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LEGAL UNCERTAINTY OF PELINDO'S LAND MANAGEMENT RIGHTS IN PORT DEVELOPMENT: A NORMATIVE ANALYSIS OF REGULATORY CONFLICT

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Abstract. *This study examines legal issues concerning land control by State-Owned Enterprises (SOEs), particularly PT Pelabuhan Indonesia (Persero) (Pelindo), in port development and expansion. In practice, Pelindo frequently acquires land or conducts reclamation using its internal funds; however, the resulting land is often transferred to the Ministry of Transportation (MoT) as the holder of Land Management Rights (Hak Pengelolaan/HPL). This arrangement creates legal uncertainty for Pelindo in managing land assets and establishing business partnerships. The study aims to analyze the legal certainty of Pelindo's rights over land utilized for port development. Using a normative juridical method, the study examines legislation governing land law, shipping, and state-owned enterprises. The findings indicate that, despite financing land acquisition independently, Pelindo faces uncertainty regarding its legal status over the acquired land. Based on Law Number 5 of 1960, Law Number 2 of 2012, Law Number 17 of 2008, and Government Regulation Number 18 of 2021, the party that acquires land and maintains a legal relationship with it should be entitled to the relevant land rights. Therefore, transferring such land to the MoT is not legally required unless acquisition is financed through the State Budget (APBN). The study recommends regulatory harmonization, granting HPL to Pelindo, and strengthening its legal position to ensure greater legal certainty.*

Keywords: *Legal Certainty; Land Acquisition; Land Management Rights; Pelindo; SOEs.*

1. Introduction

Ports have a strategic and highly significant role in supporting the national logistics system, especially for vast archipelagic countries such as Indonesia, which geographically consists of thousands of islands separated by seas and straits. The existence of ports that are structurally and operationally integrated with other modes of transportation (such as trains, highways, and inland freight corridors) creates a more efficient, reliable, and competitive supply chain ecosystem (Aritonang et al., 2025). The port encourages the growth of the surrounding industrial estate, creates jobs, and drives the local economy (Boyke et al. 2025).

PT Pelabuhan Indonesia (Persero), hereinafter referred to as Pelindo, is a state-owned enterprise that has been merged and consolidated into Pelindo I, Pelindo II, Pelindo III, and Pelindo IV since October 1, 2021, as part of a national port integration policy, with a strategic mandate to manage, develop, and optimize ports throughout Indonesia. As a company responsible for the management of major ports in various strategic regions, Pelindo has an important and decisive role in the procurement, administration, utilization, and management of port land assets.

The role of Pelindo as a state-owned enterprise includes land acquisition for port construction and development, which is carried out in accordance with Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest (hereinafter referred to as the Land Acquisition Law), which, in terms of the management and operation of port facilities and supporting infrastructure, collaborates with the private sector through various cooperation schemes. With its authority and institutional capacity, Pelindo is responsible for ensuring the availability of land, managing its use in accordance with spatial planning, resolving disputes in the event of overlapping land ownership or claims, and supporting national policies in the maritime and logistics sectors (Sadjadi & Fernández, 2023).

Pelindo is a State-Owned Enterprises Sector entity acting as a Port Business Entity (hereinafter referred to as BUP) Concession Holder based on the Concession Agreement with the Ministry of Transportation by the provisions of Article 92 of Law Number 17 of 2008 concerning Shipping (hereinafter referred to as the Shipping Law) which regulates that port service provision/service activities carried out by BUP are carried out based on concessions or other forms of authorization from the Port Authority as outlined in the form of legally binding agreements. In addition, under Article 344 paragraph 3 of Law No. 17 of 2008 concerning Shipping, Pelindo is given the authority to manage assets, including land with HPL status, which was previously managed by Pelindo within the framework of port administration and asset restructuring.

Furthermore, in the context of providing Port Services as part of its operational and commercial mandate, Pelindo is building new ports and/or developing and modernizing existing terminals, where Pelindo is required by the Ministry of Transportation to provide land/land as a Port area and/or Port support area at a cost fully borne by Pelindo as the concession holder. The provisions in the Shipping Law do not expressly regulate the obligation of BUP to provide land, but factually and operationally, the BUP of SOEs in the Port Sector, incasu PT Pelindo, carries out the obligation of the Port operator to provide land/land either in the form of direct procurement from right holders or reclamation as a Port area and/or Port Support area. This causes a legal vacuum and normative ambiguity regarding the status of land rights to land provided by the SOE BUP, particularly in relation to long-term control and utilization.

The land/land, including land/land reclaimed by BUP BUMN incasu Pelindo, which was then handed over to the Ministry of Transportation. Port Authority, as a Management Right (hereinafter referred to as HPL), belongs to the Ministry of Transportation. Port Authority is part of the concession object, which is handed over as an assumption for the implementation of Article 85 of the Shipping Law. Henceforth, on the HPL land, HGB was requested on behalf of Pelindo. In fact, regarding land/land, Pelindo has the potential to experience obstacles in carrying out cooperation/business with partners on the land/land assets, because if Pelindo wants to cooperate with the partner in question, the partner cannot apply for the part of the HGB that was originally on behalf of Pelindo to be on behalf of a Third Party. In fact, partners need the HGB to ensure legal certainty and business certainty.

Based on these issues, this study addresses the following research questions: (1) What is the legal basis for Pelindo's control over land acquired using its internal funds for port development? (2) Does the transfer of such land to the Ministry of Transportation as the holder of Land Management Rights (HPL) provide legal certainty for Pelindo? and (3) What legal framework should be adopted to ensure legal certainty regarding Pelindo's land rights in port development? This study is essential to provide legal certainty for Pelindo as the party that has acquired land using internal funds and, therefore, maintains a concrete legal relationship with the acquired land.

In the work of Muhammad Annas, it is stated that the enactment of Law Number 17 of 2008 on Shipping separated the functions of regulator and operator within the port industry. As a result of this Law, PT Pelabuhan Indonesia is authorized solely as an operator, and its status has shifted to that of an ordinary business entity (Apriani et al., 2021). In the study is argued that the authority of Regional Governments includes regulating port administration based on the Indonesian legal system.

This study differs from previous studies in that it focuses on ensuring legal certainty for parties that have undertaken land acquisition for port development. The contribution of this study lies in its value to the development of legal scholarship, particularly in the field of land law. Port-related regulations concerning land must be grounded in the prevailing National Land Law. In addition, from a practical perspective, this study benefits stakeholders involved in port management by enhancing their understanding of land law, particularly regarding land acquisition. Accordingly, this article aims to explain the legal certainty of land ownership by PT Pelindo as the party that acquires land using internal funds.

