



The Validity of the Policy on the Term of Building Use Rights in the Capital City of Nusantara

Laila Rahmawati Maghfurin

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
maghfurinlaila@gmail.com

Lego Karjoko

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
legokarioko@staff.uns.ac.id

Abdul Kadir Jaelani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
jaelaniabdulkadir@staff.uns.ac.id

Abstract— Indonesia, as an agrarian country, places great importance on land as a crucial resource for national development and social unity. However, the recent implementation of Government Regulation Number 12 of 2023 regarding building use rights (HGB) in the capital city of Nusantara has sparked debates. This is mainly due to the extension of land use rights beyond the 30-year maximum stipulated in the Basic Agrarian Law (UUPA), allowing for extensions up to 80 years. This research delves into the legal norms, such as the UUPA, while considering social, economic, and international dimensions. The analysis uses deductive reasoning and legal interpretation methods to examine the government's regulatory power and its conformity with established legislation. The findings reveal that Government Regulation Number 12 of 2023 presents inconsistencies with the Basic Agrarian Law, raising concerns about its legality and implications for land use in the Nusantara Capital. A just model for regulating the HGB duration is proposed, emphasizing social justice, economic balance, legal certainty, and transparency, alongside a rights-based approach that respects community rights and participation. In conclusion, the policy's validity is contingent upon aligning with legal frameworks, social objectives, and sustainable development practices, ensuring that the interests of all stakeholders are thoroughly considered.

Keywords— Building Use Rights; Capital City of Nusantara; The Validity

I. INTRODUCTION

Indonesia is an agrarian country, and land holds a very important position in the governance of a sovereign nation.[1] Land, as one of the natural resources, is a fundamental need for humans and serves an essential function for human life, even determining the civilization of a nation.[2] Moreover, land is highly needed in all development activities, whether for residential purposes or as a place for business activities, and the availability of land is diminishing day by day.[3] In addition, land and development are an inseparable unity and have a social function, meaning that land owned by an individual does not only serve the rights holder but also the entire Indonesian nation. Consequently, the use of land must not solely focus on the interests of the rights holder but must also consider the interests of the community. Therefore, it can be said that land has a dual function: as a social asset and a capital asset[4].

As a social asset, land serves as a binding tool for social unity among the people of Indonesia, ensuring the continuity of life. Meanwhile, as a capital asset, land is a capital factor in development, which gives it economic value. Land regulation in Indonesia after independence initially continued to use Western law, specifically the Civil Code (KUHPerduta), which was liberal and individualistic in nature.[5] Therefore, since September 24, 1960, Indonesia has established national land regulations, governed by Law Number 5 of 1960 concerning Basic Agrarian Principles. Article 16, paragraph 1, of Law Number 5 of 1960 on Basic Agrarian Principles regulates the types of land rights, including Ownership Rights, Right to Cultivate, Right to Build, Right to Use, Lease Rights, Right to Open Land, Right to Harvest Forest Products, as well as other rights not included in the aforementioned categories, which will be stipulated by law, and temporary rights as mentioned in Article 53[6].

Land rights refer to rights that can be controlled by legal subjects, either individuals or legal entities, where the land rights holders are given the freedom to utilize or use the land. The term "use" implies that the land rights can

be used for non-agricultural purposes, while the term "derive benefits" means that land rights can be used not only for the purpose of constructing buildings but also, for example, for agricultural, fishery, livestock, and plantation[7].

The development of the capital city of Nusantara has sparked both support and opposition, especially with the enactment of Government Regulation Number 12 of 2023. This is due to the regulation of the duration of building use rights, which contradicts the Basic Agrarian Law, which limits the duration of building use rights to a maximum of 30 years. However, Article 35 of Government Regulation Number 12 of 2023 states that the maximum duration is 80 years, with the possibility of extending it for another 80 years. In addition, the issuance of this regulation has had negative effects on economic growth, which has stagnated at 5% from 2022 to 2024, with one of the causes, according to Bappenas, being the overlapping regulations[8]. Therefore, I would like to research the validity of this policy, titled.

