

The Issuance of Building Use Rights Certificates in Water Areas (A Case Study of Kohod Village)

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Abstrak: *This research aims to examine the feasibility of issuing Building Use Rights (HGB) Certificates in water areas and analyze the legal consequences of dispute resolutions between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) and certificate holders. The research method employed is normative legal research. The research findings indicate, first, that there are differing legal perspectives regarding the issuance of HGB Certificates in water areas. The issuance of HGB Certificates in such areas is permissible provided that the certificates are granted to individuals who have established structures within the vicinity of the water areas. Second, regarding the legal consequences of dispute resolution by the Ministry of ATR/BPN, parties who perceive their rights to be infringed upon by such decisions may file a lawsuit. The legal repercussions of dispute resolution concerning the cancellation of HGB Certificates in water areas through the Administrative Court depend on the court's verdict. Should the Administrative Court grant the lawsuit and annul the cancellation of the HGB Certificates, the status of the HGB Certificates shall be reverted to the previous holder.*

INTRODUCTION

The Basic Agrarian Law (UUPA) introduced fundamental shifts from colonial agrarian law to a national agrarian framework characterized by legal unification, simplicity, and the guarantee of legal certainty for all Indonesian citizens. This national agrarian law is rooted in customary law that does not conflict with national interests, while maintaining the core principles of unification and legal protection.¹ Under the UUPA, and based on the "controlled by the state" provision in Article 33, paragraph (3) of the 1945 Constitution, the State as the highest-level organization of power for all people possesses the authority to regulate, organize, and determine the allocation, use, supply, and maintenance of earth, water, and space. This includes governing the legal relationships between individuals and these resources, as well as the legal acts concerning them.

¹ Mokhammad Najih dan Soimin, *Pengantar Hukum Indonesia: Sejarah, Konsep Tata Hukum dan Politik hukum Indonesia* (Setara Press, 2014), 274–275.

Article 4 of the UUPA clarifies that this authority can be granted to and held by individuals (either individually or collectively) and legal entities. Ownership is evidenced by a certificate. A land certificate serves as a formal deed of proof for land rights, management rights, waqf land, ownership rights for condominium units, and security rights, each recorded in the relevant land books. The National Land Agency (BPN) is the sole authority authorized to issue these certificates.

In accordance with Article 19, paragraph (2) of the UUPA, land registration activities provide certificates that serve as "strong evidence," indicating that Indonesia adopts a negative system with positive elements in land registration. This means that while a certificate is a strong instrument of proof, it remains subject to alteration based on court decisions if the information therein is proven inaccurate.² One example of a land title certificate is the Building Use Rights (HGB) Certificate. Article 35, paragraphs (1) and (2) of the UUPA define HGB as the right to establish and possess buildings on land not owned by oneself, for a maximum period of 30 years, extendable by up to 20 years. HGB is typically utilized for residential, commercial, industrial, or office purposes and is obtained through an application to the Ministry of ATR/BPN.³

In Kohod Village, HGB certificates complete with coordinates and registration numbers have been issued for areas spanning from the coastline to maritime waters. The Tangerang Regency Land Office recorded that these HGB areas cover approximately 300 hectares. The Right to Build constitutes a land title as stipulated in Article 16, paragraph (1) of the UUPA.⁴ A land title is defined as a right that authorizes the titleholder to utilize and derive benefits from the land under their possession. According to Article 1, point 1 of Government Regulation No. 18 of 2021, Land refers to the entire surface of the earth, including both dry land and water bodies. This definition extends to the spaces above and beneath the ground within specific limits, provided their exploitation is connected to the use of the earth's surface.

Conceptually, granting land rights over maritime waters is recognized in Indonesian law. For instance, the government previously distributed 525 HGB certificates to the Bajo tribe residing in water settlements as a realization of Agrarian Reform under Presidential Regulation No. 86 of 2018. Article 1, point 1 of Government Regulation No. 18 of 2021 defines land as the earth's surface, whether dry land or submerged in water, including the space above and within the earth.⁵ Agrarian law expert Nurhasan Ismail from Gadjah Mada University supports this, noting that "land" includes submerged areas. If water itself is the object of utility, authority lies with the Ministry of Maritime Affairs and Fisheries; however, the submerged surface remains under agrarian jurisdiction.⁶ Despite the legal possibility of issuing HGB in coastal waters, the HGB certificates in Kohod Village were revoked by the BPN due to administrative defects. As stated by the Ministry of ATR/BPN, these certificates suffered from procedural and material defects.⁷ Under Article 64 of Government Regulation No. 18 of 2021, the Ministry has the authority to revoke such rights.

Consequently, pursuant to Article 47 of the same regulation, the land status reverts to its original owner or the state. Legal remedies for such disputes include litigation through the

² M. Arba, *Hukum Agraria Indonesia* (Sinar Grafika, 2023), 156–157.

³ Arba, 111.

⁴ Shofi Nur Fajriana Kusuma, "Proses Pemberian Hak Guna Bangunan Diatas Tanah Hak Milik," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 18, no. 2 (2020): 98, <https://doi.org/10.31941/pj.v18i2.1094>.

⁵ Angeline Wirawan dan Yoan Nursari Simanjuntak, "Analisis Pemberian Sertifikat Hak Guna Bangunan di Atas Air Berdasarkan Teori Utilitarianisme," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 232–33, <https://doi.org/10.61104/alz.v3i2.929>.

