

# Legal Implications of the Expiry of the Term of Building Use Rights Certificates in Indonesia Which are the Object of Collateral Rights at the Banks.

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## ABSTRACT

The purpose of this study is to examine the legal implications of expired HGB certificates and to analyze the legal consequences for the parties related to expired HGB certificates that are used as collateral in banking. The research method used is the normative legal research method with a legislative approach and a conceptual approach. The type of data used is secondary data or literature study. Secondary data is library data sourced from primary, secondary, and tertiary legal materials. The results of the study indicate that the expiration of the HGB validity period has a significant legal impact, both for the rights holder and for the original landowner. To avoid the loss of rights to land and buildings standing on it, HGB holders must monitor the validity period of their rights and submit an extension or renewal on time. If the specified time expires, the agreement automatically terminates. Registration of community land rights is very important as a requirement to obtain a certificate as proof of ownership of rights, and can provide legal certainty and avoid conflicts or disputes that occur.

**Keywords:** Legal Implications, Building Use Rights Certificate, Mortgage Rights Object.

## INTRODUCTION

Land rights can be owned by people with rights granted by the Basic Agrarian Law (UUPA) to be used or utilized according to its designation (Sihombing, 2017, p. 18). Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) provides various kinds of land rights. One of the land rights in question is the Building Use Rights (HGB) which can be transferred or granted. The transfer of Building Use Rights can occur due to legal acts and legal events. The transfer of HGB due to legal acts means intentionally transferring rights to another party. While the transfer of HGB due to legal events occurs when the HGB holder dies, it will be transferred to the heirs of the rights holder (Sihombing, 2017).

Registration of the transfer of Building Use Rights due to inheritance is necessary to provide legal protection to the heirs and ensure orderly administration of land registration, ensuring that the data stored and presented in the land book reflects the current situation. Registration of rights due to inheritance is mandatory, but the consequences if the obligation is not carried out are not stated (Lubis & Lubis, 2012). Based on the Basic Agrarian Law No. 5 of 1960, basically Building Use Rights whose rights have expired cannot be transferred by means of sale and purchase before being extended or renewed. Therefore, based on the background that has been presented, there are several main problems in the study of the article, namely: First, what are the legal implications of a building use rights certificate that has expired? Second, what are the legal consequences for the parties to a building use rights certificate that has expired and is used as collateral at the bank?

## Research methods

The type of research used in writing this article is normative legal research. Normative legal research is also called doctrinal legal research. In this type of legal research, examining laws and regulations (law in books) or laws are conceptualized as rules or norms that become benchmarks for human behavior that is considered appropriate (Amiruddin & Asikin, 2018). According to Muhaimin in his book, namely "Legal Research Methods", normative legal research is usually only in the form of document studies, namely using legal material

sources in the form of laws and regulations, court decisions/regulations, contracts/agreements/contracts, legal theories, and opinions of scholars (Muhamin, 2020).

**Method a p p r o a c h** Which used in study This is approach legislation, namely with learn regulation related legislation with Building Use Rights are regulated in Article 35 paragraph (1) of the UUPA. The second approach is approach conceptual namely learn views and doctrines that develop in legal science that are relevant to the problems being studied, it is hoped that researchers will find ideas that give birth to understandings, concepts, and principles that are relevant to the law with the problems being faced. The legal material collection technique used It is a technique that studies libraries (Library Research) and also through the help of electronic media, namely the internet. To obtain legal materials from source, author combine, collect, and study books and materials related to the research title. All The data or legal materials that have been collected are then processed and analyzed using qualitative analysis methods, namely by using the method of interpretation (interpretation of the legal materials that have been collected). processed. Withdrawal conclusion use logic law deductive, namely draw conclusions from a general problem to the concrete problem being faced.

