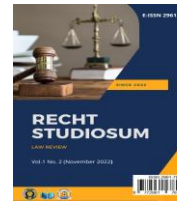




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## Legal Analysis of the Issuance of SHGB Over Maritime Areas in Tangerang from the Perspective of Indonesian Agrarian Law

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### ABSTRACT

*The issuance of 263 Building Use Rights Certificates (SHGB) on the sea barrier along the northern coast of Tangerang, Banten, spanning more than 30 km, has sparked controversy among the public. The issuance of these SHGBs has been confirmed by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN), Nusron Wahid. Positivistically, the presence of the SHGB is actually contrary to a number of regulations in Indonesia, including Law No. 5 of 1960 concerning Agrarian Principles, Law No. 27 of 2007 jo. Law No. 1 of 2014, Government Regulation No. 18 of 2021, Constitutional Court Decision No. 3/PUU-VIII/2010, as well as the principles in Article 33 paragraph (3) of the 1945 Constitution. Beyond the issue of legality, from a sociological and empirical standpoint, the presence of SHGBs on the sea barrier in Tangerang also has negative ecological and economic impacts. These SHGBs disrupt the marine ecosystem and hamper the livelihoods of local fishermen, as they obstruct access to fishing areas. Therefore, this paper aims to further analyze the legal basis for granting Building Use Rights (HGB) within Indonesia's agrarian system, examine the legality of granting HGB on the sea barrier in Tangerang, and assess the socioeconomic and ecological impacts of these SHGBs through a case study approach focusing on Tangerang.*

**Keywords:** Sustainable Development, Marine Ecosystems, Fishermen's Rights.

### 1. Introduction

Indonesia consists of 17,840 islands with a coastline of 95,181 km. In addition, Indonesia also has a sea area of 5.8 million km, which is divided into 0.8 million km<sup>2</sup> of territorial sea, 2.3 million km of archipelago sea and 2.7 million km of EEZ, making Indonesia one of the largest archipelagic countries with the highest diversity in the world.<sup>1</sup> However, this diversity has also rendered Indonesia susceptible to various conflicts, including agrarian disputes. One such controversy is the issuance of 263 Building Use Rights Certificates (SHGB) for a sea barrier spanning over 30 km along the northern coast of Tangerang, Banten. This issue has

<sup>1</sup> Redemtus, Fahririn, "Anaisis Yuridis Terhadap Pemberian Izin Tinggal Bagi Pemukiman di Atas Air", *Jurnal Penelitian Multidisiplin Terpadu*, Vol.8, No.6 (2024), hal 1021.

sparked significant public debate. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN), Nusron Wahid, confirmed that a total of 263 land parcels in the area have been granted SHGB status, comprising 234 parcels under PT Intan Agung Makmur, 20 parcels under PT Cahaya Inti Sentosa, and 9 parcels registered under individual ownership. Furthermore, 17 land parcels with Freehold Title Certificates (SHM) have also been identified within this coastal zone.<sup>2</sup>

The issuance of such SHGBs poses major and systemic problems especially in the social, economic and marine ecosystem spheres in the Tangerang area. The confusion over who is the issuing authority and what exactly is the legality of the SHGB is a major problem that needs to be looked at and studied more deeply from an agrarian law perspective, especially since it is not in accordance with the principles of sustainable development, especially point 14 related to marine ecosystems.

In simple terms, Building Use Rights (HGB) refer to land rights that grant the authority to construct buildings on a specific parcel of land.<sup>3</sup> From a legal perspective, as stipulated in Law No. 5 of 1960 on Basic Agrarian Principles ("UUPA"), HGB is defined as the right to establish and own buildings on land that does not belong to the right holder, with a maximum duration of 30 years, extendable for an additional 20 years.

Article 16 paragraph (1) of the UUPA outlines that land rights include:

- a. Right of ownership;
- b. Cultivation Rights Title (HGU);
- c. Building Use Rights (HGB);
- d. Usage Rights (Hak Pakai);
- e. Lease Rights (Hak Sewa);
- f. Land Clearing Rights (Hak Membuka Tanah);
- g. Forest Harvesting Rights (Hak Memungut Hasil Hutan); and
- h. Other rights not included in the above categories, as determined by law, along with temporary rights as outlined in Article 53 of the UUPA.<sup>4</sup>

The issuance of Building Use Rights (HGB) over the sea raises several legal and conceptual questions. Key concerns include whether granting HGB over maritime areas is legally valid and what implications arise from the issuance of these SHGBs over the sea. Furthermore, the issuance of 263 SHGBs over the sea blurs the legal interpretation of "land", creating ambiguity in its definition. According to Article 1(1) of Government Regulation (PP) No. 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration, land is defined as:

*"The surface of the earth, whether in the form of land or covered by water, including the space above and within the earth's body, within certain limits, whose use and utilization are directly or indirectly related to the use and utilization of the earth's surface."*<sup>5</sup>

Meanwhile, Article 1(1) of Government Regulation (PP) No. 32 of 2019 on Marine Spatial Planning defines the sea as:

*"A water space on the surface of the Earth that connects land to land and other natural formations, constituting a geographical and ecological unit along with all its related elements, whose boundaries and system are determined by statutory regulations and international law."*

In Indonesia's positive legal framework, HGB is only granted for land-based areas. Thus, from a juridical perspective, the issuance of SHGB over the sea lacks legal standing, as it contradicts existing land and spatial planning regulations.<sup>6</sup>

<sup>2</sup>Arif Ferdianto, "Ada 263 Sertifikat HGB di Pagar Laut Tangerang, Pengamat: Itu Ilegal", <https://nasional.kontan.co.id/news/ada-263-sertifikat-hgb-di-pagar-laut-tangerang-pengamat-itu-ilegal>, diakses 20 Januari 2025

<sup>3</sup>Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Universitas Trisakti, 2013), Hal 287.

<sup>4</sup>Muhammad Raihan Nugraha, S.H, "Bolehkah HGB di Atas Laut?", *Bolehkah HGB di Atas Laut? | Klinik Hukumonline*, diakses 20 Maret 2025.

<sup>5</sup>Republik Indonesia, Peraturan Pemerintah tentang Hak Atas Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah, PP No. 18 Tahun 2021, LN No. 28 Tahun 2021, TLN No.6630, Pasal 1 angka (1).

<sup>6</sup>Republik Indonesia, Peraturan Pemerintah tentang Rencana Tata Ruang Laut, PP No. 32 Tahun 2019, LN No. 89 Tahun 2019, TLN No. 6345, Pasal 1 angka (1).

However, beyond the legal validity of Building Use Rights (HGB) over the sea, its issuance also raises concerns related to justice and utility, which are fundamental principles of law. From economic and social perspectives, marine development projects often lead to excessive exploitation of natural resources, disrupting marine ecology and negatively impacting the environment and local communities. Granting HGB over the sea restricts public access to resources that have long been part of their livelihoods.<sup>7</sup>

For instance, the 30 km-long sea wall in Tangerang has significantly hindered fishermen from accessing fishing grounds, directly affecting their income and economic stability. Additionally, there are other legal, environmental, and social consequences resulting from such projects. Thus, this study seeks to examine the following key questions: What is the legal basis for granting Building Use Rights (HGB) within Indonesia's agrarian system? How does the issuance of SHGB in the sea wall case of Tangerang align with Indonesia's national legal framework? What are the legal, environmental, and social impacts of granting SHGB over marine areas in the Tangerang sea wall case?

## 2. Research Method

The research method employed in this study is normative legal research, which is based on legal norms found within the applicable laws and regulations. According to Peter Mahmud Marzuki, legal research generally involves several approaches, including the statute approach, conceptual approach, case approach, comparative approach, and historical approach. This study utilizes the statute approach and the case approach.<sup>8</sup> The statute approach is conducted by analyzing all relevant laws and regulations related to land rights, Building Use Rights (HGB), and regulations concerning the utilization of coastal and marine areas. Meanwhile, the case approach involves examining court decisions, particularly Constitutional Court rulings, that address land issues, specifically the granting of HGB over marine areas.

## 3. Analysis and Discussion

### 3.1. legal basis for granting Building Use Rights (HGB) within Indonesia's agrarian system

The granting of Building Use Rights (Hak Guna Bangunan or HGB) in Indonesia is rooted in the national agrarian legal system, which is primarily governed by the Basic Agrarian Law (UUPA) No. 5 of 1960. HGB is a legal right that allows individuals or legal entities to construct and own buildings on land they do not own, with a specified time limit. This right plays a crucial role in land management and development, particularly in urban and commercial sectors.

#### 3.1.1 The Definition of Building Use Right

Land plays a vital role in the lives of the Indonesian people and in the implementation of national development, which is carried out as a continuous effort to achieve a just and prosperous society based on Pancasila and the 1945 Constitution. Therefore, the regulation of land control, ownership, and utilization must be directed to ensure order in land law, land administration, land use, as well as land and environmental management, thereby providing legal certainty in the land sector.<sup>9</sup>

In Article 34 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration, the subject of Building Rights Title. Stating that Building Use Rights are granted to Indonesian Citizens, and Legal Entities established under Indonesian law and domiciled in Indonesia. Furthermore, in Article 36 of Government Regulation No. 18 of 2021 regarding land that can be granted HGB consists of 3, namely, State Land, Land Management Rights and Land Ownership Rights.<sup>10</sup>

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<sup>7</sup> Aditya Ramadhan Harahap, Fahririn, "Tantangan dan Solusi dalam Implementasi Undang-Undang Agraria dan Hukum Adat di Rempang", Jurnal Batavia, Vol.1, No.5 (2024), hal 219.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Group, 2014), hlm. 93.

