

Study Of Legal Regulation for The Utilization of Ownership Rights Above Land (Air Space)

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Abstract : Land tenure and utilization are always influenced by human needs, time and technology. Population growth is increasing, while the limited availability of land is a problem on the one hand where land is used not only on the earth's surface, but on the surface of the space above the ground and underground space. Meanwhile, on the other hand, there are no laws and regulations that accommodate human needs and interests that regulate the use and use of above-ground and underground spaces. The type of research used in this paper is normative juridical research. Normative juridical research is a legal research method that is carried out by examining library materials or mere secondary materials, namely legal research on the Principles of Utilization of Land Ownership Rights. Normatively, the Basic Agrarian Law as a unification of land law, has provided for the control and utilization of space above the land and the space below the ground as stated in Article 4 of the UUPA and Article 146 of the Job Creation Law. However, its implementation is constrained because there are no regulations that regulate the technicalities and how to use the above ground and basement spaces by providing legal certainty. The use of the same object can be owned by two legal subjects with different rights status, and the right of ownership of the space above the ground and the space below the ground by one legal subject is the same as the status of the existing rights attached to the legal subject.

Keywords : *Principles, Utilization, Ownership Rights*

1. INTRODUCTION

Indonesia is one of the countries that has a very wide area in the world, the total area of the country of Indonesia is 5,193,250 km² which includes land and sea. This places Indonesia as the 7th largest country in the world after 6 other countries, namely Russia, Canada, the United States, China, Brazil and Australia. When compared with the size of countries in Asia, Indonesia is ranked 2nd. Meanwhile, when compared to countries in Southeast Asia, Indonesia is the largest country in Southeast Asia. Apart from being one of the largest countries in the world, Indonesia is also the largest archipelagic country in the world. This is because Indonesia is an archipelagic country, so the territory of Indonesia consists of land and sea. One-third of Indonesia's area is land and two-thirds of Indonesia's area is ocean. Indonesia's land area is 1,919,440 km² which places Indonesia as the 15th largest country in the world (Anonymous, 2020). According to data from the Ministry of Home Affairs of the Republic of Indonesia, through the Directorate General of Dukcapil, Indonesia's population in the second semester of 2021 was 273,879,750 people (Anonymous, 2021).

As one of the largest countries in the world, national development is a serious problem for the country, especially for Indonesia with various backgrounds that hinder national development. One of the fields that plays an important role in the national development process is the land sector. To achieve national development goals, it is necessary to have the presence and power of the state to regulate and provide security and comfort guarantees to its people.

In the land sector, the right to control the state is regulated in the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) which states that , "*Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people*". The realization of this article is stated in Article 2 paragraph (2) of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), namely "*The State is authorized to regulate and administer the designation, use, supply and maintenance of earth, water and space*".

Furthermore, Article 14 of the LoGA explains that in order to achieve what the nation aspires to, the Government shall make a General Plan regarding the supply, designation and use of earth, water and space for the various interests of the people and the state.

Along with the pace of development development that has occurred recently, especially in big cities, which are so rapidly showing that land use is not only limited to the earth's surface, but has also developed by utilizing the space above the ground or also called the space above the air. so it also requires regulation and registration of rights regulated in the national land law system. The regulation of land use (air space) in addition to considering economic aspects related to land limitations and cost savings, also needs to pay attention to aspects of safety, security, aesthetics and the use of space for public and private interests.

The regulation of control, ownership, use and utilization of space on land, abbreviated as RAT, has not been regulated in detail in the land regulations.

In the UUPA Article 4 paragraph (3) states :

"The rights to water and space will be determined by the Government, furthermore, Article 16 paragraph (2) emphasizes that " the rights are the right to use water, the right to maintain and catch fish and the right to use space.

Article 48 (1) of the UUPA states that the right to use space gives the authority to use energy and elements in outer space for efforts to maintain and develop the fertility of the earth, water and natural resources contained therein and other matters. concerned with that, then Article 48 (2) confirms that the right to use space is regulated by a Government Regulation. However, until now the Government Regulation referred to has never existed, including in the general explanation of the LoGA it is not found, only in the explanation of Article 48 stating that the right to use space is held in view of current technical advances and the possibilities in the future.

In the Land Bill, there is an extension of the definition of "land" where in Article 1 Number 2 it is stated that land is the surface of the earth in the form of land or covered with water within certain limits as long as its use and utilization is directly related to the earth's surface including the space above and within the earth's body. This definition is only an extension of the explanation of the earth's surface itself without including other rights in the form of buildings, plants, or space, where according to Article 1 of the LoGA, land is the surface of the earth.

The terms air space and outer space refer to an unknown area with a starting point from the earth and is called "space". Space Law is included in the branch of international law that grows and develops in line with technological developments. In countries that adhere to common law, the term *strata title is known* , which according to the legal system, a person who owns a plot of land rights also has *airspace* rights. For example, in Singapore, if an apartment is built on a plot of land, the land owner can sell airspace lots called *airspace lots* . *Strata title* provides joint ownership rights over a building complex consisting of exclusive rights to space and joint rights to shared space.

