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Registration Of Priority Rights To Building Use Rights Certificates (HGB) Registered In The Name Of A Bankrupt Legal Entity

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Abstract: The purpose of this study is to examine the legal certainty of Priority Rights holders as outlined in Government Regulation No. 18 of 2021 concerning the Registration of Rights for holders of Building Use Rights (HGB) if the rights holder has been declared bankrupt. It also examines the responsibility of the National Land Agency (BPN) in issuing certificates in the legal protection of third parties who have signed a Deed of Sale and Purchase (AJB) and Sale and Purchase Agreements (PPJB) made before a notary or privately as a form of legal protection and legal certainty for the community before the company is declared bankrupt, while the HGB on the land has not been registered/separated from the certificate. This study uses a normative legal method with three main approaches, namely: a legislative approach, which examines various related regulations such as the 1945 Constitution, the 1960 Basic Agrarian Law (UUPA), Law No. 20 of 1961, and Government Regulation No. 24 of 1997 in conjunction with Government Regulation No. 18 of 2021 to understand the legal and ontological basis of the issue being studied, a historical approach, and a philosophical approach. The analysis was conducted by combining inductive and deductive methods. The results of the study show that the National Land Agency (BPN) continues to provide legal certainty for holders of Priority Rights to Land Use Rights (HGB), including in bankruptcy cases, by taking into account the protection of third parties who have signed a Deed of Sale and Purchase Agreement (AJB) or a Letter of Intent to Purchase (PPJB) in accordance with the provisions of Government Regulation No. 18/2021.

Keyword: Land registration, Priority Rights, Legal Entity Bankrupt Company.

INTRODUCTION

Land and nature (natural resources) have a very special meaning and significance in agrarian and maritime societies such as Indonesia, namely as a manifestation of existence, social and cultural roots, a primary means of production, and a symbol of social and economic status (Limbong, 2011). On September 24, 1960, Law No. 5 of 1960 concerning Basic Agrarian Principles was passed, LNRI Year 1960 No. 104-TLNRI No. 2043. This law is better known as the Basic Agrarian Law (UUPA). Since the enactment of the UUPA, the National Agrarian

Law has been in effect, revoking regulations and decrees made during the Dutch East Indies era, including Agrarische wet Stb 1870 No. 55 and Ararische Besluit Stb 1870 No. 118.

In Indonesia, land registration is a crucial component of land rights. Article 19 of the Basic Agrarian Law (UUPA) No. 5 of 1960 stipulates that land registration is required in order to provide legal certainty. According to Article 19, "The Government shall conduct land registration throughout the territory of Indonesia in order to ensure legal certainty." According to the Basic Agrarian Law (UUPA) No. 5 of 1960 addressing Basic Agrarian Principles, one of the most significant facets of land rights in Indonesia is land registration. The concepts and rules pertaining to the ownership, control, usage, and use of Indonesia's national agricultural resources are clearly and expressly regulated by this legislation. The legislation makes it clear that the goal of land registration is to give people legal clarity about their property rights. According to the UUPA, those who are unable to pay the land registration costs are excused from doing so. This is supported by UUPA Article 19(4), which stipulates that government rules control the registration fees mentioned in paragraph (1) above, with the exception that those who cannot afford them are excused from paying them (Santoso, 2015).

Land rights are divided into permanent rights, such as Freehold Title, and temporary rights, such as Cultivation Rights (HGU), Building Rights (HGB), and Use Rights (HP). This study focuses on HGB, which allows the holder to build residential, office, or warehouse buildings on someone else's land, with a standard validity period of 30 years, which can be extended to a total of 80 years. The HGB registration process is regulated in Government Regulation (PP) No. 24 of 1997 and updated through PP No. 18 of 2021. The HGB certificate serves as legal proof of land ownership rights. When the HGB expires, the previous holder retains priority rights to the land. This is particularly important when the HGB is registered in the name of a legal entity that has gone bankrupt, as in the case of PT Panca Wiratama Sakti Tbk (in bankruptcy), which serves as a concrete example of the importance of legal certainty in the registration of land rights. In this case, many consumers had sale and purchase agreements for land with HGB status but had not yet obtained certificates in their names. When the company was declared bankrupt, a legal issue arose as to whether third parties (consumers) still had priority rights to re-register the land. Based on Government Regulation No. 18 of 2021, priority rights can be granted to former HGB holders as long as they meet certain conditions, such as the proper use of the land, compliance with legal provisions, and conformity with regional spatial planning.

