

THE CONCEPT OF RENEWAL PERIOD OF RIGHT TO CULTIVATE (HGU) IN INDONESIAN LAND LAW

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Abstrak

Penelitian ini mengkaji perbedaan pengaturan jangka waktu pemberian Hak Guna Usaha (HGU) antara Undang-Undang Pokok Agraria (UUPA) dan peraturan turunan dari UU Cipta Kerja, yaitu Peraturan Pemerintah Nomor 18 Tahun 2021. Dalam UUPA, tidak terdapat ketentuan mengenai jangka waktu pembaruan HGU, hanya mengatur perpanjangan hak tanpa klausula pembaruan setelah masa berlaku berakhir. Sebaliknya, UU Cipta Kerja dan PP 18 Tahun 2021 memberikan pengaturan jangka waktu yang berbeda, tanpa merujuk pada UUPA dan tanpa kejelasan pelaksanaan aturan tersebut, sehingga menimbulkan ketidakpastian hukum. Tujuan penelitian adalah menganalisis kebijakan penggunaan jangka waktu pembaruan HGU yang diberikan pemerintah. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukkan bahwa kebijakan baru memberikan jangka waktu perpanjangan dan pembaruan HGU hingga 95 tahun. Kebijakan ini berpotensi mengabaikan prinsip fungsi sosial tanah dan lebih mengutamakan investasi jangka panjang dibandingkan redistribusi tanah untuk keadilan agraria.

Kata Kunci: *Hak Guna Usaha, Jangka Waktu, Kebijakan, Agraria, Investasi*

Abstract

This study examines the differences in the regulation of land use rights (Hak Guna Usaha, HGU) renewal periods between the Basic Agrarian Law (UUPA) and the derivative regulation from the Job Creation Law, namely Government Regulation No. 18 of 2021. The UUPA does not regulate the renewal period for HGU, only the extension of rights without clauses on renewal after the expiration period. Conversely, the Job Creation Law and

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PP 18 of 2021 regulate the renewal period differently, without referencing UUPA and lacking clarity on implementation, thus creating legal uncertainty. The study aims to analyze government policy regarding the renewal period of HGU rights. The method used is normative legal research with statutory and conceptual approaches. The results reveal that the new policy grants renewal and extension of HGU rights for up to 95 years. This policy potentially neglects the social function of land and tends to prioritize long-term investment interests over land redistribution for agrarian justice.

Keywords: Hak Guna Usaha, Renewal Period, Policy, Agrarian, Investment

INTRODUCTION

Land management has its own commercial value (Selling Value), the acquisition of this value is obtained from renting by the owner and can be used to build residential buildings or places of business activities. The need to own land has been hereditary throughout the history of human life. In order to illustrate this relationship, “where there is a land there is a life”. This notion states that land has a sacred meaning in life. (Devita, 2021) The very important function of land for prosperity and power is realized by fighting for and obtaining it. The granting of land use permission for Right to Cultivate aims to support activities in the agriculture, fisheries, and farming sectors. The Right to Cultivate in the agrarian sector is attempted as a foundation for collective business, a form of collective business, which for the greatest prosperity of the people, facilitating cooperation among the State-Region, State-Domestic, and Foreign Private Sector, while also prohibiting monopolistic practices.

The basis for the application in providing land rights is contained in the regulations in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. According to Imam Koeswahyono and Diah Pawestri Maharani, the scope of agrarian law is “First, in the aspect of civil law there are transactions such as buying and selling and inheritance. Second, such matters as land pilferage are included in the domain of criminal law. Third, conflicts can occur in administrative aspects related to the decisions of



government officials.” (Koeswahyono & Maharani, 2022) Referring to Article 29 of the UUPA, Right of Cultivation is granted for a maximum period of 25 years. Companies that require a longer period may be granted the Right of Cultivation for up to 35 years. Depending on the conditions of the company and among the right holders, the validity period as stated in Article 29 paragraphs (1) and (2) of the article may be extended for a maximum of 25 years (Imtihani & Nasser, 2024; Mutiarawati et al., 2024).

After the passage of the Job Creation Law, land ownership for agrarian businesses offera investors greater flexibility n extending time compared to the UUPA. It is due to the fact that the Job Creation Law regulates the renewal of land rights on the same object after the expiration of the initial extension period. According to Article 22 paragraph (1) of Government Regulation 18 of 2021 as the implementing regulation under Article 142 of the Job Creation Law, which regulates the granting of Right to Cultivate could be granted for a period of 35 years with an extension of up to 25 years, and renewed for up to 35 years resulting in a total of 95 years. However, the problem that arises after the enactment of the Job Creation Law is that the UUPA has not been repealed regarding the provisions on the term of the Right to Cultivate, thus the rules contradict each other. As a result, these overlapping regulations create a contradiction, leading to legal uncertainty, and confusion among the public regarding which rule should be applied (Pramadanty et al., 2024; Rahmah et al., 2024).

The time limitation imposed by the State on the Right to Cultivate (HGU) serves to restrict prolonged control over land. Once when the designated period expires and the owner does not seek an extension, the land may be transferred to another person. Therefore, the granting of the period of HGU in the Job Creation Law and PP 18 of 2021 creates injustice which limits the rights of others to access the same land. This situation creates a normative conflict between the regulation of the HGU period in the Job Creation Law and PP 18 of 2021 and the original provisions of the UUPA. With the introduction of a new policy that regulates the renewal period of Right to Cultivate with an additional length of 35 years, this policy has the potential to neglect the principle of the social function of land, and tends to prioritize long-term investment interests over land redistribution for agrarian justice.



