



## Civil relations regulation after the expiration of building rights

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### Abstract

As one of the land use rights in Indonesia, building rights are land rights that have economic benefits. The general dispute over building rights is related to the expiration of the term. It has different uses of legal regulations to resolve conflicts over building rights in Indonesia. This research shows that there are differences in legal regulations, proven by the Basic Agrarian Law of 1960 (UUPA) and the Regulation of the Minister of Agrarian Affairs Number 9 of 1999 (PMNA 9/1999) which have fundamental regulatory differences. The research method used was prescriptive legal research through literature studies. Based on the results of the study, it was found that there are fundamental differences in the regulation of the expiration of the building rights. UUPA contains a regulation regarding the expiration of the building right as a state land so that the legal relationship ends. Whereas PMNA 9/1999 regulates that the Building Right, which has expired, will still cause a legal relationship. It happens if there is still a dispute between the two parties. If there are losses incurred, then the conflict must be resolved first to end the legal relationship. This research suggests that a legal relationship affirmation is needed. It can be used to regulate the termination of building rights based on the conformity that is considered appropriate in the application of positive civil law in Indonesia.

**Keywords:** building right, positive Indonesian civil law, basic agrarian law, regulation of the minister of agriculture no. 9 of 1999, termination of term

### Introduction

Earth, water, and space (BARAKA) are some of the substantial things to be developed as one of the critical resources in supporting human life. The condition of the earth's surface layer which, in general, consists of land as one of the existing agrarian resources on land that can be used as an engine of national development <sup>[1]</sup>.

The nature of the land, which has a vital role in influencing the lives of many people, encourages the state to take a role in the control of the land. It is under what is stated in the 1945 Constitution of the Republic of Indonesia Article 33, "Earth, water, and the space contained therein, at the highest level controlled by the State <sup>[2]</sup>. The Basic Agrarian Law (UUPA) of 1960 which came into force on September 24, 1960, became the first milestone of positive law governing land tenure rights in Indonesia <sup>[3]</sup>. To increase national economic development which leads to improving the welfare of the community, the government cooperates with the private sector in concretely realizing land rights in the form of granting building right to optimize its utilization.

The governments can process the execution of the right to control the state by themselves or cooperate with third parties, namely the private sector. The private sector, in carrying out business production operations, requires shop houses that often use land and the entire object above the land, namely buildings. It is reflected in the use of building

rights <sup>[4]</sup>.

One of the problems that are closely related to the building right is in the form of the dualism of legal regulations that are still unclear. The dualism of the dispute resolution regulation for the expiry of the building rights, as proven by the reality of the settlement in Law Number 4 of 1996, can be settled as state land so that the legal relationship ends. While PMNA Number 9 of 1999 requires the usage rights would expire when the dispute settlement between the two parties terminated.

One of the problems with the ownership of land rights is the double certificate of ownership of land rights that have not been regulated yet, regarding effective settlement procedures to handle the case <sup>[5]</sup>. The absence of maximum efforts in realizing legal certainty in the field of authorization and ownership of land can be clearly reflected in the rise of disputes over ownership of dual certificates of the right to control land. Associated with previous experience, many land disputes arose as a result of inaccurate data regarding the real site and boundaries of the proposed land in order to obtain a certificate of ownership of the land.

In the national long-term development projections, the land then develops as a substantial matter in fulfilling various needs both as a place to live and for business activities. In this connection, it will undoubtedly encourage the frequency of needs that require specific regulation as the implementation of legal certainty in the land sector. The

<sup>1</sup> Supriyadi, 2010, Aspek Hukum Tanah Aset Daerah Menemukan keadilan, Kemanfaatan, dan Kepastian atas Eksistensi Tanah Aset Daerah, Jakarta: PT Prestasi Pustakaraya, page. 1

<sup>2</sup> Article 33 paragraph (3), 1945 Constitution of the Republic of Indonesia Fourth Amendment

<sup>3</sup> Elza Syarief, Menuntaskan Sengketa Tanag Melalui Pengadilan Khusus Pertanahan, Jakarta: Kepustakaan Populer Gramedia, 2012, page. 2