The issue becomes complex when the priority rights to the HGB are owned by a legal entity that has gone bankrupt. Based on Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU), all assets of a bankrupt debtor, including land, are under the management of a curator who is tasked with settling the bankruptcy estate under the supervision of a supervisory judge (Subhan, 2008). In this situation, the curator has the authority to take legal action against land assets whose legal status is unclear, including land that has been transferred through a sale and purchase agreement (PPJB) or deed of sale and purchase (AJB) but has not been legally registered with the National Land Agency (BPN).

This situation raises legal issues related to the legal protection of third parties. Many people or consumers who have purchased land have lost their rights because there has been no official registration, while the HGB in the company's name has expired. Therefore, priority registration is an important mechanism for protecting the interests of third parties and providing legal certainty regarding disputed land. From the perspective of property law theory (Zaak), as explained in Article 499 of the Civil Code (KUHPperdata), everything that can be the object of ownership rights, including land, is an object that has legal value (Asyhadie, 2018). Therefore, any change in the status of land rights, including transfer, extension, or cancellation of HGB, must be carried out in accordance with a valid legal mechanism. This principle emphasizes the

importance of rights registration as a means to avoid conflict and provide clarity for all interested parties.

Philosophically, land is a gift from God that must be managed fairly for the common good. The UUPA serves as a legal instrument that upholds the principle of social justice and regulates the legal relationship between humans and land in a fair manner. In the context of this study, the focus of the study is directed at the registration of priority rights to land with HGB status owned by legal entities in bankruptcy, with an emphasis on juridical analysis based on property law theory and the principle of legal certainty. This research is highly expected to be beneficial for legal development and also as input to clarify and fill legal gaps so that it can be useful as a reference for drafters of regulations governing Land Law, especially those governing priority rights, both Priority Rights to Land Use, Priority Rights to Building Use, Right of Use, and other rights that expire in accordance with applicable legal regulations. This research can be used as comparative material to explore deeper legal studies to create specific regulations governing Priority Rights, so that the research has an important role and makes a positive contribution to the development of legal science, particularly in the field of land and Priority Rights. Based on this description, the title of this research is “Registration of Priority Rights for Building Use Rights (HGB) Certificates Registered in the Name of a Legal Entity That Has Gone Bankrupt”.

This study emphasizes the importance of the role of law as the basis for state administration. This theory underlies the need for legal certainty in the registration of land rights. The theory of the rule of law, which in English is called the State theory of law, while in Dutch it is called *staat rechtstheorie*, consists of two words, namely, theory and the rule of law (Salim and Nurbani, 2019). This theory is inseparable from its own pillar, namely the concept of legal sovereignty. This concept is a doctrine that states that the highest power lies in the law or that there is no other power except the law itself. Many formulations have been given to the definition of the rule of law, but it is difficult to find a single formulation, either because of differences in the principles of the rule of law that are adhered to or because of the conditions of society and the era in which the rule of law was formulated.

Property law, in the context of civil law, regulates rights over property and legal relationships arising from property ownership. Property, in a broad sense, includes everything that can be the object of ownership rights, whether tangible or intangible (Sitompul, 2017). Property law has the characteristics of a closed system, in which property rights are only recognized if regulated by law. According to Soediman Kartohadiprojo, property law is defined as all legal rules that regulate what is meant by property and that regulate rights or property. Furthermore, Sri Soedewi Masjchun Sofyan explains that the regulatory system in property law is closed, which means that new property rights cannot be exercised except those already applied in the law (Hukum Online, 2025).

This study uses applied theory, specifically the theory of legal protection. The theory of legal protection is a very important theory to study because it focuses on the legal protection provided to the community, namely communities that are in a weak position, both economically and legally (Salim and Nurbani, 2019). Legal protection is an effort provided by the law to protect the community from arbitrary actions by authorities or other people that are not in accordance with the law, in order to create order and peace (Darmajaya, 2016). According to Philipus M. Hadjon, legal protection is the protection of human dignity and the recognition of human rights possessed by legal subjects based on legal provisions against arbitrariness, which are sourced from Pancasila and the concept of the rule of law (Hadjon, 1987).

METHOD

This study uses a normative legal method with three main approaches, namely: a legislative approach, which examines various relevant regulations such as the 1945

Constitution, the 1960 Basic Agrarian Law, Law No. 20 of 1961, and Government Regulation No. 24 of 1997 in conjunction with Government Regulation No. 18 of 2021 to understand the legal and ontological basis of the issue under study; a historical approach, which is used to trace the philosophical foundations and developments in thinking about the bankruptcy of legal entities and the birth and end of Building Use Rights, which form the basis for the emergence of priority rights; and a philosophical approach, which serves to explore the basic values that underlie positive legal norms in order to understand the extent to which these values live and develop in society.

