Privatization Through Building Use Rights in The Tangerang Sea Fence Area According to Positive Law

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Submitted : *February 2025*	*Accepted : March 2025*	*Published : March 2025*

ABSTRACT

The privatization of marine space in Tangerang through sea fences and Building Use Rights (HGB) certificates harms the local economy. All forms of natural resource privatization in Indonesia must consider their legality. The purpose of this research is to analyze the legality of the Tangerang Sea fence and the legal certainty of HGB certificates in the privatization of marine space. This research uses a normative juridical approach with secondary data. The research results indicate that this privatization violates Indonesian positive law because it does not meet the licensing procedures, contradicts Article 33, paragraph 4 of the 1945 Constitution, and harms the community. The HGB certificate is also invalid because it violates spatial planning regulations and the principle of common property.

Keywords: *Common Property, Building Use Rights, Sea Fence, Privatization*

A. Introduction

Law always develops to adapt to social phenomena, meaning that various concrete phenomena and social situations of society are interrelated with patterns of behavior that can form legal institutions.[1] The legal system of Indonesia is founded on the principles of positivism. Legal positivism is a philosophical doctrine about the positive standards present within the legal system. Laws are formal governmental laws or decisions that are obligatory for society, formulated by the House of Representatives (DPR) and the President.[2] Meanwhile, laws and regulations include all written rules in Indonesia, both those whose hierarchy is above and below the law. Positive law, or ius constitutum, comprises a compilation of codified legal principles and regulations that are now in effect and are either generally or particularly obligatory,[3] enforceable by the government or judiciary within the Indonesian state.[4]

Without morality, the law would have no value. Therefore, moral standards must be used to evaluate the quality of the law, laws that violate morality must be replaced with new ones. In addition, morality requires law because morality without law is just wishful thinking if it is not regulated or established for society. The morals in question are the living values that prevail in society, so the law must protect these values so that people can live safely.

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[1] Yuddin Chandra Nan Arif, "Dimensions of Legal Change in the Perspective of an Open Legal System," *IUS Journal* 1, no. 1 (2013): 115.
[2] Yapiter Marpi, *Legal Science An Introduction*, (Jakarta: PT. Zona Media Mandiri, 2020), 49.
[3] I. Gede Pantja Astawa, *Dynamics of Law and Legislation in Indonesia*, (Bandung: PT. Alumni, 2008), 56.
[4] *Ibid*.

National agrarian law is the outline of political policies established by the state to maintain, preserve, use, allot, cultivate, benefit from, manage, and divide agrarian wealth for the benefit of the people.

Indonesia's geographical position renders it strategically significant in economic, political, socio-cultural, and military and security domains. Moreover, Indonesia's geographical location and abundant maritime resources render it very significant for nations across many areas. This strategic position presents both obstacles and possibilities for Indonesia in attaining national objectives.[5] Marine space is a source of livelihood for the community, so any form of utilization of Marine space must not violate the living and economic rights of the community around the Marine space.

The placement of Marine barriers is inherently linked to agricultural concerns, since it pertains to the management and use of natural resources inside maritime areas. Natural resources include terrestrial (solid, liquid, gas) and aquatic resources (fish, Marine goods) distributed over Indonesia's inland waterways, territorial Marine, and exclusive economic zone.[6] The word agrarian in the Basic Agrarian Law (UUPA) encompasses many legal domains. Agrarian law encompasses a compilation of legal domains, each governing the rights of sovereignty over certain natural resources.[7] This group of legal fields consists of:[8]

1. Land law governs tenure rights pertaining to the earth's surface.
2. Water law governs the rights of control over water resources.
3. Mining law governs the rights of control over extracted resources as stipulated in the Basic Mining Law.
4. The legislation governing the control rights over aquatic natural resources.
5. The legislation governing the management of energy and materials in outer space delineates the rights of such control as specified in Article 48 of legislation Number 5 of 1960 (UUPA).

The privatization of marine space is increasingly becoming a topic of discussion amid the rapid coastal development and the need for more structured management of water areas. One form of this privatization is the granting of building use rights (HGB) over water bodies, which is now commonly found in various coastal areas, including the Pagar Laut region in

[5] Irwandi Idham, "Law Enforcement of the Crime of Unauthorized Utilization of Marine Space by Ditpol AIRUD Polda Sumbar," *Swara Justisia* 4, no. 4 (2021): 299.
[6] Fauzi Janu Amarrohman and Onang Onang Fadjar Witjaksono, *Textbook of Agrarian Law*, (Semarang: Undip Press, 2021), 11.
[7] Fadhil Yazid, *Introduction to Agrarian Law*, (Medan: Undhar Press, 2020), 5.
[8] Mudjiono, *Agrarian Politics and Law*, (Yogyakarta: Liberty, 1997), 112.

