



## RESEARCH ARTICLE

## Paradigm of Certificate of Rights to Residence on The Coast

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**ABSTRACT**

Land rights are the most important part of proving land ownership, so the proof must be written according to physical data and juridical data. Proof of land ownership as a guideline, that a person or legal entity has the right to the land owned according to the proof of ownership. The problem that currently arises is the paradigm of the right to residence on the coast, as is the case with many land acquisitions or land for public purposes. Most of these problems relate to aspects of compensation for land acquisition, because people do not have certificates as proof of ownership. Therefore, the certificate is the most important part of guaranteeing that the land is owned by one. The nature of this certificate provides legal certainty for the right owner, through land registration carried out by the National Land Agency or BPN for short. So this research aims to provide a legal solution related to the paradigm of ownership rights to residences on the coast. By using a normative research method that examines legal norms based on a statutory approach and a conceptual approach. Likewise, these two approaches are the basis for writing this article to provide a legal solution to existing problems.

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**INTRODUCTION**

A certificate is a proof of title consisting of a copy of a land book and a measurement letter, with a cover bound together, which is determined by the Minister of Agrarian Affairs/Head of the National Land Agency. This certificate is given to land that already has a measurement letter, or land that has been measured in each village, therefore this certificate is strong evidence, both the subject and object of land rights science. (Chomzah, 2002).

The meaning of a certificate as a strong evidentiary tool is that physical data and juridical data that correspond to the data stated in the land book and measuring certificate in question must be considered as correct data unless proven otherwise by the court (Sihombing, 2022).

So this is related to the concept of land registration, registration and recording of land, normatively it is also commonly referred to as making a certificate. If we look at the types of land ownership that are required to be certified, they include: (Syah, 2019)

1. Certificate of Ownership Rights (SHM);
2. Certificate of Building Use Rights (SHGB);

3. Certificate of Business Use Rights (SHGU);
4. Certificate of Use Rights (SHP);
5. Certificate of Management Rights (SHPL);
6. Certificate of Apartment Unit Rights (SSHRS);
7. Certificate of Rental Rights.

Recently, a land problem, especially in coastal areas, is the absence of house certificates for buildings that are above the water surface above the coast. Many indigenous peoples live in these coastal waters. Provisions regarding indigenous communities residing in coastal areas have been mentioned in CHAPTER III concerning Improving the Investment Ecosystem and Business Activities Law Number 6 of 2023 concerning Job Creation. Object of granting rights to land and buildings in coastal areas Article 5 paragraph (1) Regulation of the Minister of ATR/BPN Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands states:

- a. Building used for defense and security;
- b. Harbors and docks;
- c. Beach visitor safety guard tower;
- d. The place of residence of customary law communities or community members who have lived there for generations; and
- e. Power plants.

Then Article 5 paragraph (2) explains the granting of land rights in coastal waters, namely:

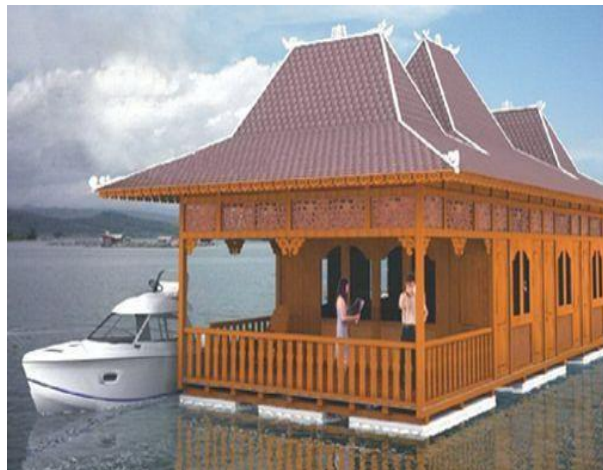
- a) Country strategy program;
- b) Public interest;
- c) Settlements on water for customary law communities;
- d) Tourism.p

In the context of houses on water it can be divided into 2 types:

- a) Floating houses or houses that move and can be moved; and
- b) Resorts above the water surface or houses that are anchored above the coast or houses that remain in coastal waters.