2. Research Methods

This research applies a normative juridical method, meaning that it is primarily grounded in the examination of prevailing written legal norms and regulatory frameworks (Hafizhah et al., 2024). The study focuses on reviewing statutory rules governing land rights, land procurement for public purposes, as well as the regulatory regimes in the land and shipping sectors that form the legal foundation for PT Pelabuhan Indonesia (Persero) and the Ministry of Transportation in determining control and management of port land. To identify and understand the core issues underlying the dispute between Pelindo and the Ministry of Transportation, the research also adopts a conceptual perspective. This involves exploring legal doctrines concerning the status of entities as holders of land rights, the principle of legal certainty, and the hierarchy of laws, particularly the notion that higher regulations prevail over lower ones. Such an approach is necessary to assess inconsistencies between sector-specific regulations in the shipping field and the general provisions governing agrarian matters, including more recent implementing regulations. The materials relied upon in this study consist of secondary sources, including primary legal documents (statutes and implementing regulations) particularly Law No. 5 of 1960 concerning Basic Agrarian Principles, Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Law No. 17 of 2008 concerning Shipping, Law No. 19 of 2003 concerning State-Owned Enterprises, Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Unit Ownership Rights, and Land Registration, Government Regulation No. 61 of 2009 concerning Ports, and Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, scholarly writings such as books and journal articles, and contractual or concession agreements concluded between Pelindo and the Ministry of Transportation. Data were gathered through library research and careful review of relevant legal documents (Piabuo et al., 2021). The analysis is conducted qualitatively, employing deductive reasoning by applying general legal principles to the specific case under review. To reinforce the conclusions, the study also undertakes systematic and historical interpretation of the relevant regulatory instruments. In addition, to strengthen the argument, a systematic and historical interpretation of the relevant laws and regulations is carried out to answer the main question: How is the legal certainty of Pelindo's ownership of Land Management Rights (Hak Pengelolaan Tanah) in port development ensured?

3. Results and Discussion

3.1. Legal arrangements related to land ownership by SOEs for port development

The foundational principle of land ownership within the framework of Indonesia's National Land Law system emphasizes that the control, possession, ownership, and utilization of land by individuals, legal entities, or institutions, regardless of the intended purpose, must be grounded in specific categories of land rights that are expressly recognized and regulated by Law Number 5 of 1960, commonly referred to as the Basic Agrarian Law. This law delineates several legally recognized land rights, including Property Rights, Right to Cultivate (Right to Business), Building Use Rights, and Right of Use, each characterized by unique attributes, durations, limitations, and legal ramifications.

Furthermore, the classification of these rights establishes a structured hierarchy within the agrarian legal system, wherein each type of right delineates the extent of authority that can be exercised over a given parcel of land. The distinctions among these rights extend beyond administrative considerations; they significantly influence aspects such as transferability, possibility of encumbrance, duration, and the legal relationship between the right holder and the State, which remains the ultimate authority over land. Importantly, the determination of an appropriate land right is closely linked to the legal status of the individual or entity intending to control or utilize the land, as eligibility to hold various categories of land rights is not uniform across all legal subjects. Consequently, adherence to the provisions of the Basic Agrarian Law is essential for ensuring legal certainty, fostering orderly land administration, and protecting both public and private interests in the management and usage of land throughout the Republic of Indonesia.

Accordingly, the legal status and qualification of the subject holding the land right, whether an individual citizen, a state institution, or a legal entity such as a State-Owned Enterprise, directly determines the type and scope of land rights that may be granted and lawfully owned. In other words, the capacity to acquire and hold certain land rights is intrinsically linked to the legal identity and classification of the rights holder under the prevailing agrarian regulatory framework.

Table 1. Land Based on the Legal Perspective

No	Category of Land Title	Eligible Right Holders	Regulatory Reference
1	Right of Ownership	• Indonesian nationals; • Certain legal entities specifically designated by the Government pursuant to Government Regulation Number 38 of 1963	Article 21 of Law Number 5 of 1960
2	Right of Cultivation (Business Use Right)	• Indonesian nationals; • Legal entities incorporated under Indonesian law and having their registered domicile within the territory of Indonesia	Article 30 of Law Number 5 of 1960, in conjunction with Article 19 of Government Regulation Number 18 of 2021
3	Right to Build	• Indonesian nationals; • Legal entities validly established under Indonesian law and domiciled in Indonesia	Article 36 of Law Number 5 of 1960, in conjunction with Article 34 of Government Regulation Number 18 of 2021
4a	Right of Use for a Fixed Period	• Indonesian nationals; • Legal entities established under Indonesian law and domiciled in Indonesia; • Foreign legal entities maintaining a representative office in Indonesia; • Religious and social institutions; • Foreign individuals residing in Indonesia	Article 49 paragraph (2), Government Regulation Number 18 of 2021
4b	Right of Use for As-Long-As-Used Purposes	• Central Government institutions; • Regional Government authorities; • Village administrations; • Diplomatic representatives of foreign states and representatives of international organizations	Article 49 paragraph (2), Government Regulation Number 18 of 2021

Pursuant to Article 1 point 1 of Law Number 19 of 2003 concerning State-Owned Enterprises (SOEs), an SOE is defined as a business entity in which all or the majority of its capital is owned by the State through direct investment originating from separated state assets that have been formally allocated as state equity participation. SOEs are categorized into two principal forms: Persero and Perum. A Persero is an SOE established in the form of a limited liability company whose capital structure is divided into shares, with all or at least 51% (fifty-one percent) of the shares held directly by the State of the Republic of Indonesia, and it is primarily oriented toward generating profit while still carrying out certain public functions. Meanwhile, a Perum is an SOE wholly owned by the State, with capital not divided into shares, established to serve the broader public interest by providing quality goods and/or services on a sustainable basis while at the same time seeking profit in accordance with sound, prudent, and accountable corporate management principles. In light of these provisions, SOEs possess full legal entity status with independent rights and obligations and therefore qualify as subjects entitled to hold land rights under Law Number 5 of 1960 within the framework of the national agrarian system.

SOEs can own and control land that is used for the purpose of strategic infrastructure development, including but not limited to ports, terminals, logistics facilities, and other supporting public utilities that are vital to national economic growth. In the regulations related specifically to shipping, there is indeed no article that expressly and explicitly states that SOEs are land rights holders in a general sense. This condition is understandable and logically consistent, because such provisions are primarily designed to regulate shipping activities, port administration, maritime safety, and navigation governance rather than agrarian matters. Meanwhile, the provisions regarding who may legally hold land rights and under what categories are comprehensively regulated in the laws and regulations in the field of land and agrarian affairs.

Based on Law Number 5 of 1960, the Job Creation Law, and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Planning Units, and Land Registration, SOEs may act as subjects of land rights (in the sense of legally recognized land right holders) for the purpose of supporting port construction and related infrastructure projects. The land rights that can be granted to and legally owned by SOEs include Building Rights, Business Rights, and Use Rights, each of which carries specific characteristics, duration, and scope of authority. In addition to these specific land rights, SOEs are also recognized—both under Government Regulation Number 18 of 2021 and earlier implementing regulations—as eligible Subjects of Management Rights, which confer broader managerial authority over state land within certain limits and conditions determined by law.

