

Juridical Construction Of Building Rights Over Management Rights In The Land Law System

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Abstract. *In the practice of national land administration, the legal instrument known as Land Management Rights (HPL) has emerged as a representation of the State's Sovereign Rights over land. However, their place in the land rights system is still up for discussion, particularly when Building Use Rights (HGB), which are widely utilized in the construction of industrial, residential, and commercial zones, are granted on top of them. Because it deals with legal certainty and protection for the interests of rights holders and investors, this matter is important. The goal of this study is to determine where HPL stands in relation to the land law system and establish the legal connection between HPL holders and HGB holders. Through the examination of primary, secondary, and tertiary legal sources, the approach utilized is normative juridical legal research with a legislative and conceptual perspective. The discussion's findings indicate that although it is situated inside an HPL management area, HGB continues to be a land right given by the government, but HPL is an administrative authority originating from the State's Right of Control rather than a property right as described by the Basic Agrarian Law. As a result, the connection between HPL and HGB holders is administrative-contractual in character, but the source of authority for issuing HGB is not altered. Therefore, a conceptual clarification is necessary to guarantee legal certainty.*

Keywords: *Building Use Rights; Land Law; Management Rights.*

1. INTRODUCTION

Land is a crucial asset that holds various important meanings for the state. Its economic significance is highlighted by its role as a key element in production relating to industries, commerce, housing, and infrastructure growth. The social aspect is evident in how land serves as a living space that is deeply connected to community identity, well-being, and sustainability (Widiatmaka, 2015). The political side is shown in how land control and allocation can act as tools of public policy and also lead to disputes. Recent statistics from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency show that land-related disputes continue to be a major focus in the annual case statistics, underscoring that land management is a core issue in the national legal framework (Faizal, 2024). The important role of land is recognized in Article 33, paragraph (3) of the 1945 Constitution of Indonesia. This article says that the land,

water, and the natural resources on it belong to the government and should be used to benefit the people as much as possible. (Hastarini, 2024) This legal statement establishes the government as the authority responsible for managing, controlling, and overseeing how land resources are used. The focus on benefiting the people acts as a constitutional guideline that restricts and shapes all land policies, ensuring they align with the goals of a fair society based on the rule of law. The idea of the State's Right of Control (Hak Menguasai Negara) developed as a legal interpretation of this constitutional authority. This principle is not understood as private ownership of the state, but instead as a public authority with the purpose of managing the designation, use, accessibility, and upkeep of land. The state's authority to exercise control grants it the power to allocate different kinds of land rights to specific legal entities through official methods defined by laws and regulations. (Djaja, 2021) In this context, the connection between the government and citizens regarding land matters is situated within a public law structure that includes regulatory and administrative functions. The system of national land law was later established based on the principle of legal unification, as stated in Law Number 5 of 1960 regarding Basic Agrarian Principles (UUPA). This regulation replaced the two separate systems of colonial agricultural law and customary law with one unified national system that is based on customary law, as long as it does not conflict with national and state interests. The UUPA serves as the fundamental basis that combines the ideas of government oversight, the social role of land rights, and legal assurance via the land registration system. This wording underscores that all land rights come from the State's Right of Control, which serves as the primary source of authority within the framework of agrarian law.

The framework of land rights under the UUPA system comprises Right of Ownership (Hak Milik), Right of Cultivation (Hak Guna Usaha), Right of Building (Hak Guna Bangunan), Right of Use (Hak Pakai), and Right of Management (Hak Pengelolaan). Every right has unique features, topics, items, and timeframes based on the reason for its granting. The Right of Ownership is regarded as the most powerful and comprehensive right for citizens of Indonesia, whereas the Right of Cultivation and the Right of Building are intended to facilitate productive economic endeavors. The Right of Use and the Right of Management offer adaptability in land oversight for specific individuals or entities with narrower ranges of power. This distinction highlights a structured approach intended to balance personal interests, business interests, and community interests. The role of the Right of Management (HPL) in this system is distinct, as it is not clearly defined within the main text of the UUPA. Instead, it has evolved through the application of regulations and practices related to land administration. HPL refers to the transfer of certain powers from the state to government bodies, state-run companies, regional enterprises, or specific authorities that are responsible for planning, using, and distributing sections of land to other parties. (Juni, 2015) This authority is not the same as ownership rights; instead, it is an administrative right that comes from the State's Right of Control. As a result, all permissions for derivative rights concerning land governed by HPL are maintained under state oversight and must adhere to the principle of land's social function.

The Right of Building (Hak Guna Bangunan / HGB) is one of the important land rights that plays a significant role in the processes of national development. According to (Zahra, 2025), the UUPA describes HGB as the entitlement to build and own structures on land that belongs to someone else for a designated duration. The restricted and time-sensitive characteristics of HGB render it a legal tool that adjusts to investment requirements and regional development (Franciska, 2022). According to its implementation rules, HGB can be awarded on government land, land that is managed by the state, or land that is privately owned, provided specific conditions are met. This quality makes HGB serve as a link between those who have power over land management and individuals engaged in development efforts. The duration of the HGB, which is theoretically awarded for a maximum of 30 years and can be extended and renewed in accordance with statutory requirements, represents a compromise between legal certainty and government regulation. Periodic review of land usage is assured by the mechanisms of extension and renewal, which also assure business continuity. The juridical interpretation of HGB becomes more intricate in the context of land subject to the Right of Management due to the triadic connection between the state, the owner of HPL, and the owner of HGB. It is thus essential to have a thorough understanding of HPL since the authority attached to it serves as the foundation for the legitimacy of the granting of HGB and defines the parameters of the legal relationship between the state, the owner of HPL, and the owner of HGB. Within the Indonesian land law framework, the Right of Management (HPL) is regarded as a derivative right of the State's Right of Control that was created by the implementation of laws and land administration procedures. (Pardede, 2019) The fact that Law Number 5 of 1960 does not specifically include it suggests that it is not a traditional land right, such as the Right of Ownership, the Right of Cultivation, or the Right of Building, but rather a delegation of particular public powers to particular individuals.