The above can be seen in the following image:

- a) Floating House



- b) House that rests above the surface of the water.



The two pictures above are two types of residence, for which currently there are no written provisions in Indonesian legislation regarding rights. When it comes to your own floating house, Regulations regarding housing and settlements have been accommodated by Law Number 1 of 2011 concerning Housing and Settlement Areas (hereinafter referred to as the Housing and Settlements Law), but in fact this Law only regulates buildings erected on land (mainland) and does not regulate regarding buildings on water such as floating houses. In fact, many floating house settlements can be found in coastal waters in Indonesia, including floating house settlements in Torosiaje Village, Gorontalo, Ayapo Village, Jayapura, Bajo Floating Village, Sulawesi, Salotengnga Village, South Sulawesi, Tablasupa Village, Papua, and many water areas. others in Indonesia. The floating houses themselves are usually built by people in coastal water areas, because most of these communities work in water areas. Floating houses themselves are a tax object, this is stated in Article 1 Number 37 of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions (hereinafter referred to as the Regional Tax Law) which explains that Rural and Urban Land and Building Tax is a tax on land and/or buildings owned, controlled and/or utilized by individuals or entities, except for areas used for plantation, forestry and mining business activities. (Bunga Nurani).

Meanwhile, for houses in coastal areas, the aspects considered include: (1) stilt house building design; (2) user activity patterns; (3) use of building materials (Susilo, 2014). This also does not officially regulate the basis for rights to houses located in coastal areas. If we look at it based on Law Number 27 of 2007 or Law Number 6 of 2023, it also doesn't state the same thing. This is very interesting, if the land rights above the water surface are determined in the issuance of the certificate. How to measure these rights without a clear legal basis.

So here the author examines the concept of a certificate for a house that is above water, whereas in the definition of certificate above there must be physical and juridical data related to the size of the land being certified. Based on the above, the legal issues that arise are formulated, namely: What type of land title certificate for residences or buildings above the water surface?.

## **RESEARCH METHOD**

### **The Field Study Population and Sample of the Study:**

This research aims to find the truth of coherence which is the discovery of truth based on law. This research uses a legal approach. In this case, the research must be able to determine which is the *lex specialis* and which is the *lex generalis*. 6 And also uses a conceptual approach, which means the research does not depart from existing legal regulations. This was done because there were no or no legal regulations for the problems being faced (Marzuki, 2005).

## **ANALYSIS**

## The Essence of Land Title Certificates as Proof of Rights

According to Maria SW Sumardjono regarding the relationship between Article 33 paragraph (3) of the 1945 Constitution and the UUPA states It must be admitted that the UUPA is a major work that was published in 1960, in the early stages of state administration, in the midst of political conflict and pressing for a law that guarantees justice regarding access to obtain and utilize agrarian resources (SDA) in the form of earth, water, natural wealth, and so on. Judging from its name, the object of UUPA regulation covers all matters related to natural resources (land, water, forests, mining, etc.), but in reality the UUPA only regulates matters relating to land, of the 67 articles, 53 articles regulate land (Rosmidah, 2013).

The meaning of "controlled" by the state as stated in Article 33 paragraph (3) of the 1945 Constitution, is not explained in more detail in the explanation, either the general explanation or the article by article explanation. This allows the right to control the country to be interpreted based on various understandings depending on the perspective and interests of the interpreter (Kunu, 2012). In connection with this, Article 33 paragraph 3 of the 1945 Constitution relates to land ownership, it can be mentioned that there is land registration. By definition, land registration is a series of activities that must be carried out by the government continuously, continuously and regularly, including collecting, processing, bookkeeping, and presenting and maintaining physical and juridical data, in the form of maps and lists regarding land plots and units. apartments, including the provision of certificates as proof of rights to plots of land to which there are already existing rights and ownership rights to apartment units as well as certain rights that encumber them (Tehupejory, 2012).