Article 53 Paragraph (2) of the Land Bill states that the land in the upper area of the Land is controlled by different rights holders, the space above the Land may be granted a Land Use Right (HGART), and Paragraph (3) explains the authority of the HGART in effect. *mutatis-mutandis* with the authority contained in the HGB. Then Article 36 of the Land Bill states that the HGB is given to construct and own a building on land that is not owned by him, with the intention that buildings on land that do not belong to him are offices, residences or settlements, industry, and hotels.

The concept of space in the Right of Ownership to Flat Units (HMSRS) which consists of individual rights to Flats which can be owned separately, and joint rights to land, objects and shared parts. However, land, objects and these shared parts are an inseparable unit. Article 46 of Law no. 20 of 2011 concerning Flats states that HMSRS is a property right to an individual condominium unit whose ownership is separate from joint rights to joint shares, joint objects, and joint land, the arrangement of parts of land, objects and joint parts using calculations based on the Proportional Comparison Value (NPP).

On the basis of this article, a person holding one HMSRS has two types of rights, collective rights and individual rights. The issuance of a certificate of ownership of condominium units (SHM Sarusun) shows proof of ownership (*de jure*) of the space above the land in the form of a condominium unit. Ownership of HMSRS is also limited to the control and use of its space through shared land, which requires the suitability of the holders of land rights (collective in nature).

The definition of space according to Article 1 Point 1 of the Spatial Planning Law is a container that includes land space, sea space, and air space, including space within the earth as a single territorial unit. Furthermore, Article 1 Number 2 of the Law on Spatial Planning is a form of spatial structure and spatial pattern. The existence of spaces, one of which is above ground space that is structured and makes a pattern. It is the arrangement of structures and patterns that are regulated in the spatial arrangement. Based on Article 5 Paragraph (3) and Article 6 Paragraph (2) of the Spatial Planning Law, spatial planning based on administrative areas consists of spatial planning for national areas, spatial planning for provincial areas and spatial planning for districts/municipalities which are carried out in stages and complementary. Based on Article 6 Paragraph (3) of the Spatial Planning Law, the spatial planning of the national territory includes the jurisdictional territory and the national sovereignty area which includes land space, sea space and air space, including space within the earth as a single unit.

Article 4 Paragraph (2) jo. Article 2 of Law no. 5 of 1960 concerning Agrarian Principles (UUPA) explains that the authority to use the space above it is only necessary for interests that are directly related to the use of the land in question. The rights to land as referred to in paragraph 1 of this article authorize the use of the land in question, as well as the body of the earth and water and the space above it, which is only needed for interests directly related to the use of the land within the limits according to law. this law and other higher laws.

The control and use of land may contain rights, obligations, authorities, and prohibitions for the holder of land rights. There are rights to control and use of land which are private and some are public. Based on the BAL, there are known Indonesian Nation Rights, State Control Rights, Customary Law Community Rights, and individual land rights. Manifestations of State Controlling Rights are known as Use Rights and Management Rights, while individual rights are known as Ownership Rights, Building Use Rights, Business Use Rights, Use Rights, and Lease Rights. In its development, Flat Ownership Units were born, whose arrangements were different from individual rights regulated in the UUPA, where there were arrangements for shared land, shared objects and legal entity arrangements for the Association of condominium owners and residents who manage flats.

The trend of land use in urban areas, especially in areas where the availability of land is increasingly scarce, such as Jakarta, Surabaya, Bandung and Makassar, is increasingly inevitable with various types of use/utilization. In dealing with this problem, BPN-RI has made a quite historic breakthrough by stipulating the Regulation of the Head of BPN-RI No. 3/2006 concerning the Organization and Work Procedures of BPN-RI, which in article 220 establishes a work unit that will handle the above-ground and underground spaces. The main tasks of this work unit include processing and registering land use rights and basement land use rights, as well as providing proof of rights.

Although there has been a Regulation of the Head of the National Land Agency as a way to deal with this problem, until now there has been no concrete policy that has been set regarding the regulation of control, ownership, use and utilization of above-ground and underground space for development purposes. Problems that arise in the activity of using space on land are caused by the provisions of the legislation in the land sector which do not provide protection for holders of land rights. Until now, there has been no regulation regarding the control and use of space above and below the ground, although a Land Bill is currently being prepared which will regulate the two institutions.

The regulation on the existence of buildings in Indonesia from the perspective of the LoGA such as the Senen Multipurpose Bridge, Pondok Indah Bridge, BSD Bridge, Toll Road Building, Crossing Bridge Building, Sarinah Bridge, and other bridge buildings has not been accommodated by the LoGA or its implementing regulations.

