

## Building Use Rights Over Management Rights in the Batam Free Trade Zone: A Perspective of Certainty and Legal Protection

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**Abstract:** *The Building Use Rights (HGB) on top of the Management Rights (HPL) is a form of state land utilization that develops in the practice of managing national strategic areas, especially in the Batam Free Trade Zone and Free Port. However, this practice raises complex juridical issues, especially related to the unclear legal status of HPL which is not explicitly regulated in the Basic Agrarian Law, thus having an impact on the weak certainty and legal protection for HGB holders. This study aims to analyze the legal status of HGB above HPL in the land management system in Batam, examine the application of Indonesian land law principles in its regulation and management by the Batam Business Agency, and formulate a reformulation of HGB regulation on HPL to ensure the protection of the rights of related parties. The research method used is normative legal research with legislative, conceptual, and systemic approaches, which are analyzed qualitatively with prescriptive reasoning. The results of the study show that the regulation of HGB above HPL is still characterized by a void and disharmony of norms, the dominance of the administrative authority of regional managers, and the application of the principles of legal certainty, justice, and protection of rights has not been optimal. This study concludes that it is necessary to reformulate the regulation of HGB above HPL through affirming the position of HPL as a state public authority, strengthening the status of HGB as a legally protected land right, and structuring the authority to manage areas to be in line with the principles of national land law and state law.*

**Keywords :** *Building Rights; Right to Management, Legal Certainty*

## INTRODUCTION

Land is an agrarian resource that has strategic value in the life of the nation and state, both from social, economic, and legal aspects.<sup>1</sup> In the Indonesian legal system, the control and management of land originates from the right to control the state as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is further regulated in Law No. 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA). Through this concept, the state is given the authority to regulate the designation, use, and legal relationship between legal subjects and land for the realization of the prosperity

<sup>1</sup> Arba, Muhammad, *Hukum Agraria Indonesia.*, 2021, hlm. 82



of the people.<sup>2</sup> One of the concrete forms of the implementation of the right to control the state is the granting of land rights to legal subjects, including the Building Use Rights (HGB). Within a certain period of time, HGB allows its holders to construct and own buildings on property that do not belong to it.<sup>3</sup> In the practice of implementing land law, HGB is not only given on state land directly, but also on land with the status of Management Rights (HPL), whose management authority is delegated by the state to certain agencies or agencies.

Management Rights have distinctive characteristics and are different from land rights in general. HPL is not specifically regulated by the UUPA as a kind of land right; rather, it is developed through land governance practices and laws and regulations.<sup>4</sup> This requirement triggered a discussion about the legal position of HPL as an expression of the State Public Authority and as the basis for granting derivative rights to third parties, such as building rights. There are fundamental concerns about predictability and legal protections for HGB holders when granting HGB over HPL. The legal relationship between HPL holders and HGB holders is often placed within a strong administrative framework, but weak in terms of comprehensive normative construction. Unclear limits of HPL holders' authority, time frame, and guarantee of the sustainability of HGB rights have the potential to cause legal uncertainty and open up space for land disputes.

This problem is exacerbated by the disharmony and absence of norms in the regulation of HPL and HGB above HPL. On the one hand, the UUPA specifically recognizes HGB as a right to land, while on the other hand, the HPL does not have an equivalent regulatory basis at the statutory level.<sup>5</sup> As a result, the regulation of HGB above HPL relies more on sectoral policies and implementing regulations that are partial, thus causing inconsistencies in the application of land law in Indonesia. From the perspective of the state of law, these conditions are contrary to the principles of legal certainty and the protection of citizens' rights. The state, through its public authority, is not only tasked with regulating and managing land, but is also obliged to guarantee legal protection for every legal subject who legally acquires land rights.<sup>6</sup> Therefore, the existence of HGB above HPL must be placed in a clear, transparent, and fair legal framework, so as not to harm the interests of third parties as rights holders.

Furthermore, the concept of dispute prevention and guarantee of the continuation of rights is closely related to the legal protection of HGB holders above HPL. Legal protection is not only repressive through dispute

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<sup>2</sup> Sari, Indah, "HAK-HAK ATAS TANAH DALAM SISTEM HUKUM PERTANAHAN DI INDONESIA MENURUT UNDANG-UNDANG POKOK AGRARIA (UUPA)," *Jurnal Mitra Manajemen* 9, no. 1 (2017), <https://doi.org/10.35968/jmm.v9i1.492>.

<sup>3</sup> Fahrul Fauzi and Lutfi Djoko Djumeno, "Telaah Pemberian Hak Guna Bangunan Sekunder Di Atas Hak Pengelolaan: Studi Perbandingan Dengan Perjanjian Sewa Menyewa Tanah," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 8, no. 3 (2022): 261–74, <https://doi.org/10.55809/tora.v8i3.141>.

