



BUILDING USE RIGHTS OVER LAND MANAGEMENT RIGHTS IN SHOPPING CENTERS

Azhar Sidiq¹

¹Faculty of Law Jambi University, Indonesia. E-mail: (sidiqazhar20@gmail.com)

Abstract: This article discusses arranging building use rights (HGB) over management rights (HPL). Management rights are rights to control land that the state directly controls. Which authorizes the right holders to plan the designation and use of the land in question, use the land to carry out their duties, hand over parts of the land to third parties with use rights for 6 (six) years, and receive annual income and or obligatory money. This research uses an empirical juridical method with the Wiltop Trade Center (WTC) Mall case approach that occurred in the Jambi Province area. In the discussion, it was found that the WTC management adhered to Article 2 of the Minister of Agrarian Regulation No. 9 of 1965 concerning the Implementation of the Conversion of Tenure Rights over State Land and Provisions Concerning Policy Further. It stipulates the conversion of tenure rights over State land into Management Rights, namely "If State land is given to Departments, Directorates, and Autonomous Regions, other than used for the agencies' interests. Also intended to be granted with a right to a third party, the right to control the State land is converted into a Management Right. Therefore, the WTC is a third party that uses Management Rights as the basis for Building Use Rights in conducting its business. Building Use Rights are used to construct buildings, including in the form of residential or residential houses, shop houses (shops), office houses (office houses), shops, hotels, offices, and industries (factories).

Keywords: *Building Use Rights; Management Use Rights; State Land*

1. Introduction

Management rights are the authority to exercise part of the State's ownership rights over land delegated to government agencies or legal entities holding management rights. The authority that is delegated is the authority to plan the use of the land in question and appoint a legal entity or a person who is given the right to use it with certain land rights, following the Basic Agrarian Law, for example, Building Use Rights (HGB).¹ Management rights are rights to control land that is directly controlled by the State, which authorizes the right holders to plan the designation and use of the land in question. Use the land to carry out their duties, hand over parts of the land to third parties with use rights for 6 (six) years, and receive annual income and or obligatory money.²

"Subjects or holders of Management Rights are limited to Government legal entities either engaged in public services (government) or engaged in business, such as State

¹ Letter of the State Minister for Agrarian Affairs/Head of the National Land Agency dated 17 September 1998, Number 630.1-3433 concerning Collateral Certificates.

² Muhammad Yamin. *Beberapa Dimensi Filosofis Hukum Agraria*. (Medan: Pustaka Bangsa Press, 2003), 28.



Owned Enterprises (BUMN)/Regional Owned Enterprises (BUMD), PT. private law does not get the opportunity to participate as subjects or holders of Management Rights”.³

HGB is granted for a maximum period of 30 years, and at the request of the right holder and considering the needs and conditions of the buildings, the HGB can be extended for a maximum period of 20 years.⁴ The holder of the Management Right has the authority to hand over part of the Management Right to a third party in the form of Property Rights, Building Use Rights, and Use Rights which must be certified. Slowing down land registration efforts can certainly increase conflict and disputes.⁵ So the Management Right holder already has the authority to enter legal relations with third parties. This is to prove that the Management Right is a land right with dual authority; namely, as part of the land right, the management right is civil, and from the State Controlling Right, the management right is Public.⁶ In Government Regulation of the Republic of Indonesia Number 18 of 2021 Concerning Management Rights, Land Rights, Flats Units and Land Registration Article 52 paragraph (1) explains, "In essence the usufructuary rights granted for a certain period are rights granted by an authorized official, namely by giving, extending, and renewing." HPL can be extended up to 20-30 years.

