



Refusal of Extension of Building Use Rights Over Management Rights on Land (Study of Supreme Court Decision Number 1343/K/Pdt/2021)

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Abstract

Building use rights (HGB) with certificate No. 172 and HGB No. 213 Pisang Selatan is located at Jln. Sungai Saddang, Ruko Latanete Plaza Blok C.No. 1 & 2 Makassar, granted over the Right to Management of the Regional Government of South Sulawesi Province in the name of Herman Suryanto, which was legally obtained in 2008, with the expiration of the two HGB on September 5, 2011 After the expiration of the HGB period, Herman Suryanto (Plaintiff) submitted an application for an extension of the HGB according to the applicable procedure. This was done by submitting an application to the Regional Government of South Sulawesi through the South Sulawesi Regional Company (Defendant). In this process, the Plaintiff obtained the Approval and Statement regarding the HGB Extension of the Latanete Ruko Complex by the Director of the South Sulawesi Regional Company as the Defendant. When the Plaintiff submitted an application for an extension of the HGB for the shop-house building to the Makassar Regency Land Office, it turned out that there had been a change of management at the South Sulawesi Regional Company (Defendant). The new management then made a request to block the request for an extension of the HGB on behalf of the Plaintiff to the Makassar Regency Land Office, so that the Plaintiff felt very aggrieved by this. The problem was finally resolved through a court which finally reached the Supreme Court with Supreme Court Decision Number 1343/K/Pdt/2021. So it is interesting to conduct a study of the judge's considerations in rejecting the extension of the HGB.

Keywords: *Extension of Building Use Rights; Building Use Rights; Management Right on Land*

Introduction

Article 16 paragraph (1) of Law No. 5 of 1960 concerning Basic Regulation on Agrarian Principles (UUPA) regulates land rights which can be divided into several types, namely:

1. Property Rights.
2. Cultivation Rights.

3. Building Use Rights.
4. Right of Use.
5. Lease Rights.
6. Right to Open Land.
7. The right to collect forest products.
8. Other rights that are not included in the points above which will be determined by law and other rights that are temporary in nature.

Building use rights are regulated specifically in Articles 35 to 40 of the UUPA. According to Article 35 paragraph (1) of the UUPA, the Right to Build is the right to build and own a building on land that does not belong to the owner of the right.¹ According to Article 37 of Government Regulation No. 18 of 2021 concerning Management Rights on Land, Land Rights, Flats Units, and Land Registration, the maximum period for Building Use Rights is 30 years, which can be extended for a maximum of 20 years and renewed for a maximum of 30 year.

The definition of management rights was first explained in Article 2 of the Minister of Agrarian Regulation Number 9 of 1965 concerning the Implementation of Conversion of Management Rights on Land over State Land and subsequent provisions regarding these rights. Management Rights on Land are not explicitly regulated in the articles of the UUPA like other land rights, but can be found implicitly in the general explanation number two of the UUPA which states that the state can give land that does not have an owner to a person or group by granting land rights or giving them in the management of a government agency.²

Subjects or holders of management right on land are limited to government institutions, whether engaged in public services by the government or engaged in business, such as State-Owned Enterprises or State-Owned Enterprises. PT.Persero or private legal entities do not have the opportunity to act as subjects or holders of management right on land.³

There is no difference in terms of the authority granted to holders of management right on land, be it ministries, regional governments, or management rights granted to companies, which includes planning for the use and utilization of the land in question.⁴ The use of land for the purposes of carrying out their duties and handing over parts of land to third parties in accordance with the requirements of holders of management rights which include use, term, and compensation as well as granting land rights to third parties are carried out by authorized officials based on statutory regulations.⁵

Management of state or regional property can include planning needs and budgeting, procurement, use, utilization, security, maintenance, appraisal, transfer of hands, destruction, write-off, administration, development, supervision and control related to land.⁶ There are several aspects in the management of state or regional property, namely aspects of management, use, utilization and transfer of hands, in which there is a transfer of function over state land which is state or regional property.⁷

¹ Martinus, *Buku Ajar Dasar-dasar Ilmu Tanah*, Jember: Universitas Jember, 2018. hlm. 10.

² Efendi Perangin, *Hukum Agraria Indonesia Suatu Telaah dari Sudut Pandang Praktisi Hukum*, Yogyakarta : Rajawali Press, 2017, hlm.311.

