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## **Legal Protection of Building Use Rights Over Land Management Rights in Batam City**

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### **ABSTRAK**

Without legal clarity or certainty over the granting of new rights, the issue of legal protection for holders of Building Use Rights over Management Rights and the agreement's contents is not a simple matter. This will impact the multiplication of legal vacancies governing the Right to Use the Building which is above the Land Management Rights. The aim to be achieved in this research is to find out the legal arrangements regarding the right to use the building above the land management rights in Batam and to find out the factors that constrain the implementation of the right to use the building over land management rights. The results showed that the application of building rights that were above the management rights resulted in a sense of injustice that resulted in the weaker community's right to prosperity and many factors that influence its application such as legal factors, factors of law enforcement officers, and the community. For this reason, it is hoped that more specific rules will be established regarding the authority to control land in Batam City and the need for socialization of the community related to the bureaucracy and the role of the Batam City Business Entity.

**Keywords:** Legal Protection, Building Rights, Land Management Rights

### **INTRODUCTION**

The land is a gift from God Almighty given to humans to carry out their life needs. For this reason, humans, as their servants, always look after and care for something that God has given. Land means not only a piece of land but also rice fields or farming. At this time, the increasing need for land is not to the circumstances and conditions of the amount of land available, meaning that the need for land is getting higher, but the amount of land is limited. Things like this cause a problem with future land requirements, which always raises disputes. Because as soon as humans are on the ground, a thing called rent appears. Rent is what makes a difference for humans. Land management rights in Indonesia, especially those concerning legal relations between humans and land, have long received attention from the state. This can be seen from the nature of the relationship that always develops according to cultural developments, especially by social, political, and economic influences. Indigenous peoples' muscular land tenure system reflects the

socio-cultural and economic system. For this reason, the state must regulate it in an orderly/fair way to be used for life and the lives of many prosperous people.

With the existence of land management rights as regulated in Law no. 5 of 1960 concerning the Basic Agrarian Regulations, it is expected that land is managed/used according to its capabilities, no plot of land is abandoned so that no plot of land can be managed/used by the existence of the land and a goal can be achieved, namely economic achievement sustainable in connection with the granting of land rights and the granting of permits for changes in the management/use of land by the state through the Land Agency to citizens who use land right.

The implementation of land management rights can be grouped into 2 (two) groups, namely: Village/rural land management and urban land management/use; the two patterns of land management/use have very different objectives. The management/use of rural/village land is focused on the objectives of economic production and plantations, and the management/use of urban land is focused on residential purposes, offices, and shops.

Likewise, regarding the granting of rights to state land that is given to citizens who are given to citizens who apply for Property Rights, Business Use Rights, Building Use Rights, and Use Rights which are regulated according to Law Number 5 of 1960 concerning Basic Agrarian Regulations organized into three groups, namely: permanent land rights, temporary land rights, and stipulated land rights. All land rights should be the state's authority because the state, as the highest organization to control them, does not mean that the state owns the land. In carrying out the functions and duties of the authority, the right of management refers to the existing regulations clearly stated. Both the authority and the implementation of management rights to the agency to the local government or third parties. However, in implementing management, rights to carry out their duties, functions, and authorities, which constitute state land to third parties or the agency itself, there is authority regulated in government regulations. However, the authority of the holder of management rights to the state as the grantor of management rights is either an obligation – Obligations of management rights holders to the state have not been explicitly regulated in regulations even though management rights are.

With the delegation of some of these authorities, the holder of management rights can grant Building Use Rights or Usage Rights to third parties with a written agreement. The authority granted by the state means that the holder of management rights has the authority to demand that other parties respect their rights so that they can request legal protection for the use of their rights.

Other parties or third parties who wish to utilize parts of the Land of Management Rights must enter into a written agreement with the holder of Management Rights. With clarity and legal certainty regarding granting new rights, the issue of legal protection for holders of building use rights over management rights and the agreement's contents is a complex matter. This, of course, will impact the creation of a legal vacuum that regulates Building Use Rights that are above Land Management Rights.

## **DATA ANALYSIS**

The descriptive research describes the symptoms in the community environment for a case under study. The approach taken is a qualitative approach which is a research method that produces descriptive data. Descriptive research explores and clarifies a phenomenon or social reality by describing several variables related to the problem and unit under study.

