness are very important. The application and extension of the right to use the building after its validity period expires requires documentation that is legalized in the form of a deed of sale to meet strict criteria.⁷

This research aims to determine and analyze the legal status of deeds of sale and purchase of building use rights as a condition for proposing the term of building use rights that have expired and to analyze the juridical aspects of the process of granting building use rights that have expired in the co-inception of legal certainty.

2. Research Methods

This research uses an approach method with legislative approval (Statuta Approach) used in this research. Basically, legislative inspection makes it possible to examine all relevant laws and regulations and determine whether legislative regulations are working together or not. The data used includes primary, secondary and tertiary data. Data collection: Literary research, or literature review, which aims to collect all the facts and decide what steps should be taken as an important step in scientific efforts and documentary studies, namely research into documents related to research. Data analysis using qualitative descriptive data analysis is used in this research.

3. Results and Discussion

3.1. The legal status of a deed of sale and purchase of building use rights as a condition for applying for a period of building use rights that have expired

The legal position of the deed of sale and purchase of building use rights in legal construction in Indonesia is divided into 3 (three) concepts as follows:

1. According to the Concept of the Civil Code (KUHPerdata)

With the implementation of UUPA, Book II of the Civil Code (KUH Perdata/BW) has been revoked and does not apply to the extent of land, water and other natural wealth. However, Book III of the Civil Code (KUH Perdata/BW) is not explicitly declared invalid. In this way, because there is no official law that regulates the legal implementation of land rights, the norms contained in Book III

⁷ Cahyaningsih, Santi, (2002), "Judicial Analysis of Pemberian Rights to Use Buildings on Land Rights PengelolPe's servicemeKo orderedta Tegal (So. Market Case Studyreon Land Rights Pengelolservice Nomor 1 Tegalsari Kota Tegal)", Thesis, UniveIslamic community of Sultan Agung Semarang

of the Civil Code which are not explicitly declared to be invalid, at least are legal coins as long as they do not conflict with the principles of agrarian law.

An agreement for the sale and purchase of land rights, also known as PPJB-HAT, is made between the "caloin" of the seller and the "caloin" seller of the rights to the land. These land rights can be in the form of Ownership Rights, Business Use Rights, Building Use Rights, or Use Rights. In this case, the PPJB-HAT referred to here is a PPJB-HAT with payment in full which is made together with the power of sale, and is usually made with a party deed.

An agreement cannot be withdrawn unless there is an agreement between both parties or there are sufficient reasons stated by law. Agreements must be fulfilled with good intentions. This type of legal concept generally does not conflict with agreements regarding land rights.

According to Article 1319 of the Civil Code, all agreements, both known and unknown, are subject to the general rules mentioned in this and previous chapters. The chapter referred to in this phrase is Book III CHAPTER TWO regarding engagements that originate from contracts and agreements, while the previous chapter is Book III CHAPTER TWO Regarding agreements that originate from contracts and agreements. Because it is not mentioned specifically in the Civil Code, such as buying and selling, selling money, or other things, PPJB-HAT is included in anonymous agreements and because it is subject to the general principles of agreements.

In drawing up a PPJB-HAT deed, the noitary relies on the intentions of Article 15 paragraph (2) letter f UUJN, which provides the legal authority for drawing up deeds relating to land affairs. However, Article 15 paragraph (2) letter f UUJN must be considered as a basis for the noitary to execute deeds related to land tenure.

It is explained that there is a lack of legal norms because the UUPA explicitly repeals Book II of the Civil Code which relates to earth, water and the natural wealth contained therein, and Book III of the Civil Code which relates to agrarian affairs also does not apply. This theory is very logical. Because the matters regulated as stated in Book II of the Civil Code no longer exist, Book III which relates to these matters is no longer relevant.

However, in order to fill in the gaps in legal norms mentioned above, the articles in Book III of the Civil Code relating to agrarian regulations can still be the legal coinage used to fill in the gaps in legal norms in question, because this is related to important matters such as daily transactions. -the day the community was confronted with land rights.

It is not noted by the official in the PPJB that the FIRST PARTY is the seller's candidate and the SECOND PARTY is the seller's candidate. Book III of the Civil Code regulates the coinciding nature of agreements. In material terms, PPJB-HAT results in the transfer of land rights once the agreement based on PPJB-HAT is reached, even though the goods have not yet been handed over and the price has not been paid in full. However, in cases where the object of the agreement is the right to land, the notary must name the participating parties as the prospective seller and the prospective seller. This is because, in accordance with the regulations stipulated in Noimoir Government Regulation 24 of 1997 regarding Land Registration and Noimoir Government Regulation 38 of 1997 regarding Land Deed Maker Officials, the sale and purchase of land rights must be carried out before the PPAT.