Indonesia, as a constitutional state based on the rule of law, has consistently upheld a legal system that seeks to guarantee legal certainty, order, and fairness in the administration of land and natural resources. The National Land Law System has clearly regulated various forms of land tenure and control as previously described, thereby creating a structured framework that distinguishes between ownership, use, and management rights. These provisions provide legal certainty regarding the categories of subjects who may hold land rights and the specific types of land rights that can be granted. Based on Sudikno Mertokusumo's view, legal certainty essentially reflects the consistent and proper implementation of the law as written, so that the public can reasonably expect and ensure that legal norms are applied in a predictable and non-arbitrary manner. For example, Article 36 paragraph (1) of Law Number 5 of 1960 expressly states that those who may become holders of Building Rights (HGB) are Indonesian Citizens and Indonesian Legal Entities. With the existence of legal certainty as a guiding principle, there is corresponding legal protection in the event of arbitrary, unlawful, or excessive actions by authorities or other parties.

According to its socio-economic and strategic function, land may legitimately be allocated and utilized for port development as part of national infrastructure expansion. In accordance with the provisions governing the construction and operation of sea ports, such development activities may be carried out by a Port Business Entity, a Central Government Agency, or a Regional Government, depending on the scope and designation of the port. Meanwhile, the development of river and lake ports may similarly be undertaken by Port Business Entities, Central Government Agencies, or Regional Government Agencies in line with their respective competencies and jurisdictions. Such development activities must be based on valid business licenses or operational approvals issued by the competent authorities, namely Ministers, Governors, or Regents/Mayors, in accordance with the distribution of governmental powers.

In accordance with the general principles and established provisions in the field of land law, the land utilized for port construction and related facilities is legally owned or controlled by SOEs through recognized legal mechanisms. Such acquisition may occur through an application for land rights over State land, through the lawful transfer of rights from previous holders, or through the release and acquisition of rights in accordance with statutory procedures. Through these mechanisms, SOEs obtain a clear and legally grounded basis for controlling and using land for port development within the framework of national law and policy.

Based on the foregoing analysis, Pelindo possesses a clear legal basis for controlling land acquired through its internal funds because, under Law Number 5 of 1960, Law Number 6 of 2023 concerning Job Creation, and Government Regulation Number 18 of 2021, SOEs are recognized as legal subjects entitled to hold land rights and Management Rights (HPL). Consequently, a direct legal relationship arises between Pelindo and the land it acquires for port development. However, when such land is subsequently transferred to the Ministry of Transportation as the holder of HPL, legal uncertainty emerges because the party financing and acquiring the land is no longer the holder of the primary land title (Permadi, 2024). From the perspective of the principle of lex superior derogat legi inferiori, the determination of land-right holders is governed by agrarian legislation, which occupies a higher normative position than administrative arrangements or sectoral interpretations in the shipping sector. Therefore, any requirement that land acquired by Pelindo be transferred to the Ministry of Transportation without an explicit mandate in higher agrarian legislation may create a conflict of norms. To ensure legal certainty, agrarian law and shipping law should be harmonized so that land acquired using Pelindo’s internal funds may remain under rights granted directly to Pelindo, including HPL where permitted by law, while the Ministry of Transportation retains its regulatory and supervisory functions in port administration.

3.2. The legal regime for granting HPL for port development and/or development carried out by PT Pelabuhan Indonesia (Pesero)

In Stb 1911 No. 110 and Stb 1940 No. 430, the term "*Beheersrecht*" is translated as the Right of Dominion over state lands. Historically, this concept embodied the authority of colonial governments to manage and oversee state lands for public and administrative purposes. It functioned as a legal instrument to regulate the allocation and utilization of land subject to state control.

With the enactment of the national agrarian system, it became necessary to adjust this concept to align with the principles established under the national land law framework. As stipulated in Articles 1 and 2 of the Regulation of the Minister of Agrarian Affairs No. 9/1965 concerning the Implementation of the Conversion of Rights of Control over State

Land, specific provisions were made for this transition: 1) The Right of Possession utilized solely for internal governmental purposes is converted into the Right of Use; 2) Conversely, if the Right of Possession is used not only for internal purposes but also permits the granting of rights to a third party, it is reclassified as a Right of Management (HPL).

This regulatory framework clarifies that the key factor in the conversion process lies in the intended manner and purpose of land utilization. It differentiates between lands employed exclusively for governmental functions and those that allow for derivative rights to be transferred to other parties. Through this systematic approach, the transition from the colonial land administration system to a national agrarian legal framework has been executed in a coherent and legally consistent manner.

According to Boedi Harsono, in the systematic framework of land control rights under Indonesian agrarian law, the HPL is not categorized as a land right in the same sense as ownership rights or other primary land titles. Although the holder of HPL is granted authority to utilize the allocated land for certain operational or business purposes, such utilization is merely ancillary in nature and does not represent the principal objective behind the conferral of the right. The essential function of HPL lies in ensuring that the land concerned is prepared, administered, and made available for allocation or use by third parties who require it for specific activities, whether commercial, public, or developmental in character. In other words, HPL serves as an instrument of land management and distribution rather than as a proprietary right that grants full private control over land.

In the mechanism of land provision and allocation, the HPL holder is entrusted with a portion of the State's authority, particularly the authority derived from the State's Right to Control as stipulated in Article 2 of Law Number 5 of 1960. This delegated authority enables the HPL holder to plan land use, determine its allocation, and cooperate with other parties in granting derivative land rights over the managed land. Consequently, from a doctrinal and conceptual perspective, HPL should not be understood as a direct land right in itself. Rather, it constitutes a derivative administrative competence or functional extension of the State's Right to Control, reflecting the State's continued overarching authority over land while allowing certain management powers to be exercised by designated entities.

The General Explanation of Law Number 5 of 1960 outlines the authority of the State to allocate land or assign management responsibilities to various governing bodies, including government departments, official governmental offices, or autonomous regions. Initially, the eligibility for Management Rights (HPL/*Hak Pengelolaan Lahan*) was limited to state administrative organs and regional governmental entities.

However, with ongoing institutional and economic developments, the scope of eligible HPL subjects has expanded. Presently, entities that may hold HPL include: (1) governing bodies or state institutions; (2) government-owned legal entities fully owned by either the Central or Regional Government; (3) public companies (Perum) and limited liability state companies (Persero); and (4) specific authorities designated to manage certain areas or sectors. This evolution illustrates the adaptability of land management policies to meet contemporary governance and development needs.

The current regulatory framework governing HPL is primarily established by Government Regulation Number 18 of 2021. According to Article 1, number 3 of this regulation, Management Right (HPL) is defined as an embodiment of the State's authority over land, which is partially delegated to the HPL holder. It is important to recognize that HPL does not equate to ownership in the private law sense; rather, it represents an administrative authority derived from the broader control exercised by the State. HPL may originate from either State Land or Customary Land, depending on the specific legal status of the land in question.

HPL derived from State Land may be conferred to various entities, including Central Government institutions, Regional Governments, State-Owned Enterprises (SOEs), Regionally Owned Enterprises (BUMD), State-Owned Legal Entities, the Land Bank Agency, or any other legal entities expressly designated by the Central Government in accordance with statutory provisions. Conversely, in situations where HPL originates from customary land, its determination and recognition are conducted in accordance with the relevant customary law community, observing prevailing customary norms and traditional governance structures.

