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# Analysis of the Legal Certainty of the Issuance of Building Rights Certificates on Sea Areas Based on Government Regulation Number 18 of 2021

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**Abstract**
*This study discusses the issue of legal certainty regarding the issuance of Building Use Rights (HGB) certificates over maritime areas, which has become a legal controversy in Indonesia. The background of this study is the emergence of conflicting interpretations between the agrarian law system, which strictly limits the object of HGB to land, and the increasing practice of granting HGB over sea areas, as illustrated by the case of HGB issuance in the waters of Sidoarjo Regency. The purpose of this research is to analyze the validity and legal certainty of issuing HGB certificates in maritime areas from the perspective of Government Regulation No. 18 of 2021 (PP 18/2021). Using a normative legal research method with a statutory and conceptual approach, this study examines the formal and material legality of HGB issuance based on existing legal norms. The discussion focuses on the discrepancy between the definition of "land" in agrarian law and the classification of "sea" in maritime law, which are governed by different legal regimes. The findings of the study indicate that sea areas, which are part of public spaces regulated Under maritime law, cannot legally be granted HGB unless they have undergone a reclamation process and have been formally designated as state land through administrative procedures. The issuance of HGB over unreclaimed maritime areas leads to administrative defects, violates the principle of legal certainty, and risks harming public interests, particularly the rights of coastal communities. The study concludes that the practice of issuing HGB in maritime areas is legally invalid and recommends regulatory harmonization and strict law enforcement to prevent similar legal violations and to ensure justice and certainty in Indonesia's land administration system.*



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## 1. INTRODUCTION

Hak Guna Bangunan (HGB) is a form of property right that authorises a legal subject to build and own buildings on land that does not belong to them. The land on which the HGB is granted can be state-owned land, land with management rights, or freehold land. In the perspective of agrarian law, the existence of HGB can arise through two mechanisms, namely through legal events and legal actions. Legal events occur because of an event that in itself causes legal consequences, while legal actions are actions carried out consciously by legal subjects with the aim of creating certain legal consequences[1].

Hak Guna Bangunan has a non-permanent or temporary nature of ownership. This is because HGB does not give ownership rights to the land, but only the right to utilise and

use the land within a certain period of time. The affirmation of this temporary nature is contained in Article 35 of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA), which states that HGBs are granted for a maximum period of 30 years, can be extended for 20 years, and can then be renewed. This provision also emphasises the fundamental difference between HGB and Hak Milik, where Hak Milik is permanent and can be inherited from generation to generation [2].

HGB, as explained in the previous definition, is simply one of the land rights granted to individuals and legal entities to build and own buildings on land that does not belong to them within a certain period of time. Juridically, the existence of HGB cannot be separated from the provisions of Article 33 paragraph (2) of the 1945 Constitution and Article 2 of the UUPA. Article 33(2) of the 1945 Constitution states that branches of production that are important to the state and control the lives of many people are under the control of the state. This provision provides a constitutional basis for the state to control and regulate the utilisation of natural resources, including land, for the prosperity of the people. Meanwhile, Article 2 of the UUPA confirms that the state has the authority to regulate the allocation, use, supply, and maintenance of land as part of its control over the earth, water, and space.

The ratio legis of the stipulation of the time period on HGB is to maintain a balance between individual rights in land utilisation and the state's authority in regulating the use and allocation of land in a sustainable manner. The granting of this right is a form of state recognition of the needs of individuals and legal entities to erect buildings and manage land, without transferring permanent control of the land [3]. In other words, although the state authorises individuals or legal entities to utilise land through HGB, the right is neither absolute nor lasts forever. The state retains full control over the land and has the authority to evaluate its use and allocation after the HGB expires.

In line with this, Boedi Harsono in his work states [4]:

> *"Building rights are granted for a certain time because land controlled by the state cannot be given absolutely to legal entities or foreigners. This right is only given to provide legal certainty in developing and using the land, without making it a property right."*

The statement emphasises that the limitation of the HGB period is an instrument of state control. With this restriction, it is hoped that land tenure will not be controlled by certain parties continuously, but will still follow the provisions of spatial planning and can be used for wider interests according to the needs of the community.

Regarding the HGB arrangement, Article 38 paragraphs (1) to (3) of GR 18/2021 regulates the mechanism for granting HGB, which is differentiated based on the status of the land that is the object of the right. First, if the HGB is granted on state land, the determination is made through a decree of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency. Second, if the HGB is granted on land with the status of management rights, the granting of rights is carried out by the Minister after obtaining approval from the holder of the management rights. Thirdly, if the HGB is granted on land with a hak milik, the granting is done directly by the hak milik holder through a deed made by a Land Deed Official.

From the explanation above, it can be seen that the object of HGB is land. This is in line with the provisions of Article 4 paragraph (1) of the UUPA which states that based on the principle of state control, there are various types of rights over the surface of the earth, called land, which can be granted to individuals, groups of people, or legal entities. This article indirectly regulates that HGB grants rights over the surface of the earth, especially land, to the holder. Furthermore, Article 36 of PP 18/2021 states that land as the object of HGB consists of three categories, namely: (1) state land; (2) land under management rights; and (3) freehold land [5].