LITERATURE REVIEW

1. Legal Certainty Theory

Legal certainty encompasses two key aspects. First, it refers to the existence of general rules that informed individuals about actions that are permitted or prohibited. Second, it ensures protection for individuals from arbitrary actions by the state, because the general rules ensure what the state may demand or enforce. (Marzuki, 2008) In his book "The Morality of Law", Lon L. Fuller asserted that the law must fulfill eight predetermined principles. If those eight principles are not fulfilled, the existing rules will be considered invalid as rules, or it means that the rules must provide legal certainty. Lon L. Fuller listed the eight principles that must be fulfilled by the law as follows:

- 1) The system created by the regulatory authority should be based on regulations that are not impulsive to specific circumstances.
- 2) Regulations issued by the regulatory authority must be publicly announced.
- 3) Regulations should not be applied retroactively, as it will disrupt the sustainability of the whole system.
- 4) The regulations must be formulated in accordance with the rules in a way that is understandable to the general public.
- 5) One regulation must be coherent and harmonized with other regulations and must not contradict each other.
- 6) A regulation that has been established may not impose an action more than what is capable of being taken.
- 7) The rules that have been established must remain consistent and not change frequently.
- 8) There must be congruence between the declared rules and their actual implementation in daily practice.

Based on the eight principles stated by Lon Fuller, it could be concluded that regulatory certainty and consistent law enforcement are essential to ensuring that positive law is effectively implemented. This encompasses the regulation of behaviour, actions, and factors that influence legal application.

In this context, the theory of legal certainty is used to analyze the concept of the regulation of Article 138-Article 142 of Law Number 6 of 2023



in conjunction with Article 28-Article 34 of Law Number 5 of 1960 related to the period of Right to Cultivate. Whether the concept of regulating the time limit given is in line with the objectives of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which regulates collective control over the earth, water, and natural resources contained therein.

The theory of legal certainty is relevant to the topic being written about by the researcher. In explaining the researcher's first research question, the theory of legal certainty is examined by focusing on the following points:

- a) Legal certainty is used to analyze rules that may provide certainty regarding rules, procedures, or mechanisms, time, and institutions.
- b) Legal certainty is used to examine the synchronization of rules that must be fulfilled.
- c) Legal certainty arrangements to provide a time limit for achieving the legal certainty.

2. Theory of Justice

John Stuart Mill's theory seeks to combine the concepts of justice and utility by considering the relationship between them. The result of this synthesis is an increasing sense of fairness in society by integrating personal interests with the common good. Mill's notion of the common interest aligns with Aristotle's Theory of Justice.

Aristotle argues that the purpose of law will be achieved if there is a proportional balance of status, rights and obligations through the concept of distributive justice to protecting the parties involved in legal relationship. This perspective is further supported by Gustav Radbruch, states that if positive law disregards the principle of equality, then it ceases to be considered law in the true sense. Law must ensure justice for all participants in legal relations in order to function effectively.

John Stuart Mill referred to justice as a particular group of moral rules that emphasize human welfare more than any other rules, thus being an absolute guide to human conduct. Justice, according to Mill, involves rights granted to individuals, which inherently imply corresponding and binding obligations. (Mill , 1957) Karen Lebacqz, in her book entitled "Six Theories



of Justice”, reveals that for Mill, none of the theories of justice may be excluded from the principle of utility. Justice is a term used for rules that protect claims considered essential to society, such as the right to fulfilment, equal treatment, and others. (Santoso Y. , 2018)

An important feature of justice in the utilitarian framework is the acknowledgement of individual rights, provided they are supported by and contribute to the broader interests of society. Mill argues that justice requires rules that advance the public good to protect individual rights and ensure firm obligations. Justice may incorporate the concept of equality of treatment and the concept of waiver. However, the most important thing is that justice is not something that just exists, as it depends entirely on social benefits in principle. Therefore, any rules regarding justice, including equality, may be affected by needs related to benefits: “everyone believes that welfare is the basis of justice, unless one assumes that its methods require inequality. Everything that provides the greatest benefit to all people may be called “fair”.

Based on the theoretical explanation above, justice requires legal rules that prioritize the public welfare while protecting individual rights and ensuring strict obligations. Accordingly, the existence of legal certainty that clearly regulates each individual's rights and responsibilities may support the fair implementation of the law. If land is considered a source of livelihood and a symbol of appreciation, then the the law must regulate the relationship between the Indonesian people and the land in a fair and beneficial manner, especially for those engaged in agriculture and plantations work.

A time period is a legal provision that determines how long a person or legal entity may own and use a parcel of land. This duration is regulated by various laws and regulations, particularly those related to land and spatial planning. Article 7 of the UUPA states that “In order not to harm the public interest, the excessive ownership and control of land is not permitted”. It means that there is no justification other than that land ownership and control beyond reasonable limits. Consequently, land ownership that exceeds the boundary could be detrimental to the public interest. When the term of granted the Land Rights expires without



renewal, the land may be transferred to other individuals, such as the Right to Cultivate.

RESEARCH METHODS

This research uses Normative legal research. Normative legal research, which focuses on the analysis of laws as they are written ("law in books") and the legal norms that prevail in society. This research relies on secondary data, especially primary legal sources such as statutes, to explore the meaning and implications of these legal rules. (Armia, Muhammad Siddiq ; Lembaga Kajian Konstitusi Indonesia, 2022)

This type of research involves the identification and examination of relevant regulations and literature in addition to secondary sources. Legal research is a process of comprehending legal situations to make a conclusion and find solutions. (Dian Hadiati, 2023) In the preparation of this research, a statue approach and a conceptual approach are used. The Statue Approach is carried out by examining all laws and regulations related to the legal issues being handled, then the Conceptual Approach is carried out by moving from the views and doctrines that develop in legal science by studying the views or doctrines in legal science, the researcher will find ideas that give birth to legal understandings, concepts law, and legal principles that are relevant to the issue at hand.