In 2007, a complex of shops, a modern shopping center Mall WTC and a Hotel built, which was previously a public place. Boom Batu Port, built for three months and was used in 1929, was successful in time; he did this for public transportation and a place for the economy to grow by sending goods such as clothing, food, and shelter. the problem is the findings of the BPK RI (Financial Supervisory Agency) Representative of Jambi Province since 2011, related to the initial agreement on the WTC (Wilton Trade Center) Mall building not following what was in the field. As it is known that the WTC Mall building owned by PT SPP (Simota Putra Parayuda), which stands on HPL land belonging to the Jambi Province government with an area of 10,765 Ha with a 30-year lease agreement starting in 2007.⁷ The results of the audit stated that there was a mismatch of function and designation between the map of the spatial pattern plan listed in Perda Number 9 of 2013 concerning the RTRW of Jambi City. This regulation has been violated, with the conditions in the field that we look Now. The spatial pattern plan pattern is designated as a river bank, whereas conditions in the field include trade and service activities (WTC Mall).⁸

³ Eman Ramelan, "Hak Pengelolaan Setelah Berlakunya Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 9 Tahun 1999". *Jurnal Yurisprudensi* Volume 15 Nomor 3, (2006), 196.

⁴ Triadi Kurniawan. "Pemberian Hak Guna Bangunan diatas Bagian Hak Pengelolaan". *Jurnal Keadilan* Volume 18 no 1 (2020), 80. <https://doi.org/10.37090/keadilan.v18i1.293>

⁵ Elita Rahmi. "Legal Certainly of Land Registration towards Sustainable National Development". *International Journal of Recent Technology and Engineering (IJRTE)* Volume-8 Issue-2S9 (2019), 240. DOI: 10.35940/ijrte.B1053.0982S919.

⁶ Oloan Sitorus. *Hak Atas Tanah dan Kondominium*. (Jakarta: Dasa Media Utama, 1995), 94.

⁷ Jamberita.com. Temuan BPK Soal Luas Lahan Mall WTC Jambi yang Berbeda di Lapangan Terus Bergulir. <https://jamberita.com/read/2019/11/18/5954872/temuan-bpk-soal-luas-lahan-mall-wtc-jambi-yang-berbeda-di-lapangan-terus-bergulir>. Retrieved on March 20, 2022.

⁸ Jambi.one. Hasil Audit, Mall WTC Jadi Temuan. <https://jambione.com/read/2020/11/28/15543/hasil-audit-mall-wtc-jadi-temuan/>. Retrieved on March 20, 2022.

“The river area covers up to the outer boundary of the borderline. The embankment boundary line within urban areas is determined to be at least three meters from the outer edge of the foot of the embankment along the river channel. In comparison, outside urban areas, it is determined to be at least five meters”.

The elucidation and Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 28/PRT/M/2015 concerning the Establishment of River Borders and Lines Border Lakes, the function of control by the state over land and water, including land, whose rights of control are granted by law to the state, is limited to management which aims and objectives for the benefit of the Inland Indonesian people. The prohibition of ownership of riverbank land by individuals has a purpose as a form of state protection for preserving rivers so that their use is only for the public interest and the prosperity of the Indonesian people.⁹ Management rights as public rights are part of the state's control rights. HPL is a right administrative, where HPL holders are given the authority to regulate and manage land state delegated. Between HPL holders and third parties as work partners, each has rights and obligations. HPL is the spearhead of the state's right to control. So that the right to control from the state is not continuously challenged as the widest right, the HPL must be more dominant in increasing the standard of living of the economically weak with deficient political, social, and economic access.¹⁰

The development of the WTC Mall miss used HPL, which the use of HPL is listed in Loss Number 9 of 2013 concerning Jambi City RTRW article 70 paragraph (5) prohibition of constructing buildings on riverbanks, Regional Regulation Number 1 of 2013 concerning Watershed Management Article 1 point (9) watershed areas from up stream to down stream for development purposes in order to increase the prosperity and welfare of the community while maintaining the sustainability of the regional ecosystem. Presidential Regulation Number 38 of 2011 Article 22 paragraph (3).¹¹ The river boundary that is written So in the Library study will answer the solution from the Position of Building Use Rights over the Land Management Rights of the WTC Batang Hari Mall Complex, so that there is an appropriateness based on the Law in force, which the river border area is allocated for the public interest. Following the basis of land use in planning, the river border is not for commercial interests alone and reaping much profit, but for the benefit of many communities

⁹ Guy Rangga Boro. Bisakah Tanah Bantaran Sungai Jadi Hak Milik? <https://www.hukumonline.com/klinik/a/bisakah-tanah-bantaran-sungai-jadi-hak-milik-lt6107f352a4265>. Retrieved on March 20, 2022.