In practice, the provisions on HGB land objects cause problems when linked to cases of HGB issuance in marine waters. One example that has caused polemics is the issuance of HGB certificates in marine areas by the Sidoarjo District BPN. In 2017, BPN Sidoarjo issued HGB certificate No. 3 covering 656 hectares on behalf of PT Dharma Lautan Utama, covering the waters around Tlocor village, Jabon sub-district, Sidoarjo district. The issuance was motivated by the local government's plan to develop an industrial estate and deep-sea port since 2013. However, in 2019, the case came into the public spotlight after a number of national media reported on the construction of a sea fence in the area, which then triggered protests from local fishermen groups because it was considered to disrupt fishing routes and threaten their livelihoods.

The case led to a legal debate on the position of HGB over marine areas. The crux of the issue stems from the contradiction between the definition of "land" in Article 4 paragraph (1) of UUPA jo. Article 1 point 1 of GR 18/2021 with the definition of "sea" as stated in Article 1 point 1 of the Marine Law jo. Article 1 point 1 of GR 32/2019. Article 1 point 1 of GR 18/2021 defines land as the surface of the earth, both in the form of land and water-covered areas, including the space above and below it, as long as it is used directly or indirectly for the purpose of using the surface of the earth. This definition expands the scope of land, not only limited to dry land, but also includes water-covered areas such as swamps, lakes, or other wetlands, with the orientation of horizontal agrarian utilisation (Weydhani Putri et al., 2024). Meanwhile, Article 1 point 1 of PP 32/2019 defines the sea as the water space on the face of the earth that connects land with land and other natural elements, is a geographical and ecological unit whose system and boundaries are regulated by laws and regulations and international law. The phrase "natural forms" confirms that the ocean is part of a natural ecosystem that is not only limited to the water element (Angeline Wirawan & Yoan Nursari Simanjuntak, 2025). Thus, the sea cannot be categorised as a land object, given the vertical and dynamic characteristics of its utilisation and is subject to a marine law regime that is separate from the agrarian law system.

In relation to the previous description, there is a contradiction between Article 1 point 1 of GR 18/2021 and Article 1 point 1 of GR 32/2019. When compared, it is clear that the term "sea" as water space cannot be equated with "land" in the sense of agrarian law. Therefore, the issuance of HGB in the sea area as stipulated in GR 18/2021 is not in line with the basic principles of control and granting of land rights, considering that the sea is not a legal object that can be encumbered with Building Rights Title. The case of the issuance of HGB certificates in the water area of Sidoarjo Regency is a clear example of an administrative flaw in land practice, which ultimately creates legal uncertainty in spatial management based on the provisions of GR 18/2021.

Furthermore, the provisions in both UUPA and GR 18/2021 have provided strict limitations on the definition and mechanism for granting HGB, especially regarding the possibility of the sea being used as an object of rights. Based on GR 18/2021, the sea is normatively not included in the category of land as an object of agrarian rights, unless it has gone through a legal reclamation process and has been designated as land by the competent authority. The provision of Article 17 paragraph (1) of GR 18/2021 confirms that the granting of HGB can only be done if there has previously been a determination of the Management Right on the land parcel, as administrative legitimisation of the change in status from sea area to reclaimed land. If there is no such change in status, the sea remains under the maritime law regime and cannot be used as the basis for granting HGB. Therefore, the issuance of HGBs in marine areas such as the 656-hectare HGB case in Sidoarjo waters reflects a practice that is contrary to the principle of legal certainty.

Based on this background, the author argues that the practice of issuing HGBs in marine areas is contrary to the principle of legality as stipulated in UUPA and PP 18/2021.

The author proposes an initial hypothesis that in the case of HGB issuance in Sidoarjo waters, based on Article 46 letter b number 3 of GR 18/2021, the Minister of Agrarian and Spatial Planning/BPN should cancel the right before the HGB expires. This is because there are administrative defects of a substantive nature due to the non-fulfilment of formal and material requirements in the granting of HGB, especially related to the object, subject, and legal status of the land on which the right is based. Therefore, the issue of the legal position of the issuance of HGB over the sea area is important to be investigated further in the context of legal certainty and its compliance with PP 18/2021.

The purpose of this research is to analyse the validity of the issuance of HGB in the sea area in terms of formal and material aspects in accordance with the provisions stipulated in GR 18/2021. This research also aims to identify the legal consequences of the issuance of HGB certificates in sea areas that do not meet the requirements as objects of rights in land law. Through this study, it is hoped that a comprehensive understanding can be obtained regarding the appropriate mechanism for granting land rights, especially in the context of water areas that are still subject to the maritime law regime. The urgency of this research lies in the importance of emphasising the boundaries of authority in space management between the agrarian law regime and marine law. The phenomenon of HGB issuance in marine areas has the potential to cause imbalances in resource management, conflicts of interest with coastal communities, and legal uncertainty in national land practices. This research is expected to contribute to the enforcement of the principle of legal certainty, encourage regulatory harmonisation, and provide recommendations for improving land policies related to the issuance of land rights in water areas.

