

Legal Analysis of Residential Tenancy Permits Overruling Right of use Certificates in Light of Pmk No. 115/Pmk.06/2020

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Abstract: State Houses or Official Residences are also classified as State Property, all of which are legally obtained from the State Budget. Members of the Indonesian National Armed Forces (TNI) who are granted Official Residences must maintain and preserve the buildings so that the utilization of State Property can carry out all TNI duties and functions without changing the ownership status. This is in accordance with TNI Commander Regulation No. 49 of 2015 concerning the Utilization of State Property in the form of land and buildings within the TNI. The type of research used in this thesis is normative juridical research. Normative juridical research examines the law from an internal perspective, with the object of research being legal norms. The approaches used are the legislative approach, the conceptual approach, the case approach, and the comparative approach with several countries. The results of this study show that the Occupancy Permit (SIP) is essentially a temporary administrative permit, so it cannot be equated with land rights such as a right-of-use certificate. Therefore, legally, a right-of-use certificate has greater legal force than an SIP. However, in practice, there is often a conflict between legal certainty (certificates) and the sense of justice of the community (long-term residents with SIPs). This happened because the residents had occupied the official residences for a long time and felt they had moral and historical rights to the dwellings. The court's decision affirming the validity of the right-of-use certificates reflects a positive legal orientation that emphasizes legal formalities over sociological aspects.

Keywords: Housing; Military; Occupancy Permits; State Property.

1. Introduction

In the Burgerlijk Wetboek (Civil Code), there are two terms, namely object (zaak) and goods (goed). The term object (zaak) refers to everything that can be owned by a person. An object (zaak) is an object as opposed to a subject or person in law. The word object (zaak) is used in a narrow sense, namely as a visible item, and is also used to refer to a person's wealth. The enactment of Law No. 5 of 1960 concerning Basic Agrarian Principles on September 24, 1960, aimed to create national legal unification regarding land (Sariani et al., 2024).

These provisions clearly indicate that the availability of housing/dormitories/mess halls is part of the care and official services provided to soldiers. To this end, measures are currently being taken to regulate the occupancy of official residences by those who are no longer entitled to occupy them. One of the ways this program is being implemented is by regulating the occupancy of official residences that have been occupied by previous occupants (Summers, 2020).

Law No. 1 of 2011 concerning Housing and Residential Areas stipulates that all requirements for housing, residential areas, and the surrounding environment have been explained and that the government has established clear rules for the community to comply with. State housing within the Ministry of Defense and the Indonesian National Armed Forces, hereinafter referred to as State Housing, is a building owned by the state and functions as a place of residence or dwelling and a means of family development as well as supporting the implementation of the duties of officials, soldiers, and/or civil servants (Stewart et al., 2024).

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The issue of vacating and clearing state-owned houses (commonly known as official residences) occupied by retired Indonesian National Armed Forces (TNI) personnel is currently coming to the fore (Sekotibo, 2021). The dispute has arisen between the TNI institution and retired personnel who still occupy government housing, or with the families of retired personnel who are descendants of TNI retirees who have even passed away, who refuse to vacate government housing that they have occupied for decades (Daniel & Ifejika Speranza, 2020).

The determination of the status of State Houses is a decision that classifies State Houses into Class I State Houses and Class II State Houses, which are independent and/or consist of apartment units with or without land. Class I State Houses are official residences that are attached to or integrated with the office where the personnel work, so that the official residence and its facilities are their property rights (Konashevych, 2020). While State Housing Category II refers to buildings located on state-owned land or assets, where the housing structures may be constructed by the state or self-built by the personnel requesting placement. These personnel are civil servants or military personnel designated by the state and cannot be privately owned (Lubis & Ramadhani, 2021).

State Houses or Official Residences are also classified as State Property, all of which are legally obtained from the State Budget. Members of the Indonesian National Armed Forces (TNI) who are granted Official Residences must maintain and preserve the buildings so that the utilization of State Property can carry out all TNI duties and functions without changing the ownership status (Rohman et al., 2024). This is in accordance with TNI Commander Regulation No. 49 of 2015 concerning the Utilization of State Property in the form of land and buildings within the TNI. The utilization of BMN in the form of land or buildings can be in the form of leasing, borrowing for use, and cooperation in utilization. If a family member wishes to erect a building as a place of business, they must obtain a Building Construction Permit in the name of the Government of the Republic of Indonesia and the Ministry of Defense to avoid misunderstandings (Tr, 2021).