## DISCUSSION

### Legal Implications of Expired Building Use Rights Certificates

In order to provide legal certainty and legal protection, land rights holders are given certificates as proof of land rights. UUPA does not mention the name of the registered land rights certificate. Only in Article 13 paragraph 3 of Government Regulation Number 10 of 1961 is it stated that the registered land rights certificate is called a certificate, namely a photocopy of the land book and measurement letter after being sewn with a cover paper whose form is determined by the Minister of Agrarian Affairs. In Article 1 number 20 of Government Regulation Number 24 of 1997 it has been stated that a certificate is a letter of proof of rights as referred to in Article 19 paragraph (2) letter c of UUPA for land rights, management rights, waqf land, ownership rights to apartment units, and mortgage rights which have each been recorded in the relevant land book. Thus, a certificate is a valid letter of proof of rights as strong evidence (Sutedi, 2012). If seen from the definition of the certificate itself, then a certificate is proof of land rights issued by the government in the context of organizing land registration according to the provisions of laws and regulations. Land title certificate is evidence stating that a person or legal entity has the right to a certain plot of land. Land title certificate is evidence stating that a person or legal entity has the right to a certain plot of land. In reality, the fact that a person or legal entity physically controls and uses the land in question does not necessarily prove that he or she has the right to the land in question. The existence of a sale and purchase letter does not necessarily prove that the buyer has the right to the land he or she purchased. In addition, there is no valid evidence stating that the seller is indeed entitled to the land he or she sold. In addition to the definition of a certificate legally granted by law, there is also a definition of a certificate put forward by experts. According to K. Wantjik Saleh, a certificate is a copy of a land book and its measurement letter after being bound with a cover paper whose form is determined by the Minister (Fitriyani & Nurhayati, 2014).

From the above definition, the author is of the opinion that a certificate is a binding and valid proof of rights issued by the Land Office, which functions as a strong means of proof regarding the physical data and legal data contained therein, where the data is below the data in the relevant measurement letter and land book. From the description above, the certificate is a strong means of proof, meaning that as long as it cannot be proven otherwise, the physical data and legal data contained therein must be accepted as correct data. Of course, the physical data and legal data contained in the certificate book must be below the data contained in the relevant land book and measurement letter, because the data is taken from the land book and measurement letter. Thus, the certificate as an authentic deed has perfect evidentiary power, in the sense that the judge must be bound by the data contained in the certificate as long as it cannot be proven otherwise by another party. This is related to the publication system adopted by Indonesian land law, both Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997, namely a negative publication system that contains positive elements because it will produce valid evidence of rights (certificates) as strong evidence. So there is no positive publication system, because according to the positive publication system, what is stated in the land registration book and the evidence of rights issued is absolute evidence. Third parties (who have good intentions) who act

on the basis of such evidence do not receive protection, even though it turns out that the information stated therein is not true.

The purpose of issuing a certificate is for the benefit of the rights holder based on physical data and legal data as registered in the land book. The existence of a certificate can be authentic evidence of the certificate holder, so that if another party considers that the land is his, the certificate holder has strong evidence that legally he is the owner of the land (Sembiring, 2010). The function of a land title certificate (ownership rights) according to UUPA is strong evidence for the owner, meaning that as long as it cannot be proven otherwise, the physical data and legal data listed therein must be accepted as correct data. The certificate as strong evidence, not as absolute evidence, is related to the issuance system adopted by Indonesian land law, both Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997, namely a negative issuance system that contains positive elements because it will produce valid proof of rights (certificates) as strong evidence.

### **Overview of Expired Building Use Rights Certificates**

In the current era of globalization and economic liberalization, the role of land for various purposes will increase, both as a place to live and for business activities. In relation to this, the need for support in the form of legal protection in the land sector will also increase. Provision of legal protection in the land sector requires the availability of written, complete, and clear legal instruments and is implemented consistently in accordance with the spirit and content of its provisions. In addition, to deal with various real cases, it is also necessary to organize land registration activities that allow land rights holders to easily prove their rights to the land they control, and for interested parties, such as prospective buyers and prospective creditors, to obtain the necessary information regarding the land that is the object of the legal act to be carried out, as well as for the government in implementing land policies.