## 2. RESEARCH METHOD

The research method used in writing this journal is normative legal research, which aims to examine the suitability of issuing Building Rights Title Certificates (HGB) in marine areas based on the provisions of PP 18/2021. This research uses two main approaches, namely a statutory approach by examining various relevant laws and regulations, and a conceptual approach through examining doctrines, legal principles, and the thoughts of experts who support the discussion of legal issues [6].

The legal materials used consist of primary legal materials such as the 1945 Constitution, UUPA, PP 18/2021, and other relevant regulations, and secondary legal materials in the form of books, scientific journals, and relevant academic literature. Data collection is carried out through a systematic inventory of legal materials, while the analysis technique used is prescriptive with a deductive logic method, namely drawing conclusions from general legal norms to provide normative solutions and legal arguments for the problems studied [6].

## 3. RESULT AND DISCUSION

### 3.1. Legal Arrangement of Building Use Rights Based on UUPA and PP 18/2021

Hak Guna Bangunan (HGB) is a right granted to individuals and legal entities to build and own buildings on land whose ownership status is not private property. Referring to Article 37 of PP 18/2021 on Management Rights, Land Rights, Flat Units, and Land Registration, HGB has a maximum grant period of 30 years, which can be extended for 20 years, and renewed again for up to 30 years. This provision is in line with Article 35 of the UUPA, which also regulates the same thing normatively. Thus, the law provides room for right holders to apply for extension and renewal of the HGB as long as they fulfil the prescribed conditions. Accumulatively, the HGB validity period can reach a total of 80 years, depending on the application process and approval from the government [7].

A more detailed explanation can be found in Article 35 paragraph (1) of the UUPA, which defines HGB as the right to build and own buildings on non-owned land with a maximum time limit of 30 years. Furthermore, paragraph (2) provides an option for HGB holders to apply for a 20-year extension on condition that they submit an application to the relevant agency and consider the feasibility and needs of the building standing on it. Meanwhile, paragraph (3) states that the HGB can be transferred to other parties through various mechanisms of transfer of rights such as sale and purchase, grants, inheritance, or other forms of transfer. This provision emphasises that the HGB has economic value because it can be traded or used as collateral with a mortgage. From this regulation, several main characteristics of HGB can be concluded, namely [8]:

1. Temporary Land Rights
   HGB authorises the holder to construct buildings on state land, management rights land, or land owned by other parties without giving ownership of the land itself. In other words, the HGB holder only has the right to use the land for a certain period of time.
2. Limited Term
   HGB is valid for a maximum period of 30 years and can be extended for 20 years. After the extension ends, this right can still be renewed according to the rules stipulated in PP 18/2021 or other applicable regulations [9].
3. Can Be Used as Credit Collateral
   Another advantage of HGB is that it can be used as collateral or debt guarantee. Based on the provisions of Law No. 4/1996 on Mortgage Rights, HGB can be encumbered by mortgage rights so that it functions as an important instrument in supporting economic and investment activities.
4. Transferability of Ownership and Change of Status
   HGB is transferable either through voluntary transactions or transfers based on legal provisions. The process of transferring or changing the status of HGB must be carried out before a PPAT and reported to the Ministry of ATR/BPN in order to obtain legal validity.

The characteristics described above indirectly indicate that HGB falls into the category of non-perpetual rights. The term "non-perpetual right" itself is widely known in the common law system to describe property rights that have certain time limits or conditions, such as leasehold or temporary land use rights. Although the term is rarely found in national legal doctrine and legislation, the concept is still in line with the thinking of Indonesian jurists. For example, Boedi Harsono argues that [10]:

> "*A hak guna bangunan is a right to construct and own buildings on land that is not one's own, granted for a certain period of time and not in perpetuity*."

A closer look at Boedi Harsono's ideas leads to an understanding that HGB is a right that is limited by time, not absolute or permanent. In line with this, in her various writings on land rights and agrarian reform, Prof Maria SW Sumardjono also emphasises the difference between a perpetual right and other rights such as HGB or HGU, which are limited by time. According to Prof Maria [11]:

> *"Building use rights are not permanent. It has a certain period of time which confirms that the right does not last forever."*

Apart from being a non-permanent right, HGB is also classified under the group of derivative rights. Derivative rights are land rights whose existence does not arise directly from legal recognition, but rather comes from the granting or transfer by other parties, in this case the state as the holder of the right to control agrarian resources. Salim HS also explains in his book [10]:

*"HGB is a derivative right because it is born from the granting of the state as the executor of the right to control land. The state not only gives, but also regulates and supervises."*

From this view, in general, the classification of land rights can be divided into two main categories, namely:

1. Primary Rights, which are rights obtained directly due to legal recognition through several mechanisms, such as:
   a) Inheritance;
   b) Transfer of rights;
   c) Conversion from customary rights
   d) Land registration;
2. Secondary Rights, i.e. rights arising from the granting by the state, which include:
   a) State land;
   b) Land under management rights;
   c) Land under ownership rights.

