

## Acquisition Of Ownership Of Land upon Expiry of Building Use Rights

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### Abstract

*Land plays a very important role and cannot be separated from human life. Most human activities and needs depend a lot on the soil, since it is the main element that favors survival, both as a place to live and as a space to develop in the social, economic, cultural and political spheres. The constant and non-increasing amount of land contrasts with the ever-increasing population growth. This imbalance is one of the factors causing the emergence of various problems that occur in society. In this study using normative research methods. Priority Rights are special rights that give a person priority over others in regaining rights to land whose term has expired. These rights are obtained from HGB certificates that have expired, causing the HGB status to be revoked and the land to revert to its original status, namely state land. If the land in question originates from State Land, then the land is directly controlled by the State. However, land administration has long recognized the existence of Priority Rights, allowing land with expired HGB rights to be reclaimed by the former rights holder. Based on the order of priority, a. The former owner of the land, b. The heirs of the owner of the rights, c. The Indonesian State. In the case of an expired HGB in South Tangerang City, the applicant is the heir of the former owner of the land, so the heir can become the subject of the priority right. HGB that has ended its term, can be applied to restore its rights using Priority Rights. The HGB can be upgraded to property rights as long as the right holder still qualifies as the subject of the property rights will remain valid. Provided, the owner is an Indonesian citizen, the allocation of land for residence that can be proven by a building permit (IMB), the land area is 600 m<sup>2</sup> or less than that, the expired certificate of building rights can be upgraded to a Certificate of property rights, then the owner no longer needs to think about if in the future the term of his land rights expires, because property rights have an unlimited period.*

**Keywords:** Land Ownership, Acquisition of Land Rights, Building Rights.

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## INTRODUCTION

Land has a very crucial and inseparable role in human life. Most human activities and needs depend a lot on the soil, since it is the main element that favors survival, both as a place to live and as a space to develop in the social, economic, cultural and political spheres. The constant and non-increasing amount of land contrasts with the ever-increasing population growth. This imbalance is one of the factors causing the emergence of various problems that occur in society. The state plays an important role in managing and utilising land, water and natural resources. This is clearly stated in Section 33 Verse 3 of the Constitution, which stipulates that the state has an obligation to manage these resources. The Basic Agrarian Law explains that the land, water and air above us, including the natural resources within Indonesia's territory, are gifts from Almighty God. (Maria R. Ruwastuti, et.all, 1997)

The state, as the power of the people, holds full authority over the management of natural resources. The state has full authority over land, including land rights that have been granted, as well as restrictions on those rights. This means that these rights are limited to the extent that the state grants the people the power to hold land rights. (A. P Parlindungan, 1991) The right to control of this state includes all land in the Indonesia, both lands that have not been granted rights with individual rights by the Constitution contained in Section 28, Section 37, Section 41, Section 43 and Section 49. (Boedi Harsono, 2020)

The authority to manage land, water and resources, including outer space, is not as owner but as an entity that has the right to: 1) Allocate, maintain and use land; 2) Determine the rights

and restrictions on land owned by legal entities; and 3) Regulate the legal relationship between land rights owners and other parties. (Salsabila, 2020)

The Ministry of Agrarian Affairs then oversees the National Land Agency (hereinafter referred to as BPN) which is located in every city or district in Indonesia and whose function is to serve and facilitate the community in land affairs. One of the products of BPN is land title certificates. The land certificate, aims to ensure legal certainty and legal protection to land rights holders, as proof that a person or legal entity that owns the land then has a certificate, based on Act of Government Number 24 Year 1997 about Land Registration (PPPT) Section 31 Verse (1) jo Section 1 Verse (6) and Verse (7), that the certificate contains 2 (two) kinds of data, the first is the juridical data that is data on the legal status of the land such as the holder of the mortgage in the certificate, the second is physical data, physical data is about the location, boundaries, and area in the certificate.

Certificate of Land Ownership aim to provide legal certainty and legal protection for land rights holders, as proof that a person or legal entity that owns the land has a certificate, based on PPPT Section 31 Verse (1) in conjunction with Section 1 Verse (6) and Verse (7), Land ownership certificates generally contain two types of data: legal data in the form of legal relationships and physical data in the form of information on the location, boundaries and area of the land. Land rights recognised by law include: a) Freehold; b) Cultivation Rights; c) Building Rights; d) Usage Rights; e) Leasehold; f) Land Clearing Rights; g) Forest Product Collection Rights; and h) other rights..