The data sources in this study consist of primary and secondary data. Primary data includes laws and regulations related to land rights, land registration, and regulations regarding the bankruptcy of legal entities, such as UUPA No. 5 of 1960, PP No. 18 of 2021, and the Civil Code. The object of this study is focused on Commercial Court Decision No. 11/PAILIT/2011/PN.NIAGA.JKT.PST related to the bankruptcy case of PT Panca Wiratama Sakti Tbk. Meanwhile, secondary data includes law books, research results, implementing regulations, ministerial and BPN decisions, as well as legal dictionaries that explain relevant legal terms, norms, and concepts as the basis for this research analysis. The research stages included a literature review to obtain secondary data, supplemented by interviews conducted at the Tangerang Regency Land Office and interviews with the curator assigned to settle the bankruptcy estate to obtain primary data.

The data analysis technique in this study aimed to systematically process and interpret the data to obtain an understanding and conclusions relevant to the research questions. The analysis was conducted by combining inductive and deductive methods, where the inductive approach was used to examine articles and regulations related to administration and the creation of land rights, while the deductive approach was used to link these findings with the legal principles of land registration and certainty of ownership rights. This approach is balanced so that the analysis remains comprehensive and scientific, supported by the exploration of normative legal facts, policies, and written interviews with authorities to strengthen the research results and produce valid and in-depth conclusions.

RESULTS AND DISCUSSION

Land Registration in Indonesia

The Basic Agrarian Law (UUPA) provides the foundation for land registration in Indonesia. According to Article 2 of the UUPA, the state has sovereign rights over the land, water, airspace, and natural resources that are found there (Santoso, 2010). With the primary goal of achieving the prosperity and welfare of the populace, the state has the power to control how individuals utilize property and the legal ties that exist between them. According to Article 16 of the UUPA, this governmental control gives birth to a number of land rights, including ownership rights, cultivation rights (HGU), building rights (HGB), and usage rights. Further regulations regarding the implementation of land registration are stipulated in Government Regulation No. 24 of 1997 concerning Land Registration, which was later refined through Government Regulation No. 18 of 2021. According to Harsono (2005), the scope of agrarian law includes land law, water law, mining law, fisheries law, forestry law, and space law, with the main objective of providing legal certainty for land rights holders.

Land law, as part of agrarian law, has evolved from an unwritten customary system to a national legal system that requires authentic proof through land certificates. Based on Article 4 of the UUPA, land is defined as the surface of the earth that can be owned or controlled by individuals or legal entities, where the principle of accessie applies, stating that buildings and plants are an integral part of the land. In practice, land control can be physical or juridical, depending on the form of the legal relationship that occurs. Therefore, land registration is an

important instrument for providing legal certainty and protection of rights for land rights holders in Indonesia.

Sources of Agrarian Law

The sources of Indonesian land law, which are more commonly known today, are land status and land history. Land status or land history is a chronology of issues relating to land ownership and control in the past, present, and future. Land status or land history is currently known as the Land Registration Certificate (SKPT) for former Western rights and other rights. The land history from the PBB or the land history certificate from the local village office is a history that explains the registration and transfer of customary land and similar types of land in the past and present (Sihombing, 2004). In general, agrarian legal sources are divided into two types, namely written legal sources and unwritten legal sources.

Written sources of law include:

1. The 1945 Constitution, in particular paragraph 3 of Article 33. "The land, water, and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people (BARAKAT)," according to Article 33, paragraph (3).
2. Agrarian Law Basic. This legislation is explained in the Supplement to the State Gazette number 2043. It is contained in legislation Number 5 of 1960 concerning: Basic Regulations on Agrarian Principles, dated September 24, 1960, adopted and published in the State Gazette of 1960-140.
3. Agrarian affairs regulations: these include those that implement the UUPA and those that regulate non-mandatory but practically required topics.
4. Old rules are still in effect with certain restrictions based on regulations or transitional articles.

Meanwhile, unwritten sources of law originate from:

1. Customary law in accordance with Article 5 of the UUPA, which states that it must: 1) not conflict with state and national interests; 2) be founded on national unity; 3) be based on Indonesian socialism; 4) and be based on the rules set forth in this law and other laws; 5) and be based on everything that considers aspects of religious law.
2. After the UUPA was passed, customary laws emerged, such as: 1) Standards of customary law; 2) Jurisprudence; 3) Agrarian administration practices.

