

LEGAL CERTAINTY FOR THE INCREASE OF HGB TO RIGHT OF OWNERSHIP OF SHOPS/OFFICE HOUSES

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Abstract

Ownership of land and residential houses is a fundamental human need after clothing, food, education, and health. This research aims to analyze the urgency of regulating the requirements of Article 151 Letter (e) of the Ministerial Regulation ATR/BPN RI Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights as an alternative requirement for upgrading Building Use Rights (HGB) for shop houses and office houses to Ownership Rights. The research method used is normative legal research with a statute approach. The results show that harmonizing the regulation of upgrading requirements between Article 151 Letter (e) of the Ministerial Regulation ATR/BPN RI Number 18 of 2021 and Law Number 28 of 2002 on Building Construction can be achieved through vertical and horizontal harmonization. Vertical harmonization is carried out by evaluating and revising conflicting regulations, while horizontal harmonization is conducted through mediation between institutions or ministries to align regulations related to upgrading HGB.

Keywords: Building use rights, building ownership rights, legal certainty.

1. Introduction

Law No. 5/1960 on Basic Agrarian Principles (UUPA) is the first milestone in the reform of the national land system in Indonesia, which is populist in nature and oriented towards equalizing land ownership and control. UUPA aims to end the dualism of land law that has prevailed since the colonial period, by prioritizing the principles of social justice. One important aspect of this reform is the restriction of excessive land tenure and the redistribution of land for the benefit of landless people, in accordance with Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (Herlindah et al., 2022, p. 226).

Previous research by Kristiansen shows that the land redistribution policy through the UUPA has had a positive impact on reducing inequality in land ownership (Kristiansen & Sulistiawati, 2016, p. 213). However, some studies also indicate that there are challenges in implementing this policy, such as resistance from those who own large amounts of land and administrative problems that hinder the redistribution process (Dhiaulhaq & McCarthy, 2020, p. 42). In this context, this study fills the gap by analyzing a recent policy that allows for the upgrade of Hak Guna Bangunan (HGB) status to Hak Milik for shop houses and office houses, which is regulated in the Ministerial Regulation of ATR/BPN Number 18 of 2021.

The novelty of this scientific article lies in the in-depth analysis of the harmonization of the policy of increasing the status of HGB to Hak Milik with other laws and regulations, especially Law Number 28 of 2002 on Building. Previous studies have focused more on aspects of land redistribution and the elimination of legal dualism, while studies on the policy of increasing the status of building use rights specifically for shop houses and office houses are still limited.

The main research problem raised in this article is the potential legal uncertainty and conflict of norms arising from disharmony between Article 151 Letter (e) of Permen ATR/BPN Number 18 of 2021 and Law Number 28 of 2002 concerning Building. The provision that allows the use of a certificate from the village head or lurah as a substitute for Building Approval (PBG) is the main focus of this research, considering that it can lead to inconsistencies in the application of land policies. Law No. 28 of 2002 on Building (UUBG) requires every building to have a Building Approval (PBG). If not, the building can be demolished, and the owner faces administrative and criminal sanctions. Article 151 letter (e) of Permen ATR/BPN Number 18 of 2021 that allows village/lurah certificate to replace PBG creates a norm conflict with UUBG. In addition, this regulation does not refer to UUBG and PP No. 16/2021 as the legal basis, creating legal uncertainty and ignoring the principle of safety. It also eliminates potential state revenue from PBG retribution.

The hypothesis in this study is that the policy of increasing the status of HGB to Hak Milik regulated in Article 151 Letter (e) of Permen ATR/BPN Number 18 of 2021 has not been fully integrated with Law Number 28 of 2002 concerning Building, which results in legal uncertainty and potential norm conflicts. In addition, more flexible administrative requirements such as a certificate from the village head or lurah as a substitute for PBG can lead to inconsistencies in the implementation of land policies.

