

## **Position Right Management (PRM) After Applicability Constitution Number 11 of 2020 about Create Work**

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### **Abstract**

*Right Management is not set by the firm in Constitution Number 5 of 1960. About Basic Basic Rules Agrarian, will but term management could study based on explanation general number II number 2 UUPA. At first, Settings about Right Management could study as set in Regulation Government Number 8 of 1953 About Mastery of State Lands, so that could be declared as the beginning start thought and embodiment of the draft from Right Management. In progress Right Management set as meant in Ministerial Regulation Agaria Number 9 of 1965 About Implementation Conversion Right Mastery on State Land and Wisdom and Further is embryo from birth Right Management. With arranged Right Management in Constitution Number 11 of 2020 About Create work, is grand design and harmonization law Right Management in law agrarian national, as well as give guarantee certainty law-related position Right Management as right rule over the country land, as meant in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 2 paragraph (1) of the Law Number 5 of 1960 About Basic Basic Rules Agrarian, isn't it including right on land as meant in Article 16 paragraph (1) of the Law Number 5 of 1960 About Basic Basic Rules agrarian.*

**Keywords:** *Right Management (HPL); Rights Control the State over Land; Law Number 11 of 2020 About Create Work following with regulation the executor.*

### **1. INTRODUCTION**

Country Indonesia is a country that adheres to the Continental European legal system (civil law system), which means sourced legislation, customs, and jurisprudence and placing the constitution as the highest hierarchy in the legislation. Thus the state of Indonesia is a state of the law; the expected goal is when the law is used as the basis for regulating the life of the nation and state. This can be studied based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (next called "UUD 45), which states that the State of Indonesia is a country based on a law which is certain things (justice, provisions, and stipulations).

The law that contains rules that are general Becomes guidelines for every the people in behave; acts behave in relationship with every individual or society in general. Constitution the Becomes base or restrictions that have obligations, rights, and character burden or forcing so that expected implementation of the Constitution give certainty law. [1]

Agricultural Law in Indonesia is regulated in the Act - Law Number 5 of 1960 [2]. About Basic Basic Rules Agrarian (next called UUPA) is an umbrella law in Indonesia, but the regulation regarding Management is not specifically regulated or declared by written in

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UUPA. The term management is already known in the LoGA, namely in the general explanation number II number 2 of the LoGA it is stated that:

The state may grant such land to a person or legal entity with a right according to its provisions and needs, such as property rights, property rights, building rights, use rights, or give it in management to a governing body (Department, Office or Autonomous District) to be used for the implementation of their respective duties. [3]

Thus, it can be stated that the regulation regarding Management is not explicitly regulated in the LoGA, but is based on a government policy that was originally based on government regulations as set in Government Regulation Number 8 of 1953 concerning Control of State Lands can be stated as the beginning of thought and realization about the concept of Management Rights. In progress Settings Right Management set as meant in Regulation of the Minister of Agrarian Number 9 of 1965 concerning the Implementation of the Conversion of Tenure Rights over State Land and Wisdom and in the future is the embryo of the birth of Rights Management. Right Management is a type of right mastery on land born no based on law but based on Regulation of the Minister of Agrarian Affairs Number 9 of 1965 About Implementation Conversion Right Mastery on State Land and Wisdom and Further.

Position of Rights Management, which is not explicitly regulated in the LoGA, but which was originally born and arranged in the Regulation of the Minister of Agrarian Affairs Number 9 of 1965 About Implementation Conversion Right Mastery on State Land and Wisdom and Further can lead to various interpretations and problems law regarding the understanding of rights Management in the future.

This is also contrary to national land law, as a result birth Right Management based on Ministerial Regulation with notice Constitution Number 15 of 2019 About Changes to the Law Number 12 of 2011 About Formation Regulation legislation , so it cannot be used as a basis for interpretation in statutory regulations. A number of example real interpretations related Right Management in practice law agrarian national that is not set in the UUPA, among others, namely:

1. Is Right Management is one right on land as meant in Article 16 paragraph (1) UUPA?
2. How guarantee certainty law related giving/extension/giving right on land on Right Management following with determination rates/fees grant/extension right?
3. How position Ownership above Right Management?

Some example interpretations on Right position Management get certainty law since set in Constitution Number 11 of 2020 About Create Work (for next called Omnibus Law) below with regulation the executor. Presence Omnibus Law is a draft of realizing harmonization law on regulation legislation in law positive in Indonesia. Harmonization law is something comprehensive assessment of design regulation legislation with the objective of studying design regulation legislation in various aspects and has reflected harmony or suitability with regulation legislation national (law positive in Indonesia). Others include a relationship with law and no living writing in society.

