LEX JOURNAL : KAJIAN HUKUM DAN KEADILAN, 2024
Vol. 8, No. 2, 132-153
E-ISSN: 2580-9113 | P-ISSN: 2581-2033
Open access at: https://ejournal.unitomo.ac.id/index.php/hukum

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Type: Research Article

Land Use Agreements as the Basis for Granting Land Rights to Third Parties: A Case Study on Building Construction Near Kuta Beach, Mandalika-Lombok

Agus Rahadi
Faculty of Law, University of Mataram, Indonesia
E-mail: agusrahadi298@gmail.com

Djumardin
Faculty of Law, University of Mataram, Indonesia
E-mail: djumardin@unram.ac.id

Diangsa Wagian
Faculty of Law, University of Mataram, Indonesia
E-mail: diangsawagian@unram.ac.id

ABSTRACT

The purpose of this study is to determine and analyze the form of cooperation agreement used as the basis for granting land rights between the holder of the Management Rights with third parties and to determine and analyze the legal protection of third parties granted land rights on management rights land based on land utilization agreements. The research method used is normative and empirical legal with statutory conceptual and sociological approaches. The types of data used are secondary data and primary data. Secondary data is literature from primary, secondary, and tertiary legal materials. After a land use agreement is made, rights, obligations, and prohibitions are born for the holder of the Management Right and third parties. With the rights, obligations, and prohibitions for both the holder of the Management Right and third parties, these provisions should be obeyed by the parties, so that legal protection for the holder of the Management Right can be maintained. Holders of land rights located on the Management Rights land, certainly receive legal protection.

KEYWORDS

Management Rights; Agreement; Land

INTRODUCTION

There are private land tenure rights, namely owning and there are public ones, namely regulating and determining rights.[1] Private land tenure rights are land rights as stipulated in Article 16 paragraph (1) of the Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (Hereinafter referred to as *"UUPA"*). Public land tenure rights are the State's control rights over land, as stipulated in Article 2 of the UUPA. Article 2 paragraph (2) of the UUPA contains the authority of the State's right of control, namely:[2]

a. Regulating and organizing the allotment, use, supply, and maintenance of the earth, water, and space;
b. Determining and regulating legal relationships between people and the land, water, and space;
c. Determining and regulating legal relationships between people and legal actions regarding the earth, water, and space.

If you look at the existing arrangements in the UUPA, there are no provisions that explicitly mention management rights *(hak pengelolaan)* as one of the land rights.[3] Management rights are not included in land rights as mentioned in Article 16, paragraph (1) of the UUPA, but are a right of control from the state. The term "management right" is not mentioned in the UUPA, but is only implied in the general explanation with the term "management", namely in General Elucidation II point (2) of the UUPA which states that the state can give such land (which is intended to be land that is not occupied by anyone) to a person or entity with land rights (as mentioned in Article 16 paragraph (1) of the UUPA) or give it under management to an authority (Department, *Jawatan,* or *Daerah Swatantra*) to be used for the implementation of their respective duties.

Based on the explanation above, there is a shift in the subject of management rights between the Article and the Explanation of the UUPA. Article 2 paragraph (4) only mentions 2 (two) subjects of management rights, namely *swatantra* regions and customary law communities. In the Explanation of the subject of the Right of Management, the word "Department" suddenly appears, while the words *"masyarakat hukum adat"* disappear. Thus, there is an inconsistency between the article and the explanation of the UUPA in interpreting the subject of the Right of Management. In its dynamics, the subject of the Right of Management is increasingly expanding to government profit entities, namely BUMN and BUMD.

Boedi Harsono in his book argues that in addition to local governments and customary law communities, the delegation of the implementation of part of the State's authority over land can also be carried out to authoritative bodies, State companies and regional companies by granting certain land tenure with what is known as Management Rights. This opinion is in line with the provisions in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency

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1 Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya* (Jakarta: Djambatan, 2007).

2 *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria* (Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles).

3 Sulasi Rongiyati, "Pemanfaatan Hak Pengelolaan Atas Tanah oleh Pihak Ketiga (Land Use Rights Management By a Third Party)" (2014) 5:1 Negara Huk Membangun Huk untuk Keadilan dan Kesejaht 77–89.

Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights, Article 67 which regulates the subjects that can be granted Management Rights, among others, Government Agencies including Regional Governments, State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), PT Persero, Authority Bodies and other government-appointed legal entities, as long as they are following their main duties and functions related to land management.

Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration (PP No. 18 of 2021) made based on the mandate of Law No. 11 of 2020 concerning Job Creation (UUCK) provides an understanding of Management Rights, namely the right to control from the state whose implementation authority is partially delegated to the holder of Management Rights. The delegated authority is to plan the use of the land concerned and to appoint a Legal Entity or person who is given the right to use it with a certain land right by the UUPA, such as Building Rights Title, Business Rights Title or Use Rights Title. In such cases, all provisions concerning land rights generally apply to land rights on management rights land. This is provided that as far as its use is concerned, every holder of a land right on a Management Right, whether the first land right holder who obtained it based on a land use agreement from the Management Right holder, or who later obtained the land right from the previous land right holder, is bound by the conditions of use specified in the land use agreement between the Management Right holder and the first land right holder.

In practice, the implementation of Management Rights has experienced significant developments both in terms of its regulation and implementation in the field. The various regulations governing management rights are all at the level of implementing regulations,[4] namely:

a. Article 1 paragraph (3) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights, which defines: *"A management right is a right of control from the state whose implementation authority is partially delegated to the holder."*
b. Article 1 paragraph (4) of Government Regulation No. 24 of 1997 on Land Registration, which defines: *"A management right is a right of control from the state whose implementation authority is partially delegated to the holder."*
c. Article 1 point 3 of Government Regulation No. 18 of 2021, states that Management Rights are control rights from the state whose implementation authority is partially delegated to the holder of the Management Rights.
d. Article 17 of Law No. 20/2011 on Flats, which stipulates that flats can be built on the land of Ownership Rights, Building Use Rights or Use Rights on State Land, and on Building Use Rights or Use Rights on Management Rights land.
e. Article 2 paragraph (3) letter f of Law No. 20 of 2000 on the Amendment to Law No. 21 of 1997 on Fees for Acquisition of Land and Building Rights, that Management Rights are one of the tax objects.

[4] *Ibid*.

