

Legal Implications of Building Use Rights Certificates Without Land Status Information: Consumer Protection and the Responsibility of the National Land Agency

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Abstract: This research examines the legal uncertainties arising from the issuance of Building Use Rights (HGB) certificates on land with Management Rights (HPL) owned by the Special Capital Region of Jakarta. The lack of clarity in the National Land Agency's certificate, which does not explicitly state that the building use rights are based on land management rights, leads to confusion and a sense of deception among consumers, making this issue crucial. This issue holds significant importance as the National Land Agency's certificate, which does not explicitly state that building use rights are based on land management rights, leads to consumer confusion and feelings of deception. When consumers applied for a certificate extension 20 years after the National Land Agency issued the Certificate Extension Decision Letter, the agency abruptly retracted both the Decision Letter and the certificate. This was due to the BPN's recent realization that the land was under Land Management Rights. This research uses a normative juridical approach to analyze the legal responsibility of the National Land Agency in the issuance of certificates. The data collection technique uses document studies, while the analysis technique uses court decision studies. Research results indicate that Building Use Rights (HGB) certificates that do not specify the type of land—whether it is on state land, Land Management Rights, or ownership rights—have the potential to harm consumers and cause legal disputes. Therefore, this study recommends land policy reforms to ensure legal certainty and consumer rights protection in property transactions.

Keywords: Building Use Rights, Land Management Rights, Land Certificate, Legal Certainty, National Land Agency

INTRODUCTION

The issue of legal certainty regarding Building Use Rights (HGB) certificates is increasingly becoming a concern in the property sector in Indonesia. The HGB certificate, which ideally provides legal protection for landowners, often does not include clear information regarding the basis of land ownership. It is possible to establish HGB as a land use right on state land, land management rights (HPL), or private land. However, in reality, HGB certificates often only mention the term "HGB" without specifying the type of underlying land. Because each type of land has fundamental differences in terms of rights, time limits, and obligations for the right holders, which consumers may not always understand, this ambiguity poses a potentially serious legal issue. Relevant research that has been conducted by several previous studies can be explained as follows: Harahap (2021)

states that land certificates are part of public services, and the performance of public service institutions depends on their capacity and internal coordination, including in terms of human resources (Harahap, 2021). Masriani (2022) mentioned that society needs legal certainty over the ownership rights they acquire, and the state is obliged to guarantee this by enforcing property law aspects through the issuance of land certificates

The Minister of State for Agrarian Affairs/Head of the National Land Agency has issued Decree No. 53/HPL/BPN/1997 concerning the Granting of HPL in the Name of the Surabaya Level II Regional Municipal Government, which prohibits the BPN from canceling land title certificates issued in Surabaya. Therefore, we urge the affected residents to sue the PTUN for the cancellation of the HPL certificate (Kurniawan, 2019).

Another study by Rahmadany (2023) states that land certificates are strong proof of ownership, but disputes often arise due to duplicate certificates that appear because of negligence or deliberate actions by irresponsible parties Suhattanto et al. (2021) emphasizes that property rights certification provided through a digital system offers better legal certainty due to more accurate and secure data

Samadi & Rukmi (2020) highlight the importance of legal certainty in land certification through regulations set forth in PP 24 of 1997 as an implementation of the Basic Agrarian Law. (UU No. 5 Tahun 1960). Nevertheless, this policy still faces technical and administrative challenges on the ground (Negara et al., 2021) HGB over HPL can be used to build flats with a BOP agreement between the government and the private sector to anticipate state budget limitations with a BOT contract agreement for thirty years, after which it must be returned to the state (Firmansyah & MS, 2023).

A minister or other authorized official can grant HPL, a land management right, based on a proposal from the HPL holder. The HPL holder can approve an update for twenty years after establishing HGB above HPL, which has a thirty-year limit. It is possible to transfer HGB above HPL land and impose mortgage rights on it. For legal certainty, we must register HGB above HPL and issue an HPL certificate (Ananda et al., 2022).

The state can grant HPL to state institutions and designated central and regional governments, enabling them to transfer a portion of their land rights to third parties in the form of HGB through a land utilization and use agreement. This arrangement does not involve the transfer of land rights, but rather involves a long-term rental or leasing arrangement (Fauzi & Djumeno, 2022).

Land disputes in Blora Regency related to HGB certificates above HPL with the community were resolved through the issuance of HGB certificates to the community for legal certainty. These certificates are valid for up to eighty years and can be extended. After that, they become local government assets again. This policy does not violate established rules and is a win-win solution (Listyaningrum, 2022). Finally, Baskara et al.(2021) mentioned that the resolution of property disputes due to duplicate certificates can be

carried out by withdrawing the administratively defective certificate. Duplicate certificates occur due to negligence or errors in the land registration system

Constitutional Court Decision Number 002/PUU-I/2003, concerning regional authority in the land sector in Constitutional Court Decision Number 009/PUU-I/2003 and the provisions on the validity period of Land Use Rights, Building Use Rights, Land Use Rights in Article 22 of Law Number 25 of 2008 concerning Investment in Constitutional Court Case Number 21-22/PUU-V/2007. According to Article 22 of the Investment Law, the Constitutional Court believes that the state's limited power over land has hurt the sovereignty of the people in the economic sector and goes against Article 33 of the country's Constitution. This includes the state's ability to cancel or end land rights and to grant extensions of land rights right away. Furthermore, the resolution of disputes between the state and investors through international arbitration establishes the country as a private institution (*de jure gestiones*), sharing the same position as investors. This, in turn, diminishes the legal sovereignty of the Republic of Indonesia based on the constitution, rendering Article 22 paragraph 1, paragraph 2, and paragraph 4 of the investment regulations legally binding (Triningsih & Aditya, 2019).

