Legal Analysis of Land Management Rights (HPL) in National Development: Regulatory Challenges and Investment Opportunities in Indonesia

Lenny Husna, Sukamto Satoto and Dwi Suryahartati
Universitas Jambi
Jambi, Indonesia
lenihusna17@gmail.com

Abstract. This article examines land management rights (HPL) in Indonesian national development and its regulatory structure. Since colonial times, land management rights have been recognized. The goal is to use HPL to accelerate development and boost the country's economy to compete with global advances. The administration must be brave to develop strategic areas. Both national and municipal governments have had trouble managing land, resulting in a lot of ungoverned land. Wealthy people can invest in national development by receiving land management rights (HPL). This study uses juridical-normative research, law and regulatory analysis, and qualitative descriptive data analysis. The study shows that UUPA's HPL laws on state land lack unambiguous normative wording that determines HPL's legal status. General Explanation II, point 2 of the UUPA states that the state can give state-owned land only to public legal bodies for administration. Article 136 of the Job Creation Act and Article 1, point 3 of Government Regulation No. 18 of 2021 outline public land administration. Land management rights (HPL) are government-granted legal entitlements that give the holder limited control over a block of land. It can be used for personal goals or land use agreements with third parties.

Keywords: Land Management Right, The Job Creation Act, Investment.

1 Introduction

Land is an essential factor in the survival of a society; a nation cannot be recognized as such without a territorial domain. Beyond the utilization of natural resources contained within, land surfaces are crucial for human habitation and agricultural activities that fulfill basic human needs. Given its fundamental importance, land frequently becomes the subject of disputes and contention among communities. Recognizing this, there is a need for government intervention in regulating land ownership and management. The state must ensure that all citizens can benefit from land for societal welfare. In line with this rationale, the government has enshrined provisions within the national constitution, specifically Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "The land and water and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people." This constitutional basis legitimizes state control over land, intended for the welfare of the populace. The state's authority over all resources, including land, has led to the development of a concept known as Hak Pengelolaan Lahan, hereafter referred to as

B. A. Wiryawan et al. (eds.), *Proceedings of the 9th International Conference on Indonesian Social and Political Enquiries (ICISPE 2024)*, Advances in Social Science, Education and Humanities Research 937,
https://doi.org/10.2991/978-2-38476-436-5_14

HPL.

HPL is a form of state control, with some execution authority delegated to the holders of Management Rights. According to A.P. Parlindungan, the term HPL originates from the Dutch term "*Beheersrecht*," which literally means "control rights," referring to state control over land. Another scholar, R. Atang Ranoemihardja, explains that "Management Rights are rights granted over state-controlled land, only given to government legal entities or local governments for their own use or for third-party interests." From these definitions, it can be concluded that HPL is distinct from land rights such as Ownership Rights (Hak Milik), Building Rights (Hak Guna Bangunan), Usage Rights (Hak Pakai), and Cultivation Rights (Hak Guna Usaha) as outlined in Law No. 5 of 1960 on Basic Agrarian Law (UUPA). HPL pertains to state land, where management authority is vested in entities such as government agencies, State-Owned Enterprises (Badan Usaha Milik Negara-BUMN/Badan Usaha Milik Daerah-BUMD), and Authority Bodies.

The history of HPL in Indonesia dates back to the Dutch colonial era, where the term "*in beheer*" or "*beheersrecht*" was used to mean "control rights." The colonial philosophy behind this rule was to assert control over colonized land. After Indonesia gained independence, this concept was translated into the term Management Rights (HPL) over land by the state. HPL is a concept that has evolved outside the UUPA, driven by developmental needs in Indonesia. Rapid development is necessary to improve the national economy and compete in the global arena. HPL reflects a developmental reality in Indonesia, where limitations in central and local government capacities to manage land have resulted in significant areas remaining underutilized. Indonesia continues to need the HPL concept to accelerate development, requiring the government to boldly develop strategic regions by opening investment opportunities for capital owners through the granting of HPL on state land, tailored to each area's potential.