Juridically, Management Rights have two aspects, namely public aspects and civil aspects. The public aspect of the Management Right can be seen from the concept of the Management Right as a control right from the state whose authority is partly delegated to the holder, where the main purpose of the Management Right is that the Management Right land is provided for the use of other parties who need it.[5] In the provision and granting of land, the right holder is authorized to carry out activities that are part of the state's authority, which is regulated in Article 2 paragraph (2) of the UUPA.[6]

The civil aspect of Management Rights is seen from the change in the function of "management" to "rights" which can be used for the holder's own business purposes and because of practical needs, namely to grant rights to land on Management Rights to third parties through agreements between Management Rights holders and third parties is more prominent and ultimately accentuates the civil aspect of Management Rights.[7]

Through the authority to hand over parts of the Management Rights land to third parties, the Management Rights holder makes a civil agreement with third parties who will utilize the Management Rights land. Furthermore, the Government through the Minister responsible for land affairs will provide determination of land rights on the Management Rights to third parties. The Minister's authority can be delegated to the head of the regional office, the head of the land office, or a designated official.[8]

This civil aspect then often causes problems, namely when the main purpose of the authority of the State's Right of Control, namely: To achieve the greatest prosperity of the people can be deviated by the holder of the Management Right by seeking maximum profit. This deviation can be seen from the actions of management right holders who carry out their role independently as if replacing the role of the state itself. They determine prices, tariffs, and fees, organize cooperation with other parties and even determine to whom and when the state can appoint third parties so that the impact is reduced business opportunities, and consumer losses, and ultimately the prosperity of the people is not achieved. As a result, many parties oppose the existence of the Right to Manage. [9]

Among them is Soedjarwo Soeromihardjo's opinion "The rights of the holder of the Management Right are reminiscent of the rights of the landowner in the partisan land, so that the rights that are contrary to the purpose of the UUPA revive.[10] PT Pengembangan Pariwisata Indonesia (Persero)/Indonesia Tourism

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5 Mohammad Dwi Febriyanto & Wahyu Prawesthi, "Sengketa Hak Milik Tanah Sawah Akibat Kegiatan Jual Beli yang Tidak Sah" (2024) 10:4 J Ilm Wahana Pendidik 461–473.

6 Fathul Hamdani et al, "Constitutional Analysis of the Need for the Tribal Peoples Bill: Initiatives to Establish a Fair Customary Court" in *Pros Pengakuan dan Perlindungan Masy Huk Adat di Tingkat Nas dan Int (Recognition, Respect, Prot Const Rights Indig Peoples a Natl Int Perspect* (Jakarta: Asosiasi Pengajar Hukum Adat (APHA), 2023) 191.

7 Rongiyati, *supra* note 3.

8 *Ibid*.

9 *Ketentuan Pasal 3 Peraturan Menteri Agraria/Kepala BPN No. 9 Tahun 1999 tentang Tata Cara Pemberian dan Pembatalan Hak Atas Tanah Negara dan Hak Pengelolaan* (Provisions of Article 3 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 on Procedures for Granting and Canceling State Land Rights and Management Rights).

10 Soemardijono, *Analisis Mengenai Hak Pengelolaan (HPL)* (Jakarta: Lembaga Pengkajian Pertanahan, 2006).

Development Corporation (ITDC) is a state-owned enterprise that has been granted management rights to manage 1,175 ha of land in the Mandalika-Lombok Tourism Special Economic Zone (SEZ) since the issuance of the Management Rights certificate on January 13, 2017. As the holder of the Management Rights, ITDC has the power to optimize the use or utilization of land and cooperate with third parties for the successful development of Mandalika Tourism SEZ.

In carrying out its duties and authority as the holder of the Management Rights, ITDC has collaborated with third parties to build the facilities needed to advance the Mandalika Tourism SEZ, including the construction of public bathrooms, hotels, filling stations, and Mandalika Circuit. (Mandalika Street Circuit), and other facilities, the construction and management of these facilities are partly carried out directly by ITDC as the holder of the management rights, and partly handed over to third parties through land utilization agreements, in which third parties are granted land rights, which in this case are Building Rights Title. However, in practice, there are buildings erected by third parties, in this case business actors, that do not have legal rights, such as what happened around Kuta Mandalika Beach.

METHOD

The type of research conducted by the author is normative-empirical research. Normative-empirical legal research (applied law research) is legal research on the enactment or implementation of normative legal provisions (codification, laws, or contracts) in action on every specific legal event that occurs in society. Implementation in action is an empirical fact and is useful for achieving predetermined goals. Implementation in action is expected to take place perfectly if the formulation of normative legal provisions is clear firm and complete.[11] The approach used is a statutory approach, which is carried out by examining all laws and regulations related to the legal issues being addressed,[12] In this case, it is related to the Land Utilization Agreement as the basis for granting land rights to third parties on managed land. Then the conceptual approach, namely by examining the views and doctrines that develop in legal science, gives birth to legal notions, legal concepts, and legal principles that are relevant to the problem under study.[13] The last approach is a sociological approach, which is the basis of study or research to study life together in society. With a sociological approach, it can lead to different perspectives or views on the social symptoms that occur, so that in completing this research it is not only from one side, and does not lead to a single truth claim. The sociology of law approach is an approach that analyzes how reactions and interactions occur when the norm system works in society.

[11] Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).
[12] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).
[13] *Ibid*.

RESULT & DISCUSSION

I. Forms of Cooperation Agreements Used as the Basis for Granting Land Rights Between Management Right Holders and Third Parties

The national agrarian law that has been successfully realized by UUPA according to its provisions is based on customary law, which means that customary law occupies a central position in the national agrarian law system. Dualism and even legal pluralism in the land sector, which is contrary to the ideals of the unity of the Indonesian nation, requires unification in the field of land law. The need for land law reform is based on the consideration that:

a. Because the current agrarian law is partly structured based on the objectives and principles of the colonial government, and partly influenced by it, it contradicts the interests of the people and the state in carrying out universal development in the context of completing the current national revolution;
b. Because as a result of the legal policy of the colonial government, agrarian law has a dualistic nature, namely with the enactment of regulations from customary law in addition to regulations from and based on Western law, which in addition to causing various difficult inter-group problems, is also not in accordance with the ideals of national unity;
c. Because for the indigenous people colonial agrarian law did not guarantee legal certainty.

In land law, there are arrangements regarding various tenure rights over land. The Basic Agrarian Law regulates and establishes a hierarchy of land tenure rights in national land law, namely:

a. The right of the Indonesian Nation referred to in Article 1 as the highest land tenure right has both civil and public aspects;
b. The right of control of the state referred to in Article 2, is solely public in aspect;
c. The customary rights of Indigenous peoples referred to in Article 3, have both civil and public aspects;
d. Individual and personal rights are all civil in nature consisting of:
    1) Land rights as individual rights, all of which directly or indirectly derive from the right of the nation mentioned in Article 16 and Article 53
    2) *Waqf,* which is a property right that has been donated, in Article 49
    3) Land security rights called mortgage rights, in Articles 25, 33, 39, and 51.