The public service of BPN bears the responsibility for the occurrence of double land certification by enhancing the system, supervision, and internal control, with the aim of mitigating the impact of land disputes that result in financial losses and a decline in public trust in BPN (Karim et al., 2023).

Previous research did not examine the Building Use Rights certificate standing on Land Management Rights land but only investigated the validity of the certificate. This study, on the other hand, looks at the legal issues that come up when the Building Use Rights certificate doesn't give clear information about land management rights. It does this by taking a normative juridical approach to look into the National Land Agency's legal duties and what happens when they give out certificates that don't accurately show the land's status. This research aims to assess the National Land Agency's compliance with applicable regulations in carrying out its functions.

METHODS

This legal research is carried out through a series of systematic and measurable scientific steps. The form of research and approach. We conduct this legal research by following a series of systematic and measurable scientific steps. We employ a normative juridical method as our research method (Fuad et al., 2023).

This study uses secondary data from legal documents that come from primary data sources that are still available. These include Government Regulation Number 40 of 1996 (now revoked and replaced by Government Regulation Number 18 of 2021), and the Minister of Agrarian Affairs/Head of BPN Letter dated September 17, 1998 No. 630-3433

regarding collateral on land with Management Rights. The data collected is relevant to the topic or issue being studied. The data came from a number of different places, including court rulings (North Jakarta District Court Ruling No.28/Pdt.G/2008/PN.Jkt.Ut, dated March 29, 2012) between consumers and developers, the Sale and Purchase Agreement of 1997 between developers and consumers (Sawah Besar/1997, dated December 12, 1997), the Certificate of Ownership of Apartment Units (SHMSRS) No.556/III Mangga Dua Selatan), scientific articles, theses, dissertations, and other written sources (both print and electronic). This normative juridical approach is conducted based on primary legal materials, by examining theories, concepts, legal principles, as well as regulations related to this research, including court decisions. This research focuses on land sale and purchase cases using certificates issued by the National Land Agency (BPN), where previously consumers were unaware of indications that the land in question was a Building Use Right (HGB) on a Land Management Right (HPL). This occurred because the certificate did not clearly state that the land in question was HGB on HPL, but only mentioned HGB.

RESULTS AND DISCUSSION

The Jakarta Special Capital Region Government's history of land use provides the background for this issue. Previously, the Mangga Dua Utara Public Cemetery (TPU), situated in the Penjaringan District, North Jakarta, occupied an area of 142,196 M2. There is also the *Mangga Dua Selatan TPU* located in the *Mangga Dua Selatan Village*, Sawah Besar District, Central Jakarta, covering an area of 151,720 m2, as well as the *Mangga Dua Bangkok TPU* located in the *Mangga Dua Selatan Village* covering an area of 14,940 m2. In 1984, a developer company named PT. X entered into a partnership with the DKI Regional Government to develop the land into shops, shopping centers, and apartments. The company completed this project in 1991/1993 and sold the property to consumers. However, the main HGB certificate's ambiguous land status differs from the fractional HGB certificate, with the former stating HGB above HPL and the latter only stating HGB. This is what ultimately causes legal issues between consumers and the government.

After the construction was completed from 1991 to 1993, consumers began purchasing properties in the form of land along with buildings on it, such as shophouses, shopping centers, and apartments, recorded in various master certificates. One of these master certificates is Number 2784/*Mangga Dua Selatan*. Consumer interest in purchasing this property is driven by its strategic location and the land status referred to as pure Right to Build (HGB). Generally, people consider pure HGB, or HGB on state land, to be nearly identical to freehold land due to the possibility of a status upgrade, and the absence of permission and written recommendation during a legal transaction.

When consumers attempted to extend the Building Use Rights (HGB) certificate after more than 20 years, the National Land Agency (BPN) revealed a shocking fact: the land was

actually under HGB status above the Land Management Rights (HPL) held by the Special Capital Region of Jakarta. Even more surprising, after issuing the Decree (SK) for the extension of HGB and handing over the certificates to the owners, the BPN suddenly canceled the SK, withdrew the certificates, and suggested that the owners first complete the permit matters and obtain a recommendation from the DKI Regional Government as the holder of HPL before continuing the extension process with the BPN.

In addition to the shift in land status from HGB on state land to HGB on HPL land, consumers face unforeseen repercussions. The extension of HGB on HPL land necessitates obtaining written permission and recommendations from the DKI Regional Government. Not only that, consumers are also required to pay an additional fee of 5% of the land area multiplied by the applicable Tax Object Sale Value (NJOP), making the extension process much more expensive compared to HGB on state land. This uncertainty makes consumers feel deceived and disadvantaged, because if from the beginning they had known that the land status was HGB above HPL, they would most likely not have purchased the property or would have negotiated a much lower price according to the actual land status.