Land Registration as Regulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2021

The provisions of Government Regulation No. 24 of 1997 and Article 19 of the Basic Agrarian Law, which uphold the government's duty to implement land registration throughout Indonesia in order to ensure legal certainty and the protection of land rights, are continued by land registration as governed by ATR Ministerial Regulation No. 18 of 2021. Systematic and intermittent land registration efforts include gathering legal and physical information, measuring, mapping, documenting rights, and issuing certificates as definitive proof of rights. The Basic Agrarian Law (UUPA), which seeks to give legal clarity for land rights across Indonesia, serves as the foundation for the universal land registration rules outlined in Minister of Agrarian Affairs and Spatial Planning Regulation No. 18 of 2021. The UUPA's Article 19 highlights the government's duty to perform land registration, which includes mapping, surveying, registering rights and transferring them, and issuing proof of rights as a legitimate form of evidence. However, as stated in articles 23, 32, and 38 of the UUPA, owners of land rights, including ownership rights, cultivation rights (HGU), and construction rights (HGB), must also register their property in order for it to have permanent legal force. The kinds of land rights that the community may own, including as ownership rights, cultivation rights, building rights, usage rights, and management rights, are likewise governed by the UUPA. According

to the social purpose of land as outlined in Article 6 of the UUPA, each of these rights has certain qualities and restrictions, meaning that the public interest must always be taken into consideration while using land in order to promote prosperity for the populace.

This regulation emphasizes the obligation of holders of ownership rights, cultivation rights (HGU), and building rights (HGB) to register their land so that it is valid and has legal force. The rights to land that are regulated include ownership rights, HGU, HGB, usage rights, and management rights, each with different provisions and time periods. Ownership rights are the strongest and most comprehensive but are still subject to the social function of land; HGU is granted for agricultural, fishery, or livestock business purposes; HGB is for constructing buildings on land owned by another party; usage rights are for using or collecting yields from state-owned or privately-owned land; and management rights are granted to government agencies or state-owned enterprises for the purpose of managing state assets. Overall, the land registration system under ATR Regulation No. 18 of 2021 aims to create unity, simplicity, and legal certainty in national land matters, while ensuring justice and prosperity for the people within the framework of economic development based on national agrarian law.

Land Rights

In theory, the state controls the land, water, and natural resources found therein and uses them to maximize the welfare of its citizens. The state is granted the power to: 1) organize and regulate the distribution, use, supply, and upkeep of the land, water, and space; 2) ascertain and control the legal relationships between individuals and the land, water, and airspace; and 3) ascertain and control the legal relationships between individuals and legal actions pertaining to the land, water, and airspace (Chandra, 2005). This is known as the state's right to "control." According to the UUPA's Article 16 paragraph (1), there are several kinds of land rights, including:

1. Ownership Rights

These are the strongest, most comprehensive, and hereditary rights to land. Holders of these rights have full authority to use or utilize their land, and can transfer or bequeath it to other parties. However, ownership rights can only be held by Indonesian citizens, not by foreigners or foreign legal entities.

2. Cultivation Rights (HGU)

This is the right to cultivate state-controlled land for cattle, fisheries, or agriculture for a set amount of time (up to 35 years, with a 25-year extension possible). HGU may be owned by Indonesian nationals or Indonesian-domiciled legal entities.

3. Building Use Rights (HGB)

This is the right to erect and own a building on land that is not owned by the holder for a certain period of time (maximum 30 years and can be extended for 20 years). HGB can be owned by Indonesian citizens or Indonesian legal entities.

4. Right of Use

This is the right, either for free or in exchange for a fee, to use and/or collect the profits from land that belongs to the state or other parties for a specific amount of time. According to the regulations, Indonesian residents, Indonesian legal entities, and even foreign nationals or foreign legal organizations having their abode in Indonesia may be granted this privilege.

5. Leasehold Rights

This is the privilege of using another person's land for a particular structure or commercial endeavor in exchange for a predetermined rent payment as stipulated in the agreement. Only the right to use the land for the term of the lease is granted by leasehold rights; ownership is not.

6. Land Clearing Rights

These are rights granted to a person or legal entity to clear or cultivate previously unused land, such as forest land or vacant land, in accordance with government regulations. Once cultivated, the land can be used as a basis for obtaining other rights such as HGU or HGB.

7. Forest Product Collection Rights

This is the right to collect forest products from land controlled by the state or customary law communities, such as timber, rattan, sap, or other natural products. This right is usually granted to indigenous peoples or certain groups based on applicable regulations and cannot be freely transferred.

