

THE MECHANISM FOR TRANSFERRING BUILDING USE RIGHTS IS THE DECISION OF THE MINISTER OF AGRARIAN AFFAIRS AND SPATIAL PLANNING/HEAD OF THE NATIONAL LAND AGENCY NUMBER 1339/SK-HK.02/X/2022 OF 2022 CONCERNING THE GRANTING OF LAND RIGHTS IN GENERAL (CASE STUDY AT NOTARY AND PPAT MULYANI'S OFFICE)

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Abstract

This article discusses the mechanism for transferring Building Use Rights (HGB) to Ownership Rights based on the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1339/SK-HK.02/X/2022. The case study was conducted at the Mulyani S.H., M.Kn., Karawang Notary and PPAT Office. This transition process is important to provide legal certainty and increase the economic value of land. The research uses an empirical juridical approach by collecting primary data through observation and interviews as well as reviewing written and unwritten legal materials. The research results show that the transition of HGB to Ownership Rights involves document verification, tax payment, and monitoring of processing status at the Land Office. Obstacles faced include completeness of documents, limited administrative staff, and lack of public understanding of the importance of transferring rights. The solutions implemented include verifying the validity of documents, ensuring tax payments, and regular monitoring. This transformation of land status provides stronger legal force and can be inherited indefinitely, thus increasing the selling value of the land.

Keywords: Mechanisms, Transfers, Building Use Rights, Property Rights.

INTRODUCTION

Land is a natural asset that is of great economic and strategic value to society. Therefore, owning land is very important to ensure legal provisions and support economic activities. In the context of national development, the aim of which is to form a prosperous and just society, based on Pancasila and the 1945 Constitution, land plays an important role. However, one of the main challenges is that the amount of land remains unchanged, while the population continues to increase. This creates a gap between availability and the increasingly urgent need

for land. Considering that the amount of land is fixed and does not increase, while the population continues to increase, this cannot meet the increasingly urgent need for land.

Availability of land for development in Indonesia is now becoming increasingly difficult. The increasing needs have caused Building Use Rights holders to want to change the condition of their territorial freedom to Freedom of Ownership, especially for land they hope to use as a house. UUPA (Basic Agrarian Law) No. 5/1960 explains that land control has very high and inherent legal force, more fundamental than other special rights such as Building Use Rights. Interestingly, privileges in the use of buildings only involve responsibility for work, while land remains regulated by the state and its use requires official permission from the relevant authorities (Puspitoningrum, 2010).

Registering the transfer of land rights is a strategic step to prevent land problems from turning into social issues. Based on Article 37 paragraph (1) of the 1997 Land Registration Regulations, every change in land ownership, whether through buying and selling, trading, granting, or sharing within an organization, must be proven by an official deed from the PPAT. This deed complies with applicable administrative regulations, thereby ensuring that any transfer of ownership is legal and protects the rights of all parties involved. This step provides legal certainty and guarantees the legitimacy of every land transaction.

Based on the provisions contained in Article 4 paragraph 1, various types of land rights are explained in Article 16 paragraph 1 UUPA No.5/1960. a. Full ownership; b. The right to manage business on land; c. The right to construct buildings; d. The right to use land; e. The right to rent land; f. The right to open new land; g. The right to utilize forest products; h. Additional rights that are not yet included in the previous categories will be regulated by future laws, and temporary rights described in Article 53 (Harsono, 2008).

RESEARCH METHOD

This research was conducted using normative legal research methods, considering the object/focus of this research study is a product of statutory regulations (Marzuki, 2017). The approach used is the statutory approach (Statue Approach), an approach that utilizes an analysis of statutory provisions that have a link or relevance to the legal issues in this study (Ibrahim, 2013) and the case approach (Case Approach), an approach to cases related to the issues examined by the author.

The data analysis technique that will be used in this study is to use a qualitative juridical analysis method in the form of interpretation of legal materials, then the results of the analysis will be linked to the problems abbreviated in this study in order to produce an objective assessment in answering the issues raised in this research. (Ali, 2013). The data sources used in this study are primary legal materials in the form of legal materials that have authority and are binding. Secondary legal materials are explanations related to primary legal materials such as legal books, scientific papers, internet materials, articles, opinions from legal experts, and other legal materials (Ibrahim, 2013).

DISCUSS AND ANALYSIS

Mechanism To Transfer Building Use Rights Into Ownership Rights For Residences

The legal transfer of land ownership rights from one party to another is known as the transfer of land rights. PPAT (Land Deed Official) must obtain authority based on applicable law before the rights to an apartment unit can be transferred through exchange, sale and

purchase, grant, or other legal methods, as stipulated in Article 37 paragraph (1) PP No. 24/1997. This registration procedure is regulated in more detail in the Guidelines from the Head of the State Agrarian Business Entity/Head of the Public Land Agency No.3/1997, which provides instructions regarding the steps that must be followed by the authorized party to register land rights. According to Dodi Ferdy Ansyah, a field staff at the Mulyani S.H., M.Kn. Notary and PPAT Office, it is very important to ensure the legality of land ownership. Residents who have Building Use Rights (HGB) certification often dream of converting them to Ownership Rights certificates. This process aims to clarify the legal status of land which is useful for all forms of transfer or dispute resolution in the future.