⁶ Syahidan, *Berkaca dari Suku Bajo, Guru Besar UGM Sebut Sertifikat Lahan di Atas Laut Diperbolehkan*, 7 Februari 2025, <https://www.inilah.com/berkaca-dari-suku-bajo-guru-besar-ugm-sebut-sertifikat-lahan-di-atas-laut-diperbolehkan>.

⁷ Kejaksaan Republik Indonesia, *HGB diatas Laut*, 21 Maret 2025, <https://halojpn.kejaksaan.go.id/publik/d/permohonan/2025-WQ9W>.

Administrative Court or the District Court. However, dispute resolution via The BPN is often viewed as more practical, as the agency possesses technical expertise regarding the issuance and legal flaws of certificates. The existence of differing legal outcomes between judicial and executive bodies can undermine legal certainty.⁸ According to Gustav Radbruch, the law serves three fundamental values: justice, utility, and legal certainty. In the context of legal certainty, the primary focus is the consistent application of the regulations themselves, ensuring that the law provides a clear and predictable framework for the community.⁹

RESEARCH METHOD

This study adopts a normative legal approach, which is an analytical method used to resolve specific legal issues. It achieves this by systematically identifying and evaluating established legal principles, doctrines, and norms. The research type is defined as doctrinal research, which involves identifying legal rules formulated within specific legislation and subsequently extracting their underlying legal principles. To achieve this, the study utilizes three distinct approaches: Statute approach: Conducted by examining all laws and regulations relevant to the legal issue. Case approach: Performed by analysing court decisions related to the subject matter that have attained permanent legal force. Conceptual Approach: Executed by reviewing scholarly views and doctrines within legal science to establish legal concepts relevant to the issues under investigation. The legal materials utilized consist of: Primary legal materials: Statutory regulations and legislation. Secondary legal materials: Books, journal articles, periodicals, theses, internet sources, and live broadcasts. Tertiary legal materials: Legal dictionaries. The data collection technique involves a literature study, which entails reviewing regulations and cases by inventorying relevant literature and previous studies associated with this research. The analytical method employed is qualitative research. Qualitative research is an approach rooted in the philosophy of post-positivism, utilized to investigate natural object conditions where the researcher serves as the primary instrument. Techniques for collecting legal materials are conducted through triangulation (a combined approach), while the analysis of these materials is inductive or qualitative in nature. Consequently, the findings of qualitative research place greater emphasis on meaning rather than generalization.

RESULT AND DISCUSSION

HGB Certificates on Waters in Kohod Village

Kohod Village is in Pakuhaji District, Tangerang Regency, Banten Province. The area gained national attention following the construction of a 30-kilometer sea wall, within which HGB Certificates were issued over maritime waters.¹⁰ The Head of the Tangerang Regency Land Office, Yayat Ahadiat Awaludin, stated that the area covered by HGB Certificates in Kohod Village reaches 300 hectares. Under the directive of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN), the Tangerang Land Office recorded the holders of these offshore land titles. These certificates were issued in August 2023, following the enactment of Regional Regulation No. 1 of 2023 concerning the Banten Provincial Spatial Plan 2023–2043 in March 2023. The HGB Certificates issuance in Kohod is reportedly consistent with the spatial plan, designated as a residential zone and thus color-coded yellow.¹¹

⁸ Eddy Pranjoto Waloejo Sugeng, *Sengketa Pembatalan Sertipikat Hak atas Tanah: dalam Perspektif Antinomi Norma Hukum* (Universitas Wisnuwardhana Malang, 2016), 24–25.

⁹ Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti, 2021), 24–25.

¹⁰ Amelia Rahima Sari, *Perjalanan Kasus Pagar Laut Kades Kohod hingga Sidang Dakwaan*, 10 Januari 2025, <https://www.tempo.co/hukum/perjalanan-kasus-pagar-laut-kades-kohod-hingga-sidang-dakwaan-2075139>.

¹¹ Taufan Rengganis, *Pagar Makan Laut: Tanah Girik di Atas Laut*, (Jakarta), 26 Januari 2025, 29–30.

The administrative process for issuing HGB Certificates over waters in Kohod Village commenced with the issuance of *girik*, which were subsequently converted into the certificate of ownership before being downgraded to HGB Certificates. In the initial stage, the Head of Kohod Village, Arsin, issued *girik* for locations situated in the water.¹² The legal basis cited for this issuance was Article 60, paragraph (2), letter f of the Regulation of the Minister of State for Agrarian Affairs/Head of BPN No. 3 of 1997. It is important to note that *girik* is no longer recognized as valid evidence of land ownership as of February 2, 2026, pursuant to Articles 95 and 96 of Government Regulation No. 18 of 2021.

