

Implementation of Building Use Rights in State Land Management by Developers

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Abstract

Management of state land through Building Rights (HGB) is an important issue in infrastructure development and economic investment in Indonesia. The problems faced include complex bureaucracy, conflicts of interest, and lack of supervision in the implementation of HGB. This study aims to analyze the implementation of HGB in the management of state land by developers and its impact on infrastructure development and economic growth. The research methods include literature studies and policy analysis covering regulations and best practices in the field. The results of the study indicate that effective implementation of HGB can encourage investment, create jobs, and improve access to public facilities. However, challenges such as regulatory complexity and potential conflicts of interest need to be addressed through collaboration between the government and developers. The implications of this study are the importance of implementing transparent governance, clear regulations, and legal protection to ensure sustainable and inclusive management of state land.

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INTRODUCTION

Global issues related management state land by developers become attention big in law agrarian, especially in developing countries like Indonesia. Many countries are facing challenge similar in optimize use land For objective development without sacrifice interest public. Use right use building (HGB) above land with rights status management (HPL) becomes one of the adopted solution For overcome problem In the Indonesian context , the system This give opportunity for party private For contribute to development national , but still cause challenge legal and administrative.

Globally , management state land by the party private has bring up various challenges , including protection rights public local and sustainability environment . In the research by (Badan Wakaf Indonesia, 2022), it was highlighted that innovation in management land , such as giving right on land with draft partnership , can become breakthrough in push development without ignore balance ecological . In countries like India and Brazil , the provision of right similar has also been implemented For support development housing area for poor people , even though often faced with conflict social and problems transparency (Irawan S, 2019).

In Indonesia, the HGB system applied above HPL holds role important in management state land . Triadi Kurniawan (2020) stated that granting of HGB above HPL land allows developer For utilise land in a way productive without lost control by the state. However ,Budi A, (2021)) show that in in practice , still there is various obstacles , such as uncertainty law in the process of transferring HGB and HPL. Ahmad S, (2023)also revealed that agreement utilization that has been expired often become source dispute law , which shows weakness in regulation related .

Sulasi R, (2020) explain that HPL is form mastery land by the given state to agency government or legal entity certain For managed . Concept This allow government For still hold control on use land , while party third can utilise land the in accordance agreement .

According to (Boedi H, 2020), HGB is right For establish and own the building above land that is not his with term time certain . In the context of HPL land ,Muhammad I, (2020) mention that HGB provides flexibility for developer For develop property without must own land in a way full .

Research byTim Peneliti Universitas Surabaya, (2019) show that Management of HGB above HPL provides benefit significant economy, but often requires mechanism more supervision strict For prevent abuse .

Urgency study This lies in the need For create system management efficient , fair and transparent state land .Harmini, (2019) take notes that management state land often faces challenge complicated bureaucracy, so that slow down the development process. By increasing need will land For development infrastructure and housing, important for government and stakeholders interest other For repair regulation related.

Study This aiming For Identifying challenge legal and administrative in application of HGB above HPL land. Analyzing benefits and risks from management state land by developers. Providing recommendation For increase efficiency and transparency in HGB and HPL systems .

RESEARCH METHOD

The methods used in this study include literature study and policy analysis, which aim to provide an in-depth understanding of the implementation of Building Use Rights (HGB). The literature study was conducted by reviewing various sources, such as laws, government regulations, and relevant articles and journals. This aims to identify the legal and regulatory framework governing HGB, as well as understand the underlying concepts and principles. The policy analysis focuses on the implementation of HGB in practice in the field. This includes interviews with stakeholders, such as developers, local governments, and communities, to explore their experiences and challenges. The best practices identified will serve as a reference for better policy recommendations. Through this combination of methods, it is hoped that the research can provide comprehensive insights and concrete solutions in the management of state land through HGB.

RESULTS AND DISCUSSION

Form of Transfer of Land Management Rights that Grants Building Use Rights and Rights of Use

Land with Management Rights controlled by the rights holder can be used to carry out his duties or business. Land use can also be transferred to a third party with the consent of the management rights holder. Although the management rights holder has the authority to use his land for the purposes of duties or business, this is not the main purpose of granting rights. The main purpose of granting management rights is to provide land for use by other parties who need it. Based on the Regulation of the Minister of Agrarian Affairs No. 1 of 1966 concerning Registration of Use Rights and Management Rights, management rights holders are required to register their management rights to land at the Land Registration Office. In its development, Article 9 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that management rights are included in the objects of land registration. The purpose of registering land management rights at the Regency/City Land Office is to issue management rights certificates as proof of ownership. With the existence of a management rights certificate, rights holders can easily prove their status as rights holders, which in turn creates a guarantee of legal certainty, legal protection, and orderly land administration.

