

# Cooperation Pattern Utilization *Hak Pengelolaan* (HPL) Between Government and Private Parties

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**Abstract**— This article presents an overview of land use *Hak Pengelolaan* (HPL) by the government in cooperation with third parties or private parties. The authority holder HPL provided by Regulation Legislation by using HPL for the purposes of conducting its business or hand over parts of land to other parties form the basis for cooperation between the government and the private sector to the use of land based on an Agreement for Land Use (SPT) and on condition certain. The existence of HPL which is a form of delegated authority from the *Hak Menguasai Negara* (HMN) makes HPL are part of the public right, so that the joint use of HPL with the private sector requires the stages of introduction to the granting of land rights on the ground HPL petitioned advance cooperation. The early part of this article describes how the HPL regulated in Indonesian Land Law. In the second part will be identified patterns of utilization of HPL which cooperated with the private sector and some practice implementation. The final section presented the results of the analysis showed that HPL cooperated with other parties / private sector has the potential disputes that need to be mitigated by rules that can accommodate cooperative relationships holder HPL and the private sector, ranging from pre-cooperation, the implementation of cooperation, and post-cooperation.

**Keywords**— Utilization, Right Management, the State's Rights, Private Parties, potential disputes

## I. OVERVIEW OF *HAK PENGELOLAAN* (HPL)

The term "*Hak Pengelolaan*" is taken from the Dutch, namely *Beheersrecht* translated into Tenure.<sup>1</sup> HPL was first introduced in the Minister of Agrarian No. 9 of 1965 concerning the State's implementation of the Conversion Rights and Conditions About Next Wisdom. Then, implementation of HPL was reinforced by the Agrarian Ministry Regulation No. 9 of 1999 on Procedures for Granting and Cancellation Rights and Rights of the State Land management until today (2019) is still valid.

In the development of the Land Law in Indonesia, in addition to reshuffle ownership of Land Rights as a result of the implementation of the provisions of type conversion Land Rights as Rights eigendom Rights Opstal and Rights Erfpact converted into Properties, Broking, and leasehold or right to use, too there is a change in the adoption of the principle of land law in Indonesia that of principle Domein Verklaring been a principle *Hak Menguasai Negara* (HMN). It is a mandate of the 1945 Constitution, Article 33 Paragraph 3, which reads: "Earth, water and natural resources contained therein controlled by the State and used for the greatest prosperity of the people". The article be interpreted that the state can not be the owner of agrarian resources but the country as a ruler of agrarian resources.

The existence of the HMN principles in the development of the Land Law, be the basic of HPL existence, as part of HMN. Furthermore, the provision of Article 33 Paragraph 3 of the 1945 Constitution as basis for the

preparation of Act No. 5 of 1960 About the Basic Regulation of Agrarian (UUPA).

UUPA does not mention explicitly HPL, but only mentions the word "management". In general explanation figure II No. 2 UUPA, that "... the state provides to the management of the Department, the Bureau or the Autonomous area to be used for the execution of their respective duties". The definition of HPL also stated in Article 1 number 2 of Government Regulation No. 40 of 1996 on the *Hak Guna Usaha*, Broking, and the Right to Use Land which reads: "the right to challenge State authority delegated to the holder partial implementation".

Urip Santoso (2012) also outlines the opinion of Maria SW Sumardjono stating that Government Regulation No. 8 of 1953 set Tenure as a translation of *Beheersrecht* on state land. Tenure in question is the right to control over state land. Since the Dutch government, especially in 1911, many government agencies are given control of parcels of land for the benefit of its duties. Governance, when it used the term "in BEHEER" which in its legal system, including public law. The word "in BEHEER" can be read in the Gazette (Stb) 1911 No. 110 jo. Stb. 1940 No. 430.14

Among experts Land Law are differences of opinion regarding HPL position in the National Land Law. Furthermore, it also found that HPL is the right of control of the state on the ground and some are found HPL is land right. This different opinion due to the existence of HPL are not set in the UUPA, but stipulated in Minister of Agrarian.<sup>2</sup>

<sup>1</sup> Parlindungan, AP, "Rights Management System According BAL", 1994: 6

<sup>2</sup> Santoso, Urip, Existence Rights Management In the National Land Law. Pulpit Law Journal. Department of Administrative Law, Faculty of Law, University of Airlangga, Surabaya. Volume 24, No. 2, June 2012