The Head of the Banten Provincial Marine and Fisheries Office, Eli Susiyanti, in a formal response to the law firm Septian Wicaksono and Partners—which had applied for the land certificates in Kohod—stated that the area is situated within aquaculture, capture fisheries, and oil and gas work zones, referring to Regional Regulation No. 1 of 2023. While the law firm had been processing the land since July 21, 2023, the Marine and Fisheries Office denied the recommendation for land utilization based on *girik*, as it contradicted Regional Regulations. Following this denial, a forged letter bearing the Marine and Fisheries Office's letterhead circulated, falsely stating that the requested area was not within the restricted zones. The Head of the Office confirmed to *Tempo* that the letter was forged but did not provide details regarding the perpetrator. Despite the denial from the Marine and Fisheries Office, the Tangerang Land Office issued the certificates in August 2023 despite the offshore location. This contradicts Constitutional Court Decision No. 3/PUU-VIII/2010, which prohibits the issuance of land titles over the sea. Furthermore, since the enactment of the Job Creation Law, maritime space utilization must be predicated on Maritime Space Utilization Compatibility Approval. According to Doni Ismanto, Special Staff to the Minister of Marine Affairs and Fisheries, no Maritime Space Utilization Compatibility Approval has been issued for the sea wall area to date.¹³

Following the outcomes in Kohod Village, Septian Wicaksono and Partners sent a letter dated October 25, 2024, to the Directorate General of Marine and Spatial Management, requesting information on administrative boundaries. The firm attached data claiming more than 1,500 hectares of *girik* land had once been utilized by residents in 16 villages before being submerged by seawater due to abrasion. Recently, 53 hectares of this land reportedly resurfaced. However, the Ministry of Marine Affairs and Fisheries refuted the claim that the petitioned area was formerly ponds or dry land. Based on satellite imagery, the 1,500-hectare area has been open sea since 1990. "There has never been a land parcel there," stated Suharyanto, Acting Director of Marine Spatial Planning.¹⁴

In the second stage, the *girik* was converted into a Freehold Title by the Tangerang Regency Land Office. This conversion was reportedly initiated by the applicant to circumvent oversight from the Banten Provincial BPN Regional Office.¹⁵ The legal basis for this conversion was Article II paragraph (1) of the Conversion Provisions of the UUPA in conjunction with Article 25 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration.

In the third stage, the certificate of ownership was downgraded to HGB Certificates. All HGB Certificates over the waters in Kohod Village originated from this downgrade of the certificate of ownership, which in turn originated from the conversion of *girik*. These HGB Certificates were not direct grants from the Tangerang Land Office, the Banten BPN Regional Office, or the Minister.

¹² "Live Streaming TVR Parlemen - Kamis, 30 Januari 2025," *Raker dengan Menteri ATR BPN RI*, diarahkan oleh Indra Pahlevi, Jakarta, 30 Januari 2025, <https://www.youtube.com/watch?v=O6JDv8zGr7g&list=LL&index=2&t=29582s>.

¹³ Rengganis, *Pagar Makan Laut: Tanah Girik di Atas Laut*, 30.

¹⁴ Rengganis.

¹⁵ "Live Streaming TVR Parlemen - Kamis, 30 Januari 2025."

Instead, the applicants utilized the Complete Systematic Land Registration scheme.¹⁶ As defined in Article 1 point 2 of Ministerial Regulation No. 6 of 2018, PTSL is a simultaneous initial land registration activity for all land registration objects within a village or administrative equivalent, encompassing the collection of physical and legal data. PTSL is a national program designed to accelerate land registration across the Republic of Indonesia.¹⁷

Recent reports indicate that the HGB Certificates over the Kohod waters have been revoked. Minister of ATR/BPN invalidated 50 HGB Certificates within the sea wall area of Kohod Village, Tangerang. The certificates were canceled due to procedural defects, as maritime waters cannot be subject to land certification. Consequently, all rights held by the HGB Certificates and the certificate of ownership holders are nullified.¹⁸ The 50 revoked titles consist of 38 the HGB Certificates and 12 certificates of ownership parcels. While the documents appeared procedurally and legally compliant on paper, the material facts regarding the offshore location were inconsistent with the issued certificates, justifying the Minister's revocation. Additionally, the Minister recommended the license revocation of the Licensed Surveyor Service Office and imposed severe administrative sanctions, including dismissal, on eight officials: JS, SH, ET, WS, YS, NS, LM, and KA.¹⁹

Local authorities in Kohod Village are also held accountable, specifically Village Head Arsin and Secretary Ujang. Furthermore, lawyers Septian Prasetya and Candra Eka Agung Wahyudi were involved as applicants. According to the indictment, Arsin, Ujang, Septian Prasetya, and Candra Eka Agung Wahyudi are charged with violating Article 12 letter b in conjunction with Article 18 paragraph (1) letter b of the Law on the Eradication of Corruption Crimes, in conjunction with Article 55 paragraph (1) of the Criminal Code.²⁰

Beyond Kohod Village, the issuance of the HGB Certificates over waters has also occurred for the Bajo tribe. The government, through the Ministry of Agrarian Affairs and Spatial Planning, distributed 525 HGB Certificates to Bajo community members residing above the water. The issuance of these certificates represents the realization of Agrarian Reform, as mandated by Presidential Regulation No. 86 of 2018. The requirements for this program were simplified, necessitating only a copy of the Family Card and an administrative fee of Rp150,000 for PTSL registration, as agreed upon by village officials. Upon completion of documentation, residents received HGB Certificates for their residential plots, typically ranging from 50 to 100 m².²¹

The Legality of Issuing HGB Certificates on Waters

In the case previously discussed regarding the issuance of HGB Certificates in the waters of Kohod Village, there are differing legal perspectives concerning such issuances in aquatic areas. Research conducted by Zhafirah Zahra in 2025 asserts that HGB Certificates should not be issued over water, based on the following legal arguments:²²

¹⁶ "Live Streaming TVR Parlemen - Kamis, 30 Januari 2025."

