

THE STRENGTH OF THE PRELIMINARY AGREEMENT AS THE BASIS FOR LAND RIGHTS IN GRANTING BUILDING RIGHTS ON LAND OWNERSHIP

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ABSTRACT

The process for registering building use rights over freehold property and the most effective method for granting use rights over freehold land are two of the topics that are discussed in this article. The purpose of this assignment is to acquire a knowledge of the process of awarding and registering building use rights on freehold land in regard to the subject matter currently being discussed. The approach that was used in this investigation was a mix of data collection (literature review) and data analysis (data collection, editing, and verification). The results indicate that the process of awarding construction use rights on freehold property begins with the creation of a notarial deed as the first step. Following the execution of the provisions of the notarial deed, a PPAT document, especially the deed of granting HGB on freehold property, is created, which acts as the basis for the authority to issue a title certificate. beyond the surface.

Keywords: Building Rights, Registration, Land

INTRODUCTION

Land is a crucial part of the Earth's surface for human life. Humans require land for agricultural purposes to meet their needs. Additionally, land serves as the foundation for habitation, as well as being an asset due to its economic value. Indonesia is an agrarian nation, relying on agriculture for sustenance. Thus, land as a farming medium holds significant value for the nation's survival.

The application of Dutch land law from the colonial period was repealed by Law 5 of 1960, which was relevant to the Basic Agrarian Principles (UUPA). This led to the beginning of the control of land under the National Law. One of the goals of the Basic Agrarian Law (UUPA) was to guarantee that land was used in a manner that was suitable by recognizing the social use of land and prohibiting absolute ownership rights (eigendom). According to State Control Rights, the state has the authority to grant agrarian resource rights to individuals or businesses, either on their own or in collaboration with other entities. These rights are categorized as pertaining to the ownership and administration of agricultural resources, according to the first paragraph of Article 16 of the UUPA:

- (a) Ownership rights;
- (b) Cultivation rights;
- (c) Building rights;
- (d) Usage rights;
- (e) Lease rights;
- (f) Land clearing rights;
- (g) Forest yield collection rights;
- (h) Other rights not included in the above categories, to be determined by law, as well as temporary rights as mentioned in Article 53.

Thus, land in a legal context refers to the Earth's surface, while Land Rights refer to specific rights over a portion of the Earth's surface, which are limited and two-dimensional with length and width measurements. Space in a legal sense, which has three-dimensional boundaries, namely length, width, and height, is studied in Spatial Planning Law. Land rights stem from State Control Rights, where the State, as an authoritative organization, has the right to manage land to benefit the people. One of the land rights derived from State Control Rights is Building Use Rights, which means that an individual can erect a building on land not owned by them.

It is important to note that ownership rights and building use rights are not the same thing. The right to possess land is deemed hereditary, the most powerful, and comprehensive under Article 20 paragraph 1 of the UUPA. This conclusion is reached after taking into consideration the conditions that are outlined in Article 6 of the UUPA constitution. The term "hereditary" refers to a right to land that is passed down through the generations of a family even after the owner of the land has passed away. This ensures that succeeding generations may continue to reap the advantages of the property. In the context of land ownership rights, the phrase "strongest" refers to the extent to which other land rights, such as use rights and building usage rights, restrict or burden ownership rights over land. There is a distinction between the ownership rights of the land upon which a building is constructed and the rights of the people who utilize the structure.

State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), State-owned Enterprises (SOEs), Authorities, and other government-appointed legal entities are eligible to exercise state control rights over land, as stated in Article 67 of Regulation Number 9 of 1999 issued by the Minister of Agrarian Affairs/Head of the National Land Agency. This regulation was issued in 1999. But this is only possible if it is tightly connected to the primary responsibilities and actions that they are responsible for in land management.

According to Article 36 of Government Regulation Number 18 of 2021 on Land Management Rights, Land Rights, Apartment Units, and Land Registration, Building Rights (Hak Guna Bangunan, HGB) may be granted to certain types of land. This is detailed in the regulation. Land may be classified into three categories: land owned by the state, land with ownership rights, and land with management rights. In order to begin the process of allocating HGB (Right to Build) on state-owned property, the first stage begins with the submission of an application to the land office. This method is defined by the government. Property rights are acquired by the government via the Decree of Granting Rights, which is the manner by which they exist. When it comes to the distribution of building rights on their property, it is common known that a landowner has the ability to work together with investors via the use of a Building Rights agreement. This agreement will detail the duration of the Building Rights that will be put on the property of the owner, as well as the rights and duties of both parties, as well as the compensation or payment that will be made for the use of the land. A property deed official, also known as a PPAT, will be responsible for drafting the deed and ensuring that it is legal documentation of this arrangement by having it registered with the local land office.