It is necessary to regulate the rights to these buildings for legal certainty, because the building itself is considered to have a higher economic value than the land on which the building is based (Musa A. Siregar and Zulkamaein Koto, 2015). The existence of the Right to Use Space on Land (HGRAT) can be categorized as land control over the air space or the space above the land, for example, the Right of Ownership to Flat Units (HMSRS), where the HMSRS has become the legal umbrella under Law Number 20 of 2011 concerning Flats.

The control and use of space on land or space above the air should have a clear legal umbrella, and not only be limited to the formulation of Article 4 of the UUPA, because philosophically Article 33 of the 1945 Constitution obliges the state to regulate ownership or control of land and lead its use. so that the ideals of all national sovereignty are used as much as possible for the prosperity of the people. In connection with this, it is necessary to study the above-ground space or above-air space , and determine the legal arrangements that can be granted and their utilization.

2. RESEARCH METHODS

Type Study

The definition of legal research according to Peter Mahmud Marzuki is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, 2006). Moving on from the definition, the type of this research is *normative juridical research*. Normative juridical research is a legal research method carried out by examining library materials or mere secondary materials (Soejono Soekanto and Sri Mamudji, 2007).

Problem Approach

This research is a normative or doctrinal legal research equipped with empirical data, which will examine and analyze the Principles of Utilization of Ownership Rights Above Space Above Air / Space above ground .

The second problem uses normative legal research by using a conceptual approach and Comparative Arrangements to find out the regulation on the utilization of ownership rights over the air space.

Source of Legal Material

The sources of legal materials in this study come from *library research*, where library research uses primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are materials whose contents are binding because they are issued by the government or institutions that have the authority. And secondary legal sources are materials in the form of books and other printed materials, as well as *software*, namely by accessing a number of data via the internet (downloading) various books, scientific journals and research results, as well as tertiary legal materials. support primary legal materials and secondary legal materials (Devi K. G Sondakh, 2009).

Legal Material Collection Techniques

In this study, the techniques of collecting legal materials used are primary legal materials and secondary legal materials. The research materials in the form of primary legal materials and secondary legal materials referred to in this study are :

1. 1945 Constitution of the Republic of Indonesia
2. Law Number 5 of 1960 concerning Basic Agrarian Regulations;
3. Law Number 11 of 2020 concerning Job Creation;
4. Law Number 28 of 2002 concerning Buildings;
5. Law Number 26 of 2007 concerning Spatial Planning
6. Law No. 20 of 2011 concerning Flats
7. Government Regulation Number 16 of 2021 concerning Buildings
8. Government Regulation Number 18 of 2021
9. Regulation of the Head of Bali Province Number. 3/2006 concerning the Organization and Work Procedure of BPN-RI.
10. Minister of Public Works Regulation No. 20/PRT/M/2010 concerning Guidelines for Utilization and Use of Road Sections.
11. DKI Jakarta Regional Regulation No. 3 of 2008 in conjunction with DKI Jakarta Regional Regulation No. 7 of 2013.
12. DKI Jakarta Governor Regulation Number 167 of 2012 concerning Underground Spaces.
13. DKI Jakarta Regional Regulation Number 1 of 2014 concerning Detailed Spatial Planning and Zoning Regulations
14. DKI Governor Regulation No. 18 of 2008 concerning Mastery of Planning/Allocation of Land for the Implementation of Development in the Public Interest
15. Regional Regulation of Bali Province Number 16 of 2009 concerning Spatial Planning of Bali Region.

Secondary legal materials include materials that support primary legal materials such as textbooks, articles in various scientific magazines or research journals in the field of law, papers presented in various forms of meetings such as discussions, seminars, workshops and etc. To support or complete this research, the authors also use a comparison of the above-ground spatial use arrangements with the Netherlands and Singapore related to this research.

Legal Material Analysis Techniques

Analysis of the materials used in the study was carried out in a qualitative and comprehensive analysis (Devi K. G Sondakh, 2009). Qualitative analysis is to describe quality legal materials in the form of regular, coherent, logical, and non-overlapping and effective sentences so as to facilitate the interpretation of legal materials and understanding of the results of the analysis, while comprehensive means that the analysis is carried out in depth and from various aspects according to with the scope of research.

The analysis of legal materials in this study was carried out using descriptive techniques, describing materials by constructing laws and arguments, which were then assessed based on legal reasoning reasons related to the problem.

3. RESULTS AND DISCUSSION

A. Legal Arrangements for Utilization of Ownership Rights on Land (Air Space)

1. Settings in UUPA

There are at least 10 articles in the Basic Agrarian Law which regulates Airspace Rights, using space terminology. These articles are :

In article 1 UUPA:

Paragraph (2) reads: the entire earth, water and space including the natural resources contained therein within the territory of the Republic of Indonesia as a gift from God Almighty is the earth, water and space of the Indonesian nation and constitutes national wealth.

Paragraph (3) the relationship between the Indonesian people and the earth, water and space as referred to in paragraph (2) of this article is an eternal relationship.

