



LEGAL ANALYSIS OF THE GRANTING OF BUILDING USE RIGHTS OVER MANAGEMENT RIGHTS

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Abstract

The Basic Agrarian Law (UUPA) is the legal basis for regulating land issues in Indonesia. Management Rights (HGB) emerge and develop in accordance with the development of a region. Management Rights (HPL) are not expressly regulated in the UUPA; however, the general explanation of the UUPA, Roman II, explains that "the state may grant land to or provide it to a governing body to be used for the implementation of its respective duties." HPL emerges and develops in accordance with the development of a region. HPL is a new term and was issued before the enactment of the UUPA. HPL is not explicitly explained in the UUPA, but its meaning is implied in Article 2 paragraph (4) of the UUPA. Regarding Building Use Rights (HGB), HGB is regulated in the General Explanation Number II Number 2 of the UUPA. HGB is the right granted to the holder to build/operate the land according to its intended use. HGB can be established on HPL land with permission from the state, which delegates the rights to another party.

Keywords: Legal Regulation, Building Use Rights, Management Rights.

INTRODUCTION

The land, water and space, including the natural resources contained therein, are controlled by the state as the organization of power of all the people, as stipulated in Article 2 paragraph (1) UUPA as an elaboration of Article 33 paragraph (3) UUD 1945. The term controlled by the state is a concept that gives rise to the state's right to control these agrarian resources in order to achieve the greatest prosperity of the people in the sense of nationality, welfare and independence in the society and legal state of Indonesia which is independent, united, sovereign, just and prosperous.¹

The definition of being controlled in the provisions of Article 2 paragraph (1) of the UUPA does not mean owning, because according to the legal concept of land, the state does not act as the land owner. The definition of Article 2 paragraph (1) is a definition that gives the state the authority to:

1. Regulating and administering the allocation, use, supply, and maintenance of land;
2. Determining and regulating legal relationships between individuals and land;
3. Determining and regulating legal relationships between individuals and legal acts concerning land;

In order to meet the various needs of the population for land for permanent land, the government is trying to optimize the allocation and use of land in various ways, including by issuing land regulations such as regulations on the provision of land for the benefit of individuals and legal entities for state lands and/or land rights. Land rights are lands that are already owned by individuals and legal entities with certain rights to the land which can be in the form of

¹ Triadi Kurniawan. 2020. Granting Building Use Rights on Land with Management Rights. Vol. 18, No. 1, February, p. 71



ownership rights, business use rights, building use rights and use rights.

UUPA is the legal basis for regulating land issues in Indonesia. Management rights (HPL) are not expressly regulated in UUPA, only in the general explanation of UUPA Roman II it is explained that "the state can give land to or provide it to a governing body (department, agency, or autonomous region) to be used for the implementation of their respective duties. Regarding the definition of Management Rights itself, it can be seen clearly in the explanation of Article 2 paragraph (3) of Law Number 20 of 2000 concerning amendments to Law Number 21 of 1997 concerning land rights acquisition fees which states that "management rights are the right to control from the state, the implementation authority of which is partly delegated to the rights holder, including, among others, in the form of planning the allocation and use of land, use of land for the purposes of carrying out their duties, handing over parts of the land to third parties and/or collaborating with third parties."

Legal subjects that can have HPL in the law are determined to be BUMN/BUMD, PT persero, authority bodies and government agencies including local governments. Land management in HPL contains the intention that, by its nature, it is a partial delegation of the state's right to control land granted to government agencies/regional governments with a management right. In addition to supporting the implementation of their duties and functions or businesses, the rights holder can grant part of the use and utilization to another party with a specific land right (for example HGB or Right of Use). As stipulated in the provisions of Article 2 of the Regulation of the Minister of Agrarian Affairs

Number 9 of 1965, HPL may be used not only by the rights holder for the interests of his own agency but can also be given to third parties.²

