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Investor Building Use Rights After the Omnibus Law Comes into Effect in the Capital City of the Archipelago Based on the Theory of Justice

Mustika Iklima Pora¹, Siti Barora Sinay², Rusdin Alauddin³¹Fakultas Hukum, Universitas Khairun, Maluku, Indonesia, mustikaiklima2001@gmail.com²Fakultas Hukum, Universitas Khairun, Maluku, Indonesia³Fakultas Hukum, Universitas Khairun, Maluku, IndonesiaCorresponding Author: mustikaiklima2001@gmail.com¹

Abstract: The government needs to ensure that the management of HGB in the IKN is carried out by paying attention to the rights of local communities and indigenous peoples. The application of the principle of social justice as taught by John Rawls by paying special attention to more vulnerable groups. In every policy related to the procurement of building use rights to accelerate the development of the IKN, the principle of social justice must be maintained. This means that policies must provide protection for vulnerable groups and ensure that this development benefits all levels of society. This study aims to provide an understanding of the Ratio legis regulation of Building Use Rights for investors in Law Number 5 of 1960 and in Law Number 6 of 2023 and to find out, understand and explain the perspective of John Rawls' Theory of Justice in the regulation of building use rights in order to accelerate the development of the IKN. This research is normative in nature using a statutory regulatory approach, an approach and a conceptual approach. Research data were collected by means of document/literature studies.

Keyword: Building Rights, Nusantara Capital City, Justice Theory

INTRODUCTION

Building use rights are one form of land rights that are specifically regulated in agrarian law. The specifications of building use rights are not the strongest, most complete and hereditary as those of ownership rights. In the sense that building use rights are only limited in their validity even though they can be transferred and assigned to other parties. Based on the explanatory memorandum of the Basic Agrarian Law (hereinafter abbreviated as UUPA), it has been recognized that at the time the UUPA was issued, building use rights were born as a new right to land to meet the needs of modern society and were granted by government stipulation (Supriadi, 2007). Building use rights give the holder the authority to construct and own buildings on land that is not his/hers (Law Number 5 of 1960 concerning Basic Agrarian Principles, 1960), with applicable terms and conditions. This concept, although temporary and limited, has an important role in the land law system in Indonesia. In practice, building use

rights are often the main choice for business actors, investors, and the community in utilizing land for commercial, industrial, or residential purposes. This is due to the flexible nature of building use rights. allows optimal use of land without having to control ownership rights to the land.

The development of the Indonesian Capital City (hereinafter abbreviated as IKN) is one of the ambitious projects of the Indonesian government to move the center of government from Jakarta to East Kalimantan. This project aims to create a more sustainable and equitable city in infrastructure development. One important aspect of this development is the regulation of land use through Building Use Rights. The request for building use rights for the IKN project is very important, because building use rights provide a legal basis for land use by the government and developers. Building use rights allow for optimal land management and utilization, so that it can accelerate the development of the necessary infrastructure. In the context of IKN, building use rights are expected to facilitate various development activities, ranging from the construction of government buildings, public facilities, to residential areas.

In addition to the UUPA, building use rights in its provisions are also regulated in Law Number 11 of 2020 as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter abbreviated as the Job Creation Law), specifically creating new defense governance regulations related to building use rights in the Job Creation Law, namely based on Article 129 paragraph (2) in the fourth part of paragraph 2, building use rights are now part of Management Rights (hereinafter abbreviated as HPL), so that building use rights can be issued from HPL land. In addition, with the issuance of PP Number 18 of 2021 which functions as the implementation of Article 142 of the Job Creation Law.

This regulation covers all aspects of land governance, including regulations related to building use rights in the Indonesian Capital City. Although UUPA is not mentioned as a basis for "remembering" in the Job Creation Law, UUPA must still be a reference. Several important articles in the Job Creation Law have sparked controversy. The law is very good for entrepreneurs investing in Indonesia to create jobs, but very dangerous for local communities (Moch Keizar, 2022). According to data obtained by the Indigenous Peoples' Alliance of the Archipelago (AMAN), it is estimated that at least 20,000 indigenous people will be victims of the National Capital project (IKN) is new in East Kalimantan. Namely 21 (twenty one) indigenous communities inhabiting the IKN area, 19 communities are in Penajam Utara Regency, and 2 more in Kutai Kartanegara and there are 11 indigenous areas and that is also a consideration.