The Army Housing Complex (KPAD) located in the Jakarta area is under the authority of the Kodam Jaya/Jayakarta. Based on the Regulation of the Minister of Defense No. 13 of 2018 concerning the Development of State Houses within the Ministry of Defense and the Indonesian National Army, Article 1, point 18, the Pangdam Jaya/Jayakarta is the Assistant User of State Property -Region (PPB-W) for State Assets (BMN) designated and authorized to manage, maintain, secure, and regulate state housing within the Kodam Jaya/Jayakarta jurisdiction (Saraswati et al., 2021).

In Indonesia itself, the provision of adequate housing is regulated under Article 28H paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which reads: "Every person shall have the right to live in physical and spiritual prosperity, to have a place to live and to obtain a good and healthy environment, and to obtain health services." Furthermore, Article 40 of Law Number 39 of 1999 concerning Human Rights states that "Everyone has the right to live in a decent place and have a decent life." This means that the fulfillment of decent housing and settlements is part of human rights, which are basic rights that are inherent to human beings, which must be respected, upheld, and protected by the state, the law, and the government (Garcia-Teruel, 2020). In this case, those who are entitled to occupy state housing are officials or members who are still actively serving and have obtained approval in the form of a Housing Permit (SIP) issued by the designated official in their respective areas (Saptomo & Sihombing, 2020). Therefore, the discussion in this study is: What are the expected regulations regarding the issuance of State Housing Occupancy Permits (SIP) based on the utilization of BMN (State-Owned Assets) according to PMK No. 115/PMK.06/2020?

2. Materials and Methods

The type of research that will be used in this thesis is normative legal research. Normative legal research examines the law from an internal perspective, with the object of research being legal norms (Budianto, 2020). The specification of this research is descriptive analytical research, which involves describing the research results with data that is as

complete and detailed as possible (Negara, 2023). In addition, the research will use prescriptive analysis, which projects how the issuance of official residence permits overrides right of use certificates as reviewed in PMK No. 115/PMK.06/2020.

3. Results and Discussion

3.1 *Expected Regulations For The Issuance Of State Housing Occupancy Permits (Sip) Based On The Utilization Of State-Owned Assets In Accordance With Pmk No. 115/Pmk.06/2020*

Based on Article 24 Paragraph (2) of Government Regulation (PP) Number 24 of 1997 concerning land registration, it is stated that a person who has physically controlled the land for a continuous period of 20 years can register as the holder of the land rights. Based on the above provisions, on December 10, 2014, Plaintiff I made a payment of Rp. 641,480 for a land area of 416 m² to Defendant III for a Certificate of Grant of Rights, However, the application was not granted because Defendant III had conducted a survey at the request of Plaintiff I, and Certificate of Use No. 55 was issued in the name of Plaintiff I on July 14, 2016, while Plaintiff I's application was from 2014 (Munsanje, 2021).

Based on the description of the facts presented above, the Plaintiff requests that the Panel of Judges of the Central Jakarta District Court hearing this case issue a ruling that essentially grants the claims of Plaintiff I and Plaintiff II in their entirety. The Plaintiff requests that the Panel of Judges declare that Defendant I, Defendant II, and Defendant III have committed unlawful acts. Furthermore, the Plaintiff requests that the Panel of Judges declare that the heirs of the late Imam Soekoto are the rightful owners of the land and house standing on it with an area of approximately 416 m² located at Jalan Slamet Riyadi I No. 27 RT.005 RW.004, Kelurahan Kebon Manggis, Kecamatan Matraman, East Jakarta, with the following boundaries: to the north, it borders Jalan Slamet Riyadi I; to the east, it borders the house of Lt. Col. (Ret.) E. Juwono; to the south, it borders the Bank Mandiri Mess; and to the west, it borders the house of Sutrisno (Suhadi & Niravita, 2024).

