International Journal of Social Science and Human Research

ISSN (print): 2644-0679, ISSN (online): 2644-0695

Volume 07 Issue 01 January 2024

DOI: 10.47191/ijsshr/v7-i01-34**,** Impact factor- 6.686

Page No: 252-259

Building Use Rights Extension Arrangements above Management Rights in Law National Agraria

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ABSTRACT: Land with building use rights over management rights used for public purposes often gives rise to legal problems because the provisions of Article 35 Basic Agrarian Law (BAL) in conjunction with Article 40 of Government Regulation 18/2021 paragraph (2) can be processed subjectively or have multiple interpretations. The formulation of the problem in this research is: What is the authority of the Management Rights holder to refuse the extension of Building Use Rights because the land is used for public purposes in terms of the principle of justice?; This research uses a type of normative legal research. The theories used to analyze the problem are: Justice theory, Authority theory, Legal Protection theory. Sources of legal materials include primary legal materials, secondary legal materials and tertiary legal materials. The approaches used are: Statute Approach, Case Approach, Conceptual Approach and Analytical Approach. Methods of analysis with interpretation: grammatical, systematic, sociological. The results of the analysis concluded: Firstly, the Surabaya City Government, in the realm of public law, has the authority to reject the extension of Limited Liability Company Building Use Rights Maspion because the land is used for public purposes, in the realm of private law when carrying out land use agreements, there is a procedurally unequal position of the subject which is not in line with the principle of justice "justice as fairness". Second, preventive legal protection, the parties agree that after the end of the period for granting Building Use Rights, the land will be returned to the control of the First Party and the building will remain the property of the Second Party, in this case the Second Party will prioritize the decision to extend the Building Use Rights. Repressive legal protection is carried out through litigation, by filing a lawsuit with the State Administrative Court. In Decree Number 65 PK/TUN/2020 that Limited Liability Company Maspion has the right to obtain an extension of Building Use Rights.

KEYWORDS: Building Use Rights, Management Rights, Extension, Justice, Legal Protection

INTRODUCTION

Fifteen years after independence, precisely on September 24, 1960 after going through a long process, finally passed Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles which is further called (basic Agrarian law) UUPA, which was later promulgated in the State Gazette of the Republic of Indonesia Number 104 of 1960, is a very important milestone in the history of agrarian / land development in Indonesia, That is as one of the efforts to realize legal unification in the land sector, although the unification can be declared *"unique"*, because it still provides space for the enactment of customary and religious law[1]. Juridical recognition of customary law is regulated in article 5 of the UUPA namely:

"The agrarian law applicable to earth, water and space is customary law, insofar as it does not conflict with national and State interests, based on national unity, with Indonesian socialism and with the regulations contained in this law and with other laws and regulations, all in accordance with regard to elements that rely on religious law"

The statement that Indonesia's national agararian law is built from customary law means that it is the conceptions in customary law that are used to build national agrarian law. There are many conceptions in customary law, including: the conception of the eternal relationship of land with its people, the conception of traditional heads as customary territory regulators, the conception of customary territories only for members of customary alliances, the conception of the principle of light and cash in buying and selling land, and the conception of land ownership is different from the ownership of buildings, plants and the like on land which is referred to as the principle of horizontal separation.

[1]I Made Suwitra, 2009, "*The Existence of Tenure Rights and Ownership of Customary Land in Bali in the Perspective of National Agrarian* Law", *Dissertation*, Law Program of Brawijaya University, Malang, p.1.

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The principle of horizontal separation in the structure of land rights adopted by the UUPA as stipulated in Article 16 of the UUPA, is manifested in:

1. Proprietary;
2. Right to Use;
3. Right to Build;
4. Right of Use;
5. leasehold rights for buildings;
6. Right to Open Land
7. The right to collect forest products.
8. Other rights not included in the aforementioned rights on land to be established by law, as well as rights of a temporary nature as mentioned in article 53.