Harmonization regulation legislation could be interpreted as a process of alignment or harmonization regulation legislation that wants to or is currently arranged so that the regulations of the resulting legislation are by principles, laws, and regulations of good legislation [4]. With this position Right Management in agrarian has gotten attention from the Government of Indonesia, so that set in something law.

## 2. METHODS

The study is the main pillar in the development knowledge. Study own objective for disclosing truth by systematic, methodological, and consistent in Thing this including study law. Knowledge from *sui generis*, which means knowledge law is also a knowledge certain, knowledge law own distinctive character, normative and natural. Method study studies law should be done with use method separately. Methods and procedures of natural and social research by nature no could be applied in study field studies law. A study law is a process for finding rule law, principles law, as well as doctrines law to use answer issue the law at hand. [5]

Method study studies law is with us approach law normative, with use approach juridical normative, including reviews and various analysis Theory law and issues law in connection with current problem analyzed. Study this held for solving problems that arise, and the results that will be obtained from the study could be used for solving various problems in the field of law. Through method study, a rules applicable laws from various aspect as aspect theory, concept, principle law, philosophy, comparison, structure/composition, consistency, explanation general and explanation of each article, formalities, and powers tie something Constitution, as well as the language used, is language law. These laws and regulations are used as the basic framework in this dissertation research which is linked to other supporting materials.

The approach used in the study covers the approach of regulation legislation (statute approach), approach conceptual (conceptual approach), approach case (case approach), approach historical (historical approach), approach sociology, and approach philosophy (philosophical approach).

Approach legislation (state approach) done to do analysis of relevant laws and regulations with issue current law researched. Approach legislation will give an opportunity to the researcher to learn determination and suitability among one law with other laws linked for explanation as well as researching various rules and/ or principles of law.

Approach conceptual (conceptual approach) means starting from the development of legislation and doctrines in the science of law carried out by starting approach with opinions and doctrines in the study of law. Opinions and doctrines will find ideas that generate an understanding of law, concept laws, and principles related to law with issues found law in the study.

The case approach in normative legal research aims to study legal norms or rules in legal practice. This is done in order to know the real conditions or conditions that occur at this time in order to support the expected goals in this paper.

Approach Historical (historical approach) in normative legal research aims to understand changes and developments in the philosophy of the rule of law in depth, including examining the background of the legal issues faced.

Approach Sociological in normative legal research aims to understand the law in relation to morals and the internal logic of law.

Approach Philosophy (philosophical approach) in normative legal research aims to understand the law in thorough, fundamental, profound, and speculative. In Thing, this is also associated with the implication of social effect from the application something regulation legislation to the public or group public about the history, philosophy, science, language, and the economy as well as the implication from social and political to enforcement regulations.

Source study originated from ingredients primary and material law secondary, that is, with learning ingredients primary, secondary and tertiary law. Collection ingredients law is done with method studies literature that is collected with to do study ingredients

bibliography and more ingredients analyzed with approach theory law. After learning method study by being careful, the researcher:

1. In detail, the ingredients for a primary that is related to regulation relevant legislation with the National Agrarian Law, in a particular position and existence Right Management after taking effect Constitution Number 11 of 2020 About Create work.
2. Research opinion of experts about position above Right Management about one right above land according to UUPA or embodiment as right dominate the upper country land.

Researching passion and purpose update or strengthening Settings Right Management in regulation legislation and practice law agrarian national.

### 3. RESULTS AND DISCUSSION

Strengthening and Understanding Right Management in National Agrarian Law after Applicability Constitution Number 11 of 2020 About Create work

Right Management arranged based on philosophy the formation of the UUPA based on Article 33 paragraph (3) of the 1945 Constitution and the principles of the basic BAL developed and strengthened in tune with principles Update agrarian in accordance with TAP MPR RI No. IX/MPR/2001 regarding Update Agrarian and Management Source Power nature.

In Constitution Number 11 of 2020 About Create Work, Rights Management set in Paragraph 2 regarding strengthening Right Management Article 136 to with 142, so that could be declared as an answer on certainty law Right Management in law agrarian national. Besides, it can also be declared as a grand design in skeleton Settings Right Management in law agrarian national.

