

Issuance of right of use for the local government of Pidie district for land that has been certified as ownership rights at the pidie district land office

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Abstract

Based on Article 52 paragraph (2) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, a right of use (Hak Pakai) "as long as it is used" is granted for an indefinite period, as long as the land continues to be used and utilized. However, in practice in Pidie Regency, granting a right of use "as long as it is used" is not supported by an agreement that clearly defines its legal status, leading to overlapping land rights.

This research examines the issuance of Rights of Use over land that has already been certified with Ownership Rights (Hak Milik) by the National Land Agency (Badan Pertanahan Nasional/BPN) of Pidie Regency, the factors causing the issuance of Rights of Use Certificates in the name of the Pidie Regency Government over land already encumbered with Ownership Rights, and the efforts undertaken by the National Land Agency of Pidie Regency to resolve disputes arising from overlaps between Ownership Rights Certificates and Rights of Use Certificates granted "as long as they are used."

The research method employed is empirical juridical research with a qualitative approach. Primary data were obtained through interviews with officials of the National Land Agency of Pidie Regency. In contrast, secondary and tertiary data were analyzed using a descriptive-analytical approach to provide a comprehensive overview of the issues under study.

The results of the research indicate that: (1) the issuance of Rights of Use Certificates over land with Ownership Rights in Pidie Regency has not been fully supported by spatial certainty, due to limitations in physical data and land mapping that has not yet been integrated; (2) the issuance of Rights of Use Certificates is influenced by juridical, administrative, and technical constraints, particularly related to land archives and field verification, which the National Land Agency addresses through document examination, data verification, and mediation; and (3) disputes over overlapping Ownership Rights Certificates and Rights of Use Certificates are caused by weaknesses in land registration administration and are resolved through administrative, non-litigation, and litigation mechanisms to ensure legal certainty.

It is recommended that the National Land Agency of Pidie Regency tighten the issuance of Rights of Use Certificates through careful juridical and physical examinations, and accelerate the digitalization and integration of land data mapping to prevent overlaps and ensure legal certainty.

Keywords: Rights of use, ownership rights, national land agency of pidie regency

Introduction

The National Agrarian Law recognizes various types of land rights, including Ownership Rights and Usage Rights. Ownership Rights are the land rights that have the strongest and fullest status. Article 20, paragraph (1), of the UUPA states that Ownership Rights are hereditary, the strongest, and the fullest rights a person can have over land, taking into account its social function. The hereditary nature indicates that Ownership Rights can be inherited. In contrast, the strongest and fullest nature gives the rights holder broad authority to use and manage their land, provided it does not conflict with public interest and statutory regulations.

Although the Right to Property is the strongest, the UUPA strictly limits its subject to only Indonesian citizens, as provided in Article 21 paragraph (1) of the UUPA. This limitation is intended to protect land as a national resource from being controlled by parties who do not meet the requirements as subjects of the Right to Property. The Right to Property also has a social function, which means that the use of land must take into account the interests of the community and must not harm the public interest. Ownership of the Right to Property is proven by a Certificate of Ownership issued by the National Land Agency as strong evidence of land ownership.

In addition to Ownership Rights, the UUPA also regulates Usage Rights as a type of land rights. Article 41 of the UUPA states that Usage Rights are the rights to use and/or collect proceeds from land directly controlled by the state or land owned by another person, and they grant the authority and obligations specified in the decision granting them by an authorized official or in an agreement with the landowner. Usage Rights differ from Ownership Rights in that they are limited in both duration and the authority of the rights holder.

Further provisions regarding the Right of Use are contained in Article 52 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. The Right of Use is divided into two types:

1. The right to use State Land and Management Land is granted for a maximum period of 30 (thirty) years, extended for a maximum period of 20 (twenty) years, and renewed for a maximum period of 30 (thirty) years.
2. The right to use is granted for an indefinite period, provided it is exercised.

In practice, the issuance of the Right of Use (Hak Pakai) on land with a Freehold Title often raises legal issues. These issues relate to the issuance procedure, the validity and

substance of the Right of Use agreement, the certainty of the term, and the legal protection for both the Right of Use and its holders. Furthermore, there are still widespread misconceptions in the community that Right of Use can automatically convert to Right of Ownership, or conversely, that granting Right of Use will permanently diminish the validity of Right of Ownership. These misunderstandings have the potential to give rise to land disputes if not regulated and implemented in accordance with applicable law. In the context of land practices in Pidie Regency, the complexity of issuing the Right of Use (Hak Pakai) on land with a Right of Ownership certificate is not merely theoretical. Still, it is also reflected in concrete events that give rise to legal disputes. One case that has come to public attention involves the issuance of two certificates for the same land by the Pidie Regency Land Office.