Regarding this, Law Number 5 of 1960 concerning Agrarian Principles, in Article 19, orders the implementation of land registration in order to guarantee the intended legal protection. The implementation of land registration is then regulated in Government Regulation Number 10 of 1961 concerning Land Registration. Regarding the purpose of land registration as regulated in Article 3 of Government Regulation Number 24 of 1997, it is stated that with the issuance of a land title certificate, the owner obtains legal protection, namely land registration ensures that land rights are clear and officially registered, thus providing legal protection for land owners from disputes or other claims. The land office as an agency at the forefront of the land world, must properly maintain all information needed for a plot of land. This information is important to be able to decide something that is needed regarding the condition of the land, both physical data and legal data, including for apartment units, this information is open to the public, meaning that all information needed can be provided for an existing plot of land/building, so that orderly land administration is needed that can be used as something reasonable.

### **Legal Consequences of the Parties Concerning Building Use Rights Certificates That Have Expired and Become Collateral at the Bank**

The state as the holder of the highest power over land, means giving the right to control to the state and giving the authority to regulate and organize the allocation, use, supply, and maintenance of the earth, water, and space and determine and regulate the legal relations between people and the earth, water, and space; determine and regulate the legal relations between people and legal acts concerning the earth, water, and space as referred to in Article 2 of Law Number 5 of 1960 concerning agrarian affairs. The state in its relationship with the earth, water, and space, including the natural resources contained therein, as an organization of power for all the people, the state acts in its position as the Ruler and Official of the Indonesian Nation (Chomzah, 2002). Based on the right to control held by the state, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and legal entities. Land rights provide the authority to utilize the land in question, as well as the earth, water and space above it, only to the extent necessary for interests directly related to the use of the land within the limits according to this Law and other higher laws and regulations according to the provisions of Article 4 of the UUPA.

Building Use Rights (HGB) as referred to in Articles 35 to 39 of the Basic Agrarian Law. Article 35 of the UUPA stipulates that HGB according to Article 35 paragraph (1) of Law No. 5 of 1960 is "the right to build and

own buildings on land that is not one's own, for a maximum period of 30 years". According to Ali Achmad Chomzah, HGB is the right to build and own buildings on land that is not one's own, for a maximum period of 30 years, can be extended for a maximum period of 20 years, can be transferred and assigned to another party, and can be used as collateral for debt with a mortgage (Santoso, 2006).

Procedures for Granting Building Use Rights are regulated in Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2011 Concerning Delegation of Authority for Granting Land Rights and Certain Land Registration Activities (Regulation of the Head of BPN No. 1 of 2012). Delegation of authority for granting land rights to BPN, Head of the Regional Office of the National Land Agency issues a decision on granting HGB, Head of the Land Office issues a decision on granting HGB for individuals on land with an area of no more than 1,000 M<sup>2</sup> (one thousand square meters). Granting HGB for legal entities on land with an area of no more than 5,000 M<sup>2</sup> (five thousand square meters). All granting of HGB for land Management Rights are regulated in Article 4 of Regulation of the Head of BPN Number 1 of 2012. HGB for individuals on land with an area of more than 1,000 M<sup>2</sup> (one thousand square meters) and no more than 5,000 M<sup>2</sup> (five thousand square meters); The granting of HGB for legal entities for land with an area of more than 5,000 M<sup>2</sup> (five thousand square meters) and a maximum of 75,000 M<sup>2</sup> (seventy five thousand square meters) is regulated in Article 8 of the Regulation of the Head of the National Land Agency Number 1 of 2012.

Regarding the granting of Building Use Rights and the procedures for granting it are regulated in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning the Procedures for Granting and Cancelling Rights to State Land and Management Rights. HGB can be granted to Indonesian Citizens, Legal Entities established under Indonesian law and domiciled in Indonesia as referred to in Article 32 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999. Applications for HGB are submitted in writing. Applications for HGB contain information regarding the applicant: If an individual: name, age, nationality, place of residence and occupation as well as information regarding wife/husband and children who are still dependent on him/her; If a legal entity: name, place of domicile, deeds or regulations of establishment in accordance with the provisions of applicable laws and regulations. Information regarding land including legal data and physical data: Basis of ownership or basis of rights can be in the form of certificates, girik, land plot letters, evidence of release of rights and determination of rights to land and houses and/or land that has been purchased from the government, court decisions, deeds of Land Deed Making Officers, deeds of release of rights, and other evidence of land acquisition; Location, boundaries, and area (if there is a Measurement Letter or Condition Drawing, include the date and number); Type of land (agricultural, non-agricultural); Land use plan; Land status (titled land or state land); Others: Information regarding the number of plots, area, and status of land owned by the applicant, including the requested plot of land; Other information deemed necessary as referred to in Article 33 of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999.