³ Erly Aristo, "Pelepasan Asset Hak Pengelolaan Pemerintah Kota Surabaya Kepada Pemegang Izin Pemakaian Tanah" *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan*, Vol. 10 No. 1, 2022.

⁴ Agung Prayogo, "Analisis Yuridis Hak Pengelolaan Lahan Kota Batam" *Journal of Law and Policy Transformation*, Vol. 3 No. 1, 2018.

⁵ Sulasi Rongiyati, "Pemanfaatan Hak Pengelolaan Atas Tanah Oleh Pihak Ketiga" *Jurnal Negara Hukum*, Vol. 5 No. 1, 2016.

⁶ Ramli Zein, *Hak Pengelolaan Dalam Sistem UUPA*, Jakarta: Rineka Cipta, 2016, hlm.45.

⁷ Enny Agustina, "Prinsip Tanggung Jawab Pengelolaan Barang Milik Negara Menuju Good Governance", *Jurnal Solusi UNPAL*, Vol. 19 No. 1, 2021.

In the case analyzed from the Supreme Court at the Cassation level with Decision Number 1343 K/Pdt/2021 dated 5 May 2021, the object of the dispute is the Building Use Rights Certificate (hereinafter referred to as SHGB) No. 172 Pisang Selatan with an area of 92 m² (ninety two square meters) and SHGB No. 213 Pisang Selatan with an area of 122 m² (one hundred and twenty two square meters) is located on Jl. Saddang River Ruko Latanete Plaza Block C.No.1 & 2 Makassar. The two HGBs were established on the Management Rights of the Regional Government of South Sulawesi Province on behalf of the Plaintiff which were legally obtained in 2008, with the HGB Certificate expiration for each on September 5, 2011. The South Sulawesi Regional Company is the party to the dispute in this case.

Whereas after the expiry of the Plaintiff's SHGB period, the Plaintiff again submitted an application for an extension of the period in accordance with the procedures of the owner of land and building rights, namely the South Sulawesi Regional Government through the South Sulawesi Regional Company, and the process of requesting an extension of the period is at the payment stage to the Sulawesi Regional Company. Selatan who is the Defendant in order to be able to carry out the extension and finally the Plaintiff obtained the Approval and Statement regarding the HGB Extension of the Latanete Ruko Complex by the Director of the South Sulawesi Regional Company as the Defendant.

When the Plaintiff submitted an application for an extension of the time period related to the HGB certificate for the shophouse building to the Makassar Regency Land Office, the Plaintiff knew that there had been a change in management at the South Sulawesi Regional Company Office/Defendant. The new management then made a request to block the request for an extension of the Plaintiff's HGB Certificate to the Makassar Regency Land Office, so that the Plaintiff felt very disadvantaged by this.

The Plaintiff filed a lawsuit with the Makassar District Court, not the State Administrative Court, because the Plaintiff believed that the position/legal standing of ownership of 2 (two) units of land and shophouses listed in SHGB No. 172 South Banana and SHGB No. 213 Pisang Selatan, which is located on Jl. Sungai Saddang Ruko Latanete Plaza Block C.No.1 & 2 Makassar, is currently in the possession of the Plaintiff because it is the result of a legal and proper process. Based on articles 529 and 533 of the Civil Code, the holder of a bezit (control) must always be considered to have good faith and hold an item for himself, unless proven otherwise. Even though the object is currently in the process of being blocked by the Makassar Regency BPN including a letter of warning from the Defendant, the Plaintiff believes that his position in terms of control over the disputed object is proper and legitimate. In addition, the Plaintiff feels that he has been harmed because after fulfilling the requirements and paying a sum of money to the right holders to extend the HGB for the shophouse building on Management Rights belonging to the Regional Government of the South Sulawesi Province through the South Sulawesi Regional Company (Defendant), the application was blocked by the Defendant. According to the Plaintiff, this was an unlawful act which caused a loss. The Defendant then filed a counterclaim/reconvention on the basis that 102 units of land and shophouses were legally owned by the Regional Government of South Sulawesi Province based on the Deed of Agreement Number 76 dated August 15, 1990. Then, HGB Certificates Numbers 172 and 213 owned by the Plaintiff were only collateral/ compensation for land and buildings that actually belong to the Regional Government of South Sulawesi Province. In addition, the Defendant also stated that the Plaintiff did not fulfill the obligations stated in the agreement so that the Plaintiff had no right to extend the HGB period. Therefore, the Defendant filed a counterclaim/reconvention so that the Plaintiff was forced to return the land and building to the Regional Government of South Sulawesi Province.

