Vol. 21 No. 4 March 2026

YURISDIKSI

Jurnal Wacana Hukum dan Sains

Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

The Urgency of Regulating Priority Rights for Former Land Rights Holders Over Management Rights

Maratul Muslimatus Salimah[1*], Imam Koeswahyono[1], Bambang Eko Supriyadi[1]

[1]Faculty of Law, Brawijaya University Malang, Indonesia

*Corresponding Author Emial: mmsalimah@student.ub.ac.id

Article History: Received: Oktober 21, 2025; Accepted: December 25, 2025

ABSTRACT

Regulations regarding management rights are still considered sporadic and fragmented, making the substance of management rights difficult to understand. One of the authorities of the holder of management rights is to use and utilize all or part of the land with management rights for their own use or in collaboration with third parties through land utilization agreements. Third parties can utilize the part of the land that is collaborated with the right to cultivate, right to build, or right to use. As is known, land rights can be granted over state land and management rights. If the term of land rights over state land expires, the former holder of the land rights is given priority rights to extend the land rights. This is different from land rights over management rights, where currently there are no regulations regarding the granting of priority rights to former rights holders. Third parties who utilize land with management rights properly and in accordance with spatial plans should be given priority rights to extend the land rights over management rights. This type of research is normative legal research with a statutory regulatory approach, a case approach, a conceptual approach, and a historical approach. The results of this study indicate that there is an urgency to regulate the priority rights of former holders of land rights over management rights, considering that the substance of management rights is part of the state's right to control. Thus, the characteristics of management rights in the context of land use agreements by third parties are in line with the objectives of the state's right to control, namely for the greatest prosperity of the people.

Keywords: Priority Rights; Former Rights Holders; Management Rights.

1. INTRODUCTION

Land, a gift from God Almighty, is a primary natural resource and plays a strategic role in meeting the needs of the state and its people. As a source of life and livelihood, land must always be managed properly to maximize the prosperity of the people and achieve a just and prosperous society (Muchsin, 2019).

According to national land law, control over land management within the Republic of Indonesia is vested in the state, as the governing body of all Indonesians. According to Achmad Sodiki, the state's control rights essentially establish a relationship and connection between the state and the nation, not a relationship of ownership (Permadi, 2023). In carrying out these duties, the state has the authority to regulate, among other things, the rights held over parts of the land, water, and airspace.

Several types of land rights are regulated in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as the UUPA). In practice, there are

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

land rights that are not explicitly regulated in the UUPA but exist in post-UPA legislation, namely management rights (HPL).

Implicitly, the management nomenclature is mentioned in General Explanation II (2) paragraph 6 of the UUPA which states that based on the state's right to control land, the state can grant land to a person or legal entity with certain rights according to regulations and needs, for example ownership rights, business use rights, building use rights, and use rights or grant it in management to a governing body (department, agency, autonomous region) to be used for the implementation of their respective duties. Based on the description in General Explanation II (2) paragraph 6 of the UUPA, it can be concluded that land control by the state can be carried out in 2 (two) ways, namely first by granting land rights according to its designation and needs, second by granting it in management as per Article 2 paragraph (4) of the UUPA. The state grants land to be managed by the governing body (department, agency, autonomous region) in its position as the exercise of the state's right to control.

In principle, the UUPA does not regulate in detail the rights of control or ownership for the purposes of the governing body (department, agency, autonomous region). Before the UUPA was issued and came into effect on September 24, 1960, land control was regulated in Government Regulation Number 8 of 1953 concerning Control of State Lands (hereinafter referred to as PP No. 8 of 1953). After the UUPA came into effect, no law or government regulation revoked the enactment of this Government Regulation. Substantively, several contents of PP No. 8 of 1953 are certainly not in accordance with the UUPA because its formulation still refers to Dutch legal products, which were revoked by the UUPA (Andora, 2021).

Mentionmanagement rightsfirst appeared in the Minister of Agrarian Affairs Regulation Number 9 of 1965 concerning the Implementation of Conversion of Control Rights over State Land (hereinafter referred to as PMA No. 9 of 1965). In the PMA, control rights can be converted intomanagement rightsif the use of land by the Department, Directorate and Swatantra is not only for the benefit of the agency but also given to a third party.

