



## Legal Position of a Deed of Release of Rights Made by a Notary for Building Use Rights Objects which the Term has expired

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### ABSTRACT

Published Online: August 14, 2024

The position of land as an asset that drives the economy and has a positive impact on economic development and development. HGB can be given a maximum period of 30 years and can be extended for a maximum period of 20 years. An application for renewal of HGB can be submitted no later than 2 years after the period or extension ends, in Article 95 Number 2 of Permen ATR/BPN 18/2021. If no extension/renewal is made, based on Article 11 of Permen ATR/BPN 18/2021, land that has exceeded its rights period automatically becomes state land. An interesting legal issue to be studied in this study is the HGB object that is controlled for a period of 30 years by the rights holder but is not renewed/extended, after several years all heirs of the former HGB owner release it to the new rights recipient with compensation based on a deed of release of rights made by a Notary. The deed raises legal problems related to its validity and legal certainty, because the object is state land. The researcher determines the problem, namely: What is the legal status of a deed of release of rights made by a Notary for an HGB object whose term has expired? This research is a normative juridical study using a statutory approach, a conceptual approach, and a historical approach. Research Results The legal status of a deed of release of rights for an HGB object is that the deed provides Priority Rights owned by the former HGB holder. This Priority Right can be used as a basis for the former rights holder to transfer his rights to the new rights owner. Because the HGB object whose term has expired is not the right of the HGB subject but state land, so the status of the deed of release is null and void.

### KEYWORDS:

Legal Status of Deed of Release of Rights, Notary, Expiration of Term

### INTRODUCTION

The Fourth Amendment to the 1945 Constitution of the Republic of Indonesia in 2002, confirmed the concept of the Legal State which was previously only included in the Explanation of the 1945 Constitution, formulated firmly in Article 1 paragraph (3) which states, "The State of Indonesia is a State of Law." The concept of the Legal State must be made the commander in chief in the dynamics of state life, namely law, not politics or economics.<sup>1</sup> So it is appropriate to use jargon related to the principle of the rule of law, namely: *'the rule of law, not of man'*. What is meant by government is essentially law as a system, not individuals who only act as "actors" in the system scenario that regulates it.

The idea of the Rule of Law is built by developing the legal apparatus itself as a functional and just system, developed by arranging the superstructure and infrastructure of political, economic and social institutions in an orderly and regular manner, and fostered by building a rational and impersonal legal culture and awareness in the life of society, nation and state. The legal system needs to be built (law making) and enforced (law enforcing) as it should be, starting with the constitution as the highest law. To guarantee the upholding of the constitution as the highest basic law (the supreme law of the land), a Constitutional Court is also formed which functions as 'the guardian' and at the same time 'the ultimate interpreter of the constitution'.

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\*Cite this Article: Elzha Putri Widya Yurisa, Dominikus Rato, Bhim Prakoso (2024). *Legal Position of a Deed of Release of Rights Made by a Notary for Building Use Rights Objects which the Term has expired. International Journal of Social Science and Education Research Studies*, 4(8), 866-874

<sup>1</sup> Jimly Asshiddiqie, *Gagasan Negara Hukum Indonesia*, www.docudesk.com

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The obligation of the State as an organization of power is to regulate legal relations between people or legal entities and legal acts regarding the earth, water and space in Indonesia and to pay attention to various interests regarding the control and use of land rights, especially at the present time,<sup>2</sup> as an implementation of the mandate of Article 33 paragraph (3) of the 1945 Constitution. This constitutional mandate mandates the state that everything related to land as part of the earth, water and natural resources contained therein must be managed and utilized as much as possible for the prosperity and welfare of the community.<sup>3</sup> Due to the large amount of these obligations, the state has become the central point for land ownership in Indonesia.