¹⁰ Elita Rahmi. “Eksistensi Hak Pengelolaan Atas Tanah (HPL) Dan Realitas Pembangunan Indonesia”. *Jurnal Dinamika Hukum* Volume 10 No 3, (2010), 358. <http://dx.doi.org/10.20884/1.idh.2010.10.3.104>

¹¹ Sumber yang dapat dipercaya untuk berlandaskan Pengelolaan sempadan sungai hanya untuk kepentingan publik yang mana telah dijelaskan dalam Peraturan Presiden Nomor 38 Tahun 2011 dan juga Peraturan Menteri Pekerjaan Umum dan Perumahan Rakyat Republik Indonesia Nomor 28/PRT/M/2015 Tentang Penetapan Garis Sempadan Sungai dan Garis Sempadan Danau.

2. Research Methods

The type of research used in this research is normative juridical, which is a research method on statutory rules both in terms of the hierarchy of the formation of laws and regulations (vertical), as well as the harmonious relationship of laws and regulations (horizontal). The research was carried out by examining legal material as a basic material for research by searching for the regulations and literature related to the problem under study based on the arrangement of authority contained in the ambiguity of norms in the existing rules.

3. Discussion

3. 1 position of HGB above the Land of WTC Jambi Mall

All land within the territory of the Republic of Indonesia is state land, namely land controlled by the State. Based on Article 2 paragraph (1) UUPA:

"On the basis of the provisions in Article 33 paragraph (3) and the matters referred to in Article 1, the earth, water and space including the natural resources contained therein are controlled at the highest level by the State, as the organization of the power of all the people."

The word "controlled" does not mean "owned" but the meaning that gives authority to the State as an organization of power for all the people at the highest level.

Building use rights are stated in Article 16, paragraph (1) letter c of the BAL. Specifically, Building Use Rights are regulated in Article 35 to Article 40 of the UUPA. Furthermore, in Article 50, paragraph (2) of the UUPA states that further provisions regarding Cultivation Rights, Building Use Rights, Use Rights, and Lease Rights for Buildings are regulated by statutory regulations. The statutory regulations referred to by Article 50 paragraph (2) of the UUPA are Government Regulation No. 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights.

Those who can have Building Use Rights according to UUPA and Government Regulation No. 40 of 1996 are:

1. Indonesian citizens;
2. A legal entity established according to Indonesian law and domiciled in Indonesia. The occurrence of Building Use Rights based on the land's origin can be explained:
3. Building use rights over state land. The procedure for this HGB is regulated in Articles 32 to 48 of the Minister of Agrarian Affairs/Head No. 9 of 1999. Article 22 and Article 23 PP No. 40 of 1996, this HGB occurred since the decision to grant the HGB was registered by the applicant with the Head of the local District/City Land Office to be recorded in the Land Book. As proof of rights, a certificate is issued.
4. The building use rights over the building use rights management rights occurred with a decision to grant rights at the suggestion of the management rights holder, which