Tangerang. This phenomenon raises various questions regarding the compatibility of the policy with positive law in Indonesia, especially in relation to the principle of marine space management that should be oriented toward the public interest.

As an archipelagic country, Indonesia has legal regulations governing the utilization of the sea, both in the Basic Agrarian Law (UUPA), the Marine Law, and regulations related to Spatial Planning and Environmental Protection. The sea is essentially part of the public domain that cannot be exclusively controlled by any particular party without clear regulations and a strong legal basis. So, when HGB is given over bodies of water, it needs to be looked at more closely to see if it is legal and how it will affect community rights, marine ecosystems, and the state's ability to manage coastal resources.

Privatization is the process of transferring management from the state of assets it controls to the private sector.[9] Emil Salim elucidates that the concept of "controlled by the state" pertains to the state's governance over land, water, and the natural resources inside, which are essential for the populace's wellbeing. The state need not own all natural resources but may maintain control via regulatory, planning, and supervisory procedures.[10] Privatization can be transferred to individuals or legal entities, but their use often violates the law.

The privatization effort in the Tangerang Marine fence polemic has been opposed by various parties, especially the people around the Tangerang Marine fence who have been economically disadvantaged due to the installation of the fence. The 30.16 km² Tangerang Marinewall area comprises 263 pieces of land, with construction rights certificates held by PT Intan Agung Makmur for 234 parcels, PT Cahaya Inti Sentosa for 20 parcels, and 9 lots owned by individuals.[11] The loss suffered by the fishing community due to the Marine fence is estimated at Rp. 9 billion.[12]

The privatization of marine space through the granting of Building Use Rights (HGB) in the Tangerang sea fence area has become a controversial issue. The granting of these rights to several private companies has resulted in limited access for the community, especially fishermen who depend on the sea as their source of livelihood. With an area covering 30.16

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[9] Mohammad Reza Naufal, "The Concept of Privatization in Indonesia," *Dharmasisya* 1, no. 1 (2021): 310.

[10] Dian Cahya Ningrum, *Legal Politics of Privatization Arrangements in Law Number 19 Year 2003 on State-Owned Enterprises*, (Postgraduate Faculty of Law, University of Indonesia: Depok, 2004), *27*.

[11] Mochammad Fajar Nur, "Tangerang Marine Fence's Trail of Lawlessness Should Not Be Ignored," Tirto.id, last modified 2025, accessed January 27, 2025, https://tirto.id/ traces-of-legal-violation-Marine-fences-don't-ignore -g7Gq#google_vignette

[12] Tamara Sanny, "Demolition of Illegal Marine Fences in Tangerang Continues," Metrotvnews, last modified 2025, accessed January 28, 2025, https://www.metrotvnews.com/play/b2lCpBnO- demolition-of-illegal-Marine-fences-in-tangerang-continues #:~:text=Pagar%20laut%20ini%20telah%20menjadi,ini%20diperkirakan%20mencapai%20Rp9%20miliar.

km² and controlled by those companies, the local community feels disadvantaged due to the loss of access to marine resources that are part of their livelihoods. As a result, there has been a decline in welfare and inequality in the utilization of marine space.

The installation of sea fences by private parties not only has economic impacts on the surrounding communities but also raises legal issues. According to Article 33, Paragraph 4 of the 1945 Constitution, the national economy is based on economic democracy with the principles of togetherness, efficiency, sustainability, environmental awareness, and independence, in addition to maintaining the balance of progress and national economic unity. Therefore, every policy related to the utilization of natural resources, including marine space, should not harm the wider community.

In the perspective of positive law, the control of maritime space through the Building Use Rights mechanism also raises questions about its compliance with the applicable laws and regulations. The sea and natural resources consist of coastal areas that should be managed for the common good and must not be monopolized by any particular party. Based on the background outlined, research must be conducted on the following issues: First, how is the legality of the utilization of marine space in the polemic of the control of the sea fence land in Tangerang? Second, what is the legal certainty of building use rights certificates regarding the control of the sea fence land in Tangerang?.