The notion of HPL has evolved through government regulations and agricultural policies that give government organizations, state-owned businesses, regional-owned enterprises, and special authorities the authority to administer state land in accordance with economic development and public service activities. Because it has both public and private elements, the "intermediate right" character of HPL puts it in a unique situation. Its authority originates from the state and is focused on the public good, demonstrating the public element. When the holder of the HPL is given the power to assign pieces of property to third parties by granting derivative rights, such as the Right of Building or the Right of Use, the private dimension emerges. This power structure shows that, in its legal interactions with other parties, HPL is both an administrative function and a management tool that has civil law ramifications. The practice of granting Right of Building (Hak Guna Bangunan/HGB) over land under Right of Management (Hak Pengelolaan/HPL) has become a common pattern in the development of industrial estates, ports, large-scale housing, and special economic zones. This scheme allows the state to retain control over land through the holder of HPL, while business actors obtain legal certainty to construct and own buildings through HGB. The model theoretically

reflects the principle of balance between public interests and investment needs. However, the complexity of the legal relationship between the HPL holder and the HGB holder simultaneously opens space for juridical problems that require more precise conceptual regulation.

The initial issue revolves around the possible conflict of power between the holder of the HPL and the holder of the HGB. The HGB holder obtains a personal ownership right that can be enforced against outside parties, whereas the HPL holder maintains control over the underlying land. Conflicts can emerge during the renewal or extension of the HGB, as administrative procedures frequently mandate consent from the HPL holder. This situation leads to concerns about how far the HPL holder can interfere with the ownership rights granted by the state to the HGB holder. A further issue pertains to the classification of land, the transfer of rights, and the presence of mortgage rights on HGB secured by HPL land. In financial transactions, HGB is often used as a form of secured interest via mortgages. Complications occur when provisions in the agreements between the HPL and HGB holders limit the ability to transfer or burden these rights. The disconnect between public land regulations and private contractual practices can create legal ambiguities, especially for creditors seeking reliable enforcement options for their collateral. The construction of the legal relationship between HPL holders and HGB holders also raises theoretical debates regarding the nature of this relationship. (Dalimunthe, 2023) Such a relationship cannot be fully categorized as a purely private law relationship because its source of authority derives from the public mandate of the state. At the same time, it cannot be viewed solely as a public law relationship because it involves proprietary rights that may be transferred and used as collateral. The concept of a mixed or hybrid legal relationship therefore provides a more adequate explanation, although this concept has not yet been explicitly formulated within a systematic normative framework.

The changes in land rules in recent years show that there are efforts to strengthen and confirm the regulations for HPL and HGB, especially through Law Number 11 of 2020 and its related rules. This new legal framework seeks to provide clarity about time limits, extensions, and the integration of licensing systems that are based on risk. By reaffirming HPL's role as the foundation for granting derivative rights and ensuring clear timeframes for HGB, it is hoped that the investment environment will improve. However, there are still obstacles in aligning the rules from older regulations with the new ones, especially in maintaining the core principles of the Basic Agrarian Law (UUPA) in the legal reform process. The importance of examining the legal structure of HGB over HPL arises from the need to create a clear and organized conceptual framework. The absence of detailed rules regarding HPL's standing within land rights can lead to various interpretations, which may cause inconsistencies in how things are administered. A clear theoretical framework that outlines the limits of authority, the nature of legal relationships, and the outcomes of rights and duties is essential for ensuring legal clarity and protection. This research is particularly significant for national development and investment, where having clear legal rules is the key foundation for responsible, open,

and fair land governance. These conditions highlight the need for research on the legal construction of the relationship between HPL and HGB to ensure the land law system remains consistent and to provide legal certainty for everyone involved.

2. RESEARCH METHOD

This study utilizes a normative legal research method, which is a type of legal research that views law as norms or regulations that are relevant within the framework of statutory laws. (Azhar, 2020) Normative legal research primarily seeks to study legal principles, the organization of legal systems, the alignment of laws, and the development of norms within a specific area using library research. As stated by Peter Mahmud Marzuki, normative legal research involves the examination of library resources or secondary data that includes primary, secondary, and tertiary legal materials. The purpose of this research is to identify legal rules, principles, and doctrines that respond to the specific legal issues being investigated (Ahmad, 2024). This method is pertinent for studies regarding the legal framework of the Right of Building (HGB) in relation to the Right of Management (HPL) because the topics explored involve unclear norms, inconsistent regulations, and the necessity for a clear conceptual structure within the national land law system.

The methods employed in this study consist of the statutory method (statute method) and the conceptual method (conceptual method). The legal approach involves analyzing the different rules that oversee the Right of Management and the Right of Building, as outlined in the Basic Agrarian Law and its accompanying regulations, to evaluate the coherence and organized structure of these rules. The theoretical method is used to examine legal ideas, including the State's Right of Control, ownership rights, and the interaction between public and private legal relationships within the framework of HGB concerning HPL.

The legal resources utilized include primary legal materials, which encompass statutory regulations and pertinent court rulings, secondary legal materials in the form of books, academic journals, and expert opinions, as well as tertiary legal materials such as legal dictionaries and encyclopedias that aid in comprehending legal vocabulary. The examination is carried out in a practical way, aiming to develop a structured legal framework that can provide legal assurance and protection in land management practices.