<sup>4</sup> A.A. Ayu Ray Saraswati, 2016, "Implikasi Hukum Pembebanan Hak Tanggungan Atas Tanah Hak Guna Bangunan Di Atas Tanah Hak Pengelolaan Yang Ijin Pemanfaatan Tanahnya Dicabut Oleh Gubernur", Jurnal Ilmiah Magister Kenotariatan Universitas Udayana Acta Comitatus (2016) 2 : 252 ISSN: 2502-89601

<sup>5</sup> Angga B. Ch. Eman, Op.Cit, page. 2.

implementation realization of the legal certainty guarantees in the field of land, first, is reflected in the urgency of the need for written, completed and cleared legal instruments that are carried out consistently in accordance with the spirit and contents of the provisions governing them<sup>[6]</sup>. In order to deal with a concrete dualism case, the settlement of the expiry of the building right requires a legal relationship affirmation that can be used to regulate the termination of the building right based on the suitability considering the appropriateness in the application of positive civil law in Indonesia.

Based on the description above, the authors are interested in studying the problem with the hope of obtaining further knowledge and settlement regarding the affirmation of legal relations that can be used to regulate the expiration of building rights over the suitability based on conformity that is considered appropriate in the application of positive civil law in Indonesia, with the following points of issue:

1. How does the settlement of disputes over the building rights that apply in Indonesia?
2. What is the appropriate dispute resolution effort to be carried out in affirming the legal regulations applied in resolving disputes after the expiration of building rights based on positive civil law in Indonesia?

## Discussion

### 1. Settlement of Disputes for the Termination of Building Rights in Indonesia

Building rights is one of the fundamental rights to construct and control buildings on land that does not belong to anyone, within 30 years and can be extended for another 20 years. It can also be purposefully and consciously transferred to other parties<sup>[7]</sup>. The regulations governing building rights in Indonesia are divided into 2 (two) regulatory regimes that have substantial differences. They are Basic Agrarian Law 1960 (UUPA) and Regulation of the Minister of Agrarian Affairs Number 9 of 1999 (PMNA 9/1999).

Several building rights arrangements are applicable and applied in Indonesia, which can be found in the Basic Agrarian Law (UUPA). The regulation regarding building rights has several distinctive characteristics. First, the mortgage rights over land ownership and all objects related to the land prioritize the right to control the holders of these rights<sup>8</sup>. The building right is as an extension of the mortgage because of the benefits given to the owner who controls it. The benefits of the ownership of the building right have a preliminary party that should be prioritized in utilizing all the potential benefits arising from the building that has been used.

Second, the mortgage rights, along with objects related to land, generally follow the control of the object in the hands of certain parties<sup>[9]</sup>. Building rights as an extension of the mortgage rights are related to the relevance of the benefits provided and included the buildings that are owned. Also, building rights always follow the parties who have the right

to control the management of the use of the building. It is reflected in various things in accordance with the benefits for those who have control over the building.

Third, it is easy and certain to execute because it already has a permanent legal force (*inkracht*). The building rights after going through the procedure for submission have permanent legal force for those who wish to submit conflicts to the legal domain. Evidence of ownership of the building rights must be carried out by the losing party because they have permanent legal force. When the losing party in the ruling does not want to implement the *inkracht* ruling, based on evidence of ownership of the building rights, the winning party can ask for help from the judge to force the losing party to carry out and have the executorial power.

The problem that often arises over the expiration of building rights is the emergence of a dispute over the ownership management of the building that has ended. Disputes over the termination of building rights arise upon misunderstandings over the acquisition of building rights, which differ in the interpretation of the period of time that becomes a marker and has been mutually agreed upon by the parties.

According to Article 36 paragraph (2) of the Basic Agrarian Law (UUPA), it broadly illustrates that each party, whether an individual or a legal entity, who is no longer able to meet the qualifications for ownership rights to building rights in Indonesia. Based on Article 36 paragraph (1) of the Basic Agrarian Law (UUPA), it confirms that within one year, the transfer of rights must be done to other parties who have met the conditions of control. If the transfer of rights to another party is not carried out and has passed the time, the rights are automatically removed based on law.

Pursuant to Article 37 of the Basic Agrarian Law (UUPA), it regulates that building rights can be used to regulate 2 (two) types of land, i.e. land that is directly controlled by the state because of the determination of the Government, and owned land because it is based on an authentic agreement between the landowner and the party who wants to obtain the building rights. In the authors' opinion, the legal relationship between the two types of land building rights has several different arrangements. The use rights of buildings owned by the state have a legal relationship that is directly controlled by the government as an extension of the state when the tenure of building rights expired<sup>[10]</sup>.

