Management Rights on Land (HPL) as Local Government Assets in the Development of Tourism Area

Irene Eka Sihombing(✉)

Trisakti University, Jakarta, Indonesia
irene.es@trisakti.ac.id

Abstract. One of the supporting factors for the implementation of the development of tourism areas is the availability of land. The Basic Land Law as the main provision in the land sector provides various types of land rights to be owned. In addition to the rights to the land, there is a Management Rights on the land (HPL) which is not mentioned in the provision at all. This right can only have a legal relationship with certain subjects, one of which is the Regional Government. However, in its development, HPL has shifted its meaning into a kind of land right. In developing tourism areas, local governments that control HPL have the opportunity to collaborate with the private sector. The issue at hand in this essay is whether HPL, an asset of the Regional Government, can be equated with land rights, and how the Regional Government, which is HPL's subject, may work with the private sector to develop tourism regions. The statutory provisions approach is used in this writing style. Because these rights are both public and civil, HPL is exceptional. HPL is therefore compared to land rights. The Regional Government, as the HPL holder, has numerous opportunities to profit from working with the private sector, but on the other hand, their relationship is more akin to that of a leasing agreement.

Keywords: Management Rights of Land · Local Government Assets · Tourism Area

1 Introduction

Because it promotes the growth of numerous national economic sectors, tourism is crucial to a nation's economic development. Given how crucial tourism is to a nation's economy, it must be managed as effectively as possible to benefit the local economy. Local governments, the private sector (actors in the tourism industry), and the community are only a few of the groups involved in tourism management. Planning, organizing, and controlling all tourism matters is what is intended by managing in accordance with the terms of Article 18 of Law Number 10 of 2009 Concerning Tourism (Dewa Gde Rudy dan Ayu Dwi Mayasari, 2019). The tourism management industry has expanded to include large-scale coastal tourism area management firms with global marketing objectives that

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oversee tourism destinations that draw both domestic and foreign tourists (Arie Sukanti Hutagalung, 2017).

The availability of large enough land is one of the factors that support companies in managing tourism. The lands that will be used to develop tourism areas are private lands owned by tourism development companies. Law Number 5 of 1960 concerning Basic Regulations on Land Principles or what is known as the Basic Land Law has regulated various types of land rights whose designation is for businesses in the agricultural sector in a broad sense, namely Cultivation Rights (HGU), in the non-agricultural sector, whose market segments are Indonesian Citizens and Indonesian Legal Entities, namely Building Use Rights (HGB), and Use of Use Rights (HP), whose market segments are Foreign Citizens, Foreign Legal Entities. The limited land rights that can be used to develop tourism areas, provide opportunities for Regional Governments who have assets in the form of HPL land to cooperate with tourism area developers.

According to Boedi Harsono, the Minister of Agrarian Affairs' Regulation Number 9 of 1965 concerning the Implementation of Conversion of Right of Ownership over State Land and Provisions on Further Policy, along with the Minister of Agrarian Affairs' Regulation Number 1 of 1966 concerning Registration of Use of Land Rights and Management Rights of Land, are where HPL was first mentioned. Although it is not explicitly stated in the UUPA, the General Elucidation of the UUPA implies that HPL is a part of the National Land Law. (2013) Boedi Harsono.

According to Maria S.W. Sumardjono, there are several different kinds of HPL in use, including: Port HPL, HPL Authority, HPL Housing, Local Government HPL, HPL Transmigration, Government Agencies HPL, and Industrial/Agricultural/Tourism/Railway HPL (Maria S.W. Sumardjono, 2007). In reality, the Public Company for National Housing Development (Perum Perumnas), district/city government, PT Kereta Api Indonesia (Persero), PT Pelabuhan Indonesia (Persero), PT Surabaya Industrial Estate Rungkut (Persero), PT Pasuruan Industrial Estate Rembang (Persero), PD Pasar Surya Surabaya, PD Pasar Jaya DKI Jakarta, and PD Sara (2018) Wendy Hartanto.