The case that occurred between Herman Suryanto (Plaintiff) and the Director of the South Sulawesi Regional Company (Defendant) has been tried at the first level, appeal and cassation. In the judicial process, there is an interesting thing to examine, namely how the judge considers in determining whether there was an unlawful act that caused a loss in the issue of extending the HGB certificate over the Management Right. In this decision, there is a blurring of norms which has led to misunderstandings between the Plaintiff and the Defendant which lies in the conditions that must be met in extending the

HGB period on the Land of Management Right. According to the Plaintiff, he has fulfilled the required requirements, while the Defendant stated that the Plaintiff has not fulfilled the requirements in extending the HGB period on the Management Right land, as well as the existence of an illegal act committed by the Plaintiff.

Based on the description above, it is interesting to carry out an analysis of the Court's decision regarding the dispute over the extension of the HGB standing on the Management Right in the case and to use it as material in the preparation of the thesis with the title "Rejection of Extension of Building Use Rights over Management Rights (Study of Supreme Court Decision Number 1343/K/Pdt/2021)".

Research Methods

The method used in research can be interpreted as a method or technique used to obtain facts and principles in the field of science. Research itself is a systematic effort that is carried out carefully and patiently to reach the truth.⁸ The type of research to conduct this legal research, normative juridical research was chosen as the method used. This approach is a method that involves studying library materials as primary data, which is also known as library research.⁹ This research focuses on the Rejection of Extension of Building Use Rights over Management Rights (Study of Supreme Court Decision No. 1343/K/Pdt/2021). Although this research is a normative juridical research, in order to complement and perfect the results of the research, interviews were also conducted with several relevant informants who have something to do with this research.

Result and Discussion

1. Overview of the Granting of Building Use Rights

In Article 35 paragraph (1) of the UUPA it is explained that the Right to Build (HGB) is the right to construct and own buildings on land that is not their own with a maximum period of 30 years. Unlike the Cultivation Rights (HGU), the use of land with HGB is not for agriculture, fishery or animal husbandry, but for buildings. In addition, HGB does not require that land is directly controlled by the state, as is the case with HGU. Therefore, both state land and land owned by individuals or legal entities can be granted HGB on it.

The occurrence of HGB on land directly controlled by the state (state land) is due to the government's stipulation.¹⁰ Whereas HGB on land owned by individuals or legal entities occurs because of an authentic agreement between the land owner and the party who will obtain the HGB. Besides that, HGB can also occur due to the conversion of old rights according to the UUPA, such as:¹¹

1. Eigendom rights belong to Indonesian citizens, but before March 24, 1961 they could not prove their citizenship at the Land Registration Office. The HGB has a term of 20 years commencing September 24, 1960 (Article I paragraph (1) Conversion Provisions, Article 4 PMA No. 2 of 1960).
2. Eigendom rights belong to social religious bodies that have been designated as entities that may own land with ownership rights. If the land is not used for purposes not directly related to religious and social businesses, and also if the land is used for purposes directly related to religious and social businesses but the agency concerned does not request conversion within the

⁸ Mardalis, *Metode Penelitian (Suatu Pendekatan Proposal)*, Jakarta: Bumi Aksara, 2019, hlm. 24.

⁹ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimeri*, Bogor: Ghalia Indonesia, 2018, hlm. 9.

¹⁰ Pasal 37 UUPA.

¹¹ Effendi Perangin, *Op. Cit.*, hlm. 279-280.

time specified in the Decree of the Minister of Home Affairs/Director Agrarian General. The HGB has a term of up to September 24, 1980.

3. The right of eigendom belongs to a party that does not meet the requirements as a subject of property rights (Article 1 paragraph (3) of the Conversion Terms). The HGB lasted until September 24, 1980.
4. Property rights (adat) and other similar rights as referred to in Article II of the Conversion Terms, if the land is building land and the person who owns it does not meet the requirements as a subject of ownership rights (Article II paragraph (2) of the Conversion Provisions) . HGB originating from the conversion of these rights by Article 14 paragraph (4), 19 paragraph (2) and Article 22 paragraph (2) PMA No. 2 of 1960 confirmed a period of 20 years from September 24, 1960.
5. Erfpacht rights for housing and opstal rights which were still valid on September 24, 1960. The HGB derived from these rights lasts for the remaining term of the converted erfpacht and opstal rights, but a maximum of 20 years (Article V of Conversion Terms).

