

Law Enforcement on Abuse of Building Use Rights in Waters and the Social Function of Public Spaces

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Abstract: The Ombudsman of the Republic of Indonesia highlighted the potential malpractice in issuing Building Use Rights Certificates in water areas. Issuing land rights certificates in water areas has the potential to violate the law. WALHI is investigating indications of affiliation between the companies that obtained the rights certificate Land Rights with large property development corporations, which can lead to the privatization of marine space and threaten the sustainability of the ecosystem and the livelihoods of coastal communities, this problem is the background to this research. The purpose of this writing is to find answers and develop previous research regarding the granting of building use rights. his certificate does not correspond to the nature and purpose of granting rights in relation to the principle of the social function of public space; In this writing, the author uses a normative legal data analysis method, related to the issuance of building use rights certificates in the waters of Tangerang and Bekasi. This problem is thought to reflect an indication malpractice administrative matters. While land regulations in the UUPA and PP No. 18/2021 do not allow for the granting of land rights in waters, regulations in the maritime sector also explicitly address this. The Ministry of Maritime Affairs and Fisheries asserts that the establishment of building use rights in these waters is unlawful and disrupts the activities of thousands of fishermen. The issuance of land title certificates in these waters has raised indications of Malpractice Administration.

Keywords: Building Use Rights; Social Functions; Law Enforcement

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INTRODUCTION

The Republic of Indonesia is a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution. As a state based on law that adheres to the concept of a welfare state, the state is obliged to manage and protect natural resources for the greatest

prosperity of the people. This mandated constitutionally in Article 33 paragraph (3) of the 1945 Constitution, which states: "The land, water and natural resources contained therein are controlled by

the state and used for the greatest prosperity of the people."¹

Land is one of the most crucial natural resources for achieving public welfare. This is regulated in Law Number 5 of 1960 concerning the Principles of Agrarian Law (UUPA). Article 1 paragraph (1) of the UUPA affirms that all land in Indonesia is the collective property of the Indonesian people. Furthermore, Article 6 stipulates that all land rights have a social function. This principle indicates that the use of land rights should not be solely for individual interests, but must also consider the broader public interest.²

However, in practice, this social function is often neglected, especially in the case of issuing Building Use Rights Certificates (SHGB) in coastal and marine areas.³ Publishing SHGB over waters, which should not be considered objects of rights, has given rise to allegations of maladministration and social conflict among coastal communities. A concrete example is the issuance of building use rights along the coastline to the seas of Tangerang and Bekasi, which is allegedly related to the issuance of SHGB by the BPN. The Ministry of Agrarian Affairs/National Land Agency acknowledged that 263 SHGB has been issued in the area, with manipulated land map data and Land Identification Number (NIB), so that the sea area looks like land.

This issue is further complicated by findings by the Indonesian Ombudsman and WALHI, which indicate maladministration

and potential conflicts of interest. The legality of SHGB in waters raises significant legal questions, considering that the sea is part of the state's sovereignty as regulated by maritime laws, including Law Number 32 of 2014 concerning Maritime Affairs and Law Number 1 of 2014 (amending Law Number 27 of 2007) concerning the Management of Coastal Areas and Small Islands.⁴

Maladministration that occurred until the publication certificate building use rights over waters. This error can lead to conflict, uncertainty, and violations of the social function of public spaces.

METHOD

The approach used is normative legal research. Normative legal research is legal research conducted solely by reviewing library materials or secondary data. Normative legal research is also called library legal research. The normative legal approach was chosen in this study because it can comprehensively analyze various legal aspects, including the study of legislation, legal principles, and legal doctrines related to the research object..⁵

ANYLISIS AND DISCUSSION

Issuance of Building Use Rights Certificates that Do Not Conform to the Nature and Purpose of Granting Them

The issuance of building use rights certificates on waters is a controversial practice and does not conform to the nature

¹Dear Sir, *Growth and Development of a Country's Constitution*, Bandung: Mandar Maju, 1995, p. 45.