In this study, the technique of tracing legal materials uses library research supported by the collection of primary, secondary, and tertiary legal materials. The processing of materials in normative legal research requires the collection of legal documents obtained methodically to overcome the legal problems raised in the formulation of the problem. The term "systematic" refers to the practice of organizing legal documents into categories for study and drafting purposes. The procedure used in examining prescriptive analysis data is for the purpose of conducting normative legal research.

RESULTS AND DISCUSSION

1. The Establishment Concept of Right to Cultivate in Indonesia

Before the colonial period, land ownership in Indonesia was governed by customary law, which was reflected in community practices such as forest clearing, inheritance, land transactions (buying, selling, and



exchanging), granting, leasing, and land-sharing arrangements. The evolution of land management systems in Indonesia became significantly influenced by the Dutch colonial administration. In 1870, the Agrarian Law (Agrarische Wet) was introduced by Engelbertus de Waal, who was then the Minister of Colonial Affairs in the Dutch East Indies. This policy emerged as a response to the controversial impact of the *cultuurstelsel* (cultivation system) implemented since 1830, which had drawn widespread criticism and resistance due to the exploitation of the community.

The Agrarisch Wet was established in response to the demands of large Dutch private investors. At that time, monopolistic policies such as the forced planting system limited the opportunity for Dutch businesses to acquire large areas of land with legal certainty. Through Agrarisch Wet, Dutch entrepreneurs were granted a 75-year long-term lease (*erfpacht*) to develop plantations. It set the foundations for the expansion of Dutch foreign capital in the large-scale agricultural sector, especially plantations, which generated huge profits for them. However, for the Indonesian people, the Agrarisch Wet worsened socio-economic conditions by triggering deep poverty, and misery. (Harsono, 2005)

After the Proclamation of Indonesian Independence on August 17, 1945, the government attempted to reform Agrarian/Land Law comprehensively in line with the spirit of independence. In the era of reform, Indonesia has taken comprehensive reform measures by returning sovereignty to the people (Syaidi, 2024). Although the efforts to establish a national land law could not be realized immediately due to the complexity of the challenges faced. To resolve post-independence agrarian/land issues, while waiting for the drafting of a new legislation, the government continued to apply the existing colonial land laws with policy adjustments that were in line with the principles of *Pancasila* and the objectives of Article 33, paragraph (3) of the 1945 Constitution. For example, the government issued a policy of abolishing feudal and colonial institutions that still survived (Muhammad, 2019).

The background of Indonesia's land law policy is rooted in Article 33, Paragraph (3) of the 1945 Constitution, which states that "The land, water and natural resources contained therein shall be controlled by the state and shall be used for the greatest prosperity of the people". The



concept of utilizing land for the welfare of the people reflects the effort to realize democracy with social justice in society. (Sulistio, 2020) Law as a tool of social control, as a tool of social engineering, social reform, and as a means of strengthening society. As a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, all aspects of life in the fields of society, nationality, and statehood including government must always be based on law. (Kusdarini, 2024)

The Law No. 5/1960 on Basic Agrarian Principles emphasizes the strategic role of land, water, and space as the foundation of development in realizing a fair and prosperous society. Within this framework, the regulation of land ownership and management is directed at realizing the principles of social justice and prosperous welfare. The UUPA aims to establish a National Agrarian Law system rooted in customary law principles related to land ownership, replacing the previous legal dualism that distinguished land rights based on Western law and customary law. With the passage of this regulation, the unification of agrarian law was created, which removed the parallel application between land rights under Western law and customary law, thus creating comprehensive legal certainty.

The Right to Cultivate emerged as a result of the conversion of land rights after the enactment of the UUPA. Through the UUPA, land ownership previously regulated by the old system was changed and adjusted to the provisions regarding the new agrarian law. In this context, HGU is a form of state-granted rights to business entity in the fields of agriculture, fisheries, or farming to manage and utilize land in order to carry out business activities in the territory of Indonesia. (Muljadi & Widjaja, 2007)

Article 16 paragraph (1) letter b and Article 28 paragraph (1) of the UUPA explain that the Right to Cultivate is the rights to manage land directly controlled by the State for a period of time determined by applicable laws. It was created to fulfill the needs of today's modern society, which is not an erfpacht right from the Indonesian Civil Code or KUH Perdata. The erfpacht institution was abolished with the repeal of the provisions in Book II of the Indonesian Civil Code Stb.1847 No.23. (Muliadi, 2015)



The UUPA introduced HGU as one of the key instruments in Indonesia's agrarian reform. Regulated in Articles 28 to 30 and the conversion provisions of Article III, HGU is not merely a new legal construct, but a transformation of the colonial-era system. It replaces the *erpacht* of the 1870 *Agrarische Wet*, along with two Dutch *consessie* of legal mechanism that occupied land ownership by foreign businesses and the colonial elite. Therefore, the UUPA aims to ended the discriminatory legacy of colonial law, while creating a socially fair agrarian system. (Setiawan, 2010)

The UUPA became an important milestone in Indonesia's agrarian law system by removing all Dutch colonial regulations that were considered unfair. Regulations that no longer apply include:

- a) *Agrarische Wet* (regulated in Article 51 *Staatsinrichting van Nederlands Indie*, *Staatsblad* 1925 No. 447);
- b) *Domein Verklaring* (such as *Algemene Domeinverklaring* in *Staatsblad* 1875 No. 119a, *Domein Verklaring* for Sumatra, Manado, and South/East Kalimantan);
- c) *Koninklijk Besluit* (*Staatsblad* 1872 No. 117); and
- d) The *hypotheek* provisions in Book II of the Indonesian Civil Code.