Changing HGB status to Ownership Rights for a residence does involve a number of crucial stages that must be observed carefully. This process aims to replace the legal status of land so that it is stronger and clearer, which of course will facilitate various transactions in the future or help in resolving disputes that may occur. As a first step, make sure all the required documents are complete and valid: a. To apply for land ownership rights for your house, you must fill out an application form at the local ATR/BPN office. This form must be submitted in printed form to the Head of the Land Office with authority in the land area. The local ATR/BPN office will provide all the information and requirements necessary for this application; 1) Attachment 13 (attached), 2) Ministerial Decree: ATR/BPN Ministerial Decree No.6/1998, dated 26 June 1998, regarding the granting of ownership rights to residential land (attached), and 3) Statement Letter (attached). b. This application is also accompanied by a land certificate which functions to change the status of HGB to Hak Milik.

The certificate must be verified at the Regency/City ATR/BPN office to ensure legal certainty for the rights holder. c. Evidence that must be included to prove the use of land as a residence includes: 1) A copy of the IMB (Building Construction Permit) from the competent authority, which states that the building is used as a residence. This IMB document is official proof. 2) Written statement from the Village Head or local Lurah confirming the use of the building as a residence. d. Include a photocopy of the latest SPPT and proof of PBB payment when submitting the application. e. When applying for Ownership Rights for residential land, the identity of the applicant must be checked to ensure ownership. This information is generally included in the certificate for which rights will be upgraded. f. Documents proving the acquisition of rights to the land and buildings on it must be included. g. When all the requested documents have been collected, the files are submitted to the transfer of rights counter. The counter officer will then check the documents to ensure they are complete. h. After the counter 9 officer verifies the completeness of the documents, documents that meet the requirements are immediately registered for the rights change process. After registration, an SPS (deposit order) will be issued and a document receipt will be issued. i. When the SPS has been issued, the applicant is required to pay the PNBP fee worth IDR. 50,000, which can be paid via bank. j. After the PNBP payment is complete, the applicant needs to submit proof of payment to the staff at counter 9. k. After the process at the counter is complete, the document will be submitted to the rights change coordinator. l. Next, the old Building Use Rights number is deleted on the land certificate and book, then replaced with the new Ownership Rights number. m. If this process has been completed, the document is submitted to the Head of the Maintenance Sub-Division and PPAT to obtain initials. Referring to Article 16 of the Minister of Agrarian Affairs/Head of BPN RI Regulation No. 38/2016 concerning the Unity and Work Procedures

of Land Organizations, this segment has a big responsibility. They manage ownership of apartment units, coordinate and monitor registration and maintenance of space and land, and prepare technical guidance materials. Apart from that, they also handle freedom of management, waqf land, and granting permits relating to the exchange of privileges, changes of use, and use/goods of land. Not only that, this section also plays a role in the formation and development of PPAT, data monitoring, and legal land implementation based on information.

They are also responsible for evaluation and reporting. Once the initiation is complete, the documents will be submitted to the Head of the Land Legal Relations Section, Mr. Soleh Hendrawan, SH. Referring to Article 13 of the ATR/BPN RI Personnel Guidelines No.38/2016, the following segments have an important role in managing and guaranteeing privileges and land obligations in the local area. They are also responsible for registering land rights and maintaining information on land rights, as well as establishing a Regional Deed Drafting Agency (PPAT). Furthermore, Article 14 of the same regulation explains further the duties of the Land Legal Relations Sector; 1) Granting, determining and extending rights to communal spaces and areas, as well as the rights of individuals and private legal entities. 2) Prepare licensing materials, find out who has rights to land for social or religious groups, and prove that the land is former Dutch land, waqf, or other foreign land. 3) Registration planning to determine certain legal substances that truly deserve property privileges. 4) Monitoring the stock and identity of land owned by people and legal confidential elements, including privileges to open space. 5) Encourage community empowerment through land rights. 6) Plan important coordinated efforts with various government and non-government agencies to help strengthen land privileges in the local area. 7) Create and disseminate models of regional special involvement for local areas. 8) Register various land privileges, including space freedom, loft unit ownership rights, executive freedom, contract privileges, waqf land, as well as land privileges from social or strict bodies, and record the invalidation and deletion of these freedoms. 9) Compile and maintain space and land registration data, including condominium ownership rights, executive freedom and waqf land. This also includes providing approval for changes in privileges, grants of discretion, and variations in the purpose and use of assets, including transfer of offerings. Next, follow the guidelines and improvements of the Land Deed Making Agency (PPAT): 10) Monitor and implement data and modernize the land implementation framework based on juridical information. 11) Providing legal aspects of technical guidance, monitoring, reporting and assessment related to land. o. After all stages are completed, Nos. 301A, 307, and 208 will be printed which serve as proof of receipt of the file. The file is then handed over to the officer at the submission counter. p. Applicants can collect documents that have been processed within up to five working days. Just bring the document receipt and hand it over to the officer at the counter in question.