Conceptually, land registration is a series activities consisting of: a). Collection, processing, storage and presentation physical data of certain land parcels; b). Collection, processing, storage and presentation of certain juridical data; c). Issuance of proof of rights; And d). Recording changes to physical data and juridical data that occur later. In relation to physical data and juridical data, by definition physical data is information regarding the location, boundaries and area of registered land plots and apartment units, including information regarding the existence of buildings or parts of buildings above them. Meanwhile, juridical data is information regarding the legal status of registered land parcels and apartment units, their rights holders and the rights of other parties as well as other burdens that burden them. In this system, the principle of *nemo plus juris* applies, namely that a person does not have the right to hand over or transfer rights beyond what he or she owns. The truth of the data attached cannot be trusted directly because the State does not provide a guarantee of the truth of the data (Rezeki Aldila Rajab, 2020).

Therefore, according to Urip Santoso, a certificate is proof of absolute rights if it fulfills the elements cumulatively, namely (Santoso, 2019) a). The certificate is legally issued in the name of a person or legal entity; b). Land is acquired in good faith; c). Land is actually controlled; d). Within 5 (five) years since the issuance of the certificate, no one submitted a written objection to the certificate holder and the Head of the local Regency/City Land Office or submitted a lawsuit to the Court regarding control of the land or certificate.

So the UUPA statement states that a certificate as a land registration product is a strong piece of evidence which shows that if a land dispute occurs, this dispute must be resolved in general court, namely the district court which is a place where someone can take legal action to fight for/demand rights or defend rights. by submitting evidence that he has Ownership (Arifin Bur, 2017) of a land title certificate is very important to provide protection for the Indonesian people regarding the land rights in question and to create the aim of establishing the Basic Agrarian Law, namely laying the foundations for providing legal certainty.

That in essence this certificate is strong evidence. Evidence as described above in land law plays a very important role in providing legal certainty and legal protection for holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question. Basically, the proof that rights holders must have is apart from certificates as formal evidence, based on Article 1866 of the Civil Code, other evidence can also be used in the

form of testimony, such as for the purposes of registering land rights originating from the conversion of old rights. (Mualifah, 2022).

### **Entity Holding Certificate of Land Rights for Owners of Buildings Above Water Surface**

Therefore, this is an interesting discussion in the issuance of house certificates in coastal areas in terms of determining the boundaries of house ownership rights and the area that will be included on the certificate. If the author looks at the Bajo tribal area in Mola Village, Wakatobi, Southeast Sulawesi, where in 2022 the government will distribute 525 land certificates to the Mola community. Based on the government's statement at that time, land certificates were not only issued for houses on land, but people in houses above the sea can also get land certificates. The Head of the Southeast Sulawesi BPN at that time issued certificates for houses above the sea with the limits of the house pillars above the sea (Basyari, n.d.).

Indeed, this is also explained in the Constitutional Court Decision Number 3 PUU/-VIII/2010 which states; "Considering that according to the Court in the coastal waters and small islands there are individual rights, customary law community rights and traditional fishing community rights, business entity rights, or other community rights and the application of local wisdom, namely noble values that still apply in the social order of life".

Based on Article 1 paragraph (1) letter b of Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of Use of Land Without Permission from the Entitled Person or His Attorney, it states that land that is not included in land directly controlled by the state which is owned with certain rights by individuals or legal entities. Thus the scope of land management can be divided into 2, namely:

a) Land management in coastal areas; Land management in coastal areas is carried out by granting land rights on the coast and coastal waters measured from the coastline towards the sea as far as the provincial sea boundary. Granting land rights on the coast can only be given for buildings that must be in the coastal area, namely: buildings for land and security, ports or docks, safety guard towers for beach visitors, residence of indigeneous people or members of the community who have lived there for generations and/or: power plants, meanwhile, granting land rights in coastal waters can only be given to buildings that must be in coastal waters.

b) Land management on small island; Land rights can be granted to small islands. With the provision that at least 70% of the area of the island, or in accordance with the direction of the Provincial/District/City RTRW and/or the zoning plan of the small island; in addition, the remaining 30% of the area of the small island is directly controlled by the state and is used and utilized for protected areas, public areas or community interests and the last requirement must allocate 30% of the island area for protected areas.