This research uses a normative juridical method with 2 (two) approaches: statute approach and conceptual approach. The sources of legal materials used include primary legal materials, such as regulations ranging from Laws to Ministerial Regulations that discuss Land Management and Rights, as well as secondary legal materials such as books, scientific journals, research reports, and other relevant legal sources. The legal materials collected were classified and screened to ensure there was no conflict between them. The analysis of legal materials was carried out using the content analysis technique, which facilitates the study of the content of the information obtained (Cheng et al., 2018, p. 104).

The purpose of writing this article is to analyze the urgency of regulating the requirements of Article 151 Letter (e) of Permen ATR / BPN Number 18 of 2021 as an alternative requirement in upgrading Building Use Rights for shop houses and office houses to Property Rights, and to evaluate the harmonization of the regulation of the upgrade requirements between Article 151 Letter (e) of Permen ATR / BPN Number 18 of 2021 with other laws and regulations. This research is expected to contribute to improving a fairer and more effective land policy in Indonesia.

2. The urgency of regulating Article 151 (e) of the 2021 ATR / BPN Ministerial Regulation in the Upgrade of HGB to Freehold

As the business development in the field of residential property and villa management is growing rapidly because it is influenced by the increase in population and population distribution every year, especially in areas that are centers of education, tourism and

office centers such as Malang City, Malang Regency and Batu City. So that it is a special attraction for investors and entrepreneurs to develop their business more than just providing houses for permanent residence, but building and selling housing units that can function as a place to live as well as can function for business in the form of trade and / or office businesses. That way people who intend to build their own businesses, both trade and service businesses (such as offices), do not need to buy or rent special buildings located in trade areas, which in fact have very high rental values, and by themselves minimize the burden of public consumption every month.

This development is driven by business or commercial interests that make Rumah Toko (hereinafter referred to as Ruko) a form of investment (Bapedalitbang Probolinggo, 2016). Purwantias based on the results of her research stated that most of the Shophouses that were built were no longer just a necessity to increase the needs of life but to increase assets and personal assets (Khatimah, 2013, p. 273). Some of the reasons people prefer to build and sell Shophouses and Home Offices (hereinafter referred to as Rukan) are because it is one of the facilities that accommodate trade or office activities for the owner or other people in the form of leasing as a form of investment value. In addition, building a shophouse unit relatively does not require a large area of land and costs a lot like building a residential house. So that it provides benefits for the owner and encourages regional economic growth.

In principle, the purpose of building Shophouse and Rukan is not only to gain profit for those who utilize it, but also to provide satisfaction for those who live in the area and as a means of multi-functional place of all activities in life and improve the quality of services to the community in creating business opportunities or doing business. It is also the reason why shophouse and shop-house buildings are growing rapidly without regard to their suitability to the spatial planning of the city and or their environmental impact on the surrounding community.

The terms Ruko and Rukan have not been officially regulated in the prevailing laws and regulations since the existence of the Basic Agrarian Law until now. Likewise, the status of the rights attached to the land on which the shop houses and or office houses are built can only be granted in the form of Building Use Rights and cannot be upgraded to Property Rights. For the owners of shophouses and office houses that have expired the period of granting the right to use the building or have reached 30 (thirty) years of control and utilization, they can apply for an extension, if they meet the requirements, it will be extended for a maximum period of 20 (twenty) years and if an extension has been granted and has expired, the building owner must apply for renewal on the condition that the land is still being used properly according to the circumstances and nature of the designation and the land is still in accordance with the policies of the Regional Spatial Plan applicable in the local area. The process and procedure is quite complicated and there are many requirements that must be met and must pay attention to the productive aspects of managing and using the building.

Government Regulation No. 40/1996, which previously regulated Hak Guna Bangunan (HGB), Hak Guna Usaha (HGU), and Hak Pakai (HP), has been replaced by Government Regulation No. 18/2021. This new regulation regulates Management Rights, Property Rights, Building Rights, Flat Units, and Land Registration. Article 86 paragraph (1) of this updated regulation stipulates that Hak Guna Bangunan is reserved exclusively for non-agricultural business activities. These activities include housing, office buildings, industrial facilities, warehouses, retail shops, hotels, apartment buildings, power plants, ports, and other uses involving construction. Therefore, any land use involving buildings such as residences, retail outlets, and office buildings must have a Hak Guna Bangunan (HGB). These rights can be granted directly to individual Indonesian citizens or legal entities established and operating in Indonesia, such as property development companies or real estate developers.