Referring to the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1339/SK-HK.02/X/2022 of 2022 concerning the Granting of Land Rights in General, a number of crucial steps must be completed in order to change the right to use a building into a right Ownership: 1. Building Use Rights or Use Rights over land for residences belonging to individual Indonesian citizens with an area of up to 600 m² (six hundred square meters), upon the request of the person concerned shall be removed and given back to the former right holder with Ownership Rights; 2. Ownership rights for residential houses as referred to in number 1 are granted with the following conditions: a) Building use

rights or use rights are still valid or have expired; b) in the name of the right holder who is still alive or deceased; and/or c) released by the Management Right holder with a letter of approval/recommendation for granting Ownership Rights to part of the Management Right land for a residential house located on the Management Right land.

To extend land status to Privilege Ownership, beneficiaries are expected to pay a certain salary to the State, in accordance with relevant guidelines. Applications to obtain Ownership Privileges are submitted to local regulations or the City Land Office, by attaching a letter according to the model in Attachment I to this Statement, in addition to the expected notes: 1. Relevant land certificate documents; 2. Proof that the land is used as a residence: a. Photocopy of the IMB stating that the building is used as a residence, or b. A statement letter from the relevant Subdistrict/Village Head confirming that the building functions as a residence, if the IMB has not been issued by the relevant authority; 3. Photocopy of the latest PBB SPPT (especially for land with an area of 200 m² or more); 4. Copy of applicant's identity; 5. Statement letter from the applicant confirming that the amount of land owned will not exceed five parcels with a total area of under 5000 m², according to the example in Appendix II.

In the process of submitting an application for Ownership Rights in accordance with Paragraph (1) of the ATR/BPN Ministerial Regulation No.6/1998 concerning Granting Ownership Rights to land for residential use, the Head of BPN gives instructions for payment of levies as described in Article 1 Paragraph (2). Based on the guidelines in Attachment III to the Decree, after the levy is paid in full, the Head of BPN will record the cancellation of the HGB or Hak Pakai on the certificate, land book and other public registers.

After that, the next step is to register the land that previously had HGB or Hak Pakai as freehold land. This is done by creating a new land book which includes the reasons for the change in status. From then on, a Certificate of Freedom of Ownership will be issued, based on an approximate document generated from the data contained in the previous land use registration.

Based on the Decree of the Minister of ATR/BPN No.6/1998 regarding the granting of ownership rights to land for residences, the rights optimization officer stated that the procedures had been carried out correctly in accordance with applicable regulations. The process carried out meets all requirements without any errors or inconsistencies. The following is a list of costs that the applicant needs to incur when applying for the conversion of HGB into Ownership Rights for residence: 1. In order to obtain Ownership Rights according to these regulations, the applicant needs to pay a certain amount of money to the state treasury, according to the applicable regulations, namely based on the Guidelines for Determining Income Money stipulated in ATR/BPN Ministerial Regulation No.4 /1998; 2. The calculation of income is based on the NJOP (Tax Object Sales Value) which is applied when the registration application is submitted. NJOP information can be obtained from SPPT PBB (Notification of Tax Due), a copy of which must be attached to the application file for registration of Ownership Rights on land, especially if the income is more than 0%. The provisions related to this process are as follows: a. If someone applies for registration of Ownership Rights after the salary calculation date, then the applicable NJOP must refer to the data stated on the PBB form for the relevant year. b. If ownership rights are submitted before the income calculation date, then the NJOP used is the one stated in the previous year's Tax Return. c. In order to obtain ownership rights, payment of installments of declaration fees must follow the General Land Organization

Leadership Guidelines No.2/1992 regarding Land Registration Levy. Building and Land Rights Acquisition Fees do not apply if the granting of Ownership Rights causes a change in the Building Use Rights, either during the validity period or after they expire.