Indonesia's constitutional agrarian norm, contained in Article 33, paragraph (3) of the 1945 Constitution, was born as a response to agrarian inequality resulting from long-term colonialism. The concept of the State's Right to Control in the UUPA, as a derivative of this constitutional norm, cannot be separated from the spirit of anti-colonialism and nationalism that strengthened with the establishment of an independent Indonesia. The State's Right to Control asserts that full sovereignty over Indonesia's land and natural resources belongs to the state, not with colonial powers, foreign corporations, or feudal local authorities. This conception is also the foundation of agrarian law unification, in which all rights and regulations are integrated under the authority of the state. As the highest legal subject, the state bear responsibility for protecting these rights from external intervention and ensuring their management is in line with national interests and social justice.



2. Regulation of the Period of Right to Cultivate Based on the Provisions of Legislation's Rules

a) Law Number 5 of 1960 concerning Basic Agrarian Regulations

In the hierarchy of Indonesian law, UUPA stands as a special law that regulates basic agrarian principles, including provisions regarding the right to cultivate. Maria S.W. Sumardjono emphasized that management rights are not expressly regulated in the UUPA, either in the considerations, articles, or official explanations of the law. However, its application in practice has developed dynamically, accompanied by a derivative legal basis that raises controversial implications and complexity of problems. (Sumardjono, 2020)

Several lower-level regulatory instruments are also visible in some of ministerial regulations, such as the Regulation of the Minister of Home Affairs Number 1 of 1977 concerning the procedures for applying and resolving the Granting of rights to parts of land under management rights, as well as their registration. (Watung & dkk, 2021) This arrangement is further strengthened through Article 2 Paragraph 3 Letter f of Law Number 21 of 1997 concerning Fees for Acquisition of Land Rights, as well as Regulation of the Minister of State/Head of BPN Number 9 of 1999 which defines Management Rights as state authority delegated to the holder (Lahilote & dkk, 2021) and Management Rights are also explicitly regulated in Government Regulation Number 24 of 1997 concerning Land Registration, which specifically formulates its legal definition. Article 1 Point 4 of the Government Regulation asserts that "Management Rights are State Control Rights, part of the authority to implement which is delegated to the right holder".

HGU as regulated in Article 28 of the UUPA is the right to manage land under the direct control of the state for a certain period of time, specifically for agricultural, fishery, or farming business activities. Based on Article 29 of the UUPA, Right to Cultivate may be granted for a period of 25 years as an initial period. In specific situations, this period can be increased to 35 years. In addition, the right also allows for an additional extension of up to a maximum of 25 years after the initial or extended period is over.



b) Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation

The result of investigation regarding the academic text of Law Number 6 of 2023 reveals that this law only takes the form of stipulation of Government Regulation in Lieu of Law. (Widiharto, 2024) It continues to rely on the academic text of Law Number 11 of 2020 (the Job Creation Act), and regarding the period of time in the text formulated a new norm of Right to Cultivate over Management Rights (*Hak Pengelolaan*) may be granted for a period of 90, as stipulated in Article 129, paragraph (2).

The Job Creation Law functions as a general law that is more extensive and flexible to support the acceleration of investment. The Job Creation Law introduces the concept of Right of Management, a right derived from the state's authority, in which part of the management power is delegated to the right holder. Among these right holders is the Indonesian Land Bank Agency (*Bank Tanah*), a new institution regulated in Article 136 to 137 of the Job Creation Law. Thus, this Law not only introduces a new legal category of land rights, but also establishes a new institution, the Indonesian Land Bank Agency.

Referring to Article 125 to 126 of the Job Creation Law, the Indonesian Land Bank Agency is responsible for planning, acquiring, organizing, managing, utilizing, and distributing land. The aim is to ensure the availability of land for five interests, which are public interest, social interest, national development and economic equality, land consolidation, and agrarian reform. The rearrangement of agrarian policy through the Job Creation Law has established the Indonesian Land Bank Agency as the central institution in carrying out national agrarian policy, from planning, procurement, to land distribution.

The Job Creation Law adopts the Right of Management, which is conceptually considered to be in alignment or similar to the "State's Right to Control" regulated in the UUPA and Article 33, paragraph (3) of the 1945 Constitution. Based on Article 136 of the Job Creation Law, Right of Management is defined as a right




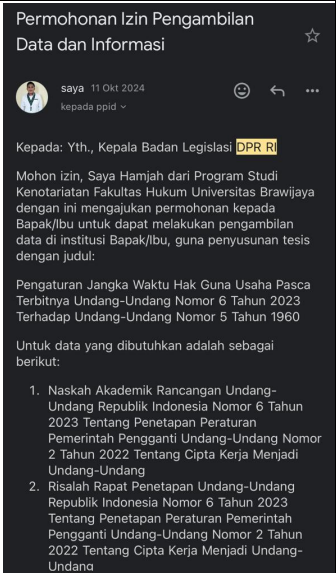
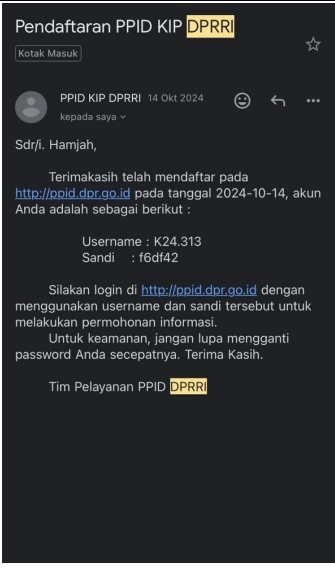
originating from the state, where some of the implementation authority is handed over to the right holder. It is not fully held by the state, but part of its authority is transferred to the party given the right to manage the land.