This aspect has sparked debate regarding the existence of HPL in Indonesia, given that the philosophy behind HPL originates from colonial-era objectives of land control. The critical question is whether implementing HPL within Indonesia's legal system will enhance economic welfare or create new landowners prioritizing investor interests over public welfare. This research examines the existence of Land Management Rights (HPL) in Indonesian development based on theories of legal justice, legal certainty, and utility. Similar to Aristotle, Thomas Aquinas defined justice as "what is due to others according to proportional equality." Legal justice (*iustitia legalis*) pertains to the application of law or general justice, in accordance with natural law (*lex naturalis*). Jan M. Otto also provided a perspective on legal certainty, which he described as comprising several elements: "Legal certainty provides clear, consistent, and accessible legal rules. These rules must be issued by state authority and possess three characteristics: clarity, consistency, and accessibility."

Previous studies on HPL have extensively explored its position in Indonesian law. For instance, Elita Rahmi [2010], in the Journal of Legal Dynamics, explained that "Development in Indonesia still requires the existence of HPL due to government funding limitations and the need to empower central and local government agencies." This study recommended that HPL should be formalized in legislation to ensure legal certainty, justice, and utility for HPL holders and third parties utilizing the HPL. This serves as the foundation for this research on legal certainty in land management rights under Indonesian law. Furthermore, Kadek Dwitya Partha Wijaya [2021], in the Kertha Desa Journal, discussed the regulation of Land Management Rights on State Land following the enactment of the Job Creation Law. He noted that "the management rights over state land have been explicitly regulated in Articles 136 and 137 of Law No. 11 of 2020 concerning Job Creation."

In essence, HPL is a state control right, with its implementation authority partially delegated to the rights holders. These holders may use and manage all or part of the land for their purposes or collaborate with third parties through land utilization agreements. This research uses the strengthening of regulations under the Job Creation Law as an initial foundation to explore whether such measures can promote investment and accelerate development to improve the economy, or whether they will marginalize economically disadvantaged groups amid policies that facilitate investment for capital owners.

2 Methodology

The author used normative law as the research methodology in this study. Normative legal research refers to the study and analysis of legal norms, principles, and doctrines. The author employs normative legal research methodology to investigate the presence of land management rights in national development by examining relevant laws. The study commences with an examination of the Basic Agrarian Law of 1960 and extends to the analysis of the Job Creation Law.

This research employs a normative legal research methodology that utilizes a legal concept analysis approach and a statutory approach to analyze the problems under study. The main legal sources utilized in this study include Law Number 5 of 1960 regarding Fundamental Regulations on Agrarian Principles, Law Number 11 of 2020 regarding Job Creation, which has been amended in Law Number 6 of 2023 concerning the Determination of Government Regulations Number 2 of 2022 regarding Job Creation, and Government Regulation Number 18 of 2021 regarding the Management of Rights, Land Rights, Flats, and Land Registration. The secondary legal documents utilized include literature pertaining to land law, such as relevant journal articles. The research included document study techniques and legal material analysis procedures, utilizing qualitative analysis methods. The process involved numerous parts, including systematization, description, and explanation.

3 Results and Discussion

3.1 Legal Certainty Of Land Management Rights (HPL) In The Indonesian Legal System

In the initial regulations on land in Indonesia, the concept of HPL was only indirectly mentioned in the General Explanation section II number 2 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The section states that the State has the authority to grant land to individuals or legal entities for specific purposes, such as ownership rights, building use rights, use rights, or management by the Ruling Body (Department, Office, or Regional Self-Sovereign) for the fulfillment of their respective responsibilities.

The term Land Management Rights was initially introduced in Minister of Agrarian Regulation Number 9 of 1965, specifically addressing the Implementation of Conversion of State Control Rights and Provisions regarding Subsequent Policies. Article 2 of this regulation stipulates that if state land, as defined in Article 1, is not only utilized for the benefit of the agencies themselves but also intended to be granted to a third party, then the aforementioned control rights are transformed into management rights as defined in Articles 5 and 6. These rights endure as long as the land is utilized for the designated purpose by the relevant agency. During its development, Minister of Agrarian Regulation Number 9 of 1965 was modified by Minister of Agrarian Regulation Number 9 of 1999. This newer regulation focuses on the procedures for granting and revoking state land rights and management rights. It specifically outlines the types of legal entities that are eligible to receive management rights or HPL for state land. These entities include government agencies, regional governments, State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), PT Persero, Authority Bodies, and other government legal entities appointed by the Government.

