

Reflecting on the Role of BPN in Protecting Land Ownership Rights Holders Above HPL in Batam City

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Abstract. *The development of the HPL management policy in Batam City shows that there is a dualism in the concept of land ownership rights over HPL that occurs in Batam City, this can be seen from the existence of the Batam Industrial Management Agency mechanism which can grant Ownership Rights to parties who buy land over HPL land in Batam City, as a result of this, the owner of the Ownership Rights for land over HPL does not fully own the land that he has purchased, because the HPL is still valid on his land. BPN, which is the party that should take action to prevent buyers of land above HPL from being harmed, still seems passive. The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized sociologically as an empirical phenomenon that can be observed in life. Based on the study conducted, it can be found that the fact that the National Land Agency has not been able to provide complete information and counseling to prospective land buyers or the community regarding the lack of legal certainty in the status of land ownership above HPL land, this has resulted in most people buying land above HPL owned by BP, this situation clearly results in legal uncertainty for the protection of land ownership rights for buyers considering that there are no clear regulations related to land ownership rights above BP HPL in Batam City. The solution that can be done is that there needs to be an affirmation regarding the absence of changes in HPL to land ownership rights above BP's HPL, there needs to be regulation of restrictions on BP's authority in terms of issuing decisions on the transfer of HPL to land ownership rights on HPL, and there needs to be a re-registration of land that before the existence of BP's HPL had been previously occupied and used by the community.*

Keywords: Land; Ownership; Protecting; Role.

1. Introduction

The allocation of land rights in its development is not entirely able to realize harmonious relations between land users and land rights holders. This problem

can be seen in the process of using Building Use Rights over Land Management Rights. Building Use Rights in its development can also apply to land where Land Management Rights are held by the government or abbreviated as HPL. In its development, regulations related to the transfer of land management functions, one of which is as HGB over HPL, must be in accordance with the approval of the HPL holder. This is in accordance with Article 22 of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights which states that "Building Use Rights over Land Management Rights are granted with a decision to grant rights by the Minister or an appointed official based on the proposal of the Management Rights holder".

Over time, the construction of various buildings for business purposes with Building Use Rights above Management Rights has become increasingly widespread in Indonesia. The increasing construction of buildings with HGB certificates on HPL land is also directly proportional to the increasing problems of HGB above HGU. The problem of extending HGB above HPL often results in complicated problems and is detrimental to HGB holders both individually and in groups like the owner of HGB certificates for housing located above HPL. This is expressly stated in Article 3 paragraph (1) of the Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Settlement of Granting Rights to Parts of Management Land and Its Registration.

Furthermore, it can be understood together that the period of use of HGB on HPL basically depends on the HPL holder. So if the application for extension of HGB on HPL is not approved by HPL, then the HGB is declared null and void by law. This can be seen in Article 35 paragraph (1) letter (a) of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Rights, and Land Use Rights which states that "the end of the period as stipulated in the decision to grant or extend it or in the granting agreement". In its development, this has resulted in the loss of legal certainty for HGB holders.¹

Such issues have caused many HGB holders above HPL to suffer losses, this is because if an HGB is not approved for extension by the HPL holder, the HGB holder above the HPL is also considered to be void. In fact, if you look at Article 35 of Law Number 5 of 1960 concerning Basic Agrarian Provisions, it is clear that HGB on HPL is only for 30 years which can only be extended for 20 years when the government approves it, so that after 50 years the HGB cannot be extended and automatically the HGB owned by most property owners above HPL land cannot be extended after the HGB is declared non-extendable.

The various problems above have resulted in injustice to property buyers

¹Reja Hidayat, Time Bomb of Apartment Case in Jakarta: HGB on State Land, Accessed via tirto.id, on September 14, 2023.

standing on HPL land. This can be observed in the case of Mediterania Palace Residence in Kemayoran, East Jakarta. The apartment owned by the property developer Agung Podomoro Group was built on land owned by the Ministry of State Secretariat, where the HGB period above the HPL expires in 2022. The dilemma for consumers who own property in the apartment only found out about the HGB period above the HPL after purchasing property at Mediterania Palace Residence. The term extension of HGB above the HPL was circumvented by replacing it with the term "strata title".² Meanwhile, the term strata title does not exist in the legislation. This ambiguity will clearly result in various legal protection issues for property consumers, especially related to the legal force of the certificate of a condominium unit building or a certificate of ownership which ultimately does not function.³ This has resulted in a new dilemma, namely the decline in the selling price of properties that have been purchased at high prices on HPL land.

