

## **Legal Defense Against Conveyance of Title to Land Accompanied by an Expired Building Use Right**

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### **Abstract**

*Indonesia has vast land areas, which is why it is referred to as an agrarian country. To provide protection and legal certainty regarding land in this country, it is necessary to establish norms and regulations that clearly govern land issues in Indonesia, thus, a law was formed, namely the Basic Agrarian Law (hereinafter referred to as UUPA). In addition, in dealing with concrete cases, a land registry system is also needed that makes it easier for land title holders to prove their rights, as well as provide the necessary information for interested parties, such as potential buyers or creditors. If the term of a land use right attached to land expires, it cannot be transferred by the holder of the right because the right has been revoked and the land returns to the control of the state. With the revocation of ownership rights to the land, the PPAT cannot issue an act of sale or other act as proof that the transfer of rights has been carried out.. This research is legal research using the normative legal method, which is research that uses legal norms, principles, and doctrines to find answers to the issues being studied. It is hoped that this research will produce arguments and theories that can be used as answers to similar issues. To apply for an expired HGB, the applicant can submit an application by attaching an Act of Disengagement of Priority Rights made before a notary. This transfer of rights can be carried out for expired HGBs, as stipulated in PP HGB Article 37 Paragraph 2 and Permen Section 131 Verse 3. The authority of a notary is to draw up acts, one of which is the act of Disengagement rights, and this is in accordance with the provisions of UUJN Section 15 Verse 1. Referring to this regulation, the act of Disengagement rights drawn up by a notary is legally valid and is used as the basis for submitting an application for the transfer of an expired HGB.*

**Keywords:** *Legal Protection, Land Right, Building Use Right.*

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## **INTRODUCTION**

Indonesia has vast land areas, which is why it is referred to as an agrarian country. To provide protection and legal certainty regarding land in this country, it is necessary to establish norms and regulations that clearly govern land issues in Indonesia, thus, a law was formed, namely the Basic Agrarian Law (hereinafter referred to as UUPA). In addition, in dealing with concrete cases, a land registry system is also needed that makes it easier for land title holders to prove their rights, as well as provide the necessary information for interested parties, such as potential buyers or creditors.

UUPA Section 35 Verse (1), Hak Guna Bangunan (hereinafter abbreviated as HGB) is title granted by the state to parties who control land to construct and own buildings on that land even though they do not own the land. HGB has a maximum term of 30 years and can be extended for up to 20 years. Based on Section 35 Verse (2) UUPA, the period can be extended to 20 (twenty) years, taking into account the needs and condition of the building. Section 35 Verse (3) UUPA, the right to use the building can be transferred to another party.

If the owner of the HGB wishes to extend it, then that party must submit an application, This is regulated in Government Regulation Number 18 Year 2021 Section 40 Verse 1 concerning Land Management Rights, Units, Apartment Buildings, and Land Registration (hereinafter referred to as "PP HGB") which regulates the requirements for HGB extension and application. HGB on state land as referred to in Article 38 Paragraph 1 of PP HGB can be extended or renewed upon application by the rights holder, who must meet the following requirements, among others: 1) The land is still controlled and used; 2) The applicant meets the

requirements; 3) The applicant meets the requirements as a right holder; 4) the land does not violate spatial planning regulations; and 5) it is not used or planned for public facilities.

Referring to PP HGB Section 45 Verse 2 regarding The right to use a building may be assigned, sublet, or transferred to another party, and their rights may be modified. Furthermore, mentioned in PP HGB Section 45 Verse 3, the waiver of building rights as meant in Verse 2 is made by and before the competent authority and reported to the Minister. Land with the right to use the building if the term of ownership has expired then the land can not be transferred by the owner because the right of ownership of the land has been removed and the land is controlled directly by the state. With the abolition of ownership rights over the land, PPAT cannot make a acte of sale or other acte as evidence that the transfer of Rights has been made. In accordance with this, the land of building rights whose rights have expired can only be transferred by a acte of Disengagement rights if the rights have been extended or renewed beforehand. However, in order to provide legal certainty to the buyer on the ownership of land for building rights that have expired, the BPN provides a policy for the parties to be able to apply for new rights in such a way that one of the priority rights holders voluntarily relinquishes his priority rights to other priority rights holders. In other words to be able to apply for new rights, the seller must first release his priority rights to the buyer then the buyer can apply for new rights.

