

# Community Motivating Factors in Upgrading Building Rights Title to Freehold Title in the Karo Regency National Land Agency Office

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**Abstract:** *The Basic Agrarian Law No. 5 of 1960 plays an active role in regulating land rights for the survival of the nation and state and for creating a just and prosperous society. The implementation of the process of changing the Building Rights Title to Freehold Title in Karo has not gone well due to the law resulting from the process of upgrading from Building Rights Title to Freehold Title. The abolition of Building Rights Title because the right-holders released them before the end of the term is usually done because there is a development project in the public interest so that the right-holders relinquish their rights before the expiry period for the sake of the smooth development. The implementation is carried out with the principle of respecting land rights. (Article 3 of Presidential Decree No. 55 of 1993). Regarding land rights for a specific time, such as land use rights and building rights, with the expiry of the relevant period, expiration of the appropriate time, the rights become void, if there is no possibility for and no extension of the period is requested.*

**Key Words:** *Building Rights Title, Freehold Title, National Land, Community.*

## 1. INTRODUCTION:

Earth, water, space, as well as the natural wealth contained therein is a natural resource that is very important for human life for its survival, both as individuals and as social creatures and as creatures created by God who always makes relations with the earth, water, and space and wealth contained therein. The land is the essential natural resource today, where almost every human activity is related to land, both for settlements and livelihoods. In reality, there are still many landowners who do not have land titles as proof of ownership of their land. If they have obtained the land, humans will defend the land as a hereditary wealth. The right to control the state contained in the 1945 Constitution Article 33 paragraph (2) and (3), in paragraph (2) states "Production branches which are important for the State and which control the livelihoods of the public are controlled by the State." Then in paragraph (3) stated: "The State controls Earth, water and natural resources contained therein and used for the greatest prosperity of the people." The content of the meaning in the article has two broad lines: first: the state controls the earth, water, and the natural resources contained therein, second: the earth, water, and the natural resources contained therein are used for the greatest prosperity of the people.

The longer the amount of vacant land becomes less and less, this is because human demand for land is always increasing, so it is no wonder the selling price of land is increasing high. The imbalance between the land supply and the need for land has caused various problems. Therefore, the regulation of land tenure and use, which can be briefly stated in the land law should consist of provisions by the developments mentioned above. The basic needs of human life, in general, are the need for clothing, food, and shelter. The need for shelter here is defined as the human need to have a place to live. Dwellings are generally in the form of houses although at present many other forms are used as dwellings by some communities such as apartments, condos, and flats, the basic concept is still referred to as a house. When viewed in terms of the law, the house can be used as a place of domicile for everyone when doing their rights and obligations in law. However, in reality, it is not easy for most people to have a decent home, especially in densely populated areas where the value of housing and land is relatively high. It is so difficult for them, especially the economically weak group, to get a piece of land just for shelter or as a source of life. Likewise, they are very vulnerable to factors that result in them losing their right to control/own land. On the other hand, a group of people easily controlled and owned large amounts of land, ironically not a few of the lands that were controlled were not used by their purpose and some were even abandoned.

The increasing needs of the community have caused the holders of Building Rights Title to feel the need to upgrade their land rights to become Ownership Rights, especially for land for housing. The increasing needs of the community can affect the mindset of the community, especially for people who own land that is still in the status of Building Rights Title. If the term of the land rights has expired or even those that have not yet ended, they choose to immediately apply to upgrade the status of the land rights to ownership rather than merely extending the term of the Building Rights Title. Besides that, the holders of Building Rights Title in the area have fulfilled the requirements as holders of ownership rights; only they have not thought about upgrading their land rights from Building Rights Title to Freehold Title.

## **2. THEORIES:**

### ***2.1 Factors Causing in Upgrading Building Rights Title to Freehold Title***

Changes in land rights are in essence an affirmation of the abolition of the first land rights and the granting of new types of land rights. In the Amendment of Building Rights Title to Freehold Title, it usually occurs because the term of the right to land has expired as stipulated in Article 35 paragraph (1) of the Basic Act on Agraria on Building Rights Title and to obtain the most reliable and most complete rights as required. Article 20, paragraph (1) explains the Basic Agraria Law on Property Rights. Moreover, it is also useful so that the value of the certificate of rights to respect is higher than the Certificate of Building Rights Title. In Article 35 paragraph (1) of the Basic Agrarian Law Article 1, number 1 Government Regulation Number 40 of 1996 regulates the definition of building rights. Article 35 Paragraph (1) of the Basic Agrarian Law stipulates that: "Building Rights Title is the right to erect and own buildings on land that is not his own, with a maximum term of 30 years." Based on Article 1 number 1 Government Regulation Number 40 of 1996, the definition of building rights, namely: "Right to Cultivate, Building Rights Title and Right to Use is the right to land as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles."

Regarding this, the building owner is different from the ruler of the land on which the building was erected. It means that a holder of a Building Rights Title is different from a Holder of a Right to a plot of land on which the building was erected, or in a more general connotation, the holder of the Building Rights Title is not the holder of the Right to Ownership of the land on which the building was erected.