The scope of authority attached to an HPL holder includes several essential powers. First, the authority to formulate and prepare a comprehensive plan concerning the allocation, designation, and utilization of the land under its management, which must be aligned with the applicable Spatial Plan. Second, the authority to use and exploit all or part of the HPL land either for its own operational purposes or through cooperation arrangements with third parties. Third, the authority determines and imposes annual tariffs, compensation, and/or mandatory contributions payable by third parties based on agreements governing the use or utilization of the land concerned. Through these authorities, HPL functions as a managerial instrument that enables structured land administration while remaining subject to overarching state control and spatial planning regulations (Husna et al. 2025).

The contemporary framework for Management Rights (HPL) represents a significant evolution from previous provisions in terms of scope, character, and practical implementation within land law. HPL encompasses three key authorities: a) Planning the Allocation and Use of Land (Public): This aspect highlights the public responsibility entrusted to HPL holders, who are charged with organizing land use in accordance with spatial planning policies, development priorities, and the broader public interest; b) Utilizing the Land for Institutional Duties or Commercial Activities (Private): This dimension emphasizes the operational functionality of HPL, permitting holders to directly engage with the land to support institutional objectives or commercially viable activities, provided such uses adhere to legal standards; c) Transfer of Portions of Land to Third Parties (Public): A distinctive feature of HPL is the ability of holders to transfer parts of the land to third parties according to specified terms, thereby facilitating the establishment of legal relationships while maintaining overarching management control (Sidiq, 2023). Collectively, these elements illustrate the dual nature of HPL, integrating public authority with private operational functions within a cohesive legal structure. This composite authority framework underscores the fundamental purpose of granting HPL within the national land administration system, ensuring that land usage aligns with both regulatory requirements and private interests.

Government Regulation Number 18 of 2021 does not expressly grant the holders of (HPL/*Hak Pengelolaan Lahan*) the authority to independently confer derivative land rights to third parties. Instead, the regulation delineates a procedural framework for the granting of land rights, particularly in Article 23, which addresses the Right to Cultivate (Hak Guna Usaha or HGU). This article specifies that rights over state land are to be issued through a formal decision by the Minister. Notably, if HGU is to be granted on land designated as HPL, such a grant requires both a ministerial decision and prior consent from the HPL holder. This indicates that the role of the HPL holder is primarily to provide authorization as part of the administrative process rather than to directly confer rights.

Moreover, Article 36 identifies that land eligible for Building Use Rights (HGB/*Hak Guna Bangunan*) includes state land, land under HPL, and land held under Ownership Rights. Article 51 further stipulates that the Right of Use (HP/*Hak Pakai*) may be granted over specified land, including state land, land under Ownership Rights, and HPL land. It is important to recognize that while HPL itself is not equivalent to ownership, it serves as a legal basis for the establishment of these derivative rights through the appropriate governmental procedures.

The regulatory framework indicates that the allocation of HPL, particularly in relation to port construction or expansion activities conducted by Pelindo, is situated firmly within the domain of Land Law. Pelindo, as a State-Owned Enterprise recognized under Indonesian law, qualifies as a legal entity capable of holding HPL, provided all substantive and administrative requirements prescribed by the land regulatory framework are met. This structure emphasizes a structured approach to land use and rights allocation, ensuring alignment with the legal standards governing land in Indonesia.

A specific legal issue arises in relation to reclaimed land created through reclamation activities financed entirely by Pelindo. From the perspective of land law, reclaimed land initially constitutes State Land because no land right has yet been granted over the newly created area (Haq, 2025). However, the fact that reclaimed land originates as State Land does not automatically justify the granting of HPL to the Ministry of Transportation. Neither Law Number 5 of 1960, Government Regulation Number 18 of 2021, nor other agrarian regulations expressly require reclaimed land financed by a State-Owned Enterprise to be assigned to a government institution as the HPL holder. On the contrary, Pelindo, as the party that plans, finances, undertakes, and utilizes the reclamation for port development, possesses a direct legal and economic relationship with the reclaimed land. Therefore, in the absence of an explicit statutory provision requiring otherwise, the legal basis for assigning HPL to the Ministry of Transportation instead of Pelindo remains unclear and raises questions regarding legal certainty, proportionality, and consistency with the principles governing the allocation of land rights under the national agrarian legal system.

3.3. The provision of HPL for land acquisition or reclamation carried out by PT Pelabuhan Indonesia (Persero) as a state-owned enterprise

As previously explained, the Right of Management (HPL) constitutes a manifestation of the State's Right to Control over land, the exercise of which is partially delegated to the HPL holder. In essence, the holder does not possess ownership of the land; rather, it is entrusted with certain managerial and administrative powers derived from the State's overarching authority. In general terms, the legal foundation of HPL can be understood through the basic principles of Indonesian agrarian law, which affirm that all land within the territory of Indonesia is ultimately controlled by the State and must be utilized for the greatest prosperity of the people. Based on this principle, the State may allocate portions of its controlling authority to specific institutions or entities through a management scheme. More specifically, the existence and operation of HPL are supported by implementing regulations in the land sector that govern how management rights are granted, how land under HPL may be allocated to third parties, and how such land must be registered and administered. These regulations also outline the procedures, requirements, and limitations applicable to HPL holders, ensuring that the exercise of their authority remains consistent with spatial planning policies and the public interest (Adithya & Santoso, 2024).

According to these provisions, the provision of HPL is regulated as follows: a) The submission of the HPL Application is completed with planning documents for the designation, use, and utilization of the land. b) The application for HPL is submitted to the Minister of Agrarian Spatial Planning/Head of the National Land Agency under the land area granted based on the KKPR (Suitability of Spatial Requirements Activities) or the basis of land acquisition. c) If the application is approved, the applicant will be given a determination that is preceded by the fulfillment of obligations in accordance with laws and regulations (Kamilah et al., 2024).

Within the statutory framework governing land procurement for projects undertaking in public interest, port infrastructure is expressly recognized as one of the categories of development that qualifies as a public interest activity. This designation confirms that ports are regarded as strategic facilities whose existence and expansion are fundamentally linked to the broader objectives of national development. Ports function as critical gateways for the movement of goods and passengers, facilitate inter-island and international trade, strengthen logistics networks, and contribute significantly to economic growth and regional integration. By placing ports within the domain of public interest development, the legal system acknowledges their essential role in ensuring connectivity across the archipelagic territory of Indonesia and in sustaining public services that depend upon efficient maritime transportation.

In this context, PT Pelabuhan Indonesia (Persero) (Pelindo), as a state-owned enterprise entrusted with the management and operation of major ports throughout Indonesia, is bound by the rules applicable to land acquisition conducted for public interest purposes. Whenever Pelindo undertakes land procurement for the construction of new ports, the expansion of existing terminals, modernization programs, or the establishment of supporting facilities such as access roads, storage areas, and logistics hubs, such activities fall within the recognized category of development for the public interest. Consequently, Pelindo must carry out these processes in accordance with the prevailing principles governing land acquisition, including planning, compensation, transfer of rights, and formal registration.