If the term of a land use right attached to land expires, it cannot be transferred by the holder of the right because the right has been revoked and the land returns to the control of the state. With the revocation of ownership rights to the land, the PPAT cannot issue a acte of sale or other acte as proof that the transfer of rights has been carried out. In accordance with this, land with building use rights whose rights have expired can only be transferred by means of a acte of transfer of rights if the rights have been extended or renewed in advance. However, to provide legal certainty to buyers regarding ownership of land use rights that have expired, the BPN has issued a policy allowing parties to apply for new rights by having one of the priority rights holders voluntarily relinquish their priority rights to another priority rights holder. In other words, in order to apply for new rights, the seller must first relinquish their priority rights to the buyer, after which the buyer can apply for new rights.

For example, there was a case in 2017 where PT VARIATATA received the release of land rights from PT TJITARIK based on the Acte of Disengagement Land Rights Number: 129 dated December 19, 2017, before Kristina Halim, Bachelor of Law, Notary in Tangerang Regency. The land that is the subject of Acte of Release and Transfer of Land Rights No. 129 is a plot of land with Building Use Rights Number: 2583/Curugsangereng, covering an area of 7,465m<sup>2</sup>, located on Jalan Boulevard Gading Serpong, Curugsangereng Village, Kelapa Dua Subdistrict, Tangerang Regency (hereinafter referred to as “SHGB No. 2583”), but the validity period of the SHGB has expired, namely in 2014, and to date, no extension or application has been made after the expiration of its validity period

## RESEARCH METHODS

This research is legal research using the normative legal method, which is research that uses legal norms, principles, and doctrines to find answers to the issues being studied. It is hoped that this research will produce arguments and theories that can be used as answers to similar issues. (Peter M. Marzuki, 2023)

In conducting their research, the researchers also used a sociological approach, whereby they understood that the emergence of this phenomenon was based on events occurring within the community. The data collection tool used was a document study of data related to the Acte of Release and Transfer of Land Rights as the basis for the transfer of land rights with a Building Use Rights Certificate that had expired. The data used in a study consists of secondary data. This

study uses secondary data. Secondary data is obtained by researching reference materials. Reference materials are basic data that are classified as secondary data in (scientific) research.

## RESULT AND DISCUSSION

Land rights can be transferred from one party to another for two reasons, namely: 1) As a result of a legal event and 2) As a result of a legal action. If the transfer of rights is based on a legal event, then the transfer is due to a legal event such as inheritance. Meanwhile, transfers due to legal actions include sale and purchase, gifts, exchanges, relinquishment of rights, and so on. These transfers can be carried out if the legal status of the parties controlling the land is deemed to have met the specified requirements.

The Disengagement rights of land and buildings can be granted to individuals or legal entities. The transfer of rights is closely related to the law with the issuance of authentic evidence of disengagement rights. To provide legal force and certainty, every transfer of rights must be carried out in accordance with applicable regulations. Disengagement rights must be carried out with an authentic acte drawn up by a notary and a Land Title Officer (hereinafter referred to as PPAT). The transfer must also be registered with the National Land Office (hereinafter referred to as BPN) and will later result in a legal product in the form of a land certificate.

Individuals or legal entities holding HGB are granted the right to apply for expired land use rights. This right is a Priority Right as stipulated in PP HGB Section 3 Verse 4. HGB holders can obtain priority rights over land controlled by the state if the following conditions are met: a) the land is under the control of the applicant and is being utilized; b) Requirements for granting the right are met; c) Applicant still meets the requirements as a right holder; d) The land is still in the spatial plan; e) Free from public interests; f) Environmental and natural resources; and g) The condition of the land and the surrounding community.

