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**ADEQUATE LEGAL ARRANGEMENTS FOR PROVIDING CERTAINTY,
JUSTICE AND LEGAL BENEFITS FOR HOLDERS OF BUILDING USE RIGHTS
CERTIFICATES ON LAND MANAGEMENT RIGHTS**

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ABSTRACT

In this study, the authors raised this issue against the background of the existence of an incomplete norm vertically and horizontally in the agrarian law system, especially regarding legal protection for former building use rights holders whose validity period has ended. Vertically, it can be seen in the absence of the Basic Agrarian Law in the consideration of Government Regulation Number 18 of 2021 and only including the Law on Job Creation which has the potential to result in non-compliance with the provisions in the articles of Government Regulation Number 18 of 2021 with the provisions of the Basic Agrarian Law as the juridical basis for the regulation of agrarian law that is still valid in Indonesia. In addition, horizontally, what can be seen is the provisions of Article 102 and Article 103 of Government Regulation Number 18 of 2021 which contradict the implementation of Government Regulation Number 40 of 1996. Based on this explanation, the focus of this research examines how adequate legal arrangements are to be able to provide certainty, justice and legal benefits for the holder of the certificate of Building Use Rights on the Land of Management Rights. This research is a normative legal research using a statutory approach, the data used are primary data and secondary data which are analyzed using quantitative analysis. The results of the research are that adequate legal arrangements to be able to provide certainty, justice and legal benefits for holders of Building Use Rights certificates need to be developed within the framework of the presence of the Basic Agrarian Law, the Job Creation Law and their derivatives which regulate land as part of the state's vision to guarantee general welfare including through increased investment opportunities. The concept of an operational regulation can be seen in the provisions relating to the extension of the validity period in which the Right to Build on the Right of Management, after the land is used and/or utilized in accordance with the purpose of granting the right, may be granted an extension and renewal of rights as regulated in article 129 paragraph (3) Job Creation Act.

KEY WORDS

Legal regulation, legal certainty, justice, legal benefits, building use rights.

The government of Indonesia attempts to regulate the usage, classification, and use of land for the benefit of mankind through various regulations, acknowledging the significance of the advantages of land for humans as well as the fact that it is a non-renewable natural resource. The 1945 Constitution of the Republic of Indonesia states in Article 33 paragraph (3), "Earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people," that the issue of agrarian resources (in a broad sense) is governed by this provision.

In theory, this article establishes a legal foundation for the State's complete transfer of control over the ground, the water, and the natural resources contained therein, along with the right to manage land, to be used to the greatest extent possible for the prosperity of the people. Law Number 5 of 1960 Concerning Agrarian Principles and Implementing Regulations also regulates land. The Basic Agrarian Law serves as the legal framework for controlling land in Indonesia. It is intended that this control will improve the people's access to justice, prosperity, and legal protection.



According to the provisions of Article 4 of the Basic Agrarian Law, the State may grant different rights to the earth's surface known as land (land rights) to individuals and legal entities (as legal subjects) on the basis of the Right to Control, to be used and utilized in accordance with the allocation of their rights, in order to promote prosperity and welfare for the right holders, their families, and the local community.

According to Boedi Harsono, the land rights are divided into 2 (two) categories, namely:¹

- First-class land rights. Primary land rights are those that are acquired directly from state-owned property;
- Rights to secondary land. Secondary land rights are those acquired through a collective agreement from other landowners.

Property rights, cultivation rights, building use rights on state property, and use rights on state land are the four main categories of land rights. Building Use Rights on Land Management Rights, Use Rights on Land Management Rights, Building Use Rights on Land Ownership Rights, Liens Rights, Business Rights Profit Sharing, Right to Ride, and Right to Rent Agricultural Land are examples of secondary land rights.

From a normative legal standpoint, the Right to Build, which is outlined in Article 16 paragraph (1) letter c of the Basic Agrarian Law, is one of the forms of land rights that should be highlighted. Articles 35 through 40 of the Basic Agrarian Law, in particular, control the Right to Build. According to the stipulations of Article 35 of the Basic Agrarian Law:

- With a 30-year time limit, the right to build refers to the ability to erect and own structures on other people's property;
- The time mentioned in paragraph (1) may be extended at the right holder's request, taking into account the requirements and condition of the buildings, for a maximum of 20 years.