Provision more carry on about regulation executor, as shape Settings by regulation legislation which special arrange Right Management could be studied based on Regulation Government Number 18 of 2021 About Right Management, Land Rights, Unit House Land Arrangement and Registration, junction Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 16 of 2021 concerning Change Third, on the Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provision Implementation Regulation Government Number 24 of 1997 About Land Registration junction Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 18 of 2021 concerning Procedures for Stipulation Right Management and Rights to Land. The rules could be analyzed about understanding, position, and arrangement about Right Management among others, namely:

1. The definition of Right Management is interpreted as the embodiment of the right to take control of the sovereign state implementation part bestowed to the Right holder Management as meant in Article 33 paragraph (3) of the 45 Constitution, so that there are elements in exploitation and utilization earth, water and wealth Indonesian nature, namely controlled by a regulated state in constitutional and control the placed in a framework for well-being people. When linked with UUPA, then by firm Right Management is an embodiment in Article 2 paragraph (1) of the LoGA, because that Right Management no there is the period the time can interpret that throughout the Unitary State Republic of Indonesia still sovereign, then Right Management permanent apply. The objective of right state control, namely, put the state position for organizing, managing, and utilizing wealth owned for the interest of the people with a strong state prerequisite with neutral state free from other interests except the interest of welfare people. Mastery land, as meant in Article 2 of the LoGA by the state in context, is mastery whose authority causes not quite enough answer that is for welfare and interests people.

2. A subject holder who can be given Right Management by the firm first time set in Article 67 Regulation of the Minister of State for Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation State Land Rights and Rights Management, namely agency Government including Local Government, State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), Limited Liability Companies PT Persero, Authority Entities, Legal Entities Government other designated government, as well as legal entities as referred to as those who can give Right Management along in accordance with Duty principal and function related with management land.

After promulgation of Omnibus Law and regulations executor, subject holder Right Management given and determined, namely:

- a. Originated from state land, granted to agency Central Government, Regional Government, State-Owned Enterprises/Regional-Owned Enterprises, State-Owned Legal Entities/Regional-Owned Legal Entities, Land Bank Entities, or Legal Entities appointed by the Central Government.
- b. Originated from land custom, established to public law custom.

Based on Thing the above, it can study that:

- a. Subject holder Right Management no given to legal entities and profit-oriented business entities or Indonesian Citizens, p this is not in line with the purpose and authority given it Right Management;
- b. Subject holder Right Management develops follow needs and support activity from subject holder Right Management itself, such as the Land Bank Agency, Legal Entities appointed by the Central Government, as well as position and existence of public law custom.

Authority from holder Right Management before and after take effect Omnibus Law and regulations executor, can study that:

- a. Plan allotment and use the land in question ;
- b. Use land for the needs implementation of his business ;
- c. Deliver parts than land to party third according to requirements determined by the company holder's right , which includes aspects allotment, use , term time, and finances, with the provision that gift right on land to party the third concerned carried out by authorized officials, in accordance with the applicable regulation legislation.

After the promulgation of Omnibus Law and regulations executor, authority from subject holder Right Management more reinforced and expanded with notice spatial plans, as well as work same with party third in skeleton utilization land on Right Management, among others are:

- a. Compile plan allotment, use, and utilization of land in accordance with the spatial plan and is plan parent compiled by the Right holder Management ;
- b. Use and utilize whole or part land Right Management for used alone or cooperated with another party; and
- c. Determine mandatory tariffs and/ or money annually from the other party that is appropriate with the agreement.

Authority from subject holder Right Management the is embodiment Article 2 paragraph (2) of the LoGA as the base from right mastery land by the state as declared in Article 2 paragraph (2) of the UUPA above, is emphasized in Article 2 paragraph (3) of the LoGA, will but the powers and powers that the state has acquired no direct make the country stand sturdy alone and act outside authority and power that. Authority granted to subject Right holder Management is an embodiment as meant in provision Article 2 paragraph

(2) of Law Number 5 of 1960 About Basic Basic Rules agrarian in strive or use Right Management by the holder. [6]

Related to object Right Management so also related to subject holder Right Acquired Management based on determination government/conversion / disposal , therefore that before taking effect Omnibus Law and regulations executor, Right object Management at first pure from state land and in practice law agrarian national known a number of object Right Management, including :

- a. Right Port Management (example subject holder Right Management is Indonesian Port (PELINDO));
- b. Right Management Authority (example subject holder Right Management is the Authority Batam or also known as Batam Area Concession Agency (BP Batam ));
- c. Right Management Housing and Settlement (example subject holder Right Management is National Housing Development Public Company (PERUMNAS)) ;
- d. Right, Management Local Government ( example subject holder Right Management is Local Government Special The capital city (DKI) Jakarta, Management Industry Right/ Agriculture / Tourism / Railways ( example subject holder Right Management is a limited liability company PT Pelabuhan Indonesia (Persero), a limited liability company PT Kereta Api Indonesia (Persero), Limited Liability Company PT Angkasa Pura (Persero), Pasar Surya Surabaya Regional Company, DKI Jakarta Sarana Jaya Regional Company, Limited Liability Company PT Jakarta Industrial Estate Pulogadung (Persero), PT Surabaya Industrial Estate Rungkut (SIER), Limited Liability Company PT Pasuruan Industrial Estate Rembang (PIER).
- e. Right Management Transmigration ;
- f. Right Management agency Government. (Sumardjono 2007)

After the promulgation of Omnibus Law and regulations implementation, rights Management can also be based on / originating on relinquishment of layout land, state forest area, assets of state/regional owned enterprises, and land reclamation.