¹⁷ Isnaini dan Anggreni A. Lubis, *Hukum Agraria Indonesia (Pelaksanaan PTSL dan Penyelesaian Konflik Agraria)* (Pustaka Prima, 2023), 80.

¹⁸ Jihan Ristiyanti, *Pembatalan 50 HGB di Area Pagar Laut Desa Kohod, Agung Sedayu Group Tunggu Surat Resmi ATR/BPN*, 29 Januari 2025, <https://www.tempo.co/hukum/pembatalan-50-hgb-di-area-pagar-laut-desa-kohod-agung-sedayu-group-tunggu-surat-resmi-atr-bpn-1200227>.

¹⁹ "Live Streaming TVR Parlemen - Kamis, 30 Januari 2025."

²⁰ Sari, *Perjalanan Kasus Pagar Laut Kades Kohod hingga Sidang Dakwaan*.

²¹ Wirawan dan Simanjuntak, "Analisis Pemberian Sertifikat Hak Guna Bangunan di Atas Air Berdasarkan Teori Utilitarianisme," 232–233.

²² Zhafirah Zahra, "Penerbitan Hak Guna Bangunan di atas Perairan (Studi Putusan Mahkamah Konstitusi Nomor 3/PUU-VIII/2010)" (Thesis, Universitas Lambung Mangkurat, 2025), 8–14.

1. Divergent definitions of land and sea. Article 1, Paragraph 1 of Government Regulation No. 18 of 2021 explains that land is the earth's surface, whether in the form of dry land or area covered by water, including the space above and within the earth's body to certain limits. Conversely, the definition of sea, found in Article 1, Paragraph 1 of Government Regulation No. 32 of 2019, states that the sea is the aquatic space on earth that connects landmasses and other natural formations, constituting a geographical and ecological unity along with all related elements, with system boundaries determined by legislation and international law. The sea serves various purposes, including natural resources, transportation, and national defense. Given these definitions, it is argued that HGB Certificates should not be attached to seas or water bodies.
2. Reference to Article 33, Paragraph (3) of the 1945 Constitution. State control over water and the natural resources contained therein mandates that these resources be controlled solely by the state. Therefore, the existence of a private "Right" as the highest legal title is impermissible, as it would supersede the State's authority as mandated by the 1945 Constitution.
3. Conflict with Constitutional Court Decision No. 3/PUU-VIII/2010. Issuing HGB over the sea contradicts the ruling that reviewed Law No. 27 of 2007. The granting of usage rights over water—similar to the Coastal Water Management Rights risks turning small islands and coastal areas into the property of large corporations. Natural resource management must not focus solely on the principle of efficiency for the benefit of a small group of capital owners but must enhance the welfare of the people.

Furthermore, the Minister of ATR/BPN, Nusron Wahid, during a working meeting with Commission II of the House of Representatives on January 30, 2025, stated that the sea cannot be certified because it constitutes common property (*res communis*) rather than private property.²³ Conversely, Nurhasan Ismail, an agrarian law expert from Gadjah Mada University, argues that it is permissible to grant HGB in waters based on the following legal arguments:²⁴

1. Article 1, Paragraph (4) of the UUPA states that the definition of land includes land positioned under water. This implies that coastal waters, lakes, and rivers fall under the definition of land.
2. The concept of constructing buildings over water has long existed in Indonesia, such as among the Laut and Barok tribes in the Riau Islands or the HGB granted to the Kampung Laut tribe living in the waters of Batam.

These conflicting legal views result in legal uncertainty. The first view, which prohibits HGB issuance over water, focuses on areas where no buildings previously existed. It argues that water supports the livelihoods of the surrounding community; thus, granting private rights could disrupt public welfare. However, if this view were strictly applied, the HGB granted to the Bajo tribe for their water-based housing would be deemed illegal and subject to cancellation by the Ministry. This would infringe upon the human right to housing as stipulated in Article 28H, Paragraph (1) of the 1945 Constitution and Article 40 of Law No. 39 of 1999. Every individual has the right to occupy and enjoy a decent house in a healthy and safe environment (Article 129 of Law No. 1 of 2011).

The second view holds that HGB Certificates can be issued on land beneath the water's surface. This view has empirical legal precedents, such as the HGB granted to the Bajo tribe. The certificate is issued for houses with poles fixed into the seabed, which serve as boundaries for measurement. However, if this view is applied without restriction, many might construct buildings for private interest without regard for the public, such as obstructing maritime access. Article 43, letter (a) of Government Regulation No. 18 of 2021 prohibits HGB holders from blocking public

²³ "Live Streaming TVR Parlemen - Kamis, 30 Januari 2025."

²⁴ Syahidan, *Berkaca dari Suku Bajo, Guru Besar UGM Sebut Sertifikat Lahan di Atas Laut Diperbolehkan*.

access or waterways. Failure to comply may result in the cancellation of the certificate (Article 46, Paragraph (b), point 1).