Even though HGB is intended only for constructing buildings, it does not mean that HGB owners are not allowed to plant something, raise livestock or have ponds for raising fish on their HGB land. This is still permissible, the important thing is that the main purpose of using the land is to construct buildings.¹²

In connection with the occurrence of HGB, AP Parlindungan¹³ describes the reasons for the rights or occurrence of HGB as follows:

1. Based on a government decision to grant state land rights as specified in the PMNA/Ka. BPN No. 3 of 1999 and PP No. 18 of 2021;
2. Based on a government decision to grant management rights to land as specified in PMNA/Ka.BPN No. 3 of 1999 and PP No. 18 of 2021;
3. Conversion of land rights that were previously subject to customary law;
4. Conversion of land rights that were previously subject to western law;
5. Based on an agreement through a PPAT deed between the holder of a property right and a person to incur HGB.

The characteristics of HGB are as follows:¹⁴

1. Is a land right that must be registered (Article 38 UUPA, Article 39 PP No. 18 of 2021, Article 9 PP No. 24 of 1997);
2. Can be transferred to the heirs of the right holder (Article 35 paragraph (3) UUPA, Article 44 PP No. 18 of 2021);
3. It is a limited term land right (Article 35 paragraph (1) and (2) UUPA, Articles 25 to 29 PP No. 40 of 1996);
4. Can be used as collateral for a debt burdened with mortgage rights (Article 39 UUPA, Article 45 PP No. 18 of 2021, Article 4 of Law No. 4 of 1996);
5. It can be released by the right holder, until the land becomes state land (Article 40 UUPA, Article 45 PP No. 18 of 2021, Articles 2 and 3 of Perpres No. 36 of 2005).
6. Can be transferred to other parties, namely sold, exchanged for other objects, included in the capital and donated (Article 35 paragraph (3) UUPA, Article 45 PP No. 18 of 2021).

¹² *Ibid.*, hlm. 275.

¹³ AP. Parlindungan, *Komentar Atas ..., Op. Cit.*, hlm. 184-185.

¹⁴ Eddy Ruchyat, *Politik Pertanahan..., Op. Cit.*, hlm. 59.

Furthermore, in Article 43 PP No. 18 of 2021 it is confirmed that holders of building use rights are prohibited from:

1. Confine or close yards or other plots of land from public traffic, public access, and/or waterways. This is prohibited because land rights have a social function.
2. Damage to natural resources and the sustainability of environmental capabilities.
3. Abandon their land, because abandoning land can result in the elimination of land rights.¹⁵
4. Constructing permanent buildings that reduce the conservation function of the embankment, the conservation function of the border, or other conservation functions, in the event that in the area of the right to use the building there is a boundary for a body of water or other conservation functions. This is prohibited because it can interfere with conservation.¹⁶

According to Article 46 paragraph (1) PP No. 40 of 1996, HGB was deleted because:

1. Expiration of the period as stipulated in the granting decision or its extension or in the granting agreement.
2. Canceled by the authorized official, holder of Management Right or holder of Property Right before the expiry of the period, because:
 - a. The rights holder's obligations are not fulfilled and/or the provisions referred to in Article 30, Article 31 and Article 32 are violated.
 - b. Non-fulfillment of the conditions or obligations contained in the agreement on the granting of building use rights between the holders of building use rights and holders of property rights or land use agreements with management rights.
 - c. Court decisions that have permanent legal force.
3. Changed the right to other land rights.
4. Released voluntarily by the rights holder before the expiry of the period.
5. Released for public interest.
6. Jepealed by law.
7. Designated as abandoned land.
8. Designated as destroyed land.
9. The expiration of the agreement on the granting of rights or land use agreements for building use rights over property rights or management rights; and/or
10. The right holder no longer fulfills the requirements as the subject of the right.

As previously stated, HGB is granted for a maximum period of 30 years and can be extended for a maximum period of 20 years. After the HGB period and its extension have ended, the former right holders can be given renewal of HGB on the same land. Thus after the expiration of the HGB is not renewed, the HGB will be deleted. Likewise, if the HGB has been extended and the extension period has expired, while the HGB is not renewed, the HGB will be deleted.