Besides for utilized and/or used by the subject holder Right Management, Rights Management can also cooperate with a party other (party third), through a shape cooperation deep utilization practice known with several mechanisms as agreement utilization ground, wake up To use handover ( build, operate and transfer ), etc. As for the things that were promised in skeleton utilization land that, broadly speaking, load:

- a. Identity of the parties;
- b. location, boundary , and area land ;
- c. Type use, use land, and/ or the building that will be established;
- d. Provision about type rights, term time, extension, renewal, transfer, assignment, change, and/ or delete/cancel the rights granted above land Right Management, and provisions ownership land and buildings after ending right on land ;
- e. Quantity mandatory tariffs and/ or money annual and ordinance the payment; and
- f. Terms and conditions that bind the parties, implementation development, fine on default including clause sanctions, and cancellation/termination agreement.

In Thing utilization with party third, then will give birth right on land, that is Cultivation Rights (HGU), Building rights (HGB) and Use Rights, and in Thing right on the land above Right Management has ended, the land return Becomes Right Management. Just in Thing gift right owned by need get attention special, Thing this caused that

- a. UU Number 11 of 2020 About Create Work , Article 140 paragraphs (1) and (2) are stated that

(1) In the Thing part, field land Right Management has given with right belong to, share field land Right Management the delete with itself.

(2) Ownership, as referred to in paragraph (1) only given for necessity House general and needs transmigration. (Indonesia and Indonesia, 2020)

b. Regulation Government Number 18 of 2021 About Right Management, Land Rights, Unit House Arrangement and Registration of Land, Article 14 paragraph (1) letter e below with the explanation declared that

(1) Right Management deleted because given right belongs ; [7]

Explanation Article 14 paragraph (1) Regulation Government Number 18 of 2021 About Right Management, Land Rights, Unit House Compilation and Registration of Land declared that

In Right Management delete when above Right Management given with right belong to , among other things, necessity House general, necessity transmigration, reform agrarian, redistribution land, or government programs / strategic programs national other. [7]

Whereas in provision Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 18 of 2021 concerning Procedures for Stipulation Right Management and Rights to Land ATR/KBPN Number 18 of 2021 concerning Procedures for Stipulation Right Management and Land Rights Article 46 paragraph (6) states that in the above Right Management given Ownership then Right Management released by the holder Right Management. [7] Thus, based on the provisions governing gift Property Rights, disharmony doesn't cause interpretation of different laws in the future.

In skeleton utilization, Right Management with party third, then holder Right Management own authority for determining tariff and mandatory money in Thing this not yet set by firm in Omnibus Law. In practice mandatory tariffs and/ or money, often become a problem/dispute/lawsuit law among holder Right Management with party third, so that worried becomes a paradigm that holder Right Management Becomes landlord.

After the promulgation Omnibus Law and regulations implementation, arranged about the determination of mandatory tariffs and/ or money regulated year in agreement utilization land as well as customized with the objective from utilization, for interest general interest social, interests development and/ or interest economy and not can contain elements that harm the parties with also consider the characteristics allotment and benefit certain by natural. Besides that, regarding formula mandatory tariffs and/ or money yearly charged by the holder Right Management determined by the Minister

Connection law among land reclamation with Right Management is in Thing permission reclamation given to agency Central Government, BUMN/BUMD, Land Bank Agency, or legal entity appointed by the Central Government, land reclamation the given Right Management. If, in the future, day third party wants to work the same with the subject holder Right Management, give birth right on land on land reclamation in principle same, adhere to that make agreement utilization land more first.

Giving Right Management of Above Grounds and Basements, pg this set in Article 74 to with Article 82 Regulation Government Number 18 of 2021 About Right Management, Land Rights, Unit House Compilation and Registration of Land which is developed in draft Right Management that yourself and terms about the subject, term time, loading, switching and releasing, and cancellation Right Management, rights To use buildings and rights wear on the Upper Ground or Dungeon applies mutated and methodically Terms about the subject, term time, loading, switching and releasing, and cancellation Right Management, rights To use buildings and rights use over the land whose implementation will set in Ministerial Regulation.