The problem that occurs in the relocation or construction of the Indonesian Capital City is a dispute that arises due to the existence of legal policy politics in the land sector issued by the government, where the regulations issued are not in accordance with or contradict the UUPA. The concept of state control over land and other natural resources is related to how the state treats people's lands. The existence of indigenous people's homelands is one of the limitations for the validity of state control over land and other natural resources. Thus, state control over land and other natural resources should not be an excuse for the seizure of community lands, resulting in East Kalimantan civil society rejecting the development of the IKN which displaces the rights of local communities (beta hita news). As a result, indigenous peoples lose their land, which is a source of food and livelihood and can also be at risk to the identity passed down from generation to generation (Husein Alting, Siti Barora & Sultan Alwan, 2024). In the implementation of land acquisition, the reference to the weak party must be interpreted as the community as the entitled party (the party affected by the land acquisition). In John Rawls' Theory of Justice, he emphasizes the balance between existing interests, which is intended to achieve justice. Based on the background above, there are three formulations of the problem in this study, namely: How is the Ratio legis of the regulation of Building Use Rights for investors in Law Number 5 of 1960 and in Law Number 6 of 2023?; What is the

perspective of John Rawls' Theory of Justice in the regulation of building use rights in order to accelerate development IKN?

METHOD

The type of research used by researchers is normative research. The term normative legal research comes from the English normative legal research, and in Dutch, normative juridisch onderzoek. Normative legal research or doctrinal legal research or dogmatic legal research or legal research which in the Anglo American literature is referred to as legal research is internal research in the discipline of law. Normative legal research is usually in the form of document studies, namely using legal material sources in the form of laws and regulations, court decisions/rules, contracts/agreements/contracts, legal theories, and expert opinions. Normative legal research is also called doctrinal legal research, also referred to as library research or document study. Another name for normative legal research is doctrinal legal research, because this research is conducted or shown only on written regulations or legal materials. It is called library research or document study, because this research is mostly conducted on secondary data available in the library (Muhaimin, 2020). The normative legal research method uses a normative legal approach method, the normative legal approach is "an approach that refers to applicable laws and regulations" (Dr. Kadarudin, 2021). The approach in normative legal research is the material to start as a basis for a researcher's perspective and framework for conducting an analysis (Mukti, 2009). This research approach is to obtain answers regarding the legal problems that are the focus of this research, there needs to be an approach to obtain various information from aspects that are in line with the components of the legal issues discussed (Dan Djulaeka Rahayu, 2019). The approach chosen to conduct an analysis of the research must be explained and accounted for because it will have consequences for the research results (Jhonny Ibrahim, 2007). In this study, the researcher used a statute approach, a comparative approach and a conceptual approach.

The technique of collecting legal materials is the most strategic step in research, because the main purpose of the research is to obtain legal materials. Without knowing the technique of collecting legal materials, the research will not obtain legal materials that meet the standards of legal materials set (Sugiyono, 2009). So in this study using the technique of collecting literature studies. This technique is used to inventory legal materials that are relevant to the problem being discussed (Fajar Mukti, 2010).

In normative legal research, the processing of tangible materials is an activity to systematize written legal materials, in this case the processing of materials is carried out by selecting secondary data or legal materials, then classifying them according to the classification of legal materials and compiling the research data systematically and logically. The analysis technique used in this study is prescriptive, namely identifying legal facts and eliminating materials that are not related to the research problem, searching for answers. problem formulation based on the laws that have been collected, then drawing conclusions as an answer to the problem formulation.

RESULTS AND DISCUSSION

Legislative Ratio of Building Use Rights Regulations for Investors in Law Number 5 of 1960 and in Law Number 6 of 2023

Ratio legis is a legal thought that is logical and rational, which is the main reason behind the birth of the legislation. Ratio legis is the reason for considering why such provisions are needed in the law, which is the broadest basis for the birth of a legal regulation. These legal regulations can ultimately be returned to these legal principles. Except for being called a basis, this legal principle is worthy of being called a reason for the birth of legal regulations or is the ratio legis of legal regulations. The ratio legis is a normative principle that provides important normative regulations, and can be called the heart of normative regulations. According to the