The requirements for HGB holders as referred to in Article 34 PP No. 18 of 2021, namely:

- a. Indonesian citizens;
- b. A legal entity established according to Indonesian law and domiciled in Indonesia.

¹⁵ Suhaimi, Herawati, Mujibussalim, Penertiban Terhadap Hak Milik Atas Tanah Yang Terindikasi Terlantar Di Kota Banda Aceh, *Syiah Kuala Law Journal*, Vol. 1(1) April 2017, pp. 287-300, <https://jurnal.usk.ac.id/SKLJ/article/download/12301/9538>.

¹⁶ Penjelasan Pasal 43 PP No. 18 Tahun 2021.

Thus if the HGB holder is no longer an Indonesian citizen, or the legal entity is no longer domiciled in Indonesia, the HGB will be deleted, if within 1 (one) year it is not transferred to another party that fulfills the requirements (Article 34 PP No. 18 Year 2021).

2. Judge's Considerations in Rejecting the Extension of Building Use Rights on Management Rights

Analysis of the Court's decision regarding the case between Herman Suryanto and the Provincial Government of South Sulawesi cq. Director of the South Sulawesi Regional Company at the Court's Decision at the Cassation Level with Decision Number. 1343 K/Pdt/2021 dated 5 May 2021 that the object of the dispute is SHGB No. 172 Pisang Selatan, measurement letter/situation picture No. 66/2001, area of 92 m² (ninety two square meters) and SHGB No. 213 Pisang Selatan, measurement letter/situation picture No. 5727/1991, area 122 m² (one hundred and twenty two square meters) both located on Jl. Sungai Saddang Ruko Latanete Plaza Blok C.No.1 & 2 Makassar where the HGB stands on the Management Right of the Regional Government of South Sulawesi Province in casu South Sulawesi Regional Company on behalf of the Plaintiff which was legally obtained in 2008 which is the expiration date of the HGB Certificate for respectively on September 5, 2011.

Whereas after the expiry of the Plaintiff's HGB period, the Plaintiff again submitted an application for an extension of the period in accordance with the procedures of the owner of land and building rights, namely the South Sulawesi Regional Government through the South Sulawesi Regional Company, and the process of requesting an extension of the period is at the payment stage to the Sulawesi Regional Company. Selatan who is the Defendant in order to be able to carry out the extension and finally the Plaintiff obtained the Approval and Statement regarding the HGB Extension of the Latanete Ruko Complex by the Director of the South Sulawesi Regional Company as the Defendant.

Then when the Plaintiff made a request for an extension of the time period related to the HGB certificate for the shophouse building to the Makassar Regency Land Office, to the knowledge of the Plaintiff there had been a change in management at the South Sulawesi Regional Company Office/Defendant and a new management policy for the new policy, the Defendant made a request for blocking of the application for an extension of the Plaintiff's HGB Certificate to the Land Office of Makassar Regency so that the Plaintiff feels very disadvantaged about this.

There is a letter of vacancy order filed by the defendant against the plaintiff which is also unfounded because it can harm the plaintiff materially, including the letter, it is suspected that it has not received permission from the South Sulawesi Provincial Government as the government agency overseeing the defendant and the defendant as a legal entity under the executive/government agency. it is suspected that the evacuation/ordering plan has not yet received approval from the legislature, in this case the South Sulawesi Regional People's Representative Council.

As for a brief description of these reasons, the Plaintiff filed a lawsuit at the Makassar District Court and not at the State Administrative Court because, according to the Plaintiff, the position/legal standing of ownership of 2 (two) units of land and shophouses on it as HGB No. 172 Pisang Selatan, measurement letter/situation picture No. 66/2001, area of 92 m² (ninety two square meters) and SHGB No. 213 Pisang Selatan, measurement letter/situation picture No. 5727/1991, area of 122 m² (one hundred and twenty two square meters) both located on Jl. Sungai Saddang Ruko Latanete Plaza Block C.No.1 & 2 Makassar is currently under the control of the Plaintiff due to a legal basis and/or through an appropriate process, therefore the plaintiff believes that legally the position of power (bezit) is protected by law in accordance with Article 529 and Article 533 of the Civil Code for the shophouse. The explanation in the two articles explains that bezit is the position of controlling or enjoying an item that is in the power of a person personally or through another person, as if the item were his own.

