

Implementation of Improvement of Building Rights into Land Ownership Rights and its Obstacles in Indonesia

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ABSTRAK

Building Rights Title (HGB) which has expired according to the legislation will return to the original legal status of the land rights, namely returning to state land, management rights or individuals. This study examines the challenges associated with transitioning from Building Rights Title to Land Ownership Rights in Indonesia and the hurdles encountered in enhancing land rights. The employed research approach is normative juridical. The utilised data source is secondary data. The data collection method employs a literature review. Data processing is done by descriptive analytical method. Land with HGB status can be upgraded to Property Rights by applying for an increase in rights. However, in reality not all HGB can be upgraded to Property Rights. HGB that is on the land of a person's property rights and land management rights cannot be upgraded to Property Rights. In addition, HGB that is encumbered with a mortgage cannot be upgraded to Hak Milik as long as the debt has not been repaid.

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1. INTRODUCTION

Every human being needs land because land is a place to live, make a living, and even to die. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the Earth and water and the natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people, based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Principles was issued.

Regarding the Fundamental Agrarian Principles, which was Law No. 5 of 1960. The many different kinds of land rights

are governed by it Article 20 paragraph (1) of the UUPA defines the hereditary right that persons are permitted to enjoy over property, which is the most complete and extensive of all the rights that are stated in Article 6. When land is hereditary, it means that the right of ownership over it continues to exist during the lifetime of the owner. After the owner passes away, this right can be passed on to successors, provided that the heirs satisfy the necessary requirements that are related with the right of ownership. The phrase "strongest" signifies that land ownership rights exhibit greater resilience than other land rights, lack a specified temporal constraint, are successfully protected from external invasion, and are not

readily extinguished. Fullest means that land ownership rights grant the owner the most extensive authority in comparison to other land rights, allowing for a more extensive use of the land, serving as a foundation for additional land rights, lacking a superior hierarchy to other land rights, and facilitating a broader exploitation of the land than alternative land rights. Land ownership rights may be held by individual Indonesian individuals and legal entities designated by the Government. Property ownership rights must be based on the social function of the property, ensuring that no damage is inflicted on others. The land use should be consistent with the circumstances and nature of the rights, ensuring that private and public interests are maintained. Additionally, the land must be properly maintained to enhance fertility and prevent degradation.

Building rights are regulated by Law No. 5/1960 on Basic Agrarian Regulations, in addition to land ownership rights. The Right to Use Buildings, as outlined in Article 35, paragraph (1) of Law Number 5 of 1960 regarding Basic Agrarian Principles, allows for the construction and proprietorship of structures on land that is not possessed by the individual, with a maximum duration of 30 years. Government Regulation No. 18 of 2021, which deals with land rights, management rights, apartment buildings, and land registration, governs the right to build.

The land will revert to freehold or state land upon the expiration of the time period specified in the Building Rights Title. The Building Rights Title that has expired may be upgraded to Land Ownership Rights. Based on the Decree of the Minister of Agrarian Affairs / Head of the National Land Agency Number 6 of 1998 concerning the Granting of Property Rights to Land for Residential Houses, Article 1 paragraph (1) letter b. The Building Rights Title for residential properties can be elevated to Property Rights. In practice, numerous holders of Building Rights Title on state property for residential properties have not converted or upgraded their Building Rights

Title to Property Rights despite the expiration of their Building Rights Title term.

This document addresses two issues: the challenges that have been encountered in the process of enhancing land rights and the transition from Building Rights Title to Land Ownership Rights in Indonesia. The objective of this investigation is to evaluate and analyze the consequences of the transition from Building Rights Title to Land Ownership Rights in Indonesia, as well as the obstacles that have been encountered in the process of improving land rights.

2. LITERATURE REVIEW

Building Rights of Use on state land have a maximum duration of 30 years, which may be extended for a further 20 years. The Building Use Right renewal or extension application must be filed at least two years before the existing term and its extension expire. Local district or municipal land offices document the extend or renewal of the Building Use Right in their land registry.

