

Building Rights Over Management Rights in the Batam Free Trade Area: Perspectives on Certainty and Legal Protection

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Abstract: Hak Guna Bangunan (HGB) above the right of Management (HPL) is a form of state land utilization that develops in the practice of managing national strategic areas, especially in the Free Trade Area and free port of Batam. However, this practice raises complex juridical issues, especially with regard to the vagueness of the legal status of HPL which is not explicitly regulated in the agrarian Basic Law, resulting in 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, assess the application of the principles of Indonesian land law in the regulation and management by the Batam Enterprise Board, and formulate reformulation of HGB settings above HPL in order to ensure the protection of the rights of related parties. The research method used is normative legal research with a statutory, conceptual, and systemic approach, which is analyzed qualitatively with prescriptive reasoning. The results showed that HGB regulation above HPL is still characterized by emptiness and disharmony of norms, dominance of administrative authority of area managers, and not optimal application of the principles of legal certainty, justice, and rights protection. This study concludes that the reformulation of HGB arrangements above HPL is needed through the affirmation of the position of HPL as a state Public Authority, strengthening the status of HGB as a right to legally protected land, as well as the arrangement of Area Management Authority to be in line with the principles of National Land Law and state law.

Keywords: Building Rights; Management Rights, 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.¹ In the Indonesian legal system, the control and management of land comes from the right to control the state as mandated by Article 33 paragraph (3) of the Indonesian constitution of 1945, which is further regulated in Law No. 5 of 1960 on basic agrarian principles (UUPA). Through this concept, the state is given the authority to regulate the allotment, use, and legal relations between subjects

¹ Arba, Muhammad, *Hukum Agraria Indonesia*, 2021, hlm. 82



of law and land for the sake of realizing the prosperity of the people.² One concrete form of implementation of the right to control the state is the granting of land rights to subjects of law, including the right to use the building (HGB). Within a certain period of time, the HGB allows the holder to build and own buildings on property that does not belong to him.³ In the practice of land law, HGB is not only given on state land directly, but also on land with the status of management rights (HPL), the management authority of which is delegated by the state to certain agencies or bodies.

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 rights; rather, it is developed through land governance practices and legislation.⁴ This requirement sparked discussions about the legal standing of HPL as an expression of State Public Authority and as a cornerstone for granting derivative rights to third parties, such as building rights. There are fundamental concerns about predictability and legal protection for HGB holders when granting HGB over HPL. Legal relations between HPL holders and HGB holders are often placed in a strong administrative framework, but weak in terms of normative construction that is comprehensive. The lack of clarity on the limits of authority of HPL holders, the period of time, and guarantees for the sustainability of HGB rights has the potential to cause legal uncertainty and open up space for land disputes.

The problem is compounded by the disharmony and emptiness of norms in the regulation of HPL and HGB above HPL. On the one hand, the UUPA specifically recognizes the HGB as a land right, while on the other hand, the HPL does not have an equivalent regulatory basis at the statutory level.⁵ As a result, HGB regulation above HPL relies more on sectoral policies and implementing regulations that are partial, causing inconsistencies in the application of land law in Indonesia. From the perspective of the rule of law, such conditions are contrary to the principles of legal certainty and protection of citizens' rights. The state, through its public authority, is not only in charge of regulating and managing the land, but is also obliged to guarantee legal protection to any subject of law who legally acquires land rights.⁶ 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 guaranteed continuation of Rights is closely related to the legal protection of HGB holders over HPL. Legal protection is not only repressive through dispute

² 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>.

³ 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>.

⁴ 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>.

⁵ Berliyan Erika Putri and Sri Setyadi, "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>.

⁶ 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 multiple interpretations.⁷ In this context, the weak regulation of HPL and HGB over HPL shows the urgency of updating and strengthening the National Land Law system. The regulation of Hak Guna Bangunan on the right of Management in the Indonesian land law system is still faced with a lack of norms at the level of legislation, especially related to the legal status of management rights, the limits of the authority of the holder, as well as guarantees of legal protection for holders of Hak Guna Bangunan as a third party. The emptiness of this norm creates legal uncertainty, opens up a diverse interpretation space, and has the potential to give birth to non-uniform administrative practices in Land Management. 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 arrangements that can fill the gaps left by the norm, in order to realize legal certainty, fairness, and order of land administration in line with the principles of the rule of law and National Development Goals.

METHOD

This study is a normative juridical research is a type of legal studies that views the law as a rule or standard that governs the system of legislation.⁸ The purpose of this study was to determine how the Indonesian land law system protects the right to use the building on the right of management. 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 point of view of the rule of law, the study uses conceptual methods to examine the idea of the right to govern the state, the legal status of the right of 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 legal materials were analyzed qualitatively by the method of prescriptive juridical analysis, namely by identifying 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 management rights.