One of the authorities of the holder of management rights over his land is to hand over parts of the land under management rights to third parties and/or cooperate with third parties. Based on the handover of parts of the land under management rights to third parties, the land rights obtained by the third party from the land under management rights are building use rights, usage rights or ownership rights. Regarding building use rights, all provisions governing building use rights generally also apply to building use rights on land under management rights, with the provision that, as far as their use is concerned, each holder of building use rights is bound by the conditions stipulated in the land use agreement between the holder of management rights and the holder of building use rights.³

In this research, the author applies a normative juridical approach. This concept views law as written norms created and promulgated by authorized institutions and officials. Furthermore, this concept also views law as an independent, closed, and separate normative system from social life, and considers each other not to be legal norms.⁴ Apart from that, the approach used is a statutory regulatory approach by understanding the hierarchy and principles in statutory regulations.⁵ and a conceptual approach that refers to legal principles where these principles can be found in the views of scholars and legal doctrines and finally an analytical approach by analyzing legal materials to find out the meaning contained in the terms used in legislation conceptually.⁶

² Ana Silviana. 2017, Land Utilization Above Management Rights Between Regulation and Implementation. Vol. 1, No. 1, November, p. 37.

³ Prasetya, Dwi Ranga, Hatta Isnaini Wahyu Utomo. 2019, Legal Protection for Creditors of Building Use Rights Certificates Secured on Management Rights. Vol. 2, No. 2, October, p. 314

⁴ Soemitro, Ronny. 1998, Legal Research Methodology and Jurimetrics, Ghalia Indonesia, Jakarta, p. 11.

⁵ P.M, Marzuki. 2005. Legal Research Revised Edition. Yogyakarta: Kencana, p. 137

⁶ Johny Ibrahim. 2006, Theory and Methodology of Normative Legal Research, Surabaya: Bayumedia Publishing, p. 310.



This research aims to examine the regulations governing the granting of building use rights over management rights and the legal implications of granting building use rights over management rights. In this regard, the author is interested in publishing the research results in a journal entitled "Legal Analysis of the Granting of Building Use Rights over Management Rights."

DISCUSSION

Regulations on the Granting of Building Use Rights over Management Rights

Management rights arise and develop according to the development of a region. According to legal expert A.P. Parlindungan, the word HPL comes from the Dutch word "beheersrecht," meaning the right to control.⁷ HPL is a new term and originated in Government Regulation Number 8 of 1953 concerning Control of State Lands, which was issued before the enactment of the UUPA. Therefore, HPL can be a group that is not included in the land rights regulated in Article 16 paragraph (1) of the UUPA.

According to Boedi Harsono, HPL is not essentially a land right, but rather a "gathering" of control rights from the state, some of which authority is delegated to the holder. Basically, the UUP does not explicitly mention HPL, but the meaning of HPL is implied in Article 2 paragraph (4) of the UUPA, which states "The implementation of the control rights from the State mentioned above can be delegated to autonomous regions and customary law communities, as necessary and not contrary to national interests, according to the provisions of Government Regulations." Management Rights were born based on the Minister of Agrarian Affairs Regulation Number 9 of 1965, the existence of Management Rights was confirmed by Law Number 16 of 1985 concerning Apartments, which states that "Apartments can only

be built on land with Ownership Rights, Building Use Rights, Use Rights over State land, and Management Rights in accordance with applicable laws and regulations."

In its implementation, HPL can be delegated to other parties, namely in this case to autonomous regions and customary law communities as long as it is necessary and does not conflict with national interests. An explanation of HPL can also be found in the Minister of Agrarian Affairs Regulation Number 9 of 1999 in Article 1 paragraph (3) which states "Management rights are the right to control from the state whose authority is partly delegated to the holder." Management Rights regulated by the Minister of Agrarian Affairs Regulation give rise to land rights regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). In the latest Regulation, namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, it is stated in Article 1 number 3 "Management Rights are the right to control from the state whose authority to implement is partly delegated to the holder of Management Rights."