Articles 32 to 48 of Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 regulate the procedure of granting Building Rights of Use. After the applicant registers the decision to award the building use right at the city land office or local regency for inclusion in the land book, the right officially begins to exist. A certificate is provided as proof of entitlement.

A Building Rights Title is granted for Management Rights land parcels not exceeding 2000 m² in size. The Building Rights Title has a 30-year restriction on management-right property, with a possible 20-year extension. The owner of the Building Rights Title may prolong or renew the Building Rights Title for Management Rights upon the filing of an application, as long as the owner of the Management Rights title accepts the conditions of the extension or renewal. A renewal or extension application for the Building Rights Title must be submitted at least two years prior to the expiration of the current term or the extension of the term. This is a requirement that must be satisfied. A record of the extension or

renewal of the Building Use Right is maintained in the land register by the relevant regency or municipal land office.

Through the use of a deed that is signed by a property Deed Official (PPAT), the Freehold holder confers the right to construct on property that is held in freehold status. It is necessary to register this PPAT deed with either the city land office or the local regency in order for it to be included in the land registry that is maintained. Information on this may be found in Article 24 of Government Regulation No. 40 of 1996. The structure of this PPAT deed may be seen in the appendix that is included in the Permen Agraria/Head of BPN No. 3 of 1997. When it comes to freehold land, the usage rights for buildings are only permitted for a maximum of thirty years. Building use rights can be renewed in line with a deed that was issued by a PPAT. This is accomplished by granting a new deed, which must then be documented at the land office after it is completed. a 17 There is a maximum length of thirty years for building use rights on buildings that are freehold, management rights, or under state ownership. While building rights of way on state property can be renewed, they cannot be extended on freehold property.

The abolition of Building Rights of Use is stipulated in Article 40 of the UUPA, namely:

- a. The term ends
- b. Terminated before the term ends due to a condition
- c. that is not fulfilled
- d. Relinquished by the right holder before the term ends. Relinquished by the right holder before the term ends
- e. Revoked for the public interest
- f. Abandoned
- g. The land is destroyed
- h. Provisions in Article 36 paragraph (2)

The abolition of a Building Rights Title on state land results in the land becoming state land. The nullification of a Building Rights Title on land under a Management Right result in the land returning to the control of the holder of the Management Right. The annulment of a Building Rights Title on Freehold land results

in the land returning to the control of the Freehold holder as stipulated in Article 36 of Government Regulation No.40 of 1996.

To provide convenience for low-income people, the government issued Decree of the Minister of Agrarian Affairs/Head of the National Land Agency, (KMNA/Ka BPN) Number 6 of 1998 concerning the Granting of Land Ownership Rights for Residential Houses. What is meant by hereditary is that the right of ownership to land remains as long as the owner is alive, and if the owner dies, the right of ownership can be passed on to the heirs who have the conditions as the subject of the right of ownership. Strongest means that land ownership rights are stronger, right holders can be encumbered by other land rights except for Cultivation Rights. Fullest means that land ownership rights authorize the owner to be the broadest compared to other land rights, can be the parent of other land rights, are not subordinate to other land rights, and their use is wider than other land rights.¹⁹ Property rights can be owned by individual Indonesian citizens and legal entities appointed by the government. In using the Right of Ownership on land must pay attention to the social function of the land, namely in using it should not cause harm to others, the use of land must be adjusted to the circumstances and nature of the right, there is a balance between private interests with public interests, and the land must be properly maintained in order to increase fertility and prevent damage.

Property rights to land according to the provisions of customary law can occur by clearing forests whose land is the ulayat of an alliance. Ownership rights will occur if the land is worked and planted continuously for a long period of time and then there is confirmation or recognition of rights from the government. In this instance, land ownership rights must be registered at the local district or municipal land office in order to obtain a certificate of land ownership. Consequently, prior to the enactment of the UUPA, ownership rights could be acquired by removing the forest and must be registered at the land office.