## II. SUBJECT AND OBJECT MANAGEMENT RIGHTS

General Explanation II in figure (2) of Law No. 5 of 1960 (UUPA) said, "The power of the state on the ground that do not belong to anything right by someone or the other party is more extensive and complete. With reference to the purposes mentioned above, the state can provide the ground such that a person or legal entity with a right according to the allotment and needs, such as property rights, the right to cultivate, building rights or rights of use or give in management to a Board Ruler (Department, Bureau or the Autonomous Region) to be used for the execution of their respective duties ". Based on the explanation of the subject of HPL by UUPA is Ruler Agency (Department, Bureau or the Autonomous Region).

Meanwhile, in the Minister of Agrarian No. 9 Year 1965 on the Implementation of the Conversion of Land Tenure Policy hereinafter: the State and legal entities that may have management rights, inter alia District / City Government, Public Corporation (Perum) National Housing Development (Housing), PT. Pelabuhan Indonesia (Persero), PT. Kereta Api Indonesia (Persero), PT. Angkasa Pura (Persero), Batam Authority Board, PD. Pasar Surya Surabaya, PD. Pasar Jaya Jakarta, PD. Sarana Jaya Jakarta, PT. Surabaya Industrial Estate Rungkut (SEER), PT. Pasuruan Industrial Estate Rembang (PIER).

Subject holders of HPL further provided in PMA / KBPN No. 9 of 1999 on Procedures for Granting and Cancellation Rights Country Land and Rights Management (HPL) which is the latest regulations regarding HPL in Article 67 paragraph (1) states that HPL can be given to the parties as the following: (i) Government Agencies including the Local Government; (ii) State-owned Enterprises; (iii) Regional Owned Enterprises; (iv) PT. Limited; (v) the Authority; (vi) Agencies Other government law appointed by the government.

## III. RIGHTS-HOLDERS AUTHORITY MANAGEMENT

Rights holders the management authority as mentioned in Article 6 of the Regulation of the Minister of Agrarian No. 9 of 1965 on the Implementation of the Conversion of Land Tenure State and Terms about Wisdom Subsequently, which states that:

1. Planning the allocation and use of the land
2. Use the land for the purposes of conducting its business
3. Hand over the parts of the land to a third party according to the requirements specified by the company holder of such rights; which includes aspects of allocation, use, period of time and finances, with the provision that the granting of land rights to a third party in question carried out by the competent authorities according to Home Affairs Minister Regulation No. 6 1972 on "Delegation of Privileges Granting Rights to Land", in accordance with applicable laws and regulations agrarian.

## IV. UTILIZATION *HAK PENGELOAAN* (HPL) A. POSITION OF MANAGEMENT RIGHTS IN LISTING OF MANAGEMENT RIGHTS ASSET HOLDERS

Supriyadi (2010: 155) in his book entitled "Legal Aspects of Land Asset (Finding Justice, usefulness, and Certainty on Ekasistensi Land Asset) explains that in order to attract the relationship between the Right to Control State by land as Regional Asset is to look at the provisions of Article 49 of Law No. 1 of 2004 on State Treasury, in paragraph (6) and (7) that determines as follows:

Article 49 Paragraph (6): "State / Region in the form of land held Central Government / Area should be certified on behalf of the Government of THE REPUBLIC / Local Government concerned". Article 49 Paragraph (7): "Building State / Regional must be equipped with proof of Ownership status and administered in an orderly manner"

In this case the certificate on behalf of the local government; is Certificate Right to Use and Certificate of Management. Furthermore, to determine the criteria for Regional Asset Land can be seen also in the Government Regulation No. 24 of 2005 concerning the Government Accounting Standards, namely:

- (1) Acquired with the intent to be used in the operations of government and in ready to use.
- (2) Evidence of mastery of the law, for example Use Rights Certificate or HPL Regions name Attas
- (3) Evidence of payment and control of land certificate in the name of the previous owner
- (4) Can be measured in money

Right to Use and HPL on behalf of Regions can be obtained through two events, namely:<sup>3</sup>:

- (1) through the conversion of tenure based on Regulation of the Minister of Agrarian No. 9 of 1965 jo. Agricultural Ministerial Regulation No. 1 of 1966
- (2) By land titling State Regulation of Minister of the Interior No. 6 Year 1972 jo. Minister of State No. 9 of 1999

In Act No. 1 of 2004 on State Treasury and Government Regulation No. 6 of 2006 on the Management of State / Regional has been changed to PP No.28 Year 2008 to PP No.27 of 2014 on Management of State / Regional giving definition of State Property that is goods purchased or obtained at the expense of the State Budget (APBN) or derived from other legitimate acquisition.