The meaning of land controlled by the state emphasizes that land does not have to be owned by the state, but is interpreted as the state having the authority as an organization of power to regulate and organize land both in terms of its use, supply and maintenance, determining and regulating the rights that can be owned over parts of the earth, water and space above the land, determining and regulating legal relations between people and legal acts between people regarding the earth, water and space above the land. The terminology "land" is based on Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as the Basic Agrarian Law) that on the basis of the state's right to control, it is determined that there are various kinds of rights to the surface of the earth, which can be given to and owned by people, either alone or together with other people and legal entities. The description of the article clearly states that land from a legal perspective is the surface of the earth and can be used for the prosperity of the people, so that land has a very important role, both economically, socially, legally and politically.<sup>4</sup>

The economic use of land by the community is in order to be a medium for seeking a livelihood, in addition, land can be used as an object for buying and selling goods on a piece of land. Socially, land is used as a place of shelter by building houses and carrying out other social activities.<sup>5</sup> Article 16 and Article 53 of the Basic Agrarian Law regulate the types of land rights, namely: 1). Ownership Rights; 2). Cultivation Rights; 3). Building Rights; 4). Usage Rights; 5). Lease Rights; 6). Land Opening Rights; and 4). Rights to collect forest products. The position of land today is identical to development, whether carried out by the government, the community, or private companies. Land is needed by private

companies in order to develop their business, whether for the construction of offices, factories, warehouses and others.<sup>6</sup>

The empirical consequence is that the need for land is increasing along with development activities resulting in the availability of land decreasing, because it is not only used by individuals but also legal entities. The position of land as an asset that drives the wheels of the economy and has a positive impact on economic development and development. Land control by the State is emphasized through Article 4 number 1 of the Basic Agrarian Law, that on the basis of the right to control from the State as intended in Article 2, there are various types of land rights, which can be given to and owned by individuals or legal entities. Further regulations on the types of land rights that can be given to the community are regulated in Article 16 of the Basic Agrarian Law, one of which is HGB (hereinafter abbreviated as HGB).

HGB is usually owned by a limited liability company in the field of property sales, shophouses and office houses and then sold to the public. Land ownership by a legal entity can only be in the form of a Right to Cultivate (HGU) as stipulated in Article 30 of the Basic Agrarian Law and HGB as stipulated in Article 36 of the Basic Agrarian Law. HGB can be owned by a legal entity established according to law and domiciled in Indonesia. Comprehensive HGB regulations are contained in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (hereinafter referred to as PP No. 18/2021) and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency concerning Procedures for Determining Management Rights and Land Rights and (hereinafter referred to as Permen ATR/BPN No. 18/2021).

Based on Article 35 of the Basic Agrarian Law, HGB can be given a maximum period of 30 years and can be extended for a maximum period of 20 years. With the period attached to HGB, the community can upgrade it to Freehold Rights or extend the period of their rights. HGB holders sometimes forget that there is a period of time for the rights to the land they control, if this happens, then the land becomes state land. The consequence is that the land is directly controlled by the state, as regulated in Article 4 letter g of Permen ATR/BPN No.18/2021 that: "State land as referred to in Article 3 paragraph (2) letter a may originate from land rights whose term has expired and for which no extension and/or renewal has been requested."

<sup>2</sup> Istiana Heriani, Peranan Pemerintah Atas Tanah Dalam Rangka Pembangunan, *Jurnal Al' Adl*, Vol 6, No. 12, (2014), h. 11.

<sup>3</sup> Denico Doly, Kewenangan Negara Dalam Penguasaan Tanah, *Jurnal Negara Hukum*, Vol. 8, No. 2, (2017), h. 196.

<sup>4</sup> Andi Bustamin Daeng Kunu, *Kedudukan Hak Menguasai Negara Atas Tanah*, *Fiat Justicia: Jurnal Ilmu Hukum*, Vol. 6, No. 1, (2012), h. 67.

<sup>5</sup> Yance Arizona, *Perkembangan Konstitusionalitas Penguasaan Negara Atas Sumber daya Alama Dalam Putusan Mahkamah Konstitusi*, *Jurnal Konstitusi*, Vol. 8, No. 3, 2021, h. 258.

<sup>6</sup> Istiana Heriani, *Op. Cit.*, h. 13.