Legal certainty guarantees include certainty regarding the status of management rights, the subject of management rights, and the object of management rights. Legal protection for management rights holders provides a sense of security in controlling land management rights, without any interference or legal claims from other parties. Management rights holders will receive legal protection as long as there are no legal defects, such as procedural defects, authority defects, or substantive defects in the issuance of management rights certificates. The issuance of management rights certificates provides external authority to rights holders, allowing them to transfer part of the land management rights to third parties or cooperate

with third parties. According to Yudhi S and Boedi DH, authority is defined as the right to act or the power to make decisions, order, and delegate responsibility to others. [5] Land rights obtained by third parties from the transfer of part of the land Management Rights are building use rights, use rights, or ownership rights. The transfer of part of the land management rights to third parties and/or cooperation with third parties, results in the creation of a legal relationship between the Management Rights holders with party third .

Land rights arising from the transfer of Land Management Rights to third parties, such as Building Use Rights, Usage Rights, and Ownership Rights, are regulated in Article 2 of the Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Transfer of Rights to Parts of Land Management Rights and Their Registration. The article stipulates that part of the land management rights granted to the rights holder may be transferred to a third party and then submitted to the Minister of Home Affairs or the relevant Regional Governor to be granted ownership rights, building use rights, or usage rights, in accordance with the land allocation and use plan that has been prepared by the rights holder.

The transfer of land with management rights to a third party was initially regulated in Article 3 paragraph (1) of the Minister of Home Affairs Regulation No. 1 of 1977, namely: "Any transfer of land use that is part of the Land Management Rights to a third party by the holder of the Management Rights, whether accompanied by the construction of buildings on it or not, must be carried out by making a written agreement between the holder of the management rights and the relevant third party." The provisions in Article 3 paragraph (1) of the Minister of Home Affairs Regulation No. 1 of 1977 only regulate that the legal relationship between the holder of the management rights and the third party regarding the transfer of the use of land management rights must be carried out with written consent. However, this provision does not mention the type of written agreement in question, whether made in the form of a notarial deed or a personal deed. Maria SW Sumardjono is of the opinion that a written agreement between the holder of the management rights and the third party must be stated in the form of a Land Use Agreement (SPPT). In practice, this SPPT can be referred to by other names, such as an agreement for the transfer , use, or management of land rights, and will hereinafter be referred to as an "agreement". [6]

In practice, there are various provisions of the agreement made between the management rights holder and the third party. First, the Surabaya City Government as the management rights holder uses the term Land Use Agreement. Second, PT Pelabuhan Indonesia (Persero) refers to the agreement with the third party as the Port Land Use Transfer Agreement. Third, PD Sarana Jaya DKI Jakarta uses the term Land Utilization Cooperation Agreement for the Construction and Development of Shopping Center Buildings. Fourth, PT Surabaya Industrial Estate Rungkut (SIER) refers to its agreement with the third party as an agreement use land industry .

Regulation of the Minister of Home Affairs No. 1 of 1977 was declared no longer valid by Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 9 of 1999. The term Land Use Agreement is stated in Article 4 paragraph (2) of Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, namely: "In the case of land requested is land with Management Rights, the applicant must first obtain an appointment in the form of a land use agreement from the holder of Management Rights." The provisions in Article 4 paragraph (2) of Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 state that the legal relationship between the holder of management rights and a third party in the use of land management rights must be made with a land use agreement. However, this provision does not regulate whether the land use agreement must be made in the form of a notarial deed or a personal deed. According to Endang Purwaningsih, an agreement is considered valid if it meets four cumulative requirements, namely: there is an agreement between the parties; capacity to make a contract; clear object (rights and obligations of each party); and legitimate reasons (not contrary to public order, morality and statutory regulations). [7]

A land use agreement made between the management rights holder and a third party is considered valid if it meets the four requirements above. The transfer of part of the land

management rights by the rights holder is carried out through the preparation of a Land Use Agreement (PPT). This PPT can be prepared in the form of a notarial deed made by a notary, or a personal deed made by the parties. The selection of the form of the deed depends on the agreement between the management rights holder and the third party. Basically, the PPT contains an agreement by the management rights holder to grant permission to a third party to use part of the land management rights. The third party can use the land for various purposes, such as a residence, shophouse, shop/town/mall, hotel, or factory. With the existence of a Land Use Agreement, a legal relationship is established between the management rights holder and the third party. The use of part of the land management rights by a third party is not only carried out through the PPT, but can also be done with a BOT Agreement. Maria SW Sumardjono explained that the BOT Agreement is an agreement between two parties, where the first party surrenders the right to use its land for development by a third party. The second party has the right to operate or manage the building for a certain period of time, with the possibility of providing a fee or without a fee to the first party. After the operational period ends, the second party is obliged to return the land and the building on it to the first party in a condition ready for operation. [8]