Management Rights are granted to a number of legal subjects explicitly included in Article 137, Paragraph (1) of the Job Creation Law, which are central government agencies, local government agencies, Indonesia Land Bank authority, state-owned enterprises (BUMN), regional-owned enterprises (BUMD), and other legal entities appointed by the central government. In Article 137, Paragraph (2), it is stated that the holder of this right has the authority to arrange land utilization, utilize the land independently or in collaboration with other parties and determine tariffs and receive payments from third parties.

In applying this legal construction, the government seems to intend for other land rights, such as the Right to Build (*Hak Guna Bangunan* "HGB") or the Right to Use (*Hak Pakai*), may be placed over the Management Rights. In other words, Management Rights is used as the basis for these rights. It can also be understood that the government created the Management Rights as a new general category under the State's Right to Control. The aim is that other rights such as the Right to Cultivate could be connected to or considered as derivatives of the Management Rights.

The enactment of the Job Creation Law changes the hierarchy of granting land rights on HGU, where the granting of HGU is attached over the Right of Management land or becomes a derivative of the Management Rights based on Article 138 paragraph (2) which states that "Upon land with Management Rights, the utilization is transferred to third parties either partially or entirely, Right to Cultivate, Right to Build, and/or Right to Use may be granted in accordance with the provisions of rules of laws".



		
<p align="center">Image 1</p> <p>Interview with the Representative of the Head of the Secretariat of the Legislative Council of the Indonesian House of Representatives (DPR RI), conducted on 14-10-2024 at 15.19 to 15.29 WIB</p>	<p align="center">Image 2</p> <p align="center">Request for Permission to Collect Data and Information from Academic Papers and Meeting Minutes</p>	

c) Government Regulation of the Republic of Indonesia No. 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration

In particular, the regulation on Right to Cultivate in the Job Creation Law introduces fundamental changes in land governance. The change in mechanism of acquisition and extension of HGU period on Management Rights including administrative requirements for rights renewal are not regulated detailed in the Job Creation Law. According to Article 138, Paragraph (2), Section four, Paragraph 2, HGU is now integrated into Management Rights framework, allowing HGU to originate from land with Management Rights status. Regulations related to this are delegated to the technical implementation stage through Article 142 which confirms



that further arrangements on Management Rights refer to Government Regulation No. 18 of 2021.

Government Regulation of the Republic of Indonesia Number 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration was formed as an implementation of the mandate of the Job Creation Law. The aim is to simplify regulations, minimize the complexity of permits, and create a more conducive investment climate.

Legal issues arise because the Job Creation Law and PP 18 of 2021 amended several provisions of the UUPA without explicitly revoking or revising them. According to Maria S.W. Sumardjono, UUPA is currently optional in land governance, with the main consideration being alignment with the objectives of the Job Creation Law. Meanwhile, Nurhasan Ismail emphasized that although PP 18 of 2021 only refers to the Job Creation Law and ignores the UUPA formally, substantively the principles of the UUPA still applied. It is based on the fact that there is no clause in the Job Creation Law that explicitly annuls the validity of the UUPA, therefore the principles of the old agrarian law must still be considered for the coherence of the regulatory system.

The fundamental aspect in granting HGU is guaranteed legal certainty regarding the term of the right. If the HGU is expired, based on the regulated time extension provisions, HGU on state land or Management Rights may be proposed to be extended or renewed by the owner or right holder through the applicable application procedure.

Furthermore, Article 4 of PP 18 of 2021 expands the sources of acquisition of Management Rights to include state land and customary land (*tanah ulayat*). Then, Article 21 of PP 18/2021 states that HGU may be granted on both state land and Management Rights of land. The combination of these two articles creates a new scheme in which the HGU indirectly derives from customary land through the mechanism of Management Rights. However, it contrary to Article 28, Paragraph (1) of the UUPA which explicitly



states that HGU may only be granted on land directly controlled by the state (i.e., state land).

Regarding the granting of HGU period stipulated in Article 22 of PP 18 of 2021, HGU is granted for the first time for a maximum period of 35 years. For HGU on State Land the rights are granted through a Decree issued by the Minister of Agrarian Affairs and Spatial Planning / National Land Agency (*Kementrian Agraria dan Tata Ruang/Badan Pertanahan Nasional "ATR / BPN"*). Meanwhile, for HGU on land under Management Rights, the granting of rights requires a Ministerial decree issued based on the approval of the Management Rights holder, as stipulated in Article 23, paragraph (1) and (2) of PP 18 of 2021.

After the initial HGU period is over, the right holder may apply for an extension. The extension is granted for a maximum of 25 years, provided that the application is submitted at the latest before the expiration of the period or after the business/crops on the land have reached the effective phase. This process requires three main things: (1) the land must still be cultivated based on the original purpose of the HGU, such as for agriculture, plantation or industry; (2) the right holder must fulfil administrative obligations, such as tax payments and land use report; and (3) the right holder still qualifies as a legal subject, such as active and legal business entity status.