That definition raises the question whether or not HPL including assets acquired on the acquisition of assets or more are persistently State / Region. Basically HPL obtained not using APBN / APBD funds but through conversion or through the filing plea of land to the state. The control rights on state land that belongs to the Ministry, the Directorate, and the Autonomous Region, through conversion, the converted right into HPL. HPL was born after tenure on state land are registered with the land registry office whose jurisdiction covers the lay of the land in question and issued a certificate as proof of their rights. Second, HPL obtained by giving

<sup>3</sup> Supriyadi, Aspek Regional Asset Land Law (Finding Justice, usefulness, and certainty over the existence of the Public Asset Land. 2010: 303

rights. According to Article 1 (8) of the Regulation of the State Minister of Agrarian Affairs / Head of National Land Agency No. 9 of 1999, which meant land titling is a government decision that gives rights over state land, extension of the term of right, renewal rights, the right to change, including the granting of rights on the land of HPL. In granting these rights, HPL occurs through land titling petition states. Request filed by granting rights to manage prospective concessionaires to the National Land Agency of the Republic of Indonesia through the Head of the District Land Office / City whose jurisdiction covers the lay of the land in question. Based on the petition, then issued Decree Granting (SKPH) by the Head of the National Land Agency of the Republic of Indonesia. While the source of BMN / BMD through other lawful acquisition of the Act is not more be explain further.

In Act No. 20 of 2011 on the Flats also meant that HPL parallel to the Land Rights, seen in Article 17 of Law 20 of 2011, where flats can be built above ground right, Broking or Right of Use on Land state and Broking or Right of Use over HPL. When recalling the forerunner of the birth of HPL which comes from their HMN. Aspect of HMN on public rights, whereas cooperation with third parties on the ground HPL will private aspects reveal due to be followed by administration of Land Rights in the top HPL. There is also a Regulation, which has regulated the cooperation with the third parties. It is also be one cause confusion in the understanding of HPL. But in practice the field, recording HPL has been categorized as an asset of the country / region with a certificate on behalf of the central government / regions.

## B. WIDE UTILIZATION PATTERNS OF *HAK PENGELOLAAN*

View again about the status of HPL are included in the Group of State Property (BMN) as well as Regional Property (BMD) so that the management can be based on Government Regulation No. 27 Year 2014 About the Management of State / Regional. In Article 27 of Regulation No. 27 Year 2014, form the utilization of State / Regional form:

- a. lease
- b. Lease
- c. Cooperation Utilization
- d. To wake up or wake Built Operate Transfer; or
- e. Cooperation Provision of Infrastructure.

HPL utilization forms stipulated in Government Regulation No. 27 Year 2014 will automatically involve other parties, including the private sector. The utilization is done in order to optimize the efficiency and yield of BMN / BMD, improve the reception countries / regions. In addition, to cope with financial problems to develop public facilities, because it is not available or not sufficient funds available funds in the State Budget / Regional for the supply of buildings and facilities. But confirmed in the Government Regulation No. 27 of 2014 tersebut bahwa use of BMN / BMD did not change the ownership status. This is regulated in Article 1 paragraph 10, which reads:

*"Utilization is the use of State / Regions that are not used to organize tasks and functions of the Ministry / Institution / Regional Work Units and or optimization*

*of State / Regional with no change in the status of ownership"*

The shape of such utilization is done by using an agreement, one of them a cooperation agreement with the private sector commonly known as Build or Build Operate Transfer. In the system Handover To Build / Build Operate Transfer (BOT) agreement between the HPL and the private sector must be approved by the Governor / Regent / Mayor. As for the time period specified BOT longer than 30 years since the agreement was signed (Article 36 of Regulation 27 of 2014). While the establishment of cooperation partners or private parties determined through a tender or in special circumstances can be established by appointment.