3. RESULT AND DISCUSSION

3.1. The Position of the Right of Management within the Structure of Land Rights

The position of the Right of Management within the structure of land rights cannot be separated from the constitutional foundation concerning state control over agrarian

resources. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the land, waters, and natural resources contained therein are controlled by the state and shall be utilized for the greatest prosperity of the people. This norm embodies a fundamental principle that land, as part of the earth, falls within the sphere of constitutionally based public control. State control is intended as an instrument to ensure equitable distribution and utilization oriented toward public welfare. (Elvis, 2023) From this constitutional requirement comes the legal notion of the State's Right to Control (Hak Menguasai Negara). Although the State's Right to Control is an attributive form of public authority, it differs from private ownership rights. This power includes administrative management (*bestuur*), regulatory functions (*regeling*), operational management (*beheer*), and oversight (*toezicht*) over land as a strategic resource. In this sense, the state serves as the ultimate arbiter for ensuring that land use complies with the aims of a rule-of-law state and the values of social justice. (Afifah, 2013).

The authority of the State to manage land is governed by Law Number 5 of 1960, which focuses on Fundamental Agrarian Principles. This legislation asserts that any land rights that may be claimed or managed by legal entities fundamentally arise from the State's authority. Instead of being seen as landowners in a conventional sense, the State is recognized as the collective entity representing the power of the people, authorized to decide how land is distributed, utilized, and the legal relationships between people and land. This framework distinctly separates private ownership from governmental oversight within the national agrarian legal framework. (Khayati, 2022).

Land rights acknowledged under the Basic Agrarian Law (UUPA) are essentially extensions of the State's authority. Rights such as Ownership Rights (Hak Milik), Cultivation Rights (Hak Guna Usaha), Building Rights (Hak Guna Bangunan), and Rights of Use (Hak Pakai) are assigned to legal entities through designated legal processes, serving as tangible expressions of state power. This signifies that land rights are not inherent rights that exist autonomously but rather rights that are granted and validated through the legal standards established by the state. Therefore, the legal recognition of each land right is contingent upon its alignment with the guidelines and restrictions set by the national legal framework. (Sugi Asadi and Ruhadini, 2024).

The arrangement and ranking of land rights specified in the UUPA are designed in a constrained way. Ownership Rights are the most robust and all-encompassing, though they still hold a social responsibility. Cultivation Rights are issued for extensive agricultural, plantation, or fishery operations. Building Rights allow for the construction and ownership of buildings on land not owned by the individual. Rights of Use permit limited types of use for particular objectives. This organization illustrates a distinct systematic categorization of land rights based on their characteristics, holders, and duration. (Afifah, 2013).

The concept of a closed system within the national agrarian legal structure indicates that the recognized types of land rights are confined to those specifically mentioned in

the legal statutes. This structure is intended to provide legal clarity and to avoid the creation of new classes of rights outside the established legal framework. Clarity about the kinds and features of land rights lays the groundwork for organized land management and legal safeguards for those holding rights. (Santoso, 2012).

The Right of Management is not explicitly mentioned within the main provisions of the Basic Agrarian Law as one of the types of land rights. The absence of explicit regulation has generated debate concerning the normative position of HPL within the structure of land rights. In practice, land administration and implementing regulations have developed the concept of HPL as an instrument for managing state land by certain institutions. This development reflects practical needs that were not fully accommodated within the original formulation of the UUPA. (Arianto, 2024).

The legal significance of not clearly recognizing HPL in the rules of the UUPA leads to different interpretations. Some viewpoints categorize HPL as part of land rights, while others see it as a type of delegated power in administration. This uncertainty affects how the legal nature of HPL is understood, especially regarding its connection with related rights like Building Rights (HGB). This confusion could lead to problems when it comes to giving, renewing, and changing land rights under HPL. (Absori, 2021).

Essentially, the Right of Management represents the transfer of some of the State's Right to Control to designated public legal entities. Government agencies, state-owned companies, regional-owned companies, and special authority organizations are given the power to plan, use, and distribute parts of land to external parties. This delegation is conducted to assist in carrying out public service duties and promoting economic growth. This authority continues to exist within the limits of state control and does not change the designation of the land as land that is under state control.

The character of HPL displays a prominent public aspect. Individuals holding HPL have the right to manage the distribution and utilization of land in line with spatial planning and development guidelines. This authority is administrative and cannot be separated from the public service role that is essential to the institution possessing it. This public aspect sets HPL apart from individual land rights, which provide direct ownership rights to their owners.

A fundamental difference between HPL and individual land rights, such as Building Rights (HGB), lies in the nature of their authority. Building Rights confer proprietary rights that may be transferred and used as objects of security. In contrast, HPL does not confer proprietary rights in the classical sense, but rather administrative authority to manage and distribute state land. Holders of HPL do not possess the right to treat the land as private property, but instead hold a mandate of management subject to public law limitations.

The conception of HPL as a "functional control instrument" provides a more accurate

explanation of its position within the land law system. HPL functions as a mechanism for implementing land policies operationally through specific entities designated by the state. This function enables flexibility in the management of strategic areas without transferring control of land from the state. This functional character affirms that HPL is not a purely proprietary right, but rather an administrative mechanism derived from public authority.

Therefore, the Right of Management (HPL) is located in the middle of the system of land rights, between the system of individual rights and the system of public control. The granting of derivative rights to third parties is mediated by the State's Right to Control through the HPL. In order to avoid infringing upon proprietary rights granted over the land, this middle ground necessitates a clear demarcation of authority. Such clarity is necessary for preserving the uniformity of the closed system within the national agrarian legal framework.

The principle of the social function of land, which is a core element of the Basic Agrarian Law (UUPA), must also be considered when evaluating the position of HPL. All forms of land use and management, including those facilitated by HPL, must be aimed towards the common good and the balance of interests. The Constitution mandates that the application of HPL as a tool for local development must adhere to the focus on public well-being. This concept places a normative restriction on the possibility of abusing managerial power. (Syukrisna, 2025).

The legal nature of the Right of Management (HPL) represents one of the most intricate issues in the country's land law framework. The main question revolves around whether HPL should be regarded as a land right under the UUPA framework, simply as an administrative right, or as something unique in its own category. The unclear status of HPL within the overall land rights framework has led to differing interpretations in both practical applications and legal theory. Thus, examining its legal nature is crucial for understanding the extent of the powers granted to HPL holders and how it relates to secondary rights like Building Rights (Hak Guna Bangunan/HGB).