Paragraph 6 reads: what is meant by space is the space above the earth and water as referred to in paragraphs (4) and (5) of this article.

In Article 2 of the LoGA:

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

Paragraph (2) : the state's right to control as referred to in paragraph (1) of this article authorizes:

- a. Regulate and administer the designation, use, supply and maintenance of the earth, water and space;
- b. Determine and regulate legal relations between people and the earth, water and space;
- c. Determine and regulate legal relations between people and legal actions concerning earth, water and outer space

In article 4 UUPA:

Paragraph (2) The rights to land as referred to in paragraph (1) of this article authorize the use of the land in question, as well as the body of the earth and water and the space above it, only necessary for interests directly related to the use of the land in limits according to this Law and other higher legal regulations.

Paragraph (3) Apart from land rights as referred to in paragraph (1) of this article, rights to water and space are also determined.

In article 5 UUPA:

The agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with the regulations contained in this law and with other laws and regulations. everything by heeding the elements that rely on religious law.

In article 8 of the LoGA:

On the basis of the state's right to control as referred to in article 2, it is the taking of natural resources contained in the earth, water and outer space.

In article 9 UUPA:

Paragraph (1) only Indonesian citizens can have a full relationship with the earth, water and space, within the limits of the provisions of articles 1 and 2.

In article 11 UUPA:

The relationship between people, including legal entities with the earth, water and space, as well as the authorities that stem from the legal relationship will be regulated, in order to achieve the objectives referred to in article (3) and prevent control over the lives and work of others that exceeds limit.

In article 14 of the LoGA:

Paragraph (1) taking into account the provisions in article 2 paragraph (3), article 9 paragraph (2) and article 10 paragraphs (1) and (2) the Government in the context of Indonesian socialism, draw up a general plan regarding the supply, designation and use of earth, water and space and the natural resources contained therein:

- a. For the needs of the State
- b. For the purposes of worship and other sacred purposes, in accordance with the basis of God Almighty

c. For the purposes of community life centers, social culture and other welfare.

Paragraph (2) based on the general plan referred to in paragraph (1) of this article and taking into account the relevant regulations. Regional governments regulate the supply, designation and use of earth, water and space for their regions, in accordance with the conditions of each region.

In article 16 UUPA :

Paragraph (1) : the rights to land as referred to in Article 4 paragraph (1) are:

- a. Right of ownership
- b. Cultivation Rights
- c. Building rights
- d. Right to use
- e. Rental rights
- f. Right to clear land
- g. The right to collect forest products
- h. Other rights that are not included in these rights will be stipulated by law as well as temporary rights as stated in article 53.

Paragraph (2) : rights to water and space as referred to in Article 4 paragraph (3) are:

- a. Right to use water
- b. Right of maintenance and fishing
- c. Space use rights

In article 48 of the LoGA:

Paragraph (1) The right to use outer space gives the authority to use energy and elements in outer space in order to maintain and develop the fertility of the earth, water and natural resources contained therein and other matters related to it.

Paragraph (2) the right to use space is regulated by a Government Regulation.

In Article 4 Paragraph (2) jo . Article 2 of Law no. 5 of 1960 concerning Agrarian Principles (UUPA) explains that the authority to use the space above it is only necessary for interests that are directly related to the use of the land in question. The rights to land as referred to in paragraph 1 of this article authorize the use of the land in question, as well as the body of the earth and water and the space above it, which is only needed for interests directly related to the use of the land within the limits according to law. this law and other higher laws.

The rights as referred to in article 16 of the LoGA are as follows:

a) Right of ownership

As regulated in Article 20 of the LoGA, it states that property rights are hereditary, strongest and fullest rights that people can have on land. Ownership rights can be transferred or transferred to other parties. It can be said that the distinctive nature of property rights is hereditary, strongest, fullest. Rights that do not have all three characteristics at once are not property rights. Hereditary nature means that property rights do not only last for the life of the person who owns it, but can be continued by the heirs if the owner dies. (Devi K. G Sondakh, 2009)

Strongest shows :

- a. The term of the rights is not limited. So it is different from the right to cultivate or the right to use the building for a certain period of time.
- b. Registered rights and the existence of proof of full rights means :
 1. The right of ownership gives the authority to the owner the widest when compared to other rights.
 2. Ownership rights are the parent of other rights, meaning that a land owner can give land to other parties with rights that are less than property rights.
 3. Ownership rights are not parented to other land rights, because property rights are the most complete rights, while other rights are less complete.
 4. Judging from its designation, property rights are also not limited.

A land owner with property rights is basically free to use his land. Restrictions on land use are related to the social function of land. The use of land must be adapted to the circumstances and nature of its rights, so that it is beneficial for the welfare and happiness of those who have rights as well as for the community and the state.