Priority rights are granted to HGB holders to obtain recognition and determination of land ownership. Unlike civil rights, which have a higher status than priority rights, civil rights relate to legal rights between subjects and land. However, even though the rights have expired, the civil relationship is still considered to exist, which means that civil rights must be settled before priority rights can be granted. The civil rights referred to are all about building rights, namely residential houses.

The transfer of expired HGBs is based on Minister of Agrarian Affairs Regulation No. 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights (hereinafter referred to as PERMEN). HGB holders who were previously able to transfer civil rights did so not through a acte of sale and purchase made by a PPAT, but through the release of HGBs. The release of HGB is carried out by making a acte of release of rights by the former owner voluntarily or with compensation. This acte of release of rights must be made with an authentic acte before a Notary.

Legal force for buyers based on the acte of release and transfer of land rights that has been executed before a notary public on the certificate of building use rights whose term has expired:

- a. Status and validity of the acte  
PT. Variatata acknowledges the validity of the acte of release and transfer of land rights that was drawn up before a notary. The acte states that PT Tjitarik releases its rights and transfers them to PT Variatata. The acte does not explicitly state that the buyer has the right to apply for a HGB at the National Land Agency (BPN).
- b. Position of the buyer in the acte  
The acte states the identity of the buyer as the authorized president director representing the company. PT Tjitarik gives its approval and has no objection to the application for new

- rights by PT Variatata. There is no additional agreement or arrangement between PT. Tjitarik and the buyer regarding the transfer of rights to the land.
- c. Legal rights for buyers  
The buyer, PT Variatata, may apply for a right to build (HGB) based on the acte, and PT. Tjitarik is willing to provide a letter of no objection or written recommendation to strengthen the buyer's application for rights.
  - d. Potential disputes and legal certainty  
No third party has ever claimed or applied for rights to the land after the HGB period ended. PT Tjitarik guarantees that the land is free from disputes or other obligations and PT. Tjitarik is willing to assist or provide clarification if requested by the National Land Agency (BPN) regarding the validity of the acte and the status of the land.
  - e. Further agreements  
There is a compensation requirement in the amount of IDR 979,484,000, and no additional documents are required from PT. VARIATATA to ensure that the buyer's application can be processed without hindrance.

PT. Variatata acknowledges the validity of the acte of release and transfer of land rights that has been drawn up before a Notary. The acte states that PT Tjitarik releases its rights and transfers them to PT Variatata. The acte does not explicitly state that the buyer has the right to apply for a Right to Build (HGB) at the National Land Agency (BPN). The acte mentions the identity of the buyer, namely the authorized managing director representing the company. PT Tjitarik gives its approval and has no objection to the application for new rights by PT Variatata. There is no additional agreement or arrangement between PT. Tjitarik and the buyer regarding the transfer of land rights.

PT Variatata may apply HGB based on the acte, and PT. Tjitarik is willing to provide a letter of no objection or written recommendation to strengthen the buyer's application for rights. No third party has ever claimed or applied for rights to the land after the HGB period ended. PT Tjitarik guarantees that the land is free from disputes or other encumbrances, and PT Tjitarik is willing to assist or provide clarification if requested by BPN regarding the validity of the acte and the status of the land.

PPAT has territorial authority over the land object in the acte because the land object is in accordance with the notary's position in Tangerang Regency and the acte was drawn up in accordance with the applicable UUJN, PP, and HGB. The acte falls within the scope of the PPAT's authority, considering that the object is land with an expired HGB. All parties signing the acte were present in person and their identities were fully verified when the acte was drawn up. The acte contains the identities of the parties, the location and area of the land, and states that the HGB has expired, in accordance with the attached acte of release. Supporting documents such as the HGB certificate, IMB, SPPT PBB, and power of attorney (if any) were checked and attached when the acte was drawn up.