Aspects That Become Obstacles In The Implementation Of The Transfer Of Building Use Rights To Ownership Rights

PPAT Office and Notary MULYANI S.H., M.Kn. often face various obstacles at the stage of transferring land rights, both from the applicant and related institutions. Pak Dodi Ferdy Ansyah shared his experience that challenges at the stage of transferring land rights still often occur. 1. Candidates who handle the exchange of land rights often do not complete the expected reports such as the IMB and PBB Statement. This happened because one of the letters had not been provided by an important organization. 2. Service to the community cannot yet be said to be ideal, because the number of personnel who take care of public administration is not sufficient. 3. The Land Office must play a more active role in providing information to the general public regarding how crucial it is to manage the transfer of land rights. 4. Many people feel that the most common way to apply for a freehold exchange for land takes a lot of time, but assuming that the report is complete and meets the requirements, the application will be handled quickly. 5. In addition, people's concerns about high valuations make them hesitant in facing exchanges for land freedom. Apart from that, many people think that HGB alone is enough, so there is no need to register the transfer of rights. 6. There are still very few individuals who make requests for transfer of land rights due to public ignorance. In fact, the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1339/SK-HK.02/X/2022 of 2022 concerning the Granting of Land Rights in General offers a quick and easy way for holders of private mortgage rights that truly have Rights status Building Use.

According to Dodi Ferdy Ansyah, who works as field staff at the PPAT Office and Notary MULYANI S.H., M.Kn., the transformation of land status from HGB to Hak Milik provides a number of benefits. HGB requires an extension after a certain period of time is completed. Meanwhile, Property Rights offer stronger legal force and longer durability, can be inherited and are not limited by time of ownership. At the PPAT Office and Notary MULYANI S.H., M.Kn., Dodi Ferdy Ansyah revealed that changing the status of land to Ownership Rights from HGB brings a number of benefits. HGB requires an extension after a certain period of time has expired, while Hak Milik offers stronger legal force and can be inherited without a time limit on ownership.

However, in implementing the transfer of land rights, there are often various obstacles experienced by both the notary and PPAT offices and the party submitting the application. To overcome these various obstacles, the Notary Office and PPAT MULYANI S.H., M.Kn., have implemented a number of creative strategies as follows: 1. The Notary Office and PPAT MULYANI S.H., M.Kn., will request and check the completeness of the documents for the transfer application land rights that will be submitted to the Regency/City Land Office; 2. The Notary Office and PPAT MULYANI S.H., M.Kn., will verify the validity of the documents from the relevant agencies to avoid legal problems in the future; 3. The Notary's Office and PPAT MULYANI S.H., M.Kn., will ensure regarding the land taxes and levies; 4. The Notary Office and PPAT MULYANI S.H., M.Kn., will carry out regular monitoring of the status of

land rights transfer processing at the Land Office; 5. The Notary Office and PPAT MULYANI S.H., M.Kn., will try to help and anticipate technical obstacles such as loss of documents or administrative errors, and non-technical obstacles such as rejection from the family or heirs. The usual method of transferring land rights carried out by the Land Office must be carried out with the assumption that the installments have been completed. The Land Office cannot process the transfer if payment has not been received in full. Because Hak Milik is considered the strongest form of ownership right, most people prefer to transfer their land rights. The selling price of land also increased significantly along with the increase in land rights.

CLOSURE

Conclusion

The legal transfer of land ownership rights, known as transfer of land rights, involves a process that must follow applicable legal regulations. PPAT has special authority to make land deeds before rights to apartment units can be transferred. The registration process and changes in land status are regulated in PP No.24/1997 and Minister of ATR/BPN Decree No.6/1998, which guide the steps for the authorities. Applicants who wish to change the status of Building Use Rights (HGB) to Ownership Rights need to complete various documents, such as land certificates, IMB, the latest PBB SPPT, and proof of ownership. This process aims to clarify the legal status of land, which is important for various transactions and dispute resolution. Payment of PNPB and other fees is also regulated based on the NJOP, and after all documents are verified and payment is completed, an Ownership Certificate will be issued. This process ensures legal certainty for rights holders and makes it easier to manage and utilize the land in the future.

PPAT Office and Notary MULYANI S.H., M.Kn. often face various obstacles in the process of transferring land rights, such as incomplete documents, limited administrative staff, and a lack of public knowledge regarding the importance of transferring rights. Other obstacles include time-consuming administrative processes and public concerns about high costs. To overcome these obstacles, this office implements strategies such as verifying the validity of documents, ensuring payment of taxes and levies, and carrying out regular monitoring of processing status at the Land Office. The transformation of land status from Building Use Rights (HGB) to Ownership Rights offers stronger legal strength and longer durability, which can be inherited without time limits on ownership, thus increasing the sale value of the land.

Sugesstion

Changing Building Use Rights into Ownership Rights is very important because Ownership Rights offer stronger legal force and are not limited by time. However, many communities have not attempted to expand their ownership areas. One of the obstacles is a lack of in-depth understanding of the conditions that must be met in order to obtain this freedom.

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