



Duration of land rights in the capital city of the Nusantara: The Perspective of national agrarian law

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ARTICLE INFO

Article history:

Received Jun 27 2023

Revised Jul 4, 2023

Accepted Jul 24, 2023

Keywords:

Building rights

Cultivation Rights

Land rights

The capital city of the Nusantara

Agraria

Usufructuary rights

ABSTRACT

Government Regulation Number 12 of 2023 concerning the Granting of Business Permits, Ease of Doing Business and Investment Facilities for business actors in the National Capital of the Nusantara (IKN), there are legal issues regarding the regulation of the granting of tenure of 95 to 190 years of leasehold rights, building use rights above right of authority management in IKN, for 80 years to 160 years. This study uses normative research using statutory approaches, conceptual approaches and philosophical approaches. The granting of a period of land rights originating from internal management rights as stipulated in Articles 18, 19 and 20 of Government Regulation Number 12 of 2023 which regulates firstly, the period for granting land rights, secondly, HGU or HGB and usage rights are stated in a Letter decision granting rights.

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1. INTRODUCTION

Law Number 3 of 2022 concerning the State Capital is the basis for the formation of the Nusantara Capital (IKN) as a sustainable city in the world, driving the Indonesian economy in the future, and as a symbol of national identity, accelerating development and development of the Nusantara's capital is a priority scale and for the economy national capital, so that the government issued government regulation number 12 of 2023 concerning the Granting of Business Licensing, ease of doing business, and Investment Facilities for Business Actors in the Nusantara Capital City, which is expected to encourage business actors in the preparation, development, transfer, and development of the Nusantara Capital City and partner area. The construction of the IKN is planned to go through 5 stages of development from 2022 to 2045. (Firnaherera & Blue, 2022)

In order to provide greater certainty, opportunity and participation to business actors in the framework of accelerating development in the Nusantara's Capital City, it is necessary to formulate management rights arrangements and scrutiny of applicable laws (Rafsanjani et al., 2022). one of the efforts made by the government is to regulate the granting of business permits, ease of doing business and investment facilities in the Nusantara capital city with the aim of accelerating the development of the Nusantara capital city as an economic superhub with investment activities originating from the private sector both from within and outside the country. (Failaq & Arelia, 2022) The development of the nation's capital city of the Nusantara in its planning has carried out the concept of sustainable development. (Yanti Fristikawati et al., 2022)

The form of granting ease of doing business in the IKN area is by granting a period of Cultivation Rights over the Archipelagic Capital Authority management rights given for a maximum of 95 (ninety five) years, which can be extended to a total of 190 (one hundred and ninety) years

for the building use rights period. above, the right to manage the IKN Authority is given for a maximum of 80 (eighty) years which can be extended to 180 (one hundred and eighty) years, and the term of use rights is given for a maximum of 80 years, which can be extended up to 180 (one hundred and eighty) years. The granting of land rights in the form of usufructuary rights, building use rights or usufructuary rights over these management rights is subject to Land Rights Acquisition Fees (BPHTB) at a rate of 0% (zero percent) of the acquisition value for a certain period of time.

Land is an important factor in human life, in the agrarian scope land is part of the earth which is called the surface of the earth, one aspect of land in a juridical sense is called rights, which originate from the right to control the state which gives various kinds of rights granted to people or legal entity.(Kusuma, 2020)

In the use of land in the Nusantara Capital City to facilitate land acquisition, the arrangements for granting permits for HGU, HGB or usage rights in Articles 18, 19 and 20 of Government Regulation Number 12 of 2023 are different in conception from the granting of rights which are carried out in stages and conditionally in the Law. Law Number 5 of 1960 concerning the Basic Agrarian Law which provides a maximum period of 35 years with a maximum extension of 25 (twentyfive) years for HGU, while HGB has a maximum period of 30 (thirty) years with an extension of 20 (twenty) year.(Marbun, 2021)

Based on these matters, the author sees that there is a legal problem in the form of a conflict of norms, namely the norm granting a period of land rights in the Nusantara Capital area as stipulated in Government Regulation Number 12 of 2023 with a period of land rights in Law Number 5 of 1960 regarding the Basic Agrarian Regulations, so that the writer is interested in examining how the granting of land rights in the IKN Area according to the prospective of agrarian law, so that this research is expected to have implications for people's understanding of the laws that apply to the Nusantara's capital area.

2. RESEARCH METHOD

This research is a normative law research that examines and analyzes based on statutory regulations, using primary and secondary legal sources in the form of statutory regulations including UU NO. 5 of 1960, the Job Creation Law, Government Regulation No. 12 of 2023, Government Regulation Number 18 of 2021, legal theory and opinion (Suyanto, 2022) the approach used is a juridical approach, a conceptual approach and a philosophical approach.