After investigation, it turns out that the root of the problem lies in the difference in information stated in the main HGB certificate and the fractional HGB certificate. The main HGB certificate states the land status as "HGB on HPL," while the fractional HGB certificate simply writes "HGB" without providing any further explanation regarding Land Management Rights (HPL). As a result, consumers reasonably assume that the land is pure HGB on state land, which provides more definite usage rights and the potential to upgrade its status to ownership or at least at a low cost without having to request written permission and recommendation if a legal transaction occurs.

The absence of Land Management Rights (HPL) information in the fractional HGB certificates issued by the BPN, which simply list the status "HGB" without further explanation, further exacerbates this situation. With this limited information, consumers reasonably assume that the land is pure HGB on state land, which has a more definite usage right and can have its status upgraded to ownership. This assumption is supported by trust in the official certificate issued by BPN, which should provide a guarantee of legal certainty. Two decades later, it was revealed that the land was not pure HGB but rather HGB on HPL, which has characteristics similar to leasehold or usage rights and requires a complicated process, including approval from the local Regional People's Representative Council (DPRD), to be upgraded to ownership rights.

This situation not only causes material losses but also erodes consumer trust in the transparency and accuracy of the information provided by the relevant parties, particularly the BPN and developers. The most surprising thing is that after BPN issued the extension decree for the HGB certificate and handed it to the consumer, BPN then cancelled it and took it back because it turned out that BPN only just realized that the HGB certificate was

on HPL land, which required prior written permission and recommendation from the HPL holder, after which BPN could proceed with the extension.

Unclear Information in the Certificate

Article 21 of Government Regulation No. 18 of 2021 concerning Business Use Rights, HGB and Use Rights over State Land, states the meaning of HGB, namely that HGB can stand on: state land, management rights land and ownership rights land. The HGB certificate issued by the BPN does not state that the HGB stands on HPL (HPL) land (Government Regulation of the Republic of Indonesia Number 40 of 1996 Concerning Business Use Rights, Building Use Rights, and Land Rights, 1996). HPL is land managed by the state that can be given HGB status according to its designation through a transfer permit to another party (Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah (Lembaran Negara RI Tahun 2021 Nomor 28, Lembaran Negara RI Nomor 6630), 2021). The land use period ends and the HGB for the HPL is withdrawn and returned to the state, as per Article 46 letter (b) and returns to the control of the HPL Holder or returns to state land Article 47 PP Number 18 of 2021 (Suhail et al., 2023). HGB over HPL must fulfil the principle of consensus (*het beginel van de consensus*) so that society has a common perception and understanding of each right to the land (Putri & Setyadji, 2024).

From the business economics perspective, the status of HGB above HPL is not a sale and purchase transaction but a lease between the tenant and its consumers. Therefore, until the extension period, there will be additional costs that cannot be upgraded to ownership rights, as the recommendation from the managing entity only grants the right to use the land, while the entity retains ownership and control of the assets (IAI, 2021). The HPL whose validity period has expired will result in the transfer of rights back to the control of the HPL, unless it is deleted due to a release to a third party with the written approval of the regional council, considering that the HPL asset is a regional government state asset. (Kurniawan, 2019).

This information is crucial because the HGB on HPL differs legally from the HGB on state land. The HGB above HPL cannot be upgraded to ownership rights, and extensions and any transfer of land rights, such as mortgage rights, pawning, and other forms of legal transactions, require written approval from the HPL holder, in this case the DKI Jakarta Regional Government (Ananda et al., 2022).

This lack of clarity causes consumers to be unable to make the right decisions and ultimately suffer financial and psychological losses because previously consumers assumed the land was pure In addition to the affordable extension fees, the HGB has the potential to transform into freehold land, which they can then transfer to their children and grandchildren in the future. However, this scenario differs significantly, as the regional

government's ownership of HPL land could potentially cease granting permits and extensions at some point. Consequently, the land would revert back to the DKI Regional Government, thereby depriving consumers of their rights.

Responsibilities of the Land National Agency (BPN)

In practice, the National Land Agency (BPN) often fails to include the crucial information that HGB is based on Land Management Rights (HPL) in its HGB certificates. This information is crucial because the legal characteristics of HGB based on HPL differ from those of HGB based on state land. Every time there is an extension or transfer of rights over the land, such as mortgages, pledges, or other legal transactions, the HPL landholder, in this case the Special Capital Region of Jakarta, must provide written approval and pay a fee.

The ambiguity of the land status prevents consumers from making informed decisions during purchases or other transactions. As a result, they suffered losses both financially and psychologically. Previously, consumers assumed that the land was pure HGB standing on state land, where the extension cost was cheaper, the land could be inherited by descendants, and the land status could be upgraded to ownership rights. However, this situation is very different for HGB on HPL. In the worst-case scenario, if in the future the Jakarta Special Capital Region Government is no longer willing to grant extension permits, the land will revert to the DKI Regional Government, and consumers will lose their rights to the land. As the agency responsible for issuing land certificates, the National Land Agency (BPN) has a legal obligation to ensure that all relevant information is fully included in each certificate issued. In this case, BPN's failure to list the land status as Building Use Rights (HGB) over Land Management Rights (HPL) can be considered a form of negligence in carrying out its duties. This negligence raises questions about the accountability of the BPN and the legal implications of the administrative errors that occurred.

No reason exists for the BPN to claim ignorance of the land with HGB above HPL. The BPN also issued the HPL certificate, which forms the basis and legal ground for the issuance of the HGB. Thus, when issuing the parent HGB certificate, the BPN should have known the land's HPL status and had no reason to ignore it. Given that the BPN uses land with HPL status as the basis for issuing the HGB certificate, this oversight could potentially create legal uncertainty and harm consumers.