On progress,management rightsdefined as the right to control the state, the implementation of which is partly delegated to the rights holder. From this definition, it can be understood that the rights holdermanagement rightsis the party to whom the state delegates part of its control rights. The state's control rights are explicitly affirmed in the UUPA as the antithesis of domain rights (Lubis, 2022). The state's control rights are the only property rights in the land sector mandated by the constitution to the state (Fauzi, 2022). Definitively, the state's control rights are limited by the ethical imperative of "maximizing the prosperity of the people" (Riyanto, 2024).

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

UUPA states that with the right to control the state, the state is given the authority to:

1. regulate and organize the allocation, use, supply and maintenance of the earth, water and space;
2. determine and regulate legal relations between people and the earth, water and space;
3. determine and regulate legal relationships between people and legal actions concerning earth, water and space.

As the right to control the country, the goalmanagement rightscannot be separated from the constitutional mandate, namely for the greatest prosperity of the people. The holdermanagement rightsgiven several powers including using or utilizing landmanagement rightsfor personal use or in collaboration with third parties. Land utilization cooperationmanagement rightswith third parties are carried out subject to civil law and made before a public official.

Holdermanagement rightscannot use and utilize land optimally if not given land rights, such as business use rights, building use rights, and/or use rights.In principle, the use of land is limited to 2 (two) purposes, namely for cultivation and as a place to build something (Harsono, 2022).With the right to cultivate, the holdermanagement rightsor a cooperating third party can use the landmanagement rightsfor agricultural or plantation businesses. Likewise with building use rights, the holdermanagement rightsor third parties who cooperate can carry out development efforts according to their fields.

The use and utilization of land management rights by third parties is a form of national development that aims to create a just and prosperous society based on Pancasila and the Constitution of the Republic of Indonesia. In line with this, everyone has the right to obtain equal opportunities to obtain land resources and a fair distribution of the results (Sumardjono, 2006).

Land usemanagement rightsby a third party is carried out based on an agreement between the holdersmanagement rightsand third parties subject to civil law. This gives rise to laws for holdersmanagement rightsto exercise public authority as well as private authority. Public authority is related to the holder ofmanagement rightsto determine the subject groups that will be granted permits to utilize agrarian resources and determine the types of community activities that require land (Ismail, 2024). Private authority is related to being a party in a land utilization cooperation agreement, management rights.

As mentioned above, the legal relationship between the management rights holder and third parties in land use is manifested through an agreement. However, in practice, the management rights holder's position is superior to that of third parties, considering that the management rights holder isthe party that receives the transfer of part of the right to control the country.

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 **and ISSN Online** 2598-5892

For the first time, provisions related to the use of land with management rights by third parties were contained in the Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Settlement of Granting Rights to Parts of Land with Management Rights and Their Registration (Hereinafter referred to as PMDN No. 1 of 1977). In PMDN No. 1 of 1977, among other things, regulates:

1. use of land by other parties must be carried out by making a written agreement between the party holding the management rights and the other parties concerned;
2. matters that need to be regulated in the agreement, such as the identity of the parties, location, boundaries and area of the land in question, and the type of use.
3. If the term of the building use rights or use rights granted to another party ends, the land in question returns to the holder of the management rights.

Over time, PMDN No. 1 of 1977 was revoked with the enactment of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancelling Rights to State Land and Management Rights. However, this ministerial regulation does not specifically regulate the use of land with management rights by third parties.

The provisions regarding the use of land with management rights by third parties that currently apply refer toLaw Number 20 of 2011 as revoked by Law Number 6 of 2023 (hereinafter referred to as UUCK), Government Regulation Number 18 of 2021, and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021. The provisions regarding the use of land with management rights in these laws and regulations are relatively more comprehensive compared to previous regulations, including regulating:

1. The use of land with management rights by third parties is carried out based on cooperation with a land use agreement;
2. Land use agreements are subject to civil law and are made before a public official;
3. Matters that need to be regulated in the agreement, such as the identity of the parties, location, boundaries and area of the land, type of land use, and the term of the land use agreement.
4. The term of land rights above management rights granted does not exceed the term in the land use agreement calculated from the date of the land use agreement.
5. Land rights over management rights in collaboration with third parties can be encumbered with mortgage rights, transferred or released.