Budi Santoso defines BOT as "Build, Operate, and Transfer (BOT)", which is a contract or agreement between the project owner (Government) and another party acting as the operator or project implementer. In this agreement, the project owner grants the operator the right to build public facilities or infrastructure, and operate them for a certain period of time. During this period, the operator can take all or part of the profits. At the end of the contract, the operator must return the project to its owner. [9] The definition of BOT is basically the same as the definition of Build Operate Transfer (BGS) as stated in Article 1 number 12 of Government Regulation No. 5 of 2006 concerning Management of State/Regional Property, namely: "Build Operate Transfer is the utilization of state/regional property in the form of land by another party by building buildings and/or facilities including their facilities, then used by another party within a certain agreed period of time, to then be returned to the land along with the buildings and/or facilities including their facilities after the end of the period."

BOT agreements arise because the management rights holder experiences limited funds or does not have funds to build infrastructure. Therefore, the management rights holder cooperates with a private company to carry out development. In this case, the management rights holder provides land, while the private company provides funds for infrastructure development. A BOT agreement is an agreement between the management rights holder and a private company, which gives the private company the right to obtain building use rights on the management rights land for a certain period of time. The private company is also given the right to build infrastructure and operate it within the agreed period of time. During this period, the private company can provide fees or no fees to the management rights holder, and at the end of the period, the building must be returned to the management rights holder.

There are several provisions that need to be considered in building use rights or land use rights with management rights. First, building use rights or use rights must be preceded by a land use agreement between the holder of management rights and a third party. Second, a recommendation from the holder of management rights is required for the occurrence of building use rights or use rights. Third, these rights are obtained through an application for the granting of building use rights or use rights to the Head of the Regency/City Land Office whose work area includes the location of the land. Fourth, building use rights or use rights are determined by the government through a decree granting rights by the Head of the relevant Land Office. Fifth, building use rights or use rights come into effect after the decree is registered by the applicant at the Land Office. Sixth, as proof of rights, building use rights or use rights certificates will be issued by the relevant Land Office. Seventh, building use rights or use rights do not change the legal relationship between the holder of management rights and their land. Eighth, building use rights on land with management rights can be valid for up to 30 years and can be extended for 20 years, and extended for a maximum of 30 years. Ninth, the right of use can be valid for up to 25 years, extended for 20 years, and extended for a maximum of 25 years. Tenth, each extension and extension of the right to build or the right to use requires prior approval from the holder of the management rights. Eleventh, the transfer

of the right to build or the right to use over the land of the management rights requires prior approval from the holder of the management rights. Twelfth, the imposition of a mortgage on the land of the building rights or the right to use must also obtain approval from the holder of the management rights. Thirteenth, if the right to build or the right to use becomes the object of land acquisition, the holder of the management rights has the right to receive compensation for the land, while the holder of the right to build or the right to use has the right to receive compensation for the building. Fourteenth, the right to build for the types of Simple Houses (RS) and Very Simple Houses (RSS) can be upgraded to ownership rights. Fifteenth, the expiration of the right to build or the right to use will result in the land returning to the control of the holder of the management rights.

Ideal Legal Concept in the Implementation of Granting of Building Use Rights Above Management Rights

Legal Construction in the Implementation of Granting Building Use Rights over Regional Government Management Rights occurs due to the existence of laws and regulations that allow Building Use Rights to grow on land with Management Rights. Part of the Land Management Rights allocated to regional governments, institutions, agencies, or government-owned legal entities for housing development can be transferred to third parties. This transfer is proposed to the Minister of Home Affairs or the relevant Regional Governor to be granted ownership rights, building use rights, or usage rights, in accordance with the land allocation and use plan that has been prepared by the Management Rights holder. Any transfer of land use that is part of the Land Management Rights to a third party, whether accompanied by the construction of a building on it or not, must be carried out with a written agreement between the Management Rights holder and the third party concerned. Traders who own shophouses with Building Use Rights (HGB) face several weaknesses if these rights are burdened with mortgage rights and want to transfer their rights to a third party. One of these weaknesses is the lack of clarity regarding the recommendation fee for installing mortgage rights, especially in situations where HGB is burdened with mortgage rights. They only get information regarding the recommendation fee for transferring rights, without a detailed explanation. In addition, HGB holders also have difficulty in transferring rights to third parties, which results in difficulties in executing KPR rights. This makes it difficult for banks to provide loans to HGB holders who are used as collateral for the Right to Manage (HPL) 05 land. In other words, HGB holders on HPL 05 land have difficulty getting loans because this collateral is difficult to execute. They also have to continue to pay the recommendation fee for extending the rights and other fees if the HGB term ends, because the HGB on HPL 05 cannot be upgraded to ownership rights. With these weaknesses, it is important for HGB holders on HPL 05 land to obtain legal protection, including accurate and transparent information regarding their rights and obligations as consumers. The state financial legal system outlines several important principles, which affect the level of flexibility in the use of state property, especially the use of land. These principles are as follows:

- a. Utilization land must to include manager goods (Local Government). Participation Regional Government in the form of giving Recommendation . Recommendation The Regional Government consists of on two things , namely recommendations that are of a nature agree user goods use land , (article 19 paragraph (3) PP No. 6 of 2006), and recommendations about magnitude contribution and benefits .
- b. Utilization only can done with choose one from four form utilization , (i) rent, (ii) borrow use , (iii) cooperation utilization , and (iv) construction use surrender and build hand over use (Article 20 PP No. 6 of 2006).
- c. State property cannot be used as collateral for debt by third parties. (article 49 paragraph (5) Law No. 1 of 2004 concerning State Treasury.
- d. Utilization goods state owned must tied up with One agreement .
- e. Utilization land restricted with term 30 years , counted since date agreement signed (Article 29 paragraph (1) PP No. 6 of 2006.

The ideal legal concept must prioritize legal certainty, transparency, and protection for all parties involved. First of all, it is important to clearly regulate the HGB registration and transfer mechanism so that all parties understand their rights and obligations. An efficient and transparent registration process will increase the trust of rights holders and provide legal certainty regarding the status of the land they manage. Furthermore, the ideal legal concept must guarantee the involvement of the Regional Government in every stage of the granting of building use rights. This participation is not only limited to approval but also includes the provision of adequate information regarding the procedures and costs involved.

Recommendations from the Regional Government must be the first step in any transfer of rights, where the management rights holder and third parties must draw up a clear and detailed agreement to avoid potential disputes in the future. On the other hand, protection for HGB holders who face challenges such as mortgage rights must also be a concern. The ideal legal concept must include an effective and fair dispute resolution mechanism, so that rights holders can gain access to accurate and reliable information. This is important to minimize difficulties in the transfer of rights and in the execution process, especially when dealing with third parties. Finally, regulations governing the time limit and type of land use must be clear and firm. The granting of building use rights must be regulated with an appropriate time period, including the possibility of extension and renewal that does not cause difficulties for rights holders. By implementing legal principles that are transparent, fair, and involve active participation from all parties, the implementation of building use rights over management rights will be more sustainable and provide optimal benefits for the community and local economy.

Optimal HGB implementation requires consistent regulations and transparent administrative procedures. Collaboration between the government and developers needs to be improved to reduce bureaucratic barriers and ensure better supervision. Empirical data shows that areas with clear HGB policies experience faster economic growth and better development equity. Conversely, areas experiencing land conflicts tend to face delays in development projects and investment uncertainty. Therefore, this study recommends the addition of empirical data in the form of case studies from various regions to strengthen the analysis.

In addition, a review of regulations related to HGB shows the need to revise several articles that are still ambiguous. Increasing the capacity of government officials and simplifying administrative procedures are also key to supporting more effective HGB implementation. Thus, this study provides a strong foundation for better policy making in the future.

CONCLUSION

The holder of the management rights has the authority to plan the allocation and utilization of land, use the land for the purposes of his duties, and transfer part of the land management rights to third parties or cooperate with them. However, this transfer can only be done if the land management rights have a certificate issued by the District/City Land Office. The transfer of part of the land management rights to a third party resulting in building use rights or use rights is carried out through a Land Use Agreement or BOT Agreement. Meanwhile, to produce ownership rights, the transfer is carried out through the release of land management rights by the rights holder. It should be noted that building use rights or use rights over land management rights do not change the legal relationship between the holder of management rights and their land, while ownership rights over land management rights will end the legal relationship.

The granting of Building Use Rights (HGB) over Regional Government Management Rights is regulated by laws and regulations that allow the transfer of these rights to third parties. However, HGB holders face various challenges, especially related to KPR rights, which make it difficult for them to transfer rights and obtain loans. The need for legal protection and clear information for HGB holders is very important in this context. In addition, the principles in the state financial legal order emphasize the importance of management involving the Regional Government, limitations on utilization, and provisions that bind every use of state

property. This shows the complexity and need to ensure transparency and compliance with regulations in the management of land management rights.

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