

Utilization Of The Above Land Road Inmakassar City

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Abstract:The purpose of this study was to determine the arrangement of the use and utilization of space on land in the main road in the city of Makassar, and to find out the legal implications of the use of space on the land above the highway. This research uses normative legal research methods, namely research on the principles of law, synchronization of law and legal system regarding the use of land facilities on the highway in Makassar City.

Keyword: Utilization Of Space On Land, Highway

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I. INTRODUCTION

Land is one of the natural resources that are essential needs that function very essential for human life from various aspects, both physical, juridical, social, economic, cultural, and environmental aspects. Land is also a gift from God Almighty and is a national wealth for the welfare of its people. It is in this framework that it is then affirmed in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which forms the basis of land policy in Indonesia, which is further elaborated in article 2 of Law No 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as BAL) that, earth, water, space, and all natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Land in general has three aspects, namely the aspects of production, aspects of space, and legal aspects. The production aspects are related to the nutrient and plant root elements, the spatial aspects related to the growth of plants and human activities above and below it, and the related legal aspects with the right to own and use. Those aspects which are carried and attached become the right of the owner of a plot of land as the subject of rights and land as a land object.

Along with the rapid development of development, especially in big cities that are so fast, shows that the use of land is not only limited to the surface of the earth, but also has developed by utilizing the space above ground and basement. The existing technology is also able to support and erect a building that is not limited to the use of land in 2 (two) dimensions (on the land), but can also be done in 3 (three) dimensions (above, on, and under the land).

The three intended are the construction of buildings in addition to utilizing the field / surface of the earth, as well as air space above the surface of the earth, as well as space under the earth / in the body of the earth. In the context of utilization of land space is simply that buildings stand on poles or milestones, so that there is space between the building space and the surface of the land or building that is not directly attached to the surface of the ground which is then known as the Land Use Right (HGRAT).

This Land Use Right (HGRAT) contains an element of land rights to establish the building site by paying attention to the civil rights of the parties under it. The right to build and have a building on land, as well as the right to use the building space by considering the height and construction of the building may be erected on the surface of the earth.

The existence and regulation, ownership, use and utilization of land and basement space are not yet more operationally regulated in land regulations. Article 48 Paragraph (1) of the BAL governs space use rights authorizes the use of personnel and elements in space, in an effort to maintain and develop the fertility of the earth, water and natural resources contained therein and other matters concerned. Then, in the next paragraph in paragraph (2) confirms that space use rights are regulated by government regulations. However, until now the intended government regulations have not been made.

HGRAT's rationale is that the building owner is not always the owner of the land, which means it can also belong to another party. For example, the use of space for buildings erected on public land, especially

pedestrian bridges on highways that connect two large buildings and functioned for shops, cafes, and so on business or trade area such as the Makassar Trade Center (MTC) Karebosi and Panakkukang Square.

The highway according to Macpherson is one part of public property "(public property) by the state. This is so that there is a guarantee for everyone to enjoy the use of these "public property" goods. The control of land by the state in the above context is the control that is authorized to give rise to responsibility, namely for the prosperity of the people, so that the establishment and / or utilization of space above ground seems to need further study and analysis, because it is established on a highway that is actually public property, which of course this is different if it is established on private property.

The existence of land use by private parties (legal entities) certainly raises several legal implications, one of which is regarding taxes and levies imposed. Do building owners become taxpayers for the earth and buildings, given that the land surface is still used for activities highway for every driver. Beside of that, the responsibility of the owner of the building against the highway below it, because there are certain conditions, the existence of this building has an impact on the surrounding community, especially for motorists. The intended effect is the condition of the space between the land surface and the building becomes dark, so it sometimes interferes with the viewer's eyesight.

Construction of buildings in general that are above the ground must fulfill the cumulative requirements such as administrative requirements in relation to land rights and aspects of research. To the basic rights of the land, prior to the establishment of the building, the land rights must be ensured, both regarding the types of rights, subject to wide certainty and boundaries of land. Likewise, if the building is a land use space, of course the same conditions are needed as well as building construction that is above the ground (the earth's surface), that is, there is a right that legally gives the authority to establish and utilize land space. However, the legislation, which is more specific governing the rights is not available until now, resulting in a legal vacuum (recht vacuum). If later, what is the legal basis underlying land use in Makassar City, because de facto has obtained several buildings as legal facts which constitute land use.

II. STATEMENT OF THE PROBLEM

Based on the background of the problems described above, the following problems are formulated:

1. What is the arrangement for the use and use of space on land on the highway in Makassar City?
2. What are the legal implications of spatial use of land above the highway?