The author uses a qualitative approach to understand or understand the symptoms under study. The author researches to draw legal principles that can be applied to written and favorable laws. Normative Legal Research, This type of legal research method, can also be referred to as doctrinal legal research or library research because this research is only aimed at written regulations, so this research is very closely related to libraries. The empirical legal research method is a legal research method that functions to see the law in a real sense and examine how the law works in society. Because this research examines people in relationships living in society, the empirical legal research method can be considered legal, sociological research. Based on the explanation above, this research is normative legal research supported by empirical legal research

## **RESEARCH RESULTS AND DISCUSSION**

### **Legal Protection of Building Use Rights Over Land Management Rights in Batam City**

The government's active involvement in realizing the general welfare of its citizens is by what is stated in the preamble of the 1945 Constitution of the Republic of Indonesia, paragraph IV. In the preamble to the 1945 Constitution of the Republic of Indonesia, it is stated:

"Then instead of that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace, and social justice."

The government's involvement in promoting public welfare is shown by establishing regulations that guarantee the fulfillment of citizens' rights in the rule of law. A rule-of-law state is simply a country that places law as the basis of state power, and exercising this power in all its forms is carried out under the rule of law. In a rule-of-law state, everything must be done according to the law. In other words, government activities must be based on law, both in administering government and in carrying out supervision. Therefore, a legal order should be formed in the state's life. The formation of the legal order in Indonesia is based on Pancasila as the state ideology. Aside from being the state ideology, Pancasila is also the source of all sources of law in Indonesia. As the source of all legal sources, Pancasila is in accordance with Article 2 of Law Number 12 of 2011 concerning the Formation of Legislation. Law Number 12 of 2011, Concerning the Formation of Legislation, is the basis and guideline for administering the state, including guidelines for all applicable laws and regulations in Indonesia.

Pancasila, as the source of all sources of law, means that all forms of law in Indonesia must be measured according to the values contained in Pancasila, and the rule of law must reflect awareness and a sense of justice by the personality and philosophy of life of the nation. Law in Indonesia must guarantee and uphold the values contained in the preamble to the 1945 Constitution of the Republic of Indonesia, which reflects Pancasila and the principles contained in the body of the 1945 Constitution of the Republic of Indonesia and its explanations. Pancasila, as a fundamental state norm (Staatfundamentalnorn) in its position as a legal ideal (Rechtidee), is a "guiding star" that provides guidance and guidance in all activities giving content to each statutory regulation. In line with this, the formation of the Agrarian Law refers to Pancasila and the 1945 Constitution of the Republic of Indonesia.

The formation of Law Number 5 of 1960 concerning the Basic Agrarian Law is in line with Article 33 paragraphs (2) and (3); in paragraph (2), it is stated that "The branches of production which are important for the State and which affect the livelihood of the people are controlled by the State." Then in paragraph (3), it is stated, "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." The content of meaning in the article has two primary outlines, namely first: the state controls the land, water, and natural resources contained therein, and second: the earth, water, and natural resources contained therein are used for the greatest prosperity of the people.

The article mentioned above is the parent of the formation of the Basic Agrarian Law. The use of the word agrarian itself refers to three perspectives. Boedi Harsono distinguishes the notion of agrarian in three perspectives: the meaning of agrarian in a general sense, Government Administration, and the notion of agrarian-based on the Basic Agrarian Law. There are several opinions regarding the meaning of agrarian law. Subekti and Tjitro Subono, agrarian law is the whole of the provisions that are the civil law, state administration, state administration, which regulate the relationship between people and the earth, water, and space in all areas of the country, and also regulate the authority that originates from these relations.

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The state is the highest authority. With its authority, the state can grant land rights to a person or legal entity according to their needs and designations, for example, building use rights, usufructuary rights, property rights, usufructuary rights, and others. The 1945 Constitution states that the state does not have to act as the owner, but the state only acts as the ruler to lead and regulate national wealth for the prosperity of the Indonesian people. So the power given to the state is limited to regulating elections and determining their uses so that all land in all areas of the Indonesian state can be used for the greatest possible prosperity of its people.

In the land, rights are known rights, including property rights, building rights, Business rights, usage rights, and others. In addition to property rights, popular land rights are building rights. As the name implies, hak guna bangunan gives the right to own a building on land that is not his, given a maximum period of 30 years and can be extended for 20 years and, after being extended, can be renewed for 30 years. In Government Regulation No. 40 of 1996 on the right to use, right to use building, and suitable to use land, it is stipulated that the “right to use building land can be obtained from state land, right to manage land, and right to own land.” In other words, granting building rights over management rights is possible. The granting of building rights over management rights is also strengthened by the regulation of the Minister of Agrarian Affairs No. 9 of 1999 on the procedure for granting and revoking state land rights and management rights if the requested land is management rights land, there must first be a designation in the form of a Land Use Agreement from the Land Management rights holder.