- was issued by the National Land Agency based on Article 4 of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1999, which was amended by Article 4 Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 1 of 2011. The procedure for the occurrence of this HGB is regulated by the Minister of Agrarian Affairs/Head No. 9 of 1999.
5. In Article 22 and Article 32 PP Number 40 of 1996, this Building Use Right occurs since the decision to grant the HGB is registered by the Head of the local Regency/City Land Office to be recorded in the Land Book. As proof of rights, a certificate is issued. This Building Use Right occurred with a decision to grant the right at the suggestion of the Management Right holder, which was issued by the National Land Agency based on Article 4 of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1999, which was amended by Article 4 Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 1 of 2011. The procedure for this HGB is regulated by the Minister of Agrarian Affairs/Head No. 9 of 1999.
 6. In Article 22 and Article 23 of Government Regulation Number 4 of 1996, this Building Use Right occurs since the decision to grant the HGB is registered by the Head of the Land Office 39 of the local Regency/City to be recorded in the Land Book. As proof of the right, a Building Use Right is issued.¹²

The period of validity of Building Use Rights based on the origin of the land, namely:

1. Building use rights over state land. This Building Use Right has a maximum term of 30 years for the first time, can be extended for a maximum period of 20 years, and can be renewed for 30 years.
2. The building use rights over the land of the Management Rights of the Building Use Rights have a maximum period of 30 years for the first time, can be extended for a maximum period of 20 years, and can be renewed for a maximum period of 30 years.

Obligations of holders of Building Use Rights, namely:

- a. pay income money, the amount and method of payment of which are determined in the decision to grant the right;
- b. use the land according to its designation and requirements as stipulated in the decision and the grant agreement;
- c. take good care of the land and its buildings and maintain the sustainability of his living environment;
- d. handing back the land granted with the Building Use Right to the State. The holder of the Management Right, or the holder of the Property Right after the Building Use Right is terminated;
- e. submit a certificate of Building Utilization Rights that has been deleted to the Head of the Land Office;

¹² *Loc Cit.*

- f. provide exits or waterways or other facilities for the grounds or areas of land enclosed by the Building Use Rights land.

Rights of the holder of Building Use Rights:

- a. control and use the land for a certain time;
- b. erecting and owning a building for his personal or business needs;
- c. transferring those rights to another party; and
- d. the burden with Mortgage.

Factors causing the cancellation of Building Use Rights, namely:

- a. expiration of the period specified in the granting or extension decision or in the granting agreement;
- b. canceled by the authorized official, the holder of Management Right, or the holder of Property Right before the expiry of the period because;
 1. non-fulfillment of the rights holder's obligations and or violation of the provisions in the Building Use Rights;
 2. non-fulfillment of the terms or obligations contained in the agreement on the granting of building use rights between holders of building use rights and land owners or land use agreements with management rights;
 3. court decisions that have permanent legal force.
- c. voluntarily released by the right holder before the term expires;
- d. the right to use the building is revoked;
- e. abandoned;
- f. the land is destroyed;
- g. Building Use Right holders need to meet the requirements as Building Use Right holders.

Building Use Rights are used to construct buildings, including in the form of residential or residential houses, shop houses (shops), office houses (office houses), shops, hotels, offices, and industries (factories). In the UUPA, there is no explicit mention of Management Rights. Only "management" is mentioned in the General Explanation of Number II Number 2. A.P. Parlindungan states that the term Management Right is taken from the Dutch language, namely *Beheersrecht*, which translates to Right of Ownership.¹³

Agree with A.P. Parlindungan, Maria S.W Sumardjono stated that Government Regulation No. 8 of 1953 concerning Control of State Lands regulates tenure rights as a translation of

¹³ A.P. Parlindungan. *Hak Pengelolaan Menurut Sistem Undang-undang Pokok Agraria*. (Bandung: Mandar Maju, 1989), 6.

management right over State lands. The right of control in question is the right of control over state lands.¹⁴

“If the State land that is given to Ministries, Directorates, and Autonomous Regions, in addition being used for the interests of the agencies themselves, also intended to be given with a right to a third party, then the right of ownership of the State land is converted into a Management Right”

In Article 2 of the Minister of Agrarian Regulation No. 9 of 1965 concerning the Implementation of the Conversion of Tenure Rights over State Land and Provisions Concerning Policy Further, it stipulates the conversion of tenure rights over State land into Management Rights, namely "If State land is given to Departments, Directorates, and Autonomous Regions, other than used for the benefit of the agencies themselves, it is also intended to be granted with a right to a third party, then the right to control over the State land is converted into a Management Right.