The National Land Agency (BPN) withholds information about the status of Building Use Rights (HGB) from the certificate, citing discrepancies in HGB status between state land and Land Management Rights (HPL), as evidenced by their own documents. However, BPN fails to clarify that it will only access these documents in the event of a court dispute. The land deed official (PPAT) or other parties in a sale and purchase transaction will rely

solely on the physical and juridical data recorded in the existing certificate, without having direct access to the deed.

According to Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration, the goals of land registration are: a) giving legal certainty and protection to people who own rights to a piece of land, apartment units, or other registered rights so that they can prove they are legitimate right holders; b) giving information to interested parties, such as the government, so that they can get the data they need to take legal action against registered land and apartment units; and c) making sure that land matters are handled in an orderly way. However, if the certificate lacks adequate and clear information, its function and strength are rendered meaningless. This ambiguity hinders the main objective of land registration, which is to provide legal certainty and protection for rights holders and other related parties.

The ambiguity and lack of information in the HGB certificate have very significant legal implications for consumers. Consumers not only incur higher certificate renewal costs, but also face the impossibility of converting the HGB status to property rights. This represents a significant setback, given that consumers may have intended to alter their land's status to enhance their ownership rights and reduce renewal expenses. This includes fees for requesting permission and written recommendations for each extension, as well as for each transaction, such as mortgage rights and pawn rights (Decision of the Head of the DKI Jakarta Region Number 122 of 2001 Regarding the Procedures for Granting Recommendations on Applications for Certain Rights Over Management Rights Land, Village Land, and Former City Land Owned by the DKI Jakarta Provincial Government, 2001).

Eroded Consumer Rights

In this case, consumers perceive a lack of respect for their rights. Statutory regulations, particularly Supreme Court Circular Letter No. 4 of 2016, establish that buyers acting in good faith, with good intentions and potential legal protection, should obtain comprehensive and precise details about the land they purchase, as indicated by the National Land Agency's certificates. This uncertainty has eroded their rights, particularly when it comes to securing legal certainty over the assets they purchase and own. SEMA No. 4 of 2016, which pertains to Good Faith Buyers Protected by Law, stipulates that purchases must be made through an official, such as a PPAT, etc.

Developer Responsibilities

Even though developers may not be directly responsible for issuing certificates, they, as parties who develop and build properties in the form of shophouses, shops, and apartments, have a legal obligation to ensure that all the information they convey to

consumers who want to buy is accurate and nothing to hide. Developers may be considered to have committed a breach of contract or even fraud if they intentionally or negligently fail to provide complete information. Because, in accordance with the provisions of Article 1473 of the Civil Code, sellers are required to state clearly what they are binding themselves to; all promises that are unclear and can be given various meanings must be interpreted to their detriment (Commercial Code (Wetboek van Koophandel Voor Indonesie) Staatsblad 1847 Nomor 23, 1847).

Then, Article 1491 of the Civil Code states that the seller's obligation to the buyer is to guarantee two things: safe and secure control of the goods being sold; and the absence of hidden defects in the goods, or which are such as to give rise to grounds for cancellation. This obligation is further confirmed in Article 1492 of the Civil Code, which states that even though no guarantee conditions are specified when entering into a sale and purchase agreement, the seller is required by law to guarantee to the buyer that the goods he sells are free from third party claims and free from encumbrance of rights. (Commercial Code (Wetboek van Koophandel Voor Indonesie) Staatsblad 1847 Nomor 23, 1847).

Then, if you look at the provisions of Article 34 number 7 (Indonesian Government Regulation Number 40 of 1996 Concerning the Right to Cultivate, the Right to Build, and Land Rights, 1996) it states that every transfer of The HGB over Management Rights land must obtain permission and written approval from the Management Rights holder, but at the time of purchase and sale of the land to consumers, even during 20, there have been many legal transactions, for example pawning transactions, mortgage rights and so on, but there has been no written request and permission from the DKI Regional Government as the HPL holder, as the signs and characteristics of The HGB are above Land Management Rights, so legally, buying and selling should be done. what happened, without written permission from the HPL holder, is a legal defect for violating statutory regulations. In fact, in the sale and purchase deed between consumers and developers, it is emphasized that both the building and the land belong to the developer and no other person or party owns it, and the developer guarantees this condition which can be interpreted as meaning that the land is owned by the developer and not with status. The HPL belongs to the DKI Regional Government.

Land Titles Registrar's (PPAT) Rights and Obligations Regarding the Sale and Purchase of Land for which there is a Certificate.

Land Deed Drafting Officials (PPAT) have a significant role in land buying and selling transactions in Indonesia. The Land Titles Registrar's duties and obligations cover various aspects to ensure that the land buying and selling process runs in accordance with applicable laws and regulations. The following is an explanation of the Land Titles Registrar's duties and obligations in land buying and selling transactions, including related

tax costs and other burdens that must be met by sellers and buyers. *Making a Sale and Purchase Deed. Main Duties:* The main task of Land Titles Registrar is to make a Sale and Purchase Deed (AJB) which is legal proof of the land sale and purchase transaction. This AJB is needed as a basis for transferring the name of the land certificate from the seller to the buyer at the Land Office (BPN) (Law Number 5 of 1960 on the Basic Agrarian Law, State Gazette of the Republic of Indonesia Year 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043, 1960)

Document Verification. The Land Titles Registrar (PPAT) is responsible for inspecting and verifying all necessary documents in land sale and purchase transactions, including land certificates, seller and buyer ID cards, and any necessary letters of consent from the spouse. *Legality of Documents:* Land Titles Registrar must also ensure that all documents involved in the transaction are valid and legal, and comply with applicable regulations (Republic of Indonesia Government Regulation Number 24 of 1997 on Land Registration (State Gazette of the Republic of Indonesia Year 1997 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 3696), 1997).