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 **and ISSN Online** 2598-5892

However, although provisions regarding the use of land with management rights by third parties have been more comprehensively regulated, implementation issues remain, such as the priority rights for former land rights holders over management rights. As is known, land rights are granted over state land and management rights. Unfortunately, the current priority rights regulation is still limited to former land rights holders over state land. Although management rights are not state land, they are part of the state's right to control.originating from the rights of the nation (Koswara, 2022). The sporadic and fragmentary regulation of management rights sometimes makes the substance of management rights difficult to understand (Sitorus, 2011). Worse still, the history of the regulation of management rights is still not fully recognized and understood by the land bureaucracy, the public, and law enforcement (Sitorus, 2011). This is one of the causes of the lack of legal certainty regarding the priority rights of former land rights holders over management rights. An example of the problem related to the lack of priority rights of former land rights holders over management rights can be seen in Supreme Court Decision Number 2425 K/PDT/2015. The main case contained in Supreme Court Decision Number 2425 K/PDT/2015 began with a third party submitting a request for approval or recommendation for the extension of the Building Use Rights Certificate (SHGB) on land with management rights to the management rights holder, a state-owned enterprise (BUMN). However, until the SHGB period expired, the management rights holder did not provide any response to the request for approval or recommendation submitted by the third party. In addition, the management rights holder also offered unreasonable land use extension rates to the third party.

On the other hand, the issue arising from the Batam District Court's decision No. 70/Pdt.G/2024/PN Btm is that the third party had submitted a request for an extension according to the specified mechanism. Eventually, the third party received a letter from the Batam Authority informing them that the Batam Authority could not approve the third party's business plan. Furthermore, the third party received information that the land allocation previously granted to the third party had in fact been allocated by the Batam Authority to another party.

The extension of land rights beyond management rights should be prioritized for the party who first physically controlled the land. Otherwise, this could potentially lead to arbitrary action by the management rights holder against third parties, impacting the sustainability of their business. However, it is regrettable that there are currently no regulations regarding priority rights for former land rights holders above management rights. Priority rights regulations for former rights holders are still limited to land rights directly controlled by the state, not to land rights above management rights. The only party authorized to grant such priority rights is the management rights holder, as

ISSN print 2086-6852 and ISSN Online 2598-5892

the executor of part of the state's control rights. This situation demonstrates the urgency of further in-depth review ofregulation of priority rights of former land rights holders in land utilizationmanagement rights.

Several researchers have previously conducted studies on the use of land rights on land management rights. and the form of legal protection. However, this study presents a novel element in the form of a historical study of the regulation of management rights before and after the UUCK to determine the position of management rights so that it is urgent to regulate the priority rights of former land rights holders above management rights. Thus, land rights holders above management rights receive legal certainty and legal protection in utilizing land with management rights as a form of participation in national development. Therefore, it can be concluded that the research object in this study is original and the researcher is fully responsible for the authenticity of this research.

Incomplete laws certainly do not provide legal certainty. Legal certainty occurs when regulations are created and enacted with certainty because they regulate clearly and logically (RADe.Rozarie, 2015).Starting from this, researchers consider it necessaryto conduct research entitled "The Urgency of Regulating Priority Rights of Former Land Rights Holders Over Management Rights"so that third parties receive legal certainty to participate in national development.

2. RESEARCH METHOD

This research method is normative research, with a legislative approach, a historical approach, a case approach, and a conceptual approach. In this normative research, the researcher used secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data is data that does not come from direct sources (Widyaningrum, 2024).

The primary legal materials used in this research include: Government Regulation Number 8 of 1953Concerning Control of State Lands, Law Number 5 of 1960 concerning Basic Agrarian Principles, Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning the Implementation of Conversion of Ownership Rights over State Land and Provisions concerning Further Policies,Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Settlement of Granting Rights to Parts of Land with Management Rights and Their Registration, Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Rights, and Land Use Rights, Regulation of the Minister of State for Agrarian

ISSN print 2086-6852 and ISSN Online 2598-5892

Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights, and UUCK and its implementing regulationsSecondary legal materials include theories, arguments, and data sourced from literature, journal studies, or scientific articles on management rights, third-party land use rights, land use agreements, and priority rights. Tertiary legal materials include the Big Indonesian Dictionary (KBBI), legal dictionaries, and encyclopedias related to the issues being researched.