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In terms of implementation, it is emphasized in Article 11 of the ATR/BPN Regulation No. 18/2021 that: “*Land rights whose term has expired and for which no extension and/or renewal has been requested as referred to in Article 4 letter g are land originating from Land Use Rights, HGB and HP whose rights have expired and for which no extension and/or renewal has been requested.*”. The substance of the article is that if the rights holder does not submit an extension and/or renewal of the land object originating from HGU, HGB, and HP, then the land becomes state land, which is directly controlled by the State. State land does not only come from land originating from HGU, HGB, and HP whose term has expired, but state land also comes from the release of rights by the rights holder who releases it to the State to then re-apply for the rights for the benefit of the new holder.

The release of rights to the State, the rights holder and the new rights recipient use a deed or letter of release of rights made before a Notary, Sub-district Head, or Head of the Land Office. Article 183 Number 1 of the Regulation of the Minister of ATR/BPN No.18/2021 states that the Release of Land Rights or Management Rights to State Land is acknowledged by an authorized official by submitting a certificate of land rights or Management Rights in question to the Land Office and in Article 183 Article 183 Number 2 of the Regulation of the Minister of ATR/BPN No.18/2021 states that the authorized officials as referred to in paragraph (1) include a Notary, Sub-district Head or Head of the Land Office.

One of the officials who makes a deed of release of rights is a Notary. This authority is an interpretation of Article 15 paragraph (2) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as the Notary Position Law) that a Notary also has the authority to make deeds relating to land.<sup>7</sup> The terminology for releasing land rights is when the land owner/holder of land rights is in the position of the party releasing the land rights and submits the original certificate of the land rights that are released to the party receiving the release of land rights, namely the organizer of the housing development.<sup>8</sup> Based on the description, there is an interesting legal issue to be studied related to the status of state land, which was previously HGB with a 30-year ownership period, by the rights holder the land object was left without being renewed/extended which would be requested and the land object was not occupied by the rights holder.<sup>9</sup>

However, in fact, after several years of being state land, there was a new rights holder for the land object based on a deed of release made by a Notary. The deed made by the Notary raises legal problems related to the validity and legal certainty of the deed of release, because the object of the agreement is state land.<sup>10</sup> Normatively, an application for renewal of HGB can be submitted no later than 2 (two) years after the term or extension ends, as regulated in Article 95 Number 2 of the ATR/BPN Regulation No. 18/2021 that: “*After the HGB period and/or its extension ends, the government grants HGB for the same plot of land to the holder of Building Use Rights*”.

Based on the description above, the researcher will narrate the chronology of the facts that occurred, a rights holder named X has a land object with HGB status that has a rights period of 30 (thirty) years, after the term ends X does not extend his HGB for 43 (forty three) years and is still physically controlled by X. Then in 2023, Y wants to use the land controlled by X, then they submit data to a Notary to make a deed of release of rights with the expired HGB object with compensation by Y to X. Then Y as the new rights holder submits a rights application for the land object at the Land Office. This is an illustration of the chronology of the problems of making a deed of release made before a Notary for HGB land that has expired, which in this case has become state land.

As stipulated in Article 11 of the Regulation of the Minister of ATR/BPN No. 18/2021, land that has exceeded its rights period without any extension or renewal automatically becomes state land. However, in reality, a notary made a deed of release of rights whose land status is state land, the subjects in the deed are all heirs of the former owner of the HGB certificate, then release it to the individual recipient of the rights with compensation that has been agreed upon by the parties. The provision of compensation from the recipient of the release of rights to all heirs of the HGB certificate holder is based on good faith.

Based on the chronology, the process of releasing rights is accompanied by compensation as a reflection of good faith, but there needs to be legal protection for the recipient of the release of rights based on the Deed of Release of Rights whose object is state land. Meanwhile, the deed of release of rights still requires a legal act, namely being submitted to the Land Office for approval and issuance of a certificate. Based on PP No. 18/2021 and Permen ATR/BPN No. 18/2021, it is normalized that for applications for granting HGB, it is not explained in detail regarding HGB

*Pendaftaran Tanah*, Journal of Private and Economic Law, Vol. 1, No. 1, 2021

<sup>10</sup> Shofi Nur Fajriana Kusuma, *Proses Pemberian Hak Guna Bangunan Diatas Tanah Hak Milik*, Pena Justisia: Media Komunikasi dan Kajian Hukum, Vol. 18, No. 1,(2019), h. 98.