<sup>4</sup> Silviana, "Pemanfaatan Tanah Di Atas Hak Pengelolaan Antara Regulasi Dan Implementasi," *Diponegoro Private Law Review* 1, no. 1 (2025), <http://u.lipi.go.id/1506583634>.

<sup>5</sup> berliyan Erika Putri And Sri Setyadji, "Prinsip Hukum Hak Guna Bangunan (Hgb) Di Atas Hak Pengelolaan (Hpl) Pada Tanah Hasil Reklamasi Dalam Perspektif Uupa," *Iblam Law Review* 4, no. 3 (2024): 34–47, <https://doi.org/10.52249/ilr.v4i3.415>.

<sup>6</sup> Rahadiyan Veda Mahardika, *Kedudukan Subyek Hukum Ditinjau Dari Hak Keperdataan: Refleksi: Terjadinya Tumpang Tindih Lahan Hak Guna Usaha.*, 2022 (UM Jember Press, 2022). hlm. 29

resolution mechanisms, but also preventive through strict normative arrangements and not multi-interpretation.<sup>7</sup> In this context, the weak regulation of HPL and HGB above HPL shows the urgency of updating and strengthening the national land legal system. The regulation of Building Rights over Management Rights in the Indonesian land law system is still faced with a void of norms at the legal level, especially related to the legal position of Management Rights, the limits of the holder's authority, and the guarantee of legal protection for Building Rights holders as third parties. This void of norms creates legal uncertainty, opens up diverse interpretation spaces, and has the potential to give birth to non-uniform administrative practices in land administration. Therefore, it is very important to conduct this study to thoroughly investigate the legal protection of building rights over management rights and to determine how to strengthen the arrangements that can fill the gaps left by these norms, in order to realize legal certainty, justice, and order of land administration that are in line with the principles of the rule of law and the goals of national development.

## METHOD

This research is a normative juridical research, which is a type of legal study that views law as a rule or standard that governs the legislative system.<sup>8</sup> The purpose of this study is to find out how the Indonesian land law system protects building use rights over management rights. The NRI Statute of 1945, Statute No. 5 of 1960 on the basic principles of agriculture, and other relevant laws and regulations governing building rights and management rights were all studied as part of the legislative strategy. In addition, from the perspective of the rule of law, this study uses a conceptual method to examine the idea of the right to govern the state, the legal status of the right to management, and the principle of legal protection.

Legislation, related court decisions, and land administration policies are examples of primary legal material; legal literature, research findings, and expert opinions are examples of secondary legal material; and tertiary legal documents are used as support. All of these legal materials are analyzed qualitatively by a prescriptive juridical analysis method, namely by identifying the gaps in norms and regulatory disharmony, then formulating legal arguments and recommendations for strengthening regulations to ensure certainty and legal protection for HGB holders above the Management Rights.

## DISCUSSION

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<sup>7</sup> Surya et al., *Perlindungan Hukum Di Indonesia*. Penerbit Widina, 2025 (Penerbit Widina, 2025). hlm. 25

<sup>8</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.



## **The legal status of the Building Use Rights over the Land Management Rights in the land management system in the Batam Free Trade Zone and Free Port**

Law Number 5 of 1960 concerning the basic principles of agrarian (UUPA) guarantees the existence of the Building Use Rights (HGB), one of the land rights that are normatively recognized.<sup>9</sup> HGB gives the holder the authority to develop and own a structure over property that does not belong to him within a certain period of time. This authority is derived from the power to control the state.<sup>10</sup> The character of HGB as a temporary right emphasizes that this right is not absolute, but is limited by the purpose of its grant and the legal provisions that govern it. According to Boedi Harsono, HGB is an individual property right that can be transferred, burdened with dependent rights, and inherited, so that it has significant economic value in the national land system.<sup>11</sup> This position shows that HGB is not just an administrative permit, but a right to land protected by law.

As a right derived from the right to control the state, HGB reflects the role of the state as a regulator and guarantor of legal certainty in land use. According to Maria S. W. Sumardjono, the power to control the state is intended to establish the state as a public authority that regulates the distribution, use, and legal relations between legal subjects and land, not as land owners.<sup>12</sup> In this context, HGB is a concrete instrument of state policy in distributing access to land use in a fair and productive manner, especially to support development and investment activities.

In terms of legal status, HGB holds an important place in the UUPA's hierarchy of land rights. HGB is subject to proprietary rights, but because it is registered and has a certificate as proof of rights, it has relatively strong legal force. A. P. Parlindungan claims that the registration of HGB in the land registration system, which protects rights holders from outside interference, provides legal certainty.<sup>13</sup> Thus, HGB must be understood as a right to land that has a clear legal standing and full legal protection, so that it cannot be treated solely as a product of administrative policy, including when HGB is granted on top of the Management Rights.

