

## **Review of the Granting of Cultivation Rights on Land Management Rights Based on Positive Law**

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### **Abstrak**

*This study is a normative investigation that seeks to evaluate the review process associated with the allocation of HGU on HPL land. This regulation stands in contradiction to the UUPA, which stipulates that HGU should only be assigned on state-owned land; however, the legitimacy of the recent regulations offers a pathway for granting HGU on HPL territory. Additionally, this paper employs both the statutory approach and the conceptual approach. Legally speaking, the UUPA does not recognize HPL as a "land right," but rather designates it as "management." HPL emerged as one of the land rights through the Agrarian Ministerial Regulation No. 9 of 1965 and has evolved to the present as outlined in PP 18 of 2021. Perspectives regarding the definition of "management" differ. The UUPA defines "management" as authority, whereas PP 18 of 2021 interprets "management" as a form of land right. Moreover, concerning the HGU concept addressed in Article 28 of the UUPA, the land allocation must originate from the state's direct control, rather than from land that has been utilized by the holder of the HPL certificate for agricultural, fishery, or livestock purposes. This discrepancy clearly indicates conflicting norms, resulting in legal ambiguity and a possibility for judicial review.*

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## **1. INTRODUCTION**

The development of the national economy is influenced by the ease of carrying out various business fields in a country, one of which is Indonesia. Indonesia's desire to immediately escape from *middle income trap country* going to *high income country* where economic growth must average at least 5% per year, with investment growing at an average of 6.8% per year in the next few years.[1] The policy strategies created by the Indonesian Government include improving regulations and facilitating procedures through Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law) which provides convenience in terms of business licensing. The Job Creation Law describes the government's procedures for realizing capital opportunities from abroad This is illustrated by the reduction of bureaucracy and the simplification of existing permits in Indonesia through several revised and revoked provisions.

In the Job Creation Law, in the closing section of Article 184 of the Job Creation Law, it is stated that the application of all implementing regulations which do not conflict with the Job Creation Law is declared to remain in effect. one of which is Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration (hereinafter referred to as PP 18 of 2021). This regulation was formed to

integrate, synchronize, innovate and replace inconsistent provisions of the Job Creation Law and as the government's intention to clearly organize the provisions of the Job Creation Law through political regulations that are enforced nationally. This is done by strengthening the concept of rights attached to land in the digital-based Land Registration acceleration program which was created to overcome various bureaucratic and regulatory obstacles and challenges which slow down the development of the economic climate and business sector in Indonesia.[2, p. 4]

As the provisions of the Job Creation Law give birth to new norms regarding the granting of business use rights (hereinafter referred to as HGU), which It is stated in Article 129 Paragraph (2) that the rights: business use; building use; And use, can be granted above management rights (hereinafter referred to as HPL). This provision is contrary to Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations (hereinafter referred to as UUPA) which regulates that HGU can only be granted on land that is directly controlled by the state, namely, state land. This arrangement clearly contradicts the principles contained in the HPL itself, namely the right to control from the state, the implementation of which authority is partially delegated to the rights holder.

HPL is a slice of the authority to control the state which is controlled indirectly by the state. HPL is based on the authority to implement several concepts based on state-controlled land rights, which based on these provisions will later be delegated to government institutions and legal entities that hold HPL. It can be seen that HPL is a delegation of rights from the state's control authority over land, which is not a land right.[3, p. 104] This delegation of authority ensures that the use of land related to legal subjects is in accordance with its intended use with a land right, this is very important in controlling the concept of state control in accordance with the UUPA, one of which is HGU.

The granting of HGU on HPL land is based on an agreement granting permission to use the land between the parties, namely, the HPL holder and the HGU recipient. The implementation of granting HPL has shifted from a public nature to a religious communalistic conception of customary law, as expected in private capacity but there is a component of togetherness [4, p. 18] as with the concept of National Land Law which was created in the UUPA, the opposite is true, it can be seen that the requirements for the nuances of privatization are solely profit-oriented in every agreement. This gives the impression of being real *reincarnation* "Landlords" that existed during the western colonial era. This is a form of consequence for the implementation of new norms that do not follow the UUPA, which can create various loopholes for arbitrary actions to occur unilaterally, so that what is the goal of the law will not be achieved and what is mandated by Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) namely utilization for the greatest prosperity of the people. Based on the background above, this article will discuss in more depth the concept and regulations for granting HGU on HPL land after the implementation of PP 18 of 2021 as well as the legal consequences that arise after granting HGU on HPL based on positive law.