<sup>7</sup> Urip Santoso, *Hukum Perumahan*, (Jakarta: Kencana, 2017), h. 194.

<sup>8</sup> *Ibid*, h. 196

<sup>9</sup> Bhim Prakoso, *Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi*

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objects whose term has expired, whether an application for granting HGB is requested based on control over the object or with a deed of release of rights.

Based on Article 37 number 3 of PP No. 18/2021, that after the granting, extension, and renewal period as referred to in paragraph (1) ends, the HGB land will return to being land controlled by the State or land with management rights. So that there is a lack of clarity regarding the regulations governing HGB, on the other hand it can be understood that the release of HGB is a legal event marked by the end of the legal relationship between the legal subject and the object under his control. This process involves a notary in making a deed of release of rights, so researchers are interested in researching the legal status of the deed of release of rights made by a Notary, while the HGB has expired. Based on this background, the researcher determines the problem that will be studied in more depth, namely: What is the legal position of the deed of release of rights made by a notary for an HGB object whose term has expired? and What are the legal consequences of making a deed of release of rights by a notary for an HGB object whose term has expired?

### RESEARCH METHODOLOGY

The type of research used in this study is normative legal research. Normative legal research is research into laws and regulations, jurisprudence (case law), contracts, and legal values that live in society.<sup>11</sup> The approaches used in this research are the legislative approach, conceptual approach, and historical approach.<sup>12</sup> This approach is used by analyzing the laws and regulations that will be used as stated in the primary legal materials. The concept used in this research is related to the concept of legal status, notarial deeds, deeds of release of rights, and the concept of HGB which is the topic of the problem in this research.

### DISCUSSION

#### 1. Legal Position of Deed of Release of Rights Made by Notary for HGB Objects Whose Term Has Expired

The terminology of the release of land rights is when the landowner/holder of land rights is positioned as the party

that releases the land rights and submits the original certificate of the released land rights to the party that receives the release of land rights in order to allocate its needs. Release of land rights is the release of the legal relationship between a person and the land he owns by way of providing compensation, the amount of which is based on deliberation between the two parties. This can be done by means of a deed stating that the rights in question have been released by the rights holder, which is made in a notarial manner by a notary.<sup>13</sup>

The notary as a public official is the only one authorized to make an authentic deed regarding all actions, agreements and determinations that are required by a general rule or by those interested to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and its collection, all during the making of the deed by a general rule is not assigned or excluded to other officials or people.<sup>14</sup>

Notary as a Public Official who is authorized to make authentic deeds and other authorities as referred to in this law. This means that the Notary Law has given Notaries the authority to make authentic deeds and gives Notaries the authority to make deeds related to Land as stated in Article 15 paragraph (2) letter f in the Notary Law.<sup>15</sup> Furthermore, as mentioned in the previous sub-chapter, Notaries as officials who are authorized to make deeds of release of rights, based on Article 15 paragraph (2) letter f of the Notary Law, Notaries are authorized to make deeds related to land, which is clarified in the provisions of Article 48 paragraph (2) and paragraph (3) of the ATR/BPN Regulation No. 18/2021 that in the case of making a deed of release of HGB, it can be done by making a deed of release of rights made by a Notary.<sup>16</sup>

Based on this, a Notary is authorized to make a deed of release of rights related to the transfer of rights that have a time period (HGB, HGU, etc.)<sup>17</sup> However, making a deed of release of rights before a Notary will become a legal problem when it is carried out on land objects whose HGB has expired,<sup>18</sup> because the status of the land is no longer owned by the rights holder but is state land. Meanwhile, in its own

<sup>11</sup> Dyah Octorina Susanti & A'an Efendi, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2014), h.1,

<sup>12</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayu Media Publishing, 2006), h.57.

<sup>13</sup> Rolan Napitupulu & Agus Saroni, *Akibat Hukum Jual Beli Tanah Untuk Kepentingan Perusahaan Swasta Dengan Akta Pelepasan Hak*, *Jurnal Notarius*, Vol. 15, No. 1, (2022).