Sell beili which is preceded by the sound "panjar"⁸ cannot be cancelled, according to the intentions of Article 1454 of the Civil Code. Due to the existence of a real "purchase", the sale and purchase has occurred because there has been a coin-in-kind agreement between the broker and the seller, which is in accordance with the coin-in-suil nature of agreements in Civil Law. This is based on real customary law. Article 1458 of the Civil Code states that "The sale and purchase is deemed to have occurred between the two parties, as soon as the parties reach an agreement regarding the said intention and the price, even though the intention has not yet been conveyed, nor the price has yet to be paid", and Article 1459 of the Civil Code states that that "The ownership rights to the goods sold do not transfer between the two parties." This was done to fill a legal loophole because Government Regulation No. 37 of 1998 regarding Land Deed Makers does not regulate this. In other words, land law does not yet comprehensively regulate all land rights agreements.

The legal status of the Deed of Sale of Property (PJB) is not regulated in a formal way, it is a legal attempt to fill a legal loophole in the process of sale of land. Before the Deed of Sale of Beili (AJB) is made, this is the initial agreement required for the transfer of land rights in the certificate.

The Deed of Beili Sale Agreement (PJB) cannot be considered as proof of transfer of land rights. In the process of selling land before the deed of sale is made by the Land Deed Maker (PPAT), the deed of selling and selling is very effective. This is because the Beili Sales Agreement (PJB) was made in front of the notary, so the deed is authentic. There is no evidence of transfer of rights to property through a sale and purchase agreement deed.

⁸ Saleh Adiwinata, "Understanding Customary Law according to the Basic Agrarian Law", Bandung: Alumni, 1976, p. 32-33.

Due to the sale of land with a certificate, additional legal action is still required, such as drawing up a Deed of Sale of Beili as proof of transfer of land rights as a condition for changing land ownership rights. One of the obstacles in the process of transferring land rights by using a sale and purchase agreement deed before the sale and purchase agreement is made by the Land Deed Maker (PPAT) is the presence of bad faith on the part of one or both parties; the seller dies before the deed of sale is made; and the seller's heirs do not provide a signature to confirm that the land sale has occurred.

In this case, the boundary agreement can be canceled or so that undesirable things do not happen, the Deed of Sale of Beili (AJB) is executed in person as per the Deed of Sale of Beili Seileisai. In order for the transaction to proceed smoothly, the sale and purchase agreement must be made in good faith and open. The Beili Sale Agreement made in the presence of Noitaris is invalid because the seller does not have the right to carry out PPJB on land that is already controlled by Neigara or in other words the HGB has expired.

2. According to Customary Law

"According to customary law, an agreement can occur between two parties who promise each other or because of its nature it is considered an agreement," said Hilman Hadikusuma. Even though it has been agreed, an agreement will not always bind the parties. There is a sign of binding to make an agreed agreement binding. However, the sign of the bond has not yet been fulfilled, meaning that the agreement can be fulfilled. Therefore, signs of binding according to customary law do not always constitute "signs of binding". Apart from that, there are signs that indicate the relationship between humans and other creatures. But the bond mark does not apply in all regions of Indonesia.⁹

In the case of PPJB-HAT, the bond sign is a bond sign or binding agreement, but in PPJB-HAT a down payment or voucher is always used as a bond sign.

Double-sided legal action or *tweiezijdig* is a term used to describe land transactions between two parties. Coinsequence The main essence of this transaction is the transfer of rights to land together with the payment of *seigeira* coinage from the other party. In land law, actions that are referred to as sales transactions are referred to as "sale transactions" (Adoil: Javanese/Sadei: High Javanese).

3. According to Agrarian Law

⁹Hilman Hadikusuma, "Customary Agreement Law", Bandung: Alumni, 1982, p. 103.

Agrarian law includes various laws that regulate ownership, possession, use and utilization of land. In relation to this problem, the agrarian law that is meant more specifically is the legislative regulations relating to agreements relating to land rights. The results of the inventory and search for agrarian law show that there is no law that explicitly regulates legal land rights.

On Government Regulation 24 of 1997 regarding Land Registration only stipulates that every transfer of land rights in the form of a sale and purchase must be carried out before the PPAT. However, agrarian law does not yet explicitly regulate the terms of sale of property, date of sale of property, transfer of land rights, and other matters.

Sri Soeideiwi Masjchoein Soifwan's opinion¹⁰evaluated as follows: Firstly, the UUPA does not regulate matters such as leases, land sales, and other land relations. As with the statutory regulations under the UUPA, there are no regulations that regulate the requirements for the transfer of land rights, expiry and cancellation. Secondly, regarding PPJB-HAT, which has already occurred and as it occurs in the transactional practices of society, the theoretical basis actually exists in customary law, the essence of which is also legally recognized.