Although there are various land tenure rights, all land tenure rights contain a series of authorities, obligations, and/or prohibitions for the right holder to do something with the land. The Central Lombok Regency Government as the holder of the Management Rights based on its authority has handed over parts of the Management Rights land to third parties according to the conditions it stipulates which include aspects of designation, time period, and finance.

The transfer of parts of the Management Rights land to third parties is regulated in Article 3 of the Regulation of the Minister of Home Affairs Number 1 of 1977 (which is declared invalid and revoked by the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999) which states that:

(1) Every transfer of land use which is part of the Management Right land to a third party by the Management Right Holder, whether accompanied or not accompanied by the construction of buildings thereon, must be carried out by making a written agreement between the Management Right holder and the relevant third party.
(2) The agreement referred to in paragraph (1) of this article shall contain, among other things, information concerning:
    a. Identity of the parties concerned
    b. The location, boundaries, and area of the land in question
    c. Type of use
    d. The land rights to be sought to be granted to the third party concerned and a description of their duration and the possibility of extending them
    e. The types of buildings to be erected thereon and the provisions regarding the ownership of such buildings upon the expiry of the land rights granted
    f. Income amount and payment terms
    g. Other conditions deemed necessary.

In Government Regulation Number 40 of 1996, conclusions can be drawn regarding the authority of the Regional Government as the holder of Management Rights, among others, namely:[14]

a. Entering into a land use agreement with a third party for a portion of the Management Rights land.
b. Submitting a proposal for the designation of the subject of Regional Government Management Rights land to the Head of the local Office to be granted Building Rights or Use Rights.
c. To approve the extension and renewal of rights to third parties over part of the Management Rights land. Providing written approval for the transfer of Building Rights Title or Use Rights on Managed Rights land.
d. Can cancel the Building Rights Title or the Right to Use on the Management Rights land before the term expires because the conditions or obligations contained in the agreement on the use of the Management Rights land are not fulfilled.
e. Receive back part of the Management Rights land from a third party after the Building Rights Title or the Right to Use on the Management Rights land has been abolished and the third party is obliged to fulfill the conditions agreed upon in the agreement on the use of the Management Rights land.
f. Provide written consent to the encumbrance with Mortgage Rights on the Building Rights Title or Use Rights on the Management Rights land, which applies as an agreement to transfer the rights if in the future it is needed in the context of the execution of the Mortgage Rights. The granting of land rights on Management Rights land according to Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 must be carried out based on a written agreement. The agreement can be made with individuals or with private companies.

[14] A P Parlindungan, *Bunga Rampai Hukum Agraria serta Landreform Bagian II* (Bandung: Mandar Maju, 2009).

Cooperation agreements with private companies are a legal development to meet the needs of the community. The cooperation agreement is intended to manage assets owned by the Regional Government in the form of Management Rights lands which are carried out by means of BOT or Build Operate Transfer. BOT (Build Operate Transfer) is a legal institution that has developed in the midst of society, which in practice is not only for privately owned lands but also concerns lands owned by the Government.[15]

In the era of regional autonomy, cooperation between local governments and private companies is carried out in order to create a source of local revenue (PAD). One form of cooperation in the stewardship of regional assets by third parties is carried out with BOT. Such cooperation is regulated in Government Regulation No. 6/2006 on the Management of State/Regional Property in Articles 27, 28, 29, 30, and 31 and Decree of the Minister of Home Affairs No. 152/2004 on Guidelines for the Management of Regional Property. The state's authority in the land sector is a delegation of the nation's duties where the principle of state control rights in the laws and regulations of the Republic of Indonesia was first stipulated in Article 33 paragraph (3) of the 1945 Constitution. In the agrarian sector, it was then developed by Basic Agrarian Law Number 5 of 1960. Article 2 paragraph (1) of UUPA clearly states that on the basis of the provisions of Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1 of UUPA: the earth, water, and airspace, including the natural resources contained therein, are at the highest level controlled by the state as the organization of the power of all the people.

Management rights are not explicitly mentioned in the preamble, dictum, body, or explanation of Law No. 5/1960 on Basic Agrarian Principles, better known as the Basic Agrarian Law. UUPA only mentions management in General Elucidation Number II Number 2, namely:

> "The State may grant such land to a person or legal entity with a right according to its designation and needs, such as Ownership Rights, Business Use Rights, Building Use Rights, Use Rights or grant it under management (author's underline) to a ruling body to be used for the performance of its respective duties".

Maria S.W Sumardjono states that in practice there are various types of management rights, namely: port management rights; authority management rights; housing management rights; local government management rights; transmigration management rights; government agency management rights; industrial/agricultural/tourism/railway management rights.[16] Management rights, in reality owned by PT Kereta Api Indonesia (Persero), PT Pelabuhan Indonesia (Persero), PT Surabaya Industrial Estate Rungkut (Persero), PT Pasuruan Industrial Estate Rembang (Persero), Batam Authority Agency, PD Pasar Surya Surabaya, PD Pasar Jaya DKI Jakarta, PD Sarana Jaya DKI Jakarta, Public Company for National Housing Development (Perum Perumnas), district/city governments.

Management rights emerged as a new type of land tenure right in 1965 through Agrarian Ministerial Regulation No. 9 of 1965 on the Implementation of

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[15] Doli D Siregar, *Manajemen Aset* (Jakarta: Gramedia Pustaka Utama, 2004).

[16] Maria SW Sumardjono, "Hak Pengelolaan Perkembangan, Regulasi, dan Implementasinya" (2007) Khusus Mimb Huk 29.

Conversion of State Land Tenure Rights and Further Policies. The provisions of Article 2 of Agrarian Ministerial Regulation No. 9 of 1965 stipulate the conversion of tenure rights over state lands, namely: If national land tenure rights are granted to Departments. Directorates, and Swatantra Districts, in addition to being used for the benefit of the institution itself, it is also intended to be granted certain rights to third parties, so that the right of tenure over the land is converted into Hak Milik Kelola.

Management rights as a type of land tenure rights were born not based on the law, but based on the Minister of Agrarian Affairs Regulation Number 9 of 1965. Management rights are born from the conversion of control rights over state land. Management rights can be controlled by departments, directorates, and autonomous regions. Although management rights are regulated by an Agrarian Ministerial Regulation, management rights have binding force, both for the holder of the management right and other parties using parts of the management right land.