3. HGB as a type of property right

HGB is one type of property right, the difference is that HGB is obtained from a legal relationship between the right holder and the limited scope of the space above

it, the space under the ground with the intention of being utilized (Republik Indonesia, 2021a) HGB is a type of property right, which is administratively granted by the Head of the Land Office individually or by granting rights collectively. Improvement of land rights is granted through a determination that includes granting, extending the period, and renewing rights, in accordance with the provisions of Article 1 point 11 of Permen ATR/BPN Number 18 of 2021. Included in the category of changes in rights is an increase in rights, which involves a determination by the government that land previously owned with the Right to Build or the Right to Use, at the request of the right holder, becomes state land and is then given back to the applicant with the Right of Ownership (Hak Milik) (Lubis & Lubis, 2008, p. 300). In practice, this change of right is carried out by crossing out the name of the old right and replacing it with the right of ownership, stating the legal basis that allows the increase in rights (Dalimunthe, 2000, p. 132).

The importance of a land right such as the Right to Build or the Right to Use must be upgraded to a property right is inseparable from strong protection efforts for the right holder and his descendants who become his heirs to be able to obtain and utilize the land for generations. This is because only property rights are attached as the strongest, fullest and hereditary rights. Land rights can be inherited from generation to generation (Gautama, 1991, p. 124), or as a right that not only lasts as long as the person is alive but can be inherited and inherited (Harsono, 2000, p. 166), or as a right that does not only last as long as the person is alive but can be inherited and inherited.

Land parcels that are eligible for land rights improvement for shophouses and shophouses are limited to land that has a Building Rights Title or Use Rights Title, either valid or expired. Especially for individual Indonesian citizens, these rights must have been owned for 30 years. In addition, the land must be used for shop houses or office houses, as stipulated in Article 149 paragraph (1) of Permen ATR/BPN Number 18 of 2021.

If the owner of the land has passed away, then the granting of his ownership rights can be directly transferred to his heirs and or reversed into the name of the heirs by completing the requirements or documents that show the applicant or individual who is given the right is an heir. In practice, to show that a person is an heir, it is sufficient to prove it with a Certificate of Heirs issued by the local Village Head and/or Lurah based on the Statement of Heirs made by the heirs and other supporting documents. If determined otherwise, it can also be proven by the Determination of the Expert from the judicial institution in accordance with the law that applies to him.

This is emphasized in the provisions of Article 150 paragraphs (1) and (2) of the Permen a quo which reads in full:

Article 150 (1) In the event that the right-holder or former right-holder as referred to in Article 149 dies, a Grant of Hak Milik may be given at the same time with a change of name to the heirs.

(2) The granting of a Hak Milik at the same time as a change of name to the heirs as referred to in paragraph (1) shall be subject to fees and/or taxes in accordance with the provisions of laws and regulations.

Referring to the above provisions, the subjects (right holders) who can be given the right to increase their land ownership rights are only individual Indonesian citizens and or their heirs if they have passed away as evidenced by a certificate of inheritance or determination of heirs from the court who own land with a right base in the form of Building Rights Title or Use Rights, both whose rights period has expired or is still running, can directly apply for an increase in rights if they have fulfilled the specified conditions, then the Head of the Land Office will issue a determination or decision letter granting ownership rights.

4. Requirements for granting rights to a plot of land to eligible parties through a determination of granting rights

The increase in rights for shop houses and office houses in Permen ATR/BPN Number 18 of 2021 is included in the category of «granting rights in general,» namely granting rights to a plot of land to eligible parties through a determination of granting rights. The

requirements that must be met by the applicant to apply for an increase in Building Rights Title to Property Rights for shop houses or office houses are regulated in Article 151 of the Permen.

