

ABSTRAK

Tanah memberikan manfaat bagi rakyat, baik warga negara secara perorangan, kelompok, badan hukum ataupun oleh pemerintah pasti akan melibatkan terkait tanah. Perdebatan tafsir hukum selalu menimbulkan sengketa di masyarakat terkait status tanah dan benda-benda di atasnya ketika HGB berakhir jangka waktunya, dimana seharusnya hak kebendaan masih melekat pada bekas pemegang hak atau ahli warisnya karena masih diperlukan justru ikut hapus. Kasus terkait hal di atas yang diangkat penulis ialah mengenai hak bekas pemegang HGB yang telah habis jangka waktunya terhadap bangunan dan tanaman di atas tanah aset negara.

Tujuan Penelitian ini adalah untuk mengetahui dasar pertimbangan Hakim dalam memutus perkara Semarang No. 282/Pdt.G/2018/PN.Smg yang mengalahkan pihak Penggugat (ahli waris almarhum Brigadir Jenderal Purnawirawan Mardeo) apakah sudah sesuai dengan Hukum Tanah Nasional apa belum dan status hukum terhadap bangunan dan tanaman bekas pemegang HGB diatas Tanah Negara berdasarkan putusan tersebut.

Metode Penelitian yang digunakan adalah *juridis normatif*. Penelitian ini meliputi penelitian asas-asas hukum, sumber-sumber hukum, peraturan perundang-undangan, putusan pengadilan yang berlaku, literatur-literatur yang berkaitan dengan permasalahan. Spesifikasi penelitian deskriptif analitis, dengan menggunakan metode analisa kualitatif.

Hasil penelitian ini mengemukakan bahwa dasar pertimbangan Hakim memutus sengketa tersebut belum sesuai dengan Hukum Tanah Nasional terkhusus pada ketentuan Pasal 2 Keputusan Presiden No. 32 tahun 1979 jo Pasal PMDN No. 3 tahun 1979 terkait skala prioritas bagi bekas pemegang HGB. Status Hukum terhadap Bangunan di atas tanah obyek sengketa tersebut berdasarkan alat bukti dalam putusan dan ditinjau dari Asas Pemisahan Horizontal adalah aset pihak Tergugat (Kodam IV/Diponegoro) yang teregister dalam Buku Kekayaan Inventaris Negara, dan ini mengesampingkan alat bukti berupa Akta Jual Beli dan Sertipikat HGB milik Penggugat serta Keputusan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No. 6 Tahun 1998 tentang Pemberian Hak Milik atas Tanah untuk Rumah Tinggal.

Kesimpulan penelitian ini bekas pemegang HGB dikalahkan dalam Putusan Pengadilan Negeri Semarang No. 282/Pdt.G/2018/PN.Smg dikarenakan Hakim mendasarkan pertimbangannya pada ketentuan Pasal 36 ayat (1) PP No. 40 Tahun 1996, dengan berakhir jangka waktu HGB maka tanah kembali menjadi tanah negara. Perlu diketahui bahwa bekas pemegang hak secara tidak langsung masih mempunyai hubungan keperdataan dengan obyek bekas haknya. Penulis menyarankan hendaknya pelaksanaan skala prioritas bagi bekas pemegang HGB harus lebih diperhatikan lagi supaya tidak mengenyampingkan hak-hak yang seharusnya didapatkan oleh subyek hukum dalam kepemilikan hak atas tanah.

Kata Kunci: *Bekas Pemegang Hak Guna Bangunan, Tanah Aset Negara, Hak Keperdataan dan Skala Prioritas.*

ABSTRACT

The land benefits the people, whether individual citizens, groups, legal entities, or the government will involve land. Debates on legal interpretation always lead to disputes in the community regarding the status of land and objects on it when the Right to Use Building expires, where the material rights should still be attached to the former right-holders or their heirs because they are still needed, they will also be deleted. The case related to the above raised by the author regarding the expiring rights of former Right to Use Building holders to buildings and plants on state-owned land.

The purpose of this research is to determine the judge's primary considerations in deciding the Semarang case no. 282/Pdt.G/2018/PN.Smg which defeated the Plaintiff (heir of the late Brigadier General Retired Mardeo) whether it was following the National Land Law or not and the legal status of buildings and plant's former Right to Use Building holders on State Land-based on the decision.

The research method used is normative juridical. This research includes research on legal principles, legal sources, laws and regulations, applicable court decisions, and literature related to the problem. Specifications of analytical descriptive research, using qualitative analysis method.

The results of this study suggest that the basis for the judge's consideration in deciding the dispute is not following the National Land Law, especially in the provisions of Article 2 of Presidential Decree No. 32 of 1979 jo Article PMDN No. 3 of 1979 related to priority scale for former Right to Use Building holders. The legal status of the building on the land object of the dispute is based on the evidence in the decision and in terms of the Horizontal Separation Principle, the assets of the Defendant (Kodam IV/Diponegoro) are registered in the State Inventory Wealth Book, and this rules out the evidence in the form of Right to Use deed of sale and Building Certificate belonging to the Plaintiff and Decree of the State Minister for Agrarian Affairs/Head of the National Land Agency No. 6 of 1998 concerning Granting Land Ownership Rights for Residential Houses.

This study concluded that former Right to-Use Building holders were defeated in the Semarang District Court Decision No. 282/Pdt.G/2018/PN.Smg because the Judge based his considerations on the provisions of Article 36, paragraph (1) PP No. 40 of 1996, with the expiration of the Right to Use Building period, the land returns to state land. It should be noted that the former right holder indirectly still has a civil relationship with the object of the former right. The author suggests that the implementation of the priority scale for former Right to-Use Building holders should pay more attention so as not to override the rights that legal subjects in Land ownership rights should obtain legal subject in Land.

Keywords: Former Holder of Building Use Rights, State Asset Land, Civil Rights, and Priority Scale