The existence of management rights has been recognized in the form of legislation, namely Article 7 of Law No. 16 of 1985 concerning Flat Houses, which was declared invalid by Law No. 20 of 2011 concerning Flat Houses. In both laws, it is stated that flats can only be built on land with ownership rights, building use rights, use rights on state land, and management rights in accordance with applicable laws and regulations. The first time the definition of management rights is mentioned in Article 1 point 2 of Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Rights, and Land Use Rights, which is a State control right whose implementation authority is partially delegated to the holder.

A more complete definition of Management Rights is contained in the Explanation of Article 2 paragraph (3) letter f of Law No. 20 of 2000 concerning Amendments to Law No. 21 of 1997 concerning Fees on Acquisition of Land and Building Rights in conjunction with Article 1 of Government Regulation No. 112 of 2000 concerning Fees on Acquisition of Land and Building Rights Due to the Granting of Management Rights, the right to control the state over land whose implementation authority is partially delegated to the right holder to plan the allotment and use of land, use the land for the purposes of carrying out his duties and hand over parts of the land to third parties and or cooperate with third parties.

Based on Agrarian Ministerial Regulation No. 9 of 1965, management rights were initially granted to departments, directorates, and autonomous regions. The latest development, based on Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights, management rights are granted to: Government Agencies, including Regional Governments; State-Owned Enterprises (BUMN); Regional-Owned Enterprises (BUMD); PT Persero; Authority Bodies; and other Government legal entities appointed by the Government.[17]

The rights that can be granted to third parties are regulated in various regulations, originally Article 6 Paragraph (1) letter c of PMA Number 9/1965 which states that: “portions of land under a management right can be handed over to third parties with a right of use for a period of 6 (six) years”. The same thing is also stated

[17] Urip Santoso, “Pengaturan Hak Pengelolaan” (2008) 15:1 J Media Huk 144.

by Article 28 letter c of Permendagri No 5/1973. However, Article 5 paragraph (7) letter a of Permendagri No. 5/1974 states that:

> "Land controlled by a housing development company under a management right may, at the proposal of the company, be granted by the competent authority referred to in Article 3 to those who need it under a *hak milik* (right of ownership), hak *guna-bangunan* (right of use of structures) or *hak pakai* (right of use) along with the houses and buildings thereon in accordance with the provisions and requirements of the prevailing laws and regulations".

Likewise, Article 2 of Permendagri No. 1/19/7 states that "Parts of management rights land granted to the Regional Government, I institutions". Agencies and or Legal Entities (owned) by the Government for the development of residential areas, can be handed over to third parties and proposed to the Minister of Home Affairs or the Governor of the Head of the relevant Region to be granted Property Rights, Building Rights or Use Rights in accordance with the land use plan and land use that has been prepared by the holder of the Management Rights concerned. Article 5 Permendagri No1/1977 also states that: "The legal relationship between the Institution, Agency and/or Agency/Legal Entity (owned by) the Government holding the management right, which is established or appointed to organize the provision of land for various types of activities included in the field of settlement development in the form of a company, and the Management Right land that has been granted to it does not become nullified by the registration of the rights granted to Third Parties as referred to in Article 2 of this Regulation at the local Agrarian Sub-Directorate Office".[18]

From the above provisions, it can be concluded that parts of the management right land can be handed over to third parties with Property Rights, Building Rights, or Use Rights. Registering the Right of Use and Right of Use at the Land Office does not make the legal relationship between the holder of the management right and the management right land nullified in accordance with the nature of the management right as part or *"gempilan"* of the right to control from the State. In particular, the granting of a Right of Ownership on the land of a Management Right will make the Management Right null and void due to the nature of the Right of Ownership as the strongest and fullest right and is not timed. All of these rights, both in terms of definition, requirements, and duration, are subject to the UUPA system. Especially regarding the right of use, the UUPA does not mention the time period. However, Article 45 of Government Regulation No. 40/1996 on Cultivation Rights, Building Rights, and Land Use Rights states that the right of use is for a maximum period of 25 years and can be extended for an unspecified period as long as the land is used for certain purposes. What is meant by certain purposes is that the right of use is granted on:

a. Departments, Non-Departmental Government Agencies and Local Governments;
b. Representatives of foreign countries and representatives of international bodies;
c. Religious and social bodies.

[18] *Ibid*.

Arie Hutagalung stated that companies with the status of Indonesian legal entities can control land in accordance with its designation with rights, including special Management Rights for State-Owned Enterprises whose shares are 100% owned by the state and whose control of land is not limited to use for its own purposes, but is intended to hand over land to third parties according to the conditions determined by the company holding the Management Rights, including aspects of long-term use and finance. Management rights granted to State-Owned Enterprises, whose land can be used for their own purposes, can also be handed over to third parties.[19]

The issuance of a decree granting a building use right or a right of use does not yet create a building use right or a right of use. The decree granting a building use right or a right of use is delivered to the applicant for the building use right or the right of use. The decree granting a building use right or a right of use stipulates that the applicant must within a certain period of time register the decree granting a building use right or a right of use with the Head of the District/Municipal Land Office whose working area covers the location of the land concerned.

The registration of a decree granting a building use right or a right of use to the District/Municipal Land Office whose working area covers the location of the land concerned marks the birth of the building use right or right of use. The purpose of registering the decree on the granting of a building use right or a right of use to the District/Municipal Land Office is to issue a certificate of a building use right or a right of use as evidence of the right.

There are several provisions that must be considered in building use rights or right of use on management rights land, namely:

a. Building use rights or use rights on management right land are preceded by a land use agreement between the management right holder and a third party.
b. The occurrence of building use rights or use rights on management right land requires a recommendation from the management right holder.
c. The establishment of a building use right or right of use on management right land through an application for the granting of a building use right or right of use to the Head of the District/Municipal Land Office whose working area covers the location of the land in question.
d. Building use rights or right of use on management right land are created by a government stipulation in the form of a decree granting building use rights or use rights by the Head of the Regency/City Land Office whose working area covers the location of the land in question.
e. A right to build or right of use (right of use of structures) on land under a management right is created when the decree granting the right to build or right of use is registered by the applicant for the right to build or right of use with the Head of the District/Municipal Land Office whose working area covers the location of the land concerned.
f. As evidence of the right to build or to use, a certificate of the right to build or to use is issued by the District/Municipal Land Office whose working area covers the location of the land concerned.