Concerning the granting of HGB on Ownership Rights Land, if we look at the contents of the agreement containing the duration, rights and obligations, and compensation for the Ownership Rights Land, it can be said that the preliminary agreement bears similarities to a lease agreement. The granting of HGB on Ownership Rights Land is initially carried out through a preliminary agreement deed for granting HGB on Ownership Rights Land. The Preliminary Agreement Deed for Granting Building Rights on Ownership Rights Land is the initial agreement where the first party as the grantor grants Building Rights on their Ownership Rights Land to be developed by the second party as the recipient of the rights, and the second party accepts the grant of Building Rights on their Ownership Rights Land with specific objects, consideration, terms, and duration.

There is a time span in the process of granting HGB on Ownership Rights Land, particularly during the drafting of the deed by the PPAT, which serves as the basis for granting HGB on Ownership Rights Land, i.e., the preliminary agreement made before a notary public. This could be a legal loophole because the preliminary agreement does not guarantee that all parties will fulfill their obligations, and whether the preliminary agreement agreed upon by the parties can serve as a basis for the rights over the land agreed upon by the parties.

DISCUSSION

The process of granting HGB On Ownership Rights Land through a preliminary agreement for Building

The Right to Build (Hak Guna Bangunan) is explicitly regulated within the articles of the Agrarian Law (UUPA) similar to other land rights. Implicitly, provisions regarding the Right of Management (Hak Pengelolaan) can be found in the general explanation number II of the Agrarian Law, which explains that the state may grant land that is not owned by anyone with a certain right by someone or another party with a certain right to the land or grant it for management to a certain governing body.

According to Article 34 of Government Regulation No. 18 of 2021, Building Rights are granted to Indonesian citizens and legal entities established under Indonesian law. This definition implies that the authority to grant Building Rights lies with the state as the governing organization. The granting of HGB on ownership land begins with a preliminary agreement for granting HGB on Ownership Rights Land drawn up in the form of a notarial deed before a Notary Public, and upon the agreement of this deed, it becomes the basis for the issuance of HGB on ownership land through a deed made by a PPAT. The granting of Building Rights (HGB) on Ownership Rights Land is said to involve owned land because of the authentic agreement between the landowner and the party acquiring Building Rights, intending to create such rights.

Further restrictions on the issuing of HGB (Right to Build) on Land Ownership Rights are outlined in the regulation that was issued by the Minister of Agrarian Affairs and Spatial Planning and the Head of the BPN (National Land Agency). It is stated in Article 120 of the Minister of Agrarian Affairs/Head of BPN Regulation No. 3 of 1997 that the imposition of Land Use Rights or Building Rights on Ownership Rights is permitted. Registering the property with the local land office is a requirement for every individual who has ownership rights, even those who have gained Building Rights or property Use Rights. It is necessary to provide certain documentation in order to support this registration:

- a. A letter of application for registration of Building Rights or Land Use Rights on Ownership Rights Land;
- b. Ownership Rights certificate encumbered with Building Rights or Land Use Rights;
- c. The relevant PPAT deed;
- d. Identity of the recipient of Building Rights or Land Use Rights;
- e. Written power of attorney from the applicant if the application is submitted by someone else;
- f. Proof of payment of land and building acquisition fees;
- g. Proof of payment of income tax.

Once the registration of the Right to Build (HGB) has been completed, it is the responsibility of the head of the local land agency to enroll it in the government land book. The HGB is able to evaluate whether or not ownership rights may be awarded based on the land book. According to Article 96 paragraph 1, the procedure for acquiring HGB (Right to Build) rights in addition to ownership rights is defined in Article 95 paragraphs (1) and (2) of the Regulation of the Head of the National Land Agency Number 8 of 2012. This regulation was issued in 2012. It is possible that the actions necessary to complete the deed are included in the appendix of the rule:

- a. Sale and Purchase Deed;
- b. Exchange Deed;
- c. Deed of Donation;
- d. Deed of Entry into the Company;
- e. Deed of Joint Rights Division;
- f. Deed of Mortgage Grant;
- g. Deed of Right to Build Grant;
- h. Right to Use on Land Ownership; and
- i. Power of Attorney to Burden the Mortgage Right.

According to the norm, one of the deeds that provides the essential legal basis is the Deed of Granting HGB above Ownership Rights. However, this is not the only deed that does so. Within this context, the municipal land office is the entity responsible for the process of granting HGB above Ownership Rights. When it comes to the actual contents of the deed, the land office's authority is restricted to that of a registrar, and it is contingent upon the intents of the parties. Everyone has the right to engage into an agreement with any terms they want, provided that it does not violate public morality, the law, or the concept of freedom to contract.

In addition, the PPAT deed, which will be drafted by the PPAT (Authorized Land Deed Official) and will serve as the legal instrument of the agreement, will be recorded by the local land office. In addition, prior to the registration of the deed, PPAT looks into whether or not the property rights are legitimate. In the event that the property rights are transferred or encumbered, the deed that was executed by PPAT is a real document that provides the most convincing evidence of the transaction. As soon as the PPAT deed is needed for the issuance of the landownership rights, the land office will issue the HGB certificate with the necessary information. Having said that, the HGB will not be kept in the land office's possession itself; rather, it will be registered in the land book.