Calculation and Payment of Tax. Seller's Income Tax (PPh): The seller is obliged to pay Income Tax (PPh) on land sales, the amount of which is usually 2.5% of the transaction value or the value stated in the Tax Object Sales Value (NJOP) (whichever is higher). Before the process of changing the certificate's name, the Land Titles Registrar must ensure the payment of this tax. Buyer's Land and Building Rights Acquisition Fee (BPHTB)**: Buyers are required to pay BPHTB, the amount of which is 5% of the transaction value or NJOP value after deducting the Acquisition Value of Non-Taxable Tax Objects (NPOPTKP). The Land Titles Registrar P is also accountable for guaranteeing the buyer's payment of the BPHTB. (Government Regulation of the Republic of Indonesia Number 40 of 1996 Concerning Business Use Rights, Building Use Rights, and Land Rights, 1996) see (Government Regulation of the Republic of Indonesia Number 18 of 2021 about Management Rights, Land Rights, Apartment Units, and land registration, State Gazette of the Republic of Indonesia Number 28 of 2021, State Gazette of the Republic of Indonesia Number 6630 of 2021).

Notification and Calculation of Other Fees. The Notary/Land Titles Registrar (PPAT) Fee is a service fee charged by the Land Titles Registrar to facilitate the AJB and name transfer process. The amount varies depending on the transaction value and agreement between the parties involved. *Administration and Other Fees:* The Land Titles Registrar (PPAT) may also require additional administration fees, such as paperwork processing fees, stamp duty, and land measurement fees (if required). *Transfer of Name Fee:* The buyer is also responsible for covering the costs associated with changing the certificate's name at the Land Office. This fee includes registration fees, measurements, and the issuance of a new certificate. (Indonesian Government Regulation Number 18 of 2021 on Management Rights,

Land Rights, Apartment Units, and Land Registration (State Gazette of the Republic of Indonesia Year 2021 Number 28, State Gazette of the Republic of Indonesia Number 6630), 2021).

Transaction Reporting. Reporting to the Tax Office: Land Titles Registrar is obliged to report land sale and purchase transactions to the Tax Office, especially regarding the Income tax (PPh) and BPHTB that have been paid. Reporting to the Land Office (B[N]): Land Titles Registrar is also responsible for reporting and submitting related documents to BPN for the land certificate transfer process (Peraturan Pemerintah (PP) Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, 1998); 6) Transaction Completion. Signing of Deed: Land Titles Registrar must ensure that the seller and buyer are present to sign the Deed of sale & purchase (AJB) before Land Titles Registrar. Certificate Submission: After the name change process is complete, Land Titles Registrar hands over the certificate which is already in the buyer's name to the buyer as legal proof of land ownership (Government Regulation (PP) Number 37 of 1998 Concerning the Regulation of the Position of Land Deed Officials, 1998).

The obligation to provide information. Consultation and Counselling: Land Titles Registrar is obliged to provide explanations and consultations to sellers and buyers regarding their rights and obligations, as well as the steps that need to be taken in land sale and purchase transactions. Cost Transparency: Land Titles Registrar must provide clear information regarding the costs that will be charged to sellers and buyers, including taxes and other charges (Government Regulation (PP) Number 37 of 1998 Concerning the Regulation of the Position of Land Deed Officials, 1998).

By carrying out these duties and obligations, Land Titles Registrar ensures that land buying and selling transactions are carried out correctly, legally, and fulfil all necessary administrative requirements. However, because the certificate does not say that The HGB is above Land Management Rights, there are obligations that Land Titles Registrar has in this transaction, in accordance with the provisions of Article 34 number 7 (Peraturan Pemerintah Republik Indonesia Nomor 40 Tahun 1996 Tentang Hak Guna Usaha, Hak Guna Bangunan Dan Hak Atas Tanah, 1996), where every transfer of The HGB above HPL requires written permission and recommendation from the DKI Regional Government, where the relevant provisions are also regulated by the Decree of (Decision of the Head of the DKI Jakarta Region Number 122 of 2001 Regarding the Procedures for Granting Recommendations on Applications for Certain Rights Over Management Rights Land, Village Land, and Former City Land Owned by the DKI Jakarta Provincial Government, 2001) regarding the amount of obligations for each transfer transaction and other transactions such as pawning and mortgages, so that it has implications for buying and selling transactions between consumers and developers without fulfilling article 34 point 7 Government Regulation Number 40 of 1996 in conjunction with (Decision of the DKI

Jakarta Regional Head Number 122 of 2001 Regarding the Procedures for Granting Recommendations on Applications for Certain Rights Over Management Rights Land, Village Land, and Former City Land Owned by the DKI Jakarta Provincial Government, 2001), so there is the potential for administrative defects in all transactions during the 20 years since the sale and purchase of The HGB land above the Land Management Rights.