Property rights or HM in the certificate is a hereditary right that can be inherited, HM is the right of the strongest and fulfilled, the meaning of the word strongest and fulfilled is not easily inviolable and not limited to the period of his rights, the strongest itself has the meaning to distinguish the rights to this land from other land rights: 1) the strongest, intended; and 3) Terun hereditary, intended by an indefinite period, can switch due to legal acts and legal events. (I Ketu Oka Setiawan, 2021) Furthermore, entitlement to utilise the premises (or known as HGB) UUPA Section 35, namely the right to erect buildings and can own the building but not its own, the existence of a period of at least 30 (thirty) years that can have HGB is an Indonesian citizen and a legal entity domiciled in Indonesia.

HGB can be diverted and handed over to another party through a Deed of Buy-Sale (AJB), Grant (Gift), Deed of Exchange (ATM), Capital Contribution (Inbreng), and Inheritance due to death, and then must be registered at the BPN where the land is located. The HGB diverted due to Selling (except through Auction), Exchange, Capital Contribution, must be done with a deed made by a Land Title Officer (hereinafter referred to as PPAT).

However, what happened in the field was conveyance of the entitlement to utilise the premises certificate was not continued using a deed by a PPAT, but only a deed made by a Notary, namely a Transfer Agreement or Sale and Purchase Agreement, where in the case of entitlement to utilise the premises Certificate Number 907/Pamulang, registered in the name of Ms. Lim Hian Nio, whose rights expired on February 24, 2002, located in Pamulang Barat, Pamulang District, South Tangerang City, Banten Province.

In 1985, Ms. Lim Hian Nio and Bank Tabungan Negara entered into a Home Ownership Credit Agreement No. 1061/c/k/2008/Jkt/1985 dated June 7, 1985, and executed a Deed of Acknowledgment of Debt with Collateral No. 10 dated June 7, 1985. Subsequently, based on the Transfer Agreement dated July 18, 1992, the object of the Building Use Rights Certificate was sold by Ms. Lim Hian Nio to Mr. Harris Maludin Zahar. The transfer of rights during the credit period meant that not only did the ownership certificate transfer, but all obligations of the old Debtor were transferred to the new Debtor, Mr. Harris Maludin Zahar.

There is no continuation of the PPAT Deed for the transfer, even though PPPT Section 37 Verse (1) states The transfer of land rights and apartment ownership rights through buying and selling, trading, gifts, incorporation into companies, and other legal actions governing the

transfer of rights, except for transfers of rights through auctions, can only be registered if proven by a deed drawn up by an authorised PPAT in accordance with applicable laws and regulations.

After the loan was paid off with Bank Tabungan Negara, the certificate was taken by Mr. Harris. In 2019, Mr. Harris Maludin Zahar passed away and the certificate had not yet been transferred to his name. What happens among the community and in this case is that sales and purchases are only between them, under the table or only through a notarial deed, namely with a transfer agreement or sale and purchase agreement. This notarial deed is usually made because the loan has not been paid off or is related to a third party. Ideally, the land that has been purchased should immediately be processed for transfer of ownership to the buyer's name.

In this case, the buyer has passed away. If the holder of land rights dies, the transfer of rights is carried out through inheritance. This transfer occurs by law, which means that when the heir dies, the rights to their property and assets, including land, are immediately transferred to the heirs. This is in accordance with the provisions of Section 830 of the Civil Code (KUHPerduta), which states that inheritance can only occur in the event of death. Thus, without death, inheritance does not occur. Proof of transfer of land rights through inheritance is provided by a Certificate of Inheritance issued by the sub-district office where the testator died or by a notary located in the city/district where the testator died.

Regarding the transition of inheritance for rights holders whose term has expired, in this case it is the HGB certificate, then the HGB is removed and the land will return to the status of the original land, which is state land. The abolition of HGB due to the expiration of the period does not necessarily cause others to take the land, this is because the practice of land administration in Indonesia has been familiar with the previous rights holders given the "priority rights". (Oloan Sitorus, 2016) Priority right is a privilege that takes precedence over other parties in applying for land rights to the Land Office where the object is located. Priority right to this land to obtain the first, precedence, precedence or priority based on the order in which the recipient of the right to obtain the establishment, recognition or determination of the right to land. (Dian Aries Mujiburohman, 2016)

HGBs that have expired can be transferred using a deed of transfer of priority rights drawn up before a notary. The use of this deed is based on ownership of land under state control. Priority Rights are explicitly regulated in Presidential Decree Number 32 Year 1979 Section 5, which regulates former settlement land using former western rights that have been converted into public settlements, giving priority to those who occupy it with the required conditions. The Head of the South Tangerang City BPN then issued Decree Number 105/HM/BPN. 36.73/XII/2023, which regulates the granting of rights in the name of the heirs of Mr H. This decree was issued with the aim of resolving the issue of the buyers' heirs, whose transfer was based on a Deed of Transfer Agreement on Certificates that were still subject to encumbrances at the bank, so that in order to obtain rights to this land, the priority rights had to be released by deed.. (E. Sulaiman, 2013)