Indonesia needs to enhance its competitiveness in response to economic developments and the global situation. To achieve this, the government has taken steps to accelerate economic growth and development, including increasing investment. The government has facilitated investment in Indonesia by simplifying land regulations, particularly those related to HPL, through the ratification of Law Number 11 of 2020 concerning Job Creation. The regulations for HPL are outlined in Paragraph II, specifically Articles 136 to 147. The implementation of the regulations outlined in this article is anticipated to enhance the HPL regulations and ensure legal clarity. Consequently, this is projected to enhance the investment climate in Indonesia and expedite economic growth in the country. Subsequently, this was enacted as a low-level regulation that governs the enhancement of HPL, which was previously ambiguous in the UUPA.

Following the implementation of the Job Creation Law in 2020, the Government introduced Government Regulation Number 18 of 2021, which focuses on the management rights, land rights, flats, and land registration (PP Number 18 of 2021). This regulation serves as one of the measures to enforce the Job Creation Law, specifically addressing the issue of HPL. PP Number 18 of 2021 has been issued to replace PP Number 40 of 1996. This new regulation addresses previously unregulated concerns concerning management rights. Therefore, ensuring legal assurance for the community.

Nevertheless, the duration of statute Number 11 of 2020, which pertains to Job

Creation, is rather short. The Constitutional Court (MK) has determined, through a formal examination, that this statute is deemed "Conditionally Unconstitutional." Moreover, the government has enacted Government Regulation in Lieu of Law Number 2 of 2022 about Job Creation. Law Number 6 of 2023, which ratified Regulation Number 2 of 2022, was enacted in 2023. This law replaced Law Number 11 of 2020 on job creation. However, the new law did not make any changes to the provisions regarding HPL.

Enhancing the HPL concept in the Job Creation Law involves establishing regulations for the state's power to determine fees specified in the state land management agreement by a third party. It also entails establishing a "Land Bank" that systematically acquires undeveloped, abandoned, or vacant land with potential for development.

3.2 The Presence Of Land Management Rights (HPL) In National Development Based On Investment Law

Table 1 Chronological Order of Regulations on Job Creation Law and HPL

Year	Regulation	Relevant Articles	Key Definitions	Affected Institutions	Responsibilities/ Authorities	Other Relevant Aspects
1960	Basic Agrarian Law (UUPA)	No specific article on HPL	- Land Rights: Ownership, Use Rights, Lease, and Right to Build (HGB)	- Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN)	- Land management and distribution	- Lacked explicit regulation on HPL (Management Rights)
2021	Government Regulation (PP) No. 18 of 2021	- Article 2(1): Defines State Land	- HPL (Management Rights): A right granted by the state, allowing control over land with delegated authority.	- Ministry of ATR/BPN	- Granting and regulating HPL to state entities or legal organizations	- Strengthened HPL regulations that were previously unclear in UUPA
		- Article 4, 10(1): HPL can be derived from State Land and Ulayat Land		- Regional Governments	- Allowing third-party usage under agreements	- Provided legal framework for land management
		- Article 5(1), 6(1): Management rights can be granted to legal entities by the state		- State-Owned Enterprises (BUMN)		
		- Article 7(1), 137(2): Use		- Private investors		

Year	Regulation	Relevant Articles	Key Definitions	Affected Institutions	Responsibilities/ Authorities	Other Relevant Aspects
		and transfer of HPL to third parties - Article 138(1): Land use agreements under HPL				
2022	Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 on Job Creation	- Legalized amendments to land laws - Addressed land banks for development - Provided investment incentives	- Land Bank: A legal entity managing state land for economic and social purposes	- Central Government - Investors - Land Bank Institutions	- Managing state land for investment - Expediting land supply for development	- Introduced land digitization and electronic land documents
2023	Law No. 6 of 2023 on Job Creation	- Article 136: Defines management rights as state-granted rights - Article 137(1): Management rights granted by the Central Government - Article 137(2): Transfer and delegation of HPL to third parties - Article 138(1): Implementation through land use agreements	- Legal Certainty: Reinforcement of existing HPL and investment regulations	- Central and Regional Governments - Investors - State-Owned Enterprises (BUMN) - Ministry of ATR/BPN	- Reinforcing land use regulations - Enhancing legal certainty for investors	- Ensures HPL is properly regulated - Strengthens investment climate in Indonesia

The implementation of the Job Creation Law is a strategic measure aimed at expediting development. The passing of Law Number 6 of 2023, which ratifies Government Regulations in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation, is a measure taken to alleviate the consequences of the global recession. The Job Creation Law has the potential to attract investors due to the presence of legal certainty. By providing legal certainty, investors will be more confident in investing their capital, which in turn will stimulate job development in Indonesia.