In this case, the Land Ownership Certificate (SHM) Number 86 of 1999, which was originally registered in the name of Keusyik Muhammad Kasem and was then legally transferred to Zakaria Umar with the Land Ownership Certificate (SHM) Number 86 of 2013, with a total area of 265 m², is a land right that was issued first and has full legal force. This is in line with the provisions of Article 20, paragraph (1), of Law Number 5 of 1960 concerning Basic Agrarian Principles, which states that Land Ownership Rights are the hereditary, strongest, and most complete rights a person can have over land. Therefore, as long as there are no legal defects in their acquisition, these Land Ownership Rights must be respected and protected by law.

On the same plot of land, specifically on a section of approximately 21 m², the Pidie Regency Land Office then issued a Right of Use Certificate (HP) Number 00004 of 2016 in the name of the Pidie Regency Government with a total area of 265 m², which included a portion of land that had previously been encumbered with Ownership Rights. The issuance of the Right of Use Certificate was carried out without prior revocation of rights, relinquishment of rights, or the existence of an agreement to encumber Use Rights by the legitimate Ownership Rights holder. This action is contrary to land registration provisions which require clarity of the legal status of the land object before the issuance of a new right, as regulated in Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, and resulted in overlapping rights to the same land object and the failure to fulfill the principle of legal certainty.

Based on the perspective of the type of Right of Use, the Right of Use Certificate issued in the name of the Pidie Regency Government is substantially more than the Right of Use during use, as regulated in Article 52 paragraph (2) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, which in principle is given to certain government agencies or bodies to be used as long as the land is used for certain purposes. However, this provision applies primarily to land with a state right of use, not to land burdened with individual Ownership Rights.

For land with Freehold status, the granting of Right of Use is only possible if it is based on an agreement between the holder of the Freehold and the recipient of the Right of Use, and must be registered to obtain legal certainty. This provision is expressly regulated in Article 41 paragraph (1)

of the UUPA and is reaffirmed in Article 44 of Government Regulation Number 18 of 2021. Thus, the issuance of a Right of Use for use on individual Freehold land without the consent and agreement of the legitimate rights holder is contrary to the law and contains legal defects.

This case subsequently developed into a legal dispute that was examined through the judicial process. At both the first and appeal levels, the courts held that the previously issued Ownership Certificate was valid and legally binding, while the issuance of a Use Rights Certificate for the same land was unlawful because it was carried out without proper authority and procedures. However, the case is still under review at the Supreme Court's cassation level and has not yet acquired final legal force.

Based on this description, it can be concluded that the issuance of Use Rights on land already certified as Ownership Rights, without considering the appropriate type of Use Rights and without following the prescribed legal procedures, has the potential to create legal uncertainty, harm legitimate rights holders, and violate the principles of orderly land administration.

Materials and Methods

Based on this research, the empirical legal research method (empirical juridical) is a research method that examines applicable law or legal provisions as its object. In this case, law is not viewed merely as a perspective and applied discipline, but also as an empirical or legal reality. This research aims to examine primary and secondary data to obtain a more comprehensive dataset and achieve optimal results. Secondary data will be analyzed and systematically described with respect to legal regulations and factors, including the implementation of legislation as government policy in the field. The method used in this research is qualitative, namely, research whose data are based on field data. These sources can be individuals (personal subjects of research) or sources in society, whether independent individuals or part of a particular community.

Results and Discussion

a. Issuance of Right of Use for the Period of Use of Freehold Land

The Right to Use is a type of land right whose regulations in Indonesian agrarian law are further detailed through Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. These regulations indicate that the Right to Use is not a single entity but is granted in various forms with different legal characteristics, both in terms of land status and validity period. The Right to Use can originate from land directly controlled by the state or from land with Freehold Rights, and can be granted for a certain period or as long as the land is used. One form of Right to Use, namely the Right to Use over state land, is granted through a decision by an authorized official to certain legal subjects to use and/or collect proceeds from state land, as regulated in Article 41 paragraph (1) of the UUPA in conjunction with Article 41 and Article 42 of PP Number 18 of 2021.