B. Research Methods

The approach used in this research is a normative juridical approach employing descriptive-analytical techniques to analyze privatization through Building Use Rights (HGB) in the Pagar Laut[13] Tangerang area according to positive law in Indonesia. Qualitative data were obtained from secondary sources such as legislation, academic literature, and other legal documents related to the concept and scope of privatization of marine space and HGB. The analysis is conducted by examining the interconnections between legal regulations regarding HGB and the management of marine space, tracing the legal developments related to the privatization of marine space, and comparing the legal concepts of privatization and rights to marine space within the national legal system. Through this approach, it is hoped that the research results can comprehensively explain the privatization through HGB in the coastal area of Tangerang.

[13] Peter Mahmud Marzuki, *Introduction to Legal Research,* (Jakarta: Prenada Media Group, 2014), 47.

C. Result and Analysis

1. The Legality of Marine Space Utilization as a Privatization Effort in the Tangerang Marine Fence Land Tenure Polemic in View of Indonesian Positive Law

In accordance with the guidelines set forth in MPR Decree No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management, the scope of agricultural affairs as outlined in Law No. 5/1960 on Basic Agricultural Principles (UUPA) is compatible. The term "agrarian" may mean either "land" in a legal sense (as a right) or "earth" (as a more general concept) and all of its natural resources (including water and space).[14] Agrarian as a natural resource includes:[15]

1. Earth, which includes the surface of the earth and the body of the earth;
2. Water, which includes the inland water and Marine of the Indonesian territory;
3. Space, encompassing the airspace over the land and waters of the Indonesian country;
4. Natural resources, which include mines, forest products, fish, animals, and so on.

Marine fences are efforts to fence off Marine space to prevent abrasion and tsunamis or for other purposes without harming people's lives and economy. Territorial Marine areas are controlled by the state. State assets are categorized into state-controlled assets (public domain) and state-owned assets (private domain).[16] Article 33, paragraph three of the 1945 Constitution (UUD 1945) asserts that the state has sovereignty over land, water, and all natural resources within, which must be used for the greatest advantage of the populace.[17] According to Mohammad Hatta, the term “controlled” does not mean that the state must become an entrepreneur or owner, but rather that the state has a role in setting policies and overseeing and controlling the management of wealth under state power, so that the state plays a role in creating economic equality.[18]

The Ministerial Regulation No. 28 of 2021 on the Implementation of Marine Spatial Planning defines Marine space as including both water and jurisdictional areas. Intracoastal

[14] Urip Santoso, *Land Deed Officials, Regulatory Perspective, Authority, and Nature of Deeds*, (Jakarta: Prenadamedia Group, 2016), 60.
[15] Fadhil Yazid, *Introduction to Agrarian Law*, (Medan: Undhar Press, 2020), 4.
[16] Eka Hidayati, “Wealth Controlled by the State vs. Wealth Owned by the State,” Artikel KPKNL Metro, last modified 2021, accessed January 28, 2025, https://www.djkn.kemenkeu.go.id/kpknl-metro/baca-artikel/13760/Kekayaan-yang-Dikuasai-Negara-vs-Kekayaan-yang-Dimiliki-Negara.html
[17] 1945 Constitution of the Republic of Indonesia, Article 33 paragraph 3
[18] Eka Hidayati, *Loc.cit*.

Marines, territorial Marines, and archipelagic waters are all types of inland waterways. At the same time, the continental shelf and Indonesia's EEZ are part of the governing territory.[19]

Individuals and corporations are required to adhere to government-regulated legal processes while using maritime spatial regions. The waters of the national strategic area, as defined in Article 32 paragraph 2 of the Minister of Maritime Affairs and Fisheries Regulation Number 28 of 2021, offer coastal waters space up to a certain extent, in accordance with statutory regulations; however, if the area is not within coastal waters, the interregional zoning plan (RZ KAW) regulates the allocation of Marine space. This is in light of the economic, social, and cultural interests of the area.[20] Use of coastal waters less than 1 nautical mile from the shore or less than 5 m deep is given priority for activities aimed at protecting ecosystems, traditional fisheries, public access, public beaches, and defense and security. However, in certain designation zones, which may include Marineside buildings and installations with the following functions:[21]

1. Residential, religious, social and cultural;
2. Land transportation and shipping;
3. Fisheries;
4. Tourism;
5. Electricity and telecommunications;
6. Oil and gas business activities;
7. Water resources provision; and/or
8. Disaster infrastructure or facilities.