3. RESULTS AND DISCUSSION

Management rightsis the result of the conversion of the right to control state land as regulated in PMA No. 9 of 1965. Before the independence of the Republic of Indonesia, the right to control state land was regulated in the Decree of the Governor General dated January 25, 1911 Number 33 (Staatsblad 1911 Number 110) as amended and supplemented, most recently by his decree dated August 22, 1940 Number 30 (Staatsblad 1940 Number 430).In the Staatsblad, the authority of government agencies to control land plots is termed "in beheer" which means "in control" (Soemardijono, 2006), which according to the legal system is classified as public law (Sitorus, 2011).

The regulation of control rights over state land during the Dutch occupation was very different from the regulation of control rights over land during the Japanese occupation. During the Japanese occupation, to launch war efforts, various departments of the Japanese occupation government were given full freedom to regulate their respective interests. This resulted in various agencies doing whatever they wanted in land matters by ignoring existing regulations. Therefore, a lot of state land is used for purposes that deviate from previously determined purposes, or is transferred from the hands of one Bureau to another, without going through an official handover and reception ceremony. Apart from that, a lot of State land is also left unused, resulting in land purchases from residents which are not only not carried out according to existing regulations, but it is also not known which office controls it.

Due to the unlimited freedom granted during the Japanese occupation and the inadequacy of existing state land ownership regulations, the government issued Government Regulation No. 8 of 1953 concerning the Control of State Lands in 1953. Seven years later, Indonesia had its own national land law with the enactment of the Basic Agrarian Law (UUPA) on September 24, 1960.

One of the provisions in the UUPA concerns conversion provisions. However, the land rights converted are those owned by individuals and legal entities, not state land ownership rights.Following the enactment of the UUPA, the Minister of Agrarian Affairs issued Decree

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

Number SK/112/Ka/61 concerning the Division of Duties and Authority in the Agrarian Sector, which includes the term “control rights (beheer)” as stated in Attachment V. The provisions in the Attachment regulate the division of authority between the Minister of Agrarian Affairs and the Head of Agrarian Inspection in terms of issuing decisions on applications for control rights (beheer) for state land, as well as regarding the termination or cancellation of said rights.

The conversion of ownership rights over state land is regulated in the Minister of Agrarian Affairs Regulation Number 9 of 1965 concerning the Implementation of the Conversion of Ownership Rights over State Land and Provisions concerning Further Policies. It was in this Minister of Agrarian Affairs Regulation that the term "land ownership" was introduced.management rights. Based on the Minister of Agrarian Affairs Regulation,management rightsis the result of the conversion of state land which, apart from being used for the interests of the agencies themselves, is also intended to be given with certain rights to other parties.

In its development, a number of regulations, both at the ministerial regulation and statutory level, have explicitly used the termmanagement rightsand regulates the substance and characteristics of these rights. Ultimately, the regulations regardingmanagement rightsThe current regulations are listed in the UUCK and its implementing regulations include Government Regulation Number 18 of 2021 and Regulation of the Minister of ATR/Head of BPN Number 18 of 2021.

Based on the description above, it can be concluded that the conceptmanagement rightsStarting from the term "in beheer," which refers to the control or management of state land, it then evolved into the term "control rights (beheer)." The term "management rights" officially became known after the issuance of Minister of Agrarian Affairs Regulation Number 9 of 1965.

Since 1965 until now, the regulations regardingmanagement rightshas experienced dynamics and inconsistencies in terms of its placement in the land law system. Before the term was knownmanagement rights, control over state land is a completely public authority. Furthermore,management rightsemerged as a result of the conversion of the concept of state land ownership, where the land is inmanagement rightsBesides being able to be used directly by the holder, it can also be used in collaboration with third parties. This development has given rise to confusion in understanding this right. Several regulations issued after the Minister of Agrarian Affairs Regulation Number 9 of 1965 actually placemanagement rightsas a right to land that has an individual or private character, as reflected in the Regulation of the Minister of Home Affairs Number 5 of 1973 and the Regulation of the Minister of Home Affairs Number 3 of 1987. Only after the issuance of Government Regulation Number 40 of 1996, the definition ofmanagement

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

rightsstarting to be consistent, namely as a form of control rights from the state, the implementation of which is partly delegated to the rights holders.