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<sup>9</sup> Husein et al., "Kepastian Hukum Penerapan Jangka Waktu Perpanjangan Hak Guna Bangunan Yang Berakhir Masa Berlakunya Sebagai Obyek Hak Tanggungan Sebelum Perjanjian Pokok Berakhir Dikaitkan Dengan Peraturan Perundang-Undangan Yang Berlaku," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 2, no. 1 (2018): 84–101, <https://jurnal.fh.unpad.ac.id/index.php/acta>.

<sup>10</sup> Nia Monicha et al., "Motivasi Peningkatan Hak Atas Tanah Dari Hak Guna Bangun Menjadi Hak Milik Di Masyarakat Bangkalan," *AL-DALIL: Jurnal Ilmu Sosial, Politik, Dan Hukum* 3, no. 2 (2025): 30–35, <https://doi.org/10.58707/aldalil.v3i2.1091>.

<sup>11</sup> Budi Setyo Aji et al., "Analisis Yuridis Pemindahtanganan Hak Guna Bangunan (HGB) Di Atas Tanah Hak Pengelolaan (HPL) Dan Aplikasinya," *Notarius* 14, no. 2 (2021): 747–57, <https://doi.org/10.14710/nts.v14i2.43726>.

<sup>12</sup> Kolopaking and Anita Dewi Anggraeni, *Penyelundupan Hukum Kepemilikan Hak Milik Atas Tanah Di Indonesia*, 2021 (Penerbit Alumni, 2021). hlm, 37

<sup>13</sup> Wardhani and Shinta Novi, "Kekuatan Hukum Sertifikat Hak Atas Tanah Dikaitkan Dengan Kepastian Hukum Dalam Pendaftaran Tanah," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 1 (2018): 61–84, <https://doi.org/10.15642/alqanun.2018.21.1.61-84>.

HGB can be granted on state land, proprietary land, or Land Management Rights (HPL) according to Indonesian land law.<sup>14</sup> A legal architecture that has evolved in response to the demands of more efficient and organized state land management is the provision of HGB over HPL. In the context of the Batam Free Trade Zone and Free Port (KPBPB), the HGB scheme above HPL is used as a means of land use by third parties to support the investment climate and regional development.

Management Rights themselves are essentially a form of delegation of part of the state's authority over land to certain subjects for management purposes. HPL is not intended as a right to land in a private sense, but as an instrument of public authority derived from the right to control the state.<sup>15</sup> In the Batam KPBPB, the authority of HPL is given to the Batam Business Agency as an institution that carries out the function of land management in an integrated manner for the benefit of the development of free trade zones.<sup>16</sup> However, normatively, the UUPA does not explicitly regulate Management Rights as a type of land rights. The existence of HPL actually develops through administrative policies and implementing regulations under the law. This condition raises fundamental problems regarding the legal status of HPL in the land law system, especially when HPL is used as the basis for granting derivative rights such as HGB to third parties.

The absence of explicit regulation on HPL in the UUPA causes its legal position to be in a gray area between public authority and land rights. In land administration practice, HPL is often treated like a land right, while conceptually HPL is more appropriately understood as a form of management authority.<sup>17</sup> This ambiguity has a direct impact on the legal construction of HGB over HPL, as the basis of the legal relationship between HPL holders and HGB holders becomes not entirely clear.

In the land management system at KPBPB Batam, HGB above HPL is given to a third party through an administrative mechanism involving the approval of HPL holders and registration at the land office. Formally, this procedure gives administrative legitimacy to HGB. However, this administrative legitimacy is not necessarily directly proportional to substantive legal certainty, especially in guaranteeing the position of HGB as a fully protected right.

The legal relationship between HPL holders and HGB holders is a crucial point in assessing the legal status of HGB above HPL. In practice, HPL holders have a very dominant authority in determining the grant, extension, and even termination of HGB. This dominance of authority places HGB holders in a subordinate position, because the sustainability of their rights is highly dependent on the administrative policy of HPL

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<sup>14</sup> Berliyan Erika Putri and Sri Setyadji, "PRINSIP HUKUM HAK GUNA BANGUNAN (HGB) DI ATAS HAK PENGELOLAAN (HPL) PADA TANAH HASIL REKLAMASI DALAM PERSPEKTIF UUPA," *IBLAM LAW REVIEW* 4, no. 3 (2024): 34–47, <https://doi.org/10.52249/ilr.v4i3.415>.

<sup>15</sup> Wulan et al., "Analisis Hukum Pemberian Hak Pengelolaan Yang Berasal Dari Tanah Ulayat Pasca Terbitnya Undang-Undang Cipta Kerja.," *Notaire* 5, no. 1 (2022), <https://doi.org/10.20473/ntr.v5i1.32708>.