In the context of HGB, the mechanism for granting rights rests on the principle of state control as affirmed in Article 2 of the UUPA, where the state has the authority to determine who is entitled to obtain land rights, including HGB. Therefore, the designation of HGB as a derivative right is appropriate for two fundamental reasons: first, HGB is not automatically attached to individuals or legal entities; second, the right can only be obtained through a decision or grant by the state. As part of a derivative right, the existence of HGB is entirely dependent on the status of the land that is its object. Based on Article 36 of GR 18/2021, HGB can only be granted on three types of land:

a. State Land, which is land directly controlled by the state without any other rights attached. This definition is regulated in detail in Article 1 point 2 of GR 18/2021, which mentions state land as land that:
   (1) Unencumbered by any rights and not under the control of any party;
   (2) Not waqf land that has been donated for religious or social purposes;
   (3) Does not include customary land owned by customary law communities;
   (4) Not state assets or local government assets that have been recorded in the administration of state/regional property management.
b. Tanah Hak Pengelolaan, which is land that is under the control of a legal entity or government agency and can be granted HGB to a third party.
c. Hak Milik land, which is land that is owned by an individual or legal entity, where HGB can be granted through an agreement or cooperation between the landowner and the beneficiary.

In the agrarian law framework, land rights subjects are all entities that are legally recognised as having the authority to acquire, own and utilise land rights, including HGB. Such legal subjects can be individuals or legal entities, as long as they fulfil the requirements as stipulated in the statutory provisions. Thus, only parties who are legally authorised can become HGB holders, whether for personal, commercial or social purposes. The provisions regarding who can be the subject of HGB are expressly regulated in two main regulations, namely the UUPA and PP 18/2021, which provide legal restrictions regarding who can legally be granted Building Rights Title in Indonesia.

Based on Article 36 of the UUPA, it is expressly stated that Building Rights Title (HGB) can only be owned by two categories of legal subjects, namely:

a. Indonesian citizens (WNI); and

b. Legal entities established under Indonesian law and domiciled in the territory of Indonesia.

With this arrangement, it can be concluded that the legal subjects of HGB holders are only limited to national legal entities, both individuals and legal entities that are fully subject to Indonesian law, both administratively and physically domiciled.

However, the implementing regulation of the UUPA, PP 18/2021, provides some leeway on the scope of legal subjects of HGB holders. The provisions stipulated in Article 39 of GR 18/2021, not only regulate national individuals and legal entities, but also allow certain foreign subjects to hold HGB in a limited context and under strict supervision. The parties that can become HGB holders according to GR 18/2021 include:

a. Individuals who are Indonesian citizens;
b. Legal entities established in accordance with the provisions of Indonesian national law and domiciled in Indonesia;
c. Representatives of foreign institutions or foreign legal entities operating in Indonesia, but within special restrictions, such as the construction of flats in special economic zones, the implementation of national strategic projects, or foreign investment activities explicitly regulated by applicable legal provisions.

In the national land law system, HGB is a type of land right that is temporary and can expire if certain conditions are met. The more recent provisions regarding the abolition of HGB are outlined in Article 46 to Article 48 of GR 18/2021, which replaces similar provisions in GR No. 24/1997. Based on Article 46 of GR 18/2021, there are several reasons that cause HGB to be abolished, namely:

a. The period of grant, extension, or renewal has expired;
b. The right is cancelled by the Minister due to a violation of law, non-compliance with administrative requirements, or a court decision that has permanent legal force;
c. The right holder voluntarily relinquishes the HGB to the state before the validity period expires;
d. Land is expropriated for the public interest, such as the implementation of national development projects in accordance with laws and regulations;
e. The right is revoked based on the provisions of the law, especially if the state needs the land for certain strategic purposes;
f. Land is declared as abandoned land, if it is not utilised in accordance with its designation within a certain period of time;
g. The object of the right, both land and building, is destroyed by disaster or other causes so that it can no longer be used;
h. The expiry of the basic agreement granting the HGB, especially if the HGB is granted on land with a hak milik or hak pengelolaan based on a cooperation agreement;
i. The right holder no longer meets the qualifications as a legal subject of HGB, for example an Indonesian citizen who changes citizenship to a foreigner or an Indonesian legal entity that has been dissolved.

Article 47 and Article 48 of GR 18/2021 clearly stipulate that if the Building Rights Title (HGB) on state land is declared null and void, the right holder is obliged to hand back the land to the state in an empty state, including the obligation to dismantle all buildings and objects located on it. The process of returning the land is given a maximum deadline of one year from the date of the abolition of the right. This provision is binding in order to ensure the orderliness of land administration and ensure legal certainty for both the state and subsequent right holders.