Table 1. Settings comparison tablemanagement rightsbefore and after UUCK

No.	Regulatory Substance	Before UUCK	After UUCK
1.	Contents	a. HPL is the result of conversion fromthe right to control state land which, in addition to being used for the benefit of departments, directorates and autonomous regions, is also intended to be granted with certain rights to third parties. (PMA No. 9 of 1965) b. Management Rights are rights to state land (Minister of Home Affairs Regulation No. 5 of 1973). c. Management Rights are the right to control from the State, the implementation authority of which is partly delegated to the holder (PP No. 40 of 1996)	Management rights are the right to control from the state, the implementation authority of which is partly delegated to the rights holder.
2.	Authority	a. planning land use and utilization in the short and long term; b. use HPL land for the purposes of carrying out his duties; c. provide part of the HPL land to a third party with usage rights for a period of 6 years (PMA No. 9 of 1965 and Permendagri No. 5 of 1973);And d. prepare land and build houses, provide land for social facilities and maintain environmental infrastructure within a certain time and hand over the infrastructure to the district/city government (Minister of Home Affairs Regulation Number 3 of 1987); e. receive income and/or annual mandatory fees from third parties who utilize HPL land (Minister of Home Affairs Regulation No. 5 of 1973 and PMA No. 9 of 1965)	a. carry out the preparation of plans for the allocation, use and utilization of land; b. use the land for his/her needs or hand over part of the HPL land to a third party; and c. determine rates and receive income/compensation and/or annual mandatory fees from third parties who utilize HPL land
3.	Subject	a. Government agencies including local governments; b. State-owned enterprises; c. Regional owned enterprises; d. PT. Persero; e. Authority Body; f. Other government legal bodies appointed by the government.	a. Central Government Agencies; b. Local government; c. Land bank agency; d. State-owned enterprises; e. Regional owned enterprises; f. State-owned legal entity; g. Regionally owned legal entity; h. Legal entity appointed by the Central Government; i. Customary law communities.
4.	Origin	HPL comes from state land.	HPL can come from state land and customary land.

Source: Several laws and regulations related to management rights processed by the author

Based on the description of the management rights regulations before and after the UUCK, the author concludes that dreview of its contents and authority, researchers are of the view that because of thismanagement rightsis part of the state's right to control which has a public nuance,

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

then other parts of the authority ofmanagement rightsof course, it is nothing other than private authority. However, according to the author, even thoughmanagement rightscontains 2 (two) authorities, public authority is more prominent than private authority. In addition, both authorities are hierarchical in nature, namely public authority comes first, followed by private authority..

It is stated in the definition that management rights are part of the state's right to control. As is known, based on Article 2 paragraph (2) of the UUPA, the state's right to control has 3 authorities, namely:

1. regulate and organize the allocation, use, supply and maintenance of the earth, water and space;
2. determine and regulate legal relations between people and the earth, water and space;
3. determine and regulate legal relationships between people and legal actions concerning earth, water and space.

To find out which part of the state's right to control has authority delegated to the holder of management rights, it is necessary to know the authority of the management rights. Based on Article 137 paragraph (2) letter bChapter VIII Part Four Paragraph 2 UUCK, authoritymanagement rightsthat is:

a. prepare plans for the allocation, use and utilization of land in accordance with spatial planning;
b. use and utilize all or part of the land with management rights for personal use or in collaboration with third parties; and
c. determine rates and receive income/compensation and/or annual mandatory fees from third parties in accordance with the agreement.

Therefore, it can be concluded that based on the provisions of Article 2 paragraph (2) UUPA and Article 137 paragraph (2) letter bChapter VIII Part Four Paragraph 2 UUCKThe state's right to control land, the implementation of which is delegated to the rights holder, specifically regarding the preparation of plans for the allocation, use, provision, maintenance, and utilization of land in accordance with spatial planning. Thus, management rights encompass a portion of public authority.