The disembarkation acte is valid and in accordance with the authority of the notary to draw up a acte of release of priority rights to land in accordance with UUJN. The disembarkation acte considered a form of transfer of priority rights from the previous rights holder to the new rights holder (the buyer). The acte reflects the intention to terminate the legal relationship between the previous holder of the Right to Build (PT. Tjitarik) and the land. The purpose of the acte is to transfer and terminate the legal relationship of the previous owner and transfer it to the new owner.

This acte is strong enough to be used by third parties (such as buyers or new applicants) as the basic for applying for HGB to BPN. BPN usually requests additional documents, namely PPh and BPHTB, as well as a letter of no dispute from the previous owner. The notary is willing to provide additional information or clarification to the BPN if requested during the application process for original rights that do not conflict with applicable regulations. The notary

recommends strengthening the legality of this acte with an additional statement or supplementary acte with the addition of a statement of no dispute from the previous owner.

The acte can be said to have legal force if through the acte it can cause legal consequences for the parties, namely by the implementation of the rights and obligations stipulated in the contents of the acte. In order to provide legal certainty, the acte must be made in accordance with the provisions stipulated in the applicable legislation, including the Indonesia Civil Code and UUJN. If the acte is made does not meet and or contrary to the provisions as regulated by applicable law, the acte only has the power of proof as a acte under hand.

In accordance with the results of research that has been done, it can be seen that the acte of release of priority rights to land can be used as the basis for registration of the transfer of land rights for building rights that have ended their ownership period if they meet the following conditions: 1. Made in the presence of a notary; 2. Contains a statement that the rights holder in question waives his priority rights to other parties; 3. Contain an agreement on the amount of compensation or compensation as evidenced by proof of payment in full; 4. Contains a statement of physical control of the land; 5. Has fulfilled the duty tax obligations of acquisition of land and building rights (BPHTB) and Income Tax on land and building rights (PPHTB).

In contrast to the disembarkation acte made by PPAT where the form and content of the act has been determined based on the PERMEN, in making the acte of release of priority rights to this land notary can determine for themselves the form and content of the acte as long as it does not conflict with applicable laws and regulations.

The acte of release of priority rights to land is a acte party, which is a acte made before a notary by containing a description of what is explained or submitted by the parties facing the notary. Against the truth of the contents of the acte the Notary is only responsible to the extent of the formal truth submitted by the parties. However, the notary in Jakarta who stated that in order for the acte made by the notary can be implemented and can have perfect proof power, the acte must contain 3 (three) elements as follows: 1. Legal Certainty; 2. Legal Protection; 3. Legal Order. In addition to containing and containing things as mentioned above, in the acte of release of priority rights to land, it must also pay attention to the basic legal truths used by the parties to carry out legal actions. The notary must ensure that the party who waives his priority right is a legitimate right holder by proving it through a certain document or letter which must be mentioned in writing at the beginning of the acte and then a copy of the document or letter must be attached to the minutes of the acte.

An disembarkation priority rights acte can be used as the basis for registering the transfer of a HGB that has expired, provided that the above conditions are met. To ensure legal certainty in the implementation of the rights and obligations of the parties involved in the release of priority rights, the acte must be executed before a notary. The acte must state that the holder of the priority rights is releasing their rights to another party so that the other party can apply for a HGB. To ensure that the acte is used properly, it must be drawn up in accordance with the rules governing authentic actes. As stipulated in Indonesia Civil Code Section 1868, which regulates “*An authentic acte is a acte in a form that has been regulated in legal norms, drawn up by and/or in the presence of a notary who has the authority.*” From these provisions, it can be concluded that: 1) It must comply with the law; 2) It must be drawn up by and/or in the presence of a notary; and 3) It must have full probative force..