The phenomenon of granting HGB in marine areas has created a new chapter in agrarian discourse, especially in the context of determining the boundaries of land rights

objects in Indonesia. This has led to a polemic on whether sea waters can be used as an object of granting rights such as HGB, considering that in the UUPA the object of agrarian rights is expressly limited to the surface of the earth, excluding the sea area, which is generally a public area. Within the framework of Indonesian agrarian law, HGB can only be granted to three types of land, namely state land, management right land, and freehold land as stipulated in Article 36 of GR 18/2021. The definition of 'land' in Article 1 point 1 of GR 18/2021 includes the surface of the earth, both in the form of land and areas covered by water, including the space above and below the surface of the land as long as it can be utilised directly or indirectly for land use purposes. This means that land covered by water, such as ponds or lakes, is still included in the scope of agrarian land.

In contrast, the sea in the legal sense is regulated differently. Article 1 point 1 of Government Regulation 32/2019 defines the sea as a water space that connects land and is part of a geographical ecosystem that is subject to regulation by both national and international law. The sea is seen as a public space under the supervision of the Ministry of Maritime Affairs and Fisheries (KKP), and is not included in the scope of agrarian land. Therefore, the sea cannot be encumbered with agrarian rights such as HGB except after going through a reclamation process, so that the water area first changes its status to state land.

As such, the direct granting of HGBs in unreclaimed marine areas is contrary to the national agrarian legal framework. Only after the sea has been reclaimed and its status changed to state land can the HGB grant be processed in accordance with land regulation procedures. This affirmation makes it clear that the object of HGB is juridically limited to land, not sea areas. One of the fundamental reasons why the sea cannot be used as an HGB object is because it is part of the public space (*common property*). Elinor Ostrom in her work "Governing the Commons" mentions the characteristics of common property: it is not privately owned, can be accessed together, is regulated by institutions, is prone to overexploitation, and cannot be transferred to individual property [12].

In Indonesia's constitutional framework, the sea is included in the category of strategic natural resources as referred to in Article 33 paragraph (3) of the 1945 Constitution, which emphasises control by the state for the greatest prosperity of the people. In this case, the state does not own land or sea in the context of individual ownership, but rather as a regulator and guardian of public interests. This concept is also known in the doctrine of public trusteeship, where the state acts as a manager (trustee) of public resources and cannot transfer ownership of these resources to certain individuals or legal entities. The sea as part of common property is subject to public regulation, not to be commodified in the form of agrarian rights such as HGB.

The principle of public trusteeship, although not explicitly mentioned in Indonesian regulations, is reflected in many Constitutional Court decisions and various laws, including the Marine Law. Article 9(1) of the Marine Law explicitly states the right of everyone to benefit from the sea, while Article 3 of Law 27/2007 in conjunction with Article 60 of Law 1/2014 affirms the sea as a public space that must be managed for the benefit of the people as a whole, not just for commercialisation. From these provisions, it can be understood that control of the sea is collective under the supervision of the state, and the granting of HGBs in water areas that have not been reclaimed has no legal basis.

Based on this description, it can be understood that the sea in the Indonesian legal system is positioned as part of the common property space, where the state only functions as a public trustee. The implication is that marine areas cannot be granted

land rights such as Building Rights Title (HGB), unless the area has undergone physical changes and legal recognition - for example, through the reclamation process - so that its status changes to state land. The principle of public trusteeship is an ethical and normative basis that limits the authority of the state and the private sector to commercialise public space. Ignoring this principle can trigger legal disputes, damage ecosystems, and potentially violate the rights of coastal communities and indigenous communities [13].

Within the framework of national land law, HGB is one type of land right that can only be granted on state land, land with management rights (HPL), and freehold land in accordance with the provisions of Article 36 paragraph (1) of PP 18 of 2021. This provision confirms that HGB cannot simply be attached to land whose status is not legally valid, including reclaimed land. For sea water areas, juridically, they cannot be categorised as land according to agrarian law, but as public water spaces regulated under the provisions of marine law. Therefore, reclamation must first be carried out to convert the water area into land, which is then officially designated as state land. This status determination is the main requirement so that the land can be the object of granting rights such as HGB.

Furthermore, Article 67 of PP 18/2021 emphasises that in situations where additional land occurs, either due to reclamation or natural factors, its management and use must follow the provisions stipulated in the laws and regulations. This means that the results of reclamation do not automatically have the status of state land or can be granted HGB rights, but need to go through an administrative process in the form of a determination by the Minister of ATR / BPN or authorised officials. After this determination process is complete, it is then possible for interested parties to apply for the granting of building use rights in accordance with procedural provisions, including referring to implementing regulations such as Ministerial Regulations.

If the reclaimed land has been legally recognised as state land, the granting of HGB is subject to the general provisions as stipulated in Article 36 to Article 40 of GR 18/2021. HGB is granted for a maximum period of 30 years, can be extended for a maximum of 20 years, and renewed for another 30 years according to Article 37. In addition, Article 39 regulates that parties who can receive HGB are Indonesian citizens, Indonesian legal entities, and representatives of foreign institutions under certain conditions. Thus, the entire process of granting HGB on reclaimed land must follow legal administrative procedures, both in terms of land determination and legal certainty for the subjects entitled to receive HGB.