Moreover, it is clearly stipulated that when the entity requiring land for public interest development is a state-owned enterprise, the land that has been successfully acquired becomes the property of that enterprise. This rule provides clarity and certainty regarding the legal status of the land after the acquisition process has been completed. It ensures that ownership or control over the land does not remain ambiguous but is instead vested in the state-owned enterprise that financed and executed the acquisition. Such certainty is crucial to guarantee stability in subsequent utilization, development planning, and cooperation arrangements with other parties.

Accordingly, when Pelindo acquires land for port development projects that serve the public interest, Pelindo may subsequently obtain Management Rights (Hak Pengelolaan/HPL) over the relevant land. The regulatory framework concerning land rights expressly recognizes that state-owned enterprises are among the subjects eligible to receive Management Rights derived from State Land. This recognition places Pelindo in a lawful position to manage, allocate, and utilize port areas under HPL status. Through the granting of HPL, Pelindo is empowered to administer the land effectively, support port operations, and ensure that the utilization of such land aligns with national development objectives and the public interest that underlies port infrastructure projects.

In Article 75 paragraph (6) of Law Number 17 of 2008 concerning Shipping, it is stated that the regions and/or waters designated as work environment areas and port environmental areas of interest, as referred to in paragraph (1), are controlled by the state and regulated by the port operator. Article 75 paragraph (6) states that in the port working environment area that has been determined, HPL is given over the land and/or water use under laws and regulations (Natadireja et al., 2024). Article 83 paragraph (1) letter a states that the provision of land and waters to become a port is the duty and responsibility of the Port Authority. Article 85 The Port Authority is given HPL over port land and the use of waters under the provisions. Article 34 paragraph (2) of Government Regulation Number 61 of 2009 states that in the port Working Environment Area that has been determined, HPL is given over the land and/or the use or utilization of waters under the provisions of laws and regulations (Anugrah et al., 2020).

The regulatory framework in the shipping sector requires that, once the Port Working Area and Port Interest Area have been designated, the port operator must secure a Management Right (HPL) certificate over the relevant land in accordance with prevailing laws. The Shipping Law further provides that, in performing regulatory, supervisory, and controlling functions over port activities, the port authority is responsible for ensuring the availability of land and port waters. This implies that the provision of land for port operations falls under the responsibility of the port authority. In addition, port service activities conducted by Port Business Entities must be based on a concession or another form of cooperation granted by the port authority and set out in a formal agreement. The law also grants port authorities and port operating units the right to manage the use of land and waters in accordance with statutory provisions. Ministerial regulations in the transportation sector clarify that land genuinely owned and controlled by a Port Business Entity may be transferred to the port operator under an HPL scheme, after which the business entity may obtain derivative land rights over such HPL in line with applicable land laws. Upon the expiration of the concession period, the land and port facilities developed through the concession arrangement must be handed over to the port operator.

From the articles in the laws and regulations, it is known that in Article 91, paragraph (1) of the Shipping Law, what is cooperated in the concession agreement between the Port Business Entity and the Port Authority is the provision and/or service of port services. So, it's not about handing over land. Meanwhile, Ministerial Regulation regulates matters that are not regulated in the Shipping Law, namely, the handover of land to Port Operators. From the above articles, it can be interpreted that: a) The responsibility for the provision of land (land) and waters is in the hands of the port authority. b) The content of the concession agreement should not regulate the handover of land from BUP to the Port Authority, because the Shipping Law emphasizes that what is stated in the concession agreement is the activity of providing and/or providing port services carried out by the Port Business Entity. c) Based on the principle of lex superior derogat legi inferiori, then the regulations that are below, in this case, the Ministerial Regulation, must be in line with the Shipping Law. d) The Shipping Law and the Regulation of the Minister of Transportation should follow the provisions of the Land Law, in the event that SOEs are allowed to be the subject of HPL. So in principle, when land acquisition is carried out by the Port Authority, HPL belongs to the Port Authority. When land acquisition is carried out by SOEs, then HPL belongs to SOEs.

From the provisions in the Land Acquisition Law, Government Regulation 18 of 2021, and the Job Creation Law related to land acquisition by the Port Authority or Port Business Entities (Dharsana et al., 2023). According to the Land Law, the parties who need land carry out land acquisition, among other things, through land acquisition. After the land acquisition is completed, the party that needs the land becomes the owner of the land (Puspitasari & Taupiqqurrahman, 2024). So, Article 35 paragraph (1) letter d of Government Regulation Number 61 of 2009, which states that port operators have the obligation to complete HPL certificates for land in accordance with the provisions of laws and regulations, is inappropriate. Except that the port operator itself carries out land acquisition, not the SOE BUP.

The Ministry of Transportation, as a regulator, has the function to regulate and supervise, while Pelindo, as a BUP, functions as a business entity whose business activities are specialized in the field of terminal business and other port facilities. So it is more appropriate if the Management Rights are given to Pelindo as an SOE, because in carrying out business activities, it can collaborate with other parties.

Pelindo, as a prominent state-owned enterprise, is entrusted with the vital responsibility of executing land procurement for port development, including the necessary financing. This role positions Pelindo not only as a key port operator but also as a legally recognized entity authorized to carry out independent land acquisition activities within the framework of national development objectives. The implementation of land procurement by Pelindo involves several essential stages, planning, preparation, execution, and the final handover of results. These stages are financed through Pelindo’s internal corporate budget, in accordance with applicable financial governance principles. The process culminates in the submission of an application for Management Rights (HPL), which provides formal legal recognition and certainty regarding the land acquired, consistent with the prevailing land law system. This framework is reinforced by Article 11, paragraph (2) of the Land Acquisition Law, which states that when a state-owned enterprise requires land for public interest, the rights to that land are conferred upon the enterprise itself. This provision clearly establishes that when Pelindo engages in land acquisition for the development of port facilities, the resulting land rights are directly attributed to Pelindo, rather than to another governmental institution. Thus, this creates a solid legal foundation for the granting of HPL in Pelindo's name, ensuring that it maintains rightful authority over the land designated for port operations.

Reclamation activities are commonly undertaken for various strategic and economic purposes, including the restoration of environmentally degraded former mining areas, the expansion and modernization of port infrastructure, the development of tourism destinations, and the facilitation of commercial and trade zones, among other public and private interests. As a complex activity that alters coastal and marine characteristics, reclamation is governed by a broad and multi-layered regulatory framework at the national level (Turisno & Dew, 2021).

Such regulatory instruments include Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands, Presidential Regulation No. 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands, Law No. 26 of 2007 concerning Spatial Planning, the Shipping Law, Law No. 32 of 2009 concerning Environmental Protection and Management, Regulation of the Minister of Maritime Affairs and Fisheries No. 28 of 2021 concerning Procedures for the Placement of Reclamation Materials in Coastal and Marine Areas, and Decree of the Minister of Environment No. 14 of 2010 concerning Environmental Documents for Reclamation Activities. Collectively, these regulations govern licensing, spatial conformity, environmental safeguards, technical implementation standards, and supervision mechanisms related to reclamation projects.