Applicants are required to provide their identity, or if applicable, the identity and power of attorney if another person is acting on their behalf. If the right holder has passed away, a death certificate and heir certificate must be provided. In addition, the relevant certificate of Hak Guna Bangunan or Hak Pakai must be attached, as well as proof of deposit of Fees for Acquisition of Land and Building Rights, especially if the application is submitted by the heirs. In addition, a Building Construction Permit or building construction approval, or a certificate from the village head/lurah, or a similar permit/confirmation letter is also required. Finally, the applicant must provide a statement letter stating that on the land applied for, a building has been erected that will be used as a residential house, shop house, or office house.

All of these requirements are cumulative, meaning that if one of the requirements is not met or is not in accordance with the provisions, the application cannot be processed further at the Land Office. Therefore, each requirement must be fulfilled and completed as a unit. The requirements include several types of documents, namely: documents proving the subject of the right (items a and b), documents proving the ownership of the land and building (item c), documents proving the tax obligation on the land and building (item d), documents on the building construction permit or the building standard (item e), and documents stating or acknowledging that the land concerned exists and will be used productively as a shophouse (item f).

The conditions mentioned above are important, especially the requirements regarding juridical data concerning the basis of rights, evidence of legal relations between the owner and the object as well as physical data concerning the location, place, area and boundaries and condition of the building as one aspect that must be considered for a building.

However, specifically the documents or requirements specified in Article 151 letter (e) are alternative documents because there are several documents, namely «Building Construction Permit/Building Approval or Village Head/Lurah Statement or similar Permit/Certificate». The applicant can choose which document to use in submitting an application for an increase in rights for shop houses and office houses. The conditions specified are alternative because there is the word «or» which shows a connecting word between other words or phrases, which in legal language the word «or» terminologically means telling to choose (Efendi & Susanti, 2020, p. 398). The improper use of the word «or» in laws and regulations can cause problems that not only bias or obscure the meaning of the article but can lead to conflicts of norms with norms in other laws and regulations.

The requirement to increase rights for shop houses and office houses in Article 151 letter (e) does not only contain obscurity of norm because it requires a «permit or similar certificate» which is not clear about the acquisition of the letter from the institution or agency and is not clearly described in the provision, so that it can simply be assessed that the permit or similar certificate referred to in the Article is not clear and has no value or importance (urgency) to be used as a condition in increasing land rights for shop houses and office houses, but only as a formality.

This contains a conflict of norms with several laws and regulations that have a higher position, namely contrary to the building law and its derivative regulations because it positions the licensing document in the form of Building Approval (PBG) as a document that does not seem to have an important meaning in increasing land rights, considering that the PBG licensing document can be replaced by another letter in the form of a Village Head / Village Head certificate or Permit Letter or similar certificate (Giltaij, 2022, p. 112).

The urgency of Building Approval as a condition that can be replaced with a Certificate of Village Head/Lurah or permit and the like:

To be able to determine the urgency value of PBG regulation as one of the requirements in applying for an increase in rights and or the urgency of PBG being

established as an alternative licensing document that can be replaced with a certificate or permit and the like, it is necessary to thoroughly describe and analyze the laws and regulations governing PBG.

Since the enactment of the Job Creation Law, the nomenclature of Building Permit (IMB) which was previously regulated in Law Number 28 of 2002 on Building is changed to Building Approval (PBG). The change from IMB to PBG is not only limited to the name, but also reflects differences in meaning. According to Article 1 point 17 of Government Regulation Number 16 of 2021 on the Implementation of the Building Law, PBG is defined as «a license given to the owner of a Building to build new, change, expand, reduce, and or maintain the Building in accordance with the Building technical standards.» In contrast, IMB, based on Article 1 paragraph 6 of Government Regulation No. 36/2005 (which has been revoked by Government Regulation No. 16/2021), is «a license given to the owner of a Building to build new, change, expand, reduce, and or maintain the Building in accordance with applicable administrative requirements and technical requirements.» From the definition, it can be seen that PBG only requires the fulfillment of technical standards, while IMB requires the fulfillment of administrative and technical requirements. This shows that PBG is a form of simplification of licensing requirements to simplify the building licensing process, but still ensures public safety and security through consultation and inspection of technical standards.