Based on these arguments, the researcher proposes an equilibrium: HGB may be granted in waters provided it is issued to local communities who have established long-term settlements that support local life, rather than to external parties. This is essential to provide legal certainty regarding the basis of rights for communities who have lived over water for generations. The HGB constitutes a land right as regulated under Article 16, Paragraph (1) of Law Number 5 of 1960. The definition of land itself, as stipulated in Article 1, Paragraph 1 of Government Regulation Number 18 of 2021, states that land refers to the earth's surface, whether in the form of dry land or areas covered by water, including the space above and within the earth's body. The inclusion of the phrase “covered by water” implies that the definition of land encompasses water-covered areas. Consequently, it can be concluded that the Right to Build may be established overwater.

In addition to Building Use Rights, the legal basis for structures in water includes the Approval of Conformity for Marine Space Utilization Activities from the Ministry of Marine Affairs and Fisheries, as per Article 120 of Ministerial Regulation No. 28 of 2021. This approval covers various sectors, including tourism, settlements, and public facilities. In implementing HGB issuance in waters, the government must also adhere to Law No. 28 of 2002 regarding Buildings. Article 7 of this law stipulates two types of requirements:²⁵

1. Administrative Requirements: These include the status of land rights and evidence of building ownership. By issuing Building Use Rights, the government provides a clear legal status, allowing the community to meet these administrative procedures.
2. Technical Requirements: These regulate spatial layout and structural reliability.

Ultimately, protecting the residential rights of water-based communities through HGB issuance ensures that the government maximizes the utility and welfare of its actions. This should be grounded in the principle of non-discrimination, giving all citizens access to resources.²⁶ Another method for establishing structures in waters is through reclamation. Pursuant to Law No. 1 of 2014, reclamation is an activity aimed at increasing the utility of land resources through filling or drainage. Article 17, Paragraph (1) of Government Regulation No. 18 of 2021 explicitly recognizes reclaimed land as an object of land rights, upon which HGB may be attached in accordance with Article 36 of the same regulation.

Legal Consequences of Case Settlements Concerning HGB Certificates Issued in Aquatic Areas by the Ministry of ATR/BPN

Article 1, Point 13 of the Regulation of the Minister of ATR/BPN No. 21 of 2020 affirms that legal products of the Ministry of ATR/BPN, the Regional Offices of the BPN, and the Land Offices within their respective authorities—hereinafter referred to as legal products—constitute administrative decisions in the field of land affairs. As a legal product, a certificate is also classified as an Administrative Decision.

In administrative law, the issuing institution is also authorized to conduct a review of said decision; this implies that the Ministry and its regional and local offices are empowered to resolve land cases through internal instruments according to their respective jurisdictions. In handling land cases, the Ministry maintains a passive role, taking action only upon the receipt of a complaint. The handling of complaints does not always culminate in the cancellation or the denial of

²⁵ Wirawan dan Simanjuntak, “Analisis Pemberian Sertifikat Hak Guna Bangunan di Atas Air Berdasarkan Teori Utilitarianisme,” 236–237.

²⁶ Wirawan dan Simanjuntak, 237–238.

cancellation of a legal product, as typically occurs in court. Complaint resolution may be achieved through case settlement or mediation. Case settlement refers to a decision made regarding a case as a follow-up to the handling process conducted by the Ministry or its subordinate offices. One of the outputs of land case resolution through internal government instruments is the cancellation of an Administrative Decision.²⁷

Article 1, Point 14 of the Regulation of the Minister of ATR/BPN No. 21 of 2020 states that cancellation is a decision that revokes a Legal Product due to administrative and/or juridical defects in its issuance or to execute a court decision that has acquired permanent legal force (*inkracht*). In principle, the cancellation of a legal product is carried out based on: first, administrative and/or juridical defects; and second, the execution of a court decision with permanent legal force. Consequently, the Ministry or authorized officials within the hierarchy may cancel a product not only by court order but also through internal case resolution if the legal product is proven to contain administrative or juridical defects.²⁸

Cancellations performed by the Ministry entail legal consequences. A legal consequence refers to all effects arising from legal acts performed by legal subjects toward legal objects, or other effects caused by specific events determined or recognized by law. Such consequences serve as the source of rights and obligations for the legal subjects involved.²⁹ The legal consequence of resolving disputes over HGB in waters by the Ministry is that the party whose rights are aggrieved may file a lawsuit against the decision, as the Ministry's decision falls under the category of an Administrative Decision as formulated in Article 1, Paragraph (3) of Law No. 5 of 1986. Under these provisions, the deadline for filing a lawsuit is no more than ninety days from the date the decision was received or announced, in accordance with Article 55 of Law No. 5 of 1986.

Article 54 of the Regulation of the Minister of ATR/BPN No. 3 of 2011 concerning the Management, Assessment, and Handling of Land Cases stipulates that the BPN is obliged to execute court decisions that have acquired permanent legal force. However, executions that cannot be implemented include:

1. When there is another conflicting decision regarding the object of the ruling;
2. When the object of the ruling is under a court-ordered seizure;
3. When the object of the ruling is currently the subject of litigation in another case; or
4. Other reasons regulated by laws and regulations.

In carrying out an execution, the Ministry is authorized to execute a portion of the ruling's injunction (*amar putusan*), in accordance with Article 55, Paragraph (1), letter b of Ministerial Regulation No. 3 of 2011. During the cancellation petition process through the Ministry, the holder of the land right issuance decision or certificate may still transfer the land rights to another party or pledge the land as collateral to other non-banking creditors.