<sup>16</sup> Badan Penelitian dan Pengembangan Kemendagri et al., "Tumpang Tindih Kewenangan Pengembangan Kawasan Ekonomi Khusus Batam.," *Matra Pembaruan* 2, no. 2 (2018): 139–48, <https://doi.org/10.21787/mp.2.2.2018.139-148>.

<sup>17</sup> Pasandaran and Jerome Bryanto, "Kajian Hukum Terhadap Hak Pengelolaan Dalam Hukum Pertanahan Indonesia.," *Lex Administratum* 9, no. 5 (2021).

holders, not solely on general and binding legal norms.<sup>18</sup> These conditions are significantly different from HGB that is given directly on state land. In HGB on state land, the legal relationship between the state and the right holder is regulated more strictly in the UUPA and its implementing regulations, thus providing stronger legal certainty.<sup>19</sup> On the other hand, in HGB above HPL, an additional layer of authority through HPL holders actually creates legal complexity that has the potential to weaken rights protection.

The legal status of HGB above HPL in KPBPB Batam is also influenced by the characteristics of the special area. KPBPB Batam has its own management regime that integrates land interests, investment, and free trade policies.<sup>20</sup> In practice, the orientation to accelerate investment and the efficiency of regional management is often more dominant than the enforcement of the basic principles of national land law. From the perspective of legal certainty, these conditions pose a serious vulnerability for HGB holders above HPL. Unclear limits on the authority of HPL holders, the legal basis for the termination of HGB, and the guarantee of extension of rights have the potential to cause land disputes. This risk is exacerbated when there is a change in regional management policy or institutional restructuring, which has a direct impact on the legal status of land rights.

This condition shows that there is a structural tension between the special area legal regime and the national land law system. The specificity of the Batam KPBPB, which is designed to encourage an investment climate and ease of doing business on the one hand, has placed land management within the framework of a pragmatic economic policy. As a result, land norms that should be general, binding, and provide legal certainty tend to be compromised by administrative and sectoral regional management policies. In this context, the Right to Use Building over the Management Rights is often treated as an instrument of area management policy, not as a land right that has strong legal guarantees as referred to in the UUPA.

The dependence of HGB status above HPL on area management policies has the potential to cause systemic legal uncertainty. Changes in investment policies, restructuring of regional management plans, or institutional restructuring of managers can directly affect the sustainability of HGB without adequate legal protection mechanisms for rights holders. This situation not only increases the potential for land disputes, but also reflects the weak function of the state as a guarantor of legal certainty and protection of land rights.

Furthermore, conceptually, the existence of HGB above HPL raises questions about its consistency with the principles of national land law, especially the principle of legal certainty and the principle of rights

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<sup>18</sup> Dyta Widi Erdianto et al., "Legal Validity of HGB Extension Over Management Rights in Surabaya: Keabsahan Hukum Perpanjangan HGB Di Atas Hak Pengelolaan Di Surabaya," *Indonesian Journal of Innovation Studies* 26, no. 2 (2025), <https://doi.org/10.21070/ijins.v26i2.1012>.

<sup>19</sup> Ramadhani and Rahmat., "Pendaftaran Tanah Sebagai Langkah Untuk Mendapatkan Kepastian Hukum Terhadap Hak Atas Tanah," *SOSEK: Jurnal Sosial Dan Ekonomi* 2, no. 1 (2021): 31–40, <https://doi.org/10.55357/sosek.v2i1.119>.

<sup>20</sup> Nur Hadiyati, "MEMAHAMI PROBLEMATIKA HAK PENGELOLAAN TANAH KOTA BATAM Dalam Rangka Penetapan Batam Sebagai Kawasan Ekonomi Khusus," *Yurispruden* 2, no. 1 (2019): 51, <https://doi.org/10.33474/yur.v2i1.1660>.

protection. The UUPA places land rights as rights that must be guaranteed and protected by the state.<sup>21</sup> However, in the practice of managing HGB over HPL, such protection is often reduced by the dominance of administrative authority aspects. Within the framework of the state of law, the state must not place the holder of land rights in a legally unbalanced position. The State, through HPL holders, should act as a regulator and manager who ensures legal certainty and protection, not as a party that has excessive discretionary power over the sustainability of third party rights.

Therefore, the legal status of HGB above HPL in KPBPB Batam needs to be reaffirmed as a right to land that receives legal protection equivalent to HGB in general. This affirmation is important to prevent the reduction of HGB to become just a product of regional management policies that can be changed at any time without a clear legal basis. The absence of a firm regulation regarding the position of HPL in the UUPA shows that there is a gap in norms that have a systemic impact on the legal status of HGB above. This void of norms opens up a space for diverse interpretations, non-uniform administrative practices, and the potential for abuse of authority in land management in special areas such as KPBPB Batam.