Systematically, HPL does not fall within the category of land rights formulated in a limited manner under Law Number 5 of 1960. The absence of explicit inclusion indicates that HPL is not a proprietary right equivalent to Ownership Rights, Cultivation Rights, Building Rights, or Rights of Use. A proprietary right presupposes direct authority over the land that can be asserted against any party (*erga omnes*). HPL does not fully satisfy this characteristic, as its authority derives from the delegation of public functions of the state and is limited by specific management objectives.

Doctrinal views generally see HPL as a power given to the government through its authority to manage land. Boedi Harsono, a top expert on land law in Indonesia, points out that HPL is not really a land ownership right in the usual sense; instead, it is a way for the government to control and oversee land use. This viewpoint underscores the

public aspect of HPL, which is closely tied to the government's role as a regulator and manager. This understanding supports the idea that HPL should be viewed more as an administrative tool instead of a personal right. (Rahmadani, 2022).

However, developments in practice and regulation indicate that HPL possesses characteristics that cannot be fully explained as an ordinary administrative right. HPL grants concrete authority to its holder to plan, utilize, and allocate portions of land to third parties. Such authority also carries civil law implications because it involves legal relations with other subjects receiving derivative rights. This complexity has led to the view that HPL possesses a *sui generis* character, namely a unique right that cannot be fully classified within either public law or private law categories.

The nature of the authority of HPL holders is first reflected in the function of planning land allocation. HPL holders are authorized to formulate plans for the use and development of areas in accordance with spatial planning policies and the objectives underlying the grant of such rights. This authority demonstrates that HPL functions as an instrument for implementing agrarian and development policies. Such planning is not exercised freely as in private ownership, but is bound by normative limitations and public interests.

The second authority relates to the utilization of land for designated purposes as per the authorization provided by the state. Such use may involve the creation of public amenities, industrial areas, ports, residential zones, or other important functions. The land utilized by HPL holders is governed by state regulations and consequently cannot be transferred freely without the consent of the appropriate authority. This feature indicates that HPL does not provide complete ownership of land but instead offers restricted operational control.

The most important authority is the allotment of plots of land to third parties via the grant of land rights, such as Rights of Use or Building Rights. This exercise illustrates that in the distribution of land rights, HPL serves as a mediator between the government and other legal entities. This allocation does not indicate that the owner of the HPL is now the owner of the land; instead, it represents the use of delegated power originating from the State's Right to Control. Because of its location, HPL serves as a key connection point in the system for controlling state land. (Azhar, 2020).

The limitation of HPL authority lies in the principle that its holder acts as an executor of state functions rather than as a private owner of land. HPL holders cannot treat land as an object of unrestricted transactions in the same manner as ownership rights. Every act of management must conform to the objectives of the right and the national land policy. Violations of these limits may result in the revocation or review of the authority granted.

The implications of the legal character of HPL become evident in the practice of granting

Building Rights over land under HPL. This scheme has been widely implemented in the development of industrial zones, housing complexes, commercial centers, and national strategic projects. The model allows the state to maintain control over land through HPL holders, while business actors obtain legal certainty to construct and own buildings through HGB. This structure reflects the need to balance public control and investment certainty. (Absori, 2021).

The legal framework surrounding the allocation of HGB on land under HPL establishes two linked tiers of legal relationships. The initial tier relates to the connection between the state and the HPL holder, characterized by a public and administrative essence. This connection arises from the delegation of the State's Right to Control and is regulated under public law. The state confers management authority with certain restrictions that the HPL holder must adhere to. (Djaja, 2021).

The second layer concerns the relationship between the HPL holder and the HGB holder, which contains both administrative and civil dimensions. The granting of HGB is usually preceded by an agreement or approval between the parties regulating the terms and conditions of land use. This relationship gives rise to reciprocal rights and obligations, including the payment of contributions or other specific obligations. The hybrid nature of this relationship confirms that legal relations within the HGB-over-HPL scheme cannot be understood in a single dimension. (Djaja, 2021).

Maria S. W. Sumardjono stresses that managing state land should always connect to being responsible and considering how land serves society. This viewpoint is important for understanding how HGB is given out over HPL, because any transfer of power needs to stay under government oversight to avoid straying from the goal of serving the public good. The two-part legal connection that develops should not hide the government's duty as the main authority over land management.

The unique role of HPL directly influences the legal setup of HGB given on it. When HGB is issued, its owner gets rights that can be sold or used for loans. At the same time, the HPL owner keeps control of the management of the land itself. The relationship between ownership rights and management authority needs clear limits to avoid conflicts or overlaps in power.

The assurance of legal matters in land practices relies significantly on the clarity of this construction. Uncertainty about the legal nature of HPL may lead to confusion in the procedures for extending HGB, transferring rights, or creating security interests in land. Investors and financial organizations need guarantees that the rights acquired have sufficient legal validity and safety. It is essential to clearly understand the nature of HPL to ensure the stability of these legal relationships.

An examination of the legal nature of HPL and its effects on the awarding of HGB reveals that HPL cannot be simplified to an ordinary administrative right; however, it

also cannot be aligned with private ownership rights. HPL acts as a working tool of regulation that comes from the State's authority to manage and functions as a way to allocate land rights. The two-tiered legal connection created by the issuance of HGB regarding HPL demonstrates the intricate nature of the national land law framework.

The expected consequences of the role of the Right of Management (HPL) in the framework of land law have a direct impact on legal certainty. The unclear nature of HPL, whether it is considered an administrative right or a unique right, can lead to practical uncertainty. Legal certainty necessitates clear understanding of the subject, object, and extent of authority in all legal relationships. When the limits of power between the government and HPL holders are not clearly defined, the possibility for different interpretations grows more substantial.