<sup>14</sup> Habib Adjie, *Hukum Notaris Indonesia*, (Bandung: Refika Aditama, 2008) h. 13.

<sup>15</sup> Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, *Jurnal Ilmu Kenotariatan*, Vol. 2, No. 1, ((2021)), h. 69-90.

<sup>16</sup> Maya Puspita Dewi, Herowati Poesoko, & Aries Harianto, *Prinsip Pembacaan Akta Oleh Notaris Dihadapan Penghadap dan Saksi*, *Jurnal Ilmu Kenotariatan*, Vol. 2, No. 1, (2021), h. 91-115.

<sup>17</sup> Rahadiyan Veda Mahardika, & Gatot Suyanto, *Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum*, *Jurnal Ilmu Kenotariatan*, Vol. 3, No. 2, 2022, h. 62.

<sup>18</sup> Rahmat Ramadhani, *Jaminan Kepastian Hukum yang Terkandung dalam Sertipikat Hak Atas Tanah*, *Jurnal: De Lega Lata*, Vol. 2, No. 2, 201

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regulations in the Regulation of the Minister of ATR/BPN No. 18/2021, there is still unclear norms in it.<sup>19</sup>

Land rights are a legal relationship between legal subjects and land, where in this relationship there is legal protection. Land rights aim to provide legal certainty for this legal relationship, so that rights holders can exercise their rights to manage and utilize their land properly.<sup>20</sup> The state through the Ministry of ATR/BPN regulates the legal relationship between rights holders and their land. This study will discuss the Implementation of the Transfer of HGB that has expired.<sup>21</sup>

Making a deed of release of rights to HGB whose validity period has expired, the relationship between the subject holding the rights and the land ends and the HGB land becomes land controlled by the State or land with management rights, in accordance with the provisions of Article 37 paragraph 3 of PP No. 18/2021, however, the former HGB holder is given priority rights by paying attention to the following matters:

1. The land is still being cultivated and utilized properly in accordance with the conditions, nature, and purpose of granting the rights;
2. The requirements for granting the rights are fulfilled properly by the rights holder;
3. The rights holder still meets the requirements as a rights holder;
4. The land is still in accordance with the spatial plan;
5. Not used and/or planned for public interest;
6. Natural resources and the environment; and
7. Condition of the land and surrounding community.

Priority rights to land are interpreted as the right to receive first priority or be prioritized/preceded based on the order of recipients of land rights to obtain recognition, granting/determination of land rights.<sup>22</sup> Unlike civil rights, civil rights are stronger/higher with priority rights, civil rights concern the legal relationship between the subject of the rights and the land.<sup>23</sup> Even though the rights have ended, the civil legal relationship is considered to still exist. This means that civil rights are resolved first, then priority rights can be granted based on the priority order of recipients of rights.<sup>24</sup>

In order to find the legal position of the deed of release of rights on HGB objects that have expired, then this sub-discussion is divided into 2 (two) sub-sub-discussions consisting of the legal consequences of making a deed of release of rights by a notary on HGB objects that have expired, and legal certainty regarding the deed of release of rights made by the notary on the HGB object that has expired. Every individual has the same legal standing in the eyes of the law, therefore the law is obliged to accommodate the protection of all parties by looking at the legal standing of each individual.<sup>25</sup>

Legal subjects or legal objects that have a position are allowed to exercise authority and action in accordance with their status. Legal position or in Latin termed *locus standi* means a condition where the legal subject or legal object is considered to have sufficient requirements in making a request for settlement of an existing case. Usually legal position can be shown in the following ways:<sup>26</sup>

- a. When the legal subject feels disadvantaged by a regulation, and causes an event that becomes a problem. And the event can be resolved in court.
- b. When the legal subject or object obtains legal standing so that it can carry out an act mandated by law.

Legal standing describes the existence of legal subjects or legal objects occupying a position that has its own

<sup>19</sup> Kurnia Rheza Randy Adinegoro, *Tantangan Implementasi Sertipikat Tanah Elektronik di Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional Republik Indonesia*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), h. 130-143.