The subjects in Management Rights are regulated in Article 5 of PP 18/2021, namely:

- (1) Management rights originating from State Land are granted to:
 - a. Central Government Agencies;
 - b. Regional Governments;
 - c. State-owned/regional-owned enterprises;
 - d. State-owned/regional-owned legal entities;
 - e. Land bank agencies;
 - f. Legal entities appointed by the Central Government.
- (2) Management rights originating from Customary Land are assigned to customary law communities.

⁷ A.P. Parlindungan. 1989. HPL According to the Basic Agrarian Law System. Mandar Maju: Bandung, p. 6 in Felix Kurniawan. 2019. Legal Aspects of Granting HPL for Land Areas that Have

Been Controlled, Occupied or Cultivated by Residents. Sapientia et Virtus Journal, Vol. 4 No. 2 2019, p. 141.



The creation of Management Rights is based on the confirmation of conversion and granting of rights. This conversion involves the HPL holder submitting an application to confirm the conversion of State Land Control Rights to Management Rights. In granting these rights, the Head of the National Land Agency issues a Management Rights Granting Decree (SKPH) to the applicant. This SKPH must be registered with the local Land Office to be recorded in the Land Book and a Management Rights Certificate (HPL) issued. Article 7 of Government Regulation 18/2021 explains the authority of HPL holders, namely:

1. Prepare a plan for the allocation, use, and utilization of land in accordance with the spatial plan;
2. Use and utilize all or part of the Land Management Rights for personal use or in collaboration with other parties; and
3. Determine the annual rates and/or fees from other parties in accordance with the agreement.

One of the provisions of Indonesian national land law is contained in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). It contains provisions regarding land ownership rights, which outline the authorities, obligations, and prohibitions for rights holders. There are two types of land ownership rights: public, which relate to regulating and determining (State Control Rights over land), and private, which relate to ownership (land rights).⁸

This private ownership right itself is based on the granting of the state based on the right to regulate and determine land. This is in accordance with the General Explanation Number II Number 2 of the UUPA, namely: "The state can grant such land to a person or legal entity with certain rights according to its designation and needs, for example Ownership Rights, Cultivation Rights, Building Rights, Usage Rights or give it in management to a governing body (Department, Service, or Autonomous Region) to be

used for the implementation of their respective duties."

Considering the above provisions, the Right to Build (HGB) can be one of the rights granted by the state. According to Article 36 of the UUPA in conjunction with Article 34 of Government Regulation No. 18 of 2021, the legal subjects holding HGB who can receive the granting of rights to state land include:

- a. Indonesian citizens;
- b. Legal entities established under Indonesian law and domiciled in Indonesia.

The provisions regarding legal entities as legal subjects holding HGB are cumulative. It is not possible for a legal entity to be established under Indonesian law but not domiciled in Indonesia; or for a related legal entity to be domiciled in Indonesia but not established under Indonesian law.

Furthermore, regarding land that can be granted HGB, this has been regulated in Article 36 of Government Regulation No. 18 of 2021, which consists of:

- a. State Land
- b. Management Rights Land
- c. Ownership Rights Land.

Regarding the provisions for granting HGB on state land and management rights, further regulations are provided in the provisions of Articles 38 and 39 of Government Regulation No. 18 of 2021, which regulate:

Article 38

1. The granting of a Building Permit (HGB) on state land must be through a Ministerial decree.
2. The granting of a Building Permit (HGB) on land with a Management Right must be through a Ministerial

⁸ Santoso, Urip. 2012. The Existence of Management Rights in National Land Law. MIMBAR HUKUM Volume 24, Number 2, June 2012, p. 276.



decree and based on the approval of the Management Right holder.

Article 39

1. The Land Office must register the Grant of Building Use Rights as referred to in Article 22 in the land register.
2. The HGB for State land or land with Management Rights is issued upon registration at the Land Office.
3. The building use rights on freehold land are binding on third parties upon registration by the Land Office.
4. As proof of rights, the holder of the Building Use Rights is issued a land title certificate.