DISCUSSION

Legal Status of building rights over land management rights in the land management system in the Free Trade Area and free port of Batam

Law No. 5 of 1960 on agrarian basic principles (UUPA) guarantees the right to build (HGB), one of the normatively recognized land rights.⁹ The HGB authorizes its holder to develop and own structures on

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

⁸ 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>.

⁹ 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>.



property that does not belong to him within a certain period of time. This authority is derived from the power to control the state.¹⁰ The character of the HGB as a timed right confirms that this right is not absolute, but is limited by the purpose for which it is granted and the legal provisions that govern it. According to Boedi Harsono, HGB is a material right that is individual and transferable, burdened with dependents, and inherited, so it has significant economic value in the National Land system.¹¹ This position shows that the HGB is not just an administrative permit, but the 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 the use of land. 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 relationship between subjects of law and land, not as the owner of the land.¹² In this context, HGB is a concrete instrument of state policy in distributing access to land use fairly and productively, especially to support development and investment activities.

In terms of legal status, the HGB holds an important place in the hierarchy of UUPA land rights. The HGB is subject to property 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 HGB registration in the land registration system, which protects rights holders from outside interference, provides legal certainty.¹³ Thus, HGB should be understood as a land right that has clear legal standing and full legal protection, so it cannot be treated solely as a product of administrative policy, including when HGB is granted above management rights. HGB can be granted on state land, freehold land, or Land Management rights (HPL) according to Indonesian land law.¹⁴ A legal architecture that developed in response to the demands of more efficient and organized state land management was the provision of HGB over HPL. In the context of the Batam Free Trade Area and Free Port (KPBPB), the HGB scheme above the HPL is used as a means of land utilization by third parties to support the investment climate and development of the area.

The right of self-management is, in essence, a form of partial delegation of state authority over land to a particular subject for management purposes. HPL is not intended as a right to land in the private sense, but as an instrument of public authority derived from the right to control the state.¹⁵ In Batam KPBPB, HPL

¹⁰ 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>.

¹¹ 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>.

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

¹³ 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>.

¹⁴ 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>.

¹⁵ 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>.

authority is given to Batam Enterprise board as an institution that performs the function of Integrated Land Management for the benefit of the development of free trade areas.¹⁶ However, normatively, the UUPA does not explicitly regulate the right of management as one of the types of land rights. The existence of HPL actually develops through administrative policies and implementing regulations under the law. This condition raises fundamental issues 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 regarding 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 land rights, while conceptually HPL is more correctly understood as a form of Management Authority.¹⁷ This ambiguity has a direct impact on the legal construction of the HGB over the HPL, since the basis of the legal relationship between the HPL holder and the HGB holder becomes not entirely clear. In the land management system in KPBPB Batam, the HGB above the HPL is given to a third party through an administrative mechanism that involves the approval of the HPL holder and registration at the Land Office. Formally, this procedure gives administrative legitimacy to the HGB. However, administrative legitimacy is not necessarily directly proportional to substantive legal certainty, especially in ensuring the position of the 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 granting, extension, and even termination of HGB. The dominance of this authority puts HGB holders in a subordinate position, because the continuity of their rights depends heavily on the administrative policies of HPL holders, not solely on legal norms that are general and binding.¹⁸ These conditions differ significantly from the HGB granted directly on state land. In HGB on state land, the legal relationship between the state and rights holders is more firmly regulated in the Constitution and implementing regulations, thus providing stronger legal certainty.¹⁹ In contrast, in HGB over HPL, an additional layer of authority through HPL holders creates legal complexity that potentially weakens rights protection.

The legal Status of HGB above HPL in KPBPB Batam is also influenced by the characteristics of special areas. KPBPB Batam has its own management regime that integrates land interests, investment, and free trade policies.²⁰ In practice, the orientation to the acceleration of investment and the efficiency of area

¹⁶ 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>.

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

¹⁸ 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>.

¹⁹ 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>.

²⁰ 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>.



management is often more dominant than the strengthening 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 of authority of HPL holders, the legal basis for termination of HGB, as well as guarantees of extension of rights have the potential to cause land disputes. This risk is even greater when there is a change in area management policies or institutional restructuring, which has a direct impact on the legal status of land rights.