In addition to the rights mentioned above, the UUPA explains the land rights to be determined by law, including Management Rights (HPL) which are part of the State Control Rights (HNM) whose authority is partly delegated to the holders of Management Rights[2]. The definition of Right to Management (HPL) comes from the Dutch word *Beheersrecht*, which translates to Right of Mastery[3]. Based on Government Regulation Number 8 of 1953, the term Right to Tenure defines the planning, allocation and use of land, with the aim of carrying out duties and the State is entitled to annual income/compensation and/or compulsory money. Management Rights are not specifically regulated or stated explicitly in the UUPA. It's just that the term management is already known in the UUPA, namely in the general explanation of number II number 2 of the UUPA.

Management Rights are control rights from the state whose exercise authority is partially delegated to its holders. Definition of State Control Rights (HMN) is the authority of the state to regulate and administer the allocation, use, supply and maintenance of land, determine and regulate legal relations between persons and legal entities with land. The implementation of State Control Rights (HMN) as referred to in Article 2 of the UUPA is:

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

(2) The right of control of the State referred to in paragraph (1) of this article authorizes to:

a. regulate and administer the allocation, use, supply and maintenance of the earth, water and space;

b. determine and regulate the legal relations between people and earth, water and space;

c. determine and regulate legal relations between persons and legal acts concerning earth, water and space.

(3) The authority derived from the right to control from the State in paragraph (2) of this article is used to achieve the greatest prosperity of the people in the sense of nationality, welfare and independence in society and the Indonesian legal State that is independent, sovereign, just and prosperous.

(4) The right of control of the State mentioned above its exercise can be vested in Swatantra areas and customary law communities, only necessary and not contrary to the national interest, according to the provisions of the Government Regulation.

The definition of being controlled in Article 2 paragraph (1) is not in the sense of owning, because the state according to the legal conception of land does not act as the owner of land (*domein verklaring).*[4] Juridically, management rights (HPL) have two aspects, namely the public aspect and the civil aspect. The public aspect of HPL can be seen from the concept of Management Rights as the right to control the State (HMN) whose authority is partly delegated to it which is used for its own interests, for example for Regency / City Government Offices, District Offices, Agencies and others. While the civil aspect can be seen from the authority to hand over parts of HPL land to third parties to individuals and / or legal entities based on Land Use agreements (PPT). Management Rights whose use and utilization of all or part of the land is cooperated with third parties can be granted Business Use Rights (HGU), Building Use Rights (HGB) and Use Rights (HP) in accordance with their nature and function. The HGB regulation in Article 35 of the UUPA states that:

(1) Right to Build is the right to build and own buildings on land that is not his own, with a maximum period of 30 years.

(2) At the request of the right holder and taking into account the needs and condition of the buildings, the period mentioned in subsection (1) may be extended for a maximum of 20 years.

(3) Building use rights can be transferred and transferred to other parties

Furthermore, in the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration (PP 18/2021) in Article 37 paragraph (1) states that "Building Use Rights

[2]Maria S.W. Sumardjono, 2009, *Land in the Perspective of Economic, Social and Cultural Rights*, Kompas, Jakarta, p. 213.

[3]A.P Parlindungan, 1994, *Management Rights According to the UUPA System*, CV. Mandar Maju, Bandung, p. 29.

[4]AP. Parlindungan, 1998*, Comment on the Law of the Tree of Agraria,* Mandar Maju, Bandung, matter. 43.

on State Land and Land Management Rights are granted for a maximum period of 3O (thirty) years, extended for a maximum period of 20 (twenty) years, and renewed for a maximum period of 30 (thirty) years".

In practice, granting HGB above HPL can raise legal problems when HPL holders refuse to extend HGB above HPL because HPL land is used for public interest. Although in Article 6 of the UUPA, that all land rights have a social function. Social functions have the meaning of the personal interests of their owners, also have a role or meaning for the public interest[5]. In some cases of land disputes, some have even entered the realm of court such as disputes between the Surabaya City Government (Pemerintah Kota) and PT. Maspion as stated in the Surabaya State Administrative Court Decision Number 79/G/2018/PTUN. SBY Juncto. Decision No. 18/B/2019/PT. TUN. SBY Juncto Decision Number 65 PK/TUN/2020.

