

Legal Ambiguities in the Renewal of Building Use Rights: A Policy and Interpretative Analysis

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Abstract: The right to use buildings in the Western legal sense before conversion comes from postal rights stipulated in Article 71 of the Civil Code. Government Regulation Number 40 of 1996 states that renewal is submitted no later than 2 (two) years before the expiration of the Right to Use Building, which means that if it has passed 2 (two) years before the end of the Right to Build, the right holder cannot make a renewal of the Right to Use Building that he has. However, in PMNA Number 9 of 1999, it is stated that it is submitted within a grace period of 2 (two) years, which means that even though it has passed 2 (two) years before the Right to Build expires, the right holder can still apply for Renewal of the Right to Build. There are 2 (two) different terms. It is used regarding terms of time for submitting an extension application for Building Use Rights; then, it can give rise to various interpretations and implications. Matter This will affect the determination policies in each office land as the authorized body to grant the extension request the term of Building Use Rights, as well as against the Official Land Deed Maker and other parties who are in contact with the Rights Building.

1. Introduction

Soil has a vital role in human life, as it is related to the rights of someone on the land. Considering the importance of land in the survival of society, complete settings are required regarding use, utilization of ownership, and manufacturing laws relating to this matter. With the higher value, price, and benefits of land, Many people are trying to get evidence of land ownership by having a certificate; the amount of a certificate canceled by the court is sufficient, thus creating vulnerability.¹ Land registration aims to ensure legal certainty and certainty of land rights. By implementing land registration, the parties concerned can quickly determine the legal status of the particular land they face, its location, area, and boundaries.²

As science and technology grow, so does the science of law, which grows and develops due to the desire to realize justice and good law. The study of the discipline of law follows the develop-

¹ Klaudius Ilkam Hulu, Dalinama Telaumbanua, and Fianusman Laia. "Akibat Hukum Tidak Dilaksanakan Putusan Hakim Pengadilan Tata Usaha Negara". *Jurnal Panah Keadilan* 3 (2), 2024. 28-37. <https://doi.org/10.57094/jpk.v3i2.1995>.

² Efendi Perangin, "Indonesian Agrarian Law: a Study From The Perspective of Legal Practitioner Owners," (Jakarta: Rajawali Pers, 1991). h.54.

ment of legal thought. It is much more critical to understand and appreciate the richness of interpretation of thought and the variety given to the law.³

Right, to Build (Building Use Right) needs to be fully understood, namely the right to build and own buildings on land that is not their own, with a maximum period of 30 years and can be extended for a maximum period of 20 years; this is explained in Article 35 of the Basic Agrarian Law. From the explanation in the Basic Agrarian Law, what is owned by the right holder is very limited because it is established on land that is not his right, so it only happens for a specific time. Based on these provisions, Building Use Rights authorize their rights holders to erect buildings according to the nature and purpose of their designation. Although Building Use Rights are not as strong as Property Rights, as with Business Use Rights, Building Use Rights are classified as substantial rights, meaning that they are not easily erased, can be defended against other parties' buildings, and must be registered.⁴

The scope of the earth, according to UUPA, is the surface of the earth and the body of the world below it and those underwater. The surface of the planet as from the earth is called soil. The land referred to here does not regulate land in all its aspects but only regulates one of its aspects, namely land in the juridical sense called the rights of control over land.⁴ The right to tenure over land contains a series of authorities, obligations, and prohibitions for the right holder to do something about the land entitled. A thing that may, must, or is prohibited from doing is the content of the right of control that becomes the criterium or benchmark of distinction between the rights of control over land regulated in the land law.⁵

Based on Article 34 paragraph (4) of PP No. 40 of 1996, the transfer of Building Use Rights occurs because of sale and purchase, except buying and selling through auctions, exchanges, participation in capital, and grants must be done by a deed made⁶. By the Land Deed Making Officer (PPAT) as evidence that a legal act has occurred, and the transfer must be registered at the local land office. Article 37 paragraph (1) of PP No. 24 of 1997 determines the transfer of land rights and property rights to apartment units through buying and selling, exchanging, grants, entering company data, and other legal acts of transfer of rights except the transfer of rights through auction can only be registered if proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.⁷