Building Use Rights are defined in Article 35, paragraph 1, of the Basic Agrarian Law as the right to erect and possess buildings on property that is not one's own, for a maximum of 30 years. The origin of Hak Guna Bangunan is a place that is not their own. Land originating from state property, land with management rights, and land with property rights are all examples of land that is not owned by itself. Hak Guna Bangunan has a set duration, although it is extendable, and the rights can be renewed. Further provisions involving Cultivation Rights, Building Use Rights, Use Rights, and Building Rental Rights are governed by laws and regulations, according to Article 50 paragraph (2) of the Basic Agrarian Law. Government Regulation Number 40 of 1996 addressing Cultivation Rights, Building Use Rights, and Land Use Rights served as the statutory regulations referred to by Article 50 paragraph (2) of the Basic Agrarian Law.

Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration is the most recent piece of legislation that governs Business Use Rights, Building Use Rights, Use Rights, and Rental Rights for Buildings. It should be emphasized that although Government Regulation Number 18 of 2021 controls the different types of land rights, it does not take Article 50 paragraph (2) of the Basic Agrarian Law into account or in its entirety. In actuality, Indonesia's Basic Agrarian Law, which serves as the legal foundation for agrarian regulation, is still in force. Articles 142 and 185 letter b of Law No. 11 of 2020 concerning job creation are mentioned in the preamble to Government Regulation No. 18 of 2021, as well as taking into account Article 5 paragraph 21 of the 1945 Constitution of the Republic of Indonesia and Law No. 11 of 2020 concerning job creation.

Additionally, land that may be given HGB comprises State Land, Land with Management Rights, and Land with Ownership Rights, as stated in article 36. According to Government Regulation Number 18 of 2021's Article 37, the maximum period for state land and land with management rights is 30 years, which may be extended for a maximum of 20 years, and may be renewed for a maximum of 30 years. When it comes to land with an ownership right, the time frame for the right to use the building is granted is up to 30 years,

¹ Boedi Harsono, 2007, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-undang Pokok Agraria, Isi, dan Pelaksanaannya*, Djambatan, Jakarta, hlm. 291.



and it can be extended by a deed awarding the right to the building above the ownership right.

Building Use Rights on state land are provided in accordance with a decision on granting rights made by the minister who oversees government activities in the agrarian/land and spatial planning sector, as stated in Article 38, Paragraph 1, of Government Regulation Number 18 of 2021. While the Minister decides whether to provide rights depending on the holder of the management right's consent, the Right to Build on Land with Management Rights is granted.

The Building Use Right includes conditions for granting, and every transfer and annulment of the right must be registered. According to Parlindungan, this registration is a powerful means of proof regarding the nullification of the Building Use Right and the legality of the transfer of rights, with the exception of rights it deletes because the time period is over.²

Even though the Basic Agrarian Law, which is based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, regulates the Right to Build within the framework of the State's Right to Control, which is now specifically regulated in Government Regulation No. 18/2021, this does not necessarily guarantee that every legal subject will hold the Right to Build during the establishment and implementation of the laws and regulations related to Cultivation Rights. The requirements in the Government Regulation Number 18 of 2021, which governs the position of the former owners of Building Use Rights in respect to the land, are not further specified. The position of the former holders of land certificates with the status of building use rights certificates whose validity time has ended seems to have escaped from sufficient regulation, and this seems to clarify the issues in the agricultural legal system related to cultivation rights.

It is still crucial to research the provisions of the application of the laws and regulations addressing the Position of the Former Holders of Building Use Rights whose validity time has passed due to the flow of legal requirements relating to Building Use Rights of this nature.

Priority rights, or rights possessed by past right holders to be prioritized so that their rights are returned to the former right holders, are known in its development. If someone is claimed to have previously held the right to use a structure whose term has passed, the building will turn into state-controlled land. Even though the right to use the building has been dissolved, the former right holder still owns it permanently, thus his priority right position is prioritized so that he gets his rights restored. In fact, normatively speaking, it does not appear that there are any restrictions pertaining to the priority rights of former owners of Building Use Rights whose validity period has passed.