These conditions indicate the existence of structural tensions between the legal regime of special regions and the National Land Law system. The specificity of Kpbpb Batam, which is designed to encourage an investment climate and ease of doing business, on the one hand, has placed Land Management within a pragmatic economic policy framework. As a result, land norms that should be general, binding, and provide legal certainty tend to be compromised by administrative and sectoral area management policies. In this context, Hak Guna Bangunan over Hak Pengelolaan is often treated as an instrument of area management policy, not as a right to land that has strong legal guarantees as referred to in the UUPA.

The dependence of the status of HGB over HPL on the policy of the area manager has the potential to cause systemic legal uncertainty. Changes in investment policies, restructuring of area 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 protection of rights. The UUPA places the right to land as a right that must be guaranteed and protected by the state.²¹ However, in the practice of managing HGB over HPL, such protection is often reduced by the dominance of aspects of administrative authority. Within the framework of the rule of law, the state should not put holders of land rights in a legally unequal position. The state, through the HPL holder, should act as a regulator and manager that ensures legal certainty and protection, not as a party that has excessive discretionary power over the continuity of third party rights.

Therefore, the legal status of HGB above HPL in KPBPB Batam needs to be reaffirmed as land rights that obtain legal protection equivalent to HGB in general. This affirmation is important to prevent the reduction of HGB into a mere product of area management policies that can be changed at any time without a clear legal basis. The absence of strict regulation regarding the position of HPL in the UUPA indicates the absence of norms that have a systemic impact on the legal status of HGB on it. The emptiness of this norm opens up a space for diverse interpretations, non-uniform administrative practices, and potential abuse of authority in Land Management in special areas such as KPBPB Batam.

The legal Status of HGB over land management rights in the land management system in Batam KPBPB is still in a condition that does not fully guarantee certainty and legal protection. This condition confirms the urgency of realignment of HGB legal construction on HPL through strengthening the normative framework

²¹ 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>.

in line with the principles of National Land Law, the rule of law, and the objective of equitable regional development.

The application of the principles of Indonesian land law in the regulation and management of building rights over land management rights in the Free Trade Area and free port of Batam

The principles of the UUPA land law serve as important guidelines for Land Management and control throughout the country, even in unique areas such as the Free Trade Area and the Free Port of Batam. The right of government control, legal certainty, the social role of 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 becomes very crucial because it involves the relationship of authority between the state, management rights holders, and third parties as HGB holders.

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.²² In its implementation in Batam KPBPB, this principle is realized through the delegation of Land Management Authority to the Batam Enterprise Board. However, the delegation does not mean the transfer of ownership, but the mandate of management 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 a quasi-ownership authority, thus affecting the way BP Batam regulates and controls HGB over HPL.

Article 33 paragraph (3) of the 1945 Constitution formulates the concept of state control rights, which places the state as the holder of public authority to regulate legal relations between subjects of law and land, determine the allocation, use, and utilization, and ensure the greatest prosperity of the people, not as landowners. 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.²³ Therefore, any delegation of Land Management Authority to certain institutions, including the Batam Enterprise Board, should be understood as the delegation of regulatory and management functions that are public and limited.

But in the practice of Land Management in Batam KPBPB, the meaning of the principle of the right to control the state is often shifted towards factual control that resembles ownership. This shift is reflected in the breadth of BP Batam's discretion in determining the granting, extension, and termination of HGB above HPL without clear normative limits. When the management authority is treated as a quasi-ownership Authority, the legal relationship between the state, HPL holders, and HGB holders becomes unbalanced and potentially obscures the function of the state as a guarantor of legal certainty and protection. This condition indicates the need to reaffirm the boundaries of the principle of the right to control the state in order to remain within the framework of the rule of law and not contradict the principle of protecting land rights.

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

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

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

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

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 policy of the area manager causes the rights of HGB holders are not fully protected by legal norms that are general and binding. When the extension or termination of the HGB is determined by policy considerations rather than normative provisions, then the predictability of the law becomes weak and the legal position of rights holders becomes vulnerable. This condition is contrary to the essence of the principle of legal certainty that should ensure stability, clarity, and legal protection for every holder of land rights in the National Land Law system.

The principle of the social function of land also has important relevance in the management of HGB over HPL. This principle affirms that the use of land should not be based solely on economic interests, but should take into account broader social interests.²⁶ In the context of Batam KPBPB, the social function of land is often interpreted narrowly as the optimization of the economic value of the area. As a result, the interests of HGB holders as legitimate subjects of law do not receive proportionate attention, especially when there is a change in the area management plan or rearrangement of land policy.

In the context of HGB management above HPL in KPBPB Batam, the principle of the social function of land should be a balancing instrument between investment interests and the protection of the rights of legal subjects. However, when social functions are narrowly interpreted as optimizing the economic value of the region, this principle can potentially 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 demands that the use of land be carried out in a fair, proportional manner, and not

²⁴ 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.v1i1.228>.