<sup>9</sup> Stevy Anggreani, Budi Santoso, "Perlindungan Hukum Terhadap Pemegang Hak Guna Bangunan Setelah Berakhirnya Jangka Waktu", Vol.17, No. 1 (2024), hal 45.

<sup>10</sup> Republik Indonesia, Peraturan Pemerintah tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah subjek Hak Guna Bangunan, PP No. 18 Tahun 2021, LN No. 28 Tahun 2021, TLN No. 6630, Pasal 34-36.

The Right to Build is specifically regulated in Articles 35 to 40 of the Basic Agrarian Law (UUPA), which defines the Right to Build as the right to construct and own buildings on land that does not belong to the right holder, with a maximum duration of 30 years. Upon the expiration of the Right to Build over Freehold Land, the land rights are legally extinguished.<sup>11</sup> The Right to Build authorizes the holder to establish and own buildings on land that is not personally owned for a maximum period of 30 years. However, upon expiration, the Right to Build may be renewed upon request by the right holder, considering the necessity and condition of the buildings. The period may be extended for up to 20 years, during which the holder retains the Right to Build. This renewal process can be carried out in two ways: first, through an extension of the existing right, and second, through the renewal of the right.

Article 38, paragraphs (1) to (3) of Government Regulation No. 18 of 2021 distinguishes the granting of HGB based on the type of land on which it is established, as follows:

1. HGB on State Land is granted through a decision issued by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Minister of ATR/BPN).
2. HGB on Management Rights Land is granted through a decision issued by the Minister based on the approval of the management rights holder.
3. HGB on Freehold Land is granted through a right granted by the freehold title holder with a deed executed by a Land Deed Official (PPAT).<sup>12</sup>

### 3.1.2 Subject and Object of the Building Use Right

The subjects of building use rights according to Article 36 of the Basic Agrarian Law in conjunction with Article 19 of Government Regulation No. 24/1997 concerning business use rights, building use rights and land use rights are Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. The types of land that can be granted HGB, as stipulated in Article 1 paragraphs (3), (4), and (5) of Government Regulation No. 24 of 1997, include: State Land Land with a Management Right (Hak Pengelolaan) Land with Ownership Rights (Hak Milik).<sup>13</sup>

The duration of HGB varies depending on the type of land, explicitly regulated in Article 37 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Strata Title Units, and Land Registration, as follows:

1. HGB on State Land and Land with Management Rights is granted for a maximum period of 30 years, extendable for up to 20 years, and renewable for up to 30 years.
2. HGB on Ownership Rights Land is granted for a maximum period of 30 years and can be renewed through a deed granting HGB over ownership rights.
3. Once the granted, extended, and renewed periods expire, the HGB land reverts to State-Controlled Land or Land with Management Rights.
4. For State-Controlled Land, the Minister holds authority over the reallocation of land use, utilization, and ownership. Former HGB holders may be given priority consideration based on factors such as:
  - a. Proper utilization of the land in accordance with its designation and purpose.
  - b. Compliance with the conditions for granting rights.
  - c. The holder's continued eligibility as an HGB holder.
  - d. Land suitability with spatial planning regulations.
  - e. The land not being allocated for public use.
  - f. Natural resource and environmental considerations.
  - f. The condition of the land and surrounding communities.<sup>14</sup>

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<sup>11</sup> *Op.Cit.*, hal 46.

<sup>12</sup> Muhamad Raihan, "Bolehkah HGB di Atas Laut?", [https://www.hukumonline.com/klinik/a/bolehkah-hgb-di-atas-laut-lt679224be3d4d6/#\\_ftn8](https://www.hukumonline.com/klinik/a/bolehkah-hgb-di-atas-laut-lt679224be3d4d6/#_ftn8), diakses 20 Maret 2025.

<sup>13</sup> Herman Hermit, *Cara Memperoleh Sertifikat Hak Milik Tanah Negara dan Tanah Pemda, Teori Praktek Pendaftaran Tanah di Indonesia* (Bandung: Mandar Maju, 2020), hal. 86.