Another case related to the existence of ambiguity in the regulation of HGB above HPL also occurred in the Batam area. Throughout 1998 to 2005, certificates of Ownership Rights were issued for a plot of land above the Land Management Rights or HPL. This is indicated by the existence of around 15,000 Certificates of Ownership Rights issued based on the Decree of the Minister of State for Agrarian Affairs/Head of BPN Number 6 of 1998. The government at that time enforced the Decree of the Minister of State for Agrarian Affairs/Head of BPN Number 6 of 1998 which should not apply to the Batam Region which has received its own Special Rights and is under the authority of the Batam Business Agency.⁴

Batam City has regulations regarding land that have different characteristics from other cities in Indonesia. The majority of regions in Indonesia have one agency that regulates land, known as the National Land Agency (hereinafter referred to as BPN), while Batam City has two agencies at once that regulate land in Batam City, namely the Business Agency whose name has been changed twice before becoming the Business Agency, namely from the Batam Authority, to the Management Agency and finally referred to as the Business Agency (hereinafter referred to as BP Batam) and the BPN of Batam City. Batam is one of the areas

²Location, cit. *Strata Title* is the right to own a unit of a condominium or is a right of joint ownership of a building complex consisting of executive rights to private space and joint rights to public space. See also: rumah.com, What is Starat Title?, Accessed on September 14, 2023.

³Elizabeth Devina Putri, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Legal Review of Legal Protection of Outsourcing Workers' Rights After the Enactment of Law Number 11 of 2020 Concerning Job Creation in Outsourcing Companies", *Journal of Legal Communication*, Volume 9, Number 1, 2023, pp. 1410-1411.

⁴Agustianto and Actika, "Legal Review Regarding the Imposition of Annual Compulsory Money on Owners of Ownership Certificates Located Above Management Rights in Batam City", *Journal of Judicial Review*, Vol. 22, No. 1, p. 2020, pp. 144, 117-118.

that uses HPL under the supervision of BP Batam, all land rights in Batam City are under the HPL regulated by BP Batam based on Presidential Decree Number 41 of 1973 which stipulates that Batam is designated as a Region under the supervision of the Batam Authority which is now known as BP Batam, so that the land in Batam City is entirely owned by BP Batam, namely placed on the HPL of BP Batam. Based on Article 6 of Regulation Number 9 of 1965, it regulates the authority of HPL who are entitled to receive Annual Mandatory Money or compensation, where BP Batam also issued a regulation that HGB is required to pay Annual Mandatory Money (hereinafter referred to as UWT) which is valid for 20 years according to the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority (hereinafter referred to as Perka BP Batam) Number 9 of 2017 (hereinafter referred to as Perka Number 9 of 2017) Article 6 number 2, so that HGB owners are required to pay UWT every 20 years to extend the ownership period of HGB above HPL. Ownership Rights in Batam City are also above HPL, however, Ownership Rights in Batam City are not subject to UWT which makes this inconsistent with Regulation Number 9 of 1965 that HPL has the right to receive Annual Mandatory Money or compensation. However, if we look at the true meaning of Ownership Rights based on the UUPA, it is very inappropriate if Ownership Rights are placed above HPL because the UUPA explains that Ownership Rights are Land Rights that do not have a specific time limit, are the strongest and most complete.⁵This has become increasingly unclear with the issuance of the Decree of the Chairman of the Batam Island Industrial Area Development Authority Number 734/UM-KPIS/XII/1998 concerning the Issuance of Recommendations for Ownership Rights for Residential Houses.