Stufenbau Theory (hierarchical norm theory) by Hans Kelsen, the legal system is a ladder system with hierarchical rules where the lowest legal norms must adhere to higher legal norms, and the highest legal rules (such as the constitution) must adhere to the most basic legal norms (grundnorm) (Hans Kelsen, 1995). In the hierarchy of norms, a norm must not conflict with the norms behind it, which is commonly referred to as the hierarchical legal theory (stufenbau). According to Kelsen, the legal system consists of a set of interrelated norms that develop from the most important general norms to more specific or concrete norms. The result will eventually be norms. In terms of the formation of legal norms or legislation, it is necessary to pay attention to their relationship with legislation at a higher level, as regulated in the hierarchy of legislation in force in Indonesia based on Law Number 12 of 2011. According to Kelsen's Stufentheory, the 1945 Constitution is the highest standard of Indonesian law known as the grundnorm, which contains legal ideals (rechtsidee) that lead to the establishment of the Indonesian state. Referring to Hans Kelsen's Stufenbau theory, according to researchers, the regulation of land rights, especially building use rights, must not conflict with the UUPA because the UUPA is based on the 1945 Constitution in Article 33 paragraph (3) and is also an elaboration of the Pancasila principles contained in the Articles of the UUPA itself (Boedi Harsono, 2008). Regarding the ratio legis HGB in the UUPA, this Law regulates the basics and provisions for the control, ownership, use and utilization of national Agrarian resources. Empirically-sociologically, the UUPA has been in effect since September 24, 1960 until now. This means that after fifteen years of independence and after trying for approximately twelve years, the Indonesian Nation for the first time has a legal basis to further formulate Agrarian Law/National Land Law as a manifestation of Pancasila and based on the 1945 Constitution. Ontologically, agrarian resources and the natural wealth contained therein (land rights) are gifts from God Almighty which must be used for the welfare of humanity. Article 1 paragraph (2) of the UUPA further emphasizes that the essence of all agrarian resources is "as gifts from God Almighty". This confirms the religious attitude of the Indonesian people in understanding the nature of agrarianism. It is further stated that all agrarian resources "are the earth, water and space (of) the Indonesian people" and at the same time "are national wealth". This is fundamentally a correction of the principle of Domienverklaring which is the core of colonial agrarian politics and law. At the same time, this provision also underlies the nature of the relationship between the people/nation Indonesia as the main agrarian subject with all agrarian resources/objects in the territory of Indonesia, as stated in the provisions of the UUPA in Article 1 paragraph (3). This existential relationship between humans and their land is recognized in the UUPA and is stated as an eternal relationship. Thus, as long as the people are united as the Indonesian nation, they will be the true owners of the earth, water, space and the natural resources they contain. Because land rights are a gift from God Almighty, land can be used as a means to achieve the welfare and well-being of the Indonesian nation. The formulation of values from the axiological aspect, namely the regulation of state authority related to HGB, can improve welfare as a state goal. The state's goal in the phrase "protecting all Indonesian people and all Indonesian blood" contained in the fourth paragraph of the 1945 Constitution is also regulated in the provisions of Article 33 of the 1945 Constitution. Natural resources (part of the environment) here are aimed at the prosperity of the people, so that the people's values are not just political, but also "economically prosperous based on natural resources." This also means that there is a state responsibility to take care of the people's prosperity based on ecological values and guarantee people's rights (Andy Hartanto, 2020). This does not mean that people cannot have rights to land, including HGB, either individually or in groups, however, the State is responsible for national management and regulation of land in Indonesia. The legal ratio regarding building use rights is further contained in Articles 34 to Article 48 of PP No. 18 of 2021 which is a derivative regulation of the Job Creation Law. Article 37 paragraph (1) PP No. 18 of 2021 that the term of HGB on state land and land with management rights is a maximum period of 80 (eighty) years.

As we know, the Job Creation Law that regulates development in the IKN must be based on the principles of agrarian land contained in the UUPA. Because the principles of land law are the embodiment of the principles contained in Pancasila as a philosophy and ideology and the source of all sources of law in Indonesia and also the principles of land law are the implementation of Article 33 of the 1945 Constitution. Thus, in the future, land issues in the IKN will not become a new source of conflict in national land law. Researchers hope that all legal principles and norms contained in Law Number 6 of 2023 can be reviewed by referring back to the principles of the UUPA, without reducing the government's efforts to accelerate development and equalize prosperity in the IKN area. Principles such as state control over land, social justice, legal certainty, sustainability, and respect for the rights of indigenous peoples must be integrated into the land policies implemented in the IKN. This will ensure that the development of the IKN not only supports economic and infrastructure progress, but also creates a just, prosperous and sustainable society in the long term. Land can be the main capital for national development, but if it is not managed carefully it will be a disaster for the Indonesian nation.