What is undesirable and not justified is if the land is used solely for personal interests, moreover the right causes harm to the community (explanation of Article 6 of Law Number 5 of 1960). With regard to social functions, it is natural for the land to be properly maintained in order to increase its fertility and prevent its damage (provided in Article 15 of Law Number 5 of 1960). This obligation is not only borne by the holder of the right to the land concerned, but also to every person, legal entity or agency that has a legal relationship with the land.

Property Rights basically have the following characteristics;

- a. Property rights can be used as debt
- b. Can be pawned
- c. Property rights can be transferred to other people
- d. Property rights can be relinquished voluntarily

The provisions of Article 27 of the LoGA stipulates that property rights are nullified if:

- a. The land falls to the State;
 1. Revocation of rights based on the provisions of Article 18 of the LoGA.
 2. Because with voluntary submission by the owner.
 3. Because being abandoned

4. Due to the provisions of Article 21 paragraph (3) and Article 26 paragraph (2)
 - b. The land is destroyed.

Right of ownership is the strongest and most complete right that people can have on land. The granting of this character does not mean that the right is an absolute, unlimited and inviolable right as an eigendom right as formulated in Article 571 of the Civil Code. Such characteristics are contrary to the nature of customary law and the social function of each right. The words "strongest and most complete" have the purpose of distinguishing them from the right to cultivate, the right to build, the right to use and others, namely to show that among the rights to land that can be owned, property rights are the strongest and fullest.

Thus, the strongest definition as formulated in Article 571 of the Civil Code is different from that formulated in Article 20 of the LoGA, because in the LoGA it is stated that all land rights have a social function and this is different from the definition of eigendom rights formulated in Article 571 of the Civil Code.

b) Cultivation Rights

In the provisions of Article 29 of the UUPA, it is stated that the Right to Cultivate is the right to cultivate land which is directly controlled by the State for a certain period of time, for agricultural, fishery and livestock companies. Right to Cultivate is limited to agriculture, fishery, animal husbandry. However, even though the land is owned with a usufructuary right, it is permissible to construct a building on it. Buildings connected with agriculture, fishing, animal husbandry, without requiring other rights. Cultivation Rights has special characteristics, namely:

- a. Cultivation rights are classified as strong land rights, meaning they are not easily erased and easily defended against interference from other parties. Therefore, the right to cultivate is one of the rights that must be registered.
- b. Cultivation rights can be transferred, namely inherited by heirs who have rights.
- c. Right to Cultivate has a limited period of time, at some point it will expire.
- d. Cultivation rights can be used as collateral for debt with encumbrances with mortgage rights.
- e. Cultivation rights can be transferred to other parties, namely sold, exchanged for other objects, granted or given in a will.
- f. Cultivation rights can be released by the owner, until the land becomes State land.
- g. Cultivation rights can only be granted for the purposes of agriculture, fishery, and animal husbandry.

Cultivation Rights is granted for a period of 25 years. At the request of the right holder, this period can be extended for another 25 years. The subject matter of the Right to Cultivate is regulated in Article 30 of the LoGA:

1. The subjects of the Cultivation Rights are:
 - a. Indonesian citizens.
 - b. Legal Entity established under Indonesian law and domiciled in Indonesia.
2. Persons or legal entities that have Cultivation Rights and no longer meet the requirements as referred to in paragraph (1) of this Article are obligated to relinquish or transfer such rights within a period of one year to parties who meet the requirements.

Right to Cultivate occurs because of a government stipulation, while this right can be abolished because;

1. Term expires.
2. Terminated before the term expires because some conditions are not met.
3. Released by the right holder before the term expires.
4. Revoked in the public interest.
5. The land is abandoned.
6. The land is destroyed.
7. Due to the provisions of Article 30 paragraph 2 of the UUPA.

c) Building Rights

Article 35 paragraph (1) of the UUPA states that the Right to Build is the right to construct and own a building on land that is not one's own for a maximum period of 30 years. In contrast to the Cultivation Rights, the designation of the right to use a building is for buildings. Even though it is specifically intended to construct buildings, it does not mean that on the land, the right owner is not allowed to plant anything, raise livestock or have a pond to raise fish, as long as the main purpose of using the land is for building. Like the Cultivation Rights, Building rights is held to meet the needs of modern society. This right is not a right that comes from customary law.

With regard to the subject of Building Use Rights, it has been regulated in the provisions of Article 36 paragraph (1), namely;

- a. Indonesian citizens.
- b. Legal Entity established under Indonesian law and domiciled in Indonesia.

Building Use Rights basically have the following characteristics;

- a. Building rights is a strong right, meaning that it is not easily erased and easily defended against interference from other parties. Therefore, this right is one of the rights that must be registered.
- b. Building rights can be transferred, meaning that it can be inherited by heirs who have rights.
- c. Building rights has a limited period, meaning that it will end at some point.
- d. Building rights can be used as collateral for debt with encumbrances with mortgage rights.
- e. Building Use Rights can be transferred to other parties, namely sold, exchanged for other objects, granted or given in a will.
- f. Building rights can be released by the owner until the land becomes State land.

g. Building Use Rights can only be granted for the purposes of building construction.