The legal status of HGB above Land Management Rights in the land management system in KPBPB Batam is still in a condition that does not fully guarantee certainty and legal protection. This condition emphasizes the urgency of restructuring the legal construction of HGB above HPL through strengthening the normative framework that is in line with the principles of national land law, the rule of law, and the goal of equitable regional development.

### **The application of Indonesian land law principles in the regulation and management of Building Use Rights over Land Management Rights at the Batam Free Trade Zone and Free Port Management Agency**

The UUPA's land law principles have become important guidelines for land management and control throughout the country, even in unique areas such as the Batam Free Trade Zone and Free Port. The right to control the government, legal certainty, social role over land, justice, and legal protection for rights holders are some of these principles. In the context of HGB above HPL, the application of these principles is very crucial because it involves the relationship of authority between the state, the holder of Management Rights, and third parties as the holder of the HGB.

The principle of the right to control the state is a central principle in Indonesian land law that gives legitimacy to the state to regulate, manage, and supervise the use of land.<sup>22</sup> In its implementation at KPBPB Batam, this principle is realized through the delegation of land management authority to the Batam Business Agency. However, the transfer does not mean a transfer of ownership, but rather the granting of a management mandate that must be carried out within the limits of public authority. The problem arises when the management authority in practice tends to be understood as quasi-ownership authority, thus affecting the way BP Batam regulates and controls HGB above HPL.

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<sup>21</sup> Dina Catur Ayu Ningtyas, "HAK ATAS TANAH SEBAGAI DASAR PEMBUKTIAN BAGI PEMILIKNYA DALAM HUKUM AGRARIA YANG DI DASARI UUPA," *COURT REVIEW: Jurnal Penelitian Hukum* (e-ISSN: 2776-1916) 3, no. 01 (2023): 28–35, <https://doi.org/10.69957/cr.v3i01.698>.

<sup>22</sup> Syaiful Bahari, *Hak Menguasai Negara Dalam Politik Hukum Agraria Di Indonesia*, 2025 (Yayasan Pustaka Obor Indonesia, 2025). hlm. 246



Article 33 paragraph (3) of the 1945 Constitution formulates the concept of the right of state control, which places the state as the holder of public authority to regulate the legal relationship between legal subjects and land, determine its allocation, use, and utilization, and ensure the greatest prosperity of the people, not as land owners. In the doctrine of agrarian law, the right to control the state is understood as a source of legitimacy for the state to shape land policy, not as a basis for the state to act like a private subject.<sup>23</sup> Therefore, any delegation of land management authority to certain institutions, including the Batam Business Agency, must be understood as a delegation of regulatory and management functions that are public and limited.

However, in the practice of land management in KPBPB Batam, the meaning of the principle of the right to control the state often shifts towards factual control that resembles ownership. This shift is reflected in the breadth of BP Batam's discretion in determining the grant, extension, and termination of HGB above HPL without clear normative limitations. When management authority is treated as quasi-ownership authority, the legal relationship between the state, HPL holders, and HGB holders becomes unbalanced and has the potential to obscure the state's function as a guarantor of certainty and legal protection. This condition shows the need to reaffirm the limits of the principle of the right to control the state so that it remains within the framework of the state of law and does not contradict the principle of protection of land rights.

Furthermore, in the HGB regulation above HPL, the principle of legal certainty should be the main principle guaranteed by the state. Legal certainty requires clarity of norms, consistency of policies, and predictability in the implementation of land rights.<sup>24</sup> However, in management practices by BP Batam, legal certainty is often disturbed by the dominance of discretionary administrative policies. The extension, renewal, or termination of HGB often depends on BP Batam's internal policies, not on standard legal norms, thereby weakening the guarantee of legal certainty for HGB holders.

The principle of legal certainty is one of the fundamental principles in the state of law that requires that every action of the ruler be based on a law that is clear, written, and predictable by the subject of the law.<sup>25</sup> In the context of land law, this principle requires a strict regulation of the status of land rights, the validity period, the mechanism for extension, and the terms and procedures for termination of rights. Legal certainty is not only related to the existence of written norms, but also includes consistency in its application, so that land rights holders can plan their land use in a sustainable manner without being overshadowed by policy uncertainty.

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<sup>23</sup>Darus and Luthfan HD, *Hak Menguasai Negara Tinjauan Filosofi, Konsepsi Dan Konstitusi*. (umsu press, 2024). hlm. 19

<sup>24</sup> Roziqin Roziqin et al., "Kepastian Hukum Pengaturan Hak Atas Tanah Dalam Pluralisme Hukum," *Journal de Facto* 11, no. 1 (2024): 135–45, <https://doi.org/10.36277/jurnaldefacto.v11i1.228>.