When the HGU granting and extension period has expired, the right holder can apply for renewal of rights on the same land with a maximum period of 35 years. Renewal requirements include: (1) the land is still being cultivated productively in accordance with its utilization; (2) all obligations in the previous HGU decision are fulfilled; (3) the right holder still meets the criteria as a legal subject; and (4) the application is submitted no later than 2 years after the HGU has expired. This renewal is an effort to maintain business continuity, while ensuring that the land is not abandoned. However, the renewal is only valid for one cycle, after its expiration, the land must be returned to the state or transferred under Management Rights.



3. The Supervision of the Utilization's Renewal Period of Right to Cultivate

After the passage of the Job Creation Law, the state's role in supporting development is visible through two sides. On the one hand, the state acts as a provider of facilities and ease of procedures that create an easy process to support the acceleration of capital accumulation, including removing regulatory or technical obstacles that prevent investment to interfere with the process. On the other hand, the state also acts as a financial financier of development. These barriers come not only from regulations, but also from communities that oppose the process of land acquisition for development projects.

Supervision and control of land rights is carried out by the Ministry of ATR/BPN through the Directorate General of Land and Space Control and Order. The aim is to ensure that land rights contribute to the achievement of people's prosperity in accordance with the principle of "land for the greatest welfare of society". This activity also aims to optimize the control, ownership, exertion, and utilization of land, as well as ensuring that right holders fulfil the obligations stated in the decree granting rights and rules of laws.

The Directorate General of Land and Space Control and Order has the main task of formulating and implementing policies in the field of space utilization control, prevention of land conversion, management of coastal areas, small islands, border areas, and certain strategic areas. In addition, the directorate general is also responsible for establishing orderly space utilization and regulating the control, ownership, exertion, and utilization of land. In carrying out its functions, the agency conducts monitoring, analysis, evaluation, and reporting on all these aspects, including ensuring land use conformity with spatial plans, preventing violations of land conversion, and organizing land ownership administration. These efforts aim to ensure compliance with legal regulations while optimizing the sustainable use of land resources.

PP 18 of 2021 regulates the period of granting, extending, and renewing HGU as a right to use land for productive activities such as agriculture or plantations. The decision to grant HGU is issued based on the hierarchy of authority, the Head of the Land Office for simple cases, the



Head of the Regional Office for large areas, and the Ministry of ATR/BPN for complex or national strategic cases. The HGU is officially valid after it is registered at the Land Office.

Supervision and evaluation by BPN are critical mechanisms to ensure legal compliance in land management. Based on Chapter XII on Supervision and Control in Ministerial Regulation ATR/BPN 18 of 2021, specifically Article 204, the Ministry of ATR/BPN is responsible for conducting periodic and tiered monitoring through Regional Offices and Land Offices. This activity covers three main aspects, which are the suitability of land use with allocation planning documents; alignment with the Spatial Plan (RTR); and compliance with obligations and prohibitions, such as the prohibition of land burning by holders of the Right to Cultivate.

Article 205 also emphasizes that supervisory findings are the foundation of legal considerations for the Minister to make strategic decisions. If serious violations are found, such as illegal land conversion or land burning, the Management Rights or HGU may be cancelled. In contrast, if the right holder fulfils all requirements, such as maintaining RTR conformity and avoiding environmentally damaging practices, the HGU has the opportunity to be extended or renewed.

The supervision and control mechanism in Ministerial Regulation ATR/BPN 18 of 2021 certainly has several structural and operational weaknesses. First, supervision relies substantially on reports from rights holders and community complaints, which are passive methods that may fail to uncover violations such as land usage outside the RTR or land burning, especially if there is inactive participation from the community. On the other hand, field monitoring by the Regional Office/Land Office is constrained by limited human resources and budget, especially in remote areas with difficult geographical access, as recognized in Article 136 Paragraph 2 on force majeure situations.

Furthermore, although BPN has adopted an electronic system for reporting monitoring results, the unequal digital infrastructure and dualism of physical file storage creates inefficiencies and data security risks. Evaluation of monitoring results is also considered subjective as it relies on officers' interpretation in assessing conformity with the RTR or compliance with restrictions, without any clearly measurable criteria.



4. Impact of Deviations on the Utilization of the Renewal Period of Right to Cultivate

In the context of Right to Cultivate, the state has the right to make macro policies such as establishing spatial plans, limiting land area, or determining priority sectors (agriculture, plantations, farming, and fisheries). In addition, the state can also cooperate with private parties or investors through legal agreements to optimize the economic potential of land. However, this practice often leads unfair competition between groups, especially when large investors dominate access to HGU ownership, while local communities are marginalized.

According to the principle of *lex specialis derogat legi generali* (particular law overrides general law), the substance of the Job Creation Law and its derivative regulations such as PP 18 of 2021 must not contradict the UUPA. It means, although the Job Creation Law functions to simplify regulations, its implementation including PP 18/2021 must remain in line with the principles of the UUPA, such as the principles of national interest, social function of land, and protection of indigenous peoples' rights. In this regard, PP 18/2021 must elaborate the provisions of the Job Creation Law as long as it does not violate the UUPA, while still referring to the basic agrarian principles mandated by the UUPA.

Based on the UUPA, HGU is initially granted for a maximum period of 25 (twenty-five) years, with an option to extend up to 35 (thirty-five) years, particularly when it serves the interests of the business. In addition, the right holder can apply for an extra 25 (twenty-five) years extension based on an evaluation of business conditions. A comparison between the UUPA and PP 18 of 2021 as a derivative of the Job Creation Law, reveals fundamental differences in the regulation of the HGU period and mechanism. In the UUPA, there is no provision on the HGU renewal period, but only regulates the extension of rights, without any clause regulating the renewal of rights after the term expires. It is due to the UUPA's philosophy that emphasizes the principle of "social function of the land", thus ownership of land rights is not intended to be permanent.