Beyond the national regulatory framework, regional governments also enact specific local regulations to address reclamation within their respective jurisdictions, particularly in coastal provinces and metropolitan areas. For instance, in the Special Capital Region of Jakarta (DKI Jakarta), Regional Regulation No. 1 of 2014 concerning Detailed Spatial Plans and Zoning Regulations was promulgated, which specifically includes provisions relating to reclamation activities in Jakarta Bay and integrates such activities into the broader spatial planning structure of the region.

Under Law Number 27 of 2007, reclamation is defined as an activity undertaken to enhance the utility of land resources from environmental and socio-economic perspectives, typically through drainage or landfilling methods. This definition reflects a broader developmental orientation, emphasizing that reclamation is not merely a technical engineering process but also a strategic effort to optimize spatial functions, improve environmental conditions, and generate economic benefits for surrounding communities. In this context, reclamation is closely related to sustainable resource management and integrated coastal planning policies. Meanwhile, Law Number 17 of 2008 defines reclamation more specifically as landfill or embankment works that alter the coastline and/or the depth contour of waters. This formulation focuses on the physical transformation of coastal and marine areas, highlighting the technical aspects of filling, dredging, and embankment activities that result in measurable changes to shoreline configuration or seabed contours for navigational and port purposes.

Land produced through reclamation activities is legally categorized and determined as State Land within the national land administration framework. Pursuant to Article 17 paragraph (1) of Government Regulation No. 18 of 2021, reclaimed land may subsequently be granted Management Rights (HPL) and/or other forms of Land Rights, provided that the reclamation has been carried out on the basis of a valid and duly issued reclamation permit in accordance with applicable regulations. Furthermore, paragraph (2) expressly stipulates that where such reclamation permits are granted to Central Government agencies, State-Owned Enterprises (SOEs), Regionally Owned Enterprises (BUMDs), state-owned legal entities, regionally owned legal entities, the Land Bank

Agency, or other legal entities specifically appointed by the Central Government, the reclaimed land referred to in paragraph (1) may be allocated in the form of HPL or other Land Rights, taking into careful consideration their legal status and eligibility as subjects of land rights under the prevailing land law regime.

Accordingly, if Pelindo, in its capacity as a State-Owned Enterprise, conducts reclamation in compliance with the required licensing procedures, then following the formal designation of the reclaimed area as State Land, Pelindo is legally entitled to apply for the granting of HPL over such land to the State through the competent land authority. Considering the provisions set forth in the Land Acquisition Law and the broader agrarian regulatory framework, there appears to be no juridical basis to arbitrarily refuse or deny an HPL application properly filed by Pelindo, provided that all substantive and administrative requirements have been fulfilled in accordance with the governing laws and regulations.

3.4. PT Pelabuhan Indonesia (Persero) can be given HPL on land from procurement or reclamation carried out using the internal budget

The principal statutory framework governing State-Owned Enterprises (SOEs) is Law Number 19 of 2003. This legislation lays down the normative foundation for the establishment, corporate governance, oversight mechanisms, restructuring, and dissolution of SOEs, while also defining their strategic function as instruments of state policy within the national economic system. It positions SOEs not merely as commercial actors, but as entities expected to balance profitability with public service obligations and macroeconomic objectives.

To operationalize this framework, several implementing Government Regulations further elaborate the technical and managerial dimensions of SOE administration. Among them is Government Regulation Number 45 of 2005, which regulates procedures for establishment, management, supervision, and dissolution of SOEs, as subsequently refined through Government Regulation Number 23 of 2022 to accommodate evolving governance standards and institutional reforms. In addition, Government Regulation Number 72 of 2016 amends earlier provisions on the mechanism of state capital participation and its administration within SOEs and limited liability companies, thereby clarifying how separated state assets are injected, recorded, and supervised as equity participation.

Beyond sector-specific regulations, the legal architecture of SOEs is also intertwined with broader public finance legislation. Law Number 17 of 2003 establishes the fundamental principles of state financial management, including the concept of separated state assets as a source of capital for SOEs. Complementarily, Law Number 1 of 2004 governs the administration of the state treasury and delineates governmental authority in overseeing and safeguarding state assets, including those converted into equity in SOEs. Taken together, this constellation of statutes and regulations forms an integrated regulatory regime that ensures SOEs operate within a dual paradigm: as corporate entities subject to business discipline and as extensions of the State entrusted with managing public resources in a manner consistent with accountability, transparency, and the broader public interest (Ren et al., 2023).

State-Owned Enterprises (SOEs) are defined as business corporations in which the government holds full or a significant portion of ownership, primarily through direct investment drawn from state assets that are distinct from the public treasury. This delineation effectively designates these assets as equity within the corporate structure of the SOE, while still upholding the legal status of state ownership. This principle is encapsulated in Article 4, paragraph (1) of Law Number 19 of 2003, which specifies that the capital structure of an SOE consists of state assets that have been formally separated from the State Budget framework and designated as government equity participation in the enterprise. This legal foundation is vital in understanding the operational and financial frameworks governing SOEs.

Moreover, the regulatory framework further clarifies that state capital participation for the purpose of establishing an SOE or acquiring shares in an existing SOE may originate from several lawful sources. These include: (a) allocations from the State Revenue and Expenditure Budget, as part of fiscal policy and public investment; (b) the capitalization of reserves accumulated within the enterprise; and (c) other legitimate sources recognized under the prevailing legal and financial system. Through these mechanisms, the State's financial involvement in SOEs is structured, recorded, and administered in accordance with statutory provisions governing public finance and corporate governance (Tuti & Muldjabar, 2026).

According to Law No. 19 of 2003, SOEs consist of two types: a) Company Company (Persero), which is a form of SOE that aims to obtain profits and its capital is divided into shares, b) Public Company (Perum), which is a form of SOE that aims to provide services to the community, but still seeks profit.

Pelindo constitutes a State-Owned Enterprise organized in the form of a Persero, which, pursuant to Article 12 of the SOE Law, is fundamentally oriented toward generating profit in order to enhance and optimize the overall value, performance, and sustainability of the company. As a Persero entity, Pelindo operates under a corporate structure similar to that of a limited liability company, with capital divided into shares and subject to principles of sound corporate governance, accountability, and business efficiency.

Pelindo, functioning as a Persero, operates in accordance with the regulatory framework established by Law Number 40 of 2007 concerning Limited Liability Companies, in conjunction with Law Number 6 of 2023, which confirms the Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. These legal instruments collectively provide a comprehensive foundation for Pelindo's corporate existence and activities. The regulations delineate the structure and mechanisms of corporate organization, including provisions for the General Meeting of Shareholders, the composition and authority of the Board of Directors and the Board of Commissioners. They also specify the rights and obligations associated with share ownership, fiduciary responsibilities, reporting duties, and accountability standards. Furthermore, these laws encompass broader aspects of corporate governance, risk management, compliance, and operational administration within the Indonesian legal system and the national business environment (Hermanto & Diani, 2022).