The regulation of the Minister of Agrarian State / Head of the National Land Agency makes it easier for economically weak people to obtain land and houses to live through the Home Ownership Credit (KPR) facility, which is very useful for Indonesian Citizens (WNI) who need it.⁸. Meanwhile, Indonesian citizens living in housing with Building Use Rights for Residential Houses can

³ Staren Tarigan, "The Direction of The Democratic Legal State Strengthens The Government's Position With A Delegation of Legylation But Restrained," (Medan: Pustaka Bangsa Press, 2008). h.81.

⁴ H. Y. P. Sibuea, "Arti Penting Pendaftaran Tanah Untuk Pertama Kali." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 2(2), 287-306. 2016. DOI: <https://doi.org/10.22212/jnh.v2i2.218>. h.290.

⁵ I. Sari, "Hak-hak atas tanah dalam sistem hukum pertanahan di Indonesia menurut Undang-Undang Pokok Agraria (UUPA)." *Jurnal Mitra Manajemen*, 9 (1). (2020). DOI: <https://doi.org/10.35968/jmm.v9i1.492>. h.15.

⁶ N. N. A., Astiti, & I. Wulandari, "Akibat Hukum Terhadap Penelantaran Tanah Hak Guna Bangunan." *Jurnal Ilmu Hukum Tambun Bungai*, 5 (2), (2020). 800-817. h.810. <https://doi.org/10.61394/jihtb.v5i2.148>.

⁷ Urip Santoso, "Agrarian Law Comprehensive Study," (Jakarta: Kencana, 2014.) h.54.

⁸ Irmayanti, Andi, Kristi Simanjuntak, and Sokhib Naim. "Perlindungan Hukum Bagi Kreditur Akibat Berakhirnya Jangka Waktu Hak Guna Bangunan Yang Dibebeani Hak Tanggungan". *Judge : Jurnal Hukum* 5 (02), 2024: 120-32. <https://doi.org/10.54209/judge.v5i02.669>.

change Building Use Rights to Property Rights. Changes in Building Use Rights to Property Rights have specific requirements; changes in these rights can only be made to buildings and residential houses. It cannot be used for other purposes like mining, agriculture, plantations, etc.⁹

The validity period of this Right to Use Building is also limited to 30 years, but it can be extended for 20 years. If the renewal period of the Right to Build expires, the former right holder can be given a renewal of the Right to Build on the same land as long as the government approves.¹⁰ However, many people still do not know about this policy. A few people still own residential houses granted by the state with Building Use Rights and have not transitioned to Property Rights. The requirements are demanding, and some people do not understand them. Some people still own Residential Houses granted by the State with Building Use Rights. Therefore, based on the explanation above, researchers are interested in researching **“The Problem of Expiring Building Use Rights as Land Rights”**.

2. Method

This research uses a qualitative methodology based on a socio-legal research framework. The application of normative legal provisions, or laws, to each unique legal event that takes place in a society is the focus of this research.¹¹ Primary as well as secondary data are used. With purposive sampling, which involves selecting the sample with specific criteria, primary data was collected through field research in the form of interviews.¹²

3. Subject

3.1.1. Building Use Rights as Land Rights

Building use rights are regulated in Article 37 PP No. 21 of 2021, which states that if the term of land rights, in this case, building use rights, has ended, the status of the land legally returns to the status of land controlled directly by the State or Land Management Rights. In this way, the former holders of building use rights no longer have the right to carry out legal actions on their former land rights. However, despite this, our national land law recognizes the existence of Priority Rights or preferred rights, namely the right to take precedence in applying for land rights, including building use rights. This right is given to the former right holder who controls the land under his former right.