<sup>14</sup> Dewi Maharani, "Prosedur Mudah untuk Mendapatkan Hak Guna Bangunan", <https://www.bukabangunan.com/artikel/hak-guna-bangunan-121301>, diakses 20 Maret 2025

### 3.2. *The legality of issuing a Building Use Rights Certificate (SHGB) in the Pagar Laut Tangerang case from the perspective of National Law.*

The issuance of Land Rights Certificates, particularly Building Rights Certificates (SHGB) and Certificates of Ownership (SHM), in the Tangerang seawall area has become a legal issue that has attracted public attention. The statement of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (ATR/BPN) regarding the existence of these certificates in the water area raises questions about the legal basis and legality of the issuance process.<sup>15</sup>

In principle, marine waters are part of the public space whose use is regulated by national law, particularly in Law No. 27/2007 on the Management of Coastal Areas and Small Islands as amended by Law No. 1/2014. This regulation emphasizes that marine areas cannot be granted property rights or building use rights as applicable to land. Therefore, the issuance of SHGB and SHM in the Tangerang sea fence area raises allegations of violations of applicable legal provisions.<sup>16</sup>

In analyzing this issue, Common Property Resources (CPR) theory provides important insight. CPR theory focuses on the management of resources that are collectively shared by a community, rather than individually owned. These resources, such as coastal areas, are utilized by local communities for various purposes, including fishing, transportation, and environmental conservation. The theory underscores the importance of managing these resources cooperatively to ensure sustainable use and prevent depletion. In the case of the Tangerang sea fence, granting individual property rights over marine areas disrupts this shared management model, potentially leading to environmental degradation and conflicts over resource use. By applying CPR theory, we can better understand how the granting of SHGB and SHM over marine areas conflicts with the sustainable management principles that are meant to protect these vital resources for the benefit of the community.<sup>17</sup>

#### 3.2.1. *Chronology of SHGB Issuance in the Coastal Barrier Area of Tangerang*

Marine spatial governance in Indonesia has once again come under scrutiny following the emergence of the sea fencing case along the coast of Tangerang. This phenomenon has not only sparked legal and administrative debates but also raised ecological and socio-economic concerns for coastal communities. The construction of the sea barrier, which was initially suspected of lacking official permits, prompted swift responses from various stakeholders, including local governments, the Ministry of Marine Affairs and Fisheries (KKP), and national defense agencies.<sup>18</sup>

The existence of Building Rights Title Certificates (SHGB) and Property Rights Certificates (SHM) issued within the more than 30km sea fence area in the waters of Tangerang Regency, Banten, has caused controversy among civil society. The community considers that the issuance of land rights in sea waters is not in accordance with the authority of the Ministry of Agrarian Affairs and Spatial Planning (ATR)/National Land Agency (BPN).<sup>19</sup>

This case presents an opportunity to analyze marine resource management policies, legal certainty regarding land use rights in coastal areas, and the impact on marine ecosystem sustainability and fishermen's livelihoods.

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<sup>15</sup>Maulana, I. (25 Januari 2025). Pagar laut, terungkap ratusan HGB dan SHM kavling laut Tangerang. Mongabay. <https://www.mongabay.co.id/2025/01/25/pagar-laut-terungkap-ratusan-hgb-dan-shm-kavling-laut-tangerang/> (Diakses 20 Maret 2025).

<sup>16</sup>Rokhmin Dahuri, 2004, *Pengelolaan Sumber Daya Wilayah Pesisir Dan Laut Secara Terpadu*, Jakarta: Penerbit Pradnya Paramita, hal. 8

<sup>17</sup>Elinor Ostrom, "Common Property Theory and Resource Governance Institutions: Strengthening Explanations of Multiple Outcomes," *Environmental Conservation* 35, no. 3 (2008): 242-253, <https://doi.org/10.1017/S0376892908003450>.

<sup>18</sup>Badan Riset dan Inovasi Nasional (BRIN). (3 Februari 2025). Peneliti BRIN soroti polemik pemagaran laut di pesisir Kabupaten Tangerang Banten. BRIN. <https://brin.go.id/news/122191/peneliti-brin-soroti-polemik-pemagaran-laut-di-pesisir-kabupaten-tangerang-banten> (Diakses 20 Maret 2025).

<sup>19</sup>Singgih, V. (2025, Januari 20). Sejak Aguan dan Agung Sedayu di balik sertifikat HGB kawasan pagar laut Tangerang – 'Presiden minta ini diusut tuntas'. BBC News Indonesia. <https://www.bbc.com> (Diakses 20 Maret 2025).