² Urip Santoso, *Agrarian Law and Land Rights*, Jakarta: Prenada Media, 2005, p. 82.

³ Erwin Muhammad *Philosophy Law: Critical Reflections on Law*. Jakarta: Raja Grafindo Persada. 2011, p. 72.

⁴ Ombudsman NEWS CLIPPING. "Ombudsman of the Republic of Indonesia Investigates Issuance of Ownership Rights Certificates in the Tangerang

Coastal Sea Fence Case" https://Ombudsman.Go.Id/News/r/Ombudsman-Ri-Usut-Penerbitan-Shm-Di-Kasus-Pagar-Laut-Pesisir-Tangerang?Utm_source=chatgpt.Com, [6/5/2025].

⁵ Wira Wanza Wonggo, "Regulation of Building Use Rights for the Granting of Rights to State Land Based on Law Number 5 of 1960", *Privacy Law*, Volume VI, Number 3, 2018.

of building use rights, the nature and purpose of building use rights which are essentially attached to the land, namely to provide an opportunity for third parties (not land owners) to invest and build permanent buildings on the land, and the concept of "land" in the context of building use rights refers to land that is permanent and can be physically measured.⁶

One of the problems in the practice of building use rights in waters is the emergence of ownership over waters, in this case the sea, even though the sea, including the seabed and the water above it, is generally considered a public space (*no one's business or common business*) controlled by the state for the benefit of the people, the concept of private ownership in the form of building use rights is very difficult to apply to waters, laws and regulations, especially in the UUPA and its derivative regulations, which regulate land rights. There are no express provisions that allow the direct granting of building use rights over the sea. The granting of rights in coastal and marine areas is usually regulated by other sector laws, such as the law on the management of coastal areas and small islands, which tends to provide utilization permits (not property rights such as building use rights) for specific purposes such as tourism, fisheries, or ports.⁷

Problems in controlling building use rights encompass interrelated legal, social, and economic aspects. Maladministration, lack of public understanding, and land market instability are key challenges that must be addressed.

Marine development, even for specific purposes, has the potential to cause significant environmental impacts, such as changes in ocean currents, damage to marine ecosystems (coral reefs, seagrass), and sedimentation. Granting permanent building use rights can complicate the management of these impacts. Determining the jurisdiction and boundaries of marine building use rights is highly complex, particularly when it involves shoreline changes or water movement.⁸

Although legally there is no right to build on the sea, in practice there are often cases of illegal/non-procedural reclamation, for example, private parties carry out sea reclamation without a permit or not in accordance with the permit granted, then "claim" the reclaimed land as land and submit an application for building rights on it. There is maladministration of land rights applications located in the waters. There are attempts to justify development at sea under the pretext of "piles" or "floating buildings" which then automatically *in fact* If the land is permanently claimed as part of the land, this can be called pseudo-utilization. Some examples of cases involving land use rights certificates in waters that have occurred include elite coastal housing developments that construct walls or permanent structures jutting out into the sea, claiming that the area behind the walls is part of their property.

Supervision and Law Enforcement of Building Use Rights Violations

Several government agencies play a crucial role in overseeing and enforcing

⁶ A. P. Parlindungan, *Land Registration in Indonesia*, Bandung: CV Mandar Maju, 1990.

⁷ Tempo, October 5, 2024, "Illegal Sea Fence in Tangerang Regency Allegedly Involves Person with the Initials T, What is His Role?", accessed May 15, 2025.