Building rights can be granted for a maximum period of 30 years. At the request of the right holder and taking into account the needs and conditions of the building, this period can be extended for a maximum period of 20 years. Building rights occurs because:

- a) Regarding land controlled by the State due to government determination.
- b) Regarding the land owned, because the agreement is in the form of an authentic agreement between the owner of the land concerned and the party who will obtain the right to use the building which intends to give rise to the right.

Building Use Rights are abolished because :

- a. The term is over.
- b. Terminated before the term expires, because some conditions are not met.
- c. Released by the right holder before the term expires.
- d. Revoked in the public interest.
- e. Abandoned.
- f. The land is destroyed.
- g. provisions in Article 36 paragraph (2) of the LoGA.

d) Right of Use

Article 41 paragraph (1) of the UUPA basically states that the Right to Use is the right to use and or collect proceeds from land directly controlled by the State or land owned by another person, which gives the authority and obligations specified in the decision to grant it or in an agreement with the land owner. which is not a lease agreement.

The subjects of the usufructuary rights are:

- a) Indonesian citizens
- b) Foreigner domiciled in Indonesia.
- c) Legal entities established under Indonesian law.

Legal entities that have representatives in Indonesia. The UUPA basically does not contain special provisions regarding the abolition of the usufructuary rights if: (Effendi Warin, 1994)

- a. Term expires.
- b. Dismissed before the term expires because of something that must be fulfilled by the right holder related to his status.
- c. Released by the right holder before the term expires.
- d. Revoked in the public interest.
- e. The land is destroyed.

e) Rental Rights

Article 44 of the LoGA states that:

- a. A person or a legal entity has the right to lease land, if he has the right to use land belonging to another person for building purposes by paying the owner a sum of money as rent.
- b. Rent payments can be made;
 1. once or at any given time.
 2. before or after the land is used.
- c. The land lease agreement referred to in this article may not be accompanied by conditions containing elements of extortion.

Based on the contents of the provisions of the article, it can be said that the right to lease is a right that authorizes other people to use their land. The difference with usufructuary rights is that in rental rights the lessee has to pay rent.

Lease rights to buildings must be distinguished from rental rights to buildings. In the case of a lease for a building, the owner surrenders the land in an empty condition to the tenant with the intention that the tenant can construct a building on the land.

The control and utilization of land may contain rights, obligations, authorities, and prohibitions for the holder of land rights. There are rights to control and use of land which are private and some are public. Based on the BAL, there are known Indonesian Nation Rights, State Control Rights, Customary Law Community Rights, and individual land rights. Manifestations of State Controlling Rights are known as Use Rights and Management Rights, while individual rights are known as Ownership Rights, Building Use Rights, Business Use Rights, Use Rights, and Lease Rights.

In its development, Flat Ownership Units were born, whose arrangements were different from individual rights regulated in the UUPA, where there were arrangements for shared land, shared objects and legal entity arrangements for the Association of condominium owners and residents who manage flats. For example, the construction of the Integrated Highway Mode (MRT) is carried out on the basis of the DKI Jakarta Governor Regulation Number 167 of 2012 concerning Underground Spaces. In the construction of MRT facilities and infrastructure, PT Mass Rapid Transit Jakarta (PT MRT Jakarta was established on the basis of DKI Jakarta Regional Regulation No. 3 of 2008 concerning the Establishment of the Jakarta MRT which was later amended by DKI Jakarta Regional Regulation No. 7 of 2013) using space on the surface ground, basement, and space above ground level. Here you can find legal problems in building construction both below and above the ground. Problems that arise in the activities of using the basement and above ground are caused by the provisions of the legislation in the land sector which do not provide protection for holders of land rights. Until now, there has been no regulation regarding the control and use of space above and below the ground, although a Land Bill (RUU Pertanahan) is currently being prepared which will regulate the two institutions.

In this section the author explains with an explanation per article in the LoGA relating to the regulation of control and utilization of air space/space above the ground, among others:

a) Article 1

The space above the land in Paragraph (6) is referred to as space with the intention of space above the earth and water. The surface of the earth according to the UUPA is land, so that what is meant by space according to this paragraph is the space above the ground. Furthermore, Paragraph (2) describes the space above the land as a gift from God Almighty which belongs to the Indonesian nation and is referred to as national wealth. Paragraph (3) emphasizes that there is an eternal or lasting relationship between the Indonesian people and the land area, so that when it is related to the method of control and the method of ownership, the Indonesian nation is the owner of the space on the land with no expiration date.

b) Section 2

The state as a power organization authorized by the Indonesian nation to regulate and administer the designation, use, supply and maintenance of outer space; Determine and regulate legal relations between people and space; and determine and regulate legal relations between people and legal actions regarding space. The implementation of the designation, use, supply and maintenance of space is carried out in the form of spatial planning as well as permits to construct buildings as a regulator and control of legal relations between people and legal actions regarding outer space.