When viewed in the perspective of Permen ATR / BPN Number 18 of 2021, the position and use of PBG documents as one in increasing rights is only as a supporting document not as the main document, because juridically the interests protected in increasing the rights referred to in Permen ATR / BPN Number 18 of 2021 are guaranteed clarity and certainty of rights or ownership status of land and buildings of shophouses and office houses which were previously owned with SHGB or SHP changing to SHM. So that it does not at all talk about the safety and feasibility of a building even though the object of increasing the rights is in the form of land and its buildings that function for shop houses and office houses, but only talks about the rights to land and buildings, therefore the applicant or owner even though he does not have a PBG document but is able to complete the documents of all other requirements in Article 151 letters a, b, c, d, and f, the PBG is simply replaced with a certificate.

Therefore, there are at least two reasons and objectives for the provisions of Article 151 letter (e) of Permen ATR / BPN Number 18 of 2021 to position the PBG licensing document as an alternative requirement, namely, first, only to make it easier for applicants or owners to apply for an increase in land rights for shop houses and office houses by simply requesting a certificate from the local village or kelurahan which is a fast process and minimal cost, while the PBG processing is quite difficult and takes a long time. Then the second is to allow owners or applicants who own Rukan and Ruko but do not yet have PBG to still be able to apply for an increase in land rights from SHGB or SHP to SHM by simply attaching a certificate from the village head or lurah or a permit and the like. However, it eliminates the source of local revenue from each PBG management retribution because with a certificate there is no need to pay tax and other fees for issuing PBG so that it has a negative impact on taxation policy.

In our opinion, the existence of PBG documents as a condition in increasing land rights is actually very important and in accordance with the legal objectives of the candy a quo itself, especially the requirements for increasing land rights for Rukan and Ruko which clearly have buildings standing on them, especially if the buildings are used for commercial businesses, so before being given the right base, it should be tested first whether the Rukan and Ruko buildings that have been utilized and or will be utilized have met the proper technical building standards or not. So that it does not only provide juridical certainty and legal force through the increase in rights but also guarantees that the building (object) that is given an increase in rights has met building standards as evidenced by the existence of PBG and Certificate of Functioning (SLF). Even in PBG, it also provides certainty regarding the clarity of the ownership status of the building through the Building Ownership Letter (SKBG) and provides legal certainty that the building that was erected has received approval from the local government in the form of a building (Republik Indonesia, 2021b).

It should be seen that this is the urgency of the existence of PBG in the requirements for increasing land rights for Rukan and Ruko. considering that buildings that function for residential homes as well as shops and offices usually do not only consist of 2 floors that are used continuously and within a certain period of time the security of the building will continue to decrease which can be a risk for residents and other communities.

5. Harmonization of Terms for Improving Building Rights Title (HGB) to Shophouse and Shophouse Property Rights: Permen ATR/BPN vs UUBG:

Ministerial Regulations are laws and regulations made based on the authority possessed by a Minister to organize government affairs. In addition, these regulations can be formed on the basis of orders from higher laws and regulations or through delegation of authority. The regulations are also tailored to the needs of related institutions or agencies.

In practice, ministerial regulations that have been formed often contain norms or content that contradict the norms of other laws and regulations, both higher and at the same level. This can trigger confusion or conflicts of authority between ministries or institutions, and potentially cause injustice to the community. In addition, this conflict of norms can hamper national and regional businesses and economic activities, both in the taxation and non-taxation sectors.

As previously described, there is content material in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, especially the content material formulated in the third part concerning the granting of property rights to land for residential houses, shop houses and office houses regulated in the provisions of Article 149 to Article 153 which contain conflicts or contradictions in legal norms with other laws and regulations. The provisions of these articles essentially regulate the increase in land rights, whose buildings function doubly in the form of business activities for shops (Ruko) and business activities for offices (Rukan) for individuals owning land and buildings with rights in the form of HGB and HP. The increase in land rights is from HGB and HP to Property Rights, so every community or individual who has land owned with Building Rights or Use Rights can apply for an increase in rights to the local land office.