3. 2 Requirements for allotment of land management

The transferring rights to land can be interpreted as something that is done regarding legal acts with an authentic deed made by and in front of the Land Deed Making Office (PPAT) which results in the transfer of the holder of rights to land to another party. While the transfer of rights to land is a legal act or event confirmed other than by the PPAT act, such as the Auction Letter made by the Auction Office.¹⁵

"Regarding the transfer of land rights, it can be done in two stages, namely by "switching" and "transferring". The meaning of switching in transferring land rights, namely not by provisions or legal actions, can be concluded from land rights related to the law of switching by itself. Inheritance without a will is a form of transfer of land rights because the law that transfers the inheritance is regulated in the inheritance law, following which law is used regarding the heir to the heir".¹⁶

Building use rights can be transferred to other parties, Article 35 paragraph (3) UUPA jo. Article 34 Government Regulation no. 40 of 1996. Building use rights can be transferred by way of inheritance, which must be proven by a statement or statement of position as heir, which must be made and made before the PPAT. regarding the certificate from the holder of the Building Use Right made by PPAT, a statement identifying the heirs, and finally, regarding the Building Use Right certificate. It is included in Article 34 of Government Regulation Number 40 of 1996 in conjunction with how an act of inheritance causes the procedure for the Transfer of Building Use Rights. Article 42 Government Regulation No. 24

¹⁴ Maria S.W Sumardjono. "Hak Pengelolaan : Perkembangan, Regulasi, dan Implementasinya". *Jurnal Mimbar Hukum*, Edisi Khusus (2007), 22. <https://media.neliti.com/media/publications/40585-eksistensi-hak-pengelolaan-dalam-hukum-t-36880399.pdf>

¹⁵ M. Yamin Lubis dan Abdul Rahim. *Hukum Pendaftaran Tanah*. (Bandung: Mandar Maju, 2008), 276.

¹⁶ *Loc Cit.*

of 1997 jo. Articles 111 and 112 of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997.

Building use rights are transferred in the form of a sale-purchase, grant, and finally, an auction which evidence of the Minutes of Auction by the PPAT must accompany. Based on Government Regulation Article 32 Government Regulation Number 40 of 1996, the holder of a Building Use Right has the right to

1. Own and use the land for a certain time;
2. Establish and have a building for personal needs and business;
3. Transfer the right to another party; and
4. The burden with Mortgage Rights.

Transferring of building by Province management rights land, some things must and must be fulfilled where prospective holders of building use rights over land management rights first make a written agreement and must comply with the designations and functions agreed in the agreement of The Provincial Government of Jambi as the owner of the Management Right to the candidate who will become the holder of the Building Use Right. Regarding how the procedure for transferring Building Use Rights is caused by buying and selling, grants are regulated in Article 34 of Government Regulation No. 40 of 1996 jo. Article 37 to Article 40 Government Regulation No. 24 of 1997 jo. Article 87 to Article 106 of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997. The procedure for transferring building use rights due to an auction is regulated in Article 34 of Government Regulation no. 40 of 1996 jo. Article 41 Government Regulation No. 24 of 1997 jo. Article 107 to Article 110 of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997.

The procedure for transferring Building Use Rights due to an auction is regulated in Article 34 of Government Regulation No. 40 of 1996 jo. For it to work properly concerning the Transition of Building Use Rights over land with Management Rights, it must be based on an agreement or prior permission from the owner of the Management Rights concerned.¹⁷ Land for human life and livelihood is "condition not". The development of human relations with the land is increasingly broad and complex, from the individual stages of land to patterns created by the state. reads:

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". with the problem of the welfare of the Indonesian nation. The paragraph and explanation stated that the state's control of land as the surface of the earth could achieve the greatest possible prosperity for the people to achieve the state's goals, as stated in the fourth paragraph of the Preamble of the 1945 Constitution.