Guarantees in the Civil Code

Collateral is governed by a number of articles in the Civil Code (Kitab Undang-Undang Hukum Perdata), including Articles 1131 and 1132, which deal with general and specialized collateral for creditors. According to Article 1131, all of the debtor's assets, both immovable and movable, are used as security for all of their personal debts. With the potential for some creditors to have preferential rights, Article 1132 governs how the money from the sale of collateral is divided among creditors. Anything provided to a lender (creditor) to instill trust that the borrower (debtor) will complete their financial responsibilities resulting from an agreement is known as collateral. Collateral is generally regulated under the Civil Code. Article 1131 of the Civil Code expressly states this: "All movable and immovable property belonging to the debtor, both existing and future, shall be collateral for the debtor's individual obligations." Therefore, this article states that regardless of whether an individual's assets currently exist or not, they will all immediately become collateral for debts that have been acquired. This reinforces that a creditor can be given collateral in the form of the debtor's property even if it has not been specifically agreed upon beforehand (Ministry of Finance, 2023). In this context, collateral is divided into two main forms:

1. Material or Property Guarantee (Zakelijk)

In order to guarantee the satisfaction of the debtor's pertinent default obligations, material collateral is collateral in the form of property and ownership rights that are obtained by separating the debtor's assets from those of third parties. Collateral in the form of absolute rights over individual goods is known as non-material collateral. These rights are distinguished by their direct link to specific debtor objects, their ability to be transferred, their ability to be contested by anybody, and their constant adherence to the object. In order to give some creditors the right or privilege of being a preferred creditor above other creditors in the payment of collateralized obligations, material collateral is offered for their benefit upon request. Real security is recognized in the Civil Code, such as Pawn (Articles 1150-1160 of the Civil Code). Provisions regarding pawn rights are regulated in Article 1150 of the Civil Code, which states that the right to obtain a debt on movable property, which is handed over to him by the debtor or by another person on his behalf, and that gives the creditor the power to take back the goods in payment in preference to other persons who are indebted to the debtor, except for the costs of auctioning the goods and the costs of bailiff fees, which must be given priority.

Additionally, there is collateral in the form of real estate, namely mortgages, which are governed by Civil Code Articles 1162-1232. The regulations on mortgages included in Book II of the Civil Code, Articles 1162 to 1232, pertaining to the imposition of security interests on land rights and objects linked to land, have been rendered invalid since the passage of Law Number 1996 about Land Rights and Objects linked to Land. However, as long as mortgages are taken out as security for immovable assets (fixed objects), which also include land rights or land, the mortgage requirements are still in effect (Rachmadi Usman, 2008: 246). Nonetheless, Articles 60–66 of Law No. 17 of 2008 addressing shipping and

Articles 314–316 of the Commercial Code (KUHD) continue to control ship mortgages, while Articles 71–82 of Law No. 1 of 2009 concerning Aviation rule aircraft mortgages.

2. Personal Guarantee (Personlijk)

If the borrower is unable to repay a loan, a personal guarantee is a third party (guarantor) who will pay back the debt. According to Article 1820 of the Civil Code, "a guarantee is an agreement whereby a third party, in the interest of the debt, binds themselves to fulfill the debt obligation when the person does not fulfill it." A personal guarantee does not involve the pledge of any particular property or the use of any third-party property as collateral. Individual guarantors only function as unsecured creditors in the event that the debtor violates the terms of the arrangement. The basic rules outlined in Articles 1131 and 1132 of the Civil Code will apply to the guarantee in the event that the debtor or the third party acting as guarantor files for bankruptcy. Since lenders lack the authority to prioritize unsecured creditors over fixed creditors, general guarantees and obligations do not provide complete protection from debt payback. The lender's right of priority, which allows him to act as a special creditor and accept collateral settlement without considering other creditors, is only mentioned in the course materials.

Company Assets Due to Bankruptcy

When a debtor can no longer afford to pay their creditors, they seek to escape their financial difficulties by filing for bankruptcy (Tjandra and Hutagalung, 2024). Bankruptcy can happen to any firm, whether or not it is a formal corporation. The root word "bankruptcy" is "pailit." It is called "failiet" in Dutch, meaning "bankrupt." "Verklarinnng," which refers to a declaration of bankruptcy based on a court ruling, is another synonym for bankruptcy. Man S states that Sastrawidjaja defines bankruptcy as an equal distribution after a general settlement made by the government (Sastrawidjaja, 2010). "Bankruptcy is a general seizure of all the assets of the bankrupt debtor, the management and liquidation of which is carried out by a curator under the supervision of a supervisory judge as regulated in the law," states Article 1 paragraph 1 of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU).

In bankruptcy law, there are three main types of creditors: preferred creditors, separate creditors, and concurrent creditors.