The conflict or contradiction of legal norms relates to the requirements for increasing land rights for shop houses and office houses which are regulated in the provisions of Article 151 letter (e), namely «Building Building Approval (formerly IMB) or Village Head/ Lurah Certificate or Permit Letter or similar Letter». This requirement is alternative because it contains the conjunction «or» to indicate a choice between several things. In legal language, the word or is a conjunction or relates to alternatives or choices, or in other terminology, the word or means to tell to choose (Efendi & Susanti, 2020, p. 398). The improper use of the word or in laws and regulations can cause problems that not only bias the meaning of the article, but can also cause conflicts of norms with norms in other laws and regulations.

The requirement in the provisions of Article 151 letter (e) implies that people who apply for an increase in land rights from SHBG or SHP to SHM are not required to attach PBG/IMB licensing documents, in other words, positioning PBG licensing documents as documents that can be replaced with just a permit or certificate from the Kelurahan, thus contradicting the provisions of Article 253 paragraph (3) and paragraph (4), Article 262 of PP No. 16 of 2021 concerning the implementation of Law No. 28 of 2008 concerning Land Rights.

The existence of laws and regulations that contain norms that contradict the norms in other laws and regulations is actually inseparable from the influence and consequences of not fulfilling completely and comprehensively the entire series of stages of making laws and regulations, one of which is to harmonize the content material or substance formed with the content material of laws and regulations that are higher or at the relevant level.

In essence, regulatory harmonization is closely related to the hierarchy of laws and regulations, as well as a consequence of the application of the theory of tiered legal norms (*stufentheori*) adopted in the Indonesian legislative system. There are layers of laws and regulations from fundamental norms that are general, abstract and basic to implementation, technical and autonomous (*verordnung* and *autonoming satzung*) (Astawa, 2008, p. 37). As a result of the structural or hierarchical position of legal norms, the validity of a lower legal norm is highly dependent on the one above it, which is the basis and source of the validity of the norm which must not deviate from the provisions above it, so it is important that harmonization efforts are made before promulgation. harmonization of laws and regulations to realize the creation of harmonious norms between laws and regulations.

According to Jimly Asshiddiqie, the hierarchy of legal norms serves to create order in the legal system. «This hierarchy ensures that every legislation has a clear foundation and does not contradict each other, thus creating legal certainty for the community,» said Prof. Jimly. In his view, non-compliance with the hierarchy of norms can result in harmful legal uncertainty (Jimly Asshiddiqie, 2021, p. 41). This regularity is important to guard against overlaps or contradictions between regulations of different levels, which can cause confusion and injustice in the application of the law.

Maria Farida Indrati, an expert in the field of legislation formation, stated that the process of regulatory harmonization is very important to maintain consistency in the legal system. Vertical and horizontal harmonization must be carried out to ensure that lower regulations are in accordance with higher regulations, and that regulations at the same level do not contradict each other. She emphasized the importance of ministerial regulations to be subject to the laws and government regulations that are the legal basis (Soeprapto, 2018, p. 63). This harmonization serves to ensure that all regulations can be applied effectively without causing conflict, and assists in the creation of a cohesive and efficient legal system.

6. Recommendations on harmonization of legislation

If a lower norm contradicts a higher norm, then the norm can be considered invalid. In legal practice, this means that Article 151 letter (e) of Permen ATR/BPN Number 18 of 2021 can be annulled or not recognized as valid because it does not comply with higher provisions. This non-compliance also has the potential to cause harm to the community, hamper economic activities, and reduce the effectiveness of land administration. This shows the importance of vertical harmonization in ensuring that lower legal norms are in accordance with higher norms.

There are two types of regulatory harmonization, according to doctrine and theory: vertical and horizontal. Horizontal harmonization is applied to regulations in the same hierarchy, while vertical harmonization is applied to laws and regulations in different hierarchies (Budoyo, 2014, p. 615). The idea of *lex superiori derogat legi inferiori*-that is, higher regulations replace lower regulations-should be considered by legislative drafters when conducting vertical harmonization. The drafter should use the principle of *lex posteriori derogat legi priori* when drafting horizontal harmonization, which states that newer regulations take precedence over older regulations (Shearmur, 2022, p. 612).