Application for Building Use Rights as mentioned above if not for investment purposes, several things must be considered, if the applicant is an individual, several requirements must be met such as a photocopy of personal identification, proof of citizenship of the Republic of Indonesia; If a legal entity: a photocopy of the deed of establishment and a photocopy of the letter of appointment based on the provisions of applicable laws and regulations. Regarding land status, the data required is legal data: land certificate, girik, land plot letter, proof of release of rights and determination of rights to land and houses and/or land that has been purchased from the Government, Land Deed Making Officer, deed of release of rights, court decisions, and other evidence of land acquisition; Physical data: measurement letter, situational drawing and Building Construction Permit, if any. other letters deemed necessary. The applicant's statement letter regarding the number of plots, area, and status of land that the applicant has owned, including the land plot being requested.

Then if the application is for investment purposes, the required requirements are a photocopy of the application identification or company deed of establishment that has been approved and registered as a legal entity; Short-term and long-term land ownership plans. Location permit or land use designation permit or land reservation permit based on the Regional Spatial Plan; Proof of ownership and/or proof of land acquisition in the form of forest area release from the authorized agency, deed of release of former customary land, or other proof of land acquisition; Domestic Investment Approval Letter (PMDN) or Foreign Investment (PMA) or Presidential



approval letter for certain Foreign Investment or principle approval letter from the Technical Department for non-Domestic Investment or Foreign Investment; Measurement Letter if any as referred to in Article 34 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999.

Procedures for Granting Building Use Rights (HGB). The application for HGB is submitted to the Minister through the Head of the Land Office whose work area includes the location of the land in question as referred to in Article 35 of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999. After the applicant's files are received, the Head of the Land Office will conduct an examination and research on the completeness of the legal data and physical data, recording on the form and notifying the receipt of the application files in accordance with the form. Furthermore, notifying the applicant to pay the application completion fee with details as referred to in the provisions of the applicable laws and regulations, as referred to in Article 36 of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999. The Head of the Land Office will conduct research on the completeness and accuracy of the legal data and physical data of the HGB application and examine the eligibility of the application to be granted or further processed as referred to in the provisions of the applicable laws and regulations. If the land requested does not yet have a measurement letter, the Head of the Land Office will instruct the Head of the Land Measurement and Registration Section to make a measurement letter or conduct a measurement. Furthermore, the Head of the Land Office orders: the Head of the Land Rights Section or an appointed official to examine applications for registered land rights, improvements, extensions, or renewals of land rights, and land whose legal data or physical data is sufficient to be decided as stated in the Land Examination Minutes (kojnstatering rapport), or the Land Research Team to examine applications for unregistered land rights as stated in the Minutes; or Land Examination Committee A to examine applications for land rights other than those examined as referred to above, which are stated in the Land Examination Minutes.

In the case of incomplete legal data and physical data, the Head of the Land Office will notify the applicant to complete it. In the case of the decision to grant HGB has been delegated to the Head of the Land Office as referred to above, after considering the opinion of the Head of the Land Rights Section or the appointed Official or the Land Research Team or Land Inspection Committee A as referred to above, the Head of the Land Office issues a decision to grant HGB for the land requested or a decision to reject accompanied by the reasons for rejection. Then the decision to grant HGB is not delegated to the Head of the Land Office as referred to above, the Head of the Land Office concerned submits the application file to the Head of the Regional Office accompanied by his opinion and considerations, based on Article 37 of the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 9 of 1999. To obtain proof of rights (Certificate) for HGB, the HGB must be registered at the Regency/Municipality Land Office no later than 3 months from the date of payment of income tax. If HGB is obtained from an extension of the term or renewal of its rights, then the application for extension of the term of HGB is submitted by the rights holder within 2 (two) years before the end of the term of the rights. After the term of HGB or its extension ends, the rights holder can be granted a renewal of HGB for the same land.