## 2. RESEARCH METHOD

This research is normative research which aims to analyze reviews of HGU grants granted on HPL land. Arrangement is contradictory with UUPA which requires HGU can only be granted on state land, but the latest regulations apply give means that HGU can be granted on HPL land. Next, we use a statutory approach and a conceptual approach in this paper. A statutory approach will be used in reviewing and analyzing regulations including UUPA, Job Creation Law, PP 9 of 1965, PP 24 of 1997, PP 18 of 2021. A conceptual

approach is used to examine legal issues with views and thoughts as well as doctrines that already exist and are still developing in legal science, especially land law.

### 3. DISCUSSION

#### 3.1. The regulation on granting HGU above HPL is based on positive law

UUPA is the basic regulation that regulates the types of land rights as contained in article 16 paragraph (1) that land rights include Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, but does not mention the existence of HPL. Juridically, the UUPA does not mention HPL as "land rights", but refers to it as "management".

The development of land law in Indonesia states that HPL is one of the land rights that emerged through Minister of Agrarian Regulation Number 9 of 1965 concerning the Implementation of Conversion of Controlling Rights over State Land and Provisions Concerning Policy (hereinafter referred to as Agrarian Ministerial Regulation No. 9 of 1965), subsequently replaced by Minister of Agrarian Regulation Number 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights (hereinafter called Ministerial Regulation No.9 of 1999). This regulation regulates legal entities that can obtain HPL, such as BUMN, BUMD, Central Government Institutions and Regional Authority Bodies, other Legal Entities appointed by the government and PT. Persero.

Definition of HPL is the right to control from the state whose authority is partly delegated to the holder. HPL is given to the subject holding the HPL to be used for the purposes of carrying out its obligations, but part or parts of the land can be managed by transferring it to a third party, so that HPL has a cumulative nature.[5, p. 873] So it can be concluded that HPL is a field and form of special authority contained in the State's Right to Control.

The occurrence of HGU from an application for granting HGU to Head BPN RI by means of the Regency/City land head. Following up on requests that have been reported, furthermore the issuance of a Decree on Granting Rights (SKPH) from the head of BPN RI was given on the basis of delegation of authority to grant HGU certificates. The presidential decree has regulated the rules regarding the requirements and procedures for HGU applications. But regarding procedures implementation rules regarding giving certificate Land rights have been outlined in the provisions of Agrarian Ministerial Regulation No. 9 of 1999 jo. Minister of Agrarian Affairs/Head of BPN Regulation No.2 of 2013.

It is mandated in the 1945 Constitution (hereinafter abbreviated to the 1945 Constitution) in Article 33 Paragraph (3) that state power over the earth's wealth is for the prosperity of the people. The existence of factors other than those mentioned in the 1945 UUPD, for the use of land for more income and in line with developments in the times that require state budget income and even the economic interests of certain groups, can cause the authorities to commit deviations, one form of which is in Part Four concerning Land, Article 129 Paragraph (2) of the Job Creation Law, on land that has been granted HPL, further rights can be granted, one of which is in the form of HGU. Then the provisions of Article 142 regulate more specifically regarding management rights in government regulations, as referred to is PP 18/2021.

The minimum contents in a land use agreement established on HPL are: identity of the parties; location, boundaries and area of land; type of use, use of land, and/or building to be erected; provisions regarding the type of rights, term, extension, renewal, transfer, encumbrance, change, and/or deletion/cancellation of rights granted on HPL land, and provisions on land and building ownership after the end of the land rights; the

amount of tariffs and/or annual mandatory fees and payment procedures; and terms and conditions that bind the parties, construction implementation, fines for non-performance including sanctions clauses, and cancellation/termination of the agreement.

Conditions for applying for rights to state land and HPL land to be granted HGU. Each of the conditions for applying for HGU on state land and HPL land are different. The rules regarding the requirements for HGU applications above HPL are regarding: the applicant; the land; licensing documents in the form of business permits related to business activities; proof of implementation of the obligation to facilitate the development of community gardens for plantation companies; proof of taxation relating to the land requested, if any; and Statement of Beneficial Owners, for companies that are required to report owners benefit as regulated in the provisions of statutory regulations.

The requirements regarding the applicant that are needed are: the identity of the applicant, or the identity of the applicant and his/her proxy as well as a power of attorney if authorized; deed of establishment and latest amendments along with approval from the authorized agency or company establishment regulations, Business Identification Number of *Online Single Submission* (OSS) or Company Registration Certificate (TDP), in the case of a legal entity applicant. The conditions regarding the land that are needed are a land use agreement which contains the obligations of the HGU holder and a map of the land plot.