[19] Arie S Hutagalung, "Kebijakan Pertanahan Dalam Undang-undang Nomor 25 Tahun 2007 tentang Penanaman Modal" (2008) 38:3 J Huk dan Pembang 315.

g. Building use rights or use rights on management right land do not sever the legal relationship between the holder of the management right and the land.
h. Building rights on land under management rights shall have a maximum term of 30 (thirty) years, may be extended for a maximum term of 20 (twenty) years, and may be renewed for a maximum period of 30 (thirty) years.
i. Right of use on land under a management right shall have a maximum term of 25 (twenty-five) years, may be extended for a maximum term of 20 (twenty) years, and may be renewed for a maximum term of 25 (twenty-five) years.
j. The extension of the period and renewal of building use rights or right of use on management right land must obtain prior approval from the management right holder.
k. The transfer of a right to build or right of use on management right land must obtain prior approval from the holder of the management right.
l. The encumbrance of mortgage rights on the land of a right to build or right of use on the land of a management right must obtain prior approval from the holder of the management right.
m. Building use right or use rights on management right land if it becomes the object of land acquisition, then the one entitled to compensation for the land is the holder of the management right, while the one entitled to compensation for the building is the holder of the building use right or the right of use.
n. Building use rights on management right land for residential houses of the Simple House (RS) and Very Simple House (RSS) types can be upgraded to property rights.
o. The termination of a building use right or right of use on management right land results in the land returning to the control of the management right holder.

One of the authorities of the holder of a management right over its land is to surrender parts of the management right land to third parties and or cooperate with third parties. The surrender of parts of the management right land gives birth to building use rights, use rights or property rights. The regulation that stipulates that on management right land, building use rights, use rights or ownership rights can be issued is the Regulation of the Minister of State Agrarian Affairs/Head of the National Land Agency No. 4 of 1998 concerning Guidelines for Determining Entry Fees in Granting State Land Rights.

The transfer of parts of the management right land to third parties that give birth to building use rights and right of use is made with a Land Use Agreement (PPT) or a Built, Operate, and Transfer (BOT) Agreement or a Build-to-Sell Agreement (BGS) between the management right holder and the third party. The transfer of parts of the management right land to third parties that give birth to property rights is not through an agreement between the management right holder and the third party but through the right holder's release or surrender of the management right land.

The right holder can relinquish or surrender the management right land after an agreement is reached in deliberation between the management right holder and

the prospective land owner recognizing the amount of compensation/compensation money to be paid by the prospective land owner to the management right holder.

The definition of relinquishment or surrender of land rights is mentioned in Article 1 point 6 of Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest in conjunction with Article 1 point 3 of Decree of the Minister of Agrarian Affairs/Head of the National Land Agency No. 21 of 1994 concerning Procedures for Acquiring Land for Companies in the Framework of Capital Investment, namely the activity of relinquishing the legal relationship between the holder of land rights and the land he controls by providing compensation based on deliberation.

The relinquishment or surrender of management right land by the right holder can be made by a deed of relinquishment or surrender of management right land by a notary or by a statement letter of relinquishment or surrender of management right land by the right holder. The release or surrender of the management right land by the right holder is done for the benefit of another party, namely the prospective land owner. The relinquishment or surrender of the management right land is done with or without compensation by the party that needs the land, namely the prospective land owner.

Part of the management right land released or surrendered if it is a management right land controlled by the provincial government, district/city government, then based on the provisions of Article 45 paragraph (2) and Article 48 paragraph (1) of Law No. 1 of 2004 concerning State Treasury in conjunction with Article 46 paragraph (2) and Article 47 paragraph (2) of Government Regulation No. 6 of 2006 concerning Management of State / Regional Property, before a deed of release or surrender of management right land or a statement letter of release or surrender of management right land must be requested for approval to the Provincial or district/city Regional House of Representatives by the governor or regent/mayor.

The release or surrender of land rights results in the termination of the legal relationship between the holder of the land rights and the land he controls. The release or surrender of management right land by the right holder does not result in the management right land transferring from the right holder to the party providing compensation, namely the prospective land owner. The relinquishment or surrender of rights is not a transfer of rights, but rather a nullification of rights. The release or surrender of the management right land results in the management right land being nullified and the land returns to being land directly controlled by the state. The release or surrender of management right land by the right holder is carried out for the benefit of other parties, namely prospective landowners.

Furthermore, arrangements regarding the granting of appropriate land rights have also been implied in UUPA “and Government Regulation No. 40/1996 on Land Use Rights, Building Use Rights, and Use Rights on Land” (hereinafter referred to as PP 40/1996). In general, land tenure by foreign nationals and foreign legal entities that have representatives in Indonesia is regulated by the Basic Agrarian Law. Article 41 jo. 42 of the UUPA, land tenure for foreigners residing in Indonesia and foreign companies is regulated.

Referring to Article 41 jo. 42 of the UUPA states that foreigners residing in Indonesia can only be granted the Right of Use for a certain period. Right, to Use is

the right to use and/or collect products from land directly controlled by the State or owned by other people, which gives the authority and obligations specified in the decision to grant it by the official authorized to grant it or in an agreement with the owner of the land which is not a lease agreement or a land processing agreement, everything as long as it does not contradict the spirit and provisions of this law. Furthermore, the right of use granted to a foreigner is not granted in perpetuity but has a period.

Article 45 of Government Regulation No. 40 of 1996. Referring to the UUPA, foreign legal entities located in Indonesia in the form of PMA can have business use rights under Article 28, building use rights under Article 36 paragraph (1), use rights under Article 42 paragraph (1), building lease rights under Article 44, and other rights regulated in the UUPA and Government Regulation No. 40 of 1996 on Building Use Rights, Business Use Rights, and Use Rights on Land.

Although land ownership rights have been regulated for foreign nationals, as well as for foreign business entities established in Indonesia, foreign parties often want to have certain rights that cannot be owned by them. A clear example is that for foreign nationals to be able to own SHM, they use a nominee agreement deed by borrowing the name of a local Indonesian citizen and a power of attorney to sell made by a local Notary following a power of attorney. In addition to foreign individuals, it is not uncommon for cases to occur where foreign companies want to have rights that they should not be able to have. Foreign companies want certain rights. An example of a real case is the foreign investment collected by the company Indonesia Tourism Development Corporation (ITDC).

Ostensibly, ITDC is a State-Owned Enterprise (SOE) engaged in the development of Indonesian tourism, but it turns out that one of the activities carried out by ITDC is to make foreign investments whose companies are foreign companies, not domestic companies. An example is the investment that led to the construction of Courtyard by Marriott, Amanusa, St. Regis, and so on. Currently, ITDC is investing in the Mandikala development, which will also be built for foreign hotels. So it seems as if BUMN carries out the development, but in fact, the development is carried out for foreign interests.