Application for extension of the term of Building Use Rights whose land is used for residential buildings is granted by an authorized official if the land is still used for residential buildings with the intention of granting the relevant rights or has been used by the rights holder for the purposes of the Regional Spatial Planning Plan of the relevant area. The definition of a house is a building that functions as a habitable place to live, a means of family development, a reflection of the dignity and honor of its occupants, and is an asset for its owner. The requirements for granting the rights are properly fulfilled by the rights holder. The rights holder continues to fulfill the requirements as a Building Use Rights holder. Application for extension of the term of HGB whose land is used for purposes other than residential buildings is granted by an authorized official if the land in question is used based on the Regional Spatial Planning Plan in effect at the time of the extension application, or is still used based on the intention of granting the rights or the Regional Spatial Planning Plan in effect before the extension application, but the rights holder can adjust the use of his land to the applicable Regional Spatial Planning Plan.

The requirements for granting rights are still fulfilled properly by the rights holder. The rights holder still fulfills the requirements as a HGB holder as referred to in Article 44 of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999. An application for an extension of the HGB period is granted by the

authorized official if the applicant has obtained approval for the extension of rights and the rights holder still fulfills the requirements as the holder of the rights concerned as referred to in Article 45 of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999. Applications for land rights must be accompanied by evidence. Regarding evidence of land rights for the conversion of old rights, this is contained in Article 24 of PP Number 24 of 1997 which is proven by evidence of ownership regarding the existence of such rights. Evidence of ownership consists of evidence of ownership in the name of the rights holder when the UUPA came into effect, and if the rights are then transferred, evidence of the subsequent transfer of rights to the rights holder when the rights are recorded.

Proof of ownership in the form of written evidence, witness statements and/or statements of the person concerned whose level of truth is determined by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, is considered sufficient to register rights, rights holders and the rights of other parties burdening them. If such evidence does not exist or is no longer available in full, rights registration can be carried out based on the fact of physical control of the land area in question for 20 (twenty) years or more consecutively by the applicant for registration and his predecessors, with the provision that such control is carried out in good faith and openly by the person concerned as the person entitled to the land, and is supported by statements from trustworthy persons, such control both before and at the time of the announcement is not disputed by the customary law community or the village/sub-district concerned or other parties. What is meant by written evidence is a grosse deed of ownership rights (eigendom) issued based on the Overschrijvings Ordonnantie (Staatsblad. 1834-27) which has been known that the relevant eigendom rights have changed function to ownership rights; or a grosse deed of ownership rights issued based on the Overschrijvings Ordonnantie (Staatsblad. 1834-27) since the UUPA came into effect until the date of land registration carried out according to Government Regulation Number 10 of 1961 in the relevant area. Such written evidence can be in the form of a certificate of proof of ownership rights issued based on the relevant Swapraja Regulation, or a certificate of proof of ownership rights issued based on the Regulation of the Minister of Agrarian Affairs Number 9 of 1959. It can also be in the form of a decision letter granting ownership rights from an authorized official, either before or since the UUPA came into effect, which is not accompanied by an obligation to register the rights granted, but all obligations mentioned therein have been fulfilled.

A deed of transfer of rights can also be used as evidence, either a letter of transfer of rights made privately and marked by witnesses by the Head of Customary Law/Head of Village/Kelurahan made before the enactment of this Government Regulation; or a deed of transfer of land rights made by a PPAT, whose land has not been recorded; or a deed of mortgage/mortgage deed made before or since the enactment of Government Regulation Number 28 of 1977. Written evidence in the form of auction minutes made by an authorized Auction Official, whose land has not been recorded, or a letter of appointment or purchase of a plot of land to replace land taken over by the Government or Regional Government. Other evidence in the form of a Land Tax/Landrente certificate, girik, pipil, gravel, and Indonesian Verponding before the enactment of Government Regulation Number 10 of 1961. A certificate of land history made by the Land and Building Tax Service Office, or other written evidence with any name as referred to in Article II, Article VI, and Article VII of the Provisions on Amendments to the UUPA. If the written evidence is incomplete or no longer exists, proof of ownership can be done with witness statements or statements from the person concerned, the truth of which can be trusted according to the opinion of the Adjudication Committee in systematic land registration or the Head of the Land Office in sporadic land registration. The witness in question is a person who is capable of providing information and knows about the ownership.