So in this case, the granting of a residential certificate is only HGB in various regions, but it can be possible to become SHM. This is related to the laws and regulations governing coastal areas or Law No. 7 of 2007, which explains that the use of coastal waters is given in the form of Water Business Rights (HP3). That HP3 is given for a period of 20 years, this period can be extended in the first stage for a maximum of 20 years and the second stage is extended in accordance with laws and regulations.<sup>18</sup> The same thing in the provisions of Law No. 6 of 2023 concerning Job Creation explains that, The validity period of coastal area and small island management planning as referred to in paragraph (1) is 20 (twenty) years and can be reviewed every 5 (five) years.

That it is legitimate for the government to provide SHGB as proof to the community residing in coastal areas. Because land in coastal areas that are not burdened with ownership rights is controlled by the State and used according to its designation/function for the prosperity of the people. The transfer of

the status of State land to land that is attached to rights that are not State land can be done through the process of applying for State land/granting rights. (Mechsan, 2012).

Therefore, land on land to the coast and ocean are the most basic production factors for coastal communities. Coastal communities can use it as capital for living in production, distribution, consumption and investment activities. Then the government in this case must also provide secure land rights, which are very important for the economic development of local communities. So that land certificates as a real form of guarantee of security of ownership, control and use of land, can be used as collateral for bank loans in increasing the availability of financing for local community development in the area (Yudhiana Irawan, 2022).

Similar to ownership rights, HGB can also be used as collateral for debt or burdened by mortgage rights that are in accordance with the following characteristics of HGB:

1. Can be transferred and assigned;
2. Limited period;
3. Can be used as collateral for debt;
4. Can be released by the rights holder;
5. Can occur from Ownership Rights and State land (Arba, 2015).

The suitability of HGB as a right to land for people living in coastal areas or houses located on the coast, provides a complete guarantee in the implementation of agrarian affairs in the coastal area. If the land is a traditional area that has long been inhabited in the coastal area? Is HGB suitable as a guarantee of this right?, that in this modern era many traditional community units have disappeared into modern communities and the loss of the unity of the traditional heritage. So it is reasonable if the sound of Article 18B paragraph (2) states that. The State recognizes and respects the units of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law. This is also stated in Article 4 paragraph (1) of the Indigenous Peoples Bill that the State recognizes Indigenous Peoples who still live and develop in society in accordance with the principles of the unitary state of the Republic of Indonesia.

### **Responsibilities and Liability of Rights Holders for Buildings Above the Water Surface**

Actually, between responsibility and liability is an inseparable unity, liability contains the meaning of a state of being obliged to bear everything if something happens, may be sued, blamed, sued, and so on. In the legal dictionary there are 2 terms that indicate responsibility, namely liability and responsibility. Liability (liability/aansprakelijkheid) is a specific form of responsibility. The definition of liability refers to the position of a person or legal entity that is considered to have to pay a form of compensation/damages after a legal event or legal action (Jiwantara, 2022).

In line with the previous discussion, SHGB is proof of rights to housing above the water surface. There are two concepts in this case, the basis of rights and evidence of rights, both of which have different definitions, that the basis of rights is a temporary basis of rights and is not strong in terms of legal evidence such as an example of a Compensation Certificate or SKGR and evidence of rights is a permanent basis of rights that cannot be contested by any party, namely a certificate. Based on this, the appropriate thing to be given by people who have houses above the water surface is SHGB.

In terms of its elements, HGB is regulated in Article 35 of the UUPA that Building Use Rights are the right to build and own buildings on land that is not one's own, with a maximum period of 30 years. However, this period has been changed through PP Number 18 of 2021 in Article 37 paragraph (1) which is a total of 80 years. Land rights that are the source of national rights are those called "primary rights", namely; ownership rights, business use rights, building use rights, use rights granted by the

state, as a national official. In addition, the definition of not being one's own, means that HGB can arise from: Granting/application for rights (Primary HGB-HAT); Agreement to encumber HGB on land owned by someone else (Secondary HGB-HAT).