From the overall arrangement, it is clear that GR No. 18/2021 does not allow the direct granting of HGB over water areas, unless the area has gone through a legitimate reclamation process and has been transformed into state land. A reclaimed area must undergo two stages of transformation: first, physical transformation in the form of changing the sea area into land; second, juridical transformation in the form of legal determination as state land. Only after these two stages have been passed can the land be used as the object of granting building use rights. This procedure is designed as a form of legal prudence to ensure that the granting of land rights is in line with the principles of legal certainty, orderly land administration, and protecting public space from exploitation that can harm the environment and the wider community. Thus, the process of granting HGB on reclaimed land must be carried out within the framework of an agrarian law system that takes into account the principles of social justice, environmental sustainability, and the prevailing rule of law.

### 3.2.Analysis of the Legal Certainty of HGB Issuance over Marine Territory

Legal certainty is one of the main objectives of the legal system that plays an important role in achieving justice. The realisation can be seen from the fair application of the law to every action, regardless of who the perpetrator is. With legal certainty, individuals can predict the consequences of every legal action taken. This principle also supports the creation of equality before the law without discriminatory treatment. As a basic principle in the legal system, legal certainty requires that regulations be formulated and applied in a firm, clear, and understandable manner by the entire community. This principle provides definite guidelines for the legal behaviour of citizens as well as a bulwark against arbitrary exercise of power. Within the framework of the rule of law, legal certainty acts as an important bridge between justice, order and legitimacy of state authority.

Etymologically, the term "certainty" is closely related to the principle of truth, which is something that can be formulated strictly within the framework of formal law. By using a deductive logic approach, positive law is positioned as a major premise, while real events are used as minor premises. From this closed legal reasoning process, a definite legal conclusion is obtained. The conclusion must be predictable, so that everyone can make it a binding reference. Legal certainty is the result of the development of legal positivism theory that emerged in the 19th century. This concept has a close relationship with positive law, which is a regulation that applies officially in a country or in a certain situation, which is generally contained in written form such as laws and regulations.

Basically, these regulations contain general provisions that serve as guidelines for behaviour for every member of society. The existence and application of this kind of law is believed to be able to create legal certainty. According to Peter Mahmud's view, legal certainty has two main dimensions:

a. first, the existence of general rules allows individuals to know what is allowed and what is prohibited;
b. second, the legal protection of citizens from arbitrary actions by the government, because general laws also limit the authority of the state towards individuals [14].

Normatively, legal certainty is closely related to the existence of laws and regulations that are legally made, logically consistent, and do not cause multiple interpretations. Widodo Dwi Putro emphasised that legal certainty is not only seen from the aspect of state treatment of its citizens, but also from the consistency and clarity of the legal norms themselves. Utrecht also stated that legal certainty includes two important things: first, the existence of general norms that provide clarity to the community regarding permitted and prohibited actions; and second, the existence of legal guarantees that protect citizens from possible abuse of power by the state.

From the previous explanation, it can be concluded that legal certainty plays an important role in guiding individuals to act in accordance with applicable rules. Conversely, without legal certainty, a person does not have a definite basis for behaviour. Therefore, it is not surprising that Gustav Radbruch stated that certainty is one of the main objectives of law. In social life, the existence of legal certainty has a close relationship because it is the foundation for the creation of social order. Legal certainty has a normative nature that is reflected in regulatory provisions and judicial decisions. This principle emphasises that the implementation of the law must be carried out in a consistent, orderly, clear, and unchanging manner due to the influence of subjectivity in social life. Gustav Radbruch also asserted that positive law or written law must originate from concrete social realities, be formulated firmly, and maintained its stability so that it is not easily changed in order to ensure effectiveness and certainty in its implementation [15].

According to German legal philosopher Gustav Radbruch, law cannot be separated from three fundamental values that become the identity and ideal of the legal system. The three values consist of:

a. The Principle of Legal Certainty (*Rechtssicherheit*), which emphasises that the law must be referable with certainty, applied consistently, and not cause confusion in interpretation. This principle reviews the law from the juridical-formal aspect.
b. The principle of Justice (*Gerechtigkeit*), which views law from a philosophical angle, where justice is defined as equal treatment for all individuals before the law, without discrimination or deviation.
c. The principle of Benefit (*Zweckmäßigkeit or Utility*), which views the law from a practical and social angle, namely the extent to which the law can provide real benefits to society as a whole [15].

As he developed his theory, Radbruch later realised that the three principles do not always run in harmony. In practice, there is often a tension between legal certainty, justice, and expediency. For example, a rule of law may be normatively certain, but unfair when applied in a concrete situation, or conversely, a morally just action may not have a clear formal legal basis.