II. LITERATURE REVIEW

A. General Overview of the State's Right to Control

Land is one of Indonesia's most fundamental assets, as the country and its people live and thrive on it. The people of Indonesia place land in a highly important position because it is a key factor in increasing agrarian productivity.[9] Therefore, land ownership regulations are governed by:

The state regulates land affairs through the provisions of Article 33, paragraph (3) of the 1945 Constitution, which grants the state the authority to control land within its territorial boundaries, as explained as follows:

“The earth, water, and natural resources contained therein are controlled by the state and used to the greatest extent for the prosperity of the people[10].”

The scope of the earth according to the UUPA (Basic Agrarian Law) includes the earth's surface, the subsoil beneath it, and what is beneath the water. The earth's surface, as part of the earth, is also referred to as land. The land referred to here does not regulate land in all its aspects, but only one of its aspects, namely land in the legal sense, which is called land rights. The concept of "control" can be understood in both a physical and legal sense, and it has both private and public aspects. Control in the legal sense refers to control that is based on rights, protected by law, and generally grants the right holder the authority to physically control the land they own. Boedi Harsono states that land rights consist of a series of authorities, obligations, and/or prohibitions for the right holder to do something regarding the land they own. What is permissible, obligatory, or prohibited to do constitutes the content of land rights as regulated in land law. Land is a vital source of life for humans, both in its function as a means of livelihood in various fields such as agriculture, plantations, livestock, fisheries, and industry, as well as in its use as a place of residence, where housing is built for living. The majority of human life depends on land because it has a crucial function and position in human life[11].

B. General Overview of Land Control

The concept of "control" can be understood both in a physical sense and a legal sense. It also encompasses both private and public aspects. Legal control refers to control that is based on rights, protected by law, and generally grants the right holder the authority to physically control the land they hold, for example, a landowner using or benefiting from the land without handing it over to others. There is legal control which, although it provides authority to physically control the land, is actually exercised by another party[12]. For instance, a person who owns land but does not use it may lease it to someone else. In this case, legally, the land belongs to the owner, but physically, it is managed by the tenant. There is also legal control that does not grant the authority to physically control the relevant land. For example, a creditor who holds a security interest in land has legal control over the land used as collateral; however, the physical control remains with the landowner. Legal and physical control over land can be viewed in a private aspect. There is legal control with a public aspect, which is the control over land as mentioned in Article 33, paragraph (3) of the 1945 Constitution and Article 2 of the Basic Agrarian Law Number 5 of 1960. Boedi Harsono states that the right to control land encompasses a series of authorities, obligations, and prohibitions for the right holder regarding actions related to the land they hold. What is permitted, required, or prohibited in relation to land control constitutes the criteria or distinguishing measures among the rights of control over land regulated in Land Law[13].

III. METHOD

The author's research employs a normative research methodology, focusing on the study of relevant legal frameworks. Reference sources are obtained from legal journals, interviews, as well as legal dictionaries and books related to the issues being investigated. In order to search for and collect the necessary data, this research utilizes library research or document study techniques[14]. Library or document studies involve collecting data through the identification of reference books and mass media such as newspapers, the internet, and other materials relevant to the issues being studied, through written remnants in the form of legislation, books, archives, and also including materials related to opinions, theories, arguments, and so on that pertain to the investigated problem. Furthermore, to provide more concrete information in accordance with practices in the field, this research also employs data collection techniques in the form of interviews, which involve direct question-and-answer

interactions regarding the general overview and issues related to the main problems in the study. The approach used in this research is both a legal approach and a conceptual approach. The analytical techniques applied to the collected legal materials to address the issues raised in this study are deductive syllogism and interpretation using a deductive reasoning pattern. The analysis focuses on the major premise, which states that law in a country must have a hierarchy or level that must be adhered to by its citizens, and that the government, as the rule-maker, must also be subject to and comply with the regulations it has established. This serves as a more general major premise and is the normative basis of this research. Subsequently, the major premise is confronted with the minor premise, which has a casuistic function and represents the factual basis of this research. This includes the assertion that Government Regulation Number 12 of 2023 contradicts the existing higher regulations, particularly concerning the duration of building use rights. Meanwhile, the interpretation or exegesis used by the author is based on legal interpretation, which is a method of legal discovery that provides explanations related to the text of the law so that the scope of the provisions can be established in relation to specific events