From the preliminary description above, the problem to be studied in this paper is formulated as follows: How does the authority of the holder of the Management Right refuse the extension of the holder of the Right to Build because the land is used for public interest in terms of the principle of justice?

RESEARCH METHODS

The type of research used in this study is Normative legal research and the problem approach method used is: *Statute Approach*, which is an approach by looking at laws and regulations related to the issues discussed. Legal analytical approach *(analitical approach)* the main purpose of analysis of legal material is to know the meaning contained by the terms used in laws and regulations conceptually, as well as knowing the application in practice and legal decisions. This is done through two examinations: first, trying to obtain new meanings contained in the legal rules concerned, second, examining these legal terms in practice through analysis of legal decisions[6]. Through this approach, legal principles and the scope of problems can be obtained from this writing so that it can help clarify the interpretation of the extension of Building Use Rights over Management Rights. Case *Approach (Case Approach)* an approach by examining cases related to legal issues. Cases that are used as material for analysis are cases that have become court decisions by taking into account legal considerations by the judge on which the decision is based. In this thesis research, the sources of legal materials that are used as the basis for case analysis are: Decision No. 79/G/2018/PTUN. SBY *Jo*. Decision No. 18/B/2019/PT. TUN. SBY *Jo*. Decision Number 65 PK / TUN / 2020 in the case between the Mayor of Surabaya representing the Surabaya City Government and PT. Maspion related to the dispute over the extension of Building Use Rights over Management Rights.

In the collection of legal materials is carried out by means of documentation studies or literature studies systematically. As well as the stage of analysis of legal materials occupies a fairly decisive position in research. Analysis of legal materials has begun since the collection of legal materials is carried out intensively until after the completion of the collection of legal materials.

RESULTS AND DISCUSSION

Position Case:

Limited Liability Company of Maspion as a legal entity is interested in utilizing one of the lands located on Jalan Pemuda Surabaya. In 1996, Limited Liability Company (PT). Maspion obtained Building use rights for an office building on Management Rights of land based on the Land Use Handover Agreement dated January 16, 1996 after fulfilling all requirements and paying the levy money. The Building use rights (HGB) expired on January 15, 2016, but article 3 of the agreement states that in essence the Surabaya City Government gives priority rights to extend the HGB in accordance with the requirements of the first party.

Furthermore, when PT. Maspion will build a building, the land contains the EX NV building. VOLKS HUISVESTING which is still occupied by PT. Singabarong Kencana, so there was a dispute between PT. Singabarong Kencana with the Mayor of Surabaya and PT. Maspion lasted a long time and ended in 2010. After the completion of the legal process at PTUN on October 21, 2010. PT. Maspion will carry out construction and submit zoning revisions to the Head of the Surabaya City Copyright and Spatial Planning Office and pay the City Plan Certificate (SKRK) permit levy as specified.

No zoning revision permit has been issued, PT. Maspion wrote to the Mayor of Surabaya on August 29, 2012 and September 28, 2012 to ask about it. The letter was answered by the Mayor of Surabaya on November 26, 2012 which in essence related to the permit still needed a study on the problems arising related to the demolition of the EX NV building. VOLKS HUISVESTING so that the application cannot be followed up yet. Because there is no certainty, in 2015 PT. Maspion began to build office buildings in accordance with the Building Permit (IMB) already owned by PT. Maspion.

Given that the Right to Use Building will expire on January 15, 2016, PT. Maspion submitted a letter requesting the extension of Building Use Rights to the Mayor of Surabaya on September 29, 2015 which then occurred correspondence between

[5]Ketut Kasta Arya Wijaya, 2019, "The Meaning of Social Function Philosophy in Water Resources Exploitation Regulation", *Dissertation*, Doctoral Program in Law, Faculty of Law, Udayana University, Denpasar, p. 51.