As the rights and Obligations of the Regional Government as Owner of HPL Land

The DKI regional government as the original owner of the HPL land certainly has an interest in supervising its assets. In Governor's Decree Number 122 of 2001, it is stated that for HPL land owned by the Regional Government, there are obligations from consumers (Government Regulation of the Republic of Indonesia Number 40 of 1996 Concerning Business Use Rights, Building Use Rights, and Land Rights, 1996) as users of HPL land which is land originating from HPL owned by the Regional Government, because land with HPL status can actually be enriched as a rental right only, while the actual owner of the land is the DKI Regional Government, the Regional Government must supervise it because it is related to (Decision of the Governor of DKI Jakarta Number 122 of 2001 Regarding the Procedures for Granting Recommendations on Applications for Certain Rights Over Management Rights Land, Village Land, and Former City Land Owned by the Provincial Government, DKI Jakarta, 2001):

Right to Income

Rental Receipts: According to the Decree of the Governor of DKI No. 122 of 2001, the Regional Government is entitled to receive income from the use of HPL land used by consumers. This is because every transfer, including buying and selling, income from company assets, inheritance, and other transactions such as pawning and mortgages, requires written permission and recommendations from the regional government. This ensures that both transfer transactions and other transactions comply with the Governor's Decree Number 122 of 2001, which governs the rental of the assets he owns. Typically, the regional government uses this income to support their budgets, finance operational activities, and promote regional development. Determination of rental rates: Regional governments have the right to determine rental rates for leased assets. Determination of this tariff must be in accordance with applicable regulations and take into account market value and regional interests, especially DKI Governor Decree No.122 of 2001.

Right to Supervise and Manage Assets

Supervision of Asset Use: The Regional Government has the right to supervise how leased assets are used by lessees/consumers. This is important to ensure that the asset is used for the purpose of the lease and is not misused.

Asset Maintenance: Despite leasing assets, the regional government retains the right and obligation to ensure their proper maintenance. The rental agreement often allows for the tenant to assume maintenance responsibilities.

Given the silence and lack of supervision from the regional government, which is the owner of the HPL land, there are indications that the DKI Regional Government is also negligent in supervising its assets, including HPL land. As a result, consumers may not be aware that the DKI Regional Government has owned HPL land for 20 years.

Dispute Resolution and Court Decisions

In order to settle this dispute, people who are unhappy and hurt by the National Land Agency's certificate—which, in their view, basically says that the BPN followed all the rules—have taken the issue to court through civil and criminal lawsuits. However, as a result, lawsuits in court, from the state court level to the level of extraordinary legal action (judicial review), also did not see and did not find any mistakes made by the BPN as the party responsible for issuing the certificate. This court decision has certainly given rise to legal debate regarding who is actually responsible for this legal uncertainty, whether the developer, the BPN as the certificate issuer, or the regional government as the owner of the HPL land.

Court Ruling

From the first level (district court) to the extraordinary legal action level, judicial review (PK), the court determined that the BPN did not make any errors in issuing the certificate. The court based this decision on the fact that the BPN issued the land certificate in accordance with applicable procedures, despite the ambiguity in the land status. Consumers were disappointed by this ruling, believing that the law did not protect their rights. This court decision fails to acknowledge and take into account the regulations that govern the responsibilities of the BPN in issuing certificates, as well as the responsibilities of the developer as the selling party, as outlined in Articles 1457, 1491, and 1492 of the Civil Code. These regulations clearly outline the developer's responsibilities as the party selling and collaborating with the DKI Regional Government to use the HPL land. This cooperation is outlined in the form of a cooperation agreement between the developer and the DKI Jakarta Regional Government.

Decision Analysis

This court decision raises big questions about how the system of land law agencies in Indonesia works to deal with the problem of unclear information on land certificates. Even though the BPN may, in its version, have followed existing procedures, the failure to include relevant information in the certificate has created legal uncertainty, which has

resulted in losses for property buyers. This underscores the necessity of revising current policies and regulations to guarantee a clear statement of all crucial land status information in the certificate. Although the community expects courts to be the last resort for justice and legal certainty, they fail to deliver the expected solutions for fairness and legal certainty.

In the lawsuit in court, the panel of judges did not see any illegal actions carried out by either BPM as the certificate issuer or PPAT, including the developer as the party collaborating with the DKI Regional Government to use the land in the form of land management rights. What's even more intriguing is that during the court hearing, the developer presented evidence in the form of a photo of the master certificate, proving that the HGB land originated from HPL land. This raises the question, why did this happen? In fact, the main and fractional certificates should contain the same legal data.

In the context of land in Indonesia, it is important to understand that fractional certificates must match the main certificate because they are part of the larger data stored at the BPN. Here's a straightforward explanation you can use to clarify this to others: The Importance of Compatibility of Fractional Certificates with Master Certificates in Land Law. Every plot of land with a certificate in Indonesia enjoys legal recognition and a distinct identity. Often, the land management process requires splitting a master certificate covering a large area into several fractional certificates. This fractional certificate is important because it is an official document that outlines ownership rights to parts of the larger land.

Why must a fractional certificate match the main certificate? Consistent Legal Relationship: Fractional certificates are part of the master certificate. This means that each fractional certificate must be consistent and match the data contained in the parent certificate. All shards must conform to the information in the master certificate, which serves as the primary reference.