Property proprietorship rights are restricted to property that is requested from state land in accordance with government provisions. This land ownership right is the result of the applicant's application for the granting of a land ownership right, which is fulfilled by adhering to the procedures and requirements outlined in PMNA/KBPN Number 9 of 1999, which pertains to the granting and cancellation of state land rights and management rights. The procedures are as follows:

- 1) Property rights are granted to Indonesian citizens and legal entities stipulated by the government based on Government Regulation No. 38/1963.
- 2) Application for property rights on State land shall be submitted in writing containing:
 - a) Complete information about the application, both individuals
 - b) and legal entities
 - c) Information about the land which includes juridical data and physical data.
- 3) Other information deemed necessary, such as the number of parcels, area and status of the land including the parcel of land being requested as well as information deemed necessary.

It is necessary for the application that was mentioned before to be presented to the Minister by the head of the land office that is situated in the region where the land in question is situated. Furthermore, the Minister is equipped to delegate the authority to grant and revoke rights to the regional office or land office principal in accordance with the regulations outlined in Article 3, paragraph 2 of PMNA/KBPN Number 9 of 1999. Any of these personnel may be granted this authority. Statutory laws have the capacity to facilitate the development of land ownership rights in order to satisfy the Land Ownership Rights Act's requirements. The UUPA's conversion procedures must be followed in order for Hak Milik to be realised on land. All previous land rights must be changed into one of the land rights governed by the UUPA when it is enacted. Converting

pre-existing land rights into those specified by Article 16 of the UUPA is known as "conversion of land rights."

Article I paragraph (1) of the Conversion Provisions stipulates that: "Eigendom rights to land which at the time this Law comes into force become Hak Milik, unless the owner does not fulfill the conditions as mentioned in Article 21.

Article II paragraph (1) of the UUPA Conversion Provisions stipulates that: "Land rights that grant authority as or similar to the rights referred to in Article 20 paragraph 1 as referred to by the names below, which exist at the time this Law comes into effect, namely: Agrarian Rights of eigendom, propertied, yasan, andarbeni, rights to druwe, rights to druwe desa, pesini, grant sultan, landownership, altijddurende erfpacht, business rights to former private land and other rights with whatever name will be further confirmed by the Minister of Agrarian Affairs, since the start of the enactment of this Law become the Ownership Rights referred to in Article 20 paragraph (1), unless the owner does not fulfill the requirements as stated in Article 21"

Land rights that were in existence prior to the enactment of the UUPA and are possessed by Indonesian residents who meet the criteria outlined in Article 21, paragraph (1) of the UUPA are eligible for conversion into ownership rights. Building Use Rights on land designated for residential purposes, owned by individual Indonesian citizens and encompassing an area of 600 m² or less, shall be annulled and returned to the original rights holder with ownership rights upon a formal request, as per the Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 6 of 1998 concerning the Allocation of Ownership Rights to Land for Residential Dwellings.

Therefore, the previous rights holder will be granted ownership rights for land that has expired Building Use Rights and is allocated for residential use, with a dimension of 600 m² or less, and is owned by individual Indonesian citizens, upon the submission of a proper application. According to Article 19 of UUPA, the government is required to

implement land registration throughout the Republic of Indonesia in accordance with the regulations established by the government to guarantee legal clarity. In accordance with the aforementioned regulations, the registration of land rights will guarantee legal certainty. A series of activities, including the collection, processing, documentation, presentation, and maintenance of both physical and legal data, concerning land parcels and apartment units, are encompassed by land registration, which is conducted by the government in a continuous, systematic, and regular manner. This data is represented in maps and lists. In accordance with Article 1, number 1 of Government Regulation Number 24 of 1997, this procedure also entails the issuance of 43 proof letters that are exclusively for land parcels with established rights, as well as ownership rights for apartment units and specific encumbrances thereon. It is possible to determine that land registration is permissible for apartment units and land parcels after considering the aforementioned criteria. Land registration will generate documentation that includes both legal and physical information regarding land rights.