This possible uncertainty is especially clear in the connection between the state, which possesses the Right to Control, and the HPL holder, who receives the granted authority. This delegation of power must stay within the limits set by the state's control. Nonetheless, administrative procedures frequently position HPL holders in a role that seems to provide them with superior control over the land they oversee. This viewpoint might change the understanding of HPL from a management tool into a type of partial ownership that does not completely align with constitutional principles.

The lack of clarity regarding the limits of authority also affects the granting and implementation of Building Rights (HGB) over land under HPL. As a proprietary right, HGB grants its holder strong authority to use, transfer, and encumber the right. On the other hand, HPL holders retain administrative authority over the underlying land. The interaction between these two forms of authority may create tension if there is no clear normative guidance regarding the scope of intervention by HPL holders over rights already granted by the state to HGB holders.

The risk of conflicts of authority becomes most apparent in the process of extending and renewing HGB. Normatively, extension and renewal constitute mechanisms guaranteed by statutory regulations provided that certain requirements are fulfilled. In practice, however, administrative procedures often require approval or recommendation from the HPL holder as a prerequisite. Such conditions may create problems if the HPL holder refuses or restricts the extension based on reasons that do not always have a clear normative foundation. This uncertainty has the potential to weaken the legal guarantees inherent in HGB. (Sugi Asadi and Ruhadini, 2024).

Further implications arise in relation to land security rights. HGB established over land under HPL is frequently used as an object of mortgage security (Hak Tanggungan) for credit financing. Financial institutions require certainty that the rights used as collateral possess stability and can be executed if the debtor defaults. When contractual clauses or administrative practices grant extensive authority to HPL holders to terminate or limit HGB, the value of such collateral becomes affected. Ambiguity in the legal construction

may therefore generate legal risks for creditors and investors. (Rahmatiar, 2025).

The significance of certainty about the status of HGB as an independent proprietary right is brought into sharp focus by the issue of encumbering property with mortgage security. Mortgage rights must be precisely defined and cannot rely only on the whim of a third party outside the legal processes established by legislation. The concepts of legal certainty and publicity in secured transactions law may be compromised when HGB is put in a position that is excessively reliant on the policies of HPL holders. The consistency between the land legislation system and the secured transactions system is a basic issue brought up by this scenario.

These conditions demonstrate that the ambiguity surrounding the legal character of HPL does not only affect the relationship between HPL holders and HGB holders but also extends to the financing and investment sectors. Legal certainty is a fundamental prerequisite for economic development. Uncertainty regarding the continuity of HGB over land under HPL may reduce business actors' confidence in the stability of the land law system. Such consequences contradict the objectives of national development, which require a strong and predictable legal foundation. (Suhantri, 2020).

In reality, the gap between the rules governing public land and private agreements is most clearly seen in the restrictions imposed by mortgage rights on HGB existing on land under HPL. According to Law Number 4 of 1996 about Mortgage Rights, HGB is a type of land ownership that can have a mortgage placed on it as long as it meets the criteria of clarity and visibility. Nonetheless, in reality, notaries and Land Deed Officials often find terms in the Land Use Agreement (*Surat Perjanjian Penggunaan Tanah / SPPT*) between the HPL holder and the HGB holder that limit the ability to transfer or put a mortgage on the rights without the HPL holder's written approval. (Afifah, 2013) At this point, a legal friction arises. From the perspective of property law, the mortgage attaches to HGB as an independent right. Yet contractually, the HPL holder positions itself as a party whose approval is required for any legal action involving the HGB. In practice, two approaches to resolving this issue have emerged. The first is an administrative-procedural approach, in which Land Deed Officials continue to request the consent of the HPL holder as a precautionary measure. The second is a normative-proprietary approach, which maintains that such restrictive clauses must not diminish the absolute character of HGB as an object of security. (Dalimunthe, 2023).

Within the context of executing collateral, the issue becomes even more complex. Creditors holding mortgage rights require certainty that the collateral object can be executed without depending on the will of third parties outside the debtor. If the SPPT contains a clause stating that the transfer of rights resulting from an execution auction still requires the approval of the HPL holder, then in practice the proprietary right becomes subordinated to an administrative agreement. In land practice, this issue is often resolved by including a clause in the deed stating that the consent of the HPL holder is deemed to have been conditionally granted insofar as the transfer occurs as

a result of execution under statutory regulations. This model reflects a compromise between the interest of area management by HPL holders and the legal certainty required by creditors. Accordingly, from a constructive legal perspective, restrictive clauses within the SPPT must not be interpreted as absolute limitations on the encumbrance of mortgage rights, but rather as administrative control mechanisms that do not eliminate the executorial nature of proprietary rights. (Absori, 2021).

3.2. The Legal Construction of the Relationship between Holders of the Right of Management (HPL) and Holders of Building Rights (HGB)

The legal framework governing the connection between the holder of the Management Right and the holder of Building Rights is a key factor in grasping how state land is managed. This connection doesn't merely involve a straightforward legal exchange; instead, it is created through a complex hierarchy of power. To fully understand this framework, one must look into the legal reasons for awarding Building Rights, the official role of the Management Right holder, and the link between the state, which has the authority to manage, and the individuals who are given some of that power.

The legal reasons for awarding Building Rights are clearly outlined in Law Number 5 of 1960 about Basic Agrarian Principles. This law states that Building Rights allow individuals to build and own structures on land they do not own for a specific period. This description highlights that Building Rights are a type of property right that is limited and comes from the state's controlling authority. The process of giving out Building Rights is conducted through legal processes set by the state, which means that its validity is based on public authority, not just private legal agreements.

The practice of granting HGB over land managed under HPL has obtained recognition within various land regulations and administrative practices. (Maula, 2025) Land managed through HPL essentially remains state land within the scope of public control. The granting of HGB over such land is permitted as long as it is consistent with the designated land use plan and area management policies. The recognition of this practice demonstrates that the land law system accommodates development needs without altering the fundamental status of land as an object of state control.