On the contrary, PP 18/2021 adopts the approach of introducing two options for granting time periods, these are HGU extension and renewal. The policy of granting a long HGU period of up to 95 years stipulated in PP



18/2021 creates a legal gap that that may lead to suboptimal land utilization and an increased risk of land abandonment. The renewal of rights allows HGU holders to submit a new application after the expiration of the previous rights period, provided that they meet the administrative and substantive requirements set. It is intended to attract long-term investment, particularly in the plantation and agribusiness sectors, by providing stronger legal certainty. The impact of this difference creates a norm conflict between UUPA and PP No. 18/2021. UUPA, as the primary agrarian law, does not accommodate the HGU renewal mechanism, while PP No. 18/2021 opened this scope. This misalignment has the potential to create some problems, which are the conflicts of dualism in legal interpretation by government officials in the issuance of HGU, legal uncertainty for HGU holders, especially regarding the status of rights after the term ends, and conflicts of interest between business owners who want investment certainty and the public who are worried about the monopoly of land ownership.

As a result of irregularities in the term of the Right to Cultivate, one of the land cases that emerged, as reflected in the Lubuk Pakam District Court Decision Number 81/Pdt.G/2023/PN Lbp, concerning a land dispute between PT Perkebunan Nusantara II (Defendant I), the National Land Agency of Deli Serdang Regency (Defendant II) and the Community of Bulu Cina Village (Plaintiffs), whereas the object of the case centred on a land area of $\pm 242.699.26 \text{ M}^2$ (two hundred forty-two thousand six hundred ninety-nine-point twenty-six square meters), formerly controlled by PT Perkebunan Nusantara II and used as plantation land, but over time it has been abandoned and has not been utilized since 1996 or for approximately 27 (twenty-seven) years. PT Perkebunan Nusantara II no longer held any valid rights over the land, and based on juridical principles, the legal status of the land reverted to State-controlled land due to the prolonged abandonment. Subsequently, the land was cultivated, controlled and utilized by the community consisting of 25 (twenty-five) parcels of land, continuously since 1998 by planting or cultivating crops, and declared as the legal owner of the land. PT Perkebunan Nusantara II (Defendant I), the National Land Agency of Deli Serdang Regency (Defendant II) were not willing to hand over the land to the Plaintiffs because PT Perkebunan



Nusantara II (Defendant I) claimed and argued to have rights based on the Right to Cultivate Certificate (SHGU) Number 103.



Image 3

Lubuk Pakam District Court Decision Number: 81/Pdt.G/2023/PN Lbp which is a land dispute between: (a) Plaintiffs: Community of Bulu Cina Village, (b) Defendant I: PT Perkebunan Nusantara II (c) Defendant II: National Land Agency of Deli Serdang Regency

CONCLUSION

The concept of the time period for granting, extending, and renewing the Right to Cultivate (HGU) for up to 95 years, as regulated under Government Regulation No. 18 of 2021 as a derivative of the Job Creation Law, this policy has the potential to undermining the principle of the social function of land, and tend to prioritize long-term investment interests over land redistribution for agrarian justice. This approach potentially facilitates large-scale land control by corporate entities, thereby limiting access to productive land for local communities. In fact, the UUPA mandates land as a medium for people's prosperity, rather than merely treating it as an economic commodity. Additionally, government supervision over land utilization during the HGU period is often not optimal, especially since the BPN does not proactively monitor whether HGU holders fulfil their obligations, such as optimal land use, and due to the absence of a real-time database on HGU land utilization, violations are often detected only after conflicts arise.



BIBLIOGRAPHY

- 1) Amarrohman, Fauzi Janu & Witjaksono, Onang Fadjar. (2021), Buku Ajar Hukum Agraria, Semarang: Undip Press.
- 2) Anggoro, Syahriza Alkohir. (2021), "Transplantasi Hukum Di Negara-Negara Asia: Suatu Perbandingan", Indonesia Law Reform Journal, Vol 1 No 1. 19-31. <https://doi.org/10.22219/ilrej.v1i1.16121>
- 3) Armia, Muhammad Siddiq (2022); Lembaga Kajian Konstitusi Indonesia: Penentuan Metode & Pendekatan Penelitian Hukum, Banda Aceh: Lembaga Kajian Konstitusi Indonesia.
- 4) Dian Hadiati, Abdul Rachmad Budiono, Hanif Nur Widhiyanti, (2023) "Legal Relationship Between Platform Service Providers and Online Transportation Driver as Gig Workers (Platform Workers)" International Journal of Islamic Education, Research and Multiculturalism (IJIERM), Vol. 5 No. 3, 751-771. <https://doi.org/10.47006/ijierm.v5i3.276>
- 5) Harsono, Boedi. (2005), Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya. Jakarta: Djambatan.
- 6) Heril Anwar and Eny Kusdarini (2024) "The Role of Mass Media in Strengthening the Modern Legal State", International Journal of Islamic Education, Research and Multiculturalism (IJIERM) Vol. 6 No. 1, 168-178. <https://doi.org/10.47006/ijierm.v6i1.290>
- 7) Imtihani, H., & Nasser, M. (2024). THE UNJUSTIFIABLE TARGETING OF HEALTHCARE IN PALESTINE: A VIOLATION OF HUMAN RIGHTS AND INTERNATIONAL LAW. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 6(3), 763-783. <https://doi.org/10.47006/ijierm.v6i3.367>
- 8) Koeswahyono, Imam & Maharani, Diah Pawestri. (2022), "Rasionalisasi Pengadilan Agraria Di Indonesia Sebagai Solusi Penyelesaian Sengketa Agraria Berkeadilan", Arena Hukum, Vol 15 No 1,1-19. <https://doi.org/10.21776/ub.arenahukum.2022.01501.1>
- 9) Lahilote, Hasyim Sofyan & dkk. (2021), "Pengawasan terhadap Bank Tanah: Urgensi, Kewenangan, dan Mekanisme", Undang: Jurnal Hukum, Vol 4 No 1, (2021). <https://doi.org/10.22437/ujh.4.1.191-211>