Building Use Rights can be used as collateral for debt by imposing Mortgage Rights (Article 39 UUPA juncto Article 33 Government Regulation Number 40 of 1996)(Santoso, 2017). The definition of Mortgage Rights is stated in Article 1 number 1 of Law Number 4 of 1996, namely the right to pledge land as referred to in Law Number 5 of 1960 concerning Agrarian Principles, as well as other objects that are inseparable from the land, for the purpose of paying off certain debts, which gives priority to certain creditors over other creditors.<sup>16</sup> Article 1 number 1 of Law Number 4 of 1996 states that Mortgage Rights are collateral rights to land as referred to in Law Number 5 of 1960. In the general explanation of Law Number 4 of 1996, it is emphasized that land rights that can be used as collateral for debt by imposing Mortgage Rights must meet two requirements, namely (Santoso, 2017):

The land rights in question must be registered based on applicable provisions;

The land rights in question, based on their characteristics, can be transferred. The two conditions above are cumulative, meaning that if one of the conditions is not met, then the land rights in question cannot be used as collateral for debts charged with Mortgage Rights. Of the various types of Land Rights that can be subject to Mortgage Rights, banks as creditors tend to choose land with Ownership Rights status as collateral for debt. This is because Ownership Rights are hereditary, strongest, and most complete Land Rights that can be owned by a person. Another option is Building Use Rights (HGB). Land Rights that are granted for a certain period of time, such as HGB, will expire after their validity period expires. HGB can be used as collateral for debt with Mortgage Rights, but these rights will expire when their validity period expires. In banking practice, it is possible that the validity period of HGB expires while the credit agreement is still ongoing and the debtor is in default. The subject of Mortgage Rights is an individual or legal entity that has the right to own, obtain, and exercise rights and obligations related to collateral rights imposed on Land Rights (Mortgage Rights). The provisions regarding the subject of the Mortgage Rights holder are regulated in Law Number 4 of 1996, specifically in Article 8 paragraph (1) and (2) which explains that "The party holding the Mortgage Rights can be an individual or a body that acts as a party that has debts or receivables, either to financial institutions such as banks, non-bank financial institutions, or other legal entities."

Based on Article 39 of the UUPA and Article 33 of PP No. 40 of 1996, "Indonesian citizens, Indonesian legal entities, foreign citizens, or foreign legal entities residing and conducting business in Indonesia may use mortgage rights as collateral for debt based on applicable provisions (Isnaini & Lubis, 2021). Article 1 paragraph 1 of Law No. 4 of 1996 defines Mortgage Rights as Collateral Rights on Land as regulated in Law No. 5 of 1960 concerning the UUPA, along with other goods that are inseparable from the land, to pay certain debts, which give priority to certain creditors compared to other creditors. In this context, the holder of the Mortgage Rights has a very crucial role in ensuring the security of debt transactions. With the existence of mortgage rights, creditors have a strong guarantee of debt repayment, because these rights provide a more prioritized position compared to other creditors. This not only provides legal protection for creditors but also ensures that the debt repayment process can run smoothly and safely.

The use of Land Rights as collateral for debt through Mortgage Rights also reflects the importance of legal certainty in financial and property transactions, thus providing a sense of security for all parties involved. According to a brief explanation of Law Number 4 of 1996, Land Rights can be used as collateral for debt subject to Mortgage Rights if they meet two provisions.

The Land Rights in question must be recorded in accordance with applicable provisions;

The Land Rights in question can be transferred according to their characteristics.

Land Rights must meet both of these requirements simultaneously, if one of the requirements is not met, then the Land Rights cannot be used as collateral for debt burdened with Mortgage Rights. The process of granting HGB Land Rights involves three main stages. First, a debt agreement is required. This is regulated in Article 10 of the Mortgage Law which states that "the granting of Land Rights must be preceded by a bond to provide Land Rights as collateral for the repayment of certain debts". This agreement must be stated in and become an inseparable part of the relevant debt agreement. The second stage is the preparation of a Deed of Grant of Land Rights. This stage is a step to provide collateral to creditors to pay off the debtor's debt. Here, the creditor provides HGB as collateral to the creditor who will become the holder of Land Rights.