III. THEORETICAL FRAMEWORK

1. Legal State Theory

The rule of law according to F.R Both of them is "De obedient waarin de wilsvrijheid van gezagsdragers is beperkt door grenzen van recht" (state, where the freedom of the will of the power holder is limited by a legal will). It was further stated that in the context of realizing the limitation of power holders, it was realized by means of, "Energijds in een binding van rechter the administration of the de wet, and the scholarship in grading van de bevoegdheden van de wetgever" (on the one hand the judge and the government attach to the law , and on the other hand limitation of authority by lawmakers). A. Hamid S. Attamimid by quoting Burkens, said that the rule of law (rechstaat) is simply a state that places the law as the basis of state power and the exercise of that power in all its forms is carried out under the rule of law.

According to German jurist, Friedrich Julius Stahl (1802-1861) stated that the rule of law must be fulfilled, namely:

- 1) There is recognition of human rights;
- 2) There is a separation of powers;
- 3) The government is run based on the Law (written law);
- 4) Administrative court.

Rule of Law elements, as stated by A.V.Dicey in Introduction to the Law of the Costitution include:

- a) Supremacy of the law: the absence of arbitrary power, in the sense that one can only be punished if it violates the law.
- b) The same position in facing the law (equality before the law). This argument applies both to ordinary people and to officials.
- c) The occurrence of human rights by the Law (in other countries by the Basic Law) and court decisions.

According to the opinion of Prof. Sudargo Gautama, SH as quoted by Abdul Azis Hakim, presented three characteristics or elements of the rule of law, namely:

- a) There are restrictions on the power of the state against individuals, meaning that the state cannot act arbitrarily, the actions of the state are limited by law, individuals have rights to the state or the people have the right to the authorities.
- b) Legality Principle

Every state action must be based on a law that has been held beforehand which must be obeyed by the government or its apparatus.

c) Separation of powers.

In connection with the concept of the rule of law, Indonesia is a country that adheres to the rule of law, this can be seen in the provisions of Article 1 paragraph (3) of the 1945 Constitution which determines "The State of Indonesia is a State of Law. The concept of the rule of law in Indonesia, according to Muhammad Yamin, states: "Indonesia is a rule of law (rechstaat, government of law) where written justice applies, not a police or military state, where police and soldiers hold government and justice, nor is the state of power (machstaat) where weapons and body strength do arbitrarily".

Thus it can be concluded that the principle of legality is state power based on applicable law, where the principle of legality can provide a legitimacy for government action in the sense that government legal action must be based on the authority granted by a written legal rule. When linked to this research proposal, the government organ, in this case the Head of the Regional Office of the National Land Agency in forming and issuing a Decree in the form of issuance of a Decree on the cancellation of the land title certificate based on the applicable Law. So that with the authority based on the applicable law, it will be accompanied by the responsibility arising from the authority in issuing the Decree.

2. Legal Certainty Theory

According to Gustav Radbruch, the law as a cultural idea cannot be formal, but it must be directed to the ideals of law, namely justice, to fill the mind of justice, we must turn to its usefulness as the second element of the legal ideal. The notion of usability can only be answered by showing on different concepts about the state and law. To complete the formalities of justice and relativity of usability, security is included as a third element of legal ideals. Usefulness demands legal certainty. The law must be certain. Demands for justice and certainty are parts that remain from the ideals of the law, and are beyond the contradictions of political opinions.

According to Gustav Radbruch justice, legal certainty and usefulness (Gustav Radbruch: *Gerechtigkeit, Rechtssicherheit, ZweckmaBigkeit*) are three terminology that is often sung in lecture halls and court rooms, but it is not certain to understand its nature or its meaning. Justice and legal certainty, for example. The glimpses of the two terms are at odds, but they may not be. The word justice can be a logic, so that the terms procedural justice, legalist justice, commutative justice, distributive justice, vindicative justice, creative justice, substantive justice, etc. Procedural justice, as termed by Nonet and Selznick to refer to one indicator of the type of autonomous law, for example, it turns out that after being examined it leads to legal certainty for the sake of the rule of law. So, in this context, justice and legal certainty are not opposite, but precisely in parallel. Fairness and Certainty are two axiological values in law. The philosophy of law often questions these two values as if they are antinomies, so that the philosophy of law is meant as a search for certainty or fair certainty.

If the law is examined from the perspective of normative positive legal science, the purpose of the law will be emphasized in terms of its legal certainty and if the law is viewed from the standpoint of legal philosophy, the legal objectives are emphasized in terms of justice, written legal norms. Law without certainty values will lose meaning because it can no longer be used as a guideline for behavior for everyone. Certainty itself is referred to as one of the objectives of the law. If viewed historically, the discussion of legal certainty is a conversation that has emerged since the idea of separation of powers from Montesquieu .