Mastery of Land by the state is important because the land is the mainstay of people's prosperity, so it is necessary to prevent land control by certain groups, which can lead to

¹⁷ *Loc cit*

oppression and extortion of the people. Article 33 paragraph (3) of the 1945 Constitution is spelled out in laws and regulations, especially Law Number 5 of 1960 concerning Basic Agrarian Regulations, published in the State Gazette of 1960 Number 104, which is commonly abbreviated as UUPA.2UUPA as an organic law of Article 33 paragraph (3) of the 1945 Constitution regulates state authority over land as summarized in Article 2 paragraph (2) of the UUPA which reads:

- 1) Regulate and administer the allotment, use, supply, and maintenance of the earth, water, and space;
- 2) Determine and regulate the legal relations between people and the earth, water, and space;
- 3) Determining and regulating the relationship between people and legal acts concerning earth, water, and space.

Through provisions that specifically regulate the management of state/regional property, the granting of HPL or HGB on Management Rights to third parties can still be carried out according to procedures regulated by laws and regulations in the land sector. However Thus, in general, it can be said that with the enactment of the two laws and regulations, the transfer and imposition of HPL or HGB over Management Rights as objects is no longer allowed. In other words, the holder of the Management Right no longer gives approval/recommendation for the transfer or encumbrance of the HPL or HGB on the Management Right as the object.

What about the possibility of imposing HPL or HGB on Management Rights based on work belonging to the state or regional utilization goods? According to Article 26 Paragraph (1) letter f PP No 6/2006, during the period of cooperation, partners operating utilization are prohibited from pledging or pawning property in the state/region, which is the object of utilization cooperation. The mindset adopted by Law No. 1/2004 jo PP No 6/2006 aims to return Management Rights to public functions implicitly.

The principle of efficiency in managing state or regional property is directed so that the state/regional property is used according to the standards required to support the optimal implementation of the main tasks and functions. In line with the above principles, land or buildings owned by the state or region that are not utilized to carry out the main tasks and functions of the agency concerned for their utilization to the Minister of Finance Governors/Regents/Mayors must be handed over for the benefit of the duties of the state/regional government following provisions of Article 49 Paragraph (3) Law No.1/2004. The use of land or buildings belonging to the state/region, among others, is in the form of leasing, joint utilization, borrowing, building use, or building handover.

Based on Article UUPA, the object of management rights, like other land rights, is the island controlled by the State. The general explanation of II number (2) of the UUPA states: The state's authority over land that any person or other party does not own is broader and full. Guided by the above-stated purpose, the state can give such land to a person or legal entity.

According to the provisions and requirements, ownership rights, business use rights, building use rights, or use rights or giving them in management to a governing body (department, position, or autonomous region) to be required for the implementation of their respective duties

The object of management rights land that is directly controlled by the state. The same conclusion will also be obtained if traced to the history of management rights originating from state land tenure rights regulated by Government Regulation Number 8 of 1953. 9/1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights are

- a. Government Agencies, including Regional Governments;
- b. State Owned Enterprises (BUMN);
- c. Regional Owned Enterprises (BUMD)
- d. PT. Persero;
- e. Authority Body;
- f. Other government legal entities appointed by the Government.

Paragraph (2) states that "Legal entities, as referred to in paragraph (1), may be granted management rights as long as they are following their main duties and functions related to land management". The procedures for granting management rights are regulated in Article 67 and Article 71 of the Minister of Religious Affairs/KBPN No 9/1999. The process of granting management rights begins with a written application containing information regarding the applicant for information regarding the land, which includes biological data and juridical data, and other information deemed necessary. The application submitted to the Minister (Head of BPN) through the head of the local Land Office. who will check the completeness of juridical and physical data for further processing? If there is no certificate for the land being applied. In that case, a measurement is then carried out for the completeness of the application file to be submitted by the Head of the Land Office to the Head of the Regional Office.