The third stage is the registration of the Mortgage Right encumbrance. Registration of the Mortgage Right encumbrance includes recording the Mortgage Right encumbrance at the local Regency/City Land Office to create a Mortgage Right land book, as well as recording books related to the land in the form of HGB which is the object of the Mortgage Right. In addition, the recording must also be photocopied into the relevant HGB Certificate. Three Laws and Regulations that regulate the procedures for HGB encumbrance with Mortgage Right are: 1. Law Number 4 of 1996; 2. Article 44 of PP Number 24 of 1997; and 3. Articles 114 to 119 of the Regulation of the Minister of Agrarian Affairs/Head of the National Agency Number 3 of 1997.

General Explanation of Law Number 4 of 1996, point (6) strengthens the explanation that buildings, plants, and other works of art that are inseparable from land are often used as collateral in the practice of Mortgage Rights, although Land Rights are the most common form of mortgage rights. Muhammad Djumhana stated that mortgage rights have the following characteristics.

Mortgage cannot be separated unless there is another agreement. Mortgage applies to all collateralized assets. Mortgage will remain valid for all collateralized properties if part of the debt is paid off. However, Mortgage can be changed so that it only applies to the remaining property, provided that both parties agree.

Mortgage follows the object, regardless of who owns it. This means that the Mortgage Right remains attached to the property if the borrower of the collateralized property borrows it. Even though the property is currently owned by someone else, the lender still has the right to seize the property and sell it to pay off the debt if the borrower is unable to pay the loan.

Accessory. This means that only a principal agreement can give rise to a derivative agreement. A principal agreement is an agreement that creates the debt secured by the Mortgage; for example, a Mortgage agreement is an additional agreement that supports a credit loan agreement for the purchase of a house.

The principle of specialization requires a specific mortgage agreement regarding the object of the debt and the debt secured. In other words, the agreement must clearly state the amount of debt secured and what assets are secured. In addition, the agreement must also explain the conditions that will occur if the borrower fails to pay the loan.

If the Land Rights that are the object are null and void by law, then the mortgage rights are also null and void by law. This is because the Mortgage Rights are property rights whose existence depends on the existence of the Land Rights. For example, if the Land Rights are no longer valid because their validity period has expired, then the mortgage rights on the land will also be lost. Rights that do not provide full ownership, such as HGB and Right of Use, are among others protected by this provision. The underlying Land Rights Certificate is required before the mortgage rights certificate can be used. The related Mortgage Rights Certificate will also be void if the HGB certificate is cancelled. Article 18 of the Mortgage Rights Law, paragraphs (1) and (2) state that the Land Rights Certificate is void together with the Mortgage Rights Certificate.

## CONCLUSION

The expiration of Building Use Rights has significant legal implications for the rights holder and the original landowner. To avoid losing rights to the land and buildings on it, Building Use Rights holders must closely monitor the validity period of their rights and immediately apply for an extension or renewal.

If the Land Rights used as collateral for the Mortgage Rights are removed, then the legal status of the Mortgage Rights becomes null and void. This is because Land Rights are property rights, if the object of the property rights is lost, then the collateral related to the land is also lost. Loss of Land Rights often occurs when the term has expired, which can result in the creditor losing his right to claim the collateral. However, the debt guaranteed by the debtor remains, meaning that the debtor is still obliged to pay off his debt to the creditor.

## RECOMMENDATION

The government through the National Land Agency in collaboration with the community needs to more intensively conduct socialization to the wider community about the importance of registering the status of land rights owned so that the land rights have legal certainty and are protected by law. Like Mortgage Rights as one of the land collateral institutions is not widely known by the Indonesian people, especially land with Building Use Rights (HGB) status can be used as collateral to obtain bank credit, therefore socialization is needed in order to provide knowledge and understanding of the law with the hope that public legal awareness will improve.



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