<sup>25</sup> Abdur Rahim et al., "Relevansi Asas Kepastian Hukum Dalam Sistem Penyelenggaraan Administrasi Negara Indonesia," *JiIP - Jurnal Ilmiah Ilmu Pendidikan* 6, no. 8 (2023): 5806–11, <https://doi.org/10.54371/jiip.v6i8.2575>.



In the management of HGB above HPL by BP Batam, the principle of legal certainty is often reduced by the dominance of discretionary administrative policies. Dependence on the internal policies of the area manager causes the rights of HGB holders to not be fully protected by general and binding legal norms. When the extension or termination of the HGB is determined more by policy considerations than by normative provisions, then the legal predictability becomes weak and the legal position of the rights holder becomes vulnerable. This condition is contrary to the essence of the principle of legal certainty which is supposed to ensure stability, clarity, and legal protection for every holder of land rights in the national land legal system.

The principle of soil social function also has important relevance in the management of HGB above HPL. This principle emphasizes that land use should not be based solely on economic interests, but must take into account broader social interests.<sup>26</sup> In the context of KPBPB Batam, the social function of land is often interpreted narrowly as optimizing the economic value of the region. As a result, the interests of HGB holders as legitimate legal subjects receive less proportionate attention, especially when there is a change in the area management plan or a rearrangement of land policy.

In the context of the management of HGB above HPL in KPBPB Batam, the principle of land social function should be a balancing instrument between investment interests and the protection of the rights of legal subjects. However, when social function is interpreted narrowly as optimizing the economic value of the region, this principle has the potential to be used to justify management policies that override the certainty and legal protection of HGB holders. Such an interpretation is not in line with the essence of the social function of land, which basically requires that the use of land be carried out in a fair, proportionate manner, and not to harm the rights of other parties who have obtained land rights legally

The application of the principle of justice in the management of HGB above HPL requires a balance between the authority of BP Batam as the holder of HPL and the rights of HGB holders as a third party. However, in practice, the legal relations that are formed tend to be hierarchical and unbalanced. HGB holders are in a weak position because they have to comply with various administrative provisions set unilaterally by BP Batam. This condition shows that the principle of justice has not been fully internalized in the regulation and management of HGB above HPL.

The principle of legal protection is another very important principle in Indonesian land law. Legal protection is not only interpreted as a dispute resolution mechanism, but also as a preventive effort through clear and fair arrangements.<sup>27</sup> In the management of HGB above HPL by BP Batam, preventive legal protection is still weak due to the absence of strict norms regarding the limits of the authority of HPL holders and the rights of HGB holders. As a result, HGB holders often face uncertainty in defending their rights.

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<sup>26</sup> Afifah Satrianty and Nadia Maulisa, "Peran Badan Bank Tanah Sebagai Land Manager Dikaitkan Dengan Fungsi Sosial Atas Tanah," *Unes Journal of Swara Justisia* 8, no. 1 (2024): 9–25, <https://doi.org/10.31933/ujsj.v8i1.474>.

<sup>27</sup> Gozali and Djoni Sumardi, "Perlindungan Hukum Pembeli Yang Beritikad Baik Dalam Praktik Jual Beli Tanah Di Bawah Tangan," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2727–36, <https://doi.org/10.61104/alz.v3i3.1733>.

From the perspective of state administrative law, the management of HGB above HPL by BP Batam should be subject to the principles of good governance, such as transparency, accountability, and legal certainty. However, land management practices at KPBPB Batam show that these principles have not been fully implemented consistently. The decision-making process related to HGB is often not accompanied by clear standards that are accessible to rights holders. In addition, the application of the principle of non-discrimination in the management of HGB above HPL is also questionable. Different treatment of HGB holders in similar situations can cause injustice and undermine trust in the land law system. This shows that the principle of equality before the law has not been fully realized in the practice of land management by BP Batam.

The principle of integration of the national land law system also faces challenges in the context of the Batam KPBPB. The specificity of the region is often used as an excuse to deviate from the basic principles of the UUPA. In fact, the existence of special areas should not override the fundamental principles of national land law. The regulation of HGB above HPL should remain in a complete and consistent land law system. From the point of view of legal protection theory, this condition shows that there is an inequality between preventive and repressive protection. When land disputes arise, HGB holders are often at a disadvantage due to weak normative grounds. This shows that the application of the principle of legal protection in the management of HGB above HPL is still partial and not yet systemic.<sup>28</sup>

The application of the principle of legal certainty for business is also an important issue in the management of HGB above HPL at KPBPB Batam.<sup>29</sup> As an investment area, Batam needs a stable and predictable land system. However, the lack of clarity in the regulation of HGB above HPL has the potential to hamper the investment climate because it increases legal risks for business actors. In this context, BP Batam's role should not only be as a regional manager, but also as an extension of the state in ensuring legal protection. The exercise of land management authority must be directed to strengthen, not weaken, the legal position of HGB holders. This requires a paradigm shift from the dominant administrative approach to a principle-based legal approach.