## RESEARCH METHODS

To address the issues in this study, the researcher used a normative legal research method, which is expected to answer legal issues by adjusting to legal principles, foundations, and doctrines. This study was also conducted to produce arguments, theories, or concepts on the issues being studied. (Peter M. Marzuki, 2023)

The approach used by the author in this study is a qualitative approach, namely a literature study. By using a legislative approach through Act Number 5 Year 1960 About Basic Agrarian Principles (UUPA) and other laws related to this study, the conceptual approach, and the case approach discussed by the author in this study, the results of this study can produce descriptive analytical data from relevant objectives. (Sri Mamudji, 2005) This research was conducted using

a documentary study. To find and collect data for this thesis, secondary and primary data were used. Secondary data is obtained from literature studies and source documents obtained from archives, reference materials, and official data from the government as well as laws, regulations, and journal Sections related to the issue being studied.

## RESULT AND DISCUSSION

In The Case Of Building Rights Certificate Number 907 / Pamulang, registered in the name of Nona Lim Hian Nio whose term of Rights has expired on February 24, 2002, located in Pamulang, Pamulang District, Tangerang reGENCY, Banten issued by the BPN Tangerang Regency dated 25-02-1982. The definition of building rights (HGB) is in UUPA Section 35 Verses (1) and (2), which in essence is the right to erect and own buildings on land that is not its own, with a maximum period of 20 years. (Urip Santoso, 2019) The term of HGB mention on Government Act Number 40 Year 1996 Section 25 for the first time is 30 years, can be extended for a maximum period of 20 years, and can be renewed for a maximum period of 30 years.

Based on the regulation, former HGB holders are entitled to submit an application to be granted title to a residential house against the expired HGB. especially for former HGB holders who have expired with the allocation of their buildings for residential houses, regulated in the decree of the Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 on granting property rights to land for residential houses, because one of the document requirements is a building construction permit/IMB which is obtained when the land will be built and in the IMB letter explains the allocation of the building for what, so it can be seen if the allocation is for residence or not. HGB to improve the status of its rights into property rights, property rights to land according to the UUPA have the following characteristics: a) property rights are hereditary rights, strongest and fulfilled; b) property rights may only be owned by Indonesian citizens and certain legal entities established by the Government; c) Property Rights can be used for the purpose of building funds or utilized for; E) property rights can occur according to customary law, government stipulations, or statutory provisions; f) Property Rights can be transferred and transferred to other parties; g) Land Rights can be used by non-owners; h) property rights can be used as money guarantees with encumbered mortgage rights; and i. Property rights can be removed. (Urip Santoso, 2017)

The expired HGB certificate can be upgraded to a property rights certificate, so the owner no longer needs to think about if in the future the term of his land rights expires, because property rights have an unlimited period of time. "as long as the right holder is still qualified as the subject of such property rights will remain valid". (Urip Santoso, 2019) Based on Decree of the Minister of Agrarian Affairs Number 6 of 1998 Section 1, State that the granting of title to land for residential houses, Following: (1) Based on decisions including: a) the title to use land for residential purposes by individual Indonesian citizens with an area of 600m<sup>2</sup>; b) Land use rights for residential properties owned by individual Indonesian citizens with an area of 600m<sup>2</sup> or less that have expired and are still owned by the previous rights holder, upon request by the relevant party, the property shall be given to the previous rights holder; and (2) for the granting of such property, the recipient of the rights is obliged to pay income to the state in accordance with applicable regulations."

If we look at the contents of that section, we can see that if the property rights have lapsed and are owned by the previous owner, upon request, the ownership rights to the land can be granted to him. In some writings, the Section is often used as a legal basis for granting priority rights. For even if the Certificate of right to use the building expires, as long as the land is still owned by the former owner of the rights, it can be applied for the grant of land into ownership. In this case, the certificate of the right to use the building has expired with the state of the function

of the land for residence. The procedure for applying for property rights with an individual application for State-owned land is regulated in Decree Ministry of Agrarian Number 18 Year 2021 Section 52 to Section 60 on procedures for determining management rights and Land Rights.