In-depth discussions continue to influence the Job Creation Law, which also governs Building Use Rights along with other land rights like Land Use Rights, despite the inadequacy of the laws and regulations governing the position of former holders of Building Use Rights more generally in the agrarian legal system. business, management, use, and other rights. Accordingly, based on the description provided above, the focus of the issue that needs to be studied in this research is the ambiguity of the legal standards governing the regulation of building use rights, particularly in light of the situation of former owners of land certificates who hold Building Use Rights certificates whose validity period has passed but which have not been subject to any legal regulation. adequate. Of course, such circumstances have an impact on how well landowners and owners of building use rights are protected by the law. The norm's vagueness extends beyond its application, particularly when dealing with legal issues, and extends to the regulatory system as well. According to Article 50 Paragraph (2) of the Basic Agrarian Law, which is based on Article 33 Paragraph (3) of the 1945 Constitution, additional provisions regarding the Right to Cultivate, the Right to Build, the Right to Use, and the Right to Rent for Buildings are regulated by laws and regulations. The Right to Build is legally regulated in Article 35 of the UUPA. Government Regulation No. 40 of 1996 regarding Cultivation Rights, Building Use Rights, and Land Use Rights was the previous planned piece of law. Currently, the Right to Use governs the Right

² A. P. Parlindungan.2008. *Komentar Atas Undang-Undang Pokok Agraria (Bandung: Mandar Maju)*, hlm. 186-187.



to Build, and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration governs the Right to Rent for the Building. Even however, the Basic Agrarian Law as a whole is not taken into account by Government Regulation Number 18 of 2021. In actuality, Indonesia's Basic Agrarian Law, which serves as the legal foundation for agrarian regulation, is still in force. Articles 142 and 185 letter b of Law Number 11 of 2020 for Job Creation are referenced in the preamble to Government Regulation Number 18 of 2021.

METHODS OF RESEARCH

In order to determine the relationship between law and society as well as the variables that affect how the law is applied in society, a normative juridical approach to research was adopted. The second set of data is acquired through indirect library research. This study specification outlines an analysis to explain the relevant law connected to legal ideas and positive law with relation to the primary research problem. A qualitative data analysis was completed using primary and secondary data, identification, classification, and validation. The findings were then presented in the study report.

RESULTS AND DISCUSSION

The purpose of a legal state, the meaning of State Controlling Rights over Land, which then has implications for the concept of Land Rights including Building Use Rights, must be described in the order of a strong conceptual building regarding the legal arrangement of the holders of Building Use Rights from the perspective of State Controlling Rights theory.

The Republic of Indonesia's 1945 Constitution's preamble makes it clear that the nation's principles and national objectives are those of the Indonesian people. The country's goal is to safeguard the entire Indonesian people and its entire territory, as well as to advance public welfare, educate the populace, and take part in establishing a free, just, and eternal world order. In order to build a legal system in Indonesia that harmonizes and pays attention to the laws that live in society, the framework of law production must also be taken into consideration. The 1945 Constitution's preamble to the fourth paragraph, which reads, in part, "The state defends the entire Indonesian nation and all of Indonesia's lands, promotes public welfare, educates the country's life, and realizes social justice," lays out the idea of a welfare state.

The Republic of Indonesia's 1945 Constitution, which stipulates that "Earth, water, and natural resources included therein are governed by the State and utilised for the greatest prosperity of the people," reflects the idea of a welfare state.