1. Preferred Creditors

Creditors who have special rights (priority) to be paid first due to legal requirements, such as state tax bills or curator fees in bankruptcy proceedings.

Based on Constitutional Court Decision No. 67/PU-XI/2013, workers' wages are given priority over all other types of creditors, including the state and separate creditors. After workers' wages have been paid, payments are then made to the state and bankruptcy costs.

2. Separate Creditors

Creditors who hold property rights, such as:

- a. Pledge Rights (Civil Code Articles 1150–1160)
- b. Fiduciary Rights (Law No. 42 of 1999)
- c. Encumbrances (Law No. 4 of 1996)
- d. Ship Mortgage (Civil Code Articles 1162–1232)
- e. Warehouse Receipts (Law No. 9 of 2011)

Based on Article 55 paragraph (1) of the UUK-PKPU, separate creditors have the right to execute their collateral as if bankruptcy had not occurred, thus giving them a stronger position than other creditors.

3. Concurrent Creditors

Creditors who do not have specific collateral, but are entitled to collect based on a debt agreement. Concurrent creditors receive payment last after preferential and separate creditors. In many cases, concurrent creditors such as suppliers or small agents often do not receive any payment at all, making their position the weakest in the bankruptcy process.

In this case, the bankruptcy system in Indonesia provides a clear order of priority for payments: first, preferred creditors (employees and the state), then separate creditors (security holders), and finally concurrent creditors (without security). Because concurrent creditors are in the weakest position, it is important that they have legal protection so that they can still obtain justice in the bankruptcy process. The bankruptcy process according to the UUK-PKPU aims to resolve debt disputes quickly, cheaply, and transparently. However, in practice, legal protection for creditors, especially unsecured creditors, is still weak due to the vagueness and inconsistency of legal regulations. Concurrent creditors are parties that do not have collateral (such as liens, fiduciary rights, or mortgages) and only receive payment after separate and preferential creditors. As a result, if the bankrupt assets are insufficient, their claims are often not fully satisfied.

Consumers who purchase property through a PPJB (Purchase and Sale Agreement) are also classified as concurrent creditors. Based on Article 37 of Law No. 37 of 2004, the status of the PPJB will be revoked when the developer is declared bankrupt, so that the property becomes part of the bankruptcy estate. Consumers can only file claims for compensation with the curator in accordance with Article 115 paragraph (1) of the UUK-PKPU. In the liquidation process, the curator is required to widely publicize the bankruptcy decision (principle of publicity in Article 15 of the UUK-PKPU) so that all creditors can register their claims. The rights of concurrent creditors are determined by the supervisory judge in accordance with Article 189 paragraph (3) of Law 37/2004, generally only receiving 5-10% of the proceeds from the sale of assets. The case study of PT Panca Wiratama Sakti Tbk (a developer in Tigaraksa, Tangerang) shows that many consumers do not understand their position as concurrent creditors and do not register their claims with the curator. This makes it difficult for them to exercise their rights to certificates or compensation. Therefore, clear rules on the position of concurrent creditors, strict supervision, and sanctions for negligent law enforcement officials are needed to create legal certainty and fairness in the bankruptcy process.

There are problems with the status of HGB ownership because of the time restriction on HGB ownership. A recognized priority right to HGB land whose term has passed exists in land law practice. The land reverts to being Land Directly Controlled by the State or Land Management Rights in accordance with the terms of Article 37 paragraph (3) of PP 18/2021, HGB, whose period has ended (Yustikaningtiyas, 2025). Furthermore, PP 18/2021's Article 37, paragraph (4), states that the Minister has the jurisdiction to restructure usage, utilization, and ownership, and that the previous right holder may be granted precedence by taking into.

The land continues to be farmed and used appropriately in accordance with the conditions, nature, and intent of the granting of rights; the rights holder continues to meet the requirements for the granting of rights; the land continues to be in accordance with the spatial plan; it is not used and/or planned for public interests; natural resources and the environment; and the state of the land and the neighbourhood. HGB was governed by Government Regulation Number 40 of 1996 covering Land Use Rights, Building Use Rights, and Land Rights (PP 40/1996) prior to the passage of PP 18/2021. Priority distribution to previous HGB holders whose rights had expired was governed by this PP.

Former holders of Building Use Rights (HGB) whose validity time has passed are protected by priority rights. According to Government Regulation No. 18 of 2021's Article 37, paragraphs (3) and (4), land with an expired HGB reverts to being directly under state control or subject to management rights. As long as the conditions are followed, such as using the

property in line with its designation, meeting legal duties, and not being utilized for public purposes, former HGB holders are granted priority rights to reapply for the use, utilization, and ownership of the land.