In order to understand clearly about the legal certainty itself, the following will be elaborated on the understanding of legal certainty from several experts. The theory developed by Hans Kelsen about law includes two important aspects, namely the static aspect (nomostatics) which sees action regulated by law and dynamic aspects (nomodynamic).) who sees the law governing certain actions. Hans Kelsen separates law and morality and also between law and reality. The essential basics of Hans Kelsen's teachings are as follows :

1. The purpose of legal theory as well as every science is to reduce confusion and increase unity.
2. Legal theory is a science and not a will. It is knowledge of the law and not the law that should be.
3. Legal science is normative not natural law.
4. Legal theory as a theory of norms does not deal with the effects of legal norms.
5. A formal theory of law is a theory of the way of regulation and content that changes according to a specific path or pattern.
6. The relationship between legal theory and a certain positive legal system is the same as the relationship between possible law and existing law.

So in this case legal certainty means that a rule of law must be formulated and clearly formed, so that it can provide certainty for the government in taking legal action. Likewise, in the case of government actions in the form of issuance of Land Rights Cancellation Decisions based on a Regulation of the Head of the National Land Agency on the Study and Handling of Disputes and Land Conflicts, where the legal rules, especially regarding the cancellation of land rights including the cancellation of certificates of ownership rights on land, must be

formulated it is clear that it does not cause a mistake in its meaning or does not contradict one Article with the other, so that the legal actions taken by the National Land Agency can provide a legal certainty.

IV. DISCUSSION

1. The Concept of Mastery and Ownership of Land

Etymologically, mastery comes from the word "power" which means the ability or ability to do something, power or authority over something or to do something, power or authority over something or to determine (govern, represent, take care, etc.). Mastery can be interpreted as something capable of using something. So, according to language, control of land can be interpreted as a process, method, or deed to master a piece of land that contains authority and ability to use the benefits for survival.

National land law gives the understanding that it is not limited to the surface of the earth, but includes below and above the surface of the earth. Similar to the common law legal system, the notion of land briefly covers the surface of the earth, including buildings, minerals, and air spaces above it. However, land does not mean ownership of everything that exists in the land, because there are many exceptions, such as minerals belonging to the state.

Lili Rajidi stated that there is a difference between property rights and the right to control an object. In essence, property rights are permanent, while the right to master if not accompanied by ownership rights to the object, is temporary. Another difference is that property rights show a legal provision of a legal system, while the right to control an object indicates the fact that there is a relationship between human and things. Thus, property rights are a legal concept, while the right to master is both a legal concept and a concept not a law, even a legal concept. Furthermore that the concept of mastery (possession) requires that there is a real mastery of an object, and that there is a strong desire to use or utilize existing power for itself.

The conception that underlies national land law is the conception of customary law, which is a communalistic religious conception, which allows individual control of land with private land rights while containing elements of togetherness. This religious communalistic conception is shown in Article 1 Paragraph (2) of the UUPA which regulates that all earth, water and space, including the natural wealth contained within the territory of the Republic of Indonesia as a gift of God Almighty is a national wealth.

The concept of ownership of land rights adopted by the UUPA as the basis of national land law is the concept of customary law. Customary law here based on the General explanation of UUPA part III number 1, is the original law of the people in the earth in the form of unwritten form and containing original national elements namely the nature of society, kinship which is based and overwhelmed by religious atmosphere. The togetherness is formulated in Article 6 which determines that all land rights have social functions.

Land tenure and ownership rights according to national land law based on Article 23 Paragraph (3) of the 1945 Constitution, so that the UUPA does not adhere to the concept of the state domain on land because the state is not the owner of the land, but only the holder of the right to control the state. The UUPA stems from the view that in order to achieve what is specified in the Article above it is not necessary and inappropriate, the state acts as the owner of the land. It is more fixed if the state as an organization of power from all the people acts as the governing body. On that basis, then Article 2 paragraph (1) of the UUPA affirms that the earth, water, and space, including the natural wealth contained therein, at the highest level are controlled by the state as an organization of all people's power. In this context, the relationship between the state and the earth, water, and space, including land is a controlling relationship rather than possessing.

2. The right to control the state over land

The second composition of land rights is the right to control from the state, where the basis of the emergence of this right is the opening of the fourth paragraph of the 1945 Constitution, the contents of which are among others that the Indonesian Nation forms the Republic of Indonesia to carry out the goals of the Indonesian Nation, among others, to improve welfare common to all the Indonesians. Dimn to implement these objectives, the state must have a legal relationship with land throughout the country in order to be able to regulate it.

The conception of relations between countries with earth, water, and space can also be deduced from scientific research by the Agrarian Law Section of Gadja Mada University that the state's right to land in its territory should be the right to control. This conclusion is based on the assumption that the state as a subject means personification the whole people, not as individuals or State Agencies. In this conception, the state cannot be separated from its people. If so, then the state is the right of the empire, namely the right to control the land or its use.