Legal Consequences of Case Settlements Concerning HGB Certificates Issued in Aquatic Areas by HGB Holders

The Minister of ATR/BPN, has canceled 50 HGB Certificates within the maritime sea-wall area of Kohod Village, Tangerang.³⁰ These certificates were revoked due to procedural defects, as the sea cannot be certified. Under both national and international law, the sea cannot be privately owned; it is part of the "common pool" whose utilization is regulated for the public interest. This

²⁷ Umar Dani, *Sengketa Pertanahan (Pembagian Kewenangan Mengadili Badan Peradilan di Bawah Mahkamah Agung)* (Rajawali Pers, 2025), 40–44.

²⁸ Dani, *Sengketa Pertanahan (Pembagian Kewenangan Mengadili Badan Peradilan di Bawah Mahkamah Agung)*, 43–44.

²⁹ Jonaedi Efendi dkk., *Kamus Istilah Hukum Populer*, 1 ed. (Prenadamedia Group, 2019), 47.

³⁰ Ristiyanti, *Pembatalan 50 HGB di Area Pagar Laut Desa Kohod, Agung Sedayu Group Tunggu Surat Resmi ATR/BPN*.

principle is recognized in international law through the doctrine of *res communis*, which states that the sea is a common area that cannot be owned by any specific party.³¹ This is further clarified by Law No. 1 of 2014, specifically Articles 16 through 20, which converted Coastal Water Utilization Rights into Management Permits, thereby precluding the control of waters in the form of ownership certificates.³²

The HGB Certificates belonging to PT IAM were among those canceled. Following this cancellation, the rights inherent to the HGB holders were extinguished. According to data from the Ministry, there are a total of 263 HGB Certificates over the Tangerang waters, consisting of 234 certificates held by PT IAM, 20 by PT CIS, and 9 by individuals.³³ Legal recourse available to HGB holders whose certificates have been canceled by the Ministry involves filing a lawsuit through the Administrative. The Administrative Court has the authority to review land title certificates as they qualify as administrative decisions. Land disputes in the Administrative Court constitute a "Tort by the Authorities" (*Onrechtmatige Overheidsdaad*). Implicitly, such torts by authorities are divided into those involving decisions and those involving actions.³⁴

The Administrative Court functions to resolve Administrative disputes with an orientation toward the cancellation of the challenged decision rather than the awarding of damages. The law regulates the court's authority based on specific criteria. Administrative agrarian law comprises the entirety of legal provisions that empower officials to implement state legal practices and take actions regarding emerging agrarian issues, such as land registration, land acquisition, and the revocation of land rights.³⁵

To determine the status of the land that is the object of a Administrative Court case, one must examine the final decision until it acquires permanent legal force.³⁶ The judge's decision regarding the disputed administrative decision may take the following forms:³⁷

1. Lawsuit Dismissed: The court decides to reject the plaintiff's claim. This effectively upholds the administrative decision issued by the relevant agency or official. Rejection usually occurs because the evidence presented by the plaintiff fails to support the grounds of the lawsuit.
2. Lawsuit Granted: Granting a lawsuit means the court finds the administrative decision to be unjustified, either in part or in its entirety. In such cases, the court must specify the obligations of the issuing agency or official, pursuant to Article 97, Paragraphs (8) and (9) of Law No. 5 of 1986: a) revocation of the administrative decision; b) revocation of the decision accompanied by the issuance of a new decision; or c) issuance of an administrative decision where one was previously absent (Article 3 of Law No. 5 of 1986). These obligations may be accompanied by compensation and/or rehabilitation, particularly in personnel disputes.
3. Lawsuit Deemed Inadmissible: This means the lawsuit does not meet the prescribed formal requirements, such as those identified during the dismissal procedure.
4. Lawsuit Abated: This occurs if the plaintiff or their legal representative fails to attend the first or second hearings after being properly summoned, or if the plaintiff fails to amend the lawsuit

³¹ Jaringan Dokumentasi dan Informasi Hukum Kota Semarang, *Apakah Laut Bisa Disertifikatkan? Kajian Hukum dan Realitasnya*, 26 Januari 2025, <https://jdih.semarangkota.go.id/artikel/view/apakah-laut-bisa-disertifikatkan-kajian-hukum-dan-realitasnya>.

³² Andry I. Sukmoputro, *Mengapa Laut di Indonesia Tidak Bisa di Sertifikasikan Hak Kepemilikannya?*, 23 Januari 2025, <https://kpk.go.id/djpkrl/mengapa-laut-di-indonesia-tidak-bisa-di-sertifikasikan-hak-kepemilikannya-w0rw/detail.html>.

³³ Ristiyanti, *Pembatalan 50 HGB di Area Pagar Laut Desa Kohod, Agung Sedayu Group Tunggu Surat Resmi ATR/BPN*.

³⁴ Dani, *Sengketa Pertanahan (Pembagian Kewenangan Mengadili Badan Peradilan di Bawah Mahkamah Agung)*, 45.

³⁵ Dani, 48–49.

³⁶ Putri Nadhira dkk., "Pembatalan Keputusan Tentang Penetapan Tanah Terlantar Atas Hak Atas Tanah," *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 1 (2024): 38, <https://doi.org/10.56128/jkih.v4i1.308>.