Holders of bezit must always be considered to have good intentions, whoever accuses them of bad intentions must prove it. The bezit holder must always be deemed to have held it for himself, as long as it is not proven that he held it for someone else and the bezit holder has started to hold it for another person, as long as it is not proven otherwise, he must always be considered to continue on the basis of the same rights. In accordance with the provisions of Article 534 and Article 535 of the Civil Code, although the object is currently in the process of being blocked by the Makassar Regency BPN including a letter of warning from the Defendant, the legal position of the Plaintiff in terms of control over the disputed object is proper and legal. In addition, according to Herman Suryanto (Plaintiff) by completing the requirements and paying a sum of money to the right holder to extend the HGB for the shophouse building on the Management Rights belonging to the Makassar Provincial Government through the South Sulawesi Regional Company (Defendant) blocking the application, the Plaintiff feels that he has been harmed resulting in unlawful acts (PMH) and losses that have been experienced.

The defendant filed a counterclaim/reconvention with the argument stating that the 102 units of shop-house land and buildings were legally owned by the Regional Government of South Sulawesi Province based on the deed of agreement Number 76 dated August 15, 1990. Then, HGB Certificate Number 172 and HGB certificate Number 213, Ujung Padang sub-district has expired on September 5, 2011, then the Plaintiff does not have the right to the land and shop building. In addition, by occupying and utilizing the shophouse building, the Defendant committed an unlawful act which in this case caused a loss to the South Sulawesi Regional Company of Rp. 3,600,000,000 and requested payment of compensation to the Plaintiff. The dispute between Herman Suryanto (Plaintiff) and the Director of the South Sulawesi Regional Company (Defendant) has been tried at the first level, appeal and cassation.

The judge's consideration stated that therefore the legal status of the a quo land object had returned and became the right and fully owned by the Regional Government of South Sulawesi Province in casu the Regional Company of South Sulawesi. As well as preventing the extension of the SHGB by the Defendant against the object of the case is not an unlawful act but is an implementation of the provisions regarding the requirements for extending the HGB as specified in Permenag No. 9 of 1999.

The considerations of the panel of judges who have tried the case are:

1) The judge's consideration regarding the position status of Herman Suryanto (Cassation Petitioner) regarding the object of the land and shop building has been nullified or deleted because the validity period of the Building Use Rights certificate has ended.

Therefore, it must first be understood regarding the validity period of the HGB certificate above the Management Right. The explanation according to Irawan Soerodjo in his book explains that the period that can be given to HGB holders on HPL land is a maximum of 30 years and can be extended for 20 years. In addition, if this period of time has expired, the HGB holder can renew the rights to the land.¹⁷

Article 35 Paragraph (1) letter a PP No. 40 of 1996 explains the write-off of HGB as follows: "The expiration of the period as stipulated in the granting decision or its extension or in the granting agreement". In this decision the judge considered that therefore the legal status of the a quo land object had returned and became the full right and property of the South Sulawesi Provincial Government in casu the South Sulawesi Regional Company. Explanation in the regulations regarding the period of HGB on HPL land that has expired, then the HGB will be deleted and the land will become the property of the Management Right holder. This is explained in Article 36 paragraph (2) PP No. 40 of 1996. So, if the land in question has ended, the control over the object will return to the HPL holder. There is an

¹⁷ Fhamila Mur Ambika, Pelaksanaan Perpanjangan Hak Guna Bangunan (HGB) Yang Telah Habis Masa Berlakunya Berdasarkan Peraturan Pemerintah Nomor 40 Tahun 1996 Di Kabupaten Sleman, *Jurnal Hukum Atma Jaya*, Vol. 1 No. 1, 2017.

explanation regarding the reasons for the abolition of HGB which has been explained in Article 40 of the UUPA is:

- a. The deadline has expired;
- b. Dismissed before the end of the period due to a condition not being met;
- c. Released by the rights holder before the expiration date
- d. Revoked in the public interest;
- e. Abandoned;
- f. The land is gone.