According to Article 33(4) of the 1945 Constitution, the national economy is based on economic democracy to ensure equity, sustainability, independence, and balanced progress. This economic democracy must not be in conflict with the use of state assets.[22]

The marine space is one of the state's assets whose utilization must consider public aspects. The utilization of marine space by private entities can be interpreted as an attempt to privatize marine space; however, the legality of this utilization must consider licensing aspects and must align with government spatial planning policies.

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[19] Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 28 of 2021 concerning the Implementation of Marine Spatial Planning, Article 20 paragraphs 2 and 3

[20] Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 28 of 2021 concerning the Implementation of Marine Spatial Planning, Article 32 paragraph 2 and Article 33

[21] Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 28 of 2021 concerning the Implementation of Marine Spatial Planning, Article 36 paragraph 2

[22] Elli Ruslina, "The Meaning of Article 33 of the 1945 Constitution in the Development of Economic Law in Indonesia," *Constitutional Journal* 9, no. 1 (2012): 55.

In the context of implementing marine spatial planning policies, the government has the authority to plan and execute policies for the utilization and control of marine space utilization, as regulated in Article 2, paragraph 1 of the Minister of Maritime Affairs and Fisheries Regulation Number 28 of 2021 (PMKP Number 28/2021). Therefore, any efforts to privatize through the utilization of marine space must not contradict the spatial planning regulations in the marine area, as this will also be one of the aspects considered in granting marine space utilization permits. In the context of positive law in Indonesia, the privatization of marine space is limited by the concept of common property, which includes areas beyond the coastline and cannot be individually owned. However, the area of public utilization, as regulated in Article 7 of PMKP Number 28/2021, allows for the utilization of marine space for sectors such as tourism, industry, ports, and fisheries through specific licensing mechanisms.

Privatization also known as denationalization is the transition of ownership from state control to individual or private ownership, implemented by government policies that facilitate the transfer of public assets to private entities.[23] Some experts argue that public spaces or state assets should be managed by the government to prevent misuse by the private sector who tend to prioritize them for commercial interests.[24] Privatization in the case of the Tangerang Marine fence is the ownership of land rights certificates over state assets by individuals or legal entities, and there is an attempt to create emergent land as a result of Marine fencing.

Efforts to privatize Marine areas through the use of Marine space in the Tangerang Marine fence case need to be reviewed from the aspect of legality. There are licensing procedures that must be fulfilled by individuals or legal entities to utilize Marine space. The permanent utilization of Marine space in coastal waters, water areas, and/or jurisdictional areas (defined as continuous use for a minimum of 30 days) within specific parts (Marine surface, water column, dam, or Marinebed) requires the suitability of Marine space utilization activities (KKPRL),[25] as stipulated in Article 113 of PMKP Number 28/2021. The conformity in the KKPRL is between the proposed Marine space utilization activities and the spatial plan and/or zoning plan. KKPRL is an important prerequisite for obtaining business and/or non-business licenses. Article 115 of PMKP Number 28/2021 stipulates that approvals are prohibited in the

[23] Siti Maro'ah, "Privatization Policy and its Impact on Indonesia's Macroeconomy," *BALANCE Economics, Bussiness, Management and Accounting Journal* 5, no. 9 (2008): 1.
[24] Edi Purwato, "Privatization of Public Space from Civic Centre to Central Business District (Learning from the Case of Simpang Lima Semarang))," *TATA LOKA* 14, no. 1 (2014): 154.
[25] Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 28 of 2021 concerning the Implementation of Marine Spatial Planning, Article 113 paragraphs 1, 2, and 3

core zone of Marine protected areas, and that open mining, dumping and reclamation activities are not permitted in Marine protected areas outside the core zone.[26]

The implementation of KKPRL is a manifestation of the government's management of marine spatial planning. Article 65, paragraph 2 of Government Regulation No. 18 of 2021 mandates that the allocation of Land Rights in aquatic zones is conducted according to licenses given by the Ministry responsible for Marine and fisheries governance.[27] Registration, evaluation of application materials, and issuance of KKPRL are the three steps in the process. As stated in Article 125 paragraph 3 letter d of PMKP Number 28/2021, one of the requirements for the second stage is that it must not conflict with the interests of the community and traditional fishermen. In the Tangerang Marine fence polemic, there was opposition from the surrounding community because the installation of the Marine fence was detrimental to the economic activities of the community, so procedurally the installation of the Marine fence was against the applicable law. The Marine fence has prevented fishermen from going to Marine, forcing them to find other routes and consuming more fuel. As a result, the loss suffered by the fishing community due to the Marine fence is estimated at Rp. 9 billion.[28]