To apply for land ownership rights originating from state land, an individual must complete the following requirements: 1) The applicant's identity, accompanied by a power of attorney if authorised; 2) A certificate or other evidence indicating ownership of the land, with no physical control over the land, including a statement of physical control over the land with at least two witnesses from the surrounding area; 3) Proof of taxation; and 4) A statement of physical control over the land and willingness to take legal responsibility, both criminal and civil.

From the above requirements, the author makes the stages of the application process for new rights in the form of property rights to the former HGB land that expires in 4 four stages, the first is The Making Of The Deed, the second measurement, the third registration of the decree of the head of the Land Office of South Tangerang City and the last:

#### 1. First Stage: Making Deed Of Waiver Of Priority Rights

The party that will relinquish and receive priority rights must first appear before a notary with the following documents: a. Original HGB certificate; b. Identity documents of the parties; and c. Land and Building Tax notification letter. The notary will then draw up a Deed of Relinquishment of Priority Rights for the transfer of priority rights from one party to another.

#### 2. Second Stage: Measurement

Next, the applicant can register a new rights application at the BPN Office by bringing the necessary requirements, one of which is a land plot map. This land plot map can be obtained by registering for a measurement. Other documents such as the Deed of Transfer of Priority Rights, the certificate to be registered, the applicant's identity (ID card and family card) and the SPPT PBB.

After registration, the applicant must make the payment and receive a document receipt. The measurement process will be carried out after the measurement officer obtains the assignment letter. After the measurement is carried out, the land plot map will be issued, which can later be used to issue a decision by the Head of the BPN for the new rights.

#### 3. The Third Stage: Registration Of The Decree Of Head of the BPN

In this third stage, the procedure for registering new rights applications until the issuance of the decree of the head of the South Tangerang City Land Office is regulated in the Regulation of Head BPN number 18 Year 2021 on the procedure for determining management rights and Land Rights.

If the applicant has gone through all the processes and considerations referring to the approval of the application, the Head of BPN will issue a Decision within 6 months to re-register to issue land rights after the transfer tax on land and building rights has been paid and verified by BAPPENDA. In this case using the decision of the head of the Land Office of South Tangerang City, Number 105/HM / BPN.36.73/XII / 2023, on the granting of property rights in the name of the heirs of Tn. H, in its decision the head of the Land Office of South Tangerang City weigh :

- a. That the applicant is the heir of Mr. Harris is D, d.k.k 4 (four) people are Indonesian citizens, so they have qualified as subjects of property rights;
- b. That the requested land has been Cadastral measurements by the Land Office of South Tangerang City, with published PBT (map of land);
- c. That the requested land has been examined by the Constataion officer whose results are set forth in the minutes of the land examination (Konstatering Rapport);

- d. Decided, the expiration of the right to use the building that has expired period, and declared the tanah to be land directly controlled by the state and declared the Certificate of the right to use the building is no longer valid as valid evidence. The heirs of Mr. Harris.

#### 4. Fourth Stage: Registration Certificate

Based on Section 31 Verse (2) of PP 24/1997, it is stipulated that the issuance of certificates is intended to enable land rights holders to easily prove their rights. In this case, SHM Certificate 15459 in West Pamulang is in the name of four heirs of Mr H. From this stipulation, it can be concluded that the state gives priority rights to former holders of HGB land rights, civil rights to objects embedded in the land. With these rights, those who have lost their HGB rights can use these regulations as a basis for claiming their rights from the new rights holders. This request is submitted through a deed of resignation of priority rights made before a notary, which is then used as a legal basis by the new rights holders to claim their rights to the land from the Regional Land Office, in accordance with the provisions of the law and land distribution.

In the process of filing, the Land Office will conduct a thorough, careful, and systematic examination before issuing a decree of the head of office regarding the establishment of new rights, in this case in the form of property rights. This decree then became the basis for the issuance of SHM. Thus, the new rights holder gains legal protection and certainty over land tenure in accordance with its function or designation, for example as a residential house.

In this case, using the Decree of the Head of the South Tangerang City Land Office, Number 105/HM/BPN.36.73/XII/2023, concerning the granting of ownership rights in the name of the heirs of Mr. H, in his decision, the head of the South Tangerang City Land Office considered:

- a. That applicant, namely their heir of Mr. Harris, namely D, 4 (four) persons, are Indonesian citizens, thus fulfilling the requirements as subjects of Ownership Rights;
- b. That the land requested has been measured cadastrally by the South Tangerang City BPN, with issuance of a PBT (Land Parcel Map);
- c. That the land requested has been inspected by the Constation Officer, the results of which are contained in the Land Inspection Report (Konstatering Rapport), stating that:
  1. The status of the land being requested is State Land formerly known as Building Use Right Number 907/Pamulang, Certificate Issuance date December 17, 1985, Situation Drawing date December 17, 1985 Number 12721 covering an area of 160 m<sup>2</sup> (one hundred and sixty square meters), registered under the name of Ms. L, whose rights expired on February 24, 2002, located in Pamulang Village (now Pamulang Barat Subdistrict), Ciputat District (now Pamulang District), Tangerang Regency (now South Tangerang City), West Java Province (now Banten Province), then based on the Transfer Agreement Deed dated July 18, 1992, Power of Attorney Deed dated August 3, 1992 Number 3 and Power of Attorney Deed dated August 3, 1992 Number 4, each of which was drawn up by and before Tahir Kamili, Bachelor of Law, Notary in Ciputat, the rights were transferred to Harris, further based on the Heir Certificate dated January 31, 2020, recorded in the Cibeunying Village register dated January 31, 2020, Number 474.3/ 06/I/KEL/2020 by Asep Rahayu, SH as Head of Cibeunying Village and the Cimenyan Subdistrict register dated February 4, 2020 Number 474.3/20/11/WRS/2020 by Achmad Rizky Nugraha, S.IP as the Head of Cimenyan Sub-District, and based on the Deed of Release of Priority Rights dated April 28, 2023, Number 28, drawn up by and in the presence of Haji Arief Afdal, Bachelor of Law, Master of Notary, Notary in Jakarta, the rights were transferred to 1. DD 2. AHP, 3. MAH 4. SR;
  2. The land in question has been used for residential purposes in accordance with the Building Permit issued by the Regent of Tangerang Level II on March 4, 1985, Number

648.3/552-Perk/Year 1985;

3. The proposed land use plan for residential purposes is in accordance with the South Tangerang City BPN based on Act of South Tangerang City Number 15 Year 2011 about 2011-2031 South Tangerang City Spatial Plan (RTRW). jo. Act of South Tangerang City Regional Number 9 Year 2019 about Amendments to Act of South Tangerang City Regional Number 15 Year 2011 about the Spatial Plan (RTRW) of South Tangerang City for 2011-2031, jo. Act Mayor of South Tangerang Number 118 Year 2022 about the Detailed Spatial Plan for the South Tangerang City Planning Area for 2022-2042, the location requested is a Residential Area;
4. With a statement of physical control over the land witnessed by two witnesses and acknowledged by the Head of Pamulang Barat Village on 18 August 2023. The land in question has been voluntarily and in good faith controlled by the Applicant. Therefore, it is confirmed that there are no disputes/conflicts/cases and objections from other parties regarding the land owned or not in dispute, located outside the forest area, not overlapping with business permits related to the utilisation of natural resources, and the Applicant is civilly and criminally liable. if in the future there are elements that cannot be justified in this statement, then all consequences arising shall be the responsibility of the Applicant and the Applicant is willing to be processed legally in accordance with the provisions of laws and regulations and will not involve other parties, and the Applicant is willing for the certificate received by the Applicant to be revoked by the competent authority;
5. It was concluded that the application could be considered for the granting of ownership rights to 1. DD 2. AHP, 3. MAH 4. SR, covering an area of 160 m<sup>2</sup> (one hundred and sixty square meters) because it had met the technical, legal, and administrative requirements.

Deciding that the Building Use Rights have expired, declaring that the land is now directly controlled by the State, and declaring that the Building Use Rights Certificate is no longer valid as legal evidence. Granting ownership rights to the heirs of Mr. Harris.

## CONCLUSION

Priority Rights are special rights that give a person priority over others in regaining rights to land whose term has expired. These rights are obtained from HGB certificates that have expired, causing the HGB status to be revoked and the land to revert to its original status, namely state land. If the land in question originates from State Land, then the land is directly controlled by the State. However, land administration has long recognized the existence of Priority Rights, allowing land with expired HGB rights to be reclaimed by the former rights holder. Based on the order of priority, a. The former owner of the land, b. The heirs of the owner of the rights, c. The Indonesian State. In the case of an expired HGB in South Tangerang City, the applicant is the heir of the former owner of the land, so the heir can become the subject of the priority right.

HGB that has ended its term, can be applied to restore its rights using Priority Rights. The HGB can be upgraded to property rights as long as the right holder still qualifies as the subject of the property rights will remain valid. Provided, the owner is an Indonesian citizen, the allotment of land for residence that can be proved by a building permit (IMB), the land area is 600 m<sup>2</sup> or less than that, the expired certificate of building rights can be upgraded to a Certificate of property rights, then the owner no longer needs to think about if in the future the term of his.

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