In addition, the Plaintiff also requested that the Panel of Judges declare that the heirs of the late E. Juwono are the rightful owners of the land and house standing on it with an area of 330 m² located at Jalan Slamet Riyadi I No. 25 RT.005 RW.004, Kebon Manggis Village, Matraman Subdistrict, East Jakarta, with the following boundaries: north: Jalan Slamet Riyadi I, east: Shela Bahasoean's house, south: Mess Bank Mandiri, and west: the house of Col. (Ret.) Ir. Imam Soekoto. The plaintiff also requested that the Panel of Judges declare that written warning letter-1 Number: B/668/III/2023 dated March 16, 2023 jo. written warning -2 Number: B/383/IV/2023 dated April 28, 2023, in conjunction with written warning-3 Number: B/1154/V/2023 dated May 23, 2023, have no binding legal force (Watermeyer & Phillips, 2020).

Furthermore, the Plaintiff requests that Certificate of Use No. 55 in the name of Defendant I be declared legally invalid, specifically with regard to the house owned by Plaintiff I located at Jalan Slamet Riyadi I No. 27 RT.005 RW.004, Kelurahan Kebon Manggis, Kecamatan Matraman, East Jakarta, with an area of 416 m², and against the house owned by Plaintiff II located at Jalan Slamet Riyadi I No. 25 RT.005 RW.004, Kelurahan Kebon Manggis, Kecamatan Matraman, East Jakarta, with an area of 330 m². Finally, the Plaintiff requests that the Panel of Judges order the Defendants to pay all court costs at all levels of the judicial process (Hendy & Tjempaka, 2022).

Based on this, retired military personnel only have occupancy permits based on policies issued by their superiors, which means that they are no longer entitled to apply for a transfer of rights in the form of an exchange of state-owned houses for other buildings of equivalent value (Hendy & Tjempaka, 2022). The main issue in this case relates to the conflict between the Occupancy Permit (SIP) granted to retired TNI personnel and their heirs and the Right of Use Certificate issued by the state for land that is classified as State Property (BMN). Normatively, the Right of Use Certificate is the strongest evidence of ownership or control of land rights, while the SIP is only administrative in nature, granting permission to occupy official residences.

In the context of agrarian law, based on Article 19 paragraph (2) of the UUPA and Government Regulation No. 24 of 1997 concerning Land Registration, certificates are valid and strong evidence. However, in this case, the plaintiffs claim that physical control of the land for more than 50 years should give them the right to obtain legal status over the land. Thus, the SIP is positioned not merely as an administrative document, but also as a basis for possession that can give rise to rights (Utomo & Heliaantoro, 2024). On the other hand, the Indonesian Army cq. Kodam Jaya argues that the house is a Class II State House, the legal status of which cannot be transferred to another party, let alone heirs. This argument is reinforced by Government Regulation No. 40 of 1994 concerning State Houses and Minister of Defense Regulation No. 13 of 2018, which stipulate that the right to occupy an official residence ends when a member of the TNI retires or dies (Arsyad & Heliaantoro, 2024). The verdict in this case confirms that Certificate of Use No. 55/Kebon Manggis of 2016 remains legally valid, as it was issued in accordance with land administration procedures and is registered as state property. However, the plaintiffs claim that there is substantive injustice, because the house they have occupied for decades was suddenly withdrawn on the basis of this certificate (Muslim & Jannani, 2020).

Legally, this case shows a conflict between the principle of legal certainty (through right-of-use certificates) and the principle of justice* (through protection of long-term residents who have SIPs and historical services as national heroes). Judges are faced with the dilemma between upholding formal rules and the need to protect historical and social values. From a civil law perspective, SIP is not actually a means of proof of ownership, but rather a form of administrative permit. Therefore, in theory, the SIP cannot override the Right of Use Certificate. However, in practice, the SIP can be evidence of legal physical control of the land when viewed from the provisions of Article 24 paragraph (2) of Government Regulation No. 24 of 1997, which opens up the possibility for control of land for more than 20 years to become the basis for claiming rights (Taufiqurrohman et al., 2023).

Another consideration arises from Article 33 of the 1945 Constitution, which stipulates that the earth, water, and natural resources are controlled by the state for the greatest prosperity of the people. Using this logic, the withdrawal of houses from the heirs of national heroes is considered contradictory to the spirit of honoring their services. From the perspective of state administrative law, the existence of the SIP signifies a public legal action that allows a person to occupy an official residence. If this permit is revoked or expires, then according to administrative law, the occupant is obliged to vacate the house. However, problems arise when the state issues certificates without considering the long-standing factual and historical control over the property (Samekto, 2022).