Like all organizations, the state exists to facilitate its constituents' (the people's) achievement of shared objectives or principles. The state has considerable control over the populace. In political science, power is typically thought to have a goal that is in the interests of all of its citizens, defined as the capacity of an individual or organization to exert influence over another individual or group. Organizing the welfare and pleasure of its citizens, or creating a fair and prosperous society, is the objective of the state.³

In reality, the ability to direct the state is typically seen as state property. According to Handoko, the phrase "controlled by the state" in the 1945 Constitution's Basic Regulations on Agrarian Principles is known as the definition of the State's Right to Control, which means that generally speaking, the state has the right to regulate, administer, and determine and regulate land rights. However, this power should only be exercised for as long as it results in the greatest prosperity of the people. However, the state has been granted such vast authority that it appears to be the owner of the land in the Republic of Indonesia's unitary territory due to the ambiguity and lack of clarity in the terms that govern the right to rule the state. The Basic Agrarian Law cannot be fully implemented since several other laws and regulations that govern the management and use of natural resources have emerged

³ Soehino. 1981. *Ilmu Negara*. Yogyakarta: Liberty, hlm. 148.



throughout its implementation. These laws and regulations either conflict with or overlap with the Basic Agrarian Law. The Basic Agrarian Law does not appear to embody the populist spirit or the empowerment of the poor.⁴

Land rights in Indonesia have seen a number of modifications throughout history. Land is merely a commodity that is processed and utilized for personal interests when the population is still tiny and the amount of land is not limited, and it is not traded or exchanged. Land started to be traded as the population increased. The law of supply and demand applies. Land ownership evolved from the idea of commodity land to the idea of property land.

Land rights were initially unassailable. Land grants its owner a variety of privileges. There are several rights associated with land ownership: the right to cultivate and use the land; the right to use the land and the air above it; the right to profit financially from the property; the right to sell, give, and bequeath the land to others; and the right to build.

Land rights in national land law give the bearer of the right the ability to use the land to which they are legally entitled. It is the subject matter of each land right because this is a general authority. This power is subject to restrictions.

Land rights therefore include obligations to use and maintain the potential of the property in question in addition to the existing authorities on land rights. These requirements, which are universal in nature and found in the Basic Agrarian Law, entail that they are applicable to all land rights, including:

- Article 6, which states, that; All land rights have a social function;
- Article 15 is linked to Article 52 paragraph 1 regarding the obligation to maintain the land that is entitled;
- Article 10 specifically concerns agricultural land, namely the obligation for the party who owns it to work or cultivate his own land actively.

Government Regulation Number 8 of 1953 adds additional restrictions to the right of control over State property. Government Regulation Number 8 of 1953 does not explicitly address management rights; instead, it only addresses government agencies' ability to control State lands.

The Minister of Agrarian Affairs Regulation Number 9 of 1965 was issued as a follow-up to the affirmation of the right of control over state land as governed by Government Regulation Number 8 of 1953. Textually, it was written that there was a management right as a conversion of the right of control over State land. Management Rights are completely acknowledged legally in this Minister of Agrarian Affairs Regulation, Number 9 of 1965.

The Minister of Agrarian Regulation/Head of the National Land Agency number 9 of 1999 has been released in order to more specifically govern State Land and Management Rights, as well as the processes for issuing and canceling them. Whether there exist other land rights, such as the right to build or the right to use, on land having management rights is not formally governed by this rule.

Government Regulation Number 40 of 1996 was issued, and it technically governs building use rights, regardless of whether the building is located on land with management rights. In particular, pursuant to articles 26 and 27 of Government Regulation Number 40 of 1996, applicants for building use rights are required to comply with the conditions in order to submit requests for extension and renewal to the owners of management rights two years prior to the expiration of the building use rights.

Life is derived from the soil. The pattern of human connections is also affected by these changes in land-human relations. The issue is not the land itself, but rather the appearance of uneven land tenure, where there are some who do not control and on the other hand, there are some who control in extremely large numbers.

It is clear that humans place a high value on land. Land value is influenced by a variety of factors. These values emerge and expand in the contexts of the economy, culture, politics, national security, and society. As a result, the value of the property will vary depending on variances in time, place, and space. Preamble letter c of the Basic Agrarian Law states that

⁴ A. P. Parlindungan, *Op.cit. hal.144*



national agrarian law must embody the incarnation of the One Supreme Godhead, humanity, nationality, populism, and social justice as the spiritual principles of the State and ideals. The Basic Agrarian Law contains philosophical values regarding land control and ownership. nation as defined in the Constitution's preamble from 1945.