In practice, there are many problems regarding land disputes related to development in Mandikala, for example the 135 Hectare Land Dispute in the Mandalika Lombok Tourism Area In the Decree of the National Land Agency (BPN) of the Republic of Indonesia Number 22 and Number 23/HPL/BPNRI/2009 dated August 31, 2009, among others, it states that the Land Management Rights ("HPL") of 135 hectares of land located in the Mandalika Lombok area claimed by the community are not included in the HPL submitted to the Company.

The Company submitted the Building Rights Title ("HGB") of 135 hectares of the claimed land to the West Nusa Tenggara BPN to apply for the 135 hectares of HPL, but currently, the Company has not received the HPL. The Company is unable to acquire the land. 135 hectares of the claimed land because it does not have the HGB. With this problem, the Commissioner of the Company has approved the proposal of the board of directors regarding the transfer of 135 hectares of land claimed by the community to the Provincial Government *("Pemprov")* of NTB and the Regency Government *("Pemkab")* of Central Lombok. With this handover, the NTB Provincial Government and the Central Lombok Regency Government will

receive a proportional share of the Company's rental income On July 10, 2013, the Governor of West Nusa Tenggara invited.

The company, the Regent of Central Lombok, the Head of the West Nusa Tenggara Regional Office of BPN, and the Head of the West Nusa Tenggara Investment Coordinating Board (BKPM) to discuss the cooperation offer to settle 135 hectares of land claimed by the community with the following agreement:

> The Governor and Regent of Central Lombok agreed that 135 hectares of land claimed by the community belonged to the State from the former HPL of West Nusa Tenggara Province and HGB of PT Lombok Tourism Development. The Provincial and Regency Governments of Central Lombok agreed to settle the land through a designated Regional Owned Enterprise *("BUMD"),* after which the BUMD will receive profit sharing from the Company proportionally.

The company was asked not to proceed with the HPL application for the land, which will be finalized so that the HPL can be owned by the West Nusa Tenggara provincial government. The Company will own the parent HGB of the land gradually and will be split into the name of the investor following the development needs of the investor. Based on these matters, the Management has submitted a letter to the Board of Commissioners on the steps to resolve the Lombok land on September 4, 2013. Based on the letter from the West Nusa Tenggara High Prosecutor's Office, Mataram No. B-2464 P.2 Oph.2-10-2014 on October 16, 2014, regarding the Progress Report on the Settlement of Problems on 135.34 ha of land owned by the Company. After a cross Dunas Intensi Lembaga coordination meeting was held on October 03, 2014, with the agenda of discussion on accelerating the settlement of the 135.34 ha land issue owned by the Company, with the following settlement:

a. to accelerate the settlement of land issues managed by the Company covering an area of 135.34 ha located in Mandalika Special Economic Zone under Government Regulation (PP) of the Republic of Indonesia Number 52 of 2014, a Team for Settlement of land issues managed by the Company will be formed consisting of a Steering Committee and a Committee/ Implementation Team by Decree of the Governor of West Nusa Tenggara.
b. That the Land Settlement Team consists of cross agencies/institutions both in West Nusa Tenggara Province and in Central Lombok Regency.
c. The Implementation Team/Implementation Committee will work to conduct an inventory of problems in the field including finding out the subject and object of land who claims to be the owner of land rights and proof of ownership for further disbursement of settlement solutions.

The Company has submitted a request to the State Attorney, West Nusa Tenggara High Prosecutor's Office to prepare a legal opinion on the legal status of 135 ha of land in the Mandalika Lombok Tourism Area. On February 12, 2015, a legal opinion document on Land Status Issues of 135.34 ha in the Mandalika Lombok Tourism area was issued. With the conclusion that:

a. Land area of 11,476,776 m^2 including 1,353,329 m^2 or 135.34 ha which is still HPL certified under the name of NTB Province is legally owned by the Company.
b. With respect to the ownership of 11,476,776 m^2 of land including 1,353,329 m^2 or 135.34 ha, the Company can plan the allocation and use of the land,

use the land for the purposes of carrying out its duties, hand over parts of the land to third parties and or cooperate with third parties.

On July 629, 2015, a clinical test meeting on the status of 135.34 hectares of land in the Mandalika Lombok Tourism area was held at the Sangkareang Meeting Room, the office of the Governor of West Nusa Tenggara Province. In the Clinical Test Meeting consisting of the Regional Secretary of Prov. West Nusa Tenggara, Assistant for Governance and Apparatus, Head of Bureau Adm. Government, Head of the West Nusa Tenggara High Prosecutor's Office, Head of the West Nusa Tenggara Regional Police, Head of the West Nusa Tenggara National Land Agency Regional Office, Head of the West Nusa Tenggara Provincial BKPMPT, Regional Secretary of Loteng Regency and Head of the Loteng National Land Agency Office discussed the status of land which was divided into 31 points with an area of 135.34 ha, with the results of the meeting:

a. Discussion of 16 tinks totaling 243,084 m^2 is considered clean and clear and it is recommended that the Company install permanent boundary signs coordinate with the Police and apply for land rights to the Central Lombok District Land Office;
b. 9,400 m2 According to the Company and BPN data, the land has been acquired but according to the heirs, the land was sold by other heirs, therefore it is deemed necessary to make legal efforts for the inheritance division process through the Praya Religious Court, and 13 points covering an area of 1,095,995 m2 the Company did not pay due to State land;
c. For 16 points that have been declared clean & clear ITDC intends to apply for certainty of land status, by submitting an application for the issuance of HPL on the land to the Regional Office of West Nusa Tenggara BPN. However, the application has not been accepted because the minutes of the clinical test meeting have not been signed by the parties present at the meeting.

As of December 31, 2016, the Company has received HPL issuance from BPN for 28 disputed points covering 128.61 ha. Up to the issuance of the report, the settlement of land issues is still in process. The description above shows that there are still many problems regarding the cooperation contract related to the development carried out by IDTC which was actually built for foreign companies. It is still unclear the protection of Indonesian citizens who should get priority over citizens of other countries.

II. Legal Protection of Third Parties Granted Land Rights on Management Rights Land

Management Rights are a reflection of the Right to Control from the State which cannot be transferred or transferred to any party. Therefore, if a person, government legal entity, or even the holder of the Management Right itself wants to need and use the land, then the person concerned must apply land rights to the authorized official (local Land Office) as a representative of the state exercising authority over the right to control the land The granting of Management Rights is carried out by the applicant applying for Management Rights submitted in writing, which is submitted to the

Minister through the Head of the Regional Land Office whose working area includes the location of the land concerned.[20]

In the application, under Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights, there is information regarding the name or identity of the applicant and states information about the land which includes juridical data and physical data, both the location or object of the land designated and requested for Management Rights, location permits, short-term and long-term land exploitation plans, other information and attachments as supporting documents or files.