There are no restrictions on the area of HGB, but it is adjusted to the needs. Article 86 of the Regulation of the Minister of ATR/BPN Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights states that housing, offices, industry, warehousing, shops, hotels, flats, power plants, ports, or other uses in the form of buildings. As explained above, HGB has the following characteristics: can be transferred and assigned, limited term, can be used as collateral for debt, can be released by the rights holder and can occur from Ownership Rights and State land. That basically the Building Use Rights granted on State land or Management Rights land are granted based on the decision of the Minister of State for Agrarian Affairs/Head of the National Land Agency. This is also one of the frameworks of Law 27 of 2007.

So it is not appropriate if a house above the water surface or coastal area is granted ownership rights, because this does not fulfill the elements of ownership rights that can be granted SHM. By definition, the concept of ownership rights as stated in Article 20 paragraph (1) of the Basic Agrarian Law is the hereditary, strongest and most complete rights that people can have over land, taking into account the provisions in Article 6 (Hendra, 2011). Although ownership rights are the highest level of rights, they are not absolute rights over land, because ownership rights over land are still related to the rights of the legal community, for example, they must allow the use of the land for public interests if necessary, provide grazing rights for livestock if the land is not fenced and not planted, and must comply with the provisions of "laggeh rights" if the land is sold (Ismail, 2012).

Thus, SHGB holders on houses standing on the surface of the water pay attention to the responsibilities of the nature of the HGB. So with the legal force of HGB, so that HGB holders have obligations, prohibitions and rights. This is as regulated in Articles 42, 43 and 44 of PP No. 18 of 2021, which are described as follows: (Sutrisno, 2022)

a) The obligations of HGB holders are as follows; (1) Carrying out development and/or cultivating their land in accordance with the intended use and requirements as stipulated in the decision to grant their rights no later than 2 years from the time the rights are granted; (2) Maintaining the land, including increasing its fertility and preventing damage and maintaining environmental sustainability; (3) Maintaining the conservation function of water body boundaries or other conservation functions; (4) Complying with the provisions on the use of space as regulated in the spatial plan; (5) Releasing land rights either in part or in whole in the event that it is used for development for the public interest; (6). Returning land granted with HGB to the state, the holder of management rights, or the holder of ownership rights, after the building use rights have been terminated.

b) The prohibitions on HGB holders are as follows: (1) Confining or closing yards or other land areas from public traffic, public access, and waterways; (2) Damaging natural resources and the sustainability of environmental capabilities; (3) Abandoning their land; (4) Erecting permanent buildings that reduce the conservation function of embankments, the conservation function of boundaries, or other conservation functions, in the case that the HGB area has a water body boundary or other conservation function.

c) Meanwhile, the rights of HGB holders are as follows: (1) Using and utilizing land in accordance with its designation and requirements as stipulated in the decision and granting agreement; (2) Erecting and having buildings on land granted with HGB as long as it is for personal needs and to support business in accordance with statutory provisions; (3) Carrying out legal acts that intend to release, transfer, and change its use and encumber it with mortgage rights in accordance with statutory provisions.

Regarding the liability of SHGB holders, if they violate the existing responsibilities regulated in PP No. 18 of 2021 above, they can be given civil sanctions due to their negligence or intention in managing the SHGB. For example, people who live on the surface of the water or coastal areas pollute the environment.

## FINDINGS AND RECOMMENDATIONS

Land registration is a series of activities that must be carried out by the government continuously, sustainably and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and legal data, in the form of maps and lists of land plots and apartment units, including the provision of certificates as proof of rights for land plots that already have rights and ownership rights to apartment units and certain rights that burden them. Land certificates as a tangible form of guarantee of security of ownership, control and use of land, can be used as collateral for bank loans in increasing the availability of financing for local community development in the region. One of the Government's policies regarding land management in coastal areas is the place customary law communities live in the area. So that SHGB becomes an important part in guaranteeing the rights of the community to a place to live on the coast. In terms of its elements, HGB is regulated in Article 35 of the UUPA which was amended in Article 37 of PP Number 18 of 2021 which extended the HGB period to 80 years. So that the land rights that are the source of the nation's rights are those called "primary rights", namely; ownership rights, business use rights, building use rights, use rights granted by the state, as a nation's official.

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