Documents at the National Land Office (BPN) store data about land certificates, both main and fractional. This document serves as a repository for all information pertaining to land rights. To maintain data accuracy and consistency, fractional certificates must reference the corresponding master certificate. If there are any discrepancies, the National Land Agency's records and data will become disorganized.

Facilitates Management and Verification: With compatibility between fractional certificates and main certificates, the process of managing and verifying land data becomes easier and more accurate. This helps avoid future legal problems, such as land disputes or discrepancies in information that could cause losses for the land owner.

Validity and Legal Certainty: A fractional certificate that matches the main certificate provides legal certainty to the land owner. This guarantees the legal recognition and protection of ownership rights to land fragments, while also reducing potential legal risks.

Prevention of Deviations: This conformity also prevents deviations or data manipulation that could occur if the fractional certificate does not match the parent certificate. Following the correct procedures ensures transparency and legality in all transactions and changes to land rights.

A fractional certificate is a derivative of the parent certificate. If the certificate is HGB over HPL, the fractional certificate also reads HGB over HPL. But the fact is that the main certificate reads HGB above HPL, while the fractional certificate given to consumers does not say HGB above HPL.

Required Process. Creation of Fractional Certificates: The National Land Agency must follow the appropriate procedures when splitting the master certificate, which include measuring and valuing the land and creating a valid document. Verification and Registration: Following the creation of the fractional certificate, BPN will confirm the accuracy of the data between the fractional certificate and the parent certificate, prior to document registration and storage. We maintain the integrity of land data and guarantee the legal protection of land rights by ensuring that a fragment of the land certificate matches the main certificate. This is important for clarifying property rights and efficient land management.

CONCLUSIONS

A Land Use Rights Certificate (HGB) that does not include complete information about the land status can create legal uncertainty for consumers. Consumers' ignorance about the actual land status, especially if the HGB is located on land under Management Rights (HPL), can lead to losses, such as ownership disputes or mismatched land use. Therefore, it is crucial for the National Land Agency (BPN) to ensure that every HGB certificate clearly and accurately includes information about the land status.

BPN, as the authorized institution for issuing land certificates, must fulfill the obligation to provide transparent and accurate information as part of consumer protection. By improving transparency and accountability, BPN can help protect consumer rights and enhance public trust in the land system in Indonesia. With better legal certainty, BPN can also prevent disputes and reduce the potential losses to consumers caused by incomplete or unclear information in HGB certificates.

RECOMMENDATIONS

Based on the analysis above, there are several policy recommendations that can be proposed to prevent the recurrence of similar cases in the future, so the following preventive steps need to be taken: 1) We should revise the procedures for issuing land certificates. The National Land Agency (BPN) needs to tighten the procedures for issuing land certificates to ensure that all relevant information, especially the status of land as HGB

above HPL, is clearly stated in the certificate, in order to reduce legal uncertainty; 2) Increased Transparency in Property Legal Transactions: Developers and BPN must improve transparency in property buying and selling processes. Regulations that require the provision of relevant documents should provide consumers with clear access to information about the land status before making a purchase; 3) Strengthening Regulations regarding the Decree of the Governor of DKI Jakarta regarding the HGB above the Land Management Rights: The government needs to strengthen regulations regarding HGB above HPL to better protect consumers, including the requirement for written approval in transactions involving HPL; 4) Education and Socialization: Educate the public and PPAT (Land Deed Officials) about the differences between HGB on state land and HPL, along with their legal implications; 5) Evaluation of the Land Law System: The government needs to evaluate and improve the land law system to ensure legal certainty and better protection of consumer rights.

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REFERENCES

- Baskara, C. H., Raharjo, P. S., & Nugroho, A. (2021). Perlindungan Hukum Pemegang Hak Atas Tanah Terhadap Terbitnya Sertifikat Ganda di Kabupaten Sukoharjo. *Jurnal Discretie*, 2(2), 80. <https://doi.org/10.20961/jd.v2i2.55592>.
- Commercial Code (Wetboek van Koophandel voor Indonesie) Staatsblad 1847 Nomor 23, Pub. L. No. Wetboek van Koophandel voor Indonesie, S.1847-23, 205 (1847).
- Decision of the Governor of DKI Jakarta Number 122 of 2001 Regarding the Procedure for Granting Recommendations on Applications for Certain Rights Over Management Rights Land, Village Land, and Former City Land Owned by the DKI Jakarta Provincial Government, (2001).
- Fahrul Fauzi, & Djumeno, L. D. (2022). Telaah Pemberian Hak Guna Bangunan Sekunder Di Atas Hak Pengelolaan: Studi Perbandingan Dengan Perjanjian Sewa Menyewa Tanah. *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 8(3), 261–274. <https://doi.org/10.55809/tora.v8i3.141>.
- Firmansyah, A. M., & MS, E. R. (2023). Perlindungan Hukum Kepemilikan Sarusun Pada HGB Di atas Hak Pengelolaan Dengan Perjanjian BOT. *Notarius*, 16(3), 1408–1421. <https://doi.org/10.14710/nts.v16i3.45112>
- Fuad, F., Tardjono, H., Machmud, A., Rohayah, N., & Maguchu, P. (2023). Ownership of Land: Legal Philosophy and Culture Analysis of Land Property Rights. *Media Hukum*, 30(2), 99–116. <http://journal.umy.ac.id/index.php/jmh/article/view/5418>
- Government Regulation of the Republic of Indonesia Number 18 of 2021 Concerning Management Rights, Land Rights, Apartment Units, and Land Registration (State Gazette of the Republic of Indonesia Year 2021 Number 28, State Gazette of the Republic of Indonesia Number 6630), Pub. L. No. State Gazette of the Republic of