The acquired land may be used by the HPL holder for commercial endeavors. But giving him the right was not done for that reason. The fundamental goal is to make the land in question accessible to those who need it so they can develop it. When land is provided or granted, the right holder is given permission to carry out tasks that fall under the purview of the State, as specified in Article 2 of the UUPA (Boedi Harsono, 2013). The Land Use Agreement specifies the legal relationship that serves as the foundation for HPL holders giving land rights to third parties (SPPT). In actual usage, the SPPT may also be known as the Agreement on Transfer, Use, and Management of Land Rights. (2009) Maria S.W. Sumardjono.

In reality, the HPL holder contracts with a third party as though he had the authority to lease the HPL-owned property. It appears that HPL is treated in the same way as other land rights with this approach. Is it possible to compare HPL to other land rights like HM, HGU, HGB, or HP?

As HPL holders, local governments have the option to enter into Land Use Agreements with themselves and third parties, such as developers of tourism areas, and transfer portions of their HPL-owned land to them. How can the Regional Government, which

is the focus of HPL, and the private sector work together to promote tourism areas? is the question.

2 HPL Cannot Be Equated with Land Rights

The history of the creation of HPL regulation itself can be used to trace the origins of the word HPL (Arie Sukanti and Oloan Sitorus, 2011). The predecessor of HPL, according to AP Parlindungan, is extremely distinctive. The phrase beheersrecht (Stb 1911 No 110 in conjunction with Stb 1940 No 430), which translates to "right of control," was originally used to refer to the right of control over state properties (AP Parlindungan, 1989). The Right of Tenure that is used for its purposes by the department, directorate, and others is converted into HP in accordance with Articles 1 and 2 of the Regulation of the Minister of Agrarian Affairs 9/1965 concerning the Implementation of Conversion of Right of Tenure to State Land, whereas the Right of Tenure that is not only used for its own purposes but also granted with a right to a third party, granted with a right to a third party, is converted into HPL.

The General Elucidation II Number 2 of the UUPA contains the word management and states that Article 2 Paragraph 4 of the UUPA and General Elucidation II Number 2 of the UUPA "…… The State can provide such land to a person or legal entity with a right according to its designation and needs, for example, Ownership Right, Business Utilization Right, Building Use Right or Use Right, or giving it under management.

Law No. 20 of 2000 Concerning Amendments to Law No. 21 of 1997 Concerning Customs for Acquiring Land and Building Rights, jo. Article 1 Government Regulation No. 112 of 2000 Concerning the Imposition of Duties on the Acquiring Land and Building Rights Due to the Granting of Management Rights, states that "Management Rights are the State's right to control land whose implementation authority is parti-prismatic." The state has the right to decide whether portion of its authority is granted to the holder of an HPL as part of the HPL (Ana Silviana, 2017).

The Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 about Procedures for Granting and Canceling State Land Rights and Management Rights governs the process for granting HPL. According to the title, this clause does not recognize the HPL holder's power. This authority is governed by the preceding clause, namely by Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Completion of the Granting of Rights to Parts of Land with Management Rights and their Registration.

2.1 planning the designation and use of the land concerned;
2.2 use the land to carry out its business;
2.3 grant portions of the land to a third party in accordance with the conditions established by the business holding the right, including aspects of the designation, use, duration, and finances, provided that the granting of land rights to the third party in question is carried out by authorized officials in compliance with the relevant laws and regulations.

Since the passing of Law Number 11 of 2021 Concerning Job Creation and Government Regulation Number 18 of 2021 Concerning Management Rights, Land Rights,

Flat Units, and Land Registration, HPL has been subject to new rules than those that had previously been in effect. The several rules cover the history of HPL, among other things. According to Article 4, HPL may come from both State and Community Land. In addition, Article 5 specifies who receives HPL originating from State Land: (1) Central Government agencies; (2) Local Government; (3) State-owned enterprises; (4) Regional-owned enterprises; (5) State-owned legal entities; (6) Regional-owned legal entities; (7) A legal entity designated by the Central Government. In the meanwhile, communities with customary law are given HPL that originated on their land. Local governments are allowed to possess property with HPL status, according to the Job Creation Law's pre- and post-employment restrictions. As a result, the Regional Government, which has assets in the form of land, can register the land and obtain an HPL Certificate, giving it the power of proof.