Therefore, Radbruch proposed the principle of value priority in law. In this principle, justice is placed as the highest value that must be prioritised, followed by expediency, and finally legal certainty. He argued that legal certainty and expediency should not be used as justification if their application ignores the principle of justice. This means that a rule is not worthy of being called a law if it blatantly contradicts a universal sense of justice. Radbruch's view is also in line with Lon L. Fuller's theory of legal morality, cited by Satjipto Rahardjo in his book Law in the Realm of Order. Fuller argues that for a system to be legitimately called "law", it must fulfil eight basic principles that reflect the internal morality of law [16]:

a. Law must consist of generally applicable rules, not arbitrary decisions tailored to specific cases (i.e., not ad hoc in nature).
b. These rules must be publicly promulgated to ensure broad awareness and accessibility.
c. Laws must not be retroactive, as retroactivity undermines legal certainty and the integrity of the legal system.
d. Legal norms must be formulated clearly and comprehensibly for the public.
e. There should be no contradictions among the applicable rules and regulations.
f. The law must not mandate actions that are impossible for citizens to perform.
g. Regulations should not be changed too frequently in order to preserve legal certainty.
h. There must be consistency between the content of legal rules and their implementation in daily practice.

When these eight principles are fulfilled, the law will possess not only formal legitimacy but also embody substantive justice, thereby enhancing public trust in the legal system.

Meanwhile, Jan Michiel Otto developed the concept of real legal certainty, which refers to legal certainty arising from laws that reflect actual social needs, are obeyed by the populace, are enforced fairly by state institutions, and are accessible to the public in a transparent manner. According to Otto, the substance of law must reflect societal values and be implemented by independent institutions, particularly the judiciary [17]. In his broader theoretical framework, Otto introduced the concept of real legal certainty, which encompasses the following:

1. Originates from law that is rooted in actual social needs;
2. Is accepted and obeyed by society;

3. Is enforced by state institutions in a fair and non-discriminatory manner;
4. Is transparently accessible to the public;
5. Is executed by independent institutions, particularly the judiciary.

According to Otto, ideal law is not only formally valid but also functions effectively in society, reflects local cultural values, and supports a just and democratic system of governance. Otto expanded the notion of legal certainty beyond the confines of formal-legal definitions. He emphasized that genuine legal certainty is not merely about the existence of legal norms, but also about how those norms operate within social reality [17]. Within this framework, legal certainty entails five essential components:

1. Availability of Clear and Accessible Rules
   Legal certainty must be supported by rules that are clearly formulated, non-contradictory, and accessible to the general public. These rules must possess formal legitimacy, meaning they are issued or recognized by legally authorized state bodies.
2. Consistent Application by Government Officials
   Government institutions are required to implement and uphold the law consistently, and must themselves be subject to the same legal norms. This fosters public trust and a sense of justice within the legal system.
3. Support and Compliance by the Majority of Citizens

Legal certainty is also grounded in social acceptance. A majority of the population must agree with the content of legal norms and voluntarily adjust their behavior in accordance with them.

4. The Role of an Independent and Impartial Judiciary
   The enforcement of law must be carried out by judges who are independent and free from external influence. In adjudicating disputes, judges must apply the law objectively and consistently.
5. Effective Implementation of Judicial Decisions
   Legal certainty requires not only fair judicial decisions but also their tangible implementation, which should be experienced directly by the affected parties.

Legal certainty serves as a fundamental pillar of the legal system, providing clear guidance on what is and is not permitted in society while protecting individuals from arbitrary actions by the state. However, legal certainty must not be understood solely in normative terms based on the written provisions of legislation. It must also account for the functional and substantive relationships between legal norms, both hierarchically and horizontally. Discrepancies between rules—such as overlaps or contradictions between general and specific provisions—can significantly compromise legal certainty in practice.

In terms of the objectives of law, there exists a tension between two dominant schools of thought: legal positivists, who view legal certainty as the ultimate goal, and functionalists, who prioritize the utility and social benefit of law. Amid this tension emerges the view that rigid, text-centered law may result in injustice—echoed in the classical maxim: *summum ius, summa iniuria* (the strictest law may become the greatest injustice). Therefore, while justice is not the sole objective of law, it remains a substantive essence that must not be disregarded.

Legal certainty is one of the primary objectives of law and plays a crucial role in achieving equitable justice within society. In practice, legal certainty is not limited to the mere existence of written norms, but also encompasses the fair and non-discriminatory enforcement of those norms. Every individual must have an equal right to understand the legal consequences of their actions, thereby enabling them to anticipate legal outcomes objectively and justly.

According to Prof. Teguh Prasetyo, the law consists of three fundamental elements: (1) justice, (2) legal certainty, and (3) utility. In his view, any legal discourse necessarily involves a balance of these three components (Dwisvimiar, 2011). Within this framework, the equilibrium among justice, certainty, and utility serves as a foundational principle to ensure that the law functions fairly, effectively, and predictably. In line with this, O. Notohamidjojo identifies three dimensions in the objectives of law [18]:

1. The regulatory (external) aspect – to organize social life and maintain peace and order;
2. The justice-oriented aspect – to promote justice that transcends mere formal order;
3. The humanitarian aspect – to ensure that human dignity is upheld and respected as intrinsic to human beings.