³⁷ Ali Abdullah M., *Teori dan Praktik Hukum Acara Peradilan Tata Usaha Negara Pasca Amandemen: Pengeseran Paradigma dan Perluasan Norma*, 2 ed. (Kencana, 2023), 216–217.

within the specified timeframe.

The legal consequence of a Administrative Court settlement regarding the cancellation of HGB Certificates in waters depends on the court's final ruling. If the court dismisses the lawsuit or deems it inadmissible, the status of the aquatic HGB object reverts to the original owner, which is the State (*State Land*). However, if the court grants the lawsuit and declares the Ministry's cancellation decision void, the status of the HGB object returns to the previous HGB holder.

Beyond the Administrative Court, HGB holders whose certificates were canceled may also sue the Minister of ATR/BPN in a District Court. Article 99, Paragraph (18) of *Rv. Staatsblad 1847 No. 52* specifically regulates the relative competence for resolving disputes involving the state as a party. When linked to Article 118, Paragraph (1) of the *HIR* (the defendant's domicile), if the Indonesian government is sued in its capacity representing the state, the Central Jakarta District Court typically holds jurisdiction. However, modern legal views, including those supported by Subekti, suggest that for the sake of simple, fast, and low-cost justice (Article 4, Paragraph 2 of Law No. 4 of 2004), the State may be sued in any District Court where the relevant departmental representative is located.³⁸

HGB holders may sue the Minister based on a Tort under Article 1365 of the Civil Code, which mandates that any unlawful act causing harm to another obliges the perpetrator to compensate for said harm. Civil court judgments include:³⁹

1. Judgment Granted: Occurs when the plaintiff proves their claim based on the principle of *actori incumbit probatio* (he who asserts must prove).
2. Judgment Denied: Occurs when the plaintiff fails to prove the tort or the resulting damages.
3. Judgment Inadmissible: Based on formal defects such as *error in persona*, vague claims (*obscur libel*), or lack of jurisdiction.
4. Judgment Abated: Due to the plaintiff's absence (Article 124 *HIR*).
5. Default Judgment: Issued when the defendant fails to appear (Article 125 *HIR*); the defendant may file an opposition (*verzet*) within 14 days.

The legal consequence of a District Court settlement regarding HGB in waters depends on the verdict. If the Tort claim is denied or deemed inadmissible, the claim for damages is rejected. Conversely, if the Tort claim is granted, the Minister must pay compensation to the HGB holder whose certificate was canceled.

CONCLUSION

The issuance of HGB in the waters of Kohod Village consists of three stages. In the first stage, the Head of Kohod Village issues a *girik*. In the second stage, the *girik* is converted into a Freehold Title. Subsequently, in the third stage, the Freehold Title is downgraded to a HGB Certificate. The issuance HGB Certificates in aquatic areas is permissible provided that such certificates are granted to local community members who have established structures that support the livelihoods of the surrounding aquatic community, and not to individuals residing outside the aquatic area. The inclusion of the phrase 'covered by water' within the definition of land under Article 1, Paragraph 1 of Government Regulation No. 18 of 2021 implies that the HGB can be granted over water-covered land

The legal consequence of a case settlement concerning HGB Certificates issued in waters by

³⁸ M. Yahya Harahap, *Hukum Acara Perdata: tentang Gugatan Pembuktian Persidangan, Penyitaan*, 2 ed. (Sinar Grafika, 2017), 253–254.

³⁹ Muhammad Arif Pahlevi, *Jenis-jenis Putusan dalam Perdata*, 22 Januari 2026, <https://marinews.mahkamahagung.go.id/artikel/jenis-jenis-putusan-dalam-perdata-0MD>.

the Ministry of ATR/BPN is that the party whose rights are aggrieved by the decision may file a lawsuit. The legal consequence of a case settlement regarding the cancellation of HGB Certificates in waters through the Administrative Court depends on the court's judgment. If the Administrative Court declares that the lawsuit against the cancellation decision is denied, inadmissible, or abated, the HGB Certificate issued in the waters reverts to the original owner, which is the state. If the Administrative Court grants the lawsuit against the cancellation decision and declares the cancellation of the HGB Certificate void, then the status of the HGB Certificate serving as the object of the lawsuit returns to the previous holder. In addition to filing a lawsuit in the Administrative Court, HGB holders whose certificates were canceled by the Ministry may sue the Minister of ATR/BPN on the grounds of a Tort. The legal consequence of a case settlement through the District Court regarding HGB Certificates in waters canceled by the Minister depends on the court's judgment. If the District Court declares that the Tort lawsuit concerning the HGB cancellation is denied, inadmissible, or abated, then the claim for damages is rejected. If the District Court grants the Tort lawsuit concerning the HGB cancellation, the Minister of ATR/BPN must pay compensation to the HGB holder whose certificate was canceled.