Harmonization of laws and regulations aims to ensure consistency and harmony between different levels of regulations. There are two types of harmonization: vertical and horizontal. Vertical harmonization is done to ensure that lower regulations are consistent with higher regulations in the legal hierarchy. In this case, vertical harmonization requires that Permen ATR/BPN Number 18 of 2021 must be consistent with UUBG and PP Number 16 of 2021. Horizontal harmonization is done to ensure that regulations at the same level do not contradict each other. In the context of Permen ATR/BPN, it is important to ensure that the provisions therein do not conflict with other ministerial regulations at the same level.

As is the case during the preparation and discussion of the draft ministerial regulation in the ministry of agrarian and spatial planning, it must first harmonize the substance of

legal norms with higher laws and regulations that are directly or indirectly related to the content material in the ministerial regulation so that the norms or content material in the ministerial regulation and the norms and content material of the laws and regulations above it have regular harmony and connection. In other words, it can become a whole unit as a legal system framework that is harmonious and not contradictory in terms of norms and content material.

Against Article 151 letter (e) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights that contradict higher regulations, namely the provisions of Article 253 paragraph (3) and paragraph (4), Article 262 of Government Regulation No. 16 of 2021 concerning the implementation of Law No. 28 of 2008 concerning Building, in conjunction with Article 7, Article 8, Article 39, Article 40 paragraph (2) of Law No. 28 of 2008 concerning Building Buildings, then against the conflict of norms that arise there are two relevant assumptions, first, the existence of conflicts / conflicts of norms shows the inattention of the government in this case the Ministry of ATR / BPN to form laws and regulations, then second, during the preparation and discussion of the draft Ministerial regulation the norms in the regulation were not carefully and comprehensively synchronized and harmonized with other laws and regulations at the same level or higher.

This is shown by the fact that the preamble of the Minister of Agrarian Affairs and Spatial Planning Regulation No. 18 of 2021 on Procedures for Determining Management Rights and Land Rights does not cite or use laws and regulations governing Building Construction Approval (PMB), previously known as IMB, as a source of law. The Ministerial Regulation does not cite or use laws and regulations governing the Building Construction Approval (PMB) as a source of law, even though the requirements for increasing land rights for shophouses and shophouses stipulated in the Ministerial Regulation include a permit document in the form of PMB as one of the requirements. However, this document can be replaced with a certificate or authorization letter from the village head, but this is not sufficient to ensure environmental safety and end the source of state or local tax money. Meanwhile, the Building Construction Approval (PMBG), which is a licensing document, is positioned as an important document that must be owned by every person who owns or uses a building for residential or commercial purposes (residential houses and offices), as stated in Article 7, Article 8, Article 39, and Article 40 paragraph (2) of Law No. 28 of 2008 concerning Building Buildings in conjunction with Government Regulation No. 16 of 2021 concerning the implementation of Law No. 28 of 2008 concerning Building Buildings.

If the Ministry of Agrarian Affairs views the Building Approval (PBG) licensing document as a document that does not have an important role and or has no relevance (legal relationship) to the improvement of land rights, then it is appropriate that the Building Approval licensing document (formerly known as IMB) does not need to be included as one of the requirements in the application for improvement of land rights for shop houses and office houses, so that it is sufficient to require a certificate or permit from the local village or village head, so as not to cause ambiguity or confusion of norms.

If interpreted a contrario, the PBG licensing document as a requirement in the application for an increase in land rights for shop houses and office houses is very closely related and has an important role in addition to supporting the legal certainty of land rights for owners because land that can be upgraded to property rights is land originating from Building Rights and Use Rights, but also because it is related to the function of the building, namely the building is functioned doubly in the form of housing or residence as well as for business activities of shops and offices, so that every landowner who functions his building for commercial activities must have a licensing document in the form of PBG which is required by the building law and its implementing regulations.