IV. RESULT AND DISCUSSION

The validity basis for the building use rights (HGB) duration policy in the Nusantara Capital can be traced through several legal and regulatory aspects applicable in Indonesia. Here are some points that can serve as a foundation for assessing the validity of this policy: the HGB duration policy must comply with the Basic Agrarian Law (UUPA), which governs land rights in Indonesia, particularly regarding the duration of HGB, which generally cannot exceed 30 years. Suppose government regulations such as Government Regulation No. 12 of 2023 state that the HGB duration can be extended up to 80 years. In that case, it is necessary to examine whether this provision aligns with the UUPA or violates the principles established in the law.

The HGB duration policy in Nusantara Capital should reflect broader development goals and support regional investment and economic development. It is crucial to ensure the policy meets legal requirements and provides social and economic benefits to the community. The policy's validity can also be measured by how fair it is and whether it does not disadvantage certain parties, including local communities. A balanced policy will consider the interests of all stakeholders. A good policy must also consider the aspirations and needs of the community.

Transparent decision-making and involving community participation in the policy formulation will strengthen the policy's validity. If there are relevant provisions or principles from international law, the HGB duration policy must also be adjusted so that it does not conflict with the international commitments that Indonesia has made. The sustainability and success of the policy also depend on an effective monitoring system and vigorous law enforcement to prevent abuse or violations of existing provisions. Considering the aspects mentioned above, the validity basis for the building use rights duration policy in the Nusantara Capital can be analyzed and examined in more depth. It can be deemed valid if the policy meets legal, social, and economic criteria. Conversely, if there are violations or inconsistencies, the policy's validity may be questioned.[15].

Building use rights policy has various problems; first, based on the building use rights regulations in Law Number 5 of 1960, Article 35 states that the building use rights have a maximum period of 30 years and can be extended for a maximum of 20 years by requesting the rights holder and taking into account the needs and conditions of the buildings, while in PP Number 18 of 2021, it states that building use rights can be used for 30 years and can be extended for 20 years and can be renewed for 30 years. Of course, this contradicts the regulations above and below. Second, based on the building use rights regulations in Article 35 of Law Number 5 of 1960, it states that the building use rights have a maximum period of 30 years. However, in PP 12 of 2023, the building use rights can be controlled for 80 years with one first cycle, namely granting rights for a maximum of 30 years, extension of rights for 20 years, and renewal of rights for 30 years. They can be extended for a second cycle if it has been agreed upon previously. Therefore, the subject HGB holders in the Indonesian Capital City can hold HGB for 160 years with two cycles that have been agreed upon; of course, this contradicts the rules above it, namely Law Number 5 of 1960.

Third, PP Number 18 of 2021 and PP Number 12 of 2023 contradict each other because referring to PP 18 of 2021, it is stated that building use rights can be controlled for a maximum of 80 years with details of 30 years of granting rights, 20 years of extension of rights and renewal of rights for 30 years. In PP Number 12 of 2023, the rights subject can be controlled for 80 years with the first cycle; if it has been agreed upon that there will be a second cycle, namely 80 years, then a subject of building use rights can be held by the rights holder for 160 years, of course, this confuses because of the differences in regulations.

The problem also negates the concept of validity theory according to Lon L. Fuller, a theorization of the existence of a solid and rational legal order is an obsession of the positivism school. According to the positivist school, law must be considered a rational building.[16] Lon L. Fuller emphasizes the content of positive law. To understand the law as a system, it must be observed whether it meets the 8 (eight) principles of legality, namely: The legal system must contain regulations, meaning it must not contain merely ad hoc (special) decisions, The regulations that have been made must be announced to the public so that the wider community knows them, Regulations must not be retroactive, meaning that new regulations apply when they are enacted or made official,