The application for Management Rights is submitted to the Minister through the Head of the Regional Land Office whose working area covers the location of the land concerned. Under Article 71 of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights, after the documents are received, the Head of the Land Office examines, scrutinizes, records them, gives a receipt for the application documents, and informs the applicant to pay the costs required to complete the application.

In the next stage, the Head of the Land Office examines the completeness and correctness of the juridical data and physical data of the application for Management Rights and examines the feasibility of the application. The role of the Head of the Regional Office after receiving the application file accompanied by opinions and considerations, then instructs the Head of the Land Rights Division to record, examine, and research it.

After the application has met the requirements, the Head of the Regional Office submits the file to the Minister along with his opinion and consideration. Article 4 then outlines that the Minister orders a designated official to record, research, and examine the completeness of the juridical data and physical data. After considering the opinion and consideration of the Head of the Regional Office, the Minister issues a decision on the granting of a Management Right on the land applied for, which is then delivered to the applicant by registered mail or by other means that ensure the arrival of the decision to the rightful person. For the holder of the Management Right, this is very important, one of which is as a basis of proof to third parties when the Management Right land is handed over parts of the land to third parties. Likewise, those whose land will stand on the Management Rights, feel confident that the land does belong to a certain agency with the status of the land Management Rights.

Therefore, the holder of a Management Right is obliged to register the land with the District/City Land Office whose working area covers the location of the land concerned. The purpose of registering the Management Right land with the District/City Land Office is to issue a Management Right certificate as proof of its rights. With the issuance of a Management Right certificate, the Management Right holder has the authority to enter into legal relations with third parties, namely to transfer parts of the Management Right land to third parties.

The management right land can be used by the right holder himself to carry out his duties. One of the powers possessed by the holder of the Management Right

[20] *Ibid*.

is to transfer parts of the Management Right land to third parties and or cooperate with third parties. The aspect of the purpose of granting the Management Right to the right holder, according to Boedi Harsono, is that the holder of the Management Right does have the authority to use the land for his business needs, but that is not the purpose of granting him the right. The main purpose is that the land concerned is made available for use by other parties who need it. In providing and granting the land, the right holder is authorized to carry out activities that are part of the state's authority, which is regulated in Article 2 of the UUPA.[21]

Based on its authority, the holder of the Management Right is authorized to temporarily hand over parts of the Management Right land to third parties, and this is done utilizing a land use agreement between the holder of the Management Right and the third party. The provisions regarding land use agreements between the holder of the Management Right and third parties were originally regulated in Article 3 paragraph (1) of the Regulation of the Minister of Home Affairs Number 1 of 1977, namely Every transfer of land use which is part of the Management Right land to a third party by the holder of the Management Right, whether accompanied or not accompanied by the construction of buildings on it, must be carried out by making a written agreement between the holder of the Management Right and the third party. Article 3 paragraph (1) of the Regulation of the Minister of Home Affairs Number 1 of 1977 is declared invalid by Article 4 paragraph (2) of the Regulation of the Minister of State of Agrarian Affairs Head of the National Land Agency Number 9 of 1999, namely If the land being requested is Management Rights land, the applicant must first obtain an appointment in the form of a land use agreement from the Management Rights holder.

Maria S.W. Sumardjono states that the legal relationship that forms the basis for granting land rights by the holder of the Management Right to a third party is stated in the Land Use Agreement Letter (SPPT) In practice, the SPPT can be called by other names, for example, the agreement on the transfer, use, and management of land rights The land use agreement between the holder of the Management Right and a third party can be made by notarial deed, or deed under hand. The land use agreement contains provisions regarding:

a. Identity of the management right holder;
b. Third-party identity;
c. Evidence of management rights certificates to be surrendered;
d. The location, boundaries, and area of the Management Rights land to be transferred to a third party;
e. Type of use of part of land under management rights;
f. The land rights to be sought to be granted to the third party concerned, and a description of their duration and the possibility of extending them;
g. The types of buildings to be erected thereon and the provisions regarding the ownership of such buildings on the expiry of the land rights granted;
h. Term of the land use agreement;
i. The amount of compensation given by the third party to the holder of the management right;
j. The obligation to certify the land portion of the management right;

[21] *Ibid*.

k. Rights, obligations, and restrictions for Management Right holders and third parties;
l. How to resolve disputes between holders of management rights and third parties.

With the making of the land use agreement, a legal relationship has been born between the holder of the Management Right and the third party. In addition, after a land use agreement is made, rights, obligations, and prohibitions are born for the holder of the Management Right and third parties. For holders of Building Rights on Management Rights, they have obligations, including:[22]

a. Pay an entry fee, the amount and method of payment of which are stipulated in the decision granting the right;
b. Use the land under its designation, and the requirements as stipulated in the decree and agreement granting it;
c. Maintain the land and buildings on it properly, and preserve the environment;
d. Returning the land to the holder of the Management Right after the Building Rights Title has lapsed;
e. Submitting the certificate of Building Rights Title that has been erased to the Head of the Land Office.

Similarly, holders of management rights should understand their rights and obligations, so that there should be no practices of holders of management rights binding third parties only with lease agreements, not with land use agreements or HGB grants." The holder of the Management Right is not authorized to lease parts of the Management Right land to third parties. If the holder of the Management Right leases parts of the Management Right land to third parties, then this is an abuse of the authority attached to the Management Right and is contrary to the provisions of Article 44 of the UUPA, that land rights that can be leased by the right holder to other parties are only Property Rights, known as the Right to Rent for Building (HSUB).

With the rights, obligations, and prohibitions for both the holder of the Management Right and third parties, these provisions should be adhered to by the parties, so that legal protection can be maintained for the holder of the Management Right, as well as third parties whose land is on the Management Right. The agreement to grant rights by the holder of a Management Right to a third party is the basis for granting a land right and is also the basis for the Head of the Land Office to issue a certificate for the land. The provisions of Article 3 paragraph (2) letter d of Regulation of the Minister of Home Affairs No. 1 of 1977 regulate some of the material or contents of the agreement to transfer the use of land under a Management Right, one of which is the provision regarding land rights that will be requested by third parties to the holder of the Management Right.

The provision also regulates that in making an agreement to transfer the use of part of the Management Right land, include a clause on the type of land rights agreed upon and will be granted by the holder of the Management Right to a third party.[23] Parts of the Management Rights land can be given to other parties with

[22] Rusmadi Murad, *Administrasi Pertanahan Pelaksanaan Hukum Pertanahan dalam Praktek* (Jakarta: Mandar Maju, 2013).
[23] *Ibid*.