Whereas, the regulation of legal relations over the building rights of real estate has a more complex tendency. It is because private party ownership cannot also be privatized, but it must prioritize the public interest in the control of land building rights. When the tenure period of the building rights has expired, the termination of the land tenure can be categorized as the property of state land, because the parties do not manage the land. Otherwise, it can still become the party's land if they indeed take care of the building tenure rights<sup>[11]</sup>.

The regulation regarding the expiration of land tenure in the laws and regulations has not been explicitly regulated. The indecisiveness of the arrangement reflected in the dualism of use regarding the expiration of building rights is a clear proof of the problems that occur in the regulation of land rights regulation in Indonesia. Termination of mortgage

<sup>6</sup> Darwis Anatami, "Tanggung Jawab Siapa, Bila Terjadi Sertifikat Ganda Atas Sebidang Tanah", Jurnal Hukum Samudra Keadilan, Volume 12, Number 1, Januari-Juni 2017, page. 2.

<sup>7</sup> Regulated in the Basic Agrarian Law Number 5 of 1960

<sup>8</sup> In accordance with Article 1 paragraph (1) of the Basic Agrarian Law Number 5 of 1960

<sup>9</sup> In accordance with Article 7 of the Basic Agrarian Law Number 5 of 1960

<sup>10</sup> Adapted to Article 37 of the Basic Agrarian Law Number 5 of 1960

<sup>11</sup> Bodi Harsono, 2003, Hukum Agraria Indonesia Sejarah Pembentukan UUPA Isi dan Pelaksanaannya, Jilid I Hukum Tanah Nasiona Ninth Edition Publisher: Djembatan, page.22

rights can be found in Article 40 of the Basic Agrarian Law (UUPA) which broadly discusses the removal of mortgage rights as one of the things that become guidelines for the implementation of Building Rights (HGB).

In the writer's opinion, Basic Agrarian Law (UUPA) of building rights has not yet been fully regulated the expiration period. It is proven when the termination of the building rights, which are made to be state land unilaterally, sometimes makes a loss for those who feel their land has been "seized" by the state by prioritizing the principle of public interest more preferred over the principle of public interest.

One of the regulations concerning the expiration of building rights can be found in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 about the Procedures for Granting and Cancellation of State Land Rights and Management Rights (PMNA/KBPN 9/1999). It broadly discusses the expiration of the building right, which can be found in Article 40 to Article 48. Providing compensation to the losers in handling conflict cases over land disputes is a solution to the settlement offered through PMNA 9/1999.

Based on Article 46 paragraph (3) PMNA 9/1999, it generally outlines that the amount of compensation given to former holders of building rights is adjusted to the suitability of the agreement between the recipient of the right and the former land rights holder, accompanied by control of the land to be controlled. It actually is a reasonably appropriate step<sup>[12]</sup>.

However, in practice, developments in the interpretation of prices regarding the number of losses based on the Ministerial decree, in this case, the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (PMNA/Head of BPN) has become less effective. The ineffectiveness of the amount of compensation that must be given is "ambiguous" because the measurement scale is only based on an assessment conducted by representatives of the PMNA/BPN which can academically lead to potential disputes in the future. It is caused by the problematic objectivity estimation of the amount of compensation made that can be used as a basis for one party to form a claim that there has been a violation of the price discrepancy in the estimated amount of compensation.

Based on the explanation above, we can understand in broad outline that the problem of regulating legal relations for the expiration of building rights still has some fundamental differences related to the still listed regulations that can be used such as the UUPA and PMA 9/1999. It is necessary to confirm which rules are used when handling cases of building rights.

## **2. Efforts to resolve disputes that are appropriate in affirming the legal regulation of dispute resolution after the expiration of building rights based on positive civil law in Indonesia**

The philosophical foundation underlies the implementation of the dispute over the expiration of building rights is to realize equitable social justice, and so that all the people of Indonesia can feel it. Building rights as a fundamental right that can provide full control of land for Indonesian citizens

<sup>12</sup> Adapted to the provisions of Article 46 paragraph (6) of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling Rights to State Land and Management Rights

become a form of state sovereignty in providing "economic welfare" for its citizens. Utilization of building rights does not last forever so that when the tenure of building right ends, it can be extended within 2 (two) years before the expiry of the building right<sup>[13]</sup>.