This priority right is a personal right (*persoonlijk recht*) because it is attached only to the former HGB holder and cannot be transferred, except through the release of priority rights by official deed. Through Decision No. 1771 K/Pdt/2019, the Supreme Court affirmed in practice that parties that maintain possession of the land after their HGB has expired still have the right of priority to reclaim it. Government Regulation No. 40 of 1996 is superseded by Government Regulation No. 18 of 2021, which serves as the new legal foundation that makes clear how priority rights are granted. For people who bought land from a developer who later went bankrupt, priority rights provide an opportunity to reapply for HGB on state land and split the certificate from the parent company, which is still in the name of the bankrupt legal entity. Priority rights thus serve as a legal tool that ensures legal certainty and protection for former HGB holders, allowing them to reclaim their rights to land that has expired in line with the goals of the state as outlined in the 1945 Constitution, which are to safeguard all Indonesians and use resources for the greatest possible prosperity of the populace.

Supreme Court Case Number 1771 K/Pdt/2019 confirms that priority rights to land with expired Right to Build (HGB) can still be transferred to heirs, even though the rights to the land have been legally revoked. In this case, the HGB on the disputed land had expired in 1994, and the certificate holder had died long before that. However, because the heirs' family continued to control and occupy the land from generation to generation in good faith, the panel of judges ruled that the heirs still had priority rights to reapply for land rights to the National Land Agency (BPN). Thus, what was inherited was no longer the right to the land (because it had expired), but rather the priority right to be given precedence in regaining that right.

Priority rights are not explicitly regulated in the Basic Agrarian Law, but the practice is recognized through several regulations such as Presidential Decree No. 32 of 1979 and Decree of the Minister of Agrarian Affairs/BPN No. 6 of 1998, which confirm that former HGB holders (or their heirs) have the right to reapply for land rights, which can even be upgraded to Freehold Rights, as long as the land is still legally controlled. The procedure for obtaining this right is carried out by submitting an application to the District Court to obtain a legal decision, which becomes the basis for the National Land Agency (BPN) in processing the granting of priority rights. The administrative steps include filling out forms, verifying physical and legal data, preparing a Land Inspection Report (*Konstatering Rapport*), and issuing a Right Granting Decree (SKPH), which is the basis for issuing a new certificate.

As long as there are no disagreements and the heirs can demonstrate actual ownership of the land, this decision upholds the idea that priority rights can be passed. Therefore, heirs or purchasers still have the legal chance to reclaim land rights through the priority rights application process in the event of bankruptcy or HGB land whose validity time has passed.

Legal certainty for holders of Priority Rights as outlined in Government Regulation No. 18 of 2021 concerning the Registration of Rights for holders of Building Use Rights (HGB) if the rights holder has been declared bankrupt.

Priority Rights holders over property with expired Building Use Rights (HGB) need legal clarity, particularly if the HGB holder has been declared bankrupt. According to Article 37 paragraphs (3) and (4) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, HGB land whose term has ended will either become Management Rights (HPL) land or return to state-directly controlled land. As long as certain conditions are followed, such as the land being used appropriately, not for public purposes, and still according to the regional spatial plan, the previous owner of the rights is granted priority to reclaim them.

The legal standing of HGB land owned by a bankrupt legal entity presents unique problems in the bankruptcy scenario. All assets of a bankrupt debtor, including land rights like HGB, are included in the bankruptcy estate to be resolved by the curator in accordance with Law Number 37 of 2004 Governing Bankruptcy and Suspension of Debt Payment Obligations. However, the rights to the property are legally terminated and the land returns to public possession after the HGB's tenure has passed. In this situation, the priority rights to reacquire the land remain attached to the former HGB holder, namely the bankrupt legal entity or parties that have a legal relationship with it (including legitimate buyers who have proof of a deed of sale or a binding sale and purchase agreement prior to the bankruptcy).

Former HGB holders are still granted priority to use, utilize, and reclaim their rights under Article 107 paragraph (2) letter an of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 18 of 2021, which provides legal certainty for holders of priority rights relating to HGB land owned by a legal entity that has filed for bankruptcy. This means that as long as the land is still legally controlled and not used for public purposes, priority rights can still be claimed even if the entity that previously held the HGB has been declared bankrupt. In practice, these priority rights can be exercised by parties who have purchased land units from the bankrupt legal entity, as long as there is evidence of a valid sale and purchase agreement and the certificate has not been divided.