- 10) Marzuki, Peter Mahmud. (2018) Pengantar Ilmu Hukum, (Jakarta: Kencana.
- 11) Mill, John Stuart, (1957), Utilitarianisme. New York: Bobbs Merrill.
- 12) Muhammad, (2019). "Tinjauan Yuridis Tentang Hak Atas Tanah Di Wilayah Negara Republik Indonesia", Wasaka Hukum, Vol 7 No 2. 487-500 <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/29>
- 13) Muliadi, Ahmad. (2015), Hak-Hak Atas Tanah (Kajian Peruntukan, Pemeliharaan Dan Penatagunaan Tanah Dalam Sistem Pembangunan Hukum Pertanahan Nasional. Bogor: Erzatama Karya Abadi.
- 14) Muljadi, Kartini & Widjaja, Gunawan. (2007), Seri Hukum Harta Kekayaan Hak-hak atas Tanah. Jakarta: Kencana.
- 15) Mutiarawati, I., Dewantara, R., & Rachmat, S. N. (2024). The Law Responsibility of E-Commerce Organizers Regarding The Failure of Payment in PayLater System. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 6(2), 528-546. <https://doi.org/10.47006/ijierm.v6i2.344>
- 16) Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 18 Tahun 2021 tentang Tata Cara Penetapan Hak Pengelolaan Dan Hak Atas Tanah, Lembar Negara Republik Indonesia Tahun 2021 Nomor 28, Tambahan Lembar Negara Republik Indonesia Nomor 6630.
- 17) Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah, Lembar Negara Republik Indonesia Tahun 2021 Nomor 28, Tambahan Lembar Negara Republik Indonesia Nomor 6630.
- 18) Putusan Pengadilan Negeri Lubuk Pakam Nomor 81/Pdt.G/2023/PN Lbp.
- 19) Pramadanty, F. L., Suhariningsih, & Herlindah. (2024). Form of Application of the Principle of Recognizing Service Users (Pmpj) by Land Deed Making Officials in Their Duties and Authorities. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 6(1), 239-267. <https://doi.org/10.47006/ijierm.v6i1.328>
- 20) Rahmah, S., Jalil, H., & Kadir, M. Y. A. (2024). Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in



- Indonesia: A Study in Aceh Province. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(1), 556. <https://doi.org/10.22373/sjkh.v8i1.16898>
- 21) Santoso, Urip. (2017), *HUKUM AGRARIA: Kajian Komprehensif*. Jakarta: Kencana.
- 22) Santoso, Yudi. (2018), *Karen Lebacqz, Indianapolis, 1986, Six Theories of Justice, Teori-Teori Keadilan*. Bandung: Nusa Media.
- 23) Setiawan, Usep. (2010), *Kembali Ke Agraria*, Sleman: STPN Press, Konsorsium Pembaruan Agraria, Sayogyo Institute.
- 24) Seventina Monda Devita (2021), "Perkembangan Hak Pengelolaan Atas Tanah Sebelum dan Sesudah Peraturan Pemerintah Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah", *Jurnal Hukum Lex Generalis*, Vol 2 No 9, 870-888. <https://doi.org/10.56370/jhlg.v2i9.130>
- 25) Sulistio, Meiliyana. (2020), "Politik Hukum Pertanahan di Indonesia", *Jurnal Education and development*, Vol 8 No 2, 105-111. <https://journal.ipts.ac.id/index.php/ED/article/view/1590>
- 26) Sumardjono, Maria SW. (2020), *Agenda yang Belum Selesai: Refleksi atas Berbagai Kebijakan Pertanahan*. Sleman: Fakultas Hukum Universitas Gadjah Mada.
- 27) Syaidi, R. (2024). The Legal Issues in Implementing Constitutional Court Decision Number 49/PUU-IX/2011 (The Polemic of the Abolition of Law 7/2020 Article 59 Paragraph 2). *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 6(1), 179-192. <https://doi.org/10.47006/ijierm.v6i1.318>
- 28) Undang-Undang Dasar Negara Republik Indonesia 1945, Lembaran Negara Republik Indonesia Tahun 1959 Nomor 75.
- 29) Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, Lembar Negara Republik Indonesia Tahun 1960 Nomor 104, Tambahan Lembar Negara Republik Indonesia Nomor 2043.
- 30) Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang, Lembar Negara Republik Indonesia Tahun 2022 Nomor 238, Tambahan Lembar Negara Republik Indonesia Nomor 6841.



- 31) Watung, Cindy Engeline & dkk. (2021), "Tinjauan Yuridis Mengenai Perpanjangan Hak Guna Usaha dengan Pemerintah Sebagai Pemilik Hak Pengelolaan", Lex Privatum, Vol 9 No 1, 46-53.
<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/32043>
- 32) Widiharto, Kepala Bagian Sekretariat Badan Legislasi Dewan Perwakilan Rakyat Republik Indonesia, Gedung Nusantara I, Pada tanggal 14-10-2-2024, Pukul 15.18 WIB.