- Indonesia Year 2021 Number 28, 1 (2021).
- Government Regulation (PP) Number 37 of 1998 concerning the Regulation of the Position of Land Deed Officials, (1998).
- Government Regulation of the Republic of Indonesia Number 40 of 1996 Concerning Business Use Rights, Building Use Rights, and Land Rights, 1 (1996).
- Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration (State Gazette of the Republic of Indonesia Year 1997 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 3696), Pub. L. No. State Gazette of the Republic of Indonesia Year 1997 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 3696, 41 (1997).
- Harahap, Z. (2021). Analisis Kualitas Pelayanan Publik Pembuatan Sertifikat Tanah di Kantor Badan Pertanahan Nasional Kota X. *ADI Bisnis Digital Interdisiplin Jurnal*, 2(2), 27–30. <https://doi.org/10.34306/abdi.v2i2.554>.
- IAI. (2021). Pelepasan HGB di atas HPL – Transaksi Penjualan atau Sewa ? *IAI*, 1, 1–5.
- Kurniawan, F. (2019). Aspek Hukum Pemberian HPL Atas Bidang Tanah Yang Telah Dikuasai, Diduduki Atau Digarap Oleh Warga. *Sapientia Et Virtus*, 4(2), 137–154. <https://doi.org/10.37477/sev.v4i2.192>.
- Law Number 5 of 1960 on the Basic Agrarian Law, State Gazette of the Republic of Indonesia Year 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043, Pub. L. No. State Gazette 1960-104, Supplement to the State Gazette Number 2043 (1960).
- Listyaningrum, R. (2022). Upaya Penyelesaian Sengketa Hak Atas Tanah Di Kawasan Wonorejo Kabupaten Blora. *Jurnal Multidisiplin Indonesia*, 1(3), 979–984. <https://doi.org/10.58344/jmi.v1i3.93>.
- Made Putri Laras Sapta Ananda, I Nyoman Putu Budiarta, & Ni Made Puspasutari Ujianti. (2022). Penyelesaian Sengketa Penguasaan Tanah Hak Guna Bangunan di Atas Tanah Hak Pengelolaan Lahan Pemerintah Daerah. *Jurnal Konstruksi Hukum*, 3(2), 316–320. <https://doi.org/10.55637/jkh.3.2.4818.316-320>.
- Masriani, Y. T. (2022). Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak. *JURNAL USM LAW REVIEW*, 5(2), 539. <https://doi.org/10.26623/julr.v5i2.5777>.
- Murti Samadi, W., & Rukmi B, S. (2020). Kebijakan Progresif Dalam Pelaksanaan Pp No. 24 Tahun 1997 Terhadap Pemberian Sertifikat Sebagai Alas Hak Yang Sah. *Research Fair Unisri*, 4(1). <https://doi.org/10.33061/rsfu.v4i1.3389>.
- Negara, C. U. K. K., Pratiwi, N. W. W., & Maylinda, P. D. (2021). Urgensi Sistem Pengamanan pada Sertifikat Tanah Digital. *Jurnal Hukum Lex Generalis*, 2(9), 832–855. <https://doi.org/10.56370/jhlg.v2i9.91>.
- Patrya Karim, M., Almoravid Dunga, W., & Rahma Y. Mantali, A. (2023). Akibat Hukum Dari Diterbitkannya Sertifikat Tanah Dengan Kepemilikan Ganda. *Journal of Comprehensive Science (JCS)*, 2(6), 1532–1543. <https://doi.org/10.59188/jcs.v2i6.372>.
- Putri, B. E., & Setyadi, S. (2024). Prinsip Hukum Hak Guna Bangunan (HGB) Di Atas Hak Pengelolaan (HPL pada Tanah Hasil Reklamasi dalam Perspektif UUPA. *IBLAM LAW REVIEW*, 4(3), 35–47.
- Rahmadany, R. (2023). Pentingnya Kepemilikan Sertifikat Tanah Untuk Menjamin Kepastian Hukum Tentang Hak Atas Tanah. *Indonesia Journal of Business Law*, 2(2), 70–72. <https://doi.org/10.47709/ijbl.v2i2.2563>.

- Suhail, A., Patitingi, F., & Nur, S. S. (2023). Kedudukan Hukum Hak Guna Bangunan di Atas Hak Pengelolaan yang Telah Berakhir Perjanjian Pemanfaatannya. *Alauddin Law Development Journal*, 5(3), 512–523. <https://doi.org/10.24252/aldev.v5i3.37076>.
- Suhattanto, M. A., Sarjita, S., Sukayadi, S., & Mujiburohman, D. A. (2021). Kualitas Data Pertanahan Menuju Pelayanan Sertifikat Tanah Elektronik. *Widya Bhumi*, 1(2), 100–114. <https://doi.org/10.31292/wb.v1i2.11>.
- Triningsih, A., & Aditya, Z. F. (2019). Pembaharuan Penguasaan Hak Atas Tanah Dalam Perspektif Konstitusi. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 8(3), 329. <https://doi.org/10.33331/rechtsvinding.v8i3.355>.