The conclusion of the UGM Agrarian Law Section is based on research on how best the relations between the Republic of Indonesia and their territories should be, and what systems should be used in the UUPA, whether the private system or collective system. Shrinking Soetijnjo, based on the results of research on

various concepts, theories, and principles concerning the relationship between the state and the land, an alternative was found in making direct relations between the state and the land, namely:

- 1) The state as a subject that can be equated with corporations, so that the relationship between the state and the land has *privaatrechtelijk*, the state as the owner. State rights are *domonium* rights.
- 2) The state as a subject in its position as a state, not an individual, so as a state body that is publicly trusted. The State Right is a *domonium* right, besides that it can be used by public rights.
- 3) The state as a subject in the sense of being the personification of the people as a whole, so not as an individual or a state body. In this concept, the state is not free from its people. If so, then the right of the state is the right of communes or the right of the empire, namely the right to control the land or its use.

The three forms of relations between the state and the land after being reviewed from the objectives of the Indonesian state based on Pancasila, the first form is not in accordance with the second principle of the Pancasila which recognizes the dual nature of man. The second form is also not suitable because it is only concerned with social nature, independent of its individual nature. This third form is considered more appropriate because the state as a personification, accommodating social and individual human nature in the control of land, based on the above, the state rights to the land more right is the right to master.

- 1) Based on Article 2 paragraph (2) of the UUPA, the right to control the state does not give authority to physically control land and use it like other land tenure rights, because its nature is only public authority, the right to control the state only has the authority, as follows:
 - 2) Regulate and organize the designation, use, supply and maintenance of the earth, water and space;
 - 3) Determine and regulate legal relations between people with the earth, water and space;
 - 4) Determine and regulate the legal relationship between people and legal actions concerning the earth, water and space;

The state power that is intended is about earth, water, and space. So, both those that have been blocked by individuals or legal entities, or those that are not, including state land. State land according to Maria Sumardjono are lands that are not attached to a right, namely ownership rights, right to cultivate, right to use buildings, use rights on state land, management rights, as well as communal land and *waqf* land, which also includes:

- a. Land that is voluntarily handed over by the owner,
- b. Land rights that expire and are not renewed,
- c. The lands whose rights holders die without heirs,
- d. Land abandoned, as well
- e. Land taken for public interest in accordance with the procedure for revocation of rights as regulated in Law No. 20 of 1961 concerning Revocation of Land Rights and objects on it as well as Presidential Decree No. 55 of 1991 concerning land acquisition for the implementation of development in the public interest.

Regarding the definition of state land, it is important to obtain clarity about the status of government land, whether it is state land or not, according to Maria Sumardjono, it must be linked to the state's deficit above state, even though the land is a state asset / wealth, because state lands controlled by a government agency are used in accordance with their respective duties, given with management rights or usufructuary rights in accordance with the regulation of the Minister of Agrarian No. 9 Year concerning the implementation of the Convention on the Use Rights of State Land and the Provisions regarding subsequent policies. If a government agency controls the land, but does not hold management rights or usufructuary rights, then the status of the land is state land.

The right to control land also does not contain the authority to control the land physically and use it as well as land rights, because its nature is indeed regulated or solely in the public legal aspect. If the state needs land for the continuation of the road the government concerned can be granted a land right.

The right to control land cannot be transferred to another party, but state land can be granted with a right to land to someone or a legal entity. The granting of rights to this does not mean giving up the right of control of the state to the land, but the authority of the state is limited to the limit of authority which is the content of the rights granted, and the state must respect that right. Although the right to control the state cannot be transferred to other parties, in its implementation it can be transferred to the Regional Government and indigenous peoples as long as it is needed and does not conflict with national interests.

The authority that can be delegated to the Regional Government according to Boedi Harsono will essentially be limited to the authority to regulate and administer land allotment, use, inventory and maintenance. The authority to organize, for example, acts to ripen the land to be prepared as a place to build public housing, industry, and so on.

3. Rights to Land as the Right of Individuals / Individuals

The Basic Agrarian Law (UUPA) has regulated and determined land rights as rights to land as individual / individual rights. Therefore, some of the land rights referred to are related to this research.

a. Right of ownership

Property rights can be owned by Indonesian citizens and legal entities appointed by the government. In using land ownership rights must pay attention to the social function of the land that is in using the land must not cause harm to others, the use of land must be adjusted to the state of the nature of the rights, the balance between personal interests and the public interest, and the land must be maintained properly in order to increase fertility and prevent damage.

As for the characteristics of land ownership rights, as follows:

- a. Property rights can be used as collateral in banking institutions or non-banking institutions (Law No. 4 of 1996 concerning Underwriting Rights).
- b. Property rights can be pawned in a pawnshop or individually pawned against certain parties.
- c. Property rights can be transferred and transferred to other parties.
- d. Property rights can be released voluntarily (Article 27 of the BAL).
- e. Property rights can be represented to socio-religious institutions (Law No. 41 of 2004 concerning Waqf)
- f. Property rights can be used as land for building rights (Article 24 paragraph (1) PP No. 40 of 1996), and,
- g. Property rights can be used as land of Right to Use (Article 41 letter PP No. 40 of 1996).