In this regard, the HGB certificate for the shop building object was legally obtained by Herman Suryanto (Cassation Petitioner) in 2008 and then the expiration date of Herman Suryanto's HGB Certificate (Cassation Petitioner) was in 2011, so until this decision is enacted, the certificate The HGB belonging to Herman Suryanto (Petitioner for Cassation) is proven to have expired, in addition to this because the period of the HGB Certificate over the Management Right has ended, then according to the explanation in PP No.40 of 1996 what will happen if the land right is not extended has returned to the owner of the HPL, in this case, is the South Sulawesi Provincial Government through the Directors of the South Sulawesi Regional Company (Defendant). In this case Herman Suryanto (Petitioner for Cassation) has not met the requirements as a HGB holder for the shop building which is the object of the dispute located in the Latanete Plaza complex. Because the validity period of his HGB certificate has expired, the status of the land rights will return to the HPL owner. In this case the legal status of the a quo land object case has returned and is fully owned and owned, namely the South Sulawesi Provincial Government in casu the South Sulawesi Regional Company.

The judge's considerations as mentioned above are in accordance with what is explained in PP No. 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Rights as well as the thoughts of experts who explain the expiration of the HGB period above the HPL.¹⁸

2) The judge's consideration regarding preventing the extension of the HGB for the object of the case is not an unlawful act but rather the fulfillment of the requirements in carrying out a refusal as stipulated in the Minister of Agrarian Affairs Regulation No. 9 of 1999.

The regulations governing the extension of the HGB period on HPL land are in Article 26 paragraph 2 of PP No. 40 of 1996 which explains that the extension of the period requested by the HGB holder can be extended after obtaining approval from the HPL holder. In this case, if the HGB holder has fulfilled the requirements stipulated by law, then the HPL holder can grant the request for an extension of the HGB period over the management rights, then an SPPT will be made. According to A.P. Parlindungan in his book explains the steps in applying for an extension of the SHGB over the HPL if the land has been approved, then a Land Use Agreement (SPPT) is given by the HPL holder, the holder of the HGB certificate can apply for an extension of the term, then the applicant makes a payment of money to the HPL holder, the money is used as income into the treasury of the HPL holder, then the applicant will apply for an extension to the Land Office of the area where the land is located to issue a Decree on the extension of the rights and issue a Certificate of Building Use Rights for the object.¹⁹

When applying for an extension of the HGB period, sometimes the applicant, in extending the period, receives a rejection from the holder of the Management Right to the application for an extension of the proposed HGB certificate. Meanwhile, there is an explanation regarding the refusal to extend the HGB period according to the elucidation of Article 46 Paragraph 2 of the Minister of Religion No. 9 of 1999 stated that in relation to the stipulation regarding the refusal of the extension of the HGB term, it

¹⁸ *Ibid.*

¹⁹ A.P. Parlindungan, *Pendaftaran Tanah Di Indonesia (berdasarkan PP No. 24 Tahun 1997) dilengkapi dengan Peraturan Jabatan Pejabat Pembuat Akta Tanah (PP No. 37 Tahun 1998)*, Bandung: Mandar Maju, 2019, hlm. 35.

stated that the former right-holders were required to take care of the land before the next land user arrived and were ordered to hand over the land to the next right-holder or land user.

According to the Supreme Court Number 1343/K/Pdt/2021, one of the reasons for blocking the application for an extension of Herman Suryanto's HGB Certificate (Cassation Petitioner) was the actions of Herman Suryanto (Cassation Petitioner) who still occupies the object of the case while the time period for the object of the case has been proven ended in 2011, the Cassation Appellant as the holder of the HGB Certificate for shophouses standing on HPL land owned by the South Sulawesi Provincial Government through the South Sulawesi Regional Company (Respondent for Cassation) which had expired did not hand over the disputed object to the HPL holder of the land. In addition, Herman Suryanto (the right holder) has not yet received an approval letter from the management right holder, because the land belongs to the South Sulawesi provincial government, in this case the governor.

There are requirements that must be met in extending the HGB Certificate as explained in Article 26 Paragraph (1) PP No. 40 of 1996, namely:

1. The land is being used properly according to the condition, nature and purpose of granting the said right.
2. The requirements for the granting of rights have been fulfilled properly by the holder.
3. The right holder still fulfills the requirements as a right holder, namely an Indonesian citizen or a legal entity established under Indonesian law and domiciled in Indonesia;
4. The land is still in accordance with the relevant RTRW;
5. HGB originating from land with management rights, requires approval from the holder of management rights.