Within this context, HGB remains a land right granted by the state, even though the land object is under HPL management. The existence of HPL does not transfer the attributive authority to grant rights from the state to the HPL holder. The state, through its administrative organs, remains the juridical authority that determines and issues such rights. This position is crucial in affirming that the source of legitimacy of HGB never shifts from the state to the HPL holder. (Gode, 2023).

The proper normative construction must therefore place HPL not as the granting authority of the right, but as a party providing approval, recommendation, or a basis for proposal within the process of granting HGB. Such approval constitutes part of the

management authority inherent in HPL, particularly in ensuring that land use corresponds with the development plan of the area. This role is administrative and coordinative in nature rather than determinative in the sense of creating proprietary rights. This clarification prevents the misunderstanding that HGB arises from the will of the HPL holder.

The framework of legal relationships established in the process of granting HGB over land under HPL is complex and multi-faceted. The initial level of relationship exists between the state and the HPL holder within the context of public authority. The state assigns some of its land management responsibilities to specific institutions through HPL, within boundaries set by law. This relationship is of an administrative nature and is focused on carrying out the state's responsibilities in land administration.

Between the HPL holder and the HGB holder is the second level of interaction. This connection is typically expressed through regulatory agreements and administrative clearances governing land usage restrictions, financial obligations, and other technical issues. This connection, which has reciprocal rights and duties, could be administrative or contractual in nature. The state determination that grants the right nevertheless results in HGB's exclusive ownership of the property.

The third level of connection between the state and the HGB holder is a legal connection about the granting of land rights. Since the state serves as the authority that establishes and acknowledges the existence of the right, this link forms the basis of the legal validity of HGB. An examination of this stratified architecture reveals that, from a legal standpoint, HGB continues to be rooted in state authority rather than in HPL. The existence and legal legitimacy of HGB continue to be based on the attribution of the State's Right to Control, while HPL serves as a management tool for connecting the implementation of public authority. (Andrea, 2020).

It is impossible to view the legal nature of the connection between the owner of the Right of Management and the owner of Building Rights as a dichotomy between being exclusively public or private. The complexity of this connection stems from the fact that the granting of HGB is a land administration action originating from state authority, but it also entails agreements between the HPL holder and the potential HGB holder. The applicable legal regime must be determined by examining the nature of this connection under the law, including in the event of a disagreement.

Issuing HGB as a land administrative judgement makes the public dimension evident. The implementation of the State's Right to Control is realized through a decision made by an authorized land administration official as a means of granting HGB. The characteristics of an administrative decision are met by the fact that such a choice is concrete, personal, and irreversible. (Erwandi, 2023) A state administrative action based on the national land law system, not a private contract, establishes the legitimacy of HGB as a proprietary right.

The relationship between the HPL holder and the possible future HGB holder, both before and after the decision that grants the right is issued, reveals the private aspect. This relationship is typically expressed in a land use agreement that includes technical requirements, payment obligations, and clauses pertaining to the use and development of the land. These agreements establish reciprocal legal ties that are subject to the rules of civil law. Although the existence of such agreements does not change the public character of the granting of HGB, it does introduce a private layer within the framework of the legal relationship.

Such a legal relationship may therefore be classified as a hybrid or mixed relationship. This mixed character indicates that a single legal event namely the granting and implementation of HGB over land under HPL simultaneously involves two legal regimes. The public element regulates the authority and legitimacy of the granting of rights, while the private element governs the implementation and utilization of land based on agreements between the parties. This hybrid construction reflects the dynamics of modern land law systems in which the separation between public law and private law can no longer be rigidly maintained.

The theoretical implication of this mixed nature relates to determining the dispute resolution regime. Disputes concerning the validity of decisions granting or rejecting HGB principally fall within the scope of administrative law. Disputes arising from the implementation of land use agreements between HPL holders and HGB holders tend to fall within the domain of civil law. This distinction requires careful identification of the object of dispute in order to avoid overlapping jurisdiction that may generate legal uncertainty.

The limits of authority of HPL holders over HGB become a central issue in maintaining balance between management functions and the protection of proprietary rights. HPL holders possess the authority to determine land allocation and usage plans in accordance with established policies. This authority is administrative in nature and constitutes part of the area management function. Such determinations must not contradict spatial planning regulations and applicable land policies.

HPL holders are also authorized to grant approval for applications for HGB submitted over land under their management. This approval functions as verification that the intended land use by the prospective HGB holder is consistent with the management plan. HPL holders may stipulate certain conditions for land use provided that they do not contradict statutory regulations. This authority is administrative and must not be interpreted as authority to unilaterally create or abolish proprietary rights.

A juridical issue arises when this authority is related to the extension or renewal of HGB. Normatively, the extension of HGB constitutes a right that may be obtained provided that the holder fulfills the requirements determined by law. HPL holders do

not possess absolute authority to reject such extensions without legitimate legal grounds. Rejection that is not based on the principle of legality may be regarded as an act exceeding administrative authority.

The potential for HPL holders to cancel or end HGB unilaterally should be examined through the lens of legal certainty. Since HGB is a proprietary right, its termination can only occur for reasons outlined by law, such as the term ending, a voluntary decision to give up the right, or cancellation due to public interest. HPL holders do not have the authority to unilaterally revoke HGB outside of established legal processes. The state's involvement is crucial in determining the ongoing existence or conclusion of rights through well-defined procedures.

The rights and responsibilities of each party should be recognized within this context. HPL holders must oversee and plan land utilization according to its intended purpose and are expected to provide impartial approvals or suggestions for HGB issuance. HPL holders do not have complete proprietary control over the land and thus cannot treat it as their private asset. HGB holders are granted the right to construct and own buildings for a designated time and may assign or place liens on their rights according to legal guidelines. Additionally, HGB holders must adhere to land use requirements set forth in the agreements and decisions that grant them their rights. This equilibrium of rights and duties serves as a crucial basis for fostering legal certainty and aligning public management roles with the safeguarding of individual rights within the framework of national land law. (Maulisa, 2024).