⁸ Jakarta Daily (2025), February 25, "The History of the Tangerang Sea Fence Controversy: From the Mystery of the 30 Km Bamboo Fence to the Revocation of the Building Use Rights Certificate",

Building Use Rights (HGUs), particularly in coastal and marine areas, including the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). This agency's primary role is as the primary authority for issuing HGUs, registering HGUs, and conducting spatial planning. They are responsible for ensuring that HGUs are issued in accordance with spatial planning and applicable laws and regulations. The Ministry of ATR/BPN's oversight mechanisms include document review, completeness verification, and validity of HGU application documents.⁹

The Ministry of Maritime Affairs and Fisheries (KKP) has the authority to oversee coastal areas and marine resources, even having a Marine Special Police (Polsus Kelautan). The KKP is authorized to manage coastal areas and small islands, including the utilization of marine space.¹⁰ They must ensure that marine development does not damage marine ecosystems and does not interfere with public access. In its monitoring mechanism, the Ministry of Marine Affairs and Fisheries monitors development activities and marine space utilization to ensure compliance with zoning and environmental regulations, ensures that every marine development project has undergone a comprehensive Environmental Impact Assessment (EIA) study and obtained an environmental permit, and conducts patrols to identify violations in the waters, including illegal development or utilization that does not comply with permits.¹¹

Violators of building use rights who cause environmental damage or abuse their authority can be prosecuted. This has a

strong deterrent effect; court decisions imposing criminal sanctions and/or fines are often the culmination of the law enforcement process. However, implementing decisions and remediating their impacts often remains a challenge. The effectiveness of supervision and law enforcement in cases of "building use rights in waters," or building rights over the sea, remains suboptimal. While there have been some successes in law enforcement, the challenges mentioned above often present obstacles.

Case of Building Use Rights Granted Above Sea Level in Tangerang Regency and Bekasi Regency

Position of Building Use Rights Case in Tangerang Waters

On August 14, 2024, the Indonesian Fishermen's Association (HNSI) of Tangerang Regency reported to the Banten Provincial Maritime Affairs and Fisheries Agency (hereinafter referred to as DKP Banten) the discovery of a "sea fence" off the coast of several villages in Kronjo District, Tangerang Regency.⁸⁰ The bamboo fence stretching along the coast was called "mysterious" because its origin and purpose were unknown, thus triggering the curiosity and concern of local residents, and even the authorities. Based on the report, five days later, to be precise on August 19, 2024, the Banten DKP together with the Marine and Fisheries Resources Surveillance (PSDKP) patrol of the local Ministry of Maritime Affairs and Fisheries (KKP) conducted a field inspection and found that the bamboo fence at that time reached seven kilometers in length. Further investigation until

⁹ S.P. Rukin, *Building Indonesia From the Coast*, Jakarta: Widya Publisher, 2025, p.23

¹⁰ Achmad Rubaie, *Law on Land Acquisition for Public Interest*, Bandung: Citra Aditya Bakti, 2011.

¹¹ Rizky Syahputra, "Agrarian Law and Agrarian Policy in Indonesia", *Court Review: Journal of Legal Research*, Volume 3, Number 4, p. 27, 2023.

September 5, 2024 revealed that the structure did not have official permits from the local village and sub-district.¹²

Then, between September and December 2024, no significant progress was made in unraveling the mystery of the building rights dispute in the waters, which was becoming increasingly protracted by the day. When, in December 2024, the issue of the "mysterious bamboo fence" became widely discussed on social media, the central government finally intervened. On January 9, 2025, the Directorate General of Maritime Affairs and Spatial Planning (hereinafter referred to as the DJPKRL) The Ministry of Maritime Affairs and Fisheries confirmed that the building use rights did not have a Conformity with Marine Space Utilization Activities (KKPRL). This confirmation was followed by sealing on January 15, 2025. Three days later, the President of the Republic of Indonesia (RI) Prabowo Subianto ordered the dismantling of the bamboo fence above the sea, including using amphibious landing combat vehicles (ranratfib) belonging to the Indonesian National Armed Forces Marine Corps (TNI-AL). Participating in the dismantling were the Ministry of Maritime Affairs and Fisheries, the Indonesian National Police (Polri), the Maritime Security Agency (Bakamla),

The Ministry of Transportation (Kemenhub), in this case the Maritime and Coast Guard Unit (KPLP), the Regional Governments (Pemda) of Banten and Tangerang, and local fishermen.