The Authority of Notaries in the Making of Preliminary Agreement Deeds for the Granting of HGB above Ownership Rights

An official who is recognized by the government and is entrusted with the responsibility of creating deeds that are legally enforceable is known as a notary public. The authority for a notary public to produce authentic deeds is derived from a statute that amends another legislation, namely statute 2 of 2014, which in turn originates from legislation 30 of 2004. Notaries have the ability to produce real deeds for any agreements, actions, or decisions that are either compelled by regulations or requested by parties having an interest in the case, as stated in the first paragraph of Article 15, which is a component of the Constitution. It is necessary for them to ensure that the deed is kept secure, verify that the date is accurate, and provide you with the original, a copy, and a proportion of the deed. On the other hand, this authority may only be exercised for matters that have not been assigned to other authorities or individuals designated by law, nor have they been exempted from authority in any other way.

Based on the definition of a notary as formulated in Article 1 of the Notary Position Regulation (PJM) above, several conclusions can be drawn as follows:

1. A notary is a government-appointed individual who holds a public office and is authorized to perform certain legal functions.
2. notary is the only authorized individual to create genuine deeds.
3. Authentic deeds are necessary for documenting activities, agreements, and conclusions that are mandated by a general rule or requested by interested parties.
4. It is necessary to verify the date, maintain the deed, and produce the original, copy, and extract.
5. The making of these deeds is neither stipulated nor exempted by a general regulation to be performed by other officials or individuals.

The authority of a notary is not limited to the making of authentic deeds. It is stated in paragraph 2, "In addition to the authority as referred to in paragraph (1), a notary is also authorized to:

- a. authenticate signatures and determine the date of underhand letters by registering them in a special book;
- b. record underhand letters by registering them in a special book;
- c. make copies of underhand letters in the form of copies containing descriptions as written and depicted in the respective letters;
- c. authenticate the conformity of photocopies with the original letters;

- d. provide legal counseling related to the making of deeds;
- e. make deeds related to land; or
- f. make auction minutes."

The authority of a notary in making preliminary agreements for granting HGB above Ownership Rights is similar to the making of notarial deeds in general, where the preliminary agreement serves as the basis for the PPAT deed on the land in question.

The Preliminary Agreement Deed for the Granting of HGB above Ownership Rights as the Basis for Land Rights

The Preliminary Agreement Deed for the Granting of HGB above Ownership Rights is a notarial deed. Due to its nature as a preliminary agreement, it can be said that this deed can serve as the basis for the issuance of land rights.

A land title certificate serves as strong evidence of someone's ownership of a piece of land. In legal terms, there are three types of documents: authentic deeds, underhand deeds, and non-deed documents. The land title certificate is an authentic deed created by a public official to serve as proof of land ownership. By issuing the land title certificate, it becomes evidence of the completion of land registration and the establishment of land administration order. The legal certainty aimed for in land registration includes certainty of the registered rights status, subject rights, and object rights.

The government has given the National Land Agency the obligation of registering land, which transferred the responsibility to the agency. In its function as a land registration organization, the National Land Agency is responsible for issuing the land title certificate, which is a document that is legally and legally binding. The certificate issued by the National Land Agency contains in-depth information on the legal and physical aspects of a specific piece of land. According to Article 23 of Government Regulation Number 24 of 1997, in order to register land rights that came into existence after the Agrarian Law was approved, one may show their land rights via the use of the following:

- (a) grant of rights (Grant of Rights Decree) over state land or land rights management from competent authorities,
- (b) deed of Right to Use or Right to Build on Ownership Rights land by a PPAT (Authorized Land Deed Official),
- (c) a pledge deed,
- (d) a deed of separation of ownership rights in apartment units, and
- (e) a deed of mortgage grant.

In accordance with these regulations, the Preliminary Agreement Deed for the Granting of HGB above Ownership Rights is a legal foundation that serves as the basis for the granting of land rights. In accordance with the Notary Position Law, a notarial deed is a document that is legally enforceable and has the potential to be included as evidence if it is interpreted correctly. The interpretation of Article 23 of Government Regulation Number 24 of 1997 states that there is a strong legal foundation for a deed of Right to Build on Ownership Rights property to serve as the basis for land rights. This is expressed in the context of the interpretation of the regulation.

CONCLUSION

It is necessary to present the Deed of Granting the Right to Build on Ownership Rights land to the land office in order to complete the process of obtaining a Right to Build Certificate on the property that belongs to another individual. In accordance with the Agrarian Law, the office of the National Land Agency is entitled to record the physical characteristics of a land item and to keep such characteristics as part of the land registration process. The first document that is created throughout the process of awarding land with HGB above Ownership Rights is the Preliminary Agreement Deed. This document is used to grant land with HGB above Ownership Rights property. One of the governmental entities that is in charge of land registration is the PPAT, which is also known as the Authorized property Deed entity. This body has the authority to provide HGB ownership rights over property. Prior to putting the deed into force, PPAT is required to verify the authenticity of the Ownership Rights certificate at the local land office. This is an extra precaution that is taken. The deed will serve as the basis for the local land office's decision to award land rights, namely the Right to Build.

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