Furthermore, the involvement of various government institutions and private developers in this dispute highlights the complexities of Indonesia's marine spatial governance, including permitting mechanisms, oversight, and land ownership and utilization aspects.<sup>20</sup>

The case first surfaced when the Banten Provincial Marine and Fisheries Agency (DKP) received reports about the sea fencing activities along the Tangerang coast on August 14, 2024. In response, DKP Banten conducted a direct inspection on August 19, 2024, discovering that the barrier had already extended 7 kilometers. Following these findings, DKP, in coordination with the Directorate General of Marine and Fisheries Resources Surveillance (PSDKP) of the KKP, sealed off the area on January 9, 2025, citing the absence of a Marine Spatial Utilization Activity Suitability Permit (KKPRL). Additionally, the barrier was located within a designated fishing and energy management zone, posing potential harm to fishermen and coastal ecosystems.<sup>21</sup>

Amidst the controversy regarding the party responsible for the construction of the sea wall, the fishermen's group Jaringan Rakyat Pantura (JRP) in Tangerang Regency claims that the wall was built independently by the local community. According to JRP Coordinator, Sandi Martapraja, the wall serves as a barrier to prevent coastal erosion and as a disaster mitigation measure against tsunamis. However, despite these claims, the government continues to question the legality of its construction.<sup>22</sup>

As this issue developed, allegations arose that the sea fence was linked to the developer of Pantai Indah Kosambi (PIK) 2. However, the management of PIK 2 strongly denied their involvement in the construction of this sea fence. PIK 2 management stated that the development of their area was still ongoing and had nothing to do with the sea fencing under investigation.

Tensions escalated when the Indonesian Navy (TNI AL) intervened. On January 18, 2025, under direct orders from President Prabowo Subianto, the Navy, in collaboration with fishermen, dismantled the sea wall in Tangerang.<sup>23</sup> This operation involved 600 personnel from three special forces units: the Frogmen Command (Kopaska), the Marine Corps (Marinir), and the Underwater Rescue Service (Dislambair). However, this action faced opposition from the Minister of Marine Affairs and Fisheries, Wahyu Sakti Trenggono, who urged a halt to the demolition, citing the ongoing investigation. Nevertheless, Commander of the Indonesian National Armed Forces (TNI), General Agus Subiyanto, ensured that the dismantling would proceed as per the President's directive.<sup>24</sup>

During the dismantling process, the Ministry of Marine Affairs and Fisheries emphasized that the investigation would continue. Doni Ismanto, Special Staff to the Minister of Marine Affairs and Fisheries, stated that legal proceedings would persist to determine the parties responsible for the sea wall's construction. Furthermore, the ministry is collaborating with law enforcement authorities to ensure accountability and transparency in resolving this case.

The controversy deepened when the public discovered that several areas surrounding the sea wall held Building Use Rights (HGB) and Freehold Title (SHM) certificates. This revelation emerged after data from the BHUMI ATR/BPN website was uploaded to social media. In response, Minister of Agrarian Affairs and Spatial

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<sup>20</sup>Ombudsman Republik Indonesia. (2025, Februari 3). Ombudsman: Tuntaskan pembongkaran pagar laut. Ombudsman RI. <http://ombudsman.go.id/pers/r/ombudsman-tuntaskan-pembongkaran-pagar-laut> (Diakses 20 Maret 2025).

<sup>21</sup>Silaban, M. W. (2025, Januari 13). Terpopuler bisnis: Kelompok ini klaim membuat pagar laut, Pegadaian sebagai bank emas pertama RI. Tempo. <https://www.tempo.co/ekonomi/terpopuler-bisnis-kelompok-ini-klaim-membuat-pagar-laut-pegadaian-sebagai-bank-emas-pertama-ri-1193158> (Diakses 20 Maret 2025).

<sup>22</sup>Abdurrahman, S. (2025, Januari 13). Manajemen PIK 2 buka suara soal pagar laut di perairan Tangerang. Tempo. <https://www.tempo.co/ekonomi/manajemen-pik-2-buka-suara-soal-pagar-laut-di-perairan-tangerang-1193270> (Diakses 20 Maret 2025).

<sup>23</sup>Nugroho, N. P. (2025, Januari 18). TNI AL dapat instruksi dari Prabowo untuk bongkar pagar laut di Tangerang. Tempo. <https://www.tempo.co/politik/tni-al-dapat-instruksi-dari-prabowo-untuk-bongkar-pagar-laut-di-tangerang-1195712> (Diakses 20 Maret 2025).

Planning/Head of the National Land Agency (ATR/BPN), Nusron Wahid, confirmed that the sea wall area in Tangerang had been officially certified. Initial investigations indicated that 263 land parcels had received certification, comprising 234 HGB parcels under PT Intan Agung Makmur, 20 HGB parcels under PT Cahaya Inti Sentosa, and 9 parcels registered under individuals. Additionally, 17 SHM parcels were identified within the area. To verify the legality of these land holdings, the Ministry of ATR/BPN conducted a further investigation in collaboration with the Geospatial Information Agency (BIG).

The objective was to determine whether the parcels were situated within or beyond the latest coastal boundary. The investigation revealed that several certificates were issued in 2023, placing them within the legal review period stipulated under Government Regulation No. 18 of 2021. If procedural or material irregularities were found in the issuance of these certificates, they could be annulled without judicial proceedings. Subsequently, Nusron Wahid announced the official revocation of the HGB and SHM certificates for the sea wall area in Tangerang due to procedural and material defects. This decision was made following verification of the land boundaries and coastal lines documented in the relevant legal instruments. According to Nusron, areas beyond the coastal boundary cannot be privately owned and are ineligible for certification.