With the issuance of Government Regulation Number 46 of 2007 concerning the Free Trade Zone and Free Harbor of Batam, the inconsistency of existing laws and regulations regarding authority regarding land in Batam City is becoming more apparent. The inconsistency affects the status of land in Batam City. On the one hand, it is the authority of the city government to utilize all the assets in its territory. However, this clashes with the authority possessed by the Batam City Administration Agency. This has resulted in the City of Batam being an area with a unique land ownership status. The status of the land is even more unique with the Authority's Annual Compulsory Money, from now on referred to as the Authority's Annual Compulsory Money. The Authority's Annual Compulsory Money is land rent that land allocation applicants must pay to the Batam Authority, now called the Batam Concession Agency.

The authority's annual obligation money will then be used to develop infrastructure and public facilities, thus maximizing the implementation of development and ensuring business activities in the economic sector, including trade, maritime, industry, transportation, banking, tourism, and other fields. When viewed from the allocation of mandatory annual money, the authority can be said that the Batam City Enterprise Board has taken over the function of the Government of Batam City. The existence of the authority's annual mandatory money as rent on the status of land in Batam City further strengthens the position of the Batam Koat Enterprise Agency regarding land. This is undoubtedly very contradictory when associated with the theory of Justice promoted by Aristotle. This conflict resulted in his unfulfilled sense of Justice. The lease

Status of the land resulted in the land can be requested at any time by the Board of Batam City administration by not providing an extension of the right to use the building.

In terms of the rice line, there is a horizontal separation between the land and all objects above it. By the rules regarding building use rights, if the extension of the building use rights is not approved, then automatically, the existing building on the land must be removed by returning it to its original state, in other words, emptied or demolished. This has resulted in a sense of justice that is no longer fulfilled for justice seekers. Aristotle's opinion is that in law, justice should apply both distributive justices by giving everyone their rights and corrective justice, namely a concept of justice that seeks to correct the mistakes of distributive justice. Justice as part of social values has a broad meaning; even at one point, it can conflict with the law as one of the social value systems. A crime committed is a mistake. However, if this is not greed, it cannot be called causing injustice.

Conversely, an action that is not a crime can lead to injustice. In this sense, justice consists of two elements, namely fairness and accordance with the law, each of which is different. Unfair is against the law, but not all unlawful acts are unfair. In general, justice is closely related to compliance with the law.

Justice is equality among members of society in action together. Equality is a point that lies between "more" and "less" (intermediate). So justice is a midpoint or a relative equation (arithmetical justice). The basis of equality between members of society depends on the system that lives in that society. In a democratic system, the basis of equality to obtain a midpoint is human freedom which is equal since birth. In an oligarchic system, the basic equation is the level of welfare or honor at birth. In the aristocratic system, the basic equation is a privilege (excellent). These different bases make justice more of the meaning of equality as a proportion. This is a particular species of justice, namely intermediate and proportion.

Another special meaning of justice is rectification. Improvement arises because of the relationship between people and people who are done voluntarily. This relationship is justice if each gets a share up to the middle point (intermediate) or an equation based on reciprocity. So justice is equality, then injustice is inequality. Injustice occurs when one person gains more than others in a relationship made equal.

To equalize this, the judge or mediator equates it by taking some of the excesses and giving it to the less so that it reaches the middle point. The judge's action was carried out as a punishment.

This is different if the relationship is established, not on the voluntary basis of each party. In relationships that are not based on involuntary corrective justice applies, which determines the midpoint as a proportion of those who gain and those who lose. Corrective action is not carried out solely by taking the benefits obtained by one party to be given to another party in the sense of retaliation. Someone who is injured is not resolved by allowing the injured person to injure their back. Reciprocity in this context is carried out by exchanging specific values so that they reach a level of proportion. It is for this exchange that money is used. In this case, justice is the midpoint between acting unfairly and being mistreated.

Justice and injustice are always done voluntarily. Volunteering includes attitudes and actions. When people commit acts involuntarily, those actions cannot be categorized as unfair or just, except in several unique ways. To carry out actions that can be considered fair, there must be room for choice as a place of consideration. So about humans, there are several aspects to assess these actions: intentions, actions, tools, and the result. When an injury goes against rational expectations, it is a misadventure; when it does not go against rational expectations but does not lead to a crime, it is a mistake.

When acting with knowledge but without consideration is an act of injustice, and one who acts by choice is an unjust and evil person. Doing something unjustly is not the same as unjustly doing something. It is impossible to be mistreated if others have not done something unfair. Someone may be willing to suffer because of injustice, but no one expects to be mistreated.