Authoritymanagement rightsAnother way is to use and utilize all or part of the land for personal use or in collaboration with third parties. In the case of part of the landmanagement rightsin collaboration with a third party, it needs to be stated in a land use agreement. Land with the status ofmanagement rightsoften used to fulfill public interests, such as providing government, education and health facilities.

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

In its implementation, the authority of the holdermanagement rightsIt is only used when there is a request from a third party who intends to use it (Zulfiqar, 2022). Givingmanagement rightsto a third party is carried out based on an agreement set out in a land use agreement that is subject to civil law and made before a public official. In the context of a land use agreement, the agreement is made by the holder of the management rights and the third party. According to Article 1313 of the Civil Code, literally, an agreement is an act by which one or more people bind themselves to one or more other people. Based on the formulation of this article, the elements of an agreement include: (Djulaeka, 2022): there is one legal act; carried out by one or more people; and there is a bond between the two. In the context of a land use agreement between land holdersmanagement rightsand third parties, the elements of the agreement contained therein are: the act of utilizing the landmanagement rightsby another party, based on an agreement between the shareholdersmanagement rightsand other parties. This is where the management rights holder exercises both public and private authority. The essence of management rights, regarding the implementation of cooperation with third parties in the utilization of land, must remain in line with the objective of the state's control rights, which is to maximize the prosperity of the people. Therefore, public authority must be prioritized over private authority.

Government Regulation No. 40 of 1996 was the first regulation to stipulate that land rights can be granted not only to state land but also to land with management rights. This regulation was issued with the aim of ensuring legal certainty so that land control, ownership, and use can be carried out in harmony with the principles of the four land regulations (Soemardijono, 2006).. If the former holder of land rights on state land is given priority rights, through the concept thatmanagement rightsis part of the state's right to control, so the rights to the land abovemanagement rightsPriority rights should also be given to former rights holders.

Priority rights to land are rights that provide a primary position or first opportunity to certain parties to be prioritized in obtaining recognition, granting or establishing rights to land in accordance with the order of recipients of rights that have been determined. (Mujiburohman, 2021). In the implementation of land law, priority rights are recognized (Mujiburohman, 2021). The legislation used to interpret the existence of priority rights is Government Regulation No. 40 of 1996, which regulates the extension or renewal of rights. In customary law, the equivalent of priority rights is called prior rights (voorkeursrecht). According to Julius Sembiring, "prior rights are the rights to cultivate land from a member of an indigenous community to take priority over other members of the indigenous community (Sembiring, 2018). According to Ter Haar, prior rights begin when a community member clears land and then cultivates it, but one day he or she

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

abandons the land. Subsequently, the community member is forced to choose between continuing to cultivate the land for himself or handing it over to someone else (Bzn, 2001).

According to customary law, the process of establishing land rights occurs through several stages. First, the right of preference to choose, which is the initial stage when someone places a prohibition mark on a plot of land as a form of initial control. Second, the right of preference, which arises after someone begins clearing and managing the land after first obtaining permission or approval from the head of the customary community. Third, the right of enjoyment, which is a right obtained through continuous and ongoing land cultivation.

Based on these stages, it can be understood that the emergence of legal land rights begins with physical control over the land with the consent or approval of the authorities within the customary community structure. In modern land practice, this form of control is known as civil rights or priority rights.Civil rights arise through investment of energy and/or investment of costs. (Bzn, 2001). In utilizing landmanagement rights, third parties are obliged to pay annual fees and/or mandatory fees to the holder.management rights. From the moment the payment is made, the third party is bound by civil rights.

The provisions regarding priority rights include the regulation that even though the HGB and HP period has ended, former HGB and HP holders are still welcome to submit an application for land rights (Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 6 of 1998).If there are no other obstacles, the former rights holder is given priority to re-apply for the same rights to the land.

Based on the above regulations, it can be seen that when the term of land rights ends, civil rights and priority rights are still attached to the former holder of management rights and the state respects these civil rights. Respect for the civil rights of former holders of land rights granted by the State is proven by the provision of appropriate compensation. Government policies related to land management are not permitted to reduce or ignore land rights and are contrary to national interests. If such a thing happens, such rights must receive constitutional protection in accordance with Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Referring to the Constitutional Court decision Number 34/PUU-IX/2011 dated July 16, 2012 and regulations related to priority rights, it can be concluded that protection of land rights is not only provided when the term of land rights has not yet expired, but when the term of land rights has expired, former rights holders are still given legal protection.