This case garnered further public attention after prominent figures such as Agus Harimurti Yudhoyono (AHY) and Hadi Tjahjanto became embroiled in the controversy. Both previously served as Ministers of ATR/BPN, with Hadi holding office from February 2022 to February 2024, and AHY from February to October 2024. Since the contested certificates were issued in 2023, AHY and Hadi were questioned by the media regarding their involvement in the issuance of these controversial land titles. However, both denied any knowledge of the certification process during their respective tenures.<sup>25</sup>

### 3.2.2. *The Validity of Building Use Rights Over Marine Areas in the Indonesian Legal Framework*

Building Use Rights (HGB) constitute one of the forms of land rights regulated under Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). This right grants individuals or legal entities the authority to construct and own buildings on land that does not belong to them for a specified period. Generally, HGB is granted over land with Freehold Title (Hak Milik), Management Rights (Hak Pengelolaan), or state land status and is frequently used for business, residential, or commercial purposes.<sup>26</sup>

However, in recent years, the application of HGB over marine areas has generated significant legal controversy. Within Indonesia's agrarian legal system, the sea does not fall under the category of land eligible for property rights, as stipulated in the UUPA. This aligns with the principle enshrined in Article 33(3) of the 1945 Constitution, which asserts that land, water, and natural resources are controlled by the state and must be utilized for the greatest benefit of the people. Consequently, the issuance of HGB certificates in marine areas creates legal uncertainty and potentially contradicts the principles of agrarian law and marine resource governance.

The case concerning the reclamation project of Pantai Indah Kapuk 2 in Tangerang serves as a concrete example of this issue. The issuance of HGB and Freehold Title (SHM) certificates over reclaimed land in marine areas has sparked legal debates, as such practices violate Law No. 1 of 2014, which amends Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands. Furthermore, the Constitutional Court, in Decision No. 3 of 2010, annulled Coastal Waters Utilization Rights (HP3), further strengthening the argument that land tenure rights in marine areas lack a solid legal foundation.

Various legal scholars have highlighted the issue of HGB validity over marine areas. Sofyan (2020) argues that the issuance of HGB certificates in water zones lacks a clear legal basis, as the sea is not classified as land subject to property rights. Similarly, Hutagalung (2018) emphasizes that this practice may lead to legal uncertainty and conflicts of interest among the state, HGB holders, and coastal communities dependent on

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<sup>25</sup>Syarifudin, T. (2025, Maret 14). Kejagung terima berkas 4 tersangka kasus Pagar Laut Tangerang. *Detiknews*. <https://news.detik.com/berita/d-7823754/kejagung-terima-berkas-4-tersangka-kasus-pagar-laut-tangerang> (Diakses 20 Maret 2025).

<sup>26</sup> Triadi Kurniawan. 2020. *Pemberian Hak Guna Bangunan Di atas Bagian Tanah Hak Pengelolaan*. Vol. 18, No. 1, Februari, hlm 71.

marine resources. Therefore, legal clarity regarding the issuance of HGB over marine areas is essential to prevent regulatory overlap that could negatively impact sustainable marine spatial management.

Constitutional Court Decision No. 3/PUU-VIII/2010 also affirms that coastal and marine areas are natural resources that must be controlled by the state for the greatest welfare of the people, as stipulated in Article 33(3) of the 1945 Constitution. In this ruling, the Constitutional Court annulled the provisions on Coastal Waters Utilization Rights (HP3), which previously allowed the granting of coastal water management rights to certain parties. This annulment was based on the consideration that HP3 could lead to the privatization of marine areas, potentially depriving coastal communities, particularly traditional fishermen, of their constitutional rights. If HGB were granted over marine areas, it would clearly contradict this Constitutional Court ruling, as both mechanisms involve the transfer of state control to individuals or legal entities, ultimately restricting public access to marine resources.

Thus, the issuance of Building Use Rights (HGB) over marine areas lacks a legal basis. The sea is not classified as land eligible for property rights under the UUPA, and the granting of HGB over marine areas is clearly in violation of Constitutional Court Decision No. 3/PUU-VIII/2010 and Law No. 1 of 2014. As a result, such SHGBs can be deemed null and void (*batal demi hukum*) due to the absence of a valid object of land rights as required under Indonesian agrarian law. This legal defect renders any rights or transactions based on these SHGBs legally weak and susceptible to annulment through judicial review.<sup>27</sup>

### *3.3. Economic, Environmental, and Social Impacts of Issuing SHGB over Water Areas in the Tangerang Sea Wall Case*

The issue surrounding the Right to Build Certificate (SHGB) over water areas in the Tangerang sea wall case is not only problematic in terms of its issuance but also in its broader implications. Beyond the legal concerns, this policy carries significant economic, environmental, and social consequences that could disrupt coastal ecosystems, threaten local livelihoods, and create long-term sustainability challenges. A comprehensive analysis is necessary to understand how such developments impact different sectors and stakeholders.