Areas beyond the coastline cannot be granted land titles as they are public property, meaning that they cannot be privatized. The ocean's resources are mostly public domain, meaning anybody may utilize them.[29] The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands specifies in Article 5 paragraph 1 that land rights on the coast may only be granted for buildings that actually exist in coastal areas, among others:[30]

1. Buildings used for defense and security;
2. Ports or docks;

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[26] Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 28 of 2021 concerning the Implementation of Marine Spatial Planning, Article 113 paragraphs 1, 2, and 3

[27] Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, Article 65 paragraph 1

[28] Tamara Sanny, "Demolition of Illegal Marine Fences in Tangerang Continues," Metrotvnews, last modified 2025, accessed January 28, 2025, https://www.metrotvnews.com/play/b2lCpBnO- demolition-of-illegal-Marine-fences-in-tangerang-continues#:~:text=This%20Marine%20fence%20has%20become,this%20is%20estimated%20to%20reach%20Rp9%20billion.

[29] Putu Oktavia Evolution and Challenges *Governance* untuk *Common Property Resource*," *Journal of Urban and Regional Planning* 1, no. 1 (2018): 35.

[30] Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands, Article 5 paragraph 1

3. Tower guarding the safety of beachgoers;
4. Residences of indigenous peoples or community members who have traditionally resided in the area;
5. Power plant.

At the same time, according to paragraph 2 of Article 5, only certain types of buildings state strategic programs, public interests, indigenous peoples' settlements on water, and tourism are allowed to be constructed in coastal water areas. These areas are measured from the coastline all the way to the Marine, up to the extent of the provincial Marine boundary.[31]

Privatization of ocean space is when rights to shared ocean space are ceded to individuals. This can harm society and national development goals. Therefore, the government must stop the unlawful privatization of the ocean. Efforts to sustainably improve the welfare and prosperity of the Indonesian people based on democracy, togetherness, justice, self-reliance, and care for the environment are known as national development.

The Ministry of Marine Affairs and Fisheries Marineled the Tangerang Marine fence because it did not have a KKPRL permit.[32] In order to ensure that operations involving the use of Marine space are suitable, the KPPRL permission is required for their exploitation in coastal waters, water areas, and/or jurisdictional territories, as stated in Article 113 of PMKP Number 28/2021. The absence of KKPRL permit in the utilization of Marine space is considered legally invalid or contrary to the legality aspect of Marine space utilization because without the fulfillment of regulated legal procedures, the Marine fence cannot be built in Marine space and cannot be utilized by the builder. In addition, the Tangerang Marine fence has contradicted Article 33 paragraph 4 of the 1945 Constitution regarding the goal of economic democracy, because the Marine fence has harmed the economic activities of the community around the Tangerang Marine fence. Without KPPRL permission, it can be interpreted that the utilization of marine space does not comply with the government's spatial planning policy; thus, the privatization efforts through marine utilization in the Tangerang sea fence area do not meet procedural requirements.

2. Legal Certainty of Building Rights Title Certificate on Land Tenure of Pagar Laut Tangerang in View of Indonesian Positive Law

[31] Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands, Article 5 paragraph 2

[32] Moch. Dani Pratama Huzaini, "The Constitutional Flaw of Ocean Space Privatization Behind the Marine Fence Findings," Hukumonline, last modified 2025, accessed January 28, 2025, https://www.hukumonline.com/stories/article/lt67882135a2b41/ constitutional-flaw-privatization-of-Marine-space-behind-the-findings-of-the-Marine-fence/

Fence M. Wantu asserts that in the absence of legal certainty, the law becomes devoid of significance, since it can no longer serve as a behavioral guide for the society. judicial certainty ensures the enforcement of the law, enables entitled persons to secure their rights, and facilitates the execution of judicial judgments.[33]

One embodiment of the ideals outlined in Article 33 paragraph 4 of the 1945 Constitution (UUD 1945) is national agrarian legislation, which mandates that the state owns and uses the land, water, and natural resources contained therein for the benefit of its citizens.[34] The rights to possess or manage land may be transitory and can include ownership, usage, renting, clearing of land, collecting forest products, and/or other rights that are regulated by legislation. These rights can also include rights to utilize buildings or conduct commerce.[35] Simultaneously, rights to water and space include the rights to use water, the rights to cultivate and capture fish, and the rights to occupy space.[36]