As stipulated in the provisions of articles 21 and article 49 paragraph (1) of the BAL, in principle only Indonesian citizens can have ownership rights on land, either alone or together with others. In addition, certain established legal entities and legal entities appointed by the government engaged in social and military affairs as legal entities that can have steadfast property rights as long as the land is indeed used directly in the social and religious fields. Therefore, foreigners and foreign legal entities are prohibited from owning land ownership rights in Indonesia. Government regulation No. 38 of 1963 concerning the designation of a legal entity that can have ownership rights over land determines which legal entities are allowed, as follows:

- a. Banks established by the state
- b. Association of Agricultural Cooperatives established under Law No. 79 of 1958 for agricultural land with an area not more than the maximum limit as stipulated in the Law of the Republic of Indonesia Number 56 Year 1960.
- c. Agencies appointed by the Minister of Religion after hearing the Minister of Religion.
- d. Agencies appointed by the Minister of Agrarian Affairs after hearing the Minister of Social Welfare.
- e.

b. Building Rights

Building Use Rights (hereinafter referred to as HGB) is also one of the rights to the land referred to in Article 16 paragraph (1) of the UUPA and regulated its points in Article 35 to Article 40 of the UUPA, which is also regulated in article 50 and article 52 of the UUPA. In particular, this HGBI has been regulated in Chapter III of Government Regulation No.40 of 1996 concerning Right to Cultivate, Right to Build, and Right to Use of Land.

Article 35 paragraph 1 of the BAL provides an understanding of HGB as the right to establish and own buildings on land that are not their own for a specified period of time. The period of HGB is 30 years and can be extended for a maximum period of 20 years, and can also be renewed. Extension or renewal of HGB on state land is granted if it meets the conditions as stipulated in Article 26 of Government Regulation No. 40 of 1996 concerning Right to Cultivate, Right to Build, and the Right to Use of Land, as follows:

- a) The land is still used properly according to the circumstances, nature and purpose of granting the right;
- b) The terms of the grant are well fulfilled by the rights holder;
- c) Rights holders still fulfill the conditions referred to in article 19;
- d) The land is still in accordance with the region's spatial plan.

An application for an extension of the HGB or renewal is submitted no later than two years before the expiration of the HGB period or extension and must be recorded in the land book in the land office. For investment purposes, the request for renewal and renewal of HGB can be done at once by paying income money at the first time applying.

In accordance with Article 36 (1) of the Loge, then those who can have an HGB are Indonesian citizens and legal entities established under Indonesian Law and domiciled in Indonesia then in Article 36 paragraph (2) of the Loga further regulated, that the person or legal entity having a Building Use Right and no longer fulfilling the period of 1 year must release or transfer the right to another party that meets the requirements.

Building Use Rights (HGB) can be granted on state land, HPL land, and Ownership land. The occurrence of HGB on state land is by granting Decrees on Granting Rights by ministers or appointed officials, while for HPL land is also given also by a decision to grant rights to the minister or appointed official, but upon the proposal of the holder of the HPL the HGB must be registered and HGB on state or HPL land has occurred since its registration. Whereas, the HGB on land ownership rights occurs by granting the right by the holder of the right of ownership under the deed made by the Land Deed Making Officer (PPAT) and must be registered.

The HGB holder has the right to control the land given for a certain period of time to establish and own a building for personal or business purposes and to transfer the right to another party and charge it. In addition to these rights, HGB holders also have obligations, namely:

- a. Paying income money, the amount and method of payment is determined in the decision to grant rights.
- b. Using the land in accordance with its allotment and the conditions set forth in the decision and the agreement of its giving,
- c. Maintain good land and buildings that have and preserve the environment,
- d. Resubmit the land given with the HGB to the state, the holder of the HPL, and the holder of the right of ownership after the HGB is deleted, and
- e. Submit the HGB certificate that has been deleted to the Land Office.

c. Usage Rights

The right of use (hereinafter referred to as HP) is the right to use and / or collect proceeds from land that is directly controlled by the state or land owned by another person, who has the authority and obligation specified in the decision to grant it by the official authorized to give it or by meeting with the owner the land, which is not a lease agreement or land processing agreement (article 41 of the UUPA). Thus, the HP holder has the right to master and use the land given during his time for personal or business purposes and to transfer the rights to another party and burden him.

The HP subject is broader compared to HGU and HGB, as determined in Article 39 of the UUPA, namely:

- a. Indonesian citizens;
- b. A legal entity established under Indonesian law and domiciled in Indonesia;
- c. Departments, Non-Departmental Government Institutions, and Local Governments;
- d. Religious and social bodies;
- e. Foreigners domiciled in Indonesia;
- f. Foreign legal entities that have representation in Indonesia; and
- g. Foreign country representatives and representatives of international agencies.