Property Rights, Building Rights, and or Use Rights. The granting is carried out by the authorized National Land Agency Officer, at the proposal of the relevant Management Right holder.

For holders of land rights located on land under management rights, they certainly receive legal protection. One form of legal protection for holders of land rights is by providing guarantees of legal certainty (certainty of rights) for holders of the land rights concerned. According to Soediman Kartohadiprodjo, what is meant by legal certainty is certainty created by law, and certainty in the law itself. To create legal certainty, Soediman further elaborates that the task of the law is to create, enforce, maintain, and defend security and fair order. It seems appropriate that if the purpose of the law is to realize legal certainty, then the law must be fair so that law enforcement will also be fair.[24]

The guarantee of legal certainty can be realized by registering the right. The granting of a land right to a third party, once registered, will result in the issuance and granting of a land right certificate in the name of the right holder (third party) by the authorized official (in this case the local District/City Land Office).[25] As long as the land rights are encumbered, the relevant Management Rights continue. The land rights that stand on the Management Right do not eliminate the authority possessed by the holder of the Management Right. The use of land by third parties is under the supervision of the holder of the Management Rights. The supervision function aims to prevent deviations from the use of land that has been mutually agreed upon beforehand. After the term of the Building Rights Title or Use Rights imposed expires, according to Article 10 of the Regulation of the Minister of Home Affairs Number 1 of 1977, the land concerned returns to the full control of the holder of the Management Right.

In addition, based on the provisions of Article 35 paragraph (1) in conjunction with Article 55 paragraph (1) of Government Regulation No. 40 of 1996, the holder of a Management Right has the authority to cancel the land rights controlled by the holder of the HGB or the Right of Use on the grounds that the obligations contained in the land rights concerned are not fulfilled or the conditions or obligations contained in the agreement to hand over the use of the land (agreement granting the HGB or the Right of Use) are not fulfilled.

However, the authority to carry out the supervisory function owned by the holder of the Management Right must be carried out while still complying with applicable legal provisions and procedures. In addition, holders of land rights above the Management Rights can file legal remedies for the cancellation carried out by the holder of the Management Rights. All of this is based on the principle of legal equality and equal legal protection between the state (government agencies as holders of Management Rights) and citizens.[26]

Regarding the land use agreement that has been made between the holder of the Management Right and the third party whose land stands on the Management Right, the agreement made does not merely contain civil elements but must fulfill the elements of legal certainty for the parties who make it. The agreement on the

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[24] Maria SW Sumardjono, *Semangat Konstitusi dan Alokasi yang Adil Atas Sumberdaya Alam* (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2014).
[25] *Ibid*.
[26] *Ibid*.

transfer of the use of the land of the Management Right is very essential because with the making of the agreement on the transfer of the use of the land of the Management Right, each party, especially the holder of the Management Right, cannot unilaterally terminate the use of land by third parties, as long as the land rights granted have not expired.

Thus, the provisions of Article 3 paragraph (1) of Regulation of the Minister of Home Affairs No. 1 of 1977, which is currently amended by Regulation of the Minister of Agrarian Affairs No. 9 of 1999, aim to provide legal protection for both parties, especially and especially third parties who use the land of the Management Rights." So, the granting of land rights marked by the granting of certificates of land rights to third parties is intended to:

a. Create a concrete legal relationship between the third party as the user of the Management Rights land and the land;
b. Protecting third parties from arbitrary actions by the holder of the Management Right on the Management Right land that is being used by third parties. Thus, some efforts can be made to provide legal protection, especially for holders of land rights whose land is on the Management Rights land.

CONCLUSION

After a land use agreement is made, rights, obligations, and prohibitions for the holder of the Management Right and third parties. With the existence of rights, obligations, and prohibitions for both the holder of the Management Right and third parties, these provisions should be obeyed by the parties, so that legal protection for the holder of the Management Right can be maintained. For holders of land rights that are on the land of the Management Rights to get more legal protection, namely by registering their rights. The granting of a land right to a third party after being registered will be issued and given a land right certificate in the name of the right holder (third party) by the authorized official (in this case the local District / City Land Office).

For holders of land rights that are on the land of Management Rights, they certainly receive legal protection. One form of legal protection for holders of land rights is by providing guarantees of legal certainty (certainty of rights) for holders of land rights concerned, which means legal certainty is certainty created by law, and certainty in the law itself.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

REFERENCES

BOOK

Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

Harsono, Boedi, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya* (Jakarta: Djambatan, 2007).

Marzuki, Peter Mahmud, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

Murad, Rusmadi, *Administrasi Pertanahan Pelaksanaan Hukum Pertanahan dalam Praktek* (Jakarta: Mandar Maju, 2013).

Parlindungan, A P, *Bunga Rampai Hukum Agraria serta Landreform Bagian II* (Bandung: Mandar Maju, 2009).

Siregar, Doli D, *Manajemen Aset* (Jakarta: Gramedia Pustaka Utama, 2004).

Soemardijono, *Analisis Mengenai Hak Pengelolaan (HPL)* (Jakarta: Lembaga Pengkajian Pertanahan, 2006).

Sumardjono, Maria SW, *Semangat Konstitusi dan Alokasi yang Adil Atas Sumberdaya Alam* (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2014).

JOURNAL

Febriyanto, Mohammad Dwi & Wahyu Prawesthi, "Sengketa Hak Milik Tanah Sawah Akibat Kegiatan Jual Beli yang Tidak Sah" (2024) 10:4 J Ilm Wahana Pendidik 461–473.

Hamdani, Fathul et al, "Constitutional Analysis of the Need for the Tribal Peoples Bill: Initiatives to Establish a Fair Customary Court" in *Pros Pengakuan dan Perlindungan Masy Huk Adat di Tingkat Nas dan Int (Recognition, Respect, Prot Const Rights Indig Peoples a Natl Int Perspect* (Jakarta: Asosiasi Pengajar Hukum Adat (APHA), 2023) 191.

Hutagalung, Arie S, "Kebijakan Pertanahan Dalam Undang-undang Nomor 25 Tahun 2007 tentang Penanaman Modal" (2008) 38:3 J Huk dan Pembang 315.

Rongiyati, Sulasi, "Pemanfaatan Hak Pengelolaan Atas Tanah oleh Pihak Ketiga (Land Use Rights Management By a Third Party)" (2014) 5:1 Negara Huk Membangun Huk untuk Keadilan dan Kesejaht 77–89.

Santoso, Urip, "Pengaturan Hak Pengelolaan" (2008) 15:1 J Media Huk 144.

Sumardjono, Maria SW, "Hak Pengelolaan Perkembangan, Regulasi, dan Implementasinya" (2007) Khusus Mimb Huk 29.