The definition of the Minister referred to in Article 38 paragraph 1 of Government Regulation Number 40 of 1996 is contained in Article 1 number 17 of Government Regulation Number 18 of 2021, namely the Minister of Agrarian Affairs/Land Affairs. After obtaining a HGB in accordance with applicable legal provisions, Article 42 of Government Regulation Number 18 of 2021 imposes several obligations on the HGB holder, namely:

- a. Carry out development and/or cultivate the land in accordance with the intended purpose and requirements as stipulated in the decision to grant the rights, no later than 2 (two) years from the date the rights are granted;
- b. Maintain the land, including increasing its fertility, preventing damage, and preserving the environment;
- c. Maintain the conservation function of water body boundaries or other conservation functions;
- d. Comply with the provisions on spatial utilization as stipulated in the spatial plan;
- e. Relinquish land rights, either in part or in whole, if used for development in the public interest; and
- f. Return land granted with building use rights to the state, the management rights holder, or the ownership rights holder, after the building use rights have expired.

Legal Implications of Granting Building Use Rights Over Management Rights

Part of the Management Rights authority can be granted to a third party for use in the form of a HGB. According to the provisions of Article 8 paragraph (1) of Government Regulation No. 18 of 2021, the transfer of Management Rights in the form of an HGB must be preceded by the creation of a land utilization agreement. This land utilization agreement is a form of agreement from the Management Rights holder to transfer part of his control over the Management Rights he owns to the relevant third party.⁹

The contents of this agreement format are regulated in Article 8 paragraph (2) of Government Regulation No. 18 of 2021, which must at least contain:

- a. Identity of the parties;
- b. Location, boundaries, and area of the land;
- c. Type of use, utilization of the land, and/or building to be constructed;
- d. Provisions regarding the type of rights, term, extension, renewal, transfer, encumbrance, change, and/or cancellation of rights granted on the land with management rights, and provisions for ownership of the land and buildings after the termination of the land rights;

Further details can be included according to the wishes of the parties as a manifestation of the application of the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. However, this agreement must still comply with the provisions of Article 1320 of the Civil Code, especially regarding lawful causes. After the Management Rights holder has entered into an agreement with the relevant third party, the Management Rights holder may propose the granting of their rights to the authorized official, namely the Regency/City Land Office. Based on this proposal, Article 6 of Regulation of the Head of the

⁹ Saraswati, A.A. Ayu Ray. 2016. Legal Implications of Mortgage Rights on Land with Building Use Rights on Land with Management Rights Whose

Land Utilization Permit Has Been Revoked by the Governor. P. 259



National Land Agency Number 2 of 2013 states that the Regency/City Land Office may grant permission to grant these rights through a Decree of Approval. If all provisions and conditions have been met, the Head of the Regency/City Land Office can issue a certificate as proof of rights to the relevant third party. The issuance of the certificate also signifies the birth of the HGB for the third party on the HPL land. The use of HGB on top of HPL must still comply with the land use agreement that has been made with the HPL holder, as well as paying attention to the regional government's determination in the Regional Spatial Planning Plan (RTRW) as also stipulated for the Management Rights holder.¹⁰

CONCLUSION

Management rights are a manifestation of the state's right to control, the authority of which is delegated to the holder of the Management Rights. Essentially, management rights can give rise to other private land rights, namely Ownership Rights, Building Use Rights, and Use Rights (as stipulated in the Minister of Agrarian Affairs Regulation or the Head of the National Land Agency Regulation No. 4 of 1998). This aligns with Article 36 of Government Regulation No. 18 of 2021, which stipulates that land that can be granted a HGB consists of:

1. State land
2. Land with Management Rights
3. Freehold land

The Management Right that gives rise to the Building Use Right is based on an agreement on the use or utilization of the Management Right land between the HPL holder and the prospective HGB holder. This agreement serves as a form of agreement by the Management Right holder to transfer part of their control over the Management Right they own to another party. After making this agreement, the Regency/City Land Office grants permission through

a Pre-Approval Decree, while simultaneously issuing a certificate as proof of ownership of the third party's rights to the HGB.

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¹⁰ Santoso, Urip. 2012. Agrarian Law: A Comprehensive Study. Kencana: Jakarta, p. 191.