The sociological foundation that underlies the implementation of the dispute over the expiration of the building right is motivated by the need for equitable distribution of justice through restrictions on tenure through a certain period that is applied equally to all parties. It is intended so that there are no handful of parties who absolutely control the use of land and the buildings included in it. Limited building rights are temporary because they are limited by the tenure period<sup>[14]</sup>.

The juridical basis that underlies the implementation of the dispute over the expiration of building management rights is based on the nature of land tenure, and the buildings that are utilized have the nature of individuality. It is because they tend to be controlled by several parties in obtaining economic benefits from the use of building rights and all objects that are on it. In the realm of positive law in Indonesia, the termination of the management of land and building rights can be found in the Basic Agrarian Law (UUPA) which outlines the arrangement for the expiration of the building rights period to become state land, to end the previous legal relationship. Another regulation, PMNA 9/1999, stipulates that the expiration of the termination of land and buildings control can lead to legal relations if there is still a dispute between the two parties; if there are losses incurred then the conflict must be resolved first to end the legal relationship.

The nature of individuality possessed by the building right, in its development, has a great potential in causing problems in the future. It is because the human nature that is a thirst for power triggers them to continue to think in various ways to achieve their goals. In daily life, there are often conflicts over the termination of mutual term agreements between the parties who want to control the use of building rights, which are generally caused by the transfer of ownership of the building rights that lead to disputes and then resolved through the realm of law.<sup>15</sup>

The settlement of disputes over the expiration of building rights under positive law in Indonesia has substantial problems. The dualism of resolving the expiration of building rights is reflected in the inconsistency of the application of legal regulations to be used in handling any disputes that have distinctive characteristics in the settlement process. The Basic Agrarian Law (UUPA) emphasizes the transfer of building rights to state land, while PMNA 9/1999 emphasizes the settlement of a dispute really ends when one party has fulfilled the claim for compensation requested by the other party. If it is scrutinized, the resolution of disputes ending the building right in the Basic Agrarian Law (UUPA) tends to be public. It is because the state resolves disputes over the termination of building rights arising between the parties through

<sup>13</sup> Adapted to the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 8 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights.

<sup>14</sup> Dian Aries Mujiburohman, 2016, "Problematika Pengaturan Tanah Negara Bekas Hak Yang Telah Berakhir", Jurnal Bhumi Vol. 2 No. 2 November 2016, Sekolah Tinggi Pertanahan Nasional (STPN).

<sup>15</sup> I Made Suwitra, 2014, "Penguasaan Hak Atas Tanah dan Masalahnya (Land Possession Rights and Its Affair), Jurnal IUS Vol. II Number 6 December 2014, Bali: Faculty of Law, Warmadewa University, Denpasar.

control over the use of buildings and all objects in them, are transferred to become a property and on behalf of state land. PMNA 9/1999 emphasizes that the completion of the expiration of building rights depends on the wishes of the parties. The settlement is deemed to have ended when the will was done and demanded in accordance with the parties' agreement on ownership of the right to occupy the building and the land thereon. If it is examined carefully, the resolution of disputes ending the building right in PMNA 9/1999 tends to be private. It is because disputes over the termination of building rights that arise can be resolved if the termination agreement ends the achievement of conformity between the parties regarding the transfer of land and building rights ownership.

The dualism of legal regulations application regarding the expiration of the tenure of land and buildings becomes problematic, which is quite worrying. Building right (HGB) is classified as a fundamental right to land tenure; in fact, it can provide significant benefits for those who can use them. The suggestion from the author is that there is a need for unification of legal regulations governing the expiration of building rights to clarify the legal relations of the parties involved in it. The affirmation of the legal status of the term termination of the land and building control must be clarified. It is intended so that the potential risks caused after the expiration of the building right can be avoided in the future as a form of providing legal protection for the community.

### Conclusion

Based on the points of the study results above, the authors conclude that: (1) Regulatory arrangements regarding legal relations the term termination of building right (HGB) in Indonesia which are regulated in the Basic Agrarian Law of 1960 (UUPA) and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 have several fundamental differences in the affirmation of legal relations. (2) Unification and affirmation of the relationship of civil law are needed on the termination of the tenure of building right (HGB) in Indonesia.

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