Article 35 Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles regulates that building use rights can be given for a limited period no later than 30 (thirty) years and later can be extended indefinitely to 20 (20 years). Furthermore, Article 27, paragraph (1), Government Regulation Number 40 of the Year 1996 concerns business use rights and use rights building. Land Use Rights (from now on referred to as PP Number 40 of the Year 1996) states that the application extension of the term of Use Rights Buildings are submitted no later than 2 (two) years before the expiration of the Rights period Use the building, while according to Article 41 Regula-

⁹ Urip Susanto, *“Agrarian Law and Land Rights,”* (Jakarta: Kencana Prenada Media Group, 2014), P.46.

¹⁰ A. Feddyawan, D., & S. Sukresno, “Perlindungan Hukum Bekas Pemegang Hak Terhadap Tanah Bekas Hak Guna Usaha Atau Hak Guna Bangunan Yang Telah Berakhir Haknya.” *Innovative: Journal of Social Science Research*, 3 (5), (2023). 5044-5053. Retrieved from <https://j-innovative.org/index.php/Innovative/article/view/5233>.

¹¹ Elisabeth Nurhaini Butarbutar, *“Metode Penelitian Hukum”* (Bandung: Refika Aditama, 2018), h.97.

¹² Sugiyono, *“Metode Penelitian Kuantitatif, Kualitatif dan R&D.”* (Bandung: Alfabeta, 2017), h.76.

tion of the Minister of State for Agrarian Affairs/ Head of National Land Agency Number 9 1999 concerning Procedures for Giving and Cancellation of State Land Rights and Titles Management (from now on referred to as National Land Agency Number 9 of 1999) stated that the application for a term extension time the Building Use Rights were submitted by rights holder within 2 (two) years, before the expiration of the rights period.¹³

There are 2 (two) different terms. It is used regarding terms of time for submitting an extension application for Building Use Rights; then, it can give rise to various interpretations and implications. Matter This will affect the determination policies in each office land as the authorized body to grant the extension request the term of Building Use Rights, as well as against the Official Land Deed Maker and other parties who are in contact with the Rights Building Use. In the interests of the bank, the Building Use Rights will be used as collateral to guarantee the return or repayment of credit that has been given by a bank to debtor customers then towards The collateral must be bound to the loading is perfect, namely through making a deed of encumbrance of Rights Dependencies created by the Official Maker Land Deed.¹⁴ Bearing in mind that in practice, Building Use Rights Renewal can still be implemented within 2 (two) years, this means that the application of the Building Use Rights Renewal law is returned to the knowledge and compliance of the officials who determine whether or not Building Use Rights can be extended based on statutory regulations.

In connection with the hierarchy of legal norms, according to the theory of levels of legal norms (*stufentheorie*) by Hans Kelsen, legal norms are tiered and layered in a hierarchy, in the sense that a lower norm applies, originates, and is based on the norm, which is even higher. Based on Article 7 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law Number 12 of 2011) it is stated that the types and hierarchy of Legislative Regulations consist of the 1945 Constitution of the Republic of Indonesia, the Decree of the Assembly People's Consultative Assembly, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations.

In addition to the seven types of statutory regulations, regulations stipulated by other structural institutions, such as ministerial institutions, are also included in the form of ministerial regulations. Furthermore, it is also emphasized in Article 8 point (2) of Law Number 12 of 2011 that types of regulations other than those in Article 7 are recognized for their existence and have binding legal force as long as they are ordered by higher Legislation or are formed based on authority.