<sup>20</sup> Bhim Prakoso, *Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah*, Journal of Private and Economic Law, Vol. 1, No. 1, 2021, h. 66.

<sup>21</sup> Rachseria Isneni Hakim, dkk., *Hak Prioritas Dalam Perolehan Tanah HGB Yang Habis Jangka Waktunya Ditinjau Dari Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Dan Keputusan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional*, Acta Djurnal, Vol. 2, No. 1, 2018

<sup>22</sup> Sanindia Septia Kisedi Putri, *Kedudukan Hukum Surat Pernyataan Pelepasan Hak Atas Tanah (SPH) sebagai*

*Dasar Bukti Kepemilikan Hak atas Tanah*, Notary Journal, Vol. 2, No. 2, 2022

<sup>23</sup> Rahadiyan Veda Mahardika, et.al., *Kedudukan Subyek Hukum Ditinjau Dari Hak Keperdataan (Refleksi: Terjadinya Tumpang Tindih Lahan Hak Guna Usaha)*, (Jember: UM Jember Press, 2022), h.

<sup>24</sup> Dwi Heny Ratnawati & Djauhari, *Pelaksanaan Akta Pelepasan Hak Sebagai Alas Hak Untuk Mengajukan Permohonan Peralihan dan Perubahan Hak Guna Bangunan Yang Jangka Waktunya Telah Berakhir di Kabupaten Brebes*, Jurnal Akta, Vol. 5, No. 1, 2018, h. 89.

<sup>25</sup> Hilbertus Sumpsius M. Wau, and T. Keizerina Devi Azwar, *Analysis of the Role of PPAT as a Shield in Illegal Property Transactions to Intercept the Land Mafia*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), h. 88-101.

<sup>26</sup> R. Soeroso, *Pengantar Ilmu Hukum*, (Jakarta: Sinar Grafika, 2011), h. 106.

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purpose and function. Therefore, legal subjects or legal objects have a reference in carrying out their functions, what is allowed and what is not allowed. With the existence of legal standing, every legal subject or legal object obtains inherent legal protection as its legal standing. So that the purpose of legal standing is to bind the existence of legal protection and that protection is obtained by legal subjects or objects so that they can carry out their roles according to their respective functions.

### 2. Legal Consequences of Making a Deed of Release of Rights by a Notary for an HGB Object Whose Term Has Expired

Every notary act is strictly regulated in the Notary Law. The logical consequence of the regulation of the notary's office by statutory regulations is that every notary's act must be subject to the provisions of the Notary Law.<sup>27</sup> This is to avoid mistakes in the implementation of the notary's office, which could potentially result in legal consequences that could be detrimental, both to the notary and to the parties who require the notary's services. Therefore, every notary is required to fully understand matters relating to the Notary Law.<sup>28</sup>

The transfer of rights to HGB land objects that have expired, based on Permen ATR/BPN No. 18/2021 related to the procedure for establishing management rights and land rights former holders of HGB can transfer objects of civil rights, but not on the basis of rights in the form of a sale and purchase deed made by PPAT but through the Release of Rights. The implementation of the release of rights is done by making a deed of release of rights, the release of rights is done by the former holder of the right to the land voluntarily or with compensation. The deed of release of rights is one of the authentic deeds made by a Notary and is a deed of parties.

The office of a notary is an office of trust (*vertrouwens ambt*) and therefore someone is willing to entrust something to him as someone who can be trusted.<sup>29</sup> A notary is obliged to keep confidential all that is told to him as a notary even if there are some that are not stated in the deed.

<sup>27</sup> Fajrina Aprilianti D., Yani Pujiwati, Betty Rubiati, *Peran Notaris Dalam Pelepasan Hak Atas Tanah Pada Proses Konsolidasi Tanah Guna Optimalisasi Fungsi Tanah Dikaitkan Dengan Peraturan Pertanahan*, Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Universitas Padjajaran, Vol.2 No. 2, 2019

<sup>28</sup> Bayu Indra Permana, et.al., *Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence*. Jurnal Justiciabelen. Vol. 7, No. 1, 2024, h. 70.