The effects on legal reliability and legal safety are a natural result of how the Right of Management (HPL) and Building Rights (HGB) relate to each other, which has not been completely defined in real-life situations. The unclear boundaries between the government and HPL holders can create confusion for investors and HGB holders, especially concerning how long their rights last, how they can be extended, and their ongoing status. These uncertain conditions might decrease trust in land laws, as HGB holders could encounter unexpected government actions. For legal reliability, it is essential that every land right is based on clear rules that are steady and dependable over time.

Changes to regulations made by Law Number 11 of 2020 about Job Creation brought about important updates to how HPL and HGB work, especially by ensuring more certainty regarding timelines and making licensing procedures easier based on risk. These updates were explained further in Government Regulation Number 18 of 2021 about the Right of Management, Land Rights, Apartment Units, and Land Registration, which clearly defines the roles, subjects, and powers of HPL holders. According to Government Regulation 18/2021, HPL can be awarded to government bodies, state-run enterprises, regional state enterprises, legal entities owned by the state, and specific authorities that can plan land use, manage land, and give parts of land to others through HGB, Cultivation Rights (HGU), or Rights of Use. This clear definition

strengthens the understanding of HPL as a recognized right within today's legal framework, rather than just an administrative system formed from practice.

The most important implication of Government Regulation 18/2021 lies in the clarification of the duration and extension of HGB over land under HPL, which is now formulated more clearly and integrated with the business licensing system. This regime reduces the discretionary space that previously often generated uncertainty in the practice of extending HGB. Furthermore, the new regulation clarifies that the granting and extension of rights remain within the authority of the state through the ministry responsible for land affairs, while the approval of HPL holders is positioned as part of the governance of area management.

The possible overlap of power between the state and HPL holders highlights the need for a more organized framework. The government, empowered by its Right to Control, is the sole entity permitted to grant, extend, and renew land rights, including HGB. HPL holders carry out management tasks that are both administrative and operational; however, they do not have the power to establish or eliminate proprietary rights. Uncertainty in differentiating between delegated authority and attributed authority can result in actions that go beyond legal boundaries and may cause extended disagreements.

The affirmation that the granting, extension, and renewal of HGB remain within the authority of the state constitutes a prerequisite for effective legal protection. HGB as a land right obtains its legitimacy and guarantee from the decision of an authorized land official, not from the unilateral will of the HPL holder. (Ardiyani, 2025) Approval or recommendations from HPL holders must therefore be understood as part of administrative procedures supporting orderly area management rather than as the source from which rights originate. A juridical reconstruction is necessary to clarify the position of HPL as a land management instrument within the framework of public functions so that it does not develop into a form of quasi-ownership that contradicts the national land law system.

The understanding that HPL is the expression of the public purpose of the State's Right to Control is the first step in any argumentative clarification of this structure. Instead of being presented as a proprietary right that is on par with ownership rights or HGB, HPL should be presented as an administrative tool for controlling, planning, and regulating land use within a specific region. It is critical to have this understanding in order to prevent a conceptual misrepresentation that positions the HPL holder as the exclusive owner of land when, in fact, its power is restricted and originates from the state's mandate.

HGB remains a land right that stands directly upon state authority even when it is located within an area managed under HPL. The relationship between the HPL holder and the HGB holder indeed contains administrative and contractual elements; however,

this characteristic does not alter the nature of HGB as a proprietary right guaranteed and protected by the state. Legal certainty and legal protection can only be realized when this relationship structure is understood proportionally, by positioning the state as the principal authority over land rights and HPL as a management instrument that supports orderly land administration without diminishing the substance of rights protection for HGB holders.

4. CONCLUSION

The Right of Management (HPL) holds a unique position in the hierarchy of land rights and cannot be compared to ownership rights like Ownership Rights (Hak Milik), Cultivation Rights (Hak Guna Usaha), or Building Rights (Hak Guna Bangunan). The Right of Management serves as a tool for executing the public responsibility of the State's Right to Control, which allows designated entities to organize, oversee, and manage land use according to its intended purpose. This power does not lead to private ownership rights; instead, it is delegative and confined to management responsibilities. This situation underscores that HPL is categorized under public law and thus cannot be regarded as a land right comparable to other ownership rights. The legal relationship between the HPL holder and the HGB holder shows a blend of administrative and contractual elements, combining aspects of public and private law. The issuance and legitimacy of HGB are rooted in state authority, based on land administration actions, while the agreements between the holders focus on governing technical details and land use for area management. This dynamic does not change the fact that HGB is a land right protected by the state, nor does it empower the HPL holder to act as a landowner. This framework emphasizes the importance of having a balanced understanding to provide legal clarity and protection for all parties within the national land law system.

5. REFERENCES

Journals:

- Absori. (2021). *KEBIJAKAN REFORMASI SUMBER DAYA ALAM BIDANG PERTANAHAN BERBASIS KESEJAHTERAAN PERSPEKTIF MAQASID AL-SYARIAH ASY-ASYATIBI*.
- Afifah, K. a. (2013). Perkembangan Hak Negara Atas Tanah: Hak Menguasai Atau Hak Memiliki. *Jurnal Media Hukum*, 20.
- Ahmad. (2024). *Buku Ajar Metode Penelitian & Penulisan Hukum*. Jakarta: PT. Sonpedia Publishing Indonesia.
- Andrea, D. L. (2020). Hubungan Kewenangan Pusat Dan Daerah Dalam Penyelenggaraan Otonomi Daerah Di Bidang Pendidikan Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah,. *Kosmik Hukum* , 203.
- Ardiyani. (2025). Analisis Yuridis Penyelesaian Tanah Terlantar Oleh Pemegang Hak Guna Bangunan (Studi Putusan Ma Nomor 90 Pk/Tun/2016 Yang Dikaitkan Dengan Putusan Ma Nomor 698 Pk/Pdt/2022). *J-CEKI: Jurnal Cendekia Ilmiah* , 221.
- Arianto, W. a. (2024). Rumah Susun Sebagai Obyek Jaminan Kebendaan Dalam Perjanjian Kredit. *Jurnal Kewarganegaraan*, 8.