The right to use can be granted for a maximum period of 25 years and can be extended for a maximum period of 20 years, and after the period and extension expire, the rights holder can be given an HP renewal on the same land. HP can also be given to keep an unspecified time if the intended subject is in points 3, 4, and 7. Whereas, HPs for land rights are granted for a maximum period of 25 years and cannot be extended. Renewal of HP with the granting of new HP is only possible with an agreement between the HP holder and the Right of Ownership that must be made with the Deed of the Land Deed Maker (PPAT). HPs on HPL land can be extended or renewed at the proposal of HPL holders. The upper HP on state land can be extended or renewed at the request of the right holder, no later than two years before the end of the HP period.

d. Rental Rights

Rental rights are specifically regulated in Article 44 and Article 45 of the UUPA, but specifically regarding the Right to Rent for buildings, while the right to lease agricultural land is referred to in Article 53, namely the Rights that are given a temporary nature in the sense that in the future this institution is eliminated because it is not in accordance with the spirit of the UUPA.

Article 44 paragraph (1) stipulates that a person or a legal entity has the right to lease land, if he has the right to use the land owned by another person for building purposes, by paying the owner some money as rent. The right to rent is actually a Right of Use, but has special characteristics, so it is called separately, which is only provided for buildings. As a right to land, the right to lease has the authority to use the land, in this case the land belongs to another person. The state cannot lease land, because the state is not the owner of the land.

e. Management Rights

Management Rights (HPL) is one of the land rights recognized by land regulations in Indonesia. Based on Republic of Indonesia Government Regulation No.40 of 1996 concerning Right to Cultivate, Right to Build, and Use of Land in Article 1 point 2, it is stated that the Right Management is the right to control from a state whose implementation authority is partly delegated to the holder.

Other authorities referred to in this article include:

- 1) Plan land use and use provided with the HPL;
- 2) Use the land for business purposes;
- 3) Submitting parts of the land to a third party according to the requirements determined by the company holding the rights, which includes aspects of the designation, use, time period and finances, provided that the rights to land to the third party concerned are carried out by officials who is authorized in accordance with the prevailing laws and regulations, initially the Minister of the Interior is now the Head of the National Agriculture Agency.

Regarding the subject of HPL mentioned in Article 67 paragraph (1) of the regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights which stipulates that management rights can be granted to:

- 1) Government agencies, including local governments;
- 2) State-owned enterprises;
- 3) PT Persero;
- 4) Authority Body;
- 5) Other legal bodies appointed by the government. These legal entities can be granted management rights as long as they are in accordance with their main duties and functions related to land management.

Other HPLs can be obtained on state land, because if on land that is to be granted HPL, if there are still rights to the land such as HGB, HP, and other land rights, including the right to work, the HPL holder must pay the compensation first loss of the following land rights to something above it.

Based on the Agrarian Minister's Regulation outline of land granted by HPL, if it meets the conditions:

- 1) Land with the status of state land (no other land rights);
- 2) The application fulfills the requirements as an HPL holder, namely the Central Government, BUMN, Local Government, BUMD;
- 3) the application must be as a land manager can be seen from the articles of association or the separate rules of the State Department / Institution;
- 4) Submit proposals regarding land use planning.

f. Government Authority in the Land Sector

Land management in Indonesia is based on the rules and policies in article 33 paragraph 3 of the 1945 Constitution, until the 4th (fourth) Amendment has not been amended in a modified manner. The article states that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. The meaning of the article according to Winahyu Erwiningsi has 2 outlines, namely:

- a. The state controls the earth, water, and natural wealth contained therein, as well as
- b. The earth, water and natural resources contained therein are used as much as possible for the prosperity of the people.

The right to control the state is a concept that is based on the understanding that the state is one of the organizations of power, the effort to influence other parties is central, which in this case is held by the central government. This is in accordance with the form of the state of Indonesia as a unitary state. However, considering the size of the region, the results of its use and effectiveness, the authority of the central government can be delegated to the regions by medebewind.

The land sector is the authority of the National Land Agency which has a regional office in the province (regional) and has a Land Office in the District / city (sectoral). Based on article 2 paragraph (4) UUPA, the right to control from the state can be medebewind. Based on article 13 and 14 letter k of Law No.32 of 2004 concerning Regional Government, the affairs of land services are mandatory authority for districts / cities. Details of land authority in the Regency / City are then regulated in Presidential Decree No.34 of 2003. So based on the devolution of land authority from the government, of course the regency / city actually has a good reason to get autonomy in the land sector. What's more then strengthened by the issuance of Government Regulation No.38 of 2007 which in its annexed section emphasizes more on the division of authority in the land sector between the central and regional.