According to paragraph 1 of Article 7 of this Government Regulation, HPL holders have the right to: (1) create plans for the spatial plan's land allocation, use, and utilization; (2) use all or a portion of their HPL land for their own purposes or in collaboration with other parties; and (3) choose the rate and/or annual mandatory fee from the other party. The provisions established in PP 18 of 2021 make the situation of HPL after the work creation law was passed clear. The PP 18 of 2021's regulations for HPL also govern the types of land that can be awarded with HPL. After the passage of the Copyright Act, a new definition of HPL emerged. Previously, HPL was a component of the State's authority to control land, which under prior laws could only occur on state territory. However, with the passage of PP 18 of 2021, HPL was enlarged to include communal land. (Abdul Ghofur, Veronica Tjokroaminoto, Dewi Nawang Wulan, 2022) Furthermore, the amendments contained in PP No. 18 of 2021 will not be discussed in this study.

The law that governs land tenure rights is known as the National Land Law, according to Boedi Harsono, who also added that each land tenure right in the Land Law contains the authority, duties/obligations, and/or prohibitions for the holder of the right to do something with the occupied land. Land tenure rights differ from one another based on what is permitted, required, or forbidden to accomplish. Article 20 of the UUPA mentions a civil law relationship, such as HM on land. Some are governed by public law, such as the Right to Control the State included in Article 2 of the UUPA. (2013) Boedi Harsono.

Land rights, which allow the holder to utilize their owned land, include ownership rights (HM), cultivation rights (HGU), building use rights (HGB), and usage rights (HP). These rights are solely based on civil law relationships. There are discrepancies between the earlier provisions and those governed by PP 18 of 2021 in terms of HPL's power. The civil and public authority that the bearer possesses is unaffected by this distinction, though. The usage of HPL land to satisfy the needs of the holder can be used to determine the civil authority of the HPL holder. In the meantime, evidence of public authority can be found in the cooperation used to transfer portions of HPL land to other parties.

The category of land rights in the systematics of land tenure rights does not contain HPL (Boedi Harsono, 2013). Consequently, HPL as a regional government asset cannot be compared to other types of land rights including ownership rights, cultivation rights, building use rights, and use rights.

3 Cooperation Between the Local Government Holding HPL and the Private Sector in the Development of Tourism Areas

The local government, the commercial sector acting as tourist business actors, as well as the community, are all stakeholders involved in tourism management. Legal land tenure is an important factor to take into account when creating a tourism management strategy, both for the Regional Government and for corporate actors.

The Regional Government has the power to create plans for the distribution, use, and usage of land in accordance with the spatial plan, starting with the knowledge that it is one of the HPL holders. One of the strategies for allocating HPL land is to use a Land Use Agreement or an Agreement for Transfer, Use, and Management of Land Rights to transfer portions of HPL land to a third party so that they can be turned into a tourist destination with HGB or HP. The Regional Government will not lose its land as a result of this arrangement, and it will even receive a stream of funding to boost its Original Regional Revenue.

Agreements can also be created when implementing the Build, Operate, and Transfer (BOT) or Build-Use-Transfer Agreements, which are agreements for the development, ownership, management, and handover of land, buildings, and supporting facilities (Maria Sumardjono, 2009). The HPL that will be worked with must satisfy the requirements for ensuring legal certainty, including the certainty of the HPL's status, its subject matter, and its goal. (2018) Wendy Hartanto that the HPL has been registered and has a letter of verification from the Regional Government in the form of an HPL Certificate. The Regional Government receives legal protection as the HPL holder with the issuance of this HPL Certificate.

With capital assets in the form of HPL land, in order to increase local revenue, the Regional Government can cooperate with the private sector in developing tourism areas. The private sector referred to here is an Indonesian Legal Entity, either domestic investment or foreign investment. As a party that will participate in developing tourism areas, of course, this private company needs certainty in controlling its land. The private corporation may acquire HGB or HP on HPL land in compliance with the relevant rules and regulations. Private enterprises may submit applications for HGB or HP to the State on the advice of the Regional Government. These applications must be accompanied by an agreement with a private company to use the proposed land for tourism. Naturally, the fundamental principles outlined in Book II of the Civil Code serve as the foundation for this agreement (Articles 1320, 1338, and 1339). Because it was mandated by law in the National Land Law (Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999), this agreement came into existence.