The juridical approach is used to examine and analyze the granting of time periods for land rights in the IKN Area based on applicable legal provisions, the conceptual approach is to examine and analyze based on the views, opinions and doctrines that have developed in legal science, while the philosophical approach examines the granting of rights terms. on land by viewing law as a set of moral values based on moral justice and the purpose of law enforcement by examining the core, the essence behind the enactment of existing legal norms.

3. RESULTS AND DISCUSSIONS

Term of Land Rights in the Capital City of the Nusantara based on Government Regulation No. 12 Year 2023

President Joko Widodo on March 6 2023 signed Government Regulation Number 12 of 2023, this belief is considered very profitable for business actors both at home and abroad because it provides many licensing facilities and one of them is the granting of land rights to the Nusantara's Capital City.

The ease of doing business provided includes the granting of land rights as regulated in Chapter III part one, which stipulates that land in the Nusantara Capital City is designated as state property whose management is carried out by the Nusantara Capital Authority and the ADP given to the Nusantara Capital Authority with Management rights. The IKN Authority is given the authority to allocate, use, utilize, transfer and/or release and write off assets on part of the land with Management Rights. Land allocated by the IKN Authority to business actors can be given land rights in the form of business use rights, building use rights and usufructuary rights, in accordance with the allotment of business activities.

The allocation of part of the land with management rights to business actors is stated in the form of an agreement between the IKN authority and the business actor, the allocation of the IKN Authority over the part of the land with Management Rights to business actors, then the status of the land remains as an asset in the management of the IKN authority and land rights above Management rights are registered on the name of the business actor.

Article 18 in the government regulation stipulates that the time period for usufructuary rights over land with management rights for the IKN authority is given for a maximum of 95 years through the first cycle with stages, namely granting rights for a maximum of 35 years, extension of rights for a maximum of 25 years and renewal of rights for a maximum of 35 year. The granting of usufructuary rights for the first 1 (one) cycle with a maximum period of 95 years is stated in the decision on the granting of rights and recorded in the usufructuary certificate, while the extension and renewal of usufructuary rights are given all at once after 5 (five) years of usufructuary rights used and/or utilized effectively in accordance with the purpose of granting the rights. Within a period of 10 (ten) years before the end of the first cycle of utilization rights,

Business actors in submitting applications for granting of usufructuary rights must meet the following criteria: the land is still being cultivated and utilized properly in accordance with the circumstances, nature and purpose of granting rights; the right holder still fulfills the requirements as a right holder; the conditions for granting the rights are met properly by the right holders; and the use of the land is still in accordance with the spatial plan.

The period for granting building use rights over management rights in the IKN authority is regulated in Article 19 of Government Regulation No. 12 of 2023, given a maximum of 80 years through 1 (one) first cycle with the stages: granting of rights, a maximum of 30 (thirty) years; extension of rights, a maximum of 20 (twenty) years, and renewal of rights, a maximum of 30 (thirty) years). Building use rights granted for the first 1 (one) cycle with a maximum period of 80 (eight) years are stated in a decision the granting of rights and recorded in the certificate of building use rights, while the extension and renewal of building use rights are given all at once after 5 (five) years the building use rights are used or utilized effectively in accordance with the purpose of granting the rights.

Usufructuary rights over IKN authority management rights, are granted for a maximum period of 80 (eighty) years through 1 (one) first cycle with the stages of: granting of rights, a maximum of 30 (thirty) years, extension of rights, a maximum of 20 (twenty) years and renewal of rights, no later than 30 (thirty) years, the term of the said rights is recorded in the certificate of usufructuary rights. Land rights in the form of building use rights, usufructuary rights, business rights over land management rights can be transferred, inherited, or encumbered with mortgage rights after obtaining approval from the IKN authority, by imposing a zero percent acquisition tax fee.

Management rights in the Job Creation Law are based on: Management rights form the basis for usufructuary rights, and other rights which are related to third parties such as companies and others, as a basis for synchronization and harmonization with previous regulations. (Febriansah Ramadhan, Deni Noer Wahid, 2021) the concept of management rights is a 'partial' delegation of state authority, in principle it can only occur on state land. (Wulan et al., 2022) Granting of Rights and Period of Land Rights in the Basic Agrarian Law.