The new agrarian law must be in accordance with the interests of the people and the state and fulfill their needs in accordance with the demands of the times in all agrarian matters, according to the general explanation of the Basic Agrarian Law. It must also provide the possibility for the achievement of the functions of the earth, water, and space as intended above.

Based on the principles outlined above, the Basic Agrarian Law actually seeks to ensure social justice for the Indonesian people in regards to the management and ownership of natural resources through the existing state institutions. This desire was sparked by the colonial period's experience of colonialists appropriating the land, water, and other natural resources present for the colonial state.

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As a logical outcome of the law, legal certainty. For the sake of legal certainty, the principle of legality requires that the state's legal system continue to be in place. The goal of the rule of law is to make sure that society has access to legal certainty. The goal of law is to have high predictability and legal certainty so that social dynamics are "predictable."⁵

The principles contained in or related to the principle of legal certainty are:⁶

- The principles of legality, constitutionality, and the rule of law;
- The principle of law stipulates various sets of regulations on how the government and its officials carry out government actions;
- The non-retroactive principle of legislation, before binding the law, must first be promulgated and properly announced;
- The principle of free, independent, impartial, and objective, rational, fair and human justice;
- The principle of non-liquet, the judge may not reject the case because the law does not exist or is not clear; and
- Human rights must be formulated and their protection guaranteed in the law or the Constitution.

The purpose of legal certainty as required will be evident from the community's legal behavior in accordance with established or established legal laws in a peaceful and orderly society.

Legal certainty is a very important aspect in law. According to Apeldoorn, argues that:⁷ "In law, tensions between demands for fairness and demands for legal certainty are inevitable and repeatedly occur. Justice will be more urgently needed if more laws are passed to suit the demands of established norms, which aim to remove as much uncertainty as possible.

To accomplish order and justice, all law enforcement, from the establishment to law enforcement, must be animated and covered by legal certainty. In order to accomplish legal objectives, there must be assurances in law enforcement. Justice, benefit or use (doelmatigheid), and legal certainty are the three factors that law enforcement must always pay attention to, according to Sudikno Mertokusumo and Pitlo.⁸

According to Franz Magnis Suseno, legal certainty means that everyone can Demand that the law be followed, that your request will be granted, and that any violations of the law receive appropriate punishment.⁹ Meanwhile, according to Mochtar Kusumaatmadja, legal certainty is included in the purpose of law.¹⁰

⁵ Pendapat Scheltema yang dirumuskan oleh Bernard Arief Sidharta. 2004. *Kajian Kefilsafatan tentang Negara Hukum*. Jakarta: Jantera (*Jurnal Hukum*) "Rule of Law" Pusat Studi Hukum dan Kebijakan Edisi 3, hlm. 124.

⁶ *Ibid.*, hlm. 125.

⁷ Apeldoorn., L.J. van. 1996. *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita, hlm. 12.

⁸ Sudikno Mertokusumo dan A. Pitlo. 1993. *Bab-Bab Tentang Penemuan Hukum*. Bandung: Citra Aditya Bakti, hlm. 1.

⁹ Franz Magnis-Suseno. *Etika Politik*. Op.Cit., hlm. 79.

¹⁰ Mochtar Kusumaatmadja. *Fungsi Hukum*. Op.Cit., hlm. 2.



Bentham also asserts that the law only seeks to portray what is beneficial to the populace. Without focusing on the topic of justice, this opinion emphasizes items that are valuable to individuals and of a broad character. Here, ensuring individual certainty through the law is law's primary objective.¹¹

The goal of legislation in Apeldoorn is to maintain a peaceful and equitable social order. To promote peace, the law must establish a just society by balancing competing interests, and everyone must get (as much as is practicable) their legal entitlements.¹²

The goal of law in Apeldoorn is to maintain social order in a peaceful and equitable manner. In order to promote peace, the law must establish a just society by balancing competing interests, and everyone must receive what is legally due (as much as is practicable).¹³

In terms of the function of land, which is a natural resource that humans require and for which there is a finite amount of land available, there is a lack of legal clarity in the land sector. From an economic, social, and technological standpoint, the demand for land is a good thing. Rechts cadaster is the name for land registration that strives to offer legal certainty. Included in the guarantee of legal certainty to be accomplished in this land register are the certainty of the listed rights' status, the certainty of the rights' subject, and the certainty of the rights' purpose.