Prior to the enactment of PP 18 of 2021, the utilization or usage of the land requested for the purposes of a business on HPL land required that an HPL holder agreement be entered into with the rights applicant.[6, p. 41] This is like a Cooperation agreement which is stated in the form of a contract agreement. However, after the enactment of PP 18 of 2021, it provides an opportunity for part or parts of the land to which HPL is attached by the rights holder to be used and exploited for his own party as long as it is regulated in Government Regulations and rights to the land can be given in accordance with its own function and nature. Because it is not possible to grant ownership rights to government agencies as was the case when *domein verklaring* was still in effect, the granting of land to state land is with full control rights.[7, p. 82] So, in order to be able to carry out freely the planning for the allocation and use of land by government agencies, both for the purpose of carrying out their own duties and for giving to other parties, there is a solution by granting tenure rights.[7] This has resulted in the unclear designation of HPL which has been given authority by the state to independently cultivate and utilize its land, but in this case there is government involvement in utilizing state land.[2, p. 10]

### **3.2.Legal consequences that arise after granting HGU on HPL land**

The UUPA does not classify HPL as part of land rights, there is no regulation regarding this right in the UUPA because so far it only depends on the State's Control Rights. The expiration of the HGU and the extension granted on the HPL are regulated by the provisions governing the HPL itself. In its implementation, HPL experienced several quite specific changes both in terms of regulations and practice. There are different views regarding the concept of "management". The UUPA states that what is meant by "management" is authority, while this is different from PP 18 of 2021 which states that "management" is a right to land.

Due to the inconsistency in interpretation regarding the granting of rights to manage HPL land as a third party, there will be legal uncertainty experienced by the oppressed party. So, incident This is where an HPL which is part of state authority

which is supposed to achieve community welfare is not achieved. Preventing land that has been controlled by certain groups and giving rise to oppression and extortion of the people is very important for the state to pay attention to as its role in controlling land, because the basis of the prosperity of the people itself is land.[8, p. 39]

The frequent use of HPL is not in accordance with applicable legal provisions, so that disputes often occur over HPL land as a result of shifts in the function of HPL which are often found due to different understandings. In the practice HPL often causes confusion, in the implementation of HPL holders transfer to investors who do not have the right to be landlords. The notary in making a deed of agreement has a role in determining rights as well as HPL holder obligations with investors. Notaries play an important role in determining rights as well as obligations of HPL and investors by referring to the principle of good faith and the principle of balance. Because legally investors can only be classified as holders of temporary land rights because they are only parties who are boarding.[9, p. 149]

In principle, HGU can be granted on HPL as contained in PP 18 of 2021, this can be implemented by referring to the spatial and regional planning (RTRW) intended for businesses: agriculture; plantation; farm; and fisheries, which in principle is a form of delegation of the concept of state control rights. However, if it is related to the application of the principle of *lex superior derogat legi inferiori* which means that lower regulations are overridden by rules higher, then the concept of HGU as contained in article 28 UUPA states that the grant of land must be sourced from direct control by the State, not over land that has been cultivated by the deed holder. certificate HPL in the form of agriculture, fisheries or animal husbandry, so it can be seen that there are conflicting norms, giving rise to legal uncertainty.

Issue of legal uncertainty on when there is a party that disadvantaged Based on these laws and regulations, it can be ascertained that the party filed the application because they felt disadvantaged, namely the potential for a judicial review application (*judicial review*) on this issue, legal products of government regulations where the material does not comply with the law, can be subject to material review (*judicial review*) by the Supreme Court.[10, p. 35] In this case, the Supreme Court, if it turns out that it does not comply with the content of the material concepts of the statutory regulations which have been assessed higher, the Supreme Court has the authority to conduct a judicial review. (*judicial review*) related to these legal products in order to obtain legal certainty if there is a party who wants to apply for HGU and who has received it certificate HGU is not harmed.

#### 4. CONCLUSION

UUPA is the basic regulation that regulates the types of land rights as contained in article 16 paragraph (1) that land rights include Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, but does not mention the existence of HPL. Juridically, the UUPA does not mention HPL as "land rights", but refers to it as "management". The existence of HPL is one of the land rights that emerged through Agrarian Ministerial Regulation No. 9 of 1965 as it has developed until now contained in PP 18 of 2021 giving authority that HGU can be born on HPL land. The UUPA does not classify HPL as part of land rights, there is no regulation regarding this right in the UUPA because so far it only depends on the State's Control Rights. There are different views regarding the concept of "management". The UUPA states that what is meant by "management" is authority, while this is different from PP 18 of 2021 which states that "management" is a right to land. Furthermore, in terms of concept, the concept of HGU as contained in article 28 of the UUPA states that the grant of land must come from direct control by the State, not over

land that has been cultivated by the deed holder. certificate HPL in the form of agriculture, fisheries or animal husbandry, so it can be seen that there are conflicting norms, giving rise to legal uncertainty and the potential for applications for judicial review. review).

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