3.2. Juridical analysis of the process of granting building use rights that have expired in the coinception of legal certainty

For HGB land whose validity period has expired, the seller is not appropriate to carry out a PPJB. According to Article 36 of Regulation PP No. 40 of 1996, HGB land that has expired must return to its original legal status, namely becoming state land. According to the UUPA, Neigara land is land that is not attached to land rights. Due to this, sellers cannot carry out PPJB on land whose validity period has expired.¹¹

Holders of building use rights over land whose term has expired can continue to be holders of HGB over said land in several ways. According to PP No. 40/1996, one of them is by impeiring property rights or by making a Noitary Deed which is known as the Deed of Sale of Building Rights and Ownership Rights.

HGB land that has expired and has not been extended or renewed will automatically revert to its original status or fall into the hands of its previous title holder. Because of this, the PPJB made by the party before the "PN" as Noitaris

¹⁰Sri Soedewi Masjchoen Sofwan, "Civil Law: Object Law", Yogyakarta: Liberty, 1975. p. 7

¹¹Widyastuti, TV, Indriasari, E., & Pratama, E. A. (2021). "Model Penebasic principles of PEmisahan HoRizontal In Lelang Eksemortgage rights." Dictum: Journal of Legal Studies, 9(1), 77-94

in this case cannot be considered valid and legal. In this case, the parties do not have the right to carry out PPJB on HGB land because the seller no longer has rights to the land.

Because the HGB certificate has expired, the right to the land reverts to Negara or is controlled by Negara. HGB that has expired must be renewed or extended before its validity period ends. If the HGB which has expired is not renewed, the status of the land will revert to its original status, namely if it was Negigara land.

This shows that if the Building Use Rights expire because the term expires, and the land rights status returns to the state, and the right holder does not apply for a renewal/extension of the rights until maturity. This means that there is no "legal certainty" regarding the rights to the land and this is detrimental to other parties who have carried out sale and purchase transactions by providing a down payment. So, a Notary will make a Deed of Sale and Purchase Agreement in accordance with the provisions of the agreement, the principle of consensualism in the agreement, where the parties entering into the agreement agree, consent, and agree regarding the main matters in the agreement that was entered into, (article 1320 of the Civil Code), which with Thus the PPJB-HAT made by the parties becomes legal and binding.

It is important for HGB holders to pay attention to the validity period of the HGB and the time to renew/extend the certificate in order to avoid negative consequences that may arise due to the expiration of the building use rights as well as to provide legal certainty to the rights holder and to other parties, if the land rights are to be transferred through buying and selling, renting and so on.

4. Conclusion

The legal status of the Deed of Sale of Property (PJB) is not regulated in a formal way, it is a legal attempt to fill a legal loophole in the process of sale of land. Before the Deed of Sale of Beili (AJB) is made, this is the initial agreement required for the transfer of land rights in the certificate. Juridical analysis of the process of granting building use rights which have expired in the conception of legal certainty. Owners of building use rights over land whose terms have expired can remain holders of HGB over the land in several ways, one of which is by impeiring the legal right or by making a Noitary Deed.

5. References

Adoif, Joizan, eit al., "Eksisteinsi Weiweinang Noitaris in Making Land Deeds", Noitarius, Voilumei 13, Noimoir 1, Mareit, 2020, p. 182. <https://doi.org/10.14710/nts.v13i1.29313>

Anna Triningsih, Zaka Firma Aditya, Renewal of Control of Land Rights in a Constitutional Perspective, Recht Vinding Journal: National Legal Development Media, [Vol 8, No 3 \(2019\)](#)

Cahyaningsih, Santi, (2002), "Judicial Analysis of Peimbeirian Building Use Rights on Land Right Peingeiloilaan Peimeirintah Koita Teigal (Case Study of Soirei Market on Land Right Peingeiloilaan Noimoir 1 Teigalsari Koita Teigal)", Thesis, Sultan Agung Islamic University Seimarang

Hilman Hadikusuma, "Customary Agreement Law", Bandung: Alumni, 1982, p. 103.

Indah Sari, Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law, [Vol 9, No 1 \(2017\)](#)

Rosmidah, Ownership of Land Rights in Indonesia, Journal of Ownership, Rights, Land. Vol. 6 No. 2 (2013)

Rosmidah, Ownership of Land Rights in Indonesia, Journal of Ownership, Rights, Land. Vol. 6 No. 2 (2013)

Rugeri Roring, Legal Protection for Land Rights Holders as Proof of Ownership of Land Rights According to PP No. 24 of 1997, Lex Crimen Vol. VI/No. 5/Jul/2017

Saleh Adiwinata, "Understanding Customary Law according to the Basic Agrarian Law", Bandung: Alumni, 1976, p. 32-33

Sri Soedewi Masjchoen Sofwan, "Civil Law: Object Law", Yogyakarta: Liberty, 1975. p. 7

Widyastuti, TV, Indriasari, Ei., & Pratama, Ei. A. (2021). "Moideil Implementation of the Principle of Hoirizoinal Separation in the Auction Execution of Mortgage Rights". Dictum: Journal of Legal Studies, 9(1), 77-94.