The enactment of the Job Creation Law and Government Regulation Number 18 of 2021 has introduced stricter regulations regarding HPL in Indonesia. These regulations, known as PP 18 of 2021, address the management rights, land rights, flats, and land registration. Prior to this, HPL regulations were not clearly defined in the UUPA (Land Law). However, it is important to note that other regulations have not provided sufficient legal certainty regarding HPL. This pertains to the interpretation of HPL, namely on the inclusion of land rights and their connection to state control rights. The Job Creation Law addressed this issue by including a provision in Article 136 that affirms the following: "Management rights are control rights granted by the state, with some of the implementation authority delegated to the right holder."

Moreover, according to Article 137 paragraph (1) of the Job Creation Law in conjunction with Article 5 paragraph (1) of Government Regulation No. 18 of 2021, it is stated that the state has the authority to grant management rights over land to a legal organization selected by the Central Government. HPL refers to the authority to oversee and utilize government-owned land, which can be delegated to other governmental bodies or legal entities with the government's or third parties' consent. According to Article 137 paragraph (2) of the Job Creation Law in conjunction with Article 7 paragraph (1) of Government Regulation No. 18 of 2021, it states that the management rights grant the authority to use and utilize the land for personal use or in partnership with third parties. The form of cooperation mentioned in Article 138 paragraph (1) of the Job Creation Law is implemented through the execution of a land use agreement. The regulations governing the use of HPL land by third parties are outlined in Article 137, paragraph (2) of the Job Creation Law. According to this article, when land with management rights is transferred to third parties, either fully or partially, they are granted rights for business use, building use, and/or use in accordance with statutory regulations. The third paragraph clarifies that the duration of building use rights, which are separate from management rights mentioned in paragraph two, might be prolonged and renewed if the rights have been utilized in line with their intended purpose. Land eligible for HPL (Right to Build) under Article 4 and Article 10 paragraph (1) of Government Regulation No. 18 of 2021 refers to "the rights to manage land that can be derived from State Land and Ulayat Land as determined by a ministerial decree." According to Article 2, paragraph (1) of PP No. 18 of 2021, State Land refers to all parcels of land within the territory of the Unitary State of the Republic of Indonesia that are not owned by any other party and are under the direct jurisdiction of the state. This clause allows for the transfer of state land to a second or third party through the HPL process, subject to the permission of the Minister responsible for land. Customary land is established through a decision made by the customary law community. In addition, according to the wording of Article 6 paragraph (1) of PP 18 of 2021, it stipulates that "State land may be allocated to individuals or legal entities with land rights that align with their intended use and requirements, or granted with management rights." Management rights over state land are provided on the condition that the primary responsibilities and functions are closely associated with the management of the land.

The Job Creation Law encompasses various newly established regulations. Firstly, this new regulation relating Land Banks enhances the framework for land supply planning. It mandates that the planning be conducted in accordance with Regional Regulations, which are produced based on the General Plan Framework established by the Central Government and aligned with central policy. Currently, land management is overseen by a specialized organization that is responsible for planning, acquiring, procuring, administering, utilizing, and distributing land. Furthermore, HPL is provided with affirmation and reinforcement to establish a more solid legal foundation concerning the prerequisites and jurisdiction of HPL holders. Furthermore, land use is governed by regulations that are determined by the rights granted to individuals for using a certain piece of land. The Agrarian Law currently lacks comprehensive regulations on the limitations on land rights. Consequently, the Job Creation Law aims to create explicit boundaries concerning the use and exploitation of land rights. Supplementary regulations concerning electronic land documents. These regulations are essentially a means of adapting to contemporary advancements that are leading to the digitization era, making the use of electronic documents increasingly common. Hence, the Job Creation Law establishes a legal framework for the utilization of electronic land documents.