<sup>29</sup> Dwi Wahyu Juliyanto dan Moch Najib Imanullah, *Problematika Covernote Notaris Sebagai Pegangan Bank Untuk Media Realisasi Pembiayaan / Kredit Dalam Dunia Perbankan*, Jurnal Repertorium, Vol. 5, No. 2, 2018, h. 55.

<sup>30</sup> Widhi Handoko, *Dominasi Negara Terhadap Profesi Notaris, Antara Ide dan Realitas*, (Bogor: Roda Publikasi Kreasi, 2019),h.45

In addition, a person who carries out the office of a notary is obliged to fulfill the form and requirements stipulated by the Notary Law and other general laws and regulations and cannot, is not allowed and is prohibited from making a deed in a form made arbitrarily by the notary.<sup>30</sup>

Priority Rights owned by former HGB holders and Civil Rights to objects located and embedded on the former HGB land can be used as a basis for former rights holders to transfer their rights to new rights owners or subsequent rights holders.<sup>31</sup> It is from this Priority Right basis that the product of the deed for the implementation of the Release of Rights made by a Notary is given the title of a deed "Release Deed".<sup>32</sup> With this Release of Priority Rights, the land object is State land so that the Recipient of Rights in the Deed of Release of Rights can submit an application for new land rights to the local Land Office in accordance with the provisions of the law and in accordance with the designation of the land with the basis of the Deed of Release as the basis for his rights. So that the Recipient of Rights obtains land rights in accordance with the provisions of the law and in accordance with the designation of the land.<sup>33</sup>

In the implementation of the deed of release of rights that is used as a basis of rights to submit an application for change and transfer of HGB whose term has expired is a form of land registration activity in the case of land with HGB<sup>34</sup>status whose term has expired will become State land and will be transferred along with the change of rights on the land. Where the land is released by the right holder to the State and requested to be returned by the applicant with new rights. Land rights that have been owned by a person can be transferred to a new land right of a different type. The change in the status of the rights was made because he wanted to strengthen his rights from the HGB whose validity period had expired.

The implementation of the release of priority rights is essentially a form of land registration activity in the case of land with HGB that has expired, so that new rights can be applied for with the aim of creating legal certainty for the

<sup>31</sup> Ardiyanto, *Kedudukan Hukum Pemegang Hak Tanggungan Atas Tanah HGB Di Atas Tanah Negara Yang Jangka Waktunya Telah Berakhir*, Jurnal Rechtidee, Vol. 17, No. 2, (2022),h.35

<sup>32</sup> Kunni Afifah, *Tanggung Jawab dan Perlindungan Hukum bagi Notaris secara Perdata Terhadap Akta yang Dibuatnya*, Jurnal Renaissance, Vol. 2, No. 1, 2017.

<sup>33</sup> Dwi Aris Feddyawan & Sukresno, *Perlindungan Hukum Bekas Pemegang Hak Terhadap Tanah Bekas Hak Guna Usaha Atau HGB Yang Telah Berakhir Haknya*, Jurnal Innovatice, Vol. 3, No. 5, 2023

<sup>34</sup> Mira Novana Ardani, *Pemanfaatan Tanah HGB Guna Mencegah Tanah Menjadi Terlantar*, Jurnal Gema Keadilan, Vol. 8, No. 1, 2021

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recipient of the rights to be able to obtain new rights to the land object they receive. The basis for this transfer of rights activity includes the Basic Agrarian Law, PP No. 18/2021, Permen ATR/BPN No. 18/2021. Through the Deed of Release of Priority Rights made before a Notary and used as a basis for rights by the new Rights Holder or Rights Recipient to submit an application for new land rights to the local Land Office in accordance with the provisions of the law and in accordance with the designation of the land.<sup>35</sup>

With this new rights application, the Land Office examines it carefully, precisely and systematically in full so that a decree of the Head of the Office is issued regarding the determination of new rights in this case the new HGB which is ultimately used as the basis for issuing a new HGB certificate. So that the recipient of the New Rights obtains protection and legal certainty for the land object that he currently controls in accordance with the designation of the land. In carrying out his/her duties, a notary is not only obliged to carry out the authority and duties given by the Law, such as making authentic deeds, but must also be responsible for the deeds he/she has made.