The objective of land registration is explicitly defined in Article 3 of Government Regulation Number 24 of 1997:

- 1) To ensure legal clarity and protect the rights of registered rights holders, including those of land holdings and apartment units, thereby allowing them to verify their identity as the appropriate rights holders.
- 2) To furnish information to relevant stakeholders, including the Government, enabling them to readily access the data required for executing legal transactions pertaining to land parcels and registered apartment units.
- 3) To guarantee systematic land management. Ownership rights must be registered in the case of transfer, deletion, or encumbrance with other rights. The registration serves as a robust evidence of the transfer, deletion, and encumbrance of

Ownership Rights, as delineated in Article 23 of the UUPA, which states: "Ownership Rights, along with any transfer, deletion, and encumbrance with other rights, must be registered in accordance with the provisions outlined in Article 19."

Article 27 of the UUPA specifies that Ownership Rights to land may be revoked, forfeited, or dissociated from the holder of such rights under certain conditions:

- 1) Individual rights encompass communal rights and state authority, enabling the revocation of land rights when necessary for the public benefit, as the revocation of rights based on Article 18 of the UUPA Land Ownership Rights contains a social function.
- 2) Due to the owner's voluntary surrender, the holder of Land Ownership Rights relinquishes these rights to the government agency pursuant to an agreement between both parties involving compensation.
- 3) Due to its abandonment Article 27 of the UUPA defines abandoned land as Freehold land that is purposely not utilised in accordance with the stipulated criteria, nature, and purpose of the rights.
- 4) Because the provisions of Article 21 paragraph (3) and Article 26 paragraph (2) Both articles determine that the holder of the Freehold Right to land loses his land rights on the basis of the principle of nationality related to his citizenship so that he can no longer be the subject of land ownership rights.

The Freehold Right is lost if the land is destroyed, this is due to natural phenomena, for example: landslides or erosion of soil in river channels and so on. In addition, the Freehold Right is also lost if there is a violation of the provisions of the land reform regulations concerning the maximum limitation and prohibition of absentee land/agricultural ownership.

According to the Director of Land Registration of the BPN in 1999, the

deregulation policy for increasing Land Rights as stated in the KMNA/Head of BPN Number. 9 of 1997 in conjunction with Number. 15 of 1997 in conjunction with Number. 6 of 1998 is a form of government attention and protection during the crisis for the weak economic groups, by limiting the criteria and freeing them from the obligation to pay income.

3. METHODS

3.1 Type of Research

The research undertaken is normative legal research. Normative legal research examines positive legal norms manifested as laws and regulations, utilising secondary evidence. This paper examines the impact of enhancing building use rights on land ownership rights and the associated challenges in Indonesia.

3.2 Research Materials

The secondary data that was utilized in this investigation consisted of both main and secondary legal resources, such as pertinent literature and norms, particularly in relation to the Unitary State of the Republic of Indonesia and the expansion of Building Use Rights to Land Ownership Rights.

3.3. Data analysis

Data analysis will be conducted on:

- a. The transition from building use rights to land ownership rights in Indonesia and the challenges that accompany it are the subject of essential legal documents.
- b. Secondary legal resources comprising legal and non-legal opinions derived from expert analyses in books, legal journals, online media, legal periodicals, and various sources concerning the execution of comprehensive systematic land registration.

4. RESULTS AND DISCUSSION

4.1 Implementation of upgrading from Building Use Rights to Land Ownership Rights in Indonesia

Article 4 of the Basic Agrarian Law (UUPA) regulates the definition of land as follows: "There are various rights to the

surface of the earth, known as land, that can be given to and owned by people, either alone or in conjunction with other people and legal entities, on the basis of the right to control from the state as referred to in Article 2."