The problem experienced by Herman Suryanto (Petitioner for cassation) made a request for an extension of the period of 2 units of HGB-certified shophouses on HPL land by fulfilling the conditions specified by law. However, when Herman Suryanto (applicant for cassation) was going to apply for an extension at the Makassar Regency Land Office, the Directors of the South Sulawesi Regional Company (respondent to cassation) requested that the land office block the request. An application for an extension of HGB that is used for purposes other than for residential buildings is granted by the authorized official if the requirements set out in Article 44 paragraph (2) of the Minister of Religious Affairs No. 9 of 1999, as follows:

- a. The land in question is used in accordance with the RTRW that was in effect at the time of the application for extension, or is still being used in accordance with the intent of granting the right or the RTRW that was in effect before the time of the application for extension, but the right holder is able to adjust the use of the land with the applicable Spatial Plan.
In this case, the land is still being used and an HGB-certified shophouse has been built on the HPL land owned by the South Sulawesi Provincial Government through the South Sulawesi Regional Company in accordance with the RTRW that was in effect at the time of extending the HGB period by Herman Suryanto (Cassation Petitioner).
- b. Application for extension, or still being used in accordance with the intent of granting the said right or the RTRW that was in effect before the time of the application for extension, but the right holder is able to adjust the use of the land with the applicable RTRW.
Herman suryanto uses the object as a place to live and as a character. The land is used and a shop building has been built on the HPL land owned by the South Sulawesi Provincial Government through the South Sulawesi Regional Company in accordance with the RTRW.
- c. Requirements in the granting of rights are still fulfilled properly by the rights holders.

There are conditions that must be fulfilled by the right holder to be able to extend or renew the HGB as explained in Article 26 Paragraph (1) PP No. 40 of 1996. Based on the argument of the lawsuit filed by Herman Suryanto (Applicant for Cassation) that approval and statement have been obtained

extension of the Building Use Right for the Latanete Ruko Complex, which was issued by the directors of the South Sulawesi Regional Company on 20 September 2005. The Cassation Respondent/Defendant in his exception stated that, "The Letter of Approval and Extension of the Latanete Ruko Complex, which was issued at that time was defective. law and cannot be used because it was issued when it had not been issued and or there was no Principle Licensing Approval from the Governor."

In connection with the lawsuit. The Board of Directors of the South Sulawesi Regional Company (Respondent for Cassation) made a request for blocking to the Makassar Regency Land Office regarding the application for an extension of Herman Suryanto's HGB Certificate (Petitioner for Cassation). Described in Article 6 Paragraph 3 of Regulation of the Head of the National Land Agency Number 1 of 2010, if the requirements in the form of documents for extending Building Use Rights have not been fulfilled the Land Office may reject the application. The judge's consideration should be in responding to the problem of preventing the extension of the HGB period, whether in extending the period there are conditions that have been met or not by the holder of the Building Use Rights, in order to provide a joint solution to the problem being debated by the Cassation Petitioner and the Cassation Respondent.

Conclusion

According to the Supreme Court Number 1343/K/Pdt/2021, one of the reasons for blocking the application for an extension of Herman Suryanto's HGB Certificate (Cassation Petitioner) was the actions of Herman Suryanto (Cassation Petitioner) who still occupies the object of the case while the time period for the object of the case has been proven ended in 2011, the Cassation Appellant as the holder of the HGB Certificate for shophouses standing on HPL land owned by the South Sulawesi Provincial Government through the South Sulawesi Regional Company (Respondent for Cassation) which had expired did not hand over the disputed object to the HPL holder of the land. In addition, Herman Suryanto (the right holder) has not yet received an approval letter from the management right holder, because the land belongs to the South Sulawesi provincial government, in this case the governor.

Herman Suryanto (Petitioner for Cassation) has not fulfilled the requirements as HGB holder for the shop building which is the object of the dispute located in the Latanete Plaza complex. Because the validity period of his HGB certificate has expired, the status of the land rights will return to the HPL owner. In this case the legal status of the a quo land object case has returned and is fully owned and owned, namely the South Sulawesi Provincial Government in casu the South Sulawesi Regional Company. The judge's considerations as mentioned above are in accordance with what is explained in PP No. 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Rights as well as the thoughts of experts who explain the expiration of the HGB period over the HPL.

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