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

²⁶ 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>.



to the detriment of the rights of other parties who have legally acquired land rights The application of the principle of justice in the management of HGB over HPL requires a balance between the authority of BP Batam as HPL holders and the rights of HGB holders as third parties. However, in practice, the formed legal relations tend to be hierarchical and unbalanced. HGB holders are in a weak position because they must be subject to various administrative provisions set unilaterally by BP Batam. This condition shows that the principle of Justice has not been fully internalized in the arrangement 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.²⁷ In the management of HGB above HPL by BP Batam, preventive legal protection is still weak because of the absence of strict norms regarding the limits of authority of HPL holders and the rights of HGB holders. As a result, HGB holders often face uncertainty in defending their rights. In 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, the practice of Land Management in Batam KPBPB shows that these principles have not been fully implemented consistently. The decision-making process regarding HGB is often not accompanied by clear and accessible standards for rights holders. In addition, the application of the principle of non-discrimination in the management of HGB over HPL is also questionable. Differences in the treatment of HGB holders in similar situations can lead to injustice and damage confidence 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 Batam KPBPB. Regional specificity 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 arrangement of HGB above HPL should remain in a unified and consistent land law system. From the point of view of the theory of legal protection, this condition indicates an inequality between preventive and repressive protection. When land disputes arise, HGB holders are often at a disadvantage due to a weak normative base. This shows that the application of the principle of legal protection in the management of HGB over HPL is still partial and not systemic.²⁸

The application of the principle of legal certainty for business is also an important issue in the management of HGB above HPL in KPBPB Batam.²⁹ As an investment area, Batam needs a stable and predictable land system. However, the vagueness of the HGB arrangement above the HPL actually has the potential to hamper the investment climate because it increases legal risks for business actors. In this context, the role of BP Batam should not only be as an area manager, but also as an extension of the state in ensuring legal

²⁷ 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>.

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

²⁹ 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>.

protection. The exercise of Land Management Authority should be directed at strengthening, not weakening, the legal position of HGB holders. This requires a paradigm shift from the dominant administrative approach to a principles-based legal approach.

Normatively, the application of the principles of Indonesian land law in the management of HGB over HPL by BP Batam still shows a gap between norms and practices. Conceptually recognized principles have not been consistently implemented 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 asserted that the application of the principles of Indonesian land law in the regulation and management of HGB over HPL in KPBPB Batam is still problematic. The dominance of administrative authority, the lack of legal certainty, and the lack of optimal legal protection indicate the need for rearrangement of land management approaches to be more in line with the fundamental principles of the UUPA.

Reformulation of building rights arrangements on Land Management rights to the rights-related rights in the management of Free Trade Areas and free port of Batam

In Indonesia the legal land system urgently needs to reformulate HGB rules on management rights, especially with regard to the administration of the Free Trade Area and the Free Port of Batam. The examination of the previous section shows how the current procedure fails to provide legal guarantees and protections to HGB holders as third parties. Therefore, regulatory reformulation is not only intended to improve administrative aspects, but also to build legal constructions that are in harmony with the basic principles of the UUPA and the concept of the rule of law. The reformulation of HGB regulation on HPL must begin with a reaffirmation of the legal position of management rights in the National Land Law system. HPL needs to be placed firmly as a form of public authority derived from the right to control the state, not as a right to land in a private sense. This affirmation is important to prevent deviation in the meaning of HPL as a quasi-ownership right that implies excessive dominance of HPL holders over the rights of third parties. Furthermore, reformulation should be directed at strengthening the legal position of HGB over HPL as land rights that obtain full legal protection. HGB should not be reduced to just a land use permit that depends on the policy of the area manager.³⁰ In the context of Batam KPBPB, HGB holders must be positioned as legal subjects whose rights are guaranteed normatively, both in terms of duration, extension, and termination of rights.

Regulatory reformulation should also touch on aspects of the legal relationship between HPL holders and HGB holders. The relationship needs to be built within a clear and balanced legal framework, with restrictions on the authority of HPL holders so as not to conflict with the principles of legal certainty and protection. HPL holders must act as managers who perform public functions, not as parties who have absolute power over the land under management. In the context of Batam KPBPB management, the reformulation of HGB arrangements above HPL must consider the characteristics of special areas without overriding the principles of National Land Law.³¹ The specificity of the region cannot be used as an excuse to deviate from the principles of legal certainty and protection of rights. Therefore, there is a need for

³⁰ Mustofa and Suratman, *Penggunaan Hak Atas Tanah Untuk Industri*. (Bumi Aksara, 2022). hlm. 60

³¹ 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>.



harmonization between the legal regime of the Free Trade Area and the National Land Law system in order to create regulatory consistency.