As can be seen from the foregoing, legal certainty is a basic principle (basic principle or *grondbeginsel*) in a state of law to produce an environment of order in legislation policy (legislated environment), which is a derivation of the concept of legality.) societal order is necessary to attain justice. To foresee the emergence of legal issues in the future, it is crucial to consider the legal component (legality aspect) of land. Aspects of legality other than ownership also serve to give the parties legal certainty that the party is the rightful landowner.

Regarding the role of land, which is a natural resource that humans require and for which there is a finite amount of land available, in terms of legal certainty in the land sector. From an economic, social, and technological standpoint, the demand for land is a good thing. Rechts cadaster is the name for land registration that strives to offer legal certainty. Included in the guarantee of legal certainty to be accomplished in this land register are the certainty of the listed rights' status, the certainty of the rights' subject, and the certainty of the rights' purpose.¹⁴

As previously mentioned, the Hak Guna Bangunan certificate grants the possessor legal status equivalent to that of the owner of the Right to Management, State Land, and Property Rights. The former holder of building use rights, which is state land, can therefore apply for the rights to the state land by submitting an application for land rights, in this case, state land, beginning with the applicant's requirements as specified in the Regulation of the State Minister of Agrarian Affairs/Head of BPN Number 9 of 1999 concerning Procedure for Granting and Cancelling of Land Rights and Management Rights, which specifies that Article 35 regulates:

- Land rights applicants must make a written application for ownership of state land to the Minister through the Head of the Land Office whose service area includes the property's location;
- The application includes information about the applicant, information about his land, including legal and physical materials, and other information, such as information about the number of plots, area, and status of the applicant's lands, as well as information about the requested land parcels and other information deemed necessary.

According to this clause, requesting state land rights in the form of building use rights constitutes both an agreement or contract and an act of land registration. The Building Use Right is enforceable against other parties according to the most recent regulation, which is

¹¹ Pendapat Jeremy Bentham, sebagaimana dikutip Peter Mahmud Marzuki. 2009. *Pengantar Ilmu Hukum*. Jakarta: Kencana Pranenda Media Group, hlm. 119-120.

¹² Apeldoorn., L.J. van. 1983. *Pengantar Dalam Hukum Indonesia*. Jakarta: Sinar Harapan, hlm. 123.

¹³ Apeldoorn., L.J. van. 1983. *Pengantar Dalam Hukum Indonesia*. Jakarta: Sinar Harapan, hlm. 123.

¹⁴ Urip Santoso. *Hukum Agraria*. Op.Cit., hlm. 104.



Article 39 paragraph (3) of Government Regulation Number 18 of 2021 because it is registered with the Land Office. Furthermore, as stated in Article 39, paragraph 4 of Government Regulation Number 18 of 2021, the holder of the Right to Build is thereafter provided a Certificate of Land Rights as proof of rights. Parlindungan asserts that the Right to Build encompasses both the prerequisites for its granting and any transfers. Except in cases when the rights are revoked because of the passage of time, and the revocation of the right must be registered, the registration in question is a potent means of proof regarding the revocation of the Building Utilization Right and the legitimacy of the transfer of the right.¹⁵

In conclusion, it can be concluded that the availability of land certificates as proof that land parcels have been registered with the state indicates that there is currently legal certainty regarding ownership of property rights in Indonesia. "Certificate is a letter of proof of rights that is valid as a strong evidence tool regarding the physical materials and juridical materials contained therein, as long as the physical materials and juridical materials are in accordance with the existing materials. in the letter of measurement and the book of land rights in question," the Government Regulation Number 24 of 1997's Article 32 states clearly.