Giving Right Management in Small Islands, Water Areas Thing this set in Article 194 to 198 Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 18 of 2021 concerning Procedures for Stipulation Right Management and Rights to Land.

Every receiver Right Management should fulfill the obligation Pay Acquisition Fee Land and Building Rights (BPHTB) and Non-State Revenue Tax (PNBP) to the State in accordance with provision regulation legislation, as meant in Article 200 paragraph (1) Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 18 of 2021 concerning Procedures for Stipulation Right Management and Rights to Land. Obligation then connected with provision Article 3 paragraph (1) letter b of Law Number 20 of 2000 About Changes to the Law Number 21 of 1998 concerning Acquisition Fees Land and Building Rights, declared that

(1) Object non - tax subject to acquisition fee Land and Building Rights is object tax earned:

b. Country for maintenance government and/ or for implementation development to use interest general.

Also related to Article 44 paragraph (4) (will but written paragraph (6)) letters a and b of the Law Number 1 of 2022 About Connection Finance between Central Government and Local Government, stated that

(4) the excluded from BPHTB object is Acquisition Land Rights and/ or Building:

a. for office Government , Regional Government , state administrators and other state institutions that are recorded as goods state -owned or goods belonging to the Region;

b. by country for maintenance government and/ or for implementation development To use interest general.

In Thing this need get attention that subject holder Right Management when given for first time worn on BPHTB and PNBP considering Right Management is right control a country that has not quite enough responsibilities and obligations by public no private.

Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Stipulation Right Land Management and Rights

Subject holder Right Management given a certificate as sign Proof right as meant in Article 32 paragraph (1) Regulation Government Number 24 of 1997 About Land Registration, only just in accordance with understanding, purpose and passion gift Right Management, should be paradigm certificate for subject holder Right Management the is letter sign Proof on right rule over the country land.

#### 4. CONCLUSION

With arranged Right Management in Omnibus Law , get analyzed and withdrawn conclusion that Omnibus Law is a grand design and harmonization regulation legislation in skeleton regulation of Management Rights in national agrarian law, so that give certainty law in law agrarian national among others , namely Right Management no is one right on land as meant in Article 16 paragraph (1) of the LoGA, but as embodiment right rule the country as meant in Article 33 of the 1945 Constitution and Article 2 ( paragraph ) 1 of the BAL. Subject , Authority, and Object from Right Management is embodiment in Article 2 paragraphs (2) and (3) of the LoGA, so that subject holder Right Management no given to individual Indonesian citizens and legal entity or profit-oriented business entity (profit-oriented) and position on recommendation from holder Right

Management Become important as shape approval and supervision from subject holder Right Management. Could be given right on land (Cultivation Rights, Building Use Rights, and Use Rights), if cooperated with party third based on agreement utilization ground and above agreement utilization land Becomes base for the parties who contain deals including settings \_ on extension/renewal right on land on Right Management following with determination rates/fees grant / extension rights and other matters agreed upon by the parties, only just need studied repeat about things as following : settings \_ on extension / renewal right on land on Right Management following with determination rates / fees grant / extension rights and other matters agreed upon by the parties , only just need studied repeat about things as following If given Ownership , then is as well as immediately Right Management the direct delete? The thing this need get attention because, in practice position related with National Housing Development Public Company (Perumnas) as holder of Right Management , thing this related to Article 140 paragraphs (1) and (2) of Law Number 11 of 2020 concerning Job Creation and Elucidation of Article 14 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration in range gift Ownership rights for public housing purposes , transmigration purposes, agrarian reform, land redistribution, or government programs/other national strategic programs. In skeleton embodiment authority as well as supervision use and designation in skeleton work same Among holder Right Management with party third who gave birth right on land on Right Management, then should be besides transition right because sell buy and related loading right dependents, required a recommendation for actions law in the form of a grant , exchange, inbred , grant, deed law transfer right other, transition right because inheritance, transfer right because merging, smelting or separation, right transition responsibility, distribution right together, change name consequence holder replacement rights name, as well as splitting, merging. Position Right Management could be optimized in skeleton support acceleration development national oriented in realizing well-being for society, thing this because that Right Management no there is period time, so during the First State. In Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1998 concerning Fees for Acquisition of Land and Building Rights and Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, position Right Management is categorized as land rights whose acquisition rights are subject to BPHTB. This thing leaves behind understanding, purpose, and passion Settings Right Management, that Right Management is the embodiment of right rule the country as meant in Article 33 of the 1945 Constitution.

#### ACKNOWLEDGEMENT

We would like to thank the Universitas Jayabaya who always encourages and guides the author in completing this research.

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