DAFTAR REFERENSI

- Arba, M. *Hukum Agraria Indonesia*. Sinar Grafika, 2023.
- Dani, Umar. *Sengketa Pertanahan (Pembagian Kewenangan Mengadili Badan Peradilan di Bawah Mahkamah Agung)*. Rajawali Pers, 2025.
- Efendi, Jonaedi, dan Prasetyo Rijadi. *Metode Penelitian Hukum Normatif dan Empiris*. Kencana, 2022.
- Efendi, Jonaedi, Ismu Gunadi Widodo, dan Fifat Fitri Lutfianingsih. *Kamus Istilah Hukum Populer*. 1 ed. Prenadamedia Group, 2019.
- Harahap, M. Yahya. *Hukum Acara Perdata: tentang Gugatan Pembuktian Persidangan, Penyitaan*. 2 ed. Sinar Grafika, 2017.
- Isnaini, dan Anggreni A. Lubis. *Hukum Agraria Indonesia (Pelaksanaan PTSL dan Penyelesaian Konflik Agraria)*. Pustaka Prima, 2023.
- Jaringan Dokumentasi dan Informasi Hukum Kota Semarang. *Apakah Laut Bisa Disertifikatkan? Kajian Hukum dan Realitasnya*. 26 Januari 2025. <https://jdih.semarangkota.go.id/artikel/view/apakah-laut-bisa-disertifikatkan-kajian-hukum-dan-realitasnya>.
- Kejaksaan Republik Indonesia. *HGB diatas Laut*. 21 Maret 2025. <https://halojpn.kejaksaan.go.id/publik/d/permohonan/2025-WQ9W>.
- Kusuma, Shofi Nur Fajriana. "Proses Pemberian Hak Guna Bangunan Diatas Tanah Hak Milik." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 18, no. 2 (2020). <https://doi.org/10.31941/pj.v18i2.1094>.
- M., Ali Abdullah. *Teori dan Praktik Hukum Acara Peradilan Tata Usaha Negara Pasca Amandemen: Pengeseran Paradigma dan Perluasan Norma*. 2 ed. Kencana, 2023.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Kencana, 2024.
- Nadhira, Putri, Muhammad Yamin, Suprayitno Suprayitno, dan Henry Sinaga. "Pembatalan Keputusan Tentang Penetapan Tanah Terlantar Atas Hak Atas Tanah." *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 1 (2024): 34–43. <https://doi.org/10.56128/jkih.v4i1.308>.
- Najih, Mokhammad, dan Soimin. *Pengantar Hukum Indonesia: Sejarah, Konsep Tata Hukum dan Politik hukum Indonesia*. Setara Press, 2014.

-
- Pahlevi, Indra, dir. "Live Streaming TVR Parlemen - Kamis, 30 Januari 2025." *Raker dengan Menteri ATR BPN RI*. Jakarta, 30 Januari 2025. <https://www.youtube.com/watch?v=O6JDv8zGr7g&list=LL&index=2&t=29582s>.
- Pahlevi, Muhammad Arif. *Jenis-jenis Putusan dalam Perdata*. 22 Januari 2026. <https://marinews.mahkamahagung.go.id/artikel/jenis-jenis-putusan-dalam-perdata-0MD>.
- Rahardjo, Satjipto. *Ilmu Hukum*. Citra Aditya Bakti, 2021.
- Rengganis, Taufan. *Pagar Makan Laut: Tanah Girik di Atas Laut*. (Jakarta), 26 Januari 2025.
- Ristiyanti, Jihan. *Pembatalan 50 HGB di Area Pagar Laut Desa Kohod, Agung Sedayu Group Tunggu Surat Resmi ATR/BPN*. 29 Januari 2025. <https://www.tempo.co/hukum/pembatalan-50-hgb-di-area-pagar-laut-desa-kohod-agung-sedayu-group-tunggu-surat-resmi-atr-bpn-1200227>.
- Sari, Amelia Rahima. *Perjalanan Kasus Pagar Laut Kades Kohod hingga Sidang Dakwaan*. 10 Januari 2025. <https://www.tempo.co/hukum/perjalanan-kasus-pagar-laut-kades-kohod-hingga-sidang-dakwaan-2075139>.
- Soekanto, Soerjono, dan Mamudji Sri. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers, 2024.
- Sugeng, Eddy Pranjoto Waloejo. *Sengketa Pembatalan Sertipikat Hak atas Tanah: dalam Perspektif Antinomi Norma Hukum*. Universitas Wisnuwardhana Malang, 2016.
- Sugiyono. *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*. Alfabeta, 2022.
- Sukmoputro, Andry I. *Mengapa Laut di Indonesia Tidak Bisa di Sertifikasikan Hak Kepemilikannya?* 23 Januari 2025. <https://kkp.go.id/djpkrl/mengapa-laut-di-indonesia-tidak-bisa-di-sertifikasikan-hak-kepemilikannya-w0rw/detail.html>.
- Syahidan. *Berkaca dari Suku Bajo, Guru Besar UGM Sebut Sertifikat Lahan di Atas Laut Diperbolehkan*. 7 Februari 2025. <https://www.inilah.com/berkaca-dari-suku-bajo-guru-besar-ugm-sebut-sertifikat-lahan-di-atas-laut-diperbolehkan>.
- Wirawan, Angeline, dan Yoan Nursari Simanjuntak. "Analisis Pemberian Sertifikat Hak Guna Bangunan di Atas Air Berdasarkan Teori Utilitarianisme." *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 228–40. <https://doi.org/10.61104/alz.v3i2.929>.
- Zahra, Zhafirah. "Penerbitan Hak Guna Bangunan di atas Perairan (Studi Putusan Mahkamah Konstitusi Nomor 3/PUU-VIII/2010)." Thesis, Universitas Lambung Mangkurat, 2025.