As a result, the term "land" in the aforementioned Article refers to the earth's surface. The earth's surface is defined as a portion of land that is subject to the appropriation of any individual or legal entity. Consequently, the legal issue pertains to the rights that arise from the surface of the earth (land rights), which include structures or objects that are situated on it. The legal issue at hand pertains to the implementation of principles that govern the relationship between land, vegetation, and buildings situated on it.

The UUPA regulates ownership rights in Article 20 paragraph (1), which stipulates that the hereditary, strongest, and most comprehensive rights that an individual can possess over land are determined by the provisions of Article 6. Hereditary means that Land ownership rights endure during the owner's lifetime and may be bequeathed to heirs following the owner's demise, contingent upon their fulfilment of ownership standards. Ownership Rights over property are more robust than other land rights, lacking a specified time limitation, readily defensible against external encroachments, and not easily revocable. Fullest denotes that Ownership Rights over land confer the owner the most extensive authority concerning other land rights, facilitating broader utilisation of the land, serving as the foundation for other land rights, remaining autonomous from other land rights, and permitting more extensive use than alternative land rights. Land ownership rights may be held by individual Indonesian individuals and legal entities designated by the Government. When exercising ownership rights over land, it is imperative to consider the social function of the land, ensuring that its use does not inflict harm on others. The utilisation of the land should align with the specific circumstances and nature of the rights involved, maintaining a balance between individual and public interests. Additionally,

the land must be properly maintained to enhance fertility and avert degradation.

Besides the hereditary, strongest, and most comprehensive rights associated with property ownership, it is asserted that the right to own property possesses superior legal authority compared to the Right to Build (HGB). This is due to the fact that the holder of property ownership is not required to extend the duration of their land rights, unlike HGB, which is subject to temporal limitations that will eventually expire.

The augmentation of HGB to Right to Own Property constitutes a mechanism of enforcement and validation pertaining to the abrogation of original land rights in favour of the allocation of new land rights. The UUPA's Article 35 paragraphs (1) and (2) provide that the right to construct a building grants the individual the ability to establish and possess structures on property that is not theirs, with a maximum term of 30 years. Upon the rights holder's request and considering the buildings' requirements and conditions, the length specified in paragraph (1) may be prolonged for a maximum of 20 years. In addition, the conversion from Building Use Rights (HGB) to Ownership Rights (HM) is regulated by Article 94 of Government Regulation Number 18 of 2021 of the Republic of Indonesia, which pertains to Management Rights, Land Rights, Apartment Units, and Land Registration. This regulation states that "Building use rights and use rights possessed by Indonesian citizens, utilised for residential purposes including shophouses and office buildings, may be converted to ownership rights upon request from the rights holder." Consequently, it is clear that the transfer of status for Building Use Rights and Use Rights is permissible in accordance with Article 94 when an application is submitted to change the status from the original HGB to Ownership Rights. A different type of land rights may develop throughout time. The association with the guarantee of legal certainty during the period of its issuance is the main factor in granting HGB. If the HGB has lapsed, the period may be extended and renewed for state land at the request of the owner or rights holder. The conferment of

Ownership Rights status is contingent upon the elimination of HGB or usage rights in the land registry and certificate. Moreover, the conferral of ownership status must be followed by a land registry and the issue of SHM based on the physical facts included in the HGB registration or Right to Use from which land rights have been revoked.

The regulations for the conversion of HGB for residential properties to HM are as follows, as outlined in the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1339/SK-HK.02/X/2022 Regarding the Granting of Land Rights in General:

- 1) A residential house owned by an individual Indonesian citizen;
- 2) Up to 600 m2 in area;
- 3) Submitting an application for HGB to be deleted and given back to the former rights holder with HM;
- 4) HGB is still valid or has expired;
- 5) In the name of the rights holder who is still alive or deceased;
- 6) Released by the rights holder who manages with a letter of approval/recommendation for the purpose of granting ownership rights to a portion of the land with management rights for a residential house situated on the land with management rights.