Management Rights are basically regulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. Article 1 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights states that "Management rights are the state's right to control, some of the implementation authority of which is delegated to the holder of Management Rights."

Article 48 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. This is then also supported by the provisions Article 51 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures

⁵*Location, cit.*

for Determining Management Rights and Land Rights and Article 54 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights.

Based on the existing provisions, it is clear that ownership rights above HPL are not justified because, before the issuance of ownership rights, the land above which the HPL applies must be released first, after the release, it can be submitted as ownership rights. Such a situation will clearly have an impact on the uncertainty of the legal status of the right to control land owned by the holder of ownership rights above HPL.

Most people in its development do not understand the legal position of land ownership certificates located on HPL land, this situation becomes a problem that has implications for losses for owners of land ownership and HGB above HPL. Regarding the lack of public knowledge, the role and responsibility of BPN are needed in this case. Based on Article 2 of Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency, BPN has the task of carrying out government duties in the land sector in accordance with the provisions of laws and regulations. Article 3 of Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency

Based on the provisions above, it is clear that BPN is a party that functions to determine and formulate matters regarding the management of the allocation, utilization, distribution and determination of land rights. The existence of the facts of the case above and the overlapping of the regulation of ownership rights above HPL has shown the minimal role and responsibility of BPN, especially in the Batam area, in preventing legal gaps that occur in the HPL regulation policy.

2. Research Methods

The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized sociologically as an empirical phenomenon that can be observed in life. In terms of substance, law is seen as a social force that is empirical in form, but which is seen legally and works to pattern the actual behavior of citizens.

3. Result and Discussion

3.1. Regulation of the Role and Responsibility of BPN in Protecting Ownership Rights Holders of Land Above HPL Occurring in Batam City

Throughout 1998 to 2005, certificates of Ownership Rights have been issued for

a plot of land on the Land Management Rights or HPL. This is indicated by the existence of around 15,000 Certificates of Ownership Rights issued based on the Decree of the Minister of State for Agrarian Affairs/Head of BPN Number 6 of 1998.⁶ The government at that time enforced the Decree of the Minister of State for Agrarian Affairs/Head of BPN Number 6 of 1998 which should not apply to the Batam Region which had received its own Special Rights and was under the authority of the Batam Business Agency.⁷

Batam City has regulations regarding land that have different characteristics from other cities in Indonesia. The majority of regions in Indonesia have one agency that regulates land, namely the National Land Agency (hereinafter referred to as BPN), while Batam City has two agencies at once that regulate land in Batam City, namely the Business Agency whose name has been changed twice before becoming the Business Agency, namely from the Batam Authority, to the Management Agency and finally referred to as the Business Agency (hereinafter referred to as BP Batam) and the Batam City BPN.

Batam is one of the areas that uses HPL under the supervision of BP Batam, all land rights in the city of Batam are under the HPL regulated by BP Batam based on Presidential Decree Number 41 of 1973 which stipulates that Batam is designated as an Area under the supervision of the Batam Authority which is now known as BP Batam, so that the land in Batam City is entirely owned by BP Batam, namely placed on the HPL of BP Batam. Land Management Rights by the Batam City Business Agency as intended by Presidential Decree Number 41 of 1973, can be seen in Article 6 of Presidential Decree Number 41 of 1973 which states that:

Article 6

(1) The designation and use of land in the Batam Island Industrial Area for the purposes of buildings, businesses and other facilities, related to the implementation of the development of Batam Island, is based on a land use plan in the context of developing Batam Island into an Industrial Area;

(2) Matters relating to land management within the Batam Island Industrial Area within the framework of the provisions referred to in paragraph (1) of this article are further regulated by the Minister of Home Affairs in accordance with the

⁶Sahnan, M.Arba, L wira Pria Suhartana, "The Authority of the National Land Agency in Resolving Land Disputes", *IUS Journal*, Vol. 7 No. 3, 2019, p. 45.