Since Law Number 5 of 1960 was passed, there have been legal reforms, especially in the area of land or agrarian affairs, experiencing changes from legal principles that changed the previous legal system (Sudiarto, 2021) become a legal system that is in accordance with the spirit of nationalism, including the granting of land rights. (Santoso, 2006)

The types of land rights in the Basic Agrarian Law (UUPA) do not explicitly state management rights as one of the rights regulated in Article 16 of the UUPA, however these management rights are one of the types of rights mentioned even though explicitly in the UUPA, (Abduh Aqil et al., 2022) originating from the right to control land, namely the state has the right to control a plot of land/land where the designation/utilization can be given to other parties.(Santoso, 2017)The state's right to control is realized by giving status to lands that are not encumbered with rights with the term state land, so that therefore the majority of lands that are given the status of management rights are state land.(Siska et al., 2021)

On state land that has been granted management rights, it is then given specifically to government institutions/agencies, regional governments, BUMN or BUMD with the aim of being able to make good use of it for the implementation of tasks or to generate profits such as being given again to other parties for business or business interests. In other words, land that is granted with management rights from state land, then the rights to the land remain with the state, while the utilization/use of land lies with the institution/institution. (Zamil, 2019), then the state may at any time revoke said management right if the use/use/allocation is not in accordance with what is expected by the state or the applicable regulations.

The General Explanation of point 2 of the Basic Agrarian Law outlines that if management rights are permanent rights recognized by the state and law, that is "the state can give such land to a person or legal entity with a right according to its designation and needs, for example property rights, Cultivation Rights, Building Use Rights, Use Rights or give them in management to a governing body (Department, service, or autonomous region) to be used for the implementation of their respective duties" hereinafter the term management rights first appeared in the Regulation of the Minister of Agrarian Affairs Number 9 1965 which divided the existence of use rights and management rights that were given to government agencies/institutions. After the existence of the Minister of Agrarian Regulation, there were many arrangements regarding management rights regulated in various laws and regulations.

One of the products of legislation that regulates management rights is Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Rights, Article 21 states that one of the land rights that can be granted a Building Use Right is a management right (HPL). (Ara Hasna Khairunnisa & Meta Indah Budhianti, 2022), meaning that lands with HPL status owned by government agencies/institutions, regional governments, BUMN on them can be granted Building Use Rights, which is based on the authority of the HPL holder is to cooperate with a third party (private sector) to utilize/use the land that is attached The HPL aims to generate a profit that can be returned to the state.

The right to build is a land right that is owned by a legal subject and is regulated in articles 35 to 40 of the Basic Agrarian Law, this right is granted for a maximum period of 30 years, then at the request of the right holder and taking into account the needs and circumstances the buildings can be extended for a maximum period of 20 years, so that the right is for a maximum of 50 years. Implementing arrangements regarding Building use rights have only emerged since the existence of the Job Creation Law, namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, in this government regulation specifically regulates the granting of these rights. (Weri, 2016)

Government Regulation Number 18 of 2021 stipulates that building use rights on state land and land management rights are granted for a maximum period of 30 years, extended for a maximum period of 20 years, and renewed for a maximum period of 30 years, so that the total length of the granting term is the period for building use rights on state land and management rights is 80 (eighty) years, after the extension period, and the renewal, the building use rights land returns to land directly controlled by the state or management rights land. (Salviana, 2020). After the enactment of Government Regulation Number 18 of 2021, management rights arrangements are explained in more detail. (Devita, 2021)

The right to cultivate or HGU is the right to cultivate land controlled by the state for a certain period of time, the Basic Agrarian Law provides a period of 35 years, the granting of the right to cultivate is further regulated in Government Regulation Number 40 of 1996 concerning Right to Cultivate, Building use rights and land usage rights and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 7 of 2017 concerning Arrangements and Procedures for Determining Cultivation Rights. PP No. 18 of 2021 provides a maximum HGU period of 35 years, which can be extended for a maximum of 25 years and renewed for a maximum period of 35 years, so that the holder of this right is a maximum of 95 years. Granting HGU can basically help the community, because with the existence of a business or company on HGU land, thus providing the surrounding community with job opportunities at the company and reducing the number of unemployed people. Cultivation rights are land rights that are

regulated in the UUPA whose time period has changed from the basic concepts and rules in the UUPA, these changes are related to efforts to attract investors to invest.(Watung et al., 2021)

The next land right is usufructuary rights, article 52 of the Basic Agrarian Law Right to Use on state land and management rights land with a maximum period of 30 years, but can be extended for a maximum period of 20 years and renewed for a maximum of 30 years, so the total maturity is 80 years. The usufructuary right is the right to use and/or collect produce from land that is directly controlled by the state or that belongs to another person. However, these rights arise not because of a lease agreement or land processing agreement.(Cape, 2021)Government Regulation Number 18 of 2021 states that management rights can originate from state land and communal land and can be determined through a ministerial decision which can be carried out electronically. other parties.(Suyanto, 2023)