The UUPA, 2017 and its implementing regulations gave birth to and ordered the engagement, so the legal relationship between the parties and the legal repercussions are also established by law. The agreement is not just an outward engagement because of a mutual agreement or agreement between the parties. In this situation, the holder/recipient of the HPL may transfer the use of the land that is a part of it to HGB or HP based on an SKPT that has received the approval of the head of the national land agency, provided that it does not contain any provisions that would be detrimental to the parties (Regulation of the Head of the National Land Agency No. 3 of 2012). This provision is regulated in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land

Agency No. 9 of 1999 and further regulated in Article 9 paragraph 1 (b) of Government Regulation 24 of 1999. Since HPL land is registered by the Land Office and document proof of its rights is issued, the occurrence of HGB on HPL land is because these documents are issued. 2017 (Ana Silviana).

According to Maria Sumardjono, the provisions contained in the agreement generally relate to (1) the surrender of the use and management of a plot of HPL land with the granting of HGB on it, with the physical delivery being carried out empty and free from all claims/demands, (2) the period of delivery, usage and management are 30 years (term of HGB), and approval can be granted once for a one-time extension, for a period of 20 years. The application for extension is made in writing by the HGB holder and the HPL holder is required to provide confirmation of approval; (3) Use of HGB land, possible assignment of HGB to Mortgage Right (Hak Tanggungan), possible transfer of HGB, if allowed, the status of HGB must be notified to the party receiving the transfer; (4) compensation paid to HPL holders; (5) handover of land rights, free from all burdens, confiscations, disputes, and all kinds of claims; (6) breach of contract due to the negligence of the HPL holder to: (a) surrender the use and management of the land; (b) carry out any and all obligations contained in the agreement; (7) Negligence of the HGB holder not to complete the management of the HGB and pay all costs according to the agreement, return the land after the expiration of the HGB, carry out any and all obligations contained in the agreement (8) As a result of contract violation, specifically a written warning to fix or reverse the contract's default event. The party who breached the contract is required to pay compensation within a certain time period (recovery time), if the deliberation has not been completed within a certain time period (deliberation time), and if an agreement is not reached; (9) the conclusion of the agreement, specifically with the expiration of the HGB period and its extension or termination by the parties (Maria Sumardjono, 2009).

Local governments that hand over parts of HPL land to private companies so that they are used for the development of a tourism area continue to pay attention to the applicable provisions and transparently explain to other parties (eg tenants of buildings in tourism areas), or buyers of HGB land on HPL land, that the HGB land concerned is located on HPL land owned by the Regional Government. Considering in practice, it is not uncommon for private companies as holders of HGB on HPL land, not to transparently explain to the tenants of buildings on HGB land, that when the HGB land expires and will be extended, the Regional Government does not provide a recommendation for an extension so that it is rejected by Head of the Land Office. As a result, the tenants of the building on the HGB land are also harmed. This often leads to disputes in court.

There are still many disputes and cases regarding HGB over HPL that reach the Court, this is due firstly to the lack of transparency on the part of the developer in selling the building which is actually a collaboration between the developer and the right holder, in this case, HPL. The second is the factor of disagreement with the new rental price after the expiration of the land rights which are considered too expensive or above the NJOP. (Ana Silviana, 2017). Disputes between HPL holders and third parties may also occur between the Regional Government and third parties. Therefore, once again, there must be transparency and firmness, if the HGB on HPL land is to be transferred, the building will be rented out, or encumbered with Mortgage Rights, and it must obtain approval from the Regional Government. However, on the other hand, there is no reason

for the Regional Government not to provide recommendations as long as the conditions specified in the land use agreement have been met. This includes cooperation in the development of a tourism area. This is to protect local government assets in the form of HPL land.

4 Conclusion

4.1 The National Land Law is the only legal document that governs land having HPL status. It may be claimed that the Management rights cannot be equated with HPL when taking into account the incidence of HPL, the particular subject matter, and the authority of the subject, both civil and public.

4.2 Local governments that possess HPL land as an asset may work with the private sector to develop tourism-related areas on the property. In order to prevent disagreements between the parties, cooperation is founded on the precautionary principle, legal requirements, and open communication between the parties.

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