⁷Agustianto and Actika, "Legal Review Regarding the Imposition of Annual Compulsory Money on Owners of Ownership Certificates Located Above Management Rights in Batam City", *Journal of Judicial Review*, Vol. 22, No. 1, p. 2020, pp. 144, 117-118.

applicable laws and regulations in the agrarian sector, with the following provisions:

- a. The entire land area located on Batam Island is handed over, with management rights, to the Chairman of the Batam Island Industrial Area Development Authority;
- b. The management rights in sub-paragraph a of this paragraph authorize the Chairman of the Batam Island Industrial Area Development Authority to:
 1. planning the designation and use of the land;
 2. use the land for the purposes of carrying out their duties;
 3. hand over parts of the land to a third party with usage rights in accordance with the provisions of Articles 41 to 43 of the Basic Agrarian Law;
 4. receive income/compensation money and annual mandatory money.

According to the provisions of Article 6 letter (a) of Presidential Decree Number 41 of 1973, it is clear that the HPL land was handed over to BP Batam for its management and use. In 2005, Presidential Decree Number 41 of 1973 was amended by Presidential Decree of the Republic of Indonesia Number 25 of 2005 concerning the Fifth Amendment to Presidential Decree Number 41 of 1973 concerning the Batam Island Industrial Area. Presidential Decree of the Republic of Indonesia Number 25 of 2005 concerning the Fifth Amendment to Presidential Decree Number 41 of 1973 concerning the Batam Island Industrial Area does not explicitly contain provisions on the management and use of land which is a Management Right as in Article 6 of Presidential Decree Number 41 of 1973 concerning the Batam Island Industrial Area. The matter of HPL land was then also regulated in the Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of the Conversion of Control Rights over State Land and Provisions concerning Further Policies. Article 1 of the Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of Ownership Rights over State Land and Provisions concerning Further Policies, states that:

The right to control state land as referred to in Government Regulation No. 8 of 1953, which was granted to departments, directorates and autonomous regions before this regulation came into effect, provided that the land was only used for the interests of the agencies themselves, is converted into a right of use, as referred to in the Basic Agrarian Law, which lasts as long as the land is used for that purpose by the relevant agency.

Article 2 of the Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of Ownership Rights over State Land and Provisions concerning Further Policies, states that:

If state land as referred to in Article 1, in addition to being used for the interests of the agencies themselves, is also intended to be given with certain rights to a third party, then the above ownership rights are converted into management rights as referred to in Articles 5 and 6, which last as long as the land is used for that purpose by the relevant agency.

Article 5 of the Minister of Agrarian Affairs Regulation No. 9 of 1965 concerning the Implementation of Conversion of Ownership Rights over State Land and Provisions concerning Further Policies, states that:

If the state lands as referred to in Article 4 above, in addition to being used by the agencies themselves, are also intended to be given with certain rights to a third party, then the Minister of Agrarian Affairs will give the land to the agency with management rights.

Article 6 of the Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of Control Rights over State Land and Provisions concerning Further Policies, states that:

1. The management rights as referred to in Article 2 and Article 5 above give the holder the authority to:

- a. planning the allocation and use of the land;
- b. use the land for the purposes of carrying out their duties;
- c. Hand over parts of the land to a third party with usage rights for a period of 6 (six) years;
- d. Receive income/compensation money and/or annual mandatory money;

2. The authority to hand over land to a third party as referred to in paragraph 1 letter c above is limited to:

- a. Land with a maximum area of 1,000 m² (one thousand square meters);
- b. Only to Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia;

c. Granting of rights for the first time only, with the provision that changes, extensions and replacement of said rights will be carried out by the relevant agrarian agency, with the principle of not reducing the income previously received by the rights holder.

Based on Article 6 of the Agrarian Ministerial Regulation Number 9 of 1965, it regulates the authority of HPL who are entitled to receive Annual Mandatory Money or compensation, where BP Batam also issued a regulation that HGB holders are required to pay Annual Mandatory Money (hereinafter referred to as UWT) which has a term of 20 years in accordance with the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 9 of 2017 concerning the Second Amendment to the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 19 of 2016 concerning Types of Service Tariffs at the Land Management Office of the Batam Free Trade Zone and Free Port Authority. Article 6 number (2) of the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 9 of 2017 concerning the Second Amendment to the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 19 of 2016 concerning Types of Service Tariffs at the Land Management Office of the Batam Free Trade Zone and Free Port Authority states that:

The Land Allocation Extension Service Fee as referred to in Article 3 letter b is in the form of an annual mandatory fee calculated based on location, allocation area per square meter, and designation, which is paid in advance for a period of 20 (twenty) years.