The internal budget of SOEs is a financial plan prepared by SOEs to regulate the use of their financial resources over a certain period. This budget is a guideline for carrying out all of the Company's activities. The internal budget of SOEs is obtained from various sources that are strictly regulated to support operations, business development, and public services. These budget sources reflect the strategic role of SOEs in the economy and their responsibilities as state-owned entities (Ainiyyah, 2022).

Sources of SOEs' Internal Budget: a) Initial Capital from the State (The initial capital of SOEs comes from state capital participation (PMN/*Penyertaan Modal Negara*) taken from the separated state wealth and this participation is regulated in the State Budget and recorded as state assets. b) Company Profit (Profit) (Net profit after tax earned by SOEs is used to fund internal needs, such as business development, investment, and reserve funds and A portion of the profits are also deposited into the state as dividends. c) Operating Income (Income generated from the main business activities of SOEs, such as sales of products or services. Examples: Income from fuel distribution (Pertamina), telecommunication tariffs (Telkom), or transportation services (Garuda Indonesia), d) Revenue from Investment (Profits from investments made by SOEs, either in the form of shares, bonds, or capital participation in other companies, e) Loans or Funding from Third Parties (SOEs can obtain funds through loans from banks, bond issuance, or other sources of financing, both from within and outside the country, and this funding is usually used for strategic projects or business expansion, f) Government Subsidies (In the case of SOEs that act as public service providers, subsidies from the government can be one of the sources of income to cover operational costs (Mulhadi, 2020). Example: Subsidies for public transportation (Perum Damri) or the provision of electricity for the underprivileged (PLN/*Perusahaan Listrik Negara*).

The main components of the internal budget consist of revenue, spending, investment, and funding. The Internal Budget of SOEs is used for the Company's Operations (costs to carry out daily activities, such as employee salary payments, purchase of raw materials, and infrastructure maintenance), investment and business development (the use of funds to expand production capacity, open new business lines, or develop technology that supports business efficiency). In addition, it is also used for National Strategic Projects (funds are used to support infrastructure projects that are considered important for national economic growth, such as the construction of toll roads, ports, or power plants), public services (the provision of social services, such as public transportation, food distribution, or the construction of public housing), dividend payments to the State (part of the net profit is used to pay dividends to the government as the majority shareholder), Research and Development (The use of the budget for product innovation, new technology, or service quality improvement). SOEs' internal budgets are also used as reserve and risk funds (SOEs set aside part of their budget for reserve funds that can be used to overcome financial risks, such as operational losses or market fluctuations), and corporate social responsibility (part of the budget is used for CSR programs aimed at improving community welfare and maintaining environmental sustainability).

In the context of the Development and Development of Pelindo Port as an SOE, the preparation of the Corporate Budget Activity Plan (RKAP/*Rencana Kerja dan Anggaran Perusahaan*) can determine the Internal Budget to carry out land acquisition and reclamation activities. Thus, according to the applicable legal principles in SOEs, Pelindo can use the internal budget to finance land acquisition, as long as it has been budgeted in the RKAP.

The legal consequence of financing land acquisition through Pelindo's internal budget is that Pelindo becomes the party conducting the land acquisition within the meaning of Article 11 paragraph (2) of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The provision stipulates that land acquired for public-interest development becomes the asset of the agency requiring the land. In the present context, where the acquisition or reclamation is financed through Pelindo's own corporate funds rather than the State Budget (APBN), Pelindo constitutes the entity that requires, finances, and utilizes the land for port development. Consequently, the subsequent requirement in concession arrangements that such land be transferred to the Ministry of Transportation as the holder of HPL lacks a clear basis in the Land Acquisition Law. From the perspective of the hierarchy of laws, a concession agreement cannot derogate from statutory provisions governing the legal consequences of land acquisition. Therefore, to the extent that a concession agreement requires the transfer of land acquired and financed by Pelindo to the Ministry of Transportation without an explicit mandate in higher legislation, such a requirement may be regarded as inconsistent with Article 11 paragraph (2) of Law Number 2 of 2012 and the principle of lex superior *derogat legi inferiori* (Tanzill et al., 2026). This inconsistency creates legal uncertainty regarding the status of the acquired land and weakens Pelindo's position as the party that has borne the financial and legal responsibility for its acquisition.

3.5. Regulations that regulate land acquisition or reclamation using state budget funds can be given in capital participation to PT Pelabuhan Indonesia (Persero)

In essence, a State-Owned Enterprise (SOE) is a commercial entity in which the entirety or a controlling portion of its equity is vested in the State through direct investment originating from separate state assets. This concept underscores that the State's ownership is not merely symbolic but materialized through capital placement that has been detached from the general state treasury and converted into corporate equity. Regarding capital participation, the law provides that state investment for the purpose of establishing or acquiring shares in an SOE may derive from several sources, namely: (a) allocations from the State Budget, (b) the capitalization of company reserves, and (c) other legitimate sources recognized by law. Where the injection of capital originates from the State Budget and is intended for the formation of an SOE or a limited liability company, such participation must be formalized through a Government Regulation. Furthermore, any alteration in the composition of state equity, whether in the form of an increase or reduction of capital, including adjustments to the percentage of state shareholding in a Persero or other limited liability company, must likewise be enacted through a Government Regulation. An exception applies to additional capital derived from the capitalization of reserves or other non-budgetary sources, which are not subject to the same formal requirement.

Based on this, then: a) If Pelindo conducts land acquisition or reclamation, it cannot use state budget funds directly, b) If land acquisition and reclamation use state budget funds, it must be carried out by the Port operator (Ministry of Transportation), c) The land resulting from land acquisition and reclamation, after being assessed, can become state capital participation in SOEs. This must be stipulated by the Government Regulation (Jatmiko, 2022).

The fact of land acquisition by Pelindo and the Concession Agreement, in fact, has been agreed between Pelindo as a BUP and the Ministry of Transportation as the Port Authority in the Concession Agreement, which, in essence, Pelindo procures land for the port (financing by Pelindo), but the land obtained by Pelindo as a result of land acquisition is handed over to the Ministry of Transportation to be owned with HPL (Sidiq, 2023).

As a result, Pelindo has no direct legal relationship with HPL land. This makes it difficult for Pelindo to work with investors. The Ministry of Transportation, as the holder of HPL, has the authority to grant parts of HPL land with a land right, namely HGB, to Pelindo. Even so, it is still difficult for Pelindo to cooperate with investors, because HGB, on behalf of Pelindo, is on HPL land, so everything related to HPL must be approved by the HPL holder, namely the Ministry of Transportation. Investors also cannot have the opportunity to be HGB holders, even though land ownership is the main factor in carrying out business activities. In carrying out business activities, investors need legal certainty in land ownership. In addition, if needed, the land owned by the investor can become the object of the Dependent Rights (Djafar et al., 2023).