Reformulation of HGB arrangements above HPL should also strengthen preventive legal protection for rights holders. Preventive protection can be realized through strict normative arrangements regarding the procedures for granting, extending, and terminating HGB.³² Clear arrangements will reduce excessive discretionary space and minimize the potential for land disputes in the future. In addition, reformulation needs to accommodate the principles of transparency and accountability in the management of HGB above HPL. Any policies and decisions relating to HGB must be based on legal norms that are accessible and understood by the parties concerned. Transparency is important to build legal trust, especially for businesses that invest in KPBPB Batam.

Regulatory reformulation should 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 over HGB over HPL is an important prerequisite for investment stability and sustainability. Without such certainty, the Free Trade Area risks losing its competitiveness. In the perspective of State Administrative Law, the reformulation of HGB arrangements above HPL should place the authority of BP Batam in the corridor of good governance principles. Land Management Authority must be exercised in a proportionate, non-discriminatory, and legally accountable manner.³³ This reformulation will prevent abuse of authority that harms HGB holders. Regulatory reformulation also needs to be directed at strengthening coordination between BP Batam and national land agencies. Dualism of authority in Land Management in Batam is often a source of legal uncertainty. Therefore, a clear division of authority is needed so that the HGB arrangement above the HPL runs consistently and does not overlap.

From the point of view of Rights Protection, reformulation should ensure that HGB holders have access to effective legal protection mechanisms. This mechanism includes administrative and judicial protection that can be accessed in the event of a dispute. Thus, HGB holders not only depend on the policies of the area managers, but also have objective legal guarantees. Reformulation of HGB arrangements above HPL must also consider the interests of the state and society at large. The management of the free trade area must remain oriented towards the general welfare and sustainable development.³⁴ Therefore, strengthening the protection of the rights of HGB holders must be balanced with arrangements that ensure the use of land remains in accordance with its social function.

Normatively, a more thorough renewal of land law policy is needed for the reformulation of HGB regulations above HPL. Confirmation of HPL arrangements in higher laws and regulations can achieve

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

³³ 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>.

³⁴ 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>.

this update, giving HGB administration over HPL a solid legal foundation. Thus, the reformulation of HGB settings above HPL in KPBPB Batam is not only technical-administrative, but also structural and conceptual. This reformulation is needed to reorganize the relationship of authority and rights in land management, so as to create a balance between the interests of the state, area managers, and HGB holders. The calculated step to achieve clarity and legal protection in the implementation of the Free Trade Area and the free port of Batam is the reformulation of the HGB regulation on HPL. Without 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 becomes the logical conclusion of the whole discussion and confirms the prescriptive contribution of this article in the development of Indonesian land law.

CONCLUSIONS

In the context of National Land Law, the legal status of the Right to Build (Hak Guna Bangunan/HGB) over Management Rights (Hak Pengelolaan/HPL) within the Batam KPBPB land management system has not yet been firmly established. This legal ambiguity stems from the Basic Agrarian Law, which does not explicitly regulate Management Rights, either as an expression of state public authority or as a legal basis for granting land rights to third parties. As a result, land management practices in Batam KPBPB tend to be dominated by the administrative authority of Management Rights holders, placing holders of Building Rights in an unequal legal position where legal certainty and normative legal protection are not fully guaranteed.

Furthermore, the application of Indonesian land law principles in the regulation and management of HGB over HPL by the Batam KPBPB Enterprise Board reveals a significant gap between legal norms and administrative practices. Fundamental principles of land law—such as legal certainty, protection of rights, justice, and the social function of land—have not been consistently internalized in policy formulation or administrative actions related to area management. Management approaches that prioritize administrative control and the development of free trade areas have gradually shifted the role of these principles, thereby weakening legal guarantees for Building Rights holders as legitimate legal subjects within the national land law system.

Therefore, the reformulation of regulations governing HGB over Management Rights in the administration of Batam KPBPB constitutes an urgent normative necessity to address existing legal vacuums and regulatory disharmony. Such reformulation should aim to strengthen the position of Management Rights as a form of public authority derived from the state's right of control, reinforce the status of Building Rights as land rights entitled to equal legal protection, and realign the limits of the administrative authority of area managers in accordance with the principles of National Land Law and the rule of law. Through a reformulation grounded in legal certainty, justice, and the protection of rights, the management of the Batam Free Trade Zone and Free Port is expected to achieve a balanced integration of area management interests, commercial certainty, and legal protection for all parties involve.

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