Based on explanation III / 3 in Basic Agrarian Law, the rights possessed by the right holder are minimal because they are established on land that is not his right, so it only occurs for a specific time. Unlike the case with property rights whose rights are fulfilled among land rights. After the expiry of the right to use the building, it can be extended for a maximum of 20 (twenty) years at the request of the rights holder and keeping in mind the needs and condition of the buildings. It is determined in Article 35 paragraph (2) of Basic Agrarian Law which stipulates that: "At the request of the right-holder and bearing in mind the needs and condition of the building, the time in paragraph (1) can be extended with a maximum period of 20 years."

### ***2.2 Obstacles in the Implementation of the Upgrading Building Rights Title to Freehold Title***

In the implementation of improving the status of land rights in the Karo Land Office from Building Rights Title to Freehold Title, of course, it will not be free from obstacles; these obstacles are related to the parties involved or involved in the process of implementing the improvement of the status of the land. The first obstacle is the obstacle that comes from the homeowner who in this case is the applicant, where most people who live in Karo Regency do not know and understand the status of the land they live in, due to limited education and knowledge, some people still do not understand the status of the land, they only know that they buy a house in installments and until a specific time limit after the installments are completed then the house becomes their property, only to that extent they know that Freehold Title to the house in the general sense.

And if there are no issues or problems related to the existence of the land status of the house they have never been to find out what and what the status of the land is from their house, but when they want to sell or want to build their house, that's when they try to find an explanation about the status the land from the house they have occupied so far, and they have just learned that the status of the land from their home is the Building Rights Title and they also just learned that their land rights could be upgraded to Freehold Title by going through the process and fulfilling certain conditions. For some Karo people who already know and understand the land status of their homes and wish to improve their land status from Building Rights Title to Freehold Title, the problem is that they do not yet know the procedures and procedures as well as the conditions that must be met to improve the status of the land. It is due to the lack of explanation and socialization regarding this matter to the people who live in Karo District.

However, there are also petitioners who state that in increasing the land rights they face obstacles or difficulties in terms of funds or costs to be incurred, they must incur costs to obtain a recommendation letter from National Housing, in addition to that they must also incur costs to upgrade their rights in the Land Office and also they have to pay for the services of the Land Deed Official, so they feel reluctant to upgrade their land rights.

## **3. RESULT AND DISCUSSION:**

### ***3.1 Requirements for Upgrading the Building Rights Title to Freehold Title***

Upgrading of Building Rights to Freehold Title is the change from rights of lower status (for example, seeing the period) to higher land rights. In the category of change or enhancement of the right from Building Rights Title to

Freehold Title, this consists of several objects, including those from Simple Flats and Simple Houses, which originate from the land for residences that have been purchased by employees country from the Government (class III house).

While the requirements for land with an area of more than 600 square meters the change (increase) of rights to become Freehold Title is treated as a request for new rights, only the process does not involve Committee A (the granting committee consisting of National Land Affairs Agency and sub-district). The process carried out in the application for Freehold Title in the form of a catering report is only at National Land Affairs Agency. The output is in the form of Decree granting Freehold Title. The requirements needed to apply for Freehold Title to an area larger than 600 square meters are the same as an upgrade in rights to an area under 600 square meters.

### ***3.2 Procedure for Upgrading the Building Rights Title to Freehold Title***

The legal basis for the change of certificate is the Decree of the State Minister or the Head of National Land Affairs Agency No. 6 of 1998. The status of Freehold Title is undoubtedly higher than the Building Rights Title. It has a certain period, for example, 20 years or 30 years. The validity period must be extended and certainly requires a fee. While the Freehold Title is not limited in time. Thus, in order not to be bothered by matters of the extension of Building Rights Title whose validity period expires, it is better to change (increase) the certificate of land rights to Freehold Title.

The requirements that must be prepared for the process of changing the Building Rights Title into Freehold Title as stipulated in the Decree of the Minister of Agrarian / Head of National Land Affairs Agency Number 9 of 1997 dated July 2, 1997 concerning Granting of Freehold Title over Land for Very Simple Houses and Simple Houses Number 15 of 1997 dated October 22, 1997 (changes) Number 1 of 1998 dated January 22, 1998, Decree of the Minister of Agrarian / Head of National Land Affairs Agency Number 2 of 1998 concerning the granting of Freehold Title over land for residences that have been purchased by civil servants and the government and the decree of the Minister of Agrarian / Head of National Land Affairs Agency Number 6 of 1998 for amendment (Improved) Right to Residential.