Normatively, the application of Indonesian land law principles in the management of HGB above HPL by BP Batam still shows that there is a gap between norms and practices. Conceptually recognized principles have not been fully implemented consistently in administrative policies and actions. This gap reflects the weak internalization of land law values in the management of special areas. Thus, it can be emphasized that the application of Indonesian land law principles in the regulation and management of HGB above HPL in KPBPB Batam is still problematic. The dominance of administrative authority, weak legal certainty, and lack of optimal legal protection indicate the need to rearrange the approach to land management to be more in line with the fundamental principles of the UUPA.

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<sup>28</sup> Teguh and Harrys Pratama, *Peradilan Agraria Di Persimpangan: Antara Kepastian Hukum Dan Keadilan Sosial*, 2025 (Pohon Cahaya, 2025). hlm. 21

<sup>29</sup> Sharfinda et al., "Kepastian Hukum Hak Guna Usaha Di Atas Hak Pengelolaan.," *MIMBAR YUSTITIA: Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 2 (2023): 144–62, <https://doi.org/10.52166/mimbar.v7i2.5060>.

## **Reformulation of the Regulation of Building Use Rights on Land Management Rights for related rights in the management of the free trade zone and the Batam free port**

In Indonesia, the legal land system is very necessary to reformulate HGB rules on management rights, especially related to the administration of the Batam Free Trade Zone and Free Port. The previous section examination shows how the current procedure fails to provide legal guarantees and protection to HGB holders as third parties. Therefore, the reformulation of the regulation is not only intended to improve the administrative aspect, but also to establish a legal construction that is in harmony with the basic principles of the UUPA and the concept of the rule of law.

The reformulation of the HGB regulation above the HPL must begin with the reaffirmation of the legal position of Management Rights in the national land legal system. HPL needs to be placed expressly as a form of public authority that comes from the right to control the state, not as a right to land in a private sense. This affirmation is important to prevent distortions in the meaning of HPL as a quasi-ownership right that has implications for the excessive dominance of HPL holders over the rights of third parties. Furthermore, the reformulation must be directed at strengthening the legal position of HGB above HPL as a land right that receives full legal protection. HGB should not be reduced to just a land use permit that depends on the policy of the area manager.<sup>30</sup> In the context of KPBPB Batam, HGB holders must be positioned as legal subjects whose rights are normatively guaranteed, both in terms of term, extension, and termination of rights.

The reformulation of the regulation must also touch on the aspect of the legal relationship between HPL holders and HGB holders. The relationship needs to be built in a clear and balanced legal framework, with restrictions on the authority of HPL holders so as not to conflict with the principles of certainty and legal protection. The HPL holder must act as a manager who carries out public functions, not as a party who has absolute power over the land managed.

In the context of the management of KPBPB Batam, the reformulation of the HGB regulation above the HPL must take into account the characteristics of the special area without overriding the principles of national land law.<sup>31</sup> The specificity of the area cannot be used as an excuse to deviate from the principles of legal certainty and protection of rights. Therefore, harmonization between the legal regime of the free trade zone and the national land law system is needed in order to create consistency of regulation.

The reformulation of HGB regulation on HPL should also strengthen preventive legal protection for rights holders. Preventive protection can be realized through strict normative arrangements regarding the procedures for granting, renewing, and terminating HGB.<sup>32</sup> Clear arrangements will reduce excessive discretionary space and minimize potential land disputes down the road. In addition, the reformulation

<sup>30</sup> Mustofa and Suratman, *The Use of Land Rights for Industry*. (Bumi Aksara, 2022). p. 60

<sup>31</sup> Muhammad Resa et al., "Tinjauan Hukum Agraria Dalam Implementasi Surat Hak Guna Bangunan Di Batam Kepulauan Riau," *Almufi Jurnal Sosial Dan Humaniora* 1, no. 2 (2024): 98–106, <https://doi.org/10.63821/ash.v1i2.302>.

<sup>32</sup> Irmayanti et al., "Perlindungan Hukum Bagi Kreditur Akibat Berakhirnya Jangka Waktu Hak Guna Bangunan Yang Dibeberatkan Hak Tanggungan," *Sokhib Naim*. 5, no. 2 (2024): 120–32, <https://doi.org/10.54209/judge.v5i02.669>.



needs to accommodate the principles of transparency and accountability in the management of HGB over HPL. Any policies and decisions relating to HGB must be based on legal norms that are accessible and understood by the relevant parties. This transparency is important to build legal trust, especially for business actors who invest their capital in KPBPB Batam.