Legal analysis of the granting of time periods for land rights in the Nusantara Capital

The granting of a period of time for land rights in the Nusantara Capital as stipulated in PP No. 12 of 2023 is different from the time period stipulated in the Basic Agrarian Law, the arrangement for granting land rights and the period of time is based on the UUPA as the highest source of law on agrarian principles. Regulations that govern land and are contrary to the UUPA have been ruled unconstitutional by the Constitutional Court, such as Law Number 25 of 2007 concerning investment. Ideally, in providing legal certainty and ease of doing business for business actors in IKN, they must stick to the above legal norms.

The legal norms regarding the granting of time periods for building use rights, usufructuary rights and usufructuary rights have been regulated in the UUPA, which has a higher legal hierarchy than government regulations, so if it is guided by the applicable legal principles. Francois argued that law is used as the basis for prioritizing a legal rule over other legal rules by looking at three criteria, namely: hierarchy, chronology, and specialization. Based on these three criteria, the principles, principles and legal maxims consist of *lex superior derogate legi inferiori*, *lex posterior derogate legi priori* and *lex specialis derogate legi generali* (Nurfaqih Irfani, 2020). This is like Hans Kelsen's theory of levels of norms or better known as *stufenteori* theory which states that legal norms are tiered and layered.(Fathorrahman, 2021)

In the context of analyzing the position of Government Regulation Number 12 of 2023 against Law Number 5 of 1960 concerning Basic Agrarian Provisions, of the three basic criteria, principles and legal rules used are the principle of *lex superior derogate legi inferiori*, which means that the law Laws (norms/legal rules) that are higher can negate the enforcement of laws (norms/legal rules) that are lower, meaning that laws with a higher degree overrule lower legal rules. The principle of *lex superior derogate legi inferiori* only applies to two regulations which are hierarchically unequal and contradict each other.

If government regulation Number 12 of 2023 is considered as a special rule because it regulates the implementation of the granting of a period of land rights in order to accelerate the development process in the Nusantara's Capital and only applies to the Nusantara's Capital, then the principle of *lex specialis derogate legi generali* is used to analyze this, which means law - specific laws (norms/legal rules) nullify general laws (norms/rules of law). There are several things that can be used as guidelines in implementing *lex specialis derogate legi generali*, namely the *lex specialis* provisions must be equal to the *lex generalis* provisions in this context the Basic Agrarian Law cannot be equated with Government Regulation Number 12 of 2023 and the *lex specialis* provisions must be in same legal environment.(Zakaria, 2022)

System law in Indonesia, the types and hierarchy of laws and regulations are regulated in the provisions of article 7 and article 8 of Law Number 12 of 2011 concerning the formation of laws and regulations, which consist of the 1945 Constitution, Decree of the People's Consultative Assembly, Law /Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Regional Regulations. Based on the above hierarchy, the material content of statutory regulations that are under the Act may not conflict with the Act and the 1945 Constitution.

Government Regulations are policies made by the government in implementing the Law, in this case the Nusantara Capital Law, which is aimed at accelerating the realization of the Nusantara Capital. State policies (*staatspolitiek*) directions, principles and objectives can be identified from the propositions and/or norms contained in the law, while government policies

(bestuurpolitiek) can be identified from the propositions and/or norms contained in government regulations.(Gunanegara, 2022) so to recognize state policy on regulating land rights, one must study the regulations it makes.

Arrangements for the granting of land rights and the period of time for these rights granted by the Nusantara Capital Authority constitute the authority granted by the government to authorities, even though the concept of an authority body and head of authority in the Nusantara Capital Law contradicts Article 18 paragraph (1) and paragraph (4) 1945 Constitution.(Hadi et al., 2022) even though one of the materials of the IKN Law is a special design that is applied to the national capital.(Wibowo, 2022)

4. CONCLUSION

The granting of a period of land rights in the form of usufructuary rights, building use rights and usufructuary rights over land with management rights in the Nusantara Capital Authority based on Government Regulation Number 12 of 2023, is contrary to Law Number 5 of 1960 concerning Basic Agrarian Provisions, which in the hierarchy of legislation, the degree is higher based on the principle *lex superior derogate legi inferiori*, the granting of rights and the period of time for the capital of the Nusantara with legal provisions at the level of government regulations, the arrangement for granting land rights and the period for granting rights is regulated by regulations at the level of the law, by first amending or revoking the terms of the term of land rights in the law. Basic Agrarian Law.

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