John Rawls' Theory of Justice Perspective in the Regulation of Building Use Rights in the Context of Accelerating the Development of the Indonesian Capital City

The revision of Law Number 3 of 2022 concerning the National Capital has been officially approved by the DPR in September 2023, which is now Law Number 21 of 2023. The main changes introduced through this revision include the arrangement of 45 government structures, funding mechanisms, and efforts to accelerate development in the IKN Nusantara. This revision aims to increase flexibility in the process development and governance of the new capital city, as well as facing technical challenges that emerged during its planning. However, the IKN Law was processed in 42 days, which was considered too short and did not allow for adequate public participation.

In Law No. 21 of 2023, there are several new provisions in Article 16A of the Law. One of them regulates that land rights in the form of Building Use Rights (hereinafter abbreviated as HGB) for investors can be granted for a very long period of time, up to 160 years. Article 16A paragraph (2) states that HGB can be granted for the first period of 80 years, and after this period expires, HGB can be extended for a second period with the same duration. With these two periods, the total HGB period can reach 160 years. Basically, HGB in Indonesia is granted based on PP No. 18 of 2021. The regulation is a regulation issued as a derivative of the UUPA as well as the latest regulation that provides HGB with the longest period of previous regulations, namely 80 years (Ratih P, Moh. Muhibbin, Benny K. Heriawanto, 2025). On Thursday, July 11, 2024, President Joko Widodo signed Presidential Regulation Number 75 of 2024 (hereinafter abbreviated as Perpres No. 75 of 2024) concerning the Acceleration of Development of the Indonesian Capital City. Presidential Regulation No. 75 of 2024 aims to implement the mandate of Law No. 21 of 2023. This regulation includes various incentives and conveniences in business licensing for investors in the IKN (tempo news). Presidential Regulation No. 75 of 2024 as a further regulation and technical implementing regulation of the provisions of Law No. 21 of 2023 also regulates the extension of the HGB period of up to 160 years as stated in Article 9 of Presidential Regulation No. 75 of 2024. The granting of HGB with a very long duration has drawn pros and cons considering that the duration far exceeds the provisions of agrarian law and applicable regulations regarding land rights.

Based on the explanation above, there is a significant discrepancy between the provisions regarding the period of granting HGB based on Presidential Regulation Number 75 of 2024 concerning the Acceleration of Development of the Indonesian Capital City with the regulations governing HGB according to the agrarian law applicable in Indonesia, namely Government Regulation Number 18 of 2021 concerning Land Rights, Apartment Units, and Land Registration. Before going further, it is necessary to understand that in agrarian law the granting

of land rights is generally limited to a maximum period of 80 years. This limitation is intended to ensure that the land is used in accordance with the social objectives as mandated by Law Number 5 of 1960 concerning Basic Agrarian Principles, which regulation is the oldest regulation that serves as the basis for granting land rights in Indonesia before the issuance of derivative regulations that specifically regulate HGB at this time as previously described. The purpose of limiting the granting of land rights, among others, is based on Article 7 of the UUPA which stipulates that in order not to harm the public interest, ownership and control of land that exceeds the limit is not permitted. From the explanation we can see that the article is intended to end and prevent the accumulation of land in the hands of certain groups and people only. The article emphasizes the prohibition of what is called "groot groundbezit". Ownership and control of land that exceeds the limit can harm the public interest (Boedi Harsono, 2008).

The regulation of building use rights in order to accelerate the development of the IKN also needs to consider the principles of justice of John Rawls, especially in the aspect of fairness. According to John Rawls, justice is the main virtue in social institutions, as is truth in a system of thought. Justice does not allow sacrifices forced on a handful of people to be burdened by the majority of benefits enjoyed by many people. The regulation of building use rights in order to accelerate the development of the IKN also needs to consider the principles of justice of John Rawls, especially in the aspect of fairness. According to John Rawls, justice is the main virtue in social institutions, as is truth in a system of thought. Justice does not allow sacrifices forced on a handful of people to be burdened by the majority of benefits enjoyed by many people. Therefore, in a just society, the freedom of citizens is considered established; rights guaranteed by justice are not subject to political bargaining or calculations of social interests. In the context of the Indonesian Capital City (IKN), building use rights (HGB) and regulations on the allocation of land rights must be regulated by taking into account Rawls' principles of justice.