From several regulations related to priority rights above, the author concludes that:

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 **and ISSN Online** 2598-5892

1. Priority rights are closely related to the civil rights of land rights holders and their land. Civil rights exist before priority rights exist. Therefore, if the former land rights holder does not receive priority rights, their civil rights remain. Civil rights end if compensation is provided to the former land rights holder.
2. In establishing a policy, the state not only provides protection for land rights holders whose term has not yet expired, but also the state provides protection for former land rights holders whose term has expired.
3. Priority rights are granted with the following conditions:
   a. land not used for public purposes;
   b. land is controlled and used by oneself, not abandoned;
   c. for HGU holders in the form of companies, the company's capital, either in part or in whole, must come from domestic capital;
   d. for HGB and HP holders, the building is the property of the former rights holder or with the consent of the land rights owner the building is used or occupied by another party;
   e. land use is in accordance with the spatial planning established by the government;
   f. land use does not conflict with statutory regulations; and
   g. the former land rights holder still fulfills the requirements as the land rights holder for the land being applied for.
4. Waiver of priority rights is achieved through the provision of compensation. Waiver of priority rights is often accompanied by the waiver of civil rights. Because civil rights arise from the investment of funds, the waiver of civil rights involves the provision of compensation.

Based on the theory of legal certainty from Moh. Fadli and Syofyan Hadi that a norm must be regulated consistently and harmoniously, then the regulation regarding priority rights should not only be intended for land directly controlled by the state, but also for land with Management Rights originating from state land. Regulations related to the priority rights of former land rights holders above management rights need to be standardized through an authorized institution to determine them so that these regulations can be a guideline not only for management rights holders and third parties who utilize the land, but also for interested parties, such as land offices that issue land rights certificates and judicial institutions in resolving disputes related to the use of land with management rights originating from state land.

To guarantee legal certainty, the regulation of priority rights must include, among other things, requirements for granting priority rights and mechanisms for releasing priority rights.

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

Granting priority rights is indeed the full authority of the holder of management rights, but as stated above, that management rights are understood as the right to control the state, so that holders of management rights also need to be aware that they are implementing part of the authority of the state's right to control which contains the constitutional mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia so that there is no reason for them to act arbitrarily.

With regard to cases such as:DecisionSupreme CourtNumber 2425 of 2015 andBatam District Court Decision Number70 of 2024, in its decision, the Panel of Judges rejected the appeals of both the applicant and the plaintiff. There was a similar opinion between the two Panels of Judges, namely that when the agreement between the management rights holder and the third party terminates, there are two (2) types of termination of the legal relationship: the legal relationship between the management rights holder and the third party and the civil relationship between the third party and the land.

In the context of land law, civil rights between a person and the land do not necessarily end due to an agreement. In the context of customary law, the former holder of management rights is entitled to prior rights (voorkeurrecht) over the land they cultivate. These prior rights end if the user voluntarily relinquishes the rights to the land for use by another party. In statutory regulations, civil rights end with the award of compensation. Therefore, in the context of an agreement whose object is land, thorough scrutiny is required from both civil law, land law, and customary law aspects, given that Indonesian agrarian law is derived from customary law.

In addition, the issues raised in the DecisionSupreme CourtGovernment Regulation No. 2425 of 2015 highlights the imposition of annual fees and/or mandatory fees deemed unreasonable by third parties, resulting in the parties being unable to reach an agreement on the fees by the end of the land rights term. Based on Government Regulation No. 18 of 2021, the imposition of fees is adjusted to the purpose of land use, whether for public, social, development, and/or economic purposes. Therefore, both landowners andManagement Rightsand third parties need to agree to determine the rate. The holderManagement RightsAs the implementer of some of the rights to control the state, it is not appropriate to impose one's will unilaterally so that third parties must choose "take it or leave it". Arbitrariness of the holdermanagement rightsThis can certainly hinder legal development, especially in the land sector.