After the application meets the requirements, the Head of the Regional Office submits the application file to the Minister (Head of BPN). In the decree granting management rights, the conditions must be met, including registering land. The Head of the Land Office signs the Management Right Certificate. (Regulation of the State Minister for Agrarian Affairs/Head of BPN No.3/1997 concerning Provisions for implementing PP No.24/1997 concerning Land Registration). Concerning the contents, aims, and objectives of the state's right to control land as stipulated in Article 33 paragraph (3) of the 1945 Constitution. The management right is located as a form of delegation of authority from the state's right to control over land, which is given to the Departments, State Government Agencies, and Autonomous Regions, as well as legal entities formed by the Government as a delegation of authority to exercise the state's right to control over land. The Management Right also contains elements of land rights.

The provisions contained in the land use agreement, namely;

- a. The identity of the parties concerned;
- b. Location, boundaries, and area of the land concerned;
- c. Type of use;
- d. Land rights requested and the period;
- e. The type of building to be built and the terms of ownership after the rights expire;
- f. The amount of money received and terms of payment;
- g. Other conditions deemed necessary.

The land use agreement contains the compensation money given by prospective holders of Building Use Rights to Management Right holders. Compensation money is a consequence of land use with Management Rights by prospective holders of Building Use Rights within a certain period according to the term of Building Use Rights. After the Land Agreement is drawn up between the holder of the Management Right and the prospective Building Use Right holder. On the recommendation of the Management Right holder, the prospective Building Use Right holder or the Management Right holder submits a written application for Building Use Rights to the Head of the local Regency/Municipal Land Office.

The conditions that must be fulfilled by the holder of the Building Use Right for the extension of the period or renewal of the Thee stipulated in Article 26 paragraph (1) of Government Regulation No. 40 of 1996, namely:

- a. the land is still being used properly following the circumstances, nature, and purpose of granting said right;
- b. the conditions for granting the right are properly met by the right holder;
- c. the right holder still meets the conditions as a right holder;
- d. the land is still following the Spatial Plan (RTRW) concerned.

The occurrence of building use rights over management rights is preceded by the making of a land use agreement between the holders of management rights and prospective holders of building use rights. Based on the recommendation of management rights holders, prospective building use rights holders applies for granting building use rights to the head of the local Regency/Municipal Land Office by attaching the said Land Use Agreement. The head of the local Regency/Municipal Land Office issues a Decree on the Granting of Building Use Rights and submits it to the applicant for Building Use Rights.

Within the period specified in the Decree on the Granting of Building Use Rights, the decree is registered with the local Regency/Municipal Land Office to be recorded in the Land Book and issued a Certificate of Building Use Rights for Management Rights. Building use rights over management rights occur from the Decree on the granting of building use rights.

The holder of the Management Right has the authority to give approval or not to give approval for the extension of the term of the Building Utilization Right for the Management Right. In addition, the holder of the Management Right has the authority to determine the

amount of compensation for the use of the Land Use Right portion, the rights, obligations and prohibitions for the holder of the Building Use Right in extending the term of the Building Use Right over the Management Right. The amount of compensation, rights, obligations and prohibitions for holders of building use rights is made in the form of an agreement between the holder of management rights and the holder of building use rights with a notarial deed or private deed

4. Conclusion

The right to build on state land is the status of an application made by the applicant in which he submits an application for the construction of a business building. If the State land granted to the Departments, Directorates, in addition to being used for the interests of the agencies themselves, is also intended to be granted with a right to a third party, then the ownership right over the State land is converted into a Management Right. In the case of the WTC Mall, the building use rights held by a third party are used for the benefit of the public shopping and also as a place for the wheels of the economy to turn. This happened because of a decision by the Jambi Provincial Government which considered the element of usefulness.