Here it can be seen that there is a regulation on legal actions between one legal subject and one legal subject with legal actions related to space, so there is the possibility of legal action in the form of transfer of rights, granting of utilization or use rights, building construction agreements. space, and so on.

c) Article 4

The authority to use and utilize air space/space above land by attribution is granted by the BAL through land rights as regulated in Article 4 Paragraph (1) provided that there is a need that is directly related to the use of the land. Utilization of air space/space above the land according to the form of land rights, it is known what the space above the land will be used for, for example, Hak Milik authorizes the use of space for residential, commercial, and other categories of functions because Hak Milik is a form of full land rights, HGB authorizes the use of its space to construct buildings with commercial functions, and other forms of land rights, both public and private. Paragraph (3) makes a separation between land rights and space rights as the implementation of horizontal separation.

It has been stated according to Boedi Harsono, (2012), which asserts that the space and the body of the earth used are not the rights of the holder of land rights, and therefore he is not entitled to hand over its use to other parties if it does not include the use of the earth's surface. This confirms the close relationship between land rights and space rights, and there is no land right without land rights.

d) Article 5

Applicability of customary law on air space/space above land in the corridor of national and state interests based on national unity, understanding of Indonesian socialism and national laws and regulations, and subject to religious law. It is clear that the application of customary law and religious law to the above-ground space, as well as its use is subject to the regulation of restrictions and controls regulated in national laws and regulations.

e) Article 8

The basis of the state's right to control is governed by the taking of natural resources in outer space. According to Article 4 Paragraph (2), land rights only give rights to the earth's surface, so the powers that come from it are not related to the natural resources contained in outer space.

f) Article 9

This full relationship with space relates to the rights to land that are under the space above the land. In General Elucidation II Number 5 it is explained that based on the principle of nationality in Article 1, according to Article 9 jo. Article 21 Paragraph (1) only Indonesian citizens can have ownership rights to land. Foreigners can own land with limited use rights. The consideration not to give full relations to legal entities is because legal entities do not need to have property rights but other rights are sufficient (HGB, Use Rights, Cultivation Rights).

g) Article 11

The mandate of regulating legal relations between people, including legal entities with airspace and the powers that stem from legal relations, is intended to prevent the occurrence of control over the lives and work of others that exceeds the limits in the fields of agrarian business, which is contrary to the principle of justice. humane social.

All control and use of space in the agrarian field must be based on common interests in the context of the national interest and the Government is obliged to prevent the existence of organizations and individual businesses in the agrarian field that are private monopolies (Article 13 paragraph 2). Not only private businesses, but also government efforts that are monopoly must be prevented from harming the people. On this basis, there are tiered and complementary arrangements for spatial planning and land use, as well as requirements for the existence of a national interest or public interest in the control and use of land space.

h) Article 14

Article 14 mandates the need for a plan (*planning*) regarding the allocation, utilization and supply of air space/space above the ground for the various interests of the people and the state. This *planning* is realized by a General Plan (National planning) which covers the entire territory of Indonesia which has now been realized in the form of a National Spatial Plan which has been regulated in Government Regulation no. 26 of 2008, which was later broken down into special plans (regional planning) for each region. The Regional Government on the basis of the general plan regulates the control and use of air space/space above the ground for its area, in accordance with the conditions of each region.

i) Article 16

Article 16 Paragraph (2) letter c mentions the existence of a right to use space, which is then explained in Article 48 the purpose of the authority contained. Space utilization rights authorize the holder to use energy and elements in outer space in the

context of efforts to maintain and develop the fertility of the earth, water and natural resources contained therein and other matters related to it. Space utilization rights are held with consideration of technical advances and the possibilities that occur in the future.

The provisions for the control and use of air/space can be found in the General Elucidation which states that the function of outer space must be in accordance with the interests of the people and the State and fulfill the needs according to the demands of the times in all agrarian matters. The control and use of space is based on the interests of the people, the public interest, and the interests of the state.

Affirmation of forms of right to control space that are attached directly to the ground below it or indirectly to the supporting pillars below it. Land rights basically cover the earth's surface as stated in the Elucidation Regulation Number II (1) of the LoGA. If the use of space which includes the body of the earth and air space is permitted, then the addition is a flexible and fair limitation criterion.

2. Regulation of the Use of Space on Land in Spatial Planning Law

Definition of Space According to Article 1 number (1) of Law no. 26 of 2007 concerning Spatial Planning, Jo. Article 1 number (1) Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning states " space is a container that includes land space, sea space and air space including space inside the earth, as a territorial unit where humans and other creatures live and maintain their survival. " .

Furthermore, Article 1 Number 2 of the Spatial Planning Law, Jo. Article 1 number (2) PP Number 21 of 2021 " Spatial planning is a form of spatial structure and spatial pattern. The existence of spaces, one of which is above ground space that is structured and makes a pattern. It is the arrangement of structures and patterns that are regulated in the spatial arrangement.