### ***3.3 Overall Obstacles Experienced***

In the implementation of increasing land rights, there are often obstacles experienced by the Karo Regency National Land Affairs Agency with those who will propose an upgrade in land rights. The obstacles experienced by the Karo Regency National Land Affairs Agency in the process of increasing land rights are:

- The applicant in carrying out the process of enhancing land rights is often not equipped with an application file with a Building Permit permit from the land being requested for increased rights.
- Building Permit attached by the applicant was mostly issued in the 1970s so that it raises doubts as to whether the building is still for a residence or has changed.
- In applying for an upgrade in land rights, there is often a difference in terms of the location of the land and the address listed in the Land and Building Tax (PBB) payment and the one listed in the Building Permit when in fact or reality the field shows the same object, because often changes the name of the road where the land is located.
- The Notification of Tax Due and the certificate indicate that the use of the land is still in the form of vacant land, this causes doubts to the Karo Regency National Land Affairs Agency, whether the land is still in the form of vacant land or there are buildings on it.
- Lack of community knowledge about the importance of the process of increasing land rights.
- Lack of cooperation between the Karo Regency National Land Affairs Agency party and village officials causes village officials not to know little about increasing land rights. The things that happened above are the obstacles experienced by the Karo Regency National Land Affairs Agency in handling the process of increasing land rights.

Whereas the petitioner in applying for an upgrade in his land rights, actually did not experience significant obstacles, because the petitioner in Karo District in making an upgrade in his rights was mostly represented by a third party, in this case, Land Deed Official, so if there are incomplete requirements Land Deed Official will notify the applicant of the upgrade in land rights to complete the requirements first, only after the paperwork is complete Land Deed Official then submit it to the Land Office for processing. For applicants who carry out the improvement process themselves, most of them do not yet know about the provisions of Government Regulations No. 46 of 2002 concerning tariffs on non-tax state revenue types that apply to national land agencies, that is, imposed on land with an estimated price above Rp. 50 million, which is a new regulation because of this regulation.

Whereas the Sub-District in the process of increasing land rights has no role because everything is done by the applicant directly to the Land Office, so the Sub-district is not responsible or has a role in the process of increasing the land rights. (Results of an interview with Bambang Haryanto H.S., SH., Kasubi of Land Mastery and Ownership

Arrangement on February 21, 2019). Likewise, the sub-district, which is only involved if the applicant does not have a Building Permit by the sub-district is given a substitute certificate for the Building Permit; the sub-districts are involved only in the process of providing counseling on increasing land rights.

The community in increasing their land rights is based on the considerations that the Freehold Title are the most potent rights compared to other rights. After the rights to the land are increased, the land has a higher sale value. All submissions for enhancing land rights must be given as long as the file is not problematic and the land is used for housing, then the submission for increasing rights is given, but if the land is used for business or the land is blocked by another party or the condition in the field is still in the form of vacant land, it cannot be given to be Freehold Title.

### ***3.4 Obstacles in the Implementation of the Concession of Building Rights Title into Freehold Title***

Building Rights Title needs to be understood in full as the right to land that gives the right holder the authority to erect and own a building on land that is not his own, with a maximum term of 30 years (article 35 paragraph (1) article 4 paragraph (2) Basic Agrarian Law). Land policy for land for residences as outlined in the decision of the Minister of Agrarian Affairs / Head of the National Land Agency number 9 of 1997 regarding the granting of Freehold Title to land for very simple houses and simple houses and the decision of the State Minister for agrarian / agency head national land number 6 of 1998 concerning the granting of Freehold Title to land for residences, the issuance of the two decrees of the agrarian State minister / head of the national land agency on the basis that housing is a primary human need after food. Therefore, the implementation of changing the status of Land Rights (increased rights) from Building Rights Title to Freehold Title in National Housing Houses (Perumnas) in Karo City in practice refers to the decision of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 9 of 1997 the decision of the Minister of Agrarian Affairs / Head of the National Land Agency number 6 of 1998.

Based on the results of the interviews of the authors with several people who will apply for a Change (Enhancement) of their Rights, the people in Karo Regency do not understand whether the certificates they have can be upgraded. Based on the juridical rules in effect, the applicant changes the status of land rights from HGB to Property Rights is a simplified process and will be granted immediately if all the necessary conditions are met. With the finding of obstacles / obstacles in the process of requesting a change in the status of land rights, it implies that the enactment of the Decree of the State Minister of Agrarian / Head of the National Land Agency Number 9 of 1997 the Decree of the State Minister of Agraria / Head of the National Land Agency Number 6 of 1998 has not been optimally implemented. To the ownership of land, then there is one process that must be passed, namely the process of control.

## **4. CONCLUSION:**

From the results of the above research, several conclusions can be drawn as follows. In the process of increasing land rights, there are also several obstacles. In carrying out rights enhancements, the applicant often does not understand the procedures regarding the upgrade in rights due to the lack of public knowledge about the upgrade in rights, such as in terms of costs, conditions, usefulness or benefits of increased rights. The second obstacle is due to the lack or lack of cooperation between the National Land Affairs Agency and the sub-district, making it often difficult for the applicant to upgrade their rights. The third obstacle is that often, the petitioner is less active in completing the conditions needed to implement the improvement of land rights. The legal consequence of the applicant as the subject of rejection of the change of land rights from Building Rights Title to Freehold Title that occurred at the Karo Regency Land Office is the disappearance of a legal condition in this case is the abolition of the application for change of land rights from the Building Rights Title to Freehold Title by the applicant, while the legal effect on the object of the land is the disappearance of the legal relationship between the legal subject and the object, namely the applicant and the requested land, if the term of the Building Rights Title has expired then the land will return to state land.

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