Thus, it has a fairly broad meaning, partly a justice determined by nature and partly a result of human decisions (legal justice). According to Islam, marriage is of two types: permanent and temporary (MUT'haf). The Justice that man determines is what is called value.

As a result of this inequality, there is a class difference between universal justice and legal justice that allows the justification of legal justice. It may be that all laws are universal, but at any given time, it is impossible to make a universal statement that must be true. It is essential to speak universally, but it is only sometimes possible to do something right because the law sometimes is inevitable errors. When a law contains a universal thing, a case arises and is not listed in the law. That is why equality and natural justice correct those errors.

The application of the principle of justice can no longer be realized with the issuance of Regulation of the Head of the Batam City Concession Agency Number 27 of 2017 concerning the Implementation of Land Allocation in the Free Trade Area and Batam Port. In the regulation



above, land allocation can only be in building use rights, apartment ownership rights, or usufructuary rights. As previously discussed, not being granted land status in the form of property rights directly injures the people's interests. The existence of residents' residential houses will decrease because if the building use rights are not approved for extension, it can result in people being stranded without having a place to take shelter in the form of a house. This has also resulted in an increasing illegal houses in Batam City.

The perceived injustice regarding the allocation of land, which is only in the form of building use rights, is not in line with the concept of a welfare state. The main feature of the welfare state concept is the emergence of the government's obligation to realize general welfare for its citizens. In realizing the general welfare of its citizens, the government is actively involved in its people's economic and social life.

The legal arrangements regarding building use rights over land management rights in Batam City are indeed justified by laws and regulations as outlined in Article 21 of Government Regulation Number 40 of 1996 concerning business use rights, building use rights, and land use rights, land that can be granted with rights use of buildings are state land, land with management rights, land with ownership rights. However, these arrangements are limited to statutory regulations in the form of ministerial regulations not contained in the Basic Agrarian Law. Arrangements regarding Building Use Rights over Land Management Rights in Batam City have resulted in overlapping authorities in Batam City. The author feels that the reshuffle regarding this authority has become urgent. The urgency of forming new regulations that do not result in overlapping authorities is needed so that the public is no longer confused about licensing issues while facilitating bureaucratic affairs.

The second factor that is in the spotlight is the Law Enforcement factor. As with other members of society, law enforcers have several positions and roles at once. Thus it is not impossible that conflicts arise between the various positions and roles. Law enforcers in supervising the application of building use rights are urgently needed. The synergy between BP Batam and the Batam City Government and the Land Office will make monitoring the status of land in Batam City easier.

The third factor that is in the spotlight is the community factor. Based on field observations, many perceptions in the community relate to land issues in Batam City. The emergence of this perception is motivated by people's ignorance of the law.

Only some activities or businesses that aim to make members of the public comply with the law result in such compliance. The activity or business results in an attitude contrary to its purpose. If obedience to the law is carried out only by presenting negative sanctions as punishment if the law is violated, then the community members may only obey when officers are present.

## **CONCLUSION**

In terms of land rights, there are rights, including property rights, building use rights, usufructuary rights, and others. In addition to land rights, the most popular are building use rights. As the name implies, the right to use a building gives the right to own a building on land that does not belong to it, given a maximum period of 30 years and can be extended for 20 years, and after being extended, it can also be renewed for 30 years. Article 21 of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights stipulates that "Land of building use rights can be obtained from state land, management rights land, and private property rights." With the issuance of Government Regulation Number 46 of 2007 concerning the Free Trade Zone and Free Harbor of Batam, the inconsistency of existing laws and regulations regarding authority regarding land in Batam City is becoming more apparent. The inconsistency affects the status of land in Batam City.

On the one hand, it is the authority of the city government to utilize all the assets in its territory. However, this clashes with the authority possessed by the Batam City Administration Agency. This has resulted in the City of Batam being an area with a unique land ownership status. The status of the land is even more unique with the Authority's Annual Compulsory Money, from now on referred to as the Authority's Annual Compulsory Money. The Authority's Annual Compulsory Money is land rent that land allocation applicants must pay to the Batam Authority, now called the Batam Concession Agency.

Law enforcement does not merely mean the implementation of legislation, even though, in Indonesia, the trend is that the notion of law enforcement is so popular. In reality, law enforcement should be interpreted as the implementation of legislation to impact the effectiveness of the law. So law enforcement is seen from the implementation of legislation and how the law works effectively in society. Several factors result in the inapplicability of building use rights arrangements above management rights, including legal, law enforcement officials, and community factors.

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