Furthermore, the formation of statutory regulations must refer to the basis for the formation of statutory regulations, which consists of a philosophical basis, a juridical basis, and a sociological basis, so it is necessary to analyze the two provisions above through these foundations. Firstly, the philosophical basis, this basis is in Bagir Manan's opinion that the philosophical basis is related to the "reconsider" which all communities have, namely what they expect from the law, for example, to guarantee justice, order, welfare, and so on, in this case, of course, the community hopes that

¹³ Wiwin Yulianingsih dan Dea Syagita Noviana, "Perlindungan Hukum Bagi Bank Sebagai Kreditur Pemegang Hak Tanggungan ber-Obyek Hak Guna Bangunan (BUILDING USE RIGHT)," *Perspektif Hukum*, Vol. 12 No. 2 November 2012, h.3., DOI: <http://dx.doi.org/10.30649/phj.v12i2>.

¹⁴ F. P. Husein, L. Abubakar, & N. A. Lubis, "Kepastian Hukum Penerapan Jangka Waktu Perpanjangan Hak Guna Bangunan Yang Berakhir Masa Berlakunya Sebagai Obyek Hak Tanggungan Sebelum Perjanjian Pokok Berakhir Dikaitkan Dengan Peraturan Perundang-Undangan Yang Berlaku." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, 2(1), (2018): 84-101. Retrieved from <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/190>, h.88.

existing laws and regulations will be easy and can be applied, especially those relating to their own interests, namely that building use rights holders will not lose their rights. Philosophically, of course, 2 (two) years before the end of the term, you still have the status of Building Use Rights holder and have full rights to these rights, including extending the rights.

Second, the juridical basis is very important in making legislative regulations because it will show the necessity of having the authority of the maker of legal products,¹⁵ the necessity of conformity of the form or type of legal products with the material being regulated, especially if ordered by the level of statutory regulations. at a higher level, nonconformity in form or type can be a reason to cancel or cancel the legal product, as well as the requirement that it does not conflict with higher-level statutory regulations.

The juridical basis of PMNA/KBPN Number 9 of 1999 shows that the Ministerial Regulation was made by certain authorities and procedures intended in Law Number 12 of 2011; however, by the above regulations, namely PP Number 40 of 1996, it can be concluded that PMNA/KBPN Number 9 of 1999 is contradictory and incompatible, namely when PP Number 40 of 1996 states that the extension is carried out 2 (two) years before the Use Rights The building is used up and PMNA/KBPN Number 9 of 1999 states that the extension is carried out 2 (two) years before the Building Use Rights expire.

The three sociological foundations (*sociologische gelding*). A sociological basis means that it reflects the reality of life in society. Through a sociological basis, it is hoped that the laws and regulations made will be accepted by society naturally and even spontaneously. Legislation that is reasonably accepted will have the power to be effective and will not require much institutional direction to implement it.¹⁶ One thing that must be remembered is that the reality of life in society as a sociological basis must also include the tendencies and hopes of society. Based on PMNA/KBPN Number 9 of 1999, which states that extensions are carried out within a period of 2 (two) years, even though there is a legal fiction principle that everyone is considered to know the law, the Ministerial Regulation does not make it difficult for building use rights owners who do not know their obligations to carry out an extension of 2 (two) years beforehand as specified in PP Number 40 of 1996.

Considering the principles of applicable laws and regulations, what needs to be adjusted is PMNA/KBPN Number 9 of 1999 to PP Number 40 of 1996 because, juridically, the position of Government Regulations is higher than Ministerial Regulations. Still, if we look at it sociologically and philosophically, then PMNA /KBPN Number 9 of 1999 has benefits and a more effective impact on society. On this basis, it is very possible to amend PP Number 18 of 2021. These changes can be made through a Supreme Court decision or awareness from the legislation makers, in this case, the government.

Apart from that, in the Government Regulation, it is also stated that HGB holders are given priority to former rights holders by taking into account: 1). The land is still being cultivated and utilized properly by the circumstances, nature, and purpose of granting rights; 2). The conditions

¹⁵ I. K. Ayu, *Problematika Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap Di Kota Batu*. *Legality : Jurnal Ilmiah Hukum*, 27(1), (2019). 27–40. Retrieved from <https://ejournal.umm.ac.id/index.php/legality/article/view/8956>.