Thus, legal protection for parties who acquire rights from a bankrupt legal entity is important to ensure that legal certainty regarding ownership is not lost. Applicants acting in good faith can apply for a new HGB on state land based on priority rights, by attaching legal documents such as a deed of sale and purchase, a sale and purchase agreement, and proof of full payment to the developer or curator. After conducting physical and juridical data research by land officials, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) can issue a Decree of Granting Rights (SKPH) as the basis for issuing a new certificate.

With the enactment of PP No. 18 of 2021, the state provides legal certainty guarantees to holders of priority rights, including those who obtain their rights from a legal entity that has gone bankrupt. This regulation confirms that even though land rights are extinguished due to the expiration of the term, priority rights remain attached as legal rights that are recognized and protected, as long as the applicant meets the substantive and administrative requirements stipulated by law.

Responsibilities of the National Land Agency (BPN) in Issuing Certificates and Legal Protection for Third Parties Before Companies Holding HGB Are Declared Bankrupt

In accordance with Law Number 5 of 1960 concerning Basic Agrarian Principles-Pokok Agraria (UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration, which has since been amended by Government Regulation Number 18 of 2021, the National Land Agency (BPN) has a strategic role as an organization authorized by the state to carry out government affairs in the field of land, including land registration, issuing certificates, and guaranteeing legal certainty of land rights.

In the context of land sale and purchase transactions that are still under the status of Right to Build (HGB) owned by a legal entity (developer), it often happens that third parties have signed a Deed of Sale and Purchase (AJB) or a Sale and Purchase Agreement (PPJB), either made before a notary/PPAT or privately, before the HGB certificate is split. Legal problems arise when the company holding the HGB is declared bankrupt, while the registration and separation of certificates for the land parcels that have been sold to consumers has not been carried out at the land office.

In these situations, the National Land Agency (BPN) has a moral and legal obligation to give third parties that performed honorably by entering into a sale and purchase agreement with

the HGB's legal holder prior to the bankruptcy decision legal protection and assurance. According to Article 3 of Government Regulation Number 18 of 2021, which emphasizes the principles of legal protection and certainty of land rights, the BPN must plan and complete the transfer of rights while taking into consideration the buyer's legal documentation, such as the AJB, PPJB, payment receipt, and proof of physical control of the land.

Additionally, the National Land Agency (BPN) may grant priority rights to former rights holders or third parties who lawfully obtained rights prior to the HGB's expiration, in accordance with Article 37 paragraph (4) of Government Regulation No. 18 of 2021 and Article 107 paragraph (2) letter an of Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18 of 2021. This means that third parties who purchase land through an AJB or PPJB from a legal entity that is later declared bankrupt still have the legal opportunity to apply for the issuance of a new HGB on state land based on this priority right, provided that the sale and purchase documents they possess are legally valid and do not conflict with the provisions of laws and regulations.

In land practice, the National Land Agency (BPN) also has the authority to conduct administrative and juridical verification of sale and purchase documents submitted by third parties. If the results of the investigation show that the transaction was carried out before the company was declared bankrupt and fulfilled the elements of good faith, the BPN can issue a Right Granting Decree (SKPH) to the buyer as the basis for issuing a new HGB certificate after the land parcel has been separated from the parent certificate. This step is a form of preventive legal protection from the state to guarantee the certainty of people's rights to land that has been legally purchased.

In addition, the BPN's responsibility is also related to the principles of justice and legal proportionality, whereby the state must not allow people to lose their rights to land simply because of administrative negligence or bankruptcy proceedings that are beyond the buyer's control. As long as there are no elements of fraud or legal violations in the sale and purchase agreement, the BPN is obliged to ensure that the civil rights of third parties are recognized and can be registered.

As mandated by the UUPA and its derivative regulations, the BPN's duty to provide certificates to third parties who have entered into an AJB or PPJB prior to the legal entity holding the HGB being declared bankrupt is therefore an expression of the values of legal protection, legal certainty, and community justice. As the land affairs administrator, the BPN is essential in establishing a national land system that is transparent, equitable, and orderly by balancing the interests of the public, legal entities, and the state.

CONCLUSION

The main conclusion of this study shows that Indonesian land law recognizes the priority rights of former holders of Building Use Rights (HGB) that have expired, as stipulated in Article 37 paragraph (4) of Government Regulation No. 18 of 2021. This right can be re-granted as long as the former holder of the right meets the applicable requirements, such as proper use of the land, compliance with spatial planning, and not being used for public purposes. Although it is an individual right, in practice, the priority right can be transferred or inherited, even though this is not explicitly regulated in legislation. Therefore, clearer derivative regulations are needed to ensure legal certainty regarding the implementation, transfer, and inheritance of these priority rights.

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