The relevant legal theory in this case is Gustav Radbruch's theory of legal certainty and justice, which asserts that law is not only a matter of certainty, but must also reflect justice and utility. In this case, substantive justice for the retired heir is an important consideration that cannot be ignored. The decision to reject the SIP as the basis for ownership shows that the Indonesian legal system places more emphasis on legal formalities (certificates as authentic evidence) than on sociological aspects (decades of control and the services of the occupants). This has led to criticism that positive law does not fully support the values of social justice. The Supreme Court's jurisprudence has repeatedly emphasized that occupants of official residences do not have the right to own the house because it is only on a loan-for-use basis. However, in certain cases, long-term possession can be recognized as a legal basis if there is no claim from the state. This case is unique because the state itself actively issued certificates to confirm ownership of state-owned property. A legal analysis of this case also shows weak coordination between state institutions. The National Land Agency (BPN) issued certificates at the request of the Ministry of Defense, while the heirs had previously applied for rights but were rejected. This gives the impression of administrative discrimination.

The conflict between SIP and Right of Use Certificates also shows how the state places the interests of defense administration above the interests of individuals. The state, through the Ministry of Defense, argues that these official residences are needed for active soldiers, so that heirs can no longer occupy them. From a legal policy perspective, this case

confirms that land law and the management of state-owned property still favor the state, not individual citizens, even if those individuals are heroes or heirs of national heroes. Thus, it can be concluded that, legally, the Right of Use Certificate still prevails over the SIP, because the SIP is not a land right but an administrative permit. However, from a social justice perspective, the state should provide a more appropriate protection or compensation mechanism so that long-term residents do not feel that they have lost their rights to the homes they have lived in for decades. Normatively, this decision is in line with positive law theory and the principle of the rule of law. However, sociologically, this decision has the potential to cause social dissatisfaction and is considered to ignore historical value. Therefore, in the future, there needs to be legal reform regarding official residences so that there will no longer be a conflict between administrative rights (SIP) and formal rights (certificates).

3.2. *Legal Analysis of Residential Lease Agreements that Invalidate Building Use Rights Certificates Based on PMK No. 115/PMK.06/2020*

Disputes involving Building Use Rights Certificates (Hak Guna Bangunan/HGB) and residential lease permits issued over state assets (Barang Milik Negara/BMN) have emerged as a growing legal concern (Esteryna, 2024). Although direct jurisprudence addressing private residential leases that conflict with HGB certificates over BMN is still limited, there are several pertinent cases and academic findings that shed light on the issue. One notable example is the case in PCN Jombang, where four HGB certificates were declared invalid because they were issued without the necessary recommendation from the local government (Pemkab) (Kristinna & Masriani, 2020). These certificates were revoked due to administrative deficiencies, highlighting the importance of procedural compliance in the issuance of HGB. Similarly, a study conducted by Universitas Airlangga (UNAIR) examines the consequences of failing to renew HGBs on state-owned land. The study found that if the certificate holder does not renew the HGB within the legal timeframe, the right is extinguished, potentially invalidating any lease agreements tied to that land. This situation demonstrates how the collapse of a legal land right such as HGB can legally undermine the enforceability of leases built upon it (Kesek, 2024).

In another instance, reflected in Decision No. 227/Pdt.G/2020/PN Mks, disputes arose over land originally held under colonial-era "Eigendom Verponding" titles. Plaintiffs sought conversion to ownership rights (Hak Milik), which clashed with existing HGB titles (Qomaruddin, 2022). These disputes illustrate the legal vulnerability of HGB certificates when other historical or administrative claims are made over the same land. Collectively, these cases affirm that HGB certificates can be revoked due to procedural errors, expiration, or conflicting legal claims, all of which can destabilize any dependent lease agreements. To understand the legal dynamics at play, one must examine the nature and strength of HGB rights within the framework of BMN regulation. Under Indonesian agrarian law (Law No. 5 of 1960 – UUPA), HGB is a temporary land right that grants the holder authority to construct and use buildings on land they do not own (Rahman, 2022). This right is typically valid for up to 30 years and can be extended under specific legal conditions. HGBs are common in both public and private land contexts, including over BMN where state permission is granted (Silitonga, 2023).