The Basic Agrarian Law's adoption attempts to give Indonesians legal certainty regarding their land rights. There are two ways to achieve legal certainty: by providing documented, comprehensive, and understandable legal documents; by registering the land under its control; and by working with the government to implement land regulations. In essence, a right is what is recorded on the land. Since the primary purpose of land registration is to make these rights possible, the dominating right function in registered land registration is a right function rather than a right. The publicity and specialty principles are meant to be satisfied through the registration of land rights. Everyone will be aware of the registration under the concept of publicity, but the location of the land will be known under the principle of specialization.

In addition to the certificate providing legal certainty on land rights, agreements or contracts may be used to apply for, grant, transfer, or abolish land rights, including building use rights. Meanwhile, according to Subekti, the term "contract" has a more limited definition because it refers to a written agreement or agreement, whereas a verbal agreement cannot be considered a contract but rather an agreement or agreement.¹⁶ Subekti emphasizes the difference between a contract and an agreement on the element of its form.

It is important to distinguish between the power (purpose) of the contract and its content. Article 1337 of the Civil Code is defined as a common aim to be reached by the parties in the contractual relationship they form. Requirement 4 of that article refers to the contract power in reference to Article 1335 jo. While the substance of the rights and duties exchanged by the parties is related to the content of the contract, the content of the contract is related to determining the nature and extent of rights and obligations originating from the contractual connection of the parties.

The contract law judgment divides the contract's content into three categories: *essentialia*, *naturalia*, and *accidentalia* elements. An *essentialia* element is one that a contract must unquestionably contain. The legal concept of *naturalia* is one that is present in regulating regulations; yet, it is subject to deviation by the parties. In the case that the law does not control it, the parties may introduce the *accidentalia* element.

With an emphasis on the legal enforceability of the agreement in the event that it is not carried out, the author agrees more with Ricardo Simanjuntak's assertion that a contract is also an agreement based on these points of view. Even when the agreements are of a commercial nature, the parties may nonetheless form enforceable agreements or agreements that have no legal repercussions. According to Ricardo Simanjuntak, the contract is a component of the understanding of the agreement, which means that even when an agreement isn't always a contract, the contract is still an agreement, regarding the agreements of the parties that bind the contract in the same way that they bind law. Contrary to popular belief, a non-binding agreement is not the same as a contract. The fundamental intent of the contracting parties serves as the foundation for establishing whether an

¹⁵ A. P. Parlindungan.2008. *Komentar Atas Undang-Undang Pokok Agraria (Bandung: Mandar Maju)*, hlm. 186-187.

¹⁶ Subekti, 1987, *Hukum Perjanjian*, Intermassa, Jakarta, hlm.1



agreement has binding legal effects or just has moral consequences. Agreements that become "laws" for holders of Management Rights, State Land, and Ownership Rights are outlined in the context of protecting the holders of Building Use Rights. These agreements take the form of an agreement that contains obligations, prohibitions, and rights with sources based on Government Regulation Number 18 of 2021 articles 42, 43, and 44.

The rights and responsibilities of owners of building use rights in Indonesia are in fact explicitly regulated by the aforementioned clauses. In Indonesia, however, it is difficult to create and put into effect legislative protections for owners of building use rights over management rights, particularly for those whose validity time has passed.

CONCLUSION

As part of the state's vision to ensure public welfare, including through increased investment opportunities, adequate legal arrangements must be developed within the framework of the Basic Agrarian Law, the Job Creation Law, and their derivatives that regulate land. These laws must be able to provide certainty, justice, and legal benefits for holders of Building Use Rights certificates. The idea of an operational regulation can be seen in the rules governing the extension of the period of time during which the Right to Build over the Management Right, after the land has been used and/or utilized in accordance with the purpose of granting the right, may be granted an extension and renewal of rights as regulated in Article 129 paragraph (3) of the Law. -The Job Creation Law. Similarly, it is claimed that the drafting of Law Number 11 of 2020's Article 129 paragraph (3) serves as a formula for direct granting, extension, and renewal. Additionally, as stated in Articles 143–145, Building Use Rights over Management Rights are expressly regulated with relation to the ownership of flat units whose joint property has such a status for foreign nationals and foreign legal entities. It makes sense to offer the chance of apartment ownership to foreign nationals working in Indonesia as the investment door opens.

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