Land Ownership Rights in Batam City in real development are above HPL, however, Land Ownership Rights in Batam City are not subject to UWT which makes it inconsistent with Agrarian Regulation Number 9 of 1965 that HPL is entitled to receive Annual Mandatory Money or compensation. However, if we look at the true meaning of Land Ownership Rights based on UUPA, it is very inappropriate if Land Ownership Rights are placed above HPL because UUPA explains that Land Ownership Rights are Land Rights that do not have a specific time limit, are the strongest and most complete.⁸This has become increasingly unclear with the issuance of the Decree of the Chairman of the Batam Island Industrial Area Development Authority Number 734/UM-KPIS/XII/1998 concerning the Issuance of Recommendations for Ownership Rights for Residential Houses.

HPL in its development was born from the concept of Domein Verklaring. Where land is actually not freely owned by everyone in this country, but land is owned and regulated by the state and the state has the authority to grant land control

⁸*Location, cit.*

rights to all parties in this country. Management Rights are basically regulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. Article 1 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights states that "Management rights are the state's right to control, some of the implementation authority of which is delegated to the holder of Management Rights."

Article 54 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights states that:

(1) Application requirements for ownership rights originating from state land include:

a. Regarding the Applicant:

1. the identity of the Applicant, or the identity of the Applicant and his or her attorney and power of attorney if authorized;

2. in the case of the Applicant being a legal entity determined by the government:

a) deed of establishment and latest amendments along with approval from the authorized agency or company establishment regulations;

b) Business Identification Number from Online Single Submission (OSS)/Company Registration Certificate (TDP)/Foundation Registration Certificate (TDY);

c) a letter of appointment as a legal entity that can have ownership rights, for religious bodies and social bodies appointed by the government; and/or

d) land acquisition permit;

b. regarding the land:

1. the basis of control or basis of rights is:

a) certificate, deed of transfer of rights, deed/proof of release of rights, letter of appointment or purchase of plot, proof of payment for land and house and/or land that has been purchased from the government, auction minutes, court decision or other proof of land acquisition; or

b) In the case where there is no proof of land ownership as referred to in letter a), physical control over the land is stated in a statement of physical control over the land area witnessed by at least 2 (two) witnesses from the local area who know the history of the land and are not related by family ties and are known to the local village head/sub-district head or other similar name;

2. Land Area Map:

c. proof of taxation relating to the land requested, if any;

d. a statement of physical control of the land area and civil and criminal responsibility stating that:

1. the land is truly owned by the person concerned, not by anyone else, and its status is State Land;

2. the land has been physically controlled;

3. land control is carried out in good faith and openly by the person concerned as the person entitled to the land;

4. land acquisition is made according to actual data and if it turns out that problems occur at a later date it is the full responsibility of the person concerned and will not involve the Ministry;

5. there are no objections from other parties regarding the land owned or not in a state of dispute;

6. there is no objection from the creditor regarding the land being used as collateral for a debt;

7. the land is not an asset of the Central Government/Regional Government or an asset of a BUMN/BUMD;

8. the land requested is outside the forest area and/or outside the area for which permits have been terminated in primary natural forests and peatlands;

9. willing not to enclose/close the yard or other land area from public traffic, public access and/or waterways; and

10. willing to release land for public interest either in part or in whole.