He asserts that the highest purpose of law is to "humanize humanity," meaning that the law should not only regulate conduct but also safeguard human existence in all its relational dimensions.

Legal certainty is closely tied to the principle of *equality before the law*, which requires that the law be applied regardless of individuals' social, economic, or political background. Semantically, the term "certainty" is rooted in the principle of verifiability, which can be tested through strict and systematic legal reasoning. Legal certainty guarantees that all legal actions can be measured and anticipated through written norms. In the absence of legal certainty, society lacks a normative reference point for lawful conduct.

Consistent with this perspective, Gustav Radbruch identified legal certainty as one of the three foundational values of law, alongside justice and utility. He argued that without legal certainty, justice cannot be realized, as the law would become unenforceable in a consistent and rational manner. Thus, legal certainty is not only a normative imperative but also a structural pillar in upholding the integrity and order of a national legal system [19].

A critical analysis of the application of Building Use Rights (Hak Guna Bangunan, or HGB) over maritime areas must be conducted through the lens of legal certainty, one of the core values of law as emphasized by Gustav Radbruch. A fundamental question arises: *Does the granting of HGB over sea territory rest on a clear, consistent, and legally accountable foundation within the framework of national law?*

According to Indonesian positive law, the Basic Agrarian Law (UUPA) explicitly states that land refers to the surface of the earth, as outlined in Article 4 paragraphs (1) and (2). Only this surface is subject to land rights, including rights such as ownership, cultivation, and building use [20]. The official elucidation of the UUPA firmly affirms that land rights pertain solely to the earth's surface—not the space above or the subsoil—except to the extent that such use benefits the surface land. Therefore, normatively speaking, the sea, as a water body, does not qualify as "land surface" within the meaning of the UUPA, and thus does not meet the legal criteria to serve as an object of HGB [21].

Furthermore, Government Regulation No. 18 of 2021, which derives from the UUPA, does provide a legal basis for granting HGB over reclaimed land. However, it is critical to emphasize that such land must first obtain legal status as *state land* through a formal process of spatial planning and land legalization by the government. Reclamation must be preceded by the fulfillment of administrative requirements, including its inclusion in marine spatial plans (*RZWP3K*) and the regional or national spatial planning framework [22]. Without fulfilling these requirements, the granting of

HGB is not only procedurally defective but also violates the principle of administrative legality, a core tenet of legal certainty theory as articulated by Peter Mahmud Marzuki and Widodo Dwi Putro.

Granting HGB directly over the sea—without undergoing a lawful reclamation process and accountable marine spatial planning—creates legal ambiguity and jeopardizes the principle of real legal certainty as conceptualized by Jan Michiel Otto. Legal uncertainty arises because no statutory provision explicitly permits the granting of land rights (including HGB) over sea territory that remains classified as state waters. If such practices continue, they may lead to unequal legal treatment, normative inconsistency, and open the door to maladministration or abuse of authority by state officials.

From the perspective of Gustav Radbruch's legal certainty principle, the issuance of HGB over marine areas contradicts this value because:

1. It lacks a clear and explicit legal basis;
2. It creates uncertainty regarding the legal status of the HGB object (i.e., whether it is land or sea);
3. It undermines established marine spatial planning as mandated by sectoral legislation.

Moreover, such actions may also violate fundamental principles of administrative law, including the principles of legality, public interest protection, and prudent governance. In the context of marine spatial governance, Article 6 paragraph (1) of the Law on Coastal and Small Islands Management (UU PWP-PPK) clearly states:

*"No person may own any part of the coastal zone or small islands."*

This provision underscores that there is no legal standing to confer land ownership or land rights (such as HGB) over maritime zones that have not been lawfully reclaimed and legally recognized as land. Therefore, the granting of HGB over marine areas—without a valid reclamation process and formal inclusion in the RZWP3K—constitutes a legal violation that undermines legal certainty both in formal-juridical and substantive terms.

## 4. CONCLUSION

The issuance of Building Use Right (HGB) certificates over marine areas is inconsistent with the principle of legal certainty as stipulated in Government Regulation No. 18 of 2021. Normatively, HGB may only be granted over state land, land under management rights, or privately owned land. Maritime zones, however, fall under the jurisdiction of maritime law and do not fall within the legal definition of "land" as stipulated in the Basic Agrarian Law (UUPA). The issuance of HGB over marine areas without a lawful reclamation process and without the formal designation of the area as state land results in legal uncertainty, administrative defects, and potential conflicts with coastal communities directly affected by such actions. Based on the findings of this study, it can be concluded that such practices violate both the principle of legality and the principle of legal certainty in land administration. Therefore, this study recommends: (1) the harmonization of regulations between agrarian and maritime legal regimes; (2) stricter enforcement of the legality principle; and (3) the revocation of HGB titles that do not comply with statutory requirements. In addition, it is necessary to strengthen administrative oversight mechanisms in land affairs to prevent the abuse of authority in the granting of land rights.

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