[6]Johnny Ibrahim, 2012, *Theory and Methodology of Normative Legal Research*, 6th printing, Bayumedia Publishing, Malang , p. 310

the two until the issuance of a letter issued by the Mayor of Surabaya on April 3, 2018 in the form of Surabaya Mayor Letter Number 593/2543/436.7.11/2018: Regarding Answer and Warning III, which letter was very detrimental to PT. Maspion. The unilateral decision taken by the Mayor of Surabaya has violated Article 3 of the Land Use Transfer Agreement, which gives priority rights to extend the Right to Build in accordance with the conditions given by the first party.

With the issuance of the letter, PT. Maspion filed a lawsuit at the Surabaya State Administrative Court (PTUN), and during the trial process at the PTUN, the Mayor of Surabaya also filed a lawsuit at the Surabaya District Court. In the first instance of the lawsuit PT. Maspion is unacceptable (PTUN No. 79/G/2018/PTUN. SBY) and filed an appeal whose decision overturned the previous PTUN decision (PTTUN No. 18/B/2019/PT. TUN. SBY). Not accepting the appeal decision, the Surabaya City Government filed a judicial review (PK) with Decision Number 65 PK / TUN / 2020).

THE AUTHORITY OF THE MANAGEMENT RIGHTS HOLDER REJECTS THE EXTENSION OF THE BUILDING USE RIGHT HOLDER BECAUSE THE LAND IS USED FOR PUBLIC INTEREST IN TERMS OF THE PRINCIPLE OF JUSTICE.

According to Sumardji, authority is described as legal power *(rechtsmacht)*, so in the concept of public law, authority relates to power. Therefore, the concept of authority is a concept in public law[7]. Authority is a very important part of governance law (administrative law), because the new government can carry out its functions on the basis of the authority obtained. The validity of government actions is measured based on the authority stipulated in laws and regulations *(legaliteit beginselen).* An authority must be based on applicable legal rules, so that it is valid. Authority is the ability to act given to legal subjects based on law to carry out a legal relationship and legal acts. Land controlled by the Regency / City Regional Government if it has the status of Management Rights, then the Regency / City Regional Government has several authorities.

First, plan the allocation and use of land. The Regency / City Government as the holder of the Management Right has the authority in the form of planning the allocation and use of the Management Right land for residential, industrial, trade, shops or office purposes. The allocation and use of land planned by the local government is guided by the District/City Regional Spatial Plan (RTRW) stipulated by the District/City Regional Regulation.

Secondly, using the land for the purposes of performing its duties. The Regency / City Government as the holder of the Management Right has the authority to use the Right of Management land for the purposes of carrying out its duties such as for offices, building public facilities. social facilities and so on.

Third, handing over parts of the Right of Management land to third parties and/or cooperating with third parties. The Regency/City Government as the holder of the Right to Management is not authorized to lease parts of the Right of Management land to third parties. Management Rights Holders, if they lease parts of Management Rights land to third parties, it is contrary to the provisions of Article 44 of the UUPA, namely land that can be leased to other parties only land with freehold status.

Management Rights Holders can hand over parts of management rights land to third parties in the form of Right to Build, Right to Use, Right to Use. Portions of Right of Management land handed over to third parties must already be certified Right of Management. By having certified Management Rights, the holder of Management Rights already has the authority to enter into legal relationships with third parties can be done through agreements.

The provisions regarding land use agreements are regulated in Article 8 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration (PP 18/2021), which specifies that in the event that the requested land is a Right of Management land, the applicant must first obtain an appointment in the form of a land use agreement by the holder of the Management Right.

One of the rights of the holder of the Right to Build is to control and use the land for a certain period of time. The term of the Right to Build on the Right to Management land is for the first time for a maximum period of 30 (thirty) years, it can be extended for a maximum period of 20 (twenty) years. The mention of the word can be as stated in paragraph (2) of Article 35 of Law No. 5 of 1960 concerning Agrarian Principles (UUPA), Boedi Harsono stated that the word can be facultative meaning that it can be extended, and can not be extended. However, if the HGB holder has and still meets the requirements at the time of applying for HGB, then the HGB extension must be granted if all (requirements) are met, there is no reason to refuse the extension (HGB).[8]

The conditions that must be met by holders of Building Use Rights for the extension of the period or renewal of Building Use Rights are stipulated in Article 40 paragraph (2) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, namely:

a. the land is still being used properly in accordance with the circumstances, nature, and purpose of granting the right;

[7]Sumardji, 2006, "Basis and Scope of Authority in Management Rights", *Yuridika Magazine*, Vol. 21 No. 3, Faculty of Law, Airlangga University, Surabaya, p. 246.