#### *3.3.1 Economic Impact of Issuing SHGB over Water Areas in the Tangerang Sea Wall Case*

The issuance of the Building Use Rights Certificate (SHGB) over water areas in the Tangerang sea wall case has had significant economic impacts on traditional fishermen in the surrounding area. One of the primary effects is the reduced access of fishermen to their fishing grounds. With the sea wall stretching as far as 36 km, fishermen are forced to seek fishing locations farther away, leading to increased operational costs, such as fuel and boat maintenance.

This situation exacerbates income uncertainty, particularly for small-scale fishermen who lack sufficient capital reserves to adapt to these changes. Citing an interview with one of the affected fishermen, Heru, conducted by TV One, he stated that the economic pressure on fishermen is worsened by threats and intimidation from certain parties involved in the sea wall construction. Some fishermen who attempted to voice their objections to the project faced pressure, ultimately forcing them to accept the situation. Heru also revealed a drastic decline in his daily catch, which previously reached 15 kg per day but has now dropped to only 2 kg per day. Local fishermen estimate that their total losses have reached Rp 9 billion due to restricted access to marine resources, which serve as their primary source of livelihood.

The Chairman of the Indonesian Ombudsman, Mohamad Najih, emphasized that this loss of access not only affects fishermen's income but also threatens food security for coastal communities that heavily depend on seafood as their main source of consumption and livelihood. The issuance of Building Use Rights (HGB) over marine areas has effectively limited the operational space of traditional fishermen. This occurs because the holders of HGB often impose physical barriers, surveillance, or even restrictions that prevent fishermen from entering designated zones either through the construction of offshore structures, deployment of security personnel, or installation of boundary markers. Consequently, fishermen are unable to access previously rich fishing grounds, leading to a significant decrease in fish catch. With fewer fishermen able to operate optimally,

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<sup>27</sup> Ma'rifah, D. R., & Sh, M. *Bahan Ajar Hukum Pengelolaan Sumber Daya Alam (Prinsip Investasi Dalam Pengelolaan Dan Pemanfaatan Pulau-Pulau Kecil Terdalam Dan Terluar Indonesia)*. Hal. 32.



the supply of fish to the market has decreased. This could potentially drive up fish prices, ultimately affecting traders and consumers in the region. If this situation persists, the local fishing industry will come under increasing pressure, further widening economic disparities in the maritime sector and marginalizing coastal communities who rely on marine resources for their daily survival.

Furthermore, according to Ekomarin, the presence of sea fences and the issuance of HGB in these areas represent a form of privatization and appropriation of marine resources. This situation has led to conflicts between local fishermen and HGB holders, as traditional fishing communities find their access to customary fishing grounds increasingly restricted. The privatization of these marine areas not only disrupts the livelihoods of fishermen but also raises concerns about the equitable management and sustainability of Indonesia's coastal resources.<sup>28</sup>

### 3.3.2 Social Impact of Issuing SHGB over Water Areas in the Tangerang Sea Wall Case

From a social perspective, the issuance of SHGB over coastal water areas in the Tangerang Sea Wall case does not merely generate public reaction, but has resulted in significant and multi-dimensional social impacts on local communities, particularly traditional fishing groups.

Firstly, the loss of free access to traditional fishing areas due to land reclamation and the privatization of coastal spaces has directly undermined the economic foundation of coastal communities. Fishermen, who rely on daily access to these waters, have experienced reduced fishing zones, leading to lower catch volumes and unstable income. This economic disruption increases household vulnerability and deepens poverty levels, particularly among those without alternative employment options.

Secondly, the marginalization of local knowledge and practices causes cultural dislocation. Coastal communities possess generational ties to the sea not only as a source of income but as part of their cultural identity. The disruption of these patterns due to restricted access and land commodification erodes social norms, rituals, and the continuity of traditional ecological wisdom.

Thirdly, social cohesion has been strained. The community is increasingly fragmented between groups that support the development for perceived economic benefits, and those who resist due to loss of livelihoods and environmental degradation. This intra-community division often escalates into prolonged horizontal conflict, further weakening community solidarity.