Position of Building Use Rights Case in Tangerang Waters

The issuance of Building Use Rights in Bekasi waters has sparked controversy and raised many questions in the public. This case came into the spotlight after it was revealed that the land certificate covered waters whose ownership status should not have existed. This raises the question of who is responsible for issuing building use rights in Bekasi waters? Based on a statement by the Minister of ATR/BPN Nusron Wahid, it was revealed that there are two companies that own SHGB in the waters of Bekasi, West Java. The Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), Mr. Nusron, stated that the first company to hold a SHGB in Hurip Jaya Village, Babelan District, Bekasi, was PT Cikarang Listrindo. The company's SHGBs were issued in 2012, 2015, 2016, 2017, and 2018.¹³

In his opinion, the company has SHGB covering an area of 509,795 hectares, on behalf of PT Cikarang Listrindo, 78 plots of land with an area of 90 hectares. On Thursday, January 30, 2025, in a meeting with Commission II of the Indonesian House of Representatives in Jakarta, the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) revealed that the company owns 268 plots of land totaling 419.6 hectares, with land titles (SHGB) issued in 2013, 2014, and 2015.

¹² Tempo, October 5, 2024, "Illegal Sea Fence in Tangerang Regency Allegedly Involves Person with the Initials T, What is His Role?", accessed May 15, 2025.

¹³ Sheila & Daniel, The Social Function of Property: A Comparative Law Perspective (November 15,

2011). Fordham Law Review, Vol. 80, p. 101, 2011; Fordham Law Studies Research Paper No. 1960022. Available at SSRN: <http://ssrn.com/abstract=1960022>.

Granting of Building Use Rights for which the Certificate Issuance is Not in Accordance with the Nature and Purpose of Granting the Rights, Related to the Principle of Social Function of Public Space

Tangerang Regency is one of the coastal areas in Banten Province that faces significant pressure on coastal and marine space utilization, including for industrial, residential, and infrastructure purposes. This region also serves as a clear example of maladministration of authority between the National Land Agency (BPN) and the Ministry of Maritime Affairs and Fisheries (KKP), as well as the emergence of social conflict resulting from the privatization of marine space through the issuance of Building Use Rights Certificates (Hak Guna Bangunan or HGU). SHGB above the waters.

Publishing SHGB above the waters has triggered the privatization of coastal public spaces, blocking access for coastal communities, especially fishermen, to the water resources that are the basis of their lives. Malpractice The administration discovered the practice of manipulating land map data and Land Plot Identification Numbers (NIB) in the process of communicating SHGB, so that land plots that should be in the waters are administratively recorded as land.

Installation building use rights in waters and publishing SHGB in the marine area has given rise to conflict between coastal communities and land holders. SHGB, and has the potential to damage coastal ecosystems.

Installation practice building use rights in waters with administrative support such as publishing SHGB is a form of privatization of marine space that is not in accordance with the mandate of the constitution. Article 33

paragraph (3) of the 1945 Constitution firmly states that the earth, water, and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. When water resources that should be in the public domain are fenced off and isolated for private interests, what occurs is not only a violation of the law, but also a betrayal of the basic principles of social justice. In addition, Law Number 7 of 2004 concerning Water Resources also mandates that water resources are controlled by the state and used for the greatest prosperity of the people. "controlled by the state" here includes the meaning of regulating and/or organizing, managing and supervising, especially to improve and enhance services so that water resources can be utilized fairly and sustainably, so that land rights above waters should not be issued, this refers to PP No. 18/2021 that land rights in the form of building use rights can only be issued in coastal areas, not on the beach or sea. This situation is exacerbated by indications of the involvement of a number of state officials, from village officials to ministerial officials, in legitimizing practices that substantially harm the interests of the general public. These practices reflect a distortion in the implementation of public policies that should favor the common people, but instead serve the interests of oligarchs and certain elite groups. Thus, the issue of building use rights in waters is not simply a matter of administrative legality, but also a crisis of state legitimacy in protecting the fundamental rights of its citizens.