Looking for the provisions of Article 13 paragraph (1) and Article 14 paragraph (1) of Law No.32 of 2004 and its implementing regulations when linked to the provisions of Article 2 paragraph (1) and paragraph (4) of the UUPA, Presidential Regulation No. 10 of 2006 along with the implementing regulations, then in the land sector there has been a lack of synchronization of laws and regulations. The Government considers that land authority in a juridical manner is in accordance with the mandate of Article 2 of the UUPA, but on the other hand the Regional Government also considers that with the coming into effect of Law No. 32 of 2004 concerning the Regional Government, then judicially the regional government also has the authority in the field of land. Synchronized so that it can cause clashes between the two laws, so that it shows the existence of problems and conflicts of interest in the implementation of regional autonomy in the land sector.

Such conditions can occur because the Local Government Law only adheres to the land in a narrow sense, namely the authority of land use and management and the area by district / city, while according to the LoGA, the land concept is interpreted broadly, covering spatial planning, land rights, land registration, land reform, etc. Land affairs that can be delegated in the context of regional autonomy are only agrarian (agricultural) matters, while the affairs of land ownership must remain within the authority of the central government.

The authority to take care of the land sector according to the UUPA is in the country which is carried out by the central government in its implementation. The provisions in the UUPA are derived from Article 33 paragraph (3) of the 1945 Constitution which has determined that all land is the right of the Ulayat Bangsa Indonesia as the gift of the Almighty God, whose control is assigned to the state in this case the central government. All of them are intended to achieve the greatest possible prosperity of the people. Based on the state's right to control as stated in Article 2 of the BAL, the central government has the authority to regulate and determine various aspects of land formation and control.

Determination and regulation includes planning, land formation, control and legal actions regarding land and land registration, which in fact is always carried out by the central government. It is indeed possible to delegate authority to the regional government or intermediary area, but the transfer is carried out in the context of deconcentration to central government officials in the region. It could also be that the delegation of authority was given to the regional government as autonomy, but only in the framework of medebewind assistance tasks, not decentralization or regional autonomy. Regional autonomy as determined by the Law No. 22 of 1999 which was later replaced by Law No.32 of 2004, land affairs can be decentralized to the regions. However, this provision does not have to be interpreted as that the authority is entirely in the local government. Ari Sukanti Hutagalung said that the authority possessed by the regional government in the land sector is limited to the nature of locality and not national.

4. Land Stewardship and Spatial Planning Policy Land Stewardship

The term land stewardship or land use is the first words formulated in a land use seminar in 1967 as a substitute for the term land use which includes the understanding of supply, land use, land use. Basically the land use policy is an integral part of national development policy. This is because the land is the location / place where development is carried out, so that it should be used as much as possible for the prosperity of the people.

The word "arrangement" implies the direction of the guidelines and the regulatory provisions and the implementation of an activity. Land use is an arrangement regarding inventory, land use, and land use in the form of directives, guidelines and provisions. Land is a series of activities to plan, implement, control land use in a planned manner to achieve the greatest possible prosperity for the people. The regulation on land stewardship is contained in Government Regulation No. 16 of 2004 concerning land stewardship, in Article 1 number 1 regulates that:

Land stewardship is the same as the management of land use covering the control, use and use of land as a unified system for the benefit of the community fairly.

The above definition contains a process of adjusting land use and land use to realize land use in accordance with the Regional Spatial Plan which includes land use planning, land use regulation, and Land Use Control In the Land Use System there are three concepts namely:

- a. Inventory is the earliest activity about how to manage the land supply for all activities by taking into account the conditions of existing land use.
- b. Allotment is the process of determining activities in a particular area.
- c. Use is already a realization where the land has begun to be occupied, duatur, and arranged.

The purpose of the preparation of the Land Use Management Pattern is as follows:

1. Provide input for the preparation of the Regional Spatial Plan, so that the aspects of land ownership and ownership and aspects of land use and utilization can be considered in full in spatial planning and can provide maximum benefit for the prosperity of the people.
2. Provide input on land programs which in this case are land stewardship to realize the designated Spatial Layout.

The land use management pattern in this case is a form of analysis that explains the physical conditions of land that have been utilized with ideal conditions that will be realized through Spatial Planning. Based on Article 6 of Government Regulation No. 16 of 2004 concerning Land Use Management, the Land Use Policy held against :

- a. Plots of land that already have rights, whether registered or not registered,
- b. State land, and
- c. Customary land of customary law communities in accordance with the provisions of the prevailing laws and regulations.

5. Spatial planning

Spatial planning is a spatial utilization policy regulated by law No.26 of 2007. Article 1 paragraph (3) determines that spatial planning is a process that includes three main activities, namely spatial planning, spatial utilization, and control of spatial utilization. The three activities are interrelated and cannot stand alone, so the whole must reinforce each other.