¹⁶ D. Amandah, & K. Khaerulnisa, "Hak Prioritas atas Pewarisan Hak Guna Bangunan yang Telah Berakhir." *Jurnal Intelek dan Cendekiawan Nusantara*, 1(3), (2024). 4904-4910. <https://jicnusantara.com/index.php/jicn/article/view/751>.

for granting rights are fulfilled properly by the rights holder; 3). The rights holder still meets the requirements as a rights holder; 4). The land is still in accordance with the spatial plan; 5). Not used and/or planned for public purposes; 6). Natural resources and the environment; 7). Condition of land and surrounding communities.

Before having SHGB, the owner will be charged money in the amount and payment method determined. Furthermore, the owner can use the building on the land. However, it must still be used by the conditions stipulated in the decision of the HGB agreement. When the building use rights have expired, the owner must hand over the land to the Management Rights holder and return the SHGB to the Head of the Land Office.

Renewal of rights is an increase in the validity period of land rights without changing the conditions in the grant of rights, for which applications can be submitted before the validity period of the land rights concerned expires. The number in the certificate of rights will remain the same through the renewal of rights, but only the period is crossed out with the replacement of the new renewal period.¹⁷ The decision to renew the term of the Right to Use Building shall take effect from the expiration of the right concerned. Renewal of rights can only be done once, and when the renewal period has expired, the same rights holder can apply for renewal of rights. Renewal of rights is granting equal land rights to holders of the same rights that can be used after the validity period of the rights concerned expires. The renewal of the Right to Build shall take effect upon registering the decision on the Granting of the Right to Use at the Land Office.

3.1.2. The Problem of Expiring Building Use Rights as Land Rights

The process of the occurrence of use rights over land is based on statutory regulations and government regulations to prevent misuse of the administration process. However, in this era of increasingly modern life, there are many disputes relating to control and use of land for public, individual and private interests. The right to use is not at all a new land rights institution, but it is less well known than the ownership rights, land use rights, or building use rights, for that it requires a correct understanding of the right to use in order to use it responsibly.¹⁸

Land with Building Use Rights can be extended for 20 years and renewed for 30 years. This Building Use Right-certified property is right for Owners who do not intend to stay in the same place for an extended period. Understandably, the period of land use does vary. It can be 5, 10, 15, 20, or up to 30 years. This certificate must be renewed periodically if you still want to use it after the building use rights expire.

The Building Use Right was granted rights for 20-30 years. Building Use Right was promised by PP No. 40 of 1996 that the Building Use Right could be renewed and extended rights, including the right to use. The right to use is the same as Building Use Right and can be burdened with the right of dependent; the difference is the period of use. Right of use can be used for agricultural and non-agricultural objects, while Building Use Right objects must be non-agricultural. Step after granting Building Use Right, say the period is 30 years before it expires; applying for Building Use Right renewal is mandatory. The land applicant must physically control the conditions for granting Building Use Rights, including environmental sustainability.

¹⁷ Permana, O. L., & Svinarky, I. Analisis Yuridis Tentang Eksistensi Penerapan Hak Guna Bangunan di Kota Batam. *Scientia Journal: Jurnal Ilmiah Mahasiswa*, 5 (4). (2023). DOI: <https://doi.org/10.33884/scientiajournal.v5i4.7857>.

¹⁸ Suryani Sappe, Adonia Ivone Latturete, and Novyta Uktolseja. "Hak Pakai Atas Tanah Hak Milik dan Penyelesaian Sengketa." *Batulis Civil Law Review* 2, no. 1 (May 31, 2021): 78-92. doi:10.47268/ballrev.v2i1.560.

An expired Building Use Right can be extended for 2 years before the term ends. This is explained in Article 27 of PP Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Rights. If the Owner forgets to take care of the renewal of the Building Use Right, then the land will again become state property. As a result, the owner is obliged to demolish the existing building on the state-owned land. The land must also be handed over to the vacant state for one year after the example of the building use rights certificate is abolished. Based on Presidential Decree (KEPPRES) Number 32 of 1979 concerning Principles of Policy in the Framework of Granting New Rights to Land from the Conversion of Western Rights.