The Job Creation Law has the potential to attract investors due to the presence of legal certainty. Legal clarity provides investors with confidence to allocate their resources, thereby fostering development and generating employment opportunities in Indonesia. The presence of Land Management Rights plays a crucial role in the national development of Indonesia, particularly within the framework of investment legislation. property Management Rights allow private individuals or investors to acquire the rights to manage property for the purpose of creating investment ventures. Land Management Rights offer investors legal assurance on the utilization of land required for their investment ventures, from the standpoint of investment law. This establishes a definitive legal foundation for the efficient utilization of land and safeguards the interests of investors. In this scenario, the Indonesian government plays a crucial role in granting licenses and authorizations for Land Management Rights to investors. The procedures and requirements for acquiring Management Rights over Land are often governed by relevant legislation, governmental regulations, or investment agreements.

The inclusion of Land Management Rights in national development can also yield broader advantages. Investment supported by Land Management Rights can lead to the creation of new jobs, increased revenue, knowledge transfer, and infrastructure development that promotes economic progress. Nevertheless, it is crucial to emphasize that the presence of Land Management Rights must align with the concerns of the community and the preservation of the environment. When regulating Land Management Rights, the government must also take into account the social, environmental, and sustainability factors involved in overseeing investment and development. In order to effectively provide Land Management Rights to investors, the government must prioritize a policy that is unambiguous, open, and equitable. This policy should also safeguard community rights, address public demands, and promote sustainable environmental conservation.

4 Conclusion

Land Management Rights play a crucial role in national development from the standpoint of investment law. property Management Rights grant investors the legal authority to oversee and exploit property for financial reasons across different economic sectors. Land Management Rights in the field of investment law offer investors a sense of legal assurance over land ownership and utilization. Investors with Management Rights have the ability to engage in enduring investment endeavors, such as establishing factories, housing complexes, shopping centers, or other forms of infrastructure. Land Management Rights offer investors legal protection with respect to rights of use, rights of sale, rights of inheritance, and other rights of utilization. This ensures the legal assurance required to commence and execute investments with confidence that the government and affiliated parties acknowledge and honor the land rights. Conversely, legislation pertaining to Land Management Rights also safeguard the interests of society and the state. These restrictions may include specific mandates, such as environmental stipulations, the sharing of profits with local communities, or other social responsibilities that investors are obligated to fulfill.

Land Management Rights can serve as a policy tool within the framework of national development to channel investments towards key sectors that promote economic growth, employment generation, and infrastructure advancement. The government has the authority to oversee and authorize Land Management Rights for investors who have investment plans and projects that align with the vision and priorities of national development. It is crucial to acknowledge that acquiring Management Rights over Land must adhere to relevant legal regulations, which include adhering to the procedures and conditions established by the government and connected agencies. Investments related to Land Management Rights must prioritize adherence to legality, licensing, and the fulfillment of social and environmental duties in order to align with legal principles and best practices.

References

[1] Amri Marzali, Antropologi dan Kebijakan Publik, Jakarta, Kencana Prenada Media Group, 2012
[2] Dwi Afni Maileni, Kepastian Hukum Terhadap Hak Milik Diatas Hak Pengelolaan Dikota Batam, Jurnal Hukum De'rechtsstaat. Volume 5 No. 1, (2019)
[3] Elita Rahmi, Eksistensi Hak Pengelolaan Atas Tanah (HPL) Dan Realitas Pembangunan Indonesia, Jurnal Dinamika Hukum Vol. 10 No. 3 (2010)
[4] Kadek Dwitya Partha Wijaya,dkk, Pengaturan Hak Pengelolaan Atas Tanah Negara Pasca Berlakunya UU Cipta Kerja, Jurnal Kertha Desa, Vol. 9 No. 7 (2021)
[5] Ida Ayu Putu AP, Pembentukan Bank Tanah dan Penguatan Hak Pengelolaan Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, Jurnal Hukum Saraswati Volume. 04, Nomor 02, (2022)
[6] Soerjono Soekanto, Pengantar Penelitian Hukum, Jakarta: UI-Pers, 2008
[7] Soehino, ilmu negara,Liberty Yogyakarta, 2005
[8] ZainuddinAli, 2006, Sosiologi Hukum, Jakarta: Sinar Grafika. 2006