PMK No. 115/PMK.06/2020, issued by the Ministry of Finance, regulates how BMN may be utilized. It allows for various forms of utilization, including leases (sewa), temporary use (pinjam pakai), and joint development schemes (kerja sama pemanfaatan). Under this regulation, BMN utilization must follow strict administrative protocols (Handoko, 2020). The land must have a "penggunaan" status (designated for use), and any lease agreement must be executed through the official state asset manager (pengelola BMN). Lease terms must conform to approved rates, durations, and purposes. Complications arise when a residential lease permit is issued for land already under an HGB. In such a case, a conflict of rights and priorities can emerge. The HGB represents a real property right protected by agrarian law, while the lease under PMK 115 is a form of asset management governed by administrative regulation. If the lease terms contradict

the rights granted under the HGB such as exceeding the HGB's term or permitting uses inconsistent with it the lease may be invalid or legally challengeable.

Moreover, PMK 115 explicitly avoids changing ownership or proprietary rights and respects existing legal entitlements. Therefore, issuing a residential lease permit that undermines or overrides an existing HGB would conflict with the regulation's principle of legal certainty. There are also risks that such permits may be administratively flawed granted by unauthorized bodies or lacking necessary approvals which opens them up to legal challenge. These defects can lead to "cacat administratif" (administrative invalidity), nullifying the lease's legal effect. The consequences for third parties can be significant. Individuals who lease property under such conditions may be unaware of these legal defects and find their lease agreements revoked or rendered unenforceable if the HGB is nullified or allowed to lapse (Mulyawan, 2024).

While PMK No. 115/PMK.06/2020 does not directly stipulate that lease agreements cause HGB revocation, the regulation's requirements indirectly affect the validity of HGB when related legal obligations are unmet. Failure to renew HGB on time or non-compliance with PMK 115 conditions may result in the expiration or administrative cancellation of the certificate. As demonstrated in the UNAIR study, such lapses can collapse associated lease arrangements due to the loss of a legal foundation for the buildings involved (Aryanto, 2021). Furthermore, HGB certificates obtained without following proper procedures, as in the PCN Jombang case, may be annulled by the National Land Agency (BPN). This administrative action reflects the legal fragility of improperly issued certificates. When HGBs are revoked, leaseholders may suffer legal uncertainty and, in some cases, lose possession rights or financial investments. The law may require restitution, compelling the return of leased property or payment of damages, depending on the specific circumstances. In such instances, HGB holders or lessees may pursue judicial remedies through civil or administrative courts, challenging the legality of the revocation or seeking compensation (Heller, 2024).

Despite these risks, Indonesian law provides several legal protections for HGB holders. The UUPA and related land registration systems offer legal certainty, recognizing HGB as a lawful proprietary interest. As long as the HGB holder adheres to the terms of their grant including timely renewal and fulfillment of obligations their rights are legally secure. Additionally, the revocation of HGB must comply with formal procedures; if not, affected parties may contest such actions in court. Legal protection is further reinforced by obligations of transparency. Authorities such as BPN, and developers in the case of residential complexes, are required to disclose the status of land rights to prospective lessees or buyers. Failure to do so can form the basis of a legal dispute. Moreover, courts have shown willingness to annul invalid leases or state asset agreements that infringe upon legitimate land rights, reinforcing the judiciary's role in safeguarding legal ownership and proprietary entitlements. Where revocation of an HGB leads to disproportionate harm, courts may grant equitable remedies or compensation, particularly where lessees or HGB holders acted in good faith. This underlines the principle that while administrative control of BMN is necessary, it must be exercised in accordance with the rule of law and with due respect for existing rights (Faunna, 2020).

4. Conclusions

A Certificate of Occupancy (SIP) is essentially a temporary administrative permit, so it cannot be equated with land rights as defined by a right-of-use certificate. Therefore, legally, a right of use certificate has greater legal force than an SIP. However, in practice, there is often a conflict between legal certainty (certificates) and the sense of justice of the community (long-term occupants with SIPs). This occurs because occupants have lived in government housing for a long time and feel they have moral and historical rights to the dwelling. Court decisions affirming the validity of right-of-use certificates reflect a positive legal orientation that emphasizes legal formalities over sociological aspects. This creates potential for dissatisfaction and substantive injustice for the heirs of government housing occupants. From a legal theory perspective, this case illustrates the dilemma between legal certainty, justice, and benefit. Formally, right of use certificates cannot be

overruled by SIPs, but in terms of social justice, long-term occupants should still receive protection or compensation. Thus, there is a need to update regulations and policies on official residences so that there are no more conflicts between administrative rights and formal rights, while still providing fair protection for the affected communities.

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