References

- Boro, Guy Ranga Boro. Bisakah Tanah Bantaran Sungai Jadi Hak Milik? <https://www.hukumonline.com/klinik/a/bisakah-tanah-bantaran-sungai-jadi-hak-milik-lt6107f352a4265>. Retrieved on March 20, 2022.
- Jamberita.com. Temuan BPK Soal Luas Lahan Mall WTC Jambi yang Berbeda di Lapangan Terus Bergulir. <https://jamberita.com/read/2019/11/18/5954872/temuan-bpk-soal-luas-lahan-mall-wtc-jambi-yang-berbeda-di-lapangan-terus-bergulir>. Retrieved on March 20, 2022.
- Jambi.one. Hasil Audit, Mall WTC Jadi Temuan. <https://jambione.com/read/2020/11/28/15543/hasil-audit-mall-wtc-jadi-temuan/> Retrieved on March 20, 2022.
- Kurniawan, Triadi. Pemberian Hak Guna Bangunan diatas Bagian Hak Pengelolaan. Jurnal Keadilan. Volume 18 no 1. (2020). <https://doi.org/10.37090/keadilan.v18i1.293>
- Lubis, M. Yamin dan Abdul Rahim. Hukum Pendaftaran Tanah. Bandung: Mandar Maju. 2008
- Parlindungan, A.P. Hak Pengelolaan Menurut Sistem Undang-undang Pokok Agraria. Bandung: Mandar Maju. 1989.

Rahmi, Elita. Eksistensi Hak Pengelolaan Atas Tanah (HPL) Dan Realitas Pembangunan Indonesia. *Jurnal Dinamika Hukum*. Volume 10 No 3 (2010.) <http://dx.doi.org/10.20884/1.jdh.2010.10.3.104>.

_____. "Legal Certainly of Land Registration towards Sustainable National Development". *International Journal of Recent Technology and Engineering (IJRTE)* Volume-8 Issue-2S9 (2019), 240. DOI: [10.35940/ijrte.B1053.0982S919](https://doi.org/10.35940/ijrte.B1053.0982S919).

Ramelan, Eman. Hak Pengelolaan Setelah Berlakunya Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 9 Tahun 1999". *Jurnal Yurisprudensi*. Volume 15 Nomor 3. 2006.

Republic of Indonesia. Law of the Republic of Indonesia of 1945

_____, Law Number 5 of 1960 Concerning Basic Agrarian Regulations

_____, Government Regulation No. 38 of 2011, concerning Rivers.

_____, Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 28/PRT/M/2015 Concerning the Establishment of River Boundary Lines and Lake Boundary Lines.

_____, Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 18 of 2021, concerning Methods of Determining Management Rights and Land Rights

_____, Regulation of the State Minister for Agrarian Affairs Number 5 of 1999 concerning Guidelines for Solving Problems of Ulayat Rights of Indigenous Peoples

_____, Jambi Regional Regulation Number 1 of 2013 Concerning Rivers

_____, Regional Regulation of the City of Jambi Number 9 of 2013 Concerning the Management of Watersheds in Jambi Province

Sitorus, Oloan. *Hak Atas Tanah dan Kondominium*, Jakarta: Dasa Media Utama. 1995.

Sumardjono, Maria S.W. Hak Pengelolaan : Perkembangan, Regulasi, dan Implementasinya. *Jurnal Mimbar Hukum, Edisi Khusus*. 2007. <https://media.neliti.com/media/publications/40585-eksistensi-hak-pengelolaan-dalam-hukum-t-36880399.pdf>

Letter of the State Minister for Agrarian Affairs/Head of the National Land Agency dated 17 September 1998, Number 630.1-3433 concerning Collateral Certificates.

Yamin Muhammad. *Beberapa Dimensi Filosofis Hukum Agraria*. Medan: Pustaka Bangsa Press. 2003