Against the Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, especially Article 151 letter (e) which contains norms that conflict with building laws and regulations, an evaluation can be carried out, which then based on the results of the evaluation the evaluation team can provide

recommendations for changes to the laws and regulations of the Ministry of ATR / BPN Law Bureau, as specified in Article 12 paragraph (3) which reads «the results of the evaluation of the laws and regulations referred to in paragraph (1) contain: suitability of the process of forming laws and regulations, or recommendations to determine changes/replacement or maintenance of laws and regulations.

Permen ATR/BPN Number 18 of 2021, especially related to Article 151 letter (e) which allows the use of «Village/Lurah Head Certificate or Permit Letter or similar Letter» as an alternative to Building Approval (PBG), requires comprehensive harmonization efforts to resolve existing norm conflicts. Vertical harmonization needs to be done to ensure conformity with higher regulations. The provisions of Article 151 letter (e) must be revised to be in accordance with Law Number 28 of 2002 on Building (UUBG) and Government Regulation Number 16 of 2021. This revision should emphasize that the PBG remains a mandatory document that cannot be replaced by a certificate from the village/lurah head. In-depth analysis and consultation with constitutional and statutory law experts should be conducted to ensure all provisions in this Permen do not conflict with higher regulations. In addition, horizontal harmonization is also required to ensure consistency with higher-level regulations. Coordination between the Ministry of Agrarian Affairs and Spatial Planning with the Ministry of Public Works and Housing and other relevant agencies should be improved. The establishment of a harmonization team consisting of representatives of various relevant ministries and agencies is essential to review, adjust, and ensure the alignment of laws and regulations.

The application of the principle of *lex superior derogat legi inferiori* and the principle of *lex posterior derogat legi priori* must be done to ensure that lower regulations do not conflict with higher ones and new regulations do not conflict with old ones. Improving the legislative process through public consultation and transparency of the process is also important. Involving the community, academics, and legal practitioners in the process of revising regulations through public consultations can ensure that regulations are drafted in accordance with the needs and realities on the ground. In addition, increasing legislative capacity through training and education for officials involved in the formation of laws and regulations as well as strengthening the capacity of legal bureaus in each ministry and institution is also needed. Thus, this vertical and horizontal harmonization will create legal certainty, improve administrative efficiency, and ensure that the policies implemented can run effectively without causing norm conflicts or losses to the community. The implementation of this harmonization requires commitment from various stakeholders and a transparent and inclusive legislative process.

7. Conclusions

The existence of PBG documents in Article 151 letter (e) of Permen ATR / BPN Number 18 of 2021 as an alternative requirement in increasing rights for Rukan and Ruko originating from Building Use Rights to Property Rights is first to provide an opportunity for Rukan and Ruko owners who do not have PBG documents to still be able to apply for an increase in rights through a village or kelurahan certificate but is weak in aspects of security, feasibility and reliability of buildings for residents and the surrounding environment and eliminates sources of regional retribution tax, The second is to provide convenience for the owner or applicant to apply for an increase in rights for Rukan and Ruko only with a village or kelurahan certificate, and the third is that the processing process and costs are cheaper than the costs, processes and timeframes for PBG processing are longer and larger but provide guarantees of security, feasibility and reliability of Rukan and Ruko buildings and eliminate regional retribution taxes.

Then, harmonization of the regulation of the improvement requirements between Article 151 Letter (e) of Permen ATR / BPN Number 18 of 2021 which contradicts the norms governing PBG in UUBG number 28 of 2002 can be carried out through vertical harmonization by examining and reviewing higher level regulatory material which is the juridical basis for the emergence of rules regarding the conditions for increasing rights for Rukan and Ruko in the candy a quo and examining and reviewing lower level regulatory material or implementing examining and reviewing higher level regulatory

material, so as not to contradict technically and not cause differences in perception between the formulator of the rules and the technical implementer by examining and evaluating the content material of the regulations within the ministry periodically and outlined in recommendations to be submitted to the regulatory drafting official. Then harmonize horizontally with parallel regulations that place PBG as one of the improvement requirements in the candy in the form of building laws and government regulations down through mediation mechanisms between institutions or ministries.

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