(2) The requirements for applying for Ownership Rights originating from Management Rights land include:

a. Regarding the Applicant:

1. the identity of the Applicant, or the identity of the Applicant and his or her attorney and power of attorney if authorized;

2. In the case of the Applicant being a legal entity determined by the government:

a) deed of establishment and latest amendments along with approval from the authorized agency or company establishment regulations;

b) Business Identification Number from Online Single Submission (OSS)/Company Registration Certificate (TDP)/Foundation Registration Certificate (TDY);

c) a letter of appointment as a legal entity that can have ownership rights, for religious bodies and social bodies appointed by the government; and

d) land acquisition permit;

b. regarding the land:

1. a letter of approval for granting Ownership Rights for a portion of the Management Rights land from the Management Rights holder or a decision issued by an agency authorized to carry out government affairs in the field of transmigration, for transmigration Management Rights land;

2. Land Area Map;

c. proof of taxation relating to the land requested, if any.

Based on the existing provisions, it is clear that ownership rights above HPL are not justified because, before the issuance of ownership rights, the land above which the HPL applies must be released first, after the release, it can be submitted as ownership rights. Such a situation will clearly have an impact on the uncertainty of the legal status of the right to control land owned by the holder of ownership rights above HPL.

The existence of Presidential Decree of the Republic of Indonesia Number 25 of

2005 concerning the Fifth Amendment to Presidential Decree Number 41 of 1973 concerning the Batam Island Industrial Area, Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of Control Rights over State Land and Provisions concerning Further Policies, and Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 9 of 2017 concerning the Second Amendment to the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 19 of 2016 concerning Types of Service Tariffs at the Land Management Office of the Batam Free Trade Zone and Free Port Authority, has clearly contradicted Article 54 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights.

The issue of inequality between these laws has resulted in various land ownership cases in Batam City, one of which is the case in Rempang. According to Rian Sugito as a Notary/PPAT in Batam City, Legal certainty regarding right of ownership above management rights in the City Batam it is very important, this is so that Management Rights given to BP Batam can be managed partially given Building Use Rights and Use Rights. However, in reality the process of registering land ownership rights on HPL land at the City Land Agency office Batam many experience legal uncertainty. If in other cities in Indonesia through customary rights the process to obtain a certificate can be done directly to the National Land Agency. This is not the case in the City Batam. Where the land registration process must be carried out first with the land application process. Due to the specificity of the City Batam which was formed based on Presidential Decree Number 41 of 1973, states that all land in the City of Batam is in the form of Management Rights. Regarding the certificate Right of ownership in the city Batam, if you look at the regulations, there is no right to land in the form of land Right of ownership on Management Rights.⁹

In order to respond to the protection of the rights and interests of the affected community, the government uses provisions Presidential Regulation of the Republic of Indonesia Number 62 of 2018 Concerning Handling of Social Impacts in the Framework of Land Provision for National Development. Article 1 number (3) of Presidential Regulation of the Republic of Indonesia Number 62 of 2018 Concerning Handling of Social Impacts in the Framework of Land Provision for National Development states that:

Handling of Social Impacts on the Community is the handling of social problems in the form of providing compensation for the relocation of communities who control land that will be used for national development.

⁹Personal interview with Rian Sugito as Notary and PPAT in Batam City, on May 12, 2023.

Provisions of Articles 7 to 10 Presidential Regulation of the Republic of Indonesia Number 62 of 2018 concerning Handling of Social Impacts on the Community in the Framework of Land Provision for National Development does not clearly state the amount of compensation for affected communities, and the involvement of affected communities in determining the amount of compensation is also not clearly regulated.

The absence of involvement of affected communities in Articles 7 to 10 Presidential Regulation of the Republic of Indonesia Number 62 of 2018 concerning Handling of Social Impacts on the Community in the Framework of Land Provision for National Development has resulted in conflicts regarding claims for compensation and relocation of settlements for affected communities, one of which is in the Rempang area.