Article 1 paragraph (1) of the Spatial Planning Law determines that space is a time that includes land space, oceanic space, and air space. As a unit area where humans and other living things and conduct activities and maintain their survival. Spatial principles are for all interests, in an integrated, effective, efficient, harmonious, balanced, sustainable and open manner. While one of its objectives is to regulate the use of space for the protected area and cultivation.

As for the purpose of Spatial Planning, as follows:

- 1) The implementation of the use of environmentally sound space based on the archipelago's insight and national resilience,
- 2) Implementation of regulation on utilization of protected areas and cultivation areas, and
- 3) Achieving quality spatial utilization.

Article 2 of Law No.27 of 2007 stipulates that spatial planning is based;

- 1) Spatial use for all interests in an integrated, efficient and effective, harmonious, balanced and sustainable manner,
- 2) Openness, equality, justice and legal protection.

Spatial planning must be organized in an orderly manner, so that it fulfills the processes and procedures that apply regularly and consistently. What is meant by empowerment and effectiveness is that spatial planning must be able to realize the quality of space in accordance with the potential and space function, harmonious, harmonious, and balanced that spatial planning can guarantee harmony, and the balance of structures and patterns of spatial use for the population distribution region, growth and development between sectors, regions and sectors and regions in one archipelago insight. Sustainability is meant that spatial planning guarantees the sustainability of natural resource carrying capacity by taking into account the interests of birth and inner generation.

In order to guarantee the achievement of the objectives of spatial planning, a statutory regulation is required in one system, giving a clear and firm basis, in order to ensure legal certainty for spatial utilization efforts, considering that spatial planning is defined as a process of spatial planning, space utilization and control. Space utilization is an integral part of the system or with others.

g. An Overview of the Right to Use Upper Land

The development of development in urban areas shows that land use is not only limited to the land surface area that is controlled, but its use develops in basements, land spaces, and water spaces. This condition encourages agencies that regulate land issues, namely National Land and Land to form policies that regulate the use of space on land, basements, and waters.

Based on the official situation of the National Land Agency (BPN), boundaries have been made or the scope of Land Use Rights (HGRAT), as follows;

1. HGRAT covers the right to the earth's surface where the building foundation is and the right to control the air space as large as the building and the ownership rights of the building.
2. HGRAT is not free from the right to own or use land, it must be based on something of land rights, for example the right to own land or building rights, and the right to use to use land and utilize land products.
3. It is necessary to use the air space above the earth's surface which is hated or on someone else's land.
4. The right to have a building is required for legal certainty, from the building itself which may have a higher economic value than the land of the building foundation.

In addition, based on the Republic of Indonesia Draft Law on Land that the Right to Use Space on Land and Underground Rooms is regulated in Article 39, as follows:

- 1) Land in the upper and / or underground spaces can be granted land rights.
- 2) Land in the room above and / or in land that is controlled by the same rights holders and physically underground buildings is a unit with the building on the ground, the status of the right of space above and / or underground follows the Land Rights.
- 3) Land occupied in the upper and / or underground spaces is controlled by different rights holders, different land and / or underground space can be granted..
- 4) The granting of different land rights as referred to in paragraph (3), the right to use them in the form of:
 - a. Underground Building Rights; or
 - b. Underground use rights

h. Principle of Horizontal Separation

The provisions of article 25 of the UUPA use the principle of horizontal separation which separates land from other objects attached to the land, so that the house is separated from the land owner. Based on the determination of the horizontal principle, the land is separated from the objects attached to it, the land owner can be different from the owner of the building that stands on it. The principle of horizontal separation in land law

(UUPA) is adopted, the legal status of objects on the ground, including the house no longer follows the status of the land where the house was built, but has a stand-alone status. Thus, the building according to law is not a single entity with the land in question. Every legal act concerning land rights does not automatically include objects on it.

The principle of horizontal separation of land rights which is the original nature of rights in customary law, is retained, but adjusted to the reality of the needs of the people now. Buildings that are built, plants that are planted, and other objects that are above a parcel of land are the property of the building and planting parties, both the holders of their own land rights and other matters, unless there is an opposite agreement. If the application of the principle of horizontal separation adopted in the UUPA is carried out, if the building has been certified separately from the land, the certified building owner can have the right to maintain the building with the same position as the land owner.

V. CONCLUSION

The right of management is born if it has been registered and as other proof of rights by making a land book at the Office of the National Defense Agency consisting of a certificate and a letter of measurement. The HPL in the system of land tenure rights is not included in the rights to the land. The holder of the HPL does have the authority to use the land which is being exploited for its business purposes. concerned is provided for use by other parties who need it. In the provision and granting of the land, the right holder is given the authority to carry out activities is part of the state's authority as stipulated in Article 2 of the Basic Agrarian Law.

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