The change of HGB to ownership rights is the right to land on one plot of land in its entirety in one land rights certificate, not in part. If the rights to the land whose rights will be changed have expired, then there is no need to first provide an extension of the term or renewal of the rights.

Before granting ownership rights to a residential house from HGB, the following checks will be carried out:

- 1) Documents; for example, building permits, building approvals, and others. In the event that there is none, a certificate from the village head/sub-district head certifying that the structure on the land is being utilized as a residence may be substituted.

- 2) Physical and legal data; carried out by examining the land title certificate whose rights will be changed and ensuring that the subject of the rights meets the requirements to be granted ownership rights. If accompanied by a transfer of rights such as inheritance, then the completeness of the documents and examination of the attached requirements are also checked.

Regarding the Details of Costs for Changing HGB to HM, a Land and Building Acquisition Fee ("BPHTB") will be imposed, specifically if there is a change in the subject of rights due to inheritance, and a non-tax state revenue fee ("PNBP"), which is IDR 50,000 per plot. However, the details of these costs do not include the amount of administration fees, if processed through a Notary-PPAT.

4.2 Obstacles that arise in increasing land rights

By The proprietor of building use rights (HGB) has the ability to convert the land's status to ownership rights by presenting a certificate of ownership (SHM). The elevation of land status is mandated by Government Regulation (PP) Number 18 of 2021, which pertains to Management Rights, Land Rights, Apartment Units, and Land Registration. According to Article 45, paragraph (2), building use rights may be transferred, surrendered, or given to other parties, and their rights may be modified.

Mortgage rights may be imposed on the HGB as collateral for financial obligations, which may present obstacles to the conversion of Building Use Rights (HGB) to Ownership Rights (HM). The Debtor must prioritise repaying the creditor to overcome obstacles arising from this debt. Furthermore, other impediments persist in the procedures at the Land Office, including:

- 1) The applicant seeking to enhance land rights is frequently lacking the requisite application documents, specifically a Building Construction Permit (IMB), for the land associated with the sought rights enhancement.

- 2) The Building Construction Permit (IMB) submitted by the petitioner was predominantly issued in the 1970s, so casting uncertainty on whether the building remains a residence or has undergone modifications.
- 3) When submitting an application for an augmentation of land rights, discrepancies frequently arise between the land's address and the addresses recorded in the Land and Building Tax (PBB) and the Building Construction Permit (IMB), despite the fact that the actual object remains consistent in the field. This is often due to alterations in the nomenclature of the road on which the land is situated.
- 4) The SPPT PBB and the certificate indicate that the land remains vacant, which raises concerns at the local Land Office on whether the site is indeed unoccupied or if a structure has been erected on it.
- 5) Insufficient awareness within the community regarding the need of enhancing land rights.

5. CONCLUSION

- a. The transition from Building Use Rights to Land Ownership Rights in the Republic of Indonesia is regulated by Government Regulation Number 18 of 2021. Land Registration, Management Rights, Apartment Units, and Land Rights are all addressed in this regulation. The procedure by which Building Use Rights (HGB) can be converted into Ownership Rights (HM) is delineated in Article 94 of the Government Regulation. It specifies that the use rights and Building Use Rights (HGB) of Indonesian residents for residential purposes, such as shophouses and office structures, may be converted into ownership rights upon the submission of an application. The procedure of converting building use rights into ownership rights is

addressed in the decree issued by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency with the number 1339/SK-HK.02/X/2022 about the Granting of Land Rights in General.

- b. Challenges encountered during the transition from Building Use Rights to Land Ownership Rights include the encumbrance of Mortgage Rights on HGB as collateral for debt, the Applicant's inability to finalize the IMB, discrepancies between prior and

current land use, inconsistencies in land location between the PBB SPT and the IMB, and the land being unoccupied and lacking structures.

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