The Right to Use over Freehold land is granted based on an agreement between the holder of the Freehold and the recipient of the Right to Use, which must be registered at the land office, as regulated in Article 41 paragraph (1) UUPA in conjunction with Article 41 and Article 44 PP Number 18 of 2021. In terms of the time period, the Right to

Use can be granted for a certain period as stipulated in the decision to grant rights or agreement, which is temporary and is null and void by law after the time period ends, unless an extension or renewal is carried out in accordance with the provisions of Article 52 and Article 54 of PP Number 18 of 2021. In addition, the Right to Use can also be granted for the duration of use, that is, without determining a specific time period, as long as the land is utilized in accordance with the grant, as regulated in Article 52, paragraph (2), of PP Number 18 of 2021. This regulation complements the classification of the Right to Use. It serves as the legal basis for the procedure for issuing the Right to Use, including the mechanism for granting rights, the legal basis used, the period of validity, and the procedures for registering it at the land office.

In the procedure for issuing a Right of Use, there are provisions on permitted and prohibited matters, serving as legal restrictions to ensure legal certainty and protect land rights. Matters permitted in a Right of Use include the use of land in accordance with the grant of the right as stated in the decision to grant the right or agreement, the utilization of the land and/or the collection of its yield, as long as it does not conflict with the spatial planning designation, laws and regulations, and does not harm the public interest. The recipient of the Right of Use is also permitted to transfer or encumber the Right of Use with a mortgage in certain cases, as long as it is permitted by the provisions of laws and regulations and, specifically for the Right of Use on land with a Freehold Right, with the written consent of the holder of the Freehold Right. In addition, a Right of Use with a fixed term can be extended or renewed in accordance with established procedures, provided the administrative and substantive requirements are met.

Its implementation takes into account two specific dimensions: first, Aceh's special autonomy framework, in which land affairs remain the responsibility of the central government through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), resulting in the Pidie Regency Land Office operating as an extension of the central government's vertical agency without regulatory autonomy regarding the substance of rights; second, local administrative realities, such as the high volume of conversion applications related to post-tsunami infrastructure development projects and the development of special economic zones (KEK) in the Pidie region, which encourages the implementation of priority services for applicants with written recommendations from the Regent or the Pidie Regency Investment and PTSP Office.

The problem of issuing Land Use Rights (Hak Pakai) for land with Ownership Rights (SHM) certificates in Pidie Regency cannot be separated from the objective conditions of the land administration system, which is not yet fully digitized, particularly in terms of land mapping. Based on interviews with sources from the Pidie Regency National Land Agency, it was discovered that some of the SHMs subject to HAK Pakai applications are products of outdated land registrations still supported by manual measurement data and analog maps. As a result, the boundaries, locations, and areas of land plots have not been fully integrated into the digital mapping system, leading to a discrepancy between field data and legal data recorded in land books.

This problem is also related to the negative nature of Indonesia's land registration publication system, which

contains positive elements. In this system, certificates do have strong evidentiary power, but they are not absolute. This power depends heavily on the accuracy of the underlying data, both legal and physical. When physical data is not digitally and accurately mapped, a Freehold Title (Hak Milik) certificate may contain administrative defects. Assigning a Right of Use (Hak Pakai) to such a certificate could exacerbate the impact of these defects, as it adds a new layer of rights to an object that lacks spatial certainty.

The source explained that most certificates issued in the previous period were still based on analog maps. Therefore, when applying for a Right of Use (Hak Pakai) on such land, officials often relied solely on archived documents, old measurement letters, and administrative records, without support from precise digital spatial data. According to the source, this situation creates room for differences in the interpretation of the boundaries and locations of land parcels, especially if there have been changes in land ownership or use in the surrounding area.