[8]Online law, 2006, URL: https://www.hukumonline.com/berita/a/hpl-di-atas-hgb-tidak-berlaku-hol15718/?page=all accessed December 28, 2023

b. the conditions of granting such rights are well fulfilled by the right holder;
c. the right holder still qualifies as a rights holder;
d. the land is still in accordance with the relevant Regional Spatial Plan (RTRW)
e. not used and/or planned for public use.

The applicant's position in the extension of the Right to Build is still as the holder of the Right to Use Building because the Right to Use Building is still valid. The Management Rights Holder has the authority to approve or reject the extension of the Right to Build and the details of the income money are included in the decision granting the Right to Build. The extension of Building Use Rights above Management Rights is regulated in Article 41 paragraph (2) of PP 18/2021 that:
"An application for an extension of the period of the right to build can be submitted after the land has been used and utilized in accordance with the purpose for which it was granted or at the latest before the expiration of the period of the right to build".
Article 40 paragraph (2) of PP 18/2021 stipulates that the extension of the period of the Right to Build on the land of the Right to Management can be submitted by the holder of the Right to Build after obtaining approval from the holder of the Right of Management. In relation to the extension of this Building Use Right, the holder of the Management Right has the authority to approve or not give approval (reject) the extension of the holder of the Building Use Right above the Management Right. Legal acts in the form of giving approval from the holder of the Management Right in the extension of the Right to Build over the Right to Management because the land is used for public interest are subjective legal acts of the holder of the Management Right.

The authority to give approval from the holder of the Right of Management to the holder of the Right to Build can be in the form of information containing to reuse part of the land of the Right of Management. The reason for the HPL holder to approve or reject the HGB display of HPL land is approved if: there is a request from the HGB holder; the applicant is still an Indonesian citizen; the applicant is still a Legal Entity established under Indonesian law and domiciled in Indonesia; the land is still used in accordance with the grant of rights contained in the agreement or in the decree granting rights; and still RTRW compliant; The building can still be used properly and safely, has a proper function, the land is used for the greatest prosperity of the people, and the investment made absorbs labor[9]. If the holder of the Right of Management gives approval for the extension of the Right to Build, then this means that the holder of the Right to Build has the right to reuse part of the land of the Right of Management for a maximum of 20 (twenty) years. For the use of part of the Land Management Rights for a maximum of 20 (twenty) years, the holder of the Management Right is also authorized to determine the amount of compensation for the use of the land to the holder of the Right to Build.

Anagreement regarding the amount of compensation between the holder of the Management Right and the holder of the Right to Build, can be made by notarial deed or deed under hand. This agreement can contain rights, obligations, and prohibitions for holders of Management Rights and holders of Building Use Rights based on the principle of the agreement, namely article 1320 of the Civil Code (KUHPercivil).

The holder of the Management Right also has the authority not to approve/reject the extension of the Right to Build above the Right to Management if the HGB holder is no longer an Indonesian citizen; legal entity status is carried out in accordance with Article 34 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration; not carry out development and/or cultivate the land in accordance with the purpose of designation and requirements as stipulated in the decision granting rights; not maintaining the soil, including increasing its fertility and preventing its damage and preserving the environment; not maintaining the conservation function of the boundaries of water bodies or other conservation functions; not complying with the provisions of space utilization stipulated in the spatial plan; the land does not correspond to the spatial plan; not used and/or planned for public use. Problems occur when there is a policy of changing Spatial Planning and/or the land is used for public interest.