Based on the above description, regulations regarding priority rights for former land rights holders over management rights are essential to ensure legal certainty in the implementation of land use with management rights. The concept of a state based on the rule of law implies that every action and administration of government must be based on applicable legal provisions and that law

ISSN print 2086-6852 and ISSN Online 2598-5892

is the primary basis for all implementation processes (Hadi, 2023).Without the existence of law, humans will tend to oppress and dominate each other, especially the weaker ones (homo homini lupus) (Ibrahim, 2013).Furthermore, these regulations are also necessary to provide legal protection for former land rights holders who use land under management rights. Legal uncertainty creates chaos in the legal protection system provided by the state to land rights holders (Gunanegara, 2022). According to Ramli Zein, every right essentially contains four main elements: a legal subject as the rights holder, a legal object as the target of the right, a legal relationship between the parties, and legal protection for the rights held (Zein, 1995).

4. CONCLUSION

Based on a philosophical study of the concept of management rights, a legal study of civil rights and priority rights, and a sociological study in the Supreme Court decision Number 2425 of 2015 and the Batam District Court decision Number 70 of 2024, it is necessary to regulate the priority rights of former land rights holders over management rights into a norm to guarantee legal certainty for parties who utilize land with management rights.

REFERENCE

Andora, H. (2021). Government Land Control and Management: Concepts and Dialectics in the Indonesian Legal System. Depok: Rajawali Pers.

Bzn, BT (2001). Beginning the System of Customary Law, Principles and Structure of Customary Law. Jakarta: Pradnya Paramita.

Djulaeka, S. d. (2022). Selected Chapters on Contract Law. Surabaya: Scopindo.

Fauzi, LD (2022). Study of the Granting of Secondary Building Use Rights over Management Rights: A Comparative Study with Lease Agreements. Tora Law Journal, 261.

Gunanegara. (2022). State Policy on the Regulation of Land Rights Post-Job Creation Law. Journal of Legal Studies: Legal Reflections, 179.

Hadi, MF (2023). Legal Certainty: A Theoretical Perspective. Malang: Nusantara Media Utama.

Harsono, B. (2022). Towards Perfecting National Land Law. Jakarta: Trisakti University.

Ibrahim, J. (2013). Theory & Methodology of Normative Legal Research. Malang: Bayumedia.

Ismail, N. (2024). Law on Land Rights Management and Registration. Malang: Setara Press.

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 **and ISSN Online** 2598-5892

Koswara, AY (2022). Implementation of the State's Right to Control Policy in the Utilization of Agrarian Resources from a Human Rights Perspective. Samudra Keadilan Law Journal, 219.

Lubis, I. d. (2022). Agrarian Law: A Contemporary Study. Medan: Pustaka Prima.

Muchsin, IK (2019). Indonesian Agrarian Law in Historical Perspective. Bandung: Refika Aditama.

Mujiburohman, DA (2021). Legalization of Former Lands with Eigendom Rights. Judicial Journal, 131.

Permadi, I. (2023). The Constitutionality of the Existence of Land Banks in the Management and Control of Land by the State. USM Law Review Journal, 297.

RADe.Rozarie. (2015). Legal Theory and Its Implementation. Surabaya: Member of the Indonesian Publishers Association.

Riyanto, A. (2024). Private & Public Concepts of Nation's Rights to Land. Petita Journal, 115.

Santoso, MR (2024). The Status of Management Rights in National Land Law in Relation to Ownership of State Property. Jurnal Future Academia, 796-797.

Sembiring, J. (2018). Understanding, Regulation, and Issues of State Land. Jakarta: Prenadamedia Group.

Sitorus, AS (2011). Regarding Management Rights. Yogyakarta: STPN Press.

Soemardijono. (2006). Analysis of Management Rights. Jakarta: Land Assessment Institute.

Sumardjono, MS (2006). Land Policy Between Regulation and Implementation. Jakarta: Kompas.

Widyaningrum, RC (2024). Normative Legal Research. Depok: Rajawali Pers.

Zein, R. (1995). Management Rights in the UUPA System. Jakarta: Rineka Cipta.

Zulfiqar, MD (2022). The Position of Management Rights in National Land Law in Relation to Ownership of State/Regional Property. Litra: Journal of Spatial Planning and Agrarian Law, 235.