Regulations are formulated in a formula that can be understood and is easy to understand, not long winded, A legal system must not contain regulations that conflict with each other, namely in harmony between the regulations below and above, Regulations must not contain demands that exceed what can be done, Regulations must not be changed frequently, There must be consistency between the regulations that are enacted and their daily implementation. According to Fuller, the law cannot be accepted as law unless it is based on a particular morality; this concept is called the concept of inner morality theory by Lon Fuller, who is known as the Father of the Revival of Natural Law.[17] The inner Morality of law is the moral principle derived from the idea that law is an instrument to regulate and control human behavior as an agent (transporter) who can consider and choose. According to Lon Fuller, the core concept of legal theory is that every genuine legal system is always bound by certain moral principles, termed "Inner Morality." Therefore, if based on the validity theory put forward by Lon Fuller, the regulations related to building use rights in Indonesia today are not valid because they contain conflicting legal systems.

A just model for regulating the duration of building use rights (HGB) in the Nusantara Capital can be designed by considering several principles and approaches that ensure a balance between the interests of various parties.[18] Here are some elements that can be incorporated into this just model:

1. Social Justice
 - a. Community Participation: Involving local communities in the policy formulation process to ensure that their aspirations and needs are represented. This can be done through public consultations and discussion forums.
 - b. Community Empowerment: Providing training and resources for local communities to understand their rights related to land and HGB, enabling them to participate actively in the decision-making process.
2. Economic Balance
 - a. Investment Protection: The HGB policy should provide legal certainty for investors while still considering the interests of local communities. For example, a sufficiently long HGB duration can encourage investment, provided that the benefits are also felt by the community.
 - b. Incentives for Sustainable Development: Implementing incentives for developers committed to sustainable development practices and those that provide direct benefits to local communities.
3. Legal Certainty
 - a. Compliance with Existing Regulations: Ensuring that the HGB policy aligns with the Basic Agrarian Law (UUPA) and other relevant regulations, thus avoiding legal uncertainties that could harm any party.
 - b. Effective Oversight: Developing a transparent and accountable oversight system to monitor the implementation of HGB and ensure compliance with applicable provisions.
4. Transparency and Accountability
 - a. Open Information: Providing easy access for the public to obtain information related to the HGB policy and its management processes.
 - b. Reporting and Evaluation: Creating mechanisms for reporting and evaluation that involve the community so that they can assess the impact of the policies adopted.
5. Flexibility and Adjustment
 - a. Periodic Review: Conducting regular reviews of the HGB policy to adjust to changing social, economic, and environmental dynamics.
 - b. Fair Extension Procedures: Providing fair procedures for extending HGB that consider the contributions of the rights holders to development and community welfare.
6. Rights-Based Approach
 - a. Respecting Community Rights: Ensuring that the HGB regulations do not infringe upon local community rights, including indigenous land rights and access to natural resources.
 - b. Fair Dispute Resolution: Developing fair and effective dispute resolution mechanisms to resolve conflicts that may arise between HGB holders and the community.

By implementing this just model, the regulation of the duration of building use rights in the Nusantara Capital can become more inclusive and sustainable, ensuring that all parties benefit and their rights are acknowledged and respected.

V. CONCLUSION

The validity of a policy must meet at least the following criteria: Legislation, Policy Objectives, Principles of Justice, Public Considerations, International Legal Aspects, Oversight, and Law Enforcement. By considering these various aspects, the basis for the validity of the duration policy for building use rights in the Nusantara Capital can be analyzed and studied more deeply. If the policy meets existing legal, social, and economic criteria, it can be deemed valid. Conversely, if there are violations or inconsistencies, the validity of the policy may be questioned. According to Lon Fuller, the core concept of legal theory is that every genuine legal system is always bound by certain moral principles, which are termed "Inner Morality." Therefore, based on the validity theory put forward by Lon Fuller, the regulations related to building use rights in Indonesia today are not valid because they

contain conflicting legal systems. The model for regulating the duration of building use rights must take into account the aspect of social justice, which requires that community participation and empowerment be involved in determining a policy. It should also consider economic stability by providing legal certainty and ensure that the policy is transparent and accountable.

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