Giving portions HPL on the other Land Rights will spawned a new temporary during the term of the agreement between the holder of management rights to another parties. Based on Government Regulation No. 40 of 1996 on leasehold, Broking and Right to Use Up of land that Broking and Right of Use (HP) can be built on land HPL. HGB on HPL and HP on HPL supplied with the decision on granting by the Minister or officials designated by the holder of HPL proposal. Provisions indicate that one of the utilization management right is to give the HGB on HPL.

At first, based on regulatory Minister of the Interior No. 5 of 1973 on the Provisions on the Procedures for granting Land Rights over land HPL may be granted right to use a term of six (6) years.

During its development, the Minister of Home Affairs No. 1 Year 1977 tentang Application And Settlement Procedures Granting Rights portions Land Registration And HPL, explaining that in the land HPL may be granted Broking, HP, or Property.

Third parties who get Broking or right to use the land of HPL reached through agreement between the Land Use of HPL holders with third parties. While the third party to get Properties on land of HPL through the release of land taken by holders of HPL.

The provisions concerning the Land Use Agreement originally provided for in Article 3 of Regulation of the Minister of Interior No. 1 of 1977, which was later declared null and void by Article 4 (2) of the Regulation of the State Minister of Agrarian Affairs / Head of National Land Agency No. 9 of 1999, namely: "In terms of the requested land is the land of HPL, the applicant must first obtain a designation such as land use agreement of the holder of HPL".

The agreement should contain, among others (Article 3 Paragraph 2 of Regulation No. 1 of 1977):

- a. the identity of the parties concerned
- b. location, boundaries and land area in question
- c. the type of use
- d. land rights and which require to be given to a third party in question and information about time as well as the possibility to extend it
- e. the types of buildings that will be built on them, and provisions regarding the ownership of the buildings at the end of a given land rights
- f. the amount of money income and terms of payment
- g. other requirements deemed necessary.
- h.

### C. ISSUE / CASE IN UTILIZATION OF HPL

In the framework of the implementation of the joint use of HPL with the private sector that would require the provision of a new Land Rights on the ground HPL cooperated, in practice can not be separated from the problems-the problems that had to be up to the court for dispute between the parties concerned. Some conflict on Land Rights in the top HPL as explained on Table 1.

[4] Supriyadi. 2010. Legal Aspects of Land Asset (Finding Justice, usefulness, and certainty over the existence of the Land Assets of Area. Jakarta: Performance Library

Table 1 Conflict of Land Rights on Central Java Province

No	Location	Parties Involved
1	HPL PRPP Central Java	1. The Central Java Provincial Government 2. PT.IPU (The Developer)
2	Market HGB above Klaten Klaten regency HPL	1.The Government of Klaten 2.Market trades 3. PT.Inti Griya Primasakti (The Developer)
3	Plasa muntilan	1. Holders of HGB plaza 2. Magelang regency 3. PT. Merbabu (The Developer)
4	Mangga Dua Court (MDC)	1.Association of MDC Apartment 2. PT.DUTA Pertiwi (the developer)

## V. CONCLUSION

Based on the descriptions of the above it can be concluded that background to the *Hak Pengelolaan* (HPL) is the adoption of the principle of the *Hak Menguasai Negara* (HMN) adopted by the National Land Law. Where HMN only has the aspect of public rights. So that HPL is also included in the area of public rights.

Utilization of HPL was conducted in partnership with the private sector to further highlight aspects of their private rights. Because of the above will be given HPL Land Rights which has the nature of civil / private.

Problems often arise in the field indicate that the dispute HPL majority occurred between the holder and the developer in this case one of them is the private sector. This one can be caused by the system of regulation and supervision of HPL has not been able to accommodate the overall implementation.

## VI. REFERENCE

- [1] Parlindungan, AP1984. Rights Management System According to the UUPA, Bandung: Mandar Maju.
- [2] Santoso, Urip.2012. Existence of Land Management Rights Law Nasional. Joutnal of Pulpit In Law. Department of Administrative Law, Faculty of Law, University of Airlangga, Surabaya. Volume 24, No. 2, June 2012
- [3] Sumardjono, Maria SW. 2007. Hak Pengelolaan : Development, Regulation and Implementation. Pulpit Journal of Law, Special Edition. Faculty of Law, University of Gadjah Mada. Vol. 2 No. 2 November 2007