This legal responsibility is very important because it can explain the relationship between the notary's responsibilities related to the notary's authority based on the Notary Law, which is in the realm of civil law. The notary's professional responsibilities and ethics are closely related to moral and integrity aspects, so if a notary does not maintain a high level of integrity and morals, then good professional responsibilities and ethics cannot be held by him/her. The responsibility of a notary for the deed he has prepared is based on the principle of responsibility for errors, which implies that the notary is obliged to bear the legal consequences if there are errors or violations that are intentionally committed in making the deed.<sup>36</sup>

However, in the opposite situation, where there are errors arising from the parties involved in the transaction, the notary remains free from legal responsibility as long as he has exercised his authority in accordance with the provisions stipulated in the applicable Notary Law. This principle is emphasized by the fact that the role of the notary is limited to documenting the information he obtains from the parties involved in the transaction. Basically, a notary is not responsible for the substance or content of the deed he/she drafts, because the content of the deed is derived from the agreement and wishes of the parties involved in the transaction. Therefore, the notary's responsibility is limited to the formality and procedural aspects in making an authentic deed, in line with the provisions mandated by the laws that regulate it. As a result, a notary can only be held accountable

in the civil realm if there is a claim related to a violation of the principles of unlawful acts.

The legal consequences arising from a notarial deed that contains legal defects, both in terms of content and procedure, are that the deed can lose its authentic status, and can even be canceled or considered null and void. Although the term "null and void" is not commonly used in practice, a deed that does not meet formal and material requirements is considered invalid, and the cancellation process can be submitted through the appropriate legal channels. Parties who feel aggrieved by the deed can demand the notary's responsibility through legal processes, including criminal, civil, and administrative lawsuits.

The legal consequence of a legal defect in the making of an authentic deed by a Notary is that the deed will lose its authentic status. This loss of authenticity can occur when the court issues a decision that has permanent legal force after examining the deed, and all parties must comply with the decision. The resolution of this situation involves identifying and determining the party responsible for the legal defect that caused the loss of authenticity of the deed. If the legal defect is caused by the actions of the notary, then the party who feels aggrieved can sue the notary concerned for compensation. However, if the legal defect is caused by the parties involved in the deed, then they are responsible for the losses arising from the loss of authenticity of the deed. Thus, the responsibility related to the legal defect in an authentic deed involves the party who directly contributed to the legal defect.

In substance, the deed of release of rights only functions as an agreement between the parties in terms of buying and selling buildings that have been built on land, but the substance in it regulates the priority rights given to buyers of buildings to apply for HGB that has reached the end of its validity period. In the context when land has an HGB status that has expired, the land automatically changes into land that is directly controlled by the state, so that if the former rights holder does not extend the land rights, the priority can be released to another party with a deed of release of priority rights as the legal basis by considering the provisions stipulated in Article 1320 of the Civil Code and Article 15 of the Notary Law.

So that in the case where the HGB object has expired, the making of the deed does not fulfill the objective elements of Article 1320 of the Civil Code, because the HGB object whose validity period has expired is not the right of the HGB subject but state land, so that the status of the deed of release is null and void by law. The deed of release of priority rights is not only an authentic agreement agreed to by both

<sup>35</sup> Tjahjo Arianto, dkk., *Hasil Penelitian Strategis : Kajian Hukum Tentang Keberadaan Hak Prioritas Dalam Penyelesaian Masalah Pertanahan*, (Yogyakarta: STPN, 2015).

<sup>36</sup> Tan Thong Kie, *Studi Notariat: Serba-Serbi Praktek Notaris*, (Jakarta: Ichtiar Baru van Hoeve, 1994),h.23

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parties, but also has a significant legal impact, namely providing legal certainty to the recipient of the release of priority rights to be able to carry out legal acts on former HGB state land, which can then be re-submitted by the applicant to obtain new ownership rights. In this context, the state grants priority rights to the applicant to submit an HGB application which provides clearer legal certainty for the land.

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