Subsequent to the promulgation of Law No. 5/1960 about the Basic Regulation of Agrarian Principles (UUPA), agrarian law is categorized into two domains:[37]

1. Civil agrarian law, is a compilation of legal statutes concerning the rights of persons and legal entities, which govern licenses, duties, and restrictions pertaining to legal acts with land as the subject matter. Examples include sales and purchases, land rights as loan collateral (hak tanggungan), and inheritance.
2. Administrative agrarian law (administrative), The comprehensive legislative framework that empower authorities to implement state legislation and address arising agricultural difficulties. Examples include land registration, property purchase, and the revocation of land rights.

The UUPA grants the right to use structures, as outlined in Article 35 paragraphs 1 and 2, which means that individuals may construct and own buildings on someone else's property for a maximum of 30 years, with the possibility of an additional 20-year extension.[38] Article 36 of Government Regulation No. 18 of 2021 concerning Management Rights, land Rights, Flat Units, and Land Registration stipulates that building use rights may be granted on land that

[33] Siti Halilah dan Mhd. Fakhrurrahman Arif, "The Principle of Legal Certainty According to Experts," *Siyasah: Jurnal Hukum Tata Negara* 4, no. 2 (2021): 60-61.
[34] Law of the Republic of Indonesia Year 1945, Article 33 paragraph 3
[35] Law Number 5 of 1960 Concerning the Basic Regulation of Agrarian Principles, Article 16 paragraph 1
[36] Law No. 5/1960 on the Basic Regulation of Agrarian Principles, Article 16 paragraph 2
[37] AP. Parlindungan, *Commentary on the Basic Agrarian Law*, (Bandung: Mandar Maju, 1993), 27.
[38] Law No. 5/1960 on the Basic Regulation of Agrarian Principles, Article 35 paragraphs 1 and 2

is either freehold, state-managed, or subject to management rights.[39] Certain types of land are eligible to be classified as state land. These include land that is required by law or government decree, reclaimed land, arising land, land that is the result of the release or surrender of rights, forest area land that has been cleared, abandoned land, land that has expired without a request for extension or renewal, land rights that cannot be extended due to policies at the federal level, and land that was previously classified as state land,[40] Thus, building rights can be granted to naturally occurring land on the coast, but efforts to fence off Marine space by individuals or legal entities to create natural land, which in the process harms the community, are unjustified (illegal).

Foreign individuals and legal entities cannot obtain building use rights because the legal subjects that can obtain building use rights are legal entities established in accordance with Indonesian law and domiciled in Indonesian territory or individuals with Indonesian citizenship. Indonesia's agrarian law system is based on nationalism, which regulates the ownership and management of land and natural resources by the Indonesian people for the common good. Building use rights can be granted on management rights land, state land, or freehold land. The granting period of building use rights can be divided into two types, namely:

1. Primary, building use rights can be granted for the following periods:
    a. First time in terms of maximum 30 years;
    b. Renewal in terms of a maximum of 20 years;
    c. Renewal within a maximum of 30 years.
2. Secondary, building use rights can be granted with the following terms:
    a. First time in terms of maximum 30 years;
    b. Renewal based on agreement with the property right holder.

Land registration in Indonesia follows a negative publishing method with a positive inclination, indicating that the certificate serves as evidence of lawful land ownership; nevertheless, this ownership may be contested if it can be shown to be erroneous. Certificates of building use rights may be granted for land reclaimed from the Marine, as outlined in Article 190, paragraph 2 of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 18 of 2021, which delineates the procedures for

[39] Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, Article 36

[40] Asep Nursobah, "State Land," Registrar of the Supreme Court of the Republic of Indonesia, last modified 2022, accessed January 26, 2025, https://kepaniteraan.mahkamahagung.go.id/glosarium-hukum/2040-tanahnegara#:~:text=Land%20that%20is%20included%20in%20the%20qualification,%20expires%20the%20time%20and%20is%20not%20qualified.

establishing management rights and land rights for private legal entities or individual Indonesian citizens.[41] The granting of building use rights in the case of Marine fencing in Tangerang cannot be categorized as reclaimed land, because before reclaimed land is attached to building use rights, reclamation must obtain a reclamation permit from the government and comply with applicable legal procedures, title certificates can be issued on reclaimed land.