This analysis reinforces the view that if all stages of the issuance of Land Use Rights are implemented comprehensively, systematically, and in accordance with the principle of prudence, particularly by ensuring the clarity of physical land data through accurate, integrated digital mapping, then the potential for overlapping rights should be minimized or even avoided. Clarity regarding the location, boundaries, and area of land plots is a fundamental prerequisite for land registration, so any ambiguity in spatial data will directly impact legal uncertainty regarding the rights issued. This finding indicates that the problems that arise are not solely due to weaknesses in legal norms, but rather to the gap between normative provisions and their implementation in practice, where the process of verifying legal and physical data has not been carried out optimally or comprehensively.

b. Factors in Issuing a Certificate of Right of Use During Use of Freehold Land

The issuance of a Right of Use Certificate for land that already holds Ownership Rights is a land administration procedure with complex legal implications, as it involves the encumbrance of new rights on existing rights. Therefore, the process is not solely determined by normative provisions governing the Right of Use but is also influenced by various administrative, technical, and empirical factors. These factors directly determine the quality of legal certainty, the clarity of the right's object, and the potential for land issues, particularly disputes and overlapping land rights. In the context of Pidie Regency, the existence of land with Ownership Rights that has not been fully digitized in the land mapping system is a crucial issue affecting the issuance of Right of Use Certificates.

In practice, land issues in Pidie Regency are inseparable from national factors but also have their own characteristics influenced by regional social, administrative, and technical conditions. These local factors play a significant role in creating disorderly land data and the potential for overlapping land rights. Specifically, several factors that frequently occur in Pidie Regency can be outlined as follows:

1. The limited availability of accurate, up-to-date land registration maps, particularly in rural areas, means that determining land boundaries and area still relies heavily on field conditions and information from the parties.

2. The continued dominance of customary or sporadic evidence of land ownership, which has not been fully followed up with formal land registration, thus poses a risk of duplicate claims.
3. Low public legal awareness of the importance of registering and updating land data, particularly regarding land transfers, which are often not registered with the Land Office.
4. Reliance on information from village officials in determining land history and boundaries, which, in practice, is not always supported by complete and accurate written documents.
5. Administrative and technical constraints in the field survey process, including limited resources and certain geographic conditions, impact the accuracy of physical land data.
6. Lack of synchronization between legal and physical land data, resulting in discrepancies between actual land ownership and officially recorded data.

According to Mr. Roy Mubarak, Head of the Rights Determination and Registration Section at the Pidie Regency Land Office, not all land parcels with Freehold Titles (Hak Milik) have been digitally mapped in the land mapping system. Most old Freehold Title certificates still use analog maps and measurement letters issued using conventional measurement methods. This results in relative accuracy of physical data, particularly when field conditions change, such as shifting boundaries, changes in land use, or the disappearance of natural boundary markers. In these situations, the data contained in the certificates does not always reflect the land's actual condition at the time of inspection for the issuance of the Right of Use (Hak Pakai). This situation indicates that the functions of mapping and measurement as preventive instruments for land disputes have not been optimal. Accurate mapping should provide a clear spatial picture of the positions and relationships among land parcels, thereby preventing overlapping rights. Therefore, this analysis confirms that the issuance of Right of Use (Hak Pakai) certificates for Freehold Titles (Hak Milik) in Pidie Regency continues to face significant structural and technical challenges. If these factors are not comprehensively addressed, the issuance of Right of Use (Hak Pakai) may continue to give rise to overlapping rights and land disputes. Strengthening digital mapping, improving the quality of land administration, and consistently applying the precautionary principle are urgent steps to ensure that the issuance of Right to Use Certificates truly creates legal certainty and protection, as is the purpose of land registration.

c. Efforts to resolve disputes between overlapping certificates of ownership and rights of use by the Pidie District Land Office

In resolving this overlapping certificate dispute, the National Land Agency of Pidie Regency not only undertook administrative efforts but also actively pursued resolution through the judicial process as part of the litigation dispute resolution mechanism. This involvement indicates that the dispute has entered the judicial realm and requires assessment and resolution by a judicial institution to achieve legal certainty regarding the status of the disputed land rights. Therefore, the resolution of this dispute is pursued through a hierarchical civil court process, starting from the

first-level examination to the extraordinary legal remedy of judicial review. The stages of the case resolution are as follows:

1. First Instance (Sigli District Court) This overlapping certificate dispute case was first registered on March 9, 2022, at the first instance in the Sigli District Court under Case Number 5/Pdt.G/2022/PN Sgi. The object of the dispute is a shop unit and a plot of land measuring approximately 21 m² located in Gampong Blok Bengkel, Sigli City. The Plaintiff based his lawsuit on the Land Ownership Certificate Number 86 of 1999 in the name of Zakaria Umar. The Sigli District Court issued a decision on September 8, 2022. In its decision, the panel of judges rejected the Defendants' exceptions, granted the Plaintiff's lawsuit in part, and declared that the actions of Defendant I and Defendant II constituted an unlawful act (PMH).
2. Appeal Level (Banda Aceh High Court) Based on the Sigli District Court's decision, the Pidie Regency Government (Defendant I) and the Pidie Regency National Land Agency (Defendant II) filed an appeal with the Banda Aceh High Court on September 19, 2022. The appeal was registered under Case Number 95/PDT/2022/PT BNA. The Banda Aceh High Court issued its decision on November 9, 2022. In its decision, the High Court accepted the Appellants' appeal and affirmed the Sigli District Court's decision.
3. Cassation Level (Supreme Court of the Republic of Indonesia) The Defendants subsequently filed an appeal with the Supreme Court of the Republic of Indonesia on November 28, 2022. The appeal was examined and decided under Decision Number 2514 K/Pdt/2023. The Supreme Court issued a cassation decision on October 4, 2023, rejecting the cassation petition filed by the Applicants, namely the Pidie Regency Government and the Pidie Regency National Land Agency. The cassation decision was then notified to the parties on November 13, 2023.
4. Judicial Review (Supreme Court of the Republic of Indonesia) As an extraordinary legal remedy, the judicial review application was registered under case Number 875 PK/Pdt/2024. The Petitioner for PK I (Regent of Pidie) granted special power of attorney on February 13, 2024, while the Petitioner for PK II (Land Office of Pidie Regency) granted special power of attorney on February 22, 2024. The Defendants filed a Judicial Review (PK) to the Supreme Court of the Republic of Indonesia on March 4, 2024. The Petitioner registered the Judicial Review Application for PK I on March 4, 2024, and for PK II on March 7, 2024. Against the application, Zakaria Umar, as the Respondent for PK, submitted a counter-memorandum on PK's behalf, which the Supreme Court accepted on March 28, 2024. After going through the examination process, the panel of judges' deliberation meeting was held on Monday, September 30, 2024.

A non-litigation approach through mediation is seen as a more effective and equitable mechanism for land disputes. Maria S.W. Sumardjono emphasized that land disputes are not only normative and juridical in nature but are also closely related to the social and historical aspects of land ownership, so that resolution through deliberation and mediation can achieve substantive justice for the parties.

Thus, theoretically, efforts to resolve disputes over overlapping Ownership and Use Rights certificates are carried out in stages through administrative, non-litigation, and litigation mechanisms, with the primary goal of achieving legal certainty, justice, and protection of land rights in accordance with the principles of national agrarian law.

Efforts to resolve disputes over overlapping Ownership and Use Rights certificates carried out by the Pidie Regency National Land Agency are implemented through structured administrative procedures, prioritizing the principles of legal certainty, prudence, and protection of the parties' rights. Based on interviews with sources from the Pidie Regency Land Office, non-litigation mechanisms are generally preferred for land dispute resolution, with judicial channels being pursued as a last resort if an agreement cannot be reached.

Conclusion

The issuance of Land Use Rights derived from Ownership Certificates in Pidie Regency is essentially in accordance with statutory provisions. Still, it faces technical and administrative obstacles, particularly suboptimal digitization and integration of land data, resulting in incomplete verification of land location, boundaries, and area, which can lead to overlapping rights. Limited and outdated maps exacerbate this problem, as do the predominance of unregistered customary or sporadic land ownership, low public legal awareness of data updates, and the lack of synchronization between legal and physical data. Dispute resolution is carried out in stages through administrative mechanisms, mediation, and litigation, with the Land Office playing a role in document research, data verification, status quo determination, and mediation facilitation, and is obligated to enforce legally binding court decisions; thus, the effectiveness of settlement is highly dependent on data accuracy, optimized mediation, and compliance with decisions to ensure legal certainty over land.

Suggestion

It is recommended that the National Land Agency/Pidie District Land Office tighten and improve the procedures for issuing Right of Use Certificates, especially for land that already has a Right of Ownership certificate, through a comprehensive initial examination of legal and physical data, re-measurement in the field, and clarification of land boundaries and ownership by involving owners and village officials. In addition, it is necessary to emphasize the implementation of integrated mapping verification as an operational standard, accompanied by accelerated digitization of land data, increased administrative and technical accuracy, and the consistent application of the principle of prudence, to prevent overlapping rights, minimize disputes, and ensure legal certainty over land.

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