However, there are many problems in the field against Building Use Rights, namely many objects controlled by other parties (residents) so that former rights holders and their heirs, even though they hold ex-Building Use Right certificates, cannot apply for renewal of rights because they are physically controlled by other parties (residents). Conversely, suppose residents want to obtain certainty of rights and legal certainty over the inhabited land. In that case, they can apply for rights on the condition that residents must enter into a building settlement agreement and sell and purchase buildings from former rights holders or their heirs.

Land rights in agrarian law consist of two types, namely land rights for a specified period and land rights with no specific period. The community has a lack of understanding regarding land rights over a specified period, and thus, it has caused problems in the community; precisely, if the land rights have expired, the government will erase the rights and claim it as state-owned land.¹⁹ The position of the guarantee of building rights whose term has ended but the credit has not expired leads to the abolishment of building rights as land rights which still serve as credit guarantees. Efforts made by the bank to the credit agreement which has not ended are efforts to implement the binding power of attorney imposing liability rights during the extension process of building rights done in the office of the National Land Body.²⁰

The binding of a special object as a collateral, is a manifestation of the principle of prudence on the creditor side in the debt and receivables agreement, and this will give birth to material rights. This kind of material rights are classified as material rights that provide guarantees, and have several special features, including creditor preferences, the existence of priorities, and most importantly, the execution which can be somewhat easier and more certain, namely by regulating the execution parate. Dependent rights as a form of material rights can be deleted for several reasons.²¹

Based on Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, the expiration of the correct period can also cause the removal of building use rights. If the Right to Build term has been or will expire, the right can be extended or renewed. The fundamental difference between the renewal of rights and the renewal of building use rights lies in the situation.

¹⁹ Sri Winarsi, Essa Adhita Rachmawati, and Oemar Moechthar. 2020. "a Study of Priority Principle In Indonesian Agrarian Law System". *People: International Journal of Social Sciences* 6 (2):535-43. <https://doi.org/10.20319/pijss.2020.62.535543>.

²⁰ I Gede Etha Prianjaya, Ibrahim R; I Ketut Westra. "Pemberian Kredit Bank Dengan Jaminan Hak Guna Bangunan Yang Jangka Waktunya Telah Berakhir Sedangkan Perjanjian Kreditnya Belum Berakhir." *Acta Comitas : Jurnal Hukum Kenotariatan*, [S.l.], v. 2, n. 1, p. 127-137, apr. 2017. ISSN 2502-7573. doi: <https://doi.org/10.24843/AC.2017.v02.i01.p12>.

²¹ Fani Martiawan Kumara Putra, "Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tanggungan". *Yuridika* 28 (2) 2015.. <https://doi.org/10.20473/ydk.v28i2.1760>.

4. Conclusion

Building Use Right is granted rights for 20-30 years. Building Use Right was promised by Government Regulation No. 40 of 1996 that it could be renewed and extended its rights, including its right to use. The right to use is the same as Building Use Right and can be burdened with the right of dependent; the difference is the period of use. Right of use can be used for agricultural and non-agricultural objects, while Building Use Right objects must be non-agricultural. Step after granting Building Use Right, say the period is 30 years before it expires; applying for Building Use Right renewal is mandatory. The land applicant must physically control the conditions for granting Building Use Rights, including environmental sustainability. However, there are many problems in the field against Building Use Rights, namely many objects controlled by other parties (residents) so that former rights holders and their heirs, even though they hold ex-Building Use Right certificates, cannot apply for renewal of rights because they are physically controlled by other parties (residents). Conversely, suppose residents want to obtain certainty of rights and legal certainty over the inhabited land. In that case, they can apply for rights on the condition that residents must enter into a building settlement agreement and sell and purchase buildings from former rights holders or their heirs.

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