Law Enforcement Against the Issuance of Building Use Rights Certificates in Waters Where the Utilization is Not in Accordance with the Nature and Purpose of Granting the Rights When Reviewed

from the Perspective of the Principle of the Social Function of Public Space

Analysis of the legal enforcement of the granting of building use rights over waters whose use is inconsistent with the purpose of granting the rights, when viewed from the principle of the social function of public space, focuses on several aspects. First, the legality of granting building use rights over waters is still debated, particularly regarding the land object and its designation. Second, violations of the principle of the social function of public space due to use that is inconsistent with the purpose of granting the rights, such as reclamation that is detrimental to the community and the environment. Third, the need for strict law enforcement against such violations, including the revocation of building use rights if proven to violate the law.

The legal principle of granting building use rights on waters through the issuance of SHGB on Waters, especially those related to reclamation, are often in the spotlight because they are considered to violate the basic principles of land law.

In essence, granting building use rights over waters lacks a strong legal basis and is considered invalid. Waters are not among the objects that can be granted land rights, such as building use rights. Under national law, the sea belongs to the state and is intended for the public interest. It also has the principle of a social function as a public space and cannot be made an object of rights. Even in the UUPA and its derivative regulations, there are no provisions regarding the granting of building use rights over waters. Building use rights in marine areas can only be exercised after there is a building standing on a reclaimed area. However, reclamation of marine areas itself

is not a simple process because it requires permits and meets several applicable requirements. So that the issuance of SHGB in the waters can be considered administratively flawed, because it does not comply with applicable laws and regulations, this is in line with. According to Andi Hamzah, the theory of law enforcement is a conscious effort by individuals or institutions, both government and private, to achieve the goals of securing, controlling and fulfilling the welfare of the community by ensuring that applicable laws and regulations are upheld. Strict law enforcement, increased public participation, and transparency in the permitting process are key to ensuring the ocean remains an open and equitable public space for all. By comprehensively understanding the legal implications of marine fencing practices, efforts to achieve social justice and sustainable marine resource management can be implemented more systematically and effectively.

CONCLUSION

Based on the applicable laws and regulations, the issuance of Building Use Rights (HGB) in maritime areas is considered illegal and there is suspected maladministration in the issuance. SHGB This is because the Basic Agrarian Law (UUPA) clearly prohibits the existence of SHGB in waters and maritime laws and regulations, such as the Law on the Management of Coastal Areas and Small Islands. Legally, marine areas are not subject to individual property rights, so the issuance of land certificates in the sea has the potential to be legally flawed and can be revoked through judicial mechanisms. Granting Building Use Rights that are used not in accordance with their intended use

contradicts the principle of the social function of public space. This is because Building Use Rights should provide social and economic benefits to the wider community, not just for personal gain. Weak law enforcement in this case can lead to injustice and social conflict among coastal communities. Problems with the issuance of building use rights in waters indicate maladministration of laws and authorities.

The lack of oversight of Government Regulation No. 18/2021 and maritime regulations has created lax law enforcement, opened up opportunities for abuse of authority, and fueled social conflict among coastal communities. Weak oversight and coordination between institutions, along with minimal public participation in the licensing process, have exacerbated this situation.

The use of exclusive Building Use Rights (HGB) by certain parties can be detrimental to surrounding communities, particularly fishermen and coastal communities who lose access to the sea. This is due to the indecisiveness in prosecuting HGB misuse, which indicates weak law enforcement regarding natural resource management. Weak law enforcement in this regard can lead to injustice and social conflict. Strict law enforcement and a proper understanding of the nature and purpose of HGB are crucial for maintaining the sustainability of coastal and marine areas.

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