To comply with the provisions stipulated in Indonesia Civil Code Section 1868 mentioned above, the acte of release of priority rights to land must be made before a notary. The authority of the notary in making this acte is regulated in the provisions of UUJN Section 15 Verse (1). The next thing that must be met is about the form of the acte of release of priority rights to this land which refers to the provisions set forth in UUJN Section 38. With the fulfillment of the provisions of Section 38 of the Notary Office Act mentioned above, the priority waiver acte has fulfilled the provisions of Indonesia Civil Code Section 1868, which form of the

acte has been made in accordance with the provisions of the act. Furthermore, in accordance with the provisions of Section 18 of the notary position law, it has been regulated that the notary's place of residence is located in the Regency/City with an area of office covering the entire provincial area from the place of his position. Based on this provision, the Notary is authorized to make a acte of renunciation of priority rights on land whose objects are located throughout the province from the place of their position. This is different from the authority possessed by PPAT, based on the provisions Government Regulation Number 24 Year 2016 About regulation of land acte officials Section 12 Verse (1) are only authorized to make a acte of transfer of land rights in the working area covering the District / City from the place of his position.

Furthermore, in order to have binding legal force, the acte of release of priority rights to land must contain the following elements:

#### 1. Legal certainty

Any legal act committed by the parties must be guaranteed legal certainty. The purpose of this is what the parties can do well which can be proven both outside and in court. Every acte made by a notary must be enforceable and can be used as perfect evidence, therefore every acte made must meet the provisions set forth in the Notary Office Act, especially Section 16 and Section 38 as this is also stipulated in Section 1868 of the Civil Code so as not to contain legal defects and become a acte under hand.

Notary must ensure the correctness of the legal basis used by the face as a basis for committing an act or often referred to as the position in the Act (legal standing). Notary must be able to ensure that the right person is someone who has the authority to perform a legal act. To be able to know the capacity of a person in performing a legal act, the notary can see it based on the formal truth that can be conveyed by the parties through letters or documents that will be used as a basis for action. In the acte of waiver of priority rights, this must be clearly stated at the beginning of the acte and can be further emphasized in the premise of the acte.

#### 2. Legal protection

The rights and obligations of the parties to the legal act should be regulated in proportion to the content of the act. It aims to avoid the abuse of circumstances due to the imbalance of kududukan in bargaining (Inequality of bargaining power). The notary must ascertain the legal effect of the provisions set forth in each Section whether they are null and void or revocable. Based on this, the acte of release of priority rights must contain a statement that the rights holder in question relinquishes his priority rights to another party with the release agreement made so that the other party can apply for the granting of land rights to the state. In addition to this, the value of compensation or compensation made to waive the right must also be clearly outlined in the contents of the acte.

#### 3. Legal order

The acte must be based on a regulation without disregarding other regulations. Thus, everything in the acte can be accounted for in terms of propriety, morality, and other norms. To that end, the acte must also fulfill the element of public order, and the execution of the acte must also be preceded by the payment of BPHTB and PPHTB taxes as stipulated in the Law on the Acquisition of Rights to Land and Buildings and the Government Regulation on the Payment of Income Tax. After paying the tax, an application can be submitted for an expired HGB by fulfilling the applicable requirements.

## CONCLUSION

To apply for an expired HGB, the applicant can submit an application by attaching a Acte of Release of Priority Rights made before a notary. This transfer of rights can be carried out for

expired HGBs, as stipulated in PP HGB Article 37 Paragraph 2 and Permen Article 131 Paragraph 3. The authority of a notary is to draw up acts, one of which is the act of release of rights, and this is in accordance with the provisions of Article 15 Paragraph 1 of the UUJN. Referring to this regulation, the act of release of rights drawn up by a notary is legally valid and is used as the basis for submitting an application for the transfer of an expired HGB.

Legal force for the buyer based on the act of release and surrender of land rights that have been made before a notary for the Certificate of building rights that period has ended, which has binding legal force and can be used as the basis for registration of the transition of land rights to building rights that have ended the term of ownership by fulfilling the provisions set forth in Indonesia Civil Code Section 1868 which regulates the authentic act and UUJN Section 38 that regulates the form of notarial act. In addition to fulfilling these provisions, the matters stipulated in the act of release of land rights must also contain elements of certainty, protection, and legal order so as not to conflict with the relevant laws and regulations.

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