Regarding the Concession Agreement that has been signed by Pelindo and the Ministry of Transportation, the parties are obliged to implement the contents of the concession agreement during the concession period. If it is not implemented, there will be a default. After the concession agreement is completed, the HPL land on behalf of the Ministry of Transportation is handed over to the Port Authority (Ministry of Transportation) along with the port facilities.

Pursuant to the binding agreement that has been lawfully concluded between the relevant parties, the agreed terms and conditions must continue to be implemented in good faith, because they constitute obligations that have been expressly stipulated and mutually accepted in the agreement. The principle of pacta sunt servanda requires that every valid agreement be honored and carried out consistently. Furthermore, based on verifiable evidence demonstrating that the land acquisition process, including all related expenses and administrative procedures, has been financed entirely by Pelindo through its internal corporate budget, and not through direct allocations from the State Budget, it is legally reasonable that, subject to approval by the Ministry of Transportation, an application for a change of name in the HPL certificate may be submitted. Such application would seek the transfer of the designation of the HPL holder from the Ministry of Transportation to Pelindo and may be formally addressed to the Ministry of Agrarian and Spatial Planning/National Land Agency in accordance with prevailing land administration procedures (Sumanto, 2021). This proposed change does not contravene any statutory provisions, considering several fundamental legal grounds. First, the governing legal framework applicable to the granting and administration of HPL is the Land Law regime, as the primary object concerned is land and land rights. Second, Article 11 paragraph (2) of the Land Acquisition Law clearly stipulates that where the agency requiring land acquisition for public interest purposes is a State-Owned Enterprise, the land shall belong to the SOE. Third, both the Job Creation Law and Government Regulation Number 18 of 2021 expressly recognize that State-Owned Enterprises, including Pelindo, qualify as subjects eligible to be granted Management Rights (HPL). Therefore, the legal basis for recognizing Pelindo as the holder of HPL is firmly supported by higher-level legislation.

In circumstances where Pelindo intends to develop a new port facility and engage in cooperation with domestic or foreign investors, Pelindo may independently conduct land acquisition activities using its own corporate funds. In principle, HPL may still be granted to Pelindo under such conditions because, first, the Land Acquisition Law, the Job Creation Law, and Government Regulation Number 18 of 2021 consistently acknowledge that Pelindo, as a State-Owned Enterprise, can be a legitimate subject of HPL. Second, the Shipping Law does not impose any explicit obligation requiring that land controlled or managed by Pelindo must necessarily be registered in the name of the Port Authority. The requirement for the handover of HPL land to the Port Authority is found only in a Regulation of the Minister of Transportation, which occupies a lower hierarchical position than statutory laws. Given that its substantive content differs from and potentially conflicts with the provisions of higher-ranking legislation, such ministerial regulation must be assessed in light of the principle of lex superior derogat legi inferiori, whereby lower regulations may not contradict higher laws (Ferels et al., 2024).

The distinction between land acquired through the State Budget (APBN/Anggaran Pendapatan dan Belanja Negara) and land acquired through Pelindo's internal corporate funds is legally significant in determining the status of Management Rights (HPL). Where land acquisition or reclamation is financed through the APBN, the resulting land constitutes a state asset and may appropriately be placed under the control of a government institution, including the Ministry of Transportation, as an embodiment of the State's right to control land (Sri et al., 2019. Conversely, where the acquisition or reclamation is financed entirely through Pelindo's internal funds, the legal relationship with the acquired land arises in favor of Pelindo as the entity that bears the financial burden, undertakes the acquisition process, and utilizes the land for port development. In such circumstances, the automatic placement of HPL under the Ministry of Transportation lacks a clear legal basis unless expressly mandated by higher legislation. Therefore, the source of funding constitutes a decisive factor in determining the appropriate holder of HPL and must be considered when assessing legal certainty regarding land acquired for port development.

4. Conclusion

The legal regime governing the granting of Management Rights (HPL) for port development and expansion undertaken by PT Pelabuhan Indonesia (Persero) (Pelindo) fundamentally falls within the domain of Land Law, given that the primary object being regulated is land. From the perspective of agrarian legislation, Pelindo qualifies as a lawful subject capable of holding HPL. Accordingly, where land acquisition or reclamation activities are financed through Pelindo's internal corporate budget, a direct legal relationship arises between Pelindo and the acquired land. This position is supported by Article 11 paragraph (2) of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, which provides that land acquired for public-interest development belongs to the institution requiring the land. Consequently, where Pelindo undertakes land acquisition for port development using its own funds, the legal basis for Pelindo's control over the acquired land is firmly supported by agrarian legislation.

At the same time, the coexistence of provisions contained in the Shipping Law, the Land Acquisition Law, the Job Creation Law, Government Regulation Number 18 of 2021, and ministerial regulations issued by the Ministry of Transportation has created normative overlap and disharmony regarding the determination of the HPL holder over port land.

The requirement that land acquired or reclaimed by Pelindo be handed over to the Ministry of Transportation as the holder of HPL does not fully provide legal certainty, particularly where the acquisition is financed entirely through Pelindo's internal budget. This distinction is legally significant because land acquired through APBN funding constitutes a state asset that may appropriately be controlled by the State through the Ministry of Transportation, whereas land acquired through Pelindo's internal corporate funds establishes a direct legal and economic relationship between Pelindo and the land concerned.

The contribution of this article lies in demonstrating that the determination of HPL holders in port development should be assessed primarily through the framework of agrarian law and the Land Acquisition Law, while shipping regulations and concession arrangements should be interpreted consistently with higher-ranking legislation. In this regard, the principle of lex superior derogat legi inferiori provides an important basis for resolving normative conflicts concerning land acquired by State-Owned Enterprises for port development.

To minimize normative conflict and enhance regulatory coherence, the Regulation of the Minister of Transportation governing port land should be harmonized with the Land Acquisition Law and Government Regulation Number 18 of 2021. Furthermore, where land acquisition or reclamation is financed entirely through Pelindo's internal funds, HPL should be granted in the name of Pelindo. In cases where concession agreements have already been concluded, their implementation should continue in accordance with contractual obligations, while allowing the possibility of administrative adjustment of the HPL holder through the applicable land administration procedures. The supervisory and regulatory functions of the Ministry of Transportation as Port Authority should nevertheless be maintained to ensure effective port governance without compromising legal certainty regarding land rights.

The appropriate legal framework is one in which the determination of HPL holders is governed primarily by agrarian legislation, particularly Law Number 5 of 1960, Law Number 2 of 2012, Law Number 6 of 2023, and Government Regulation Number 18 of 2021, while shipping regulations govern operational, regulatory, and supervisory aspects of port administration. Under this framework, land acquired or reclaimed through Pelindo's internal corporate funds should be eligible for HPL in Pelindo's name because Pelindo is the entity that finances, acquires, manages, and utilizes the land for port development. Conversely, where land acquisition is financed through the State Budget (APBN), the resulting land may appropriately remain under state control through the Ministry of Transportation in accordance with the applicable public finance and state asset regime.

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