The right to use a building can lapse due to the following conditions:

1. When the term has expired;
2. Cancelled by the holder of the ownership right, the holder of the management right, or the authorized official before the term expires for the following reasons:
    a. The obligations of the right holder are not fulfilled and/or violation of the provisions of Article 42 and/or Article 43 of Government Regulation No. 18 of 2021;
    b. Failure to fulfil the conditions or obligations stipulated in the agreement on the granting of building use rights between the ownership right holder and the building use right holder or the agreement on the use of management right land;
    c. Not fulfilling administrative requirements (administrative defect);
    d. A court decision with permanent legal force;
3. Voluntarily relinquished by the right holder before the end of its term;
4. The right is changed;
5. Relinquished in the public interest;
6. Revoked by law;
7. Abandoned;
8. The land is destroyed; and/or
9. The subject does not fulfil the requirements.

Coastal and Marine waters are *common property*, so if controlled by individuals or legal entities, it will reduce state control over coastal waters.[42] In Decision No. 3/PUU-VIII/2010, the Constitutional Court determined that the right to exploit coastal waters (HP-3) contravened the 1945 Constitution, since the exploitation mechanism diminished the state's authority to

[41] Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, Article 190 paragraph 2

[42] Rido Miduk Sugandi Batubara, "Settlement Rights of Indigenous, Local and Traditional Communities in Coastal Waters," Directorate General of Marine and Spatial Management, last modified 2023, accessed January 26, 2025, https://kkp.go.id/djpkrl/ settlement-rights-of-local-and-traditional-communities-in-coastal-waters65fa4880589b8/detail.html

govern coastal regions and tiny islands.[43] Furthermore, Article 13, paragraph 2 of the UUPA prohibits the establishment of agricultural enterprises by groups and people that constitute private monopolies.[44]

The 30.16 km² Tangerang Marinewall area has construction rights certificates for 263 land lots, with PT Intan Agung Makmur holding 234 parcels, PT Cahaya Inti Sentosa possessing 20 parcels, and 9 parcels held by private persons.[45]

According to Article 65, paragraph 2 of Government Regulation No. 18 of 2021, the allocation of Land Rights in aquatic regions is conducted based on licenses given by the Ministry responsible for Marine and fisheries affairs, in line with legal regulations.[46] Article 8 of Government Regulation Number 21 of 2021 concerning Spatial Planning is elaborated upon. Article 17 of the Regulation promulgated by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2021 concerning the Implementation of Conformity of Space Utilization Activities and Synchronization of Space Utilization Programs stipulates that the Conformity of Space Utilization Activities (KKPR) shall function as a standard for space utilization and land administration.[47]

Although the regulation allows the granting of land rights in water areas as long as there is underwater land utilization with KKPRL permits, the granting of land rights must pay attention to the boundaries of areas that become areas outside the coastline which are included in the *common property* area, basically these areas cannot be certified because the area outside the coastline is included in public property not private property.

Common property is an area of public spaces that is an asset controlled by the state but which the public can freely enjoy.[48] Article 16 of Law No. 1 of 2014, which amends Law No. 27 of 2007 regarding the Management of Coastal Areas and Small Islands, stipulates that the spatial utilization of certain coastal waters and small islands must be conducted in an orderly

[43] Constitutional Court Decision Number 3/PUU-VIII/2010
[44] Law No. 5/1960 on the Basic Regulation of Agrarian Principles, Article 13 paragraph 2
[45] Mochammad Fajar Nur, "Traces of Tangerang Marine Fence Law Violations Should Not Be Ignored," Tirto.id, last modified 2025, accessed January 27, 2025, https://tirto.id/ trace-legal-violation-Marine-fence-don't-ignore-g7Gq#google_vignette
[46] Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, Article 65 paragraph 1
[47] Hamalatul Qurani, "Land in waterways can be certified," Hukumonline, last modified 2025, accessed January 26, 2025, https://www. hukumonline.com/news/a/land-in-water-can-be-titled-lt66cad27b2fec9/?page=1
[48] Hadyan Iman Prasetya, "State Wealth in the Perspective of Theory *Public Property*," Artikel DJKN, last modified 2023, accessed January 27, 2025, https://www.djkn.kemenkeu.go.id/artikel/baca/16077/ State-Wealth-in-Perspective-of-the-Theory-of-Public-Property.html

manner and requires a location permit as a prerequisite for obtaining a management permit.[49] Article 17, paragraph 4 of Law No. 1/2014 stipulates that location permissions are prohibited in core zones of conservation areas, maritime routes, port regions, and public beaches.[50]