The reformulation of the regulation must also provide certainty regarding the protection of the economic rights of HGB holders. HGB is often the basis for long-term business and investment activities. Therefore, legal certainty on HGB over HPL is an important prerequisite for investment stability and sustainability. Without this certainty, the free trade area is at risk of losing its competitiveness.

From the perspective of state administrative law, the reformulation of the HGB regulation on HPL must place the authority of BP Batam in the corridor of good governance principles. Land management authority must be exercised proportionately, non-discriminatory, and legally accountable.<sup>33</sup> This reformulation will prevent abuse of authority that is detrimental to HGB holders. The reformulation of the regulation also needs to be directed at strengthening coordination between BP Batam and the national land agency. The dualism of authority in land management in Batam is often a source of legal uncertainty. Therefore, clarity is needed in the division of authority so that the regulation of HGB above HPL runs consistently and does not overlap.

From the point of view of rights protection, the reformulation should ensure that HGB holders have access to effective legal protection mechanisms. This mechanism includes administrative and judicial protections that can be accessed in the event of a dispute. Thus, HGB holders are not only dependent on the policies of the area manager, but also have objective legal guarantees.

The reformulation of HGB regulation on HPL must also consider the interests of the state and the wider community. The management of the free trade zone must remain oriented towards general welfare and sustainable development.<sup>34</sup> Therefore, strengthening the protection of the rights of HGB holders must be balanced with regulations that ensure that land use remains in accordance with its social functions. Normatively, a more comprehensive reform of land law policy is needed for the reformulation of HGB regulations on HPL. Confirmation of HPL arrangements in higher laws and regulations can achieve this update, giving the administration of HGB over HPL a solid legal foundation. Thus, the reformulation of HGB regulation on HPL in KPBPB Batam is not only technical-administrative, but also structural and conceptual. This reformulation is needed to rearrange the relationship of authority and rights in land management, so as to create a balance between the interests of the state, regional managers, and HGB holders.

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<sup>33</sup> Iqbal Maulana et al., "Pengaturan Jangka Waktu Yang Berkeadilan Atas Perjanjian Kerjasama Kepada Pihak Ketiga Hak Pengelolaan Diatas Tanah Ulayat," *Tunas Agraria* 7, no. 3 (2024): 285–302, <https://doi.org/10.31292/jta.v7i3.352>.

<sup>34</sup> Maltus Hutagalung, "Tinjauan Yuridis Perpanjangan HGB Tanpa Persetujuan Di Atas HPL Pasca UU Cipta Kerja," *All Fields of Science Journal Liaison Academia and Society* 5, no. 1 (2025): 135–43, <https://doi.org/10.58939/afosj-las.v5i1.782>.

The steps taken into account to achieve clarity and legal protection in the implementation of the Batam Free Trade Zone and free port is the reformulation of the HGB regulation on HPL. Without a reformulation based on the principles of national land law, the management of risk areas continues to be in legal uncertainty that is detrimental to development and legal justice. This reformulation is the logical conclusion of the entire discussion and affirms the prescriptive contribution of this article in the development of Indonesian land law.

## CONCLUSIONS

Within the framework of Indonesia's National Land Law, the legal status of Building Use Rights (Hak Guna Bangunan/HGB) over Management Rights in the Batam Free Trade and Free Port Zone (KPBPB Batam) has not yet been established on a solid legal foundation. This uncertainty stems from the absence of clear and explicit regulation of management rights within the Basic Agrarian Law. Management rights have not been definitively positioned either as a form of public authority exercised by the state or as a legal basis for granting land rights to third parties. As a result, land management practices in KPBPB Batam are predominantly governed by the administrative authority of the holder of management rights. This situation places HGB holders in an unequal legal position. Legal certainty and protection for HGB holders are therefore not fully guaranteed in normative terms. In practice, the application of national land law principles reveals a gap between legal norms and actual implementation. The principle of legal certainty has not been consistently internalized in regional land management policies. Protection of land rights has likewise not become the primary orientation of administrative actions. The principles of justice and the social function of land tend to be marginalized by the interests of free trade zone development. The dominance of an administrative approach weakens the position of HGB as a legitimate land right. Consequently, the reformulation of regulations governing HGB over Management Rights constitutes an urgent normative necessity. Such reformulation must affirm management rights as public authority derived from the state's right to control land. Through regulations aligned with the principles of National Land Law and the rule of law, a balance is expected to be achieved between area management interests, business certainty, and legal protection for all parties involved.

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