- Azhar, K. B. (2020). Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 20-33.
- Dalimunthe, F. A. (2023). Keabsahan HGB Sebagai Objek Hak Tanggungan Tanpa Persetujuan Pemegang Hak Pengelolaan. *JURNAL USM LAW REVIEW*, 500-511.
- Djaja, D. S. (2021). PENGATURAN BANK TANAH DALAM UNDANG-UNDANG CIPTA KERJA DAN IMPLIKASI KEBERADAAN BANK TANAH TERHADAP HUKUM PERTANAHAN DI INDONESIA. *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 74-462.
- Elvis, J. (2023). HUKUM PENGELOLAAN SUMBER DAYA MINYAK DAN GAS BUMI MENURUT PASAL 33 UNDANG-UNDANG DASAR TAHUN 1945. *IBLAM LAW REVIEW*, 14-29.
- Erwandi, M. (2023). Penegakan Hukum Terhadap Penelantaran Hak Guna Bangunan (HGB) Oleh Pemegang Hak: (Studi Kasus Dikecamatan Sekotong Kabupaten Lombok Barat). *Jurnal Risalah Kenotariatan*, 4.
- Faizal. (2024). *Hukum Pembukaan Lahan Perumahan Di Kawasan Zona Hijau*. Penerbit NEM: Jakarta.
- Franciska, W. (2022). Perjanjian Penjaminan Kredit Perbankan Terhadap Objek Hak Guna Bangunan Di Atas Hak Pengelolaan. *Aksara: Jurnal Ilmu Pendidikan Nonformal*, 223.
- Franciska, W. (2022). Perjanjian Penjaminan Kredit Perbankan Terhadap Objek Hak Guna Bangunan Di Atas Hak Pengelolaan. *Aksara: Jurnal Ilmu Pendidikan Nonformal*, 76.
- Gode. (2023). Analisa Yuridis Hak Guna Bangunan Di Atas Hak Pengelolaan Yang Bisa Dijadikan Jaminan Utang. *Unes Law Review*, 45.
- Hastarini, A. (2024). Kedudukan Hukum Masyarakat Adat Dalam Memperoleh Hak Atas Tanah Di Indonesia. *Jurnal Hukum Sasana*, 8-20.
- Juni, S. a. (2015). Analisis Normatif Pelepasan Hak Pengelolaan Pemerintah Daerah Provinsi Nusa Tenggara Barat Dalam Rangka Pembangunan Kawasan Mandalika Resort. *Jurnal IUS Kajian Hukum Dan Keadilan*, 3.
- Khayati, S. (2022). Perlindungan Hukum Perubahan Fungsi Sosial Hak Milik Atas Tanah Di Kendari. *Arus Jurnal Sosial dan Humaniora*, 2.
- Maula, N. R. (2025). Legitimasi Penerbitan Sertifikat Hak Atas Tanah Di Wilayah Perairan Laut Dalam Hukum Agraria Indonesia. *JURNAL USM LAW REVIEW*, 54-213.
- Maulisa, D. S. (2024). Peran PPAT Dalam Pembebanan Hak Tanggungan Atas Tanah Yang Belum Bersertifikat Dalam Praktik Perbankan. *Binamulia Hukum*, 213.
- Pardede, M. (2019). Hak Menguasai Negara Dalam Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Dan Peruntukannya,. *Jurnal Penelitian Hukum De Jure*, 20-405.
- Rahmadani, P. (2022). Penyelesaian Sengketa Ganti Kerugian Pengadaan Tanah Untuk Pembangunan Jalan Tol Section Binjai-Pangkalan Brandan Berbasis Perlindungan Hukum. *Locus Journal of Academic Literature Review*, 65.
- Rahmatiar, S. S. (2025). PENGADAAN TANAH UNTUK KEPENTINGAN UMUM ASPEK HUKUM DAN SOSIAL (Untuk Kepentingan Umum Dan Swasta). *K Media*, 78.
- Santoso, U. (2012). EKSISTENSI HAK PENGELOLAAN DALAM HUKUM TANAH NASIONAL. *Mimbar Hukum*, 275.
- Sugi Asadi and Ruhadini. (2024). Eksistensi Hak Guna Usaha (HGU) Terhadap Tanah Negara Dalam Perspektif Keadilan Agraria. *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum*, 42-236.
- Suhantri, Y. P. (2020). PERLINDUNGAN HUKUM BAGI KREDITUR DENGAN OBJEK HAK GUNA BANGUNAN YANG AKAN BERAKHIR MASA BERLAKUNYA SEBELUM

PERJANJIAN KREDIT JATUH TEMPO DILIHAT DARI ASPEK HUKUM HAK TANGGUNGAN. *LEX ET SOCIETATIS*, 3.

Syukrisna, D. A. (2025). Perlindungan Hak Masyarakat Adat Atas Tanah Ulayat Pasca Peraturan Menteri Agraria Dan Tata Ruang Nomor 14 Tahun 2024. *SENTRI: Jurnal Riset Ilmiah*, 65.

Widiatmaka, W. (2015). APPRAISAL KEBERLANJUTAN MULTIDIMENSI PENGGUNAAN LAHAN UNTUK SAWAH DI KARAWANG - JAWA BARAT. *Jurnal Kawistara*, 2.

Zahra. (2025). Penerbitan Hak Guna Bangunan (Hgb) Di Atas Perairan (Studi Putusan Mahkamah Konstitusi Nomor 3/PUU-VIII/2010). *Jurnal Kolaboratif Sains* , 39-315.