In the Tangerang Marine fence case, the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency has evaluated the locations listed in the Building Rights Title certificates using geospatial data. As a result, the 263 building use right certificates were found to be in violation of the rules because the areas outside the coastline are included in common property areas that cannot be certified.[51] The expiration of the Right to Build (HGB) on state land, as regulated in Article 36(1) of the UUPA, results in the land reverting to state ownership.[52]

The granting of building use rights certificates in the Tangerang Marine barrier case subverts economic democracy as defined in Article 33, paragraph 4 of the 1945 Constitution, as privatization detrimentally impacts the community's economic operations. The land, intended as communal property, should function as an entrance point for the economic activities of the adjacent community in the Marine zone. Moreover, the granting of building use rights seems to authorize the exploitation of coastal waters under HP-3, which involves jurisdiction over the Marine and water column extending to the Marinebed surface, a practice that is now prohibited. The Constitutional Court Decision Number 3/PUU-VIII/2010 has nullified HP-3 and has been amended by Articles 16 and 17 of Law Number 1 Year 2014. This privatization might create a private or individual monopoly over state-controlled public space.

The legal certainty of building use right certificates in the Tangerang Marine fence polemic is highly dependent on the suitability of the issuance procedures with existing regulations and the issuance of these certificates must be in accordance with applicable spatial regulations. If not, legal steps must be taken to cancel the certificates, so the issuance of 263 building use rights certificates that violate the rules in the Tangerang Marine fence case should be canceled.

As stipulated in Article 46 letter b number 3 of Government Regulation Number 18 Year 2021, the granting of building use rights in the Tangerang Sea fence case is administratively

[49] Law of the Republic of Indonesia Number 1 of 2014 Concerning the Amendment to Law Number 27 of 2007 Concerning the Management of Coastal Areas and Small Islands, Article 16 paragraphs 1 and 2

[50] Law of the Republic of Indonesia Number 1 of 2014 Concerning the Amendment to Law Number 27 of 2007 Concerning the Management of Coastal Areas and Small Islands, Article 17 paragraph 4

[51] Mochammad Fajar Nur, "Tangerang Marine Fence's Trail of Lawlessness Should Not Be Ignored," Tirto.id, last modified 2025, accessed January 27, 2025, https://tirto.id/ traces-of-legal-violation-Marine-fences-don't-ignore -g7Gq#google_vignette

[52] Boedi Harsono, *Indonesian Agrarian Law*, (Jakarta: Djambatan, 1996), 109.

flawed, so the rights can be removed. In addition, because the building does not meet the space utilization requirements stipulated in the spatial plan, the building use right violates Article 42 letter d of the Government Regulation. The Tangerang Sea fence has the potential to damage environmental sustainability in the sea space area. Also, the building use rights in the Tangerang Sea fence area contradict Article 43 letter a of Government Regulation No. 18 of 2021 because they have closed other land parcels from roads/waterways, public access, and public traffic, especially for the daily access of fishermen who live around the Tangerang Sea fence.

D. Conclusion

The utilization of marine space in the land control controversy in Pagar Laut Tangerang violates the law because it was carried out without fulfilling the Marine Space Utilization Activity Suitability Permit (KKPRL) as regulated in PMKP Number 28/2021. The area beyond the coastline is considered common property and therefore cannot be privatized. Furthermore, the installation of sea fences harms fishermen by restricting their access to the sea, contrary to Article 33, paragraph 4 of the 1945 Constitution regarding economic democracy. Because it does not meet the legal aspects of licensing and harms the public interest, the use of marine space in this case is legally invalid.

The issuance of the Building Use Rights (HGB) certificate in the case of Pagar Laut Tangerang lacks legal certainty because it violates various regulations, including Article 113 of the Minister of Maritime Affairs and Fisheries Regulation Number 28 of 2021, Article 33 paragraph 4 of the 1945 Constitution, as well as Articles 42 and 43 of Government Regulation Number 18 of 2021. In addition, the HGB certificates at that location are declared administratively defective because they do not comply with spatial planning and the mandatory KKPRL permits. Therefore, 263 HGB certificates in Pagar Laut Tangerang must be revoked, in accordance with Indonesian positive law, which stipulates that the utilization of marine space must be carried out based on applicable regulations and should not harm the public interest.

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