By ensuring fair access to HGB and equitable distribution of benefits, the development of the IKN can be more inclusive and sustainable, and minimize the inequality that may arise. In this way, the development of the IKN can attract investors and create a more just, equal, and prosperous society. In his book entitled *A Theory of Justice*, John Rawls puts forward many things about justice. Furthermore, John Rawls also argues that justice plays an important role in society, if society is organized in such a way that justice is possible (John Rawls, 2019). Justice is a recognition of humans according to their dignity as humans. Justice as fairness by John Rawls states that it is unfair if most of the benefits are enjoyed by many people but a small number of people must be sacrificed and something is also unfair if most people experience prosperity by making some people lack. The government must be able to create justice that does not harm any party in ensuring the availability of land, especially building use rights in the context of a just economy to accelerate the development of the IKN.

Problems regarding land, especially building use rights in the IKN, are problems that are very touching on justice. This is due to the nature of land which is rare and limited, and is a necessity of human life. Thus, policies both in regulations and government decisions are not easy if they aim for justice for all parties (Maria S.W. Sumardjono, 2001). Article 9 paragraph (2) of Presidential Decree No. 75 of 2024 aims to attract more investment by providing long-term legal and economic certainty for investors and regulating the governance of special regional governments in the Indonesian Capital City (IKN). One of the focuses is to make adjustments to the regulations regarding land rights (hereinafter abbreviated as HAT) including HGB in the IKN area. However, this rule must be accompanied by strict regulations to protect the rights of local communities, ensure appropriate land use, and maintain environmental sustainability. Routine monitoring and transparency in the implementation of HGB are also important so that the expected economic benefits can be achieved without sacrificing the interests of the general public and the environment. Control of HGB for up to 160 years can provide benefits in terms of investment and economy, but the risks that arise are also great,

especially for the environment and local communities or local indigenous communities. The government needs to be very careful, conduct in-depth studies, and establish strict regulations so that these benefits do not sacrifice environmental sustainability and community rights. Therefore, the government needs to take wise policies to resolve this land issue, in addition to enforcing the law.

Many customary law communities have lost their customary rights because the State uses the principle of legal certainty more than the principle of justice and also uses the right to control the state (hereinafter abbreviated as HMN). This is evident in the Job Creation Law which contains provisions on land that has been owned by individuals or legal entities that hold land ownership rights in an effort to provide convenience for investors, and is owned or handed over by a government agency, legal entity or individual that refers to and in accordance with existing laws and regulations, customary rights cannot be implemented on it. Customary law communities are communities that use unwritten law, so they do not have proof of their customary land. So, if another party has evidence such as a certificate, then the party holding the evidence is the winner, even though in reality the land may be customary land which is not only a source of livelihood, but also part of their cultural identity.

Land acquisition involving local communities and indigenous peoples in the development project of the Indonesian Capital City must pay attention to the principles of justice according to John Rawls. By implementing the principles of justice, the government and investors can design fairer policies, minimize inequality, and ensure that the affected communities in East Kalimantan receive equal benefits from the development. This will not only create more inclusive development, but also enhance the social and cultural sustainability of local and indigenous communities.

The conclusion must be linked to the title and answer the research formulation or objectives. Do not make statements that are not adequately supported by your findings. Write down improvements made to industrial engineering or science in general. Don't create further discussion, repeat abstracts, or simply list research findings. Don't use bullet points, use paragraph sentences instead.

CONCLUSION

From the results and discussions above, the conclusion of this researcher is as follows that the Ratio Legis of the Regulation of Building Use Rights for Investors in Law Number 5 of 1960 and in Law Number 6 of 2023 includes various aspects, both philosophical, sociological and legal. The objectives of the state contained in the fourth paragraph of the 1945 Constitution are also regulated in the provisions of Article 33 of the 1945 Constitution. However, the government's policy regarding the granting of HGB with a very long period of up to 160 years, risks violating the constitutional boundaries and land principles that have been stipulated in the UUPA. This can lead to social inequality in land use, potentially ignoring the rights of local communities and indigenous peoples as vulnerable groups with policies implemented that do not reflect the desired principles of justice, and can even worsen social and economic inequality, as well as creating injustice in land distribution, as well as the environment if not managed carefully.

The regulation of building use rights (HGB) in order to accelerate the development of the Indonesian Capital City (IKN) contains a discrepancy between the provisions of Article 9 paragraph (2) letter b in Presidential Decree Number 75 of 2024 and PP Number 18 of 2021 which is a derivative regulation of UUPA Number 5 of 1960. This discrepancy indicates a lack of harmony in the regulation of land rights for development purposes which can pose challenges in the implementation of the policy. In addition, the granting of HGB with 2 cycles with a total period of 160 years is also considered not entirely in line with the philosophy of agrarian regulation which emphasizes fairer and more sustainable land regulation.

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