Article 18 of the UUPA expressly states that in the public interest, including the interests of the nation and the State as well as the common interests of the people, land rights may be revoked, by providing appropriate compensation and in the manner provided for by law. The public interest aims to provide more welfare to many people and does not intend to be oriented towards mere economic profit. In other words, the public interest more broadly is the interest of the nation and the State. This means that the government and local governments are given the authority by laws and regulations to take legal action in planning and using land for public interest.

Based on the theory of authority according to Philipus M Hadjon that authority is related to power, therefore, the concept of authority is a concept in public law. The validity of government actions is measured based on the authority stipulated in laws and regulations *(legaliteit beginselen).* An authority must be based on applicable legal provisions, so that it is valid. The authority of HPL holders to refuse the extension of HGB holders above HPL because HPL land is used for public interest, can be interpreted as a valid action that has been regulated in Article 40 paragraph (2) PP 18/2021 juncto Article 6 of the UUPA, in the principles of justice.

[9]Inyoman Alit Puspadma, 2013, "Extension of Building Use Rights by Limited Liability Companies Towards Sustainable Investment and People's Welfare (Study on Legal Certainty and Justice)". *Dissertation*, Brawijaya University, Malang.

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John Rawls in his book *A Theory of Justice* (1971). Rawls called his theory of justice *"justice as fairness*," an abstraction about the gathering of rational, free, and equal people to accept the principles of justice from an initial fair equality position or "default position," or the principle of fair bargaining. Article 109 paragraph (2) of Regulation of ATR/KBPN 18/2021, namely in the event that the Right to Use Building is not given back to the former right holder either partially or completely, then the building along with the objects and planting grows on the land of the Right to Build in accordance with the land utilization agreement with the holder of the Right to Build Management on the land of the Right to Management, meaning that the principle of justice can be contained in the Land Use and Utilization Agreement (PPPT) between HGB holders with HPL holders.

However, when viewed from the side of the subject's position, HPL holders are government parties who are in a position as rulers which does not rule out the possibility because their power and authority can refuse the extension of HGB holders because the HPL Land Utilization and Use Agreement is in the realm of public law (because it involves the government as the ruler) and the realm of private law (involving private parties)[10], so that the subject's position becomes unbalanced which is not in line with John Rawls' principle of justice or is not in the *Original Position*. The authority possessed by HPL holders to refuse extensions because their land is used for public interests so that HGB holders do not get the opportunity to develop their economic capabilities which are not solely for profit, there are other more important purposes, namely in order to encourage the wheels of the economy, also to create jobs in accordance with the mandate of Law Number 25 of 2007 concerning Investment.

In relation to the case of PT. Maspion as a Civil Law Entity in the form of a Limited Liability Company established based on the Deed of Establishment number: 38 dated 10-02-1971 made before Djoko Soepadmo, SH., Notary in Surabaya and has received approval from the Minister of Justice, dated March 14, 1972 No. J.A. 5/39/23, and the last one based on Deed of Amendment No. 29 dated 23-06-2015 made before Sugiharto, SH., Notary in Surabaya. interested in utilizing one of the lands located in persil 17 Jl. Pemuda Surabaya.

In 1996, PT. Maspion obtained HGB for office buildings above HPL based on the Land Use Handover Agreement (PPPT) dated January 16, 1996 after fulfilling all requirements and paying retribution. The HGB ended on January 15, 2016. After having HGB and Building Permit (IMB) PT. Maspion is not necessarily able to carry out construction as planned, it turns out that on the HGB land it owns there is a building occupied by the EX NV building. VOLKS HUISVESTING was once occupied by PT. Mas Murni Indonesia/PT. Singa Barong Kencana which is basically the land to be built offices by PT. Maspion still has disputes between PT. Singa Barong Kencana with the Head of the Surabaya City Government Building Office.

The legal process lasted a long time and ended until 2010. After the completion of the legal process at the PTUN and at the East Java Regional Police, then PT. Maspion will carry out the construction phase namely on October 21, 2010, PT. Maspion submitted a Revision of Zoning Requirements to the Head of the Surabaya City Copyright and Spatial Planning Office, the original plan was for offices only, added for the Hotel and its equipment, and has carried out the obligation to pay the SKRK Permit Retribustion (Surat Keterangan Plan Kota). Karaena's submission for the Revision of Zoning Requirements did not get an answer from the Surabaya City Government, finally PT. Maspion decided to build according to the original plan, which was to build offices. Given that the HGB period will expire, PT. Maspion proposed an extension to the Surabaya City Government.