Moreover, the public perception of government collusion with developers fosters widespread distrust toward formal institutions. The feeling of being excluded from decision-making processes has delegitimized state authority in the eyes of affected residents, potentially fueling long-term civic disobedience or resistance movements. This erosion of social trust undermines not only governance at the local level but also the broader social contract.<sup>29</sup>

### 3.3.3 Environmental Impact of Issuing SHGB over Water Areas in the Tangerang Sea Wall Case

The construction of a sea wall based on Building Use Rights (HGB) over water areas not only impacts economic and social aspects but also poses serious environmental consequences. According to Prof. Muhammad Amin Alamsjah, Dean of the Faculty of Fisheries and Marine Sciences at Airlangga University (UNAIR), the installation of a sea wall that restricts access to water areas can accelerate sedimentation and reduce the carrying capacity of marine ecosystems.

With the presence of the sea wall, water currents that would normally flow freely become obstructed, leading to a faster accumulation of sediment on the seabed. This sediment buildup can disrupt ecosystem balance,

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<sup>28</sup> Gusti Grehenson. (2025, Januari 24). *Kasus pagar laut bersertifikat HGB, pakar agraria UGM nilai ada ketidaksinkronan regulasi dan kepatuhan hukum*. UGM News. <https://ugm.ac.id/id/berita/kasus-pagar-laut-bersertifikat-hgb-pakar-agraria-ugm-nilai-ada-ketidaksinkronan-regulasi-dan-kepatuhan-hukum/> (Diakses 20 Maret 2025).

<sup>29</sup> Syahril Hidayat dkk., “Analisis Keabsahan Sertifikat Hak Guna Bangunan yang Terbit di atas Laut,” *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia*, Vol. 2, No. 1 (Januari 2025): 215, <https://doi.org/10.62383/amandemen.v2i1.824>.

reduce dissolved oxygen levels in the water, and degrade the quality of habitats for marine life. Additionally, the sea wall poses a threat to nursery grounds, which serve as breeding and growth areas for various fish species and other marine organisms. When the aquatic ecosystem is disturbed, fish populations in the area may decline drastically due to the loss of natural spawning and rearing habitats. This not only affects fish availability for fishermen but also disrupts the food chain within the marine ecosystem.

Furthermore, these impacts endanger the sustainability of the fisheries sector and disturb the balance of marine biodiversity that has developed naturally over many years. Coral reefs and seagrass beds, which are crucial ecosystems for numerous marine species, are also at risk due to environmental changes caused by the sea wall. Coral reefs are highly sensitive to alterations in water conditions, particularly increased sedimentation and declining water quality due to disrupted natural circulation. If coral reefs are damaged, many fish species and other marine organisms will lose their habitats and food sources, ultimately leading to a decline in overall marine ecosystem productivity. The long-term impact of this policy could result in an environmental crisis that is difficult to reverse. Therefore, the issuance of HGB over water areas must undergo strict evaluation, taking ecological aspects into serious consideration.<sup>30</sup>

#### 4. Conclusion.

The issuance of Building Use Rights Certificates (SHGB) over water areas in the Tangerang sea wall case has raised significant legal, economic, social, and environmental concerns. Legally, it contradicts the national agrarian system, which only permits land rights over terrestrial areas, as regulated under the Basic Agrarian Law (UUPA) and its derivative laws. The existence of more than 260 SHGBs in marine zones blurs the legal boundaries between land and sea, setting a dangerous precedent for future coastal resource management.

This policy violates multiple national legal instruments, including Law No. 5 of 1960 on Basic Agrarian Principles, Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands (as amended by Law No. 1 of 2014), and Government Regulation No. 18 of 2021. Furthermore, it disregards the Constitutional Court Decision No. 3/PUU-VIII/2010 and Article 33(3) of the 1945 Constitution, which assert that natural resources must be controlled by the state and utilized for the greatest benefit of the people. From the international perspective, this practice also conflicts with Sustainable Development Goal 14, which emphasizes the protection and sustainable use of oceans and marine resources.

To restore legal certainty and uphold justice for coastal communities, the issuance of SHGB over marine areas must be reviewed and revoked. In addition, the government—both central and local—must adopt several policy measures:

1. Harmonize overlapping regulations related to land and marine governance to eliminate legal gray areas.
2. Reinforce coordination between the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Marine Affairs and Fisheries in coastal zoning.
3. Establish clear legal safeguards to prevent the extension of land-based rights over marine spaces.
4. Conduct inclusive spatial planning that respects community rights and environmental sustainability.

Ultimately, this case reflects the urgent need for integrated legal and policy reform to ensure responsible, equitable, and sustainable management of coastal and marine areas in Indonesia.

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<sup>30</sup> Roiqoh, S., & Ayu, N. (2025). Peran Hukum Agraria dalam Pengelolaan Tanah Pesisir Studi Kasus Pagar Laut di Tangerang. *Jurnal Ilmu Hukum*, 1(2), 74-81.

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