Weaknesses of Articles 7 to 10 Presidential Regulation of the Republic of Indonesia Number 62 of 2018 Concerning Handling of Social Impacts in the Framework of Land Provision for National Development resulted in the President issuing Presidential Regulation of the Republic of Indonesia Number 78 of 2023 Concerning Amendments to Presidential Regulation Number 62 of 2018 Concerning Handling of Social Impacts in the Framework of Land Provision for National Development. The fundamental changes are regarding the authority of BP which replaces the role of the Governor in relation to technical implementation of Social Impact Management. Article 12 paragraph (1a) Presidential Regulation of the Republic of Indonesia Number 78 of 2023 concerning Amendments to Presidential Regulation Number 62 of 2018 concerning Handling of Social Impacts in the Framework of Land Provision for National Development which states that:

In the case of Handling of Social Impacts on the Community located in Free Trade Areas and Free Ports as stipulated in laws and regulations, the governor's authority in Handling Social Impacts on the Community is carried out by the Head of the Free Trade Area and Free Port Management Agency.

Presidential Regulation of the Republic of Indonesia Number 78 of 2023 concerning Amendments to Presidential Regulation Number 62 of 2018 concerning Handling of Social Impacts in the Framework of Land Provision for National Development also does not contain provisions on the amount of clear compensation as well as community involvement and transparency in the implementation of compensation in land acquisition for National Development. In addition, Presidential Regulation of the Republic of Indonesia Number 78 of 2023 concerning Amendments to Presidential Regulation Number 62 of 2018 concerning Handling of Social Impacts in the Framework of Land Provision for National Development was made after problems in Rempang related to the status of land ownership rights above HPL.

Based on the various problems above, it is clearly seen that there is a dualism in the concept of land ownership rights above HPL that occurs in Batam City. According to Decree of the Minister of State for Agrarian Affairs/Head of BPN Number 6 of 1998, Presidential Decree Number 41 of 1973, Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of State Land Ownership Rights and Provisions on Further Policies, Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 9 of 2017 concerning the Second Amendment to the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 19 of 2016 concerning Types of Service Tariffs at the Land Management Office of the Batam Free Trade Zone and Free Port Authority, HGB and Ownership Rights for land above HPL are managed and the regulation of ownership status is under the authority of the Batam Authority, while according to Article 54 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, land ownership rights can be granted after the release of HPL, after which a status change is made first from land with HPL status to Ownership Rights, and after that a certificate of ownership rights for the land can be made.

3.2. Solutions Related to the Role of the Batam City BPN in Resolving the Problem of Legal Uncertainty in the Protection of Ownership Rights Holders of Land Above HPL That Occurred in Batam City

The solution that can be implemented by the Batam City BPN regarding the problem of legal uncertainty regarding the protection of land rights holders above HPL that occurs in Batam City is to:

- a. There needs to be an affirmation regarding the absence of changes in HPL to land ownership rights above BP's HPL. Making an affirmation in the Decree of the President of the Republic of Indonesia Number 25 of 2005 concerning the Fifth Amendment to Presidential Decree Number 41 of 1973 concerning the Batam Island Industrial Area, Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of State Land Ownership Rights and Provisions concerning Further Policies, and Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 9 of 2017 concerning the Second Amendment to the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 19 of 2016 concerning Types of Service Tariffs at the Land Management Office of the Batam Free Trade Zone and Free Port Authority, that HPL land managed by BP cannot be subject to land ownership rights over it. As for HGB, its validity period must follow the provisions in the UUPA, even though its grant is submitted to the HPL holder, in this case BP.

b. It is necessary to regulate the limitation of BP's authority in terms of issuing a decision on the transfer of HPL to ownership rights over HPL land. The Batam Business Agency does not have the right to issue a decision letter on the transfer of HPL to ownership rights over HPL land granted to it by the state, before the release of the HPL status as referred to in Article 54 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights.

c. There needs to be a re-registration of land that was previously occupied and used by the community before the existence of BP's HPL, so that when a community settlement area that was previously established before BP's HPL is used by the state for industrialization purposes, the affected community can have their settlements relocated first by replacing the settlement area with new land.

4. Conclusion

The National Land Agency has not been able to provide complete information and counseling to prospective land buyers or the community regarding the lack of legal certainty in the status of land ownership above HPL land, this has resulted in most people buying land above HPL owned by BP, this situation clearly results in legal uncertainty for the protection of land ownership rights for buyers considering that there are no clear regulations related to land ownership rights above BP HPL in Batam City.

5. References

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