Mayor of Surabaya through letter No.5590/2481/436.6.1.8/2016, dated May 25, 2016, subject: Surabaya City Government assets located on Jalan Pemuda 17 Surabaya addressed to the President Director of PT. Maspion whose contents basically stated that the Surabaya City Government did not extend HGB No. 612 / Kelurahan Embong Kaliasin because the HPL land would be used by the Surabaya City Government itself for public interest in efforts to develop the square on Jalan Pemuda Number 17 Surabaya City.

Regarding the authority possessed by the Surabaya city government, it refused the extension of HGB owned by PT. Maspion because HPL land is used for public purposes to carry out legal acts in the realm of public law, but is given authority in carrying out legal acts in private law, namely making agreements with third parties in this case between the Surabaya City Government as the government (ruler) and PT. Maspion (private).

According to John Rawls' Theory of Justice, justice from an initial fair equality position or "original position", so that procedurally between the Surabaya City Government to cooperate in HPL land utilization with PT. Maspion formulated in the Agreement on the Use of Land Utilization and Handover (PPPT) occurs in an unbalanced subject position between the Surabaya City Government as the regional government as the ruler who hierarchically has the authority to negotiate to make agreements in cooperation in land utilization Management Rights which will be outlined in the agreement in a weaker position compared to the regional government. So procedurally according to John Rawls' Theory of Justice it will be difficult to realize.

CONCLUSION

The authority of HPL holders to reject the application for extension of HGB holders because the land used for public interests does not reflect the principle of equality, when viewed from the position of the subjects, HPL holders are district/city local

[10]Ana Silviana, 2017, "Land Use Over Management Rights Between Regulation and Implementation," *Diponegoro Private Law Review*, Vol. 1 No. p. 39

governments who are in a position as rulers which does not rule out the possibility because the power and authority possessed can refuse the extension of HGB holders, because procedurally, The regency/city government as the HPL holder, has the authority in the realm of public law to plan the use and hand over part of the HPL land to a third party (private). While the civil aspect can be seen from the authority to hand over parts of HPL land to third parties (private) based on civil agreements / private domains.

So that the existence of an unbalanced / equal position of the subject is certainly not in line with the principle of justice John Rawls, the position of the subject is not in the Original Position *(Original Position).* So the principle of *"justice as fairness"* will be difficult to realize. This can be found in the case of the Surabaya City Government as the holder of HPL Number 2 / Kelurahan Embong Kaliasin Surabaya. The Surabaya city government rejected the extension of HGB Number 612/Kelurahan Embong Kaliasin owned by PT. Maspion because HPL land is used for public purposes. Legal acts carried out by the Surabaya City Government act in the realm of public law, based on the authority granted by Article 40 paragraph (2) of PP Number 18 of 2021, namely using HPL land for public interest. The decision of the Surabaya City Government to reject the extension of HGB owned by PT. Maspion consequently PT. Maspion cannot build offices in an effort to develop its economic capabilities which are not solely for profit, but there are other more important goals, namely in order to encourage the wheels of the economy, as well as to create jobs in accordance with the mandate of Law Number 25 of 2007 concerning Investment.

RECOMMENDATIONS

In an effort to ensure justice, it is necessary to plan the allocation, use, and utilization of HPL land oriented to long-term development patterns by synchronizing Article 26 paragraph (4) of Law 26/2007 Juncto Article 17 of the Juncto Job Creation Law Article 35 of the Juncto Law Article 37 paragraph (1) of Government Regulation 18/2021. And the district government in the use of HPL land in collaboration with private parties should not go through an agreement but with a decision to grant HGB above HPL.

The Parties must obey the principles, especially *the Pacta Sunt Servanda* Principle, so that the parties create their own justice without seeking justice through litigation to the Court.

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Scientific Documentation and Publication

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