Based on Article 5 Paragraph (3) and Article 6 Paragraph (2) of the Spatial Planning Law, spatial planning based on administrative areas consists of spatial planning for national areas, spatial planning for provincial areas and spatial planning for districts/municipalities which are carried out in stages and complementary. Based on Article 6 Paragraph (3) of the Spatial Planning Law, the spatial planning of the national territory includes the jurisdictional territory and the national sovereignty area which includes land space, sea space and air space, including space within the earth as a single unit. This explains the existence of the use of space which is indirectly related to the land beneath it, and this utilization has an element of public obligation (public *verification*) such as not disturbing the function of the infrastructure and facilities under it and/or in its surroundings, while still paying attention to the harmony of the building. the building to its environment, and meet the safety and health requirements according to the function of the building.

Zoning regulations according to Article 1 Number 27 PP No. 26 of 2008 concerning the National Spatial Planning is a provision that regulates the requirements for space utilization and the provisions for its control and is prepared for each designation block/zone whose zoning is stipulated in a detailed spatial plan. For example, in the DKI Jakarta Provincial Regulation No. 1 of 2014 concerning Detailed Spatial Planning and Zoning Regulations regulates the boundaries of space utilization such as height, land controlled and planned, the amount of open space for each building construction. The amount of space regulated in Article 1 Number 107 of the Regional Regulation on RDTR is the amount of space for certain functions which are determined based on the arrangement of KLB, KDB, Building Height, KDH, KTB, each part of the city according to its position and function in urban development.

Looking back at the consideration of spatial planning arrangements in the Spatial Planning Law, the regulation of restrictions on the use of space is made to maintain the existence of limited space and the growing public understanding of the importance of spatial planning; and the implementation of transparent, effective and participatory spatial planning in order to create a safe, comfortable, productive and sustainable space. Geographically, the Unitary State of the Republic of Indonesia is located in a disaster-prone area so that spatial planning based on disaster mitigation is needed as an effort to improve the safety and comfort of life and livelihood.

In line with the Spatial Planning Law, the UUPA states that in order to achieve the above-mentioned aspirations of the nation and state in the agrarian sector, it is necessary to have a plan regarding the allocation, use and supply of earth, water and space for the various interests of the people and the state. . With this plan, the use of land space can be carried out in a guided and orderly manner so that it can provide the greatest benefit to the State and the people.

3. Building Arrangements as a Form of Mastery of Upper Air Space

Buildings are a form of control and use of land or air space. Based on Article 1 Paragraph (1) of Law Number 28 of 2002 concerning Buildings, a building is a physical form of the result of construction work that is integrated with its domicile, partially or wholly located above and/or in land and/or water that functions as a place for humans to carry out their activities, both for housing or residence, religious activities, business activities, social activities, culture and special activities.

Based on Article 8 Paragraph (1) of the Building Law, it is stated that: paragraph (1) every building must meet administrative requirements which include:

- a. Status of land rights, and/or utilization permits from land rights holders;
- b. Building ownership status; and
- c. Building permits

In accordance with applicable laws and regulations.

Paragraph (2) : any person or legal entity may own a building or part of a building.

Based on article 8 letter c and paragraph (3) of the Building Law, an IMB is a letter of evidence from the government that the building owner can construct a building according to the functions that have been determined and based on the technical plan of the building that has been approved by the regional government, as well as the implementation of the principle horizontal separation. IMB is a permit to carry out the construction of buildings and as a means of controlling the operation of buildings.

Buildings built on land, water, or public infrastructure and facilities, the application for building permits is submitted after obtaining approval from the competent authority. The public infrastructure and facilities referred to are roads and/or green lines, high-voltage air delivery (transmission) areas, and/or telecommunications towers, and/or water towers.

Every building must be erected on land whose ownership status is clear, both own and owned by other parties. Based on Article 8 Paragraph (1) letter a of the Building Law, in the case of land belonging to another party, a building can only be erected with a land use permit from the holder of land rights or land owners in the form of a written agreement between the holder of land rights or the owner of the land and building owner. The written agreement shall contain at least the rights and obligations of the parties, the area, location, and boundaries of the land, as well as the function of the building and the period of use of the land.

Based on Article 7, 8 and Article 9 of the Building Law, every building must meet administrative requirements and technical requirements in accordance with the function of the building. The fulfillment of the function of the building and the classification of the building shall be proposed by each person who will construct the building in the application for IMB accompanied by proof of the status of ownership of land rights or proof of land use permit; building owner data; building technical plan; and the results of an analysis of environmental impacts for buildings that have a significant impact on the environment (Article 15 of the Building Law).

Proof of ownership status of land rights or proof of land use permit indicates the existence of an attachment to the building with the land beneath it. Based on the proposal received after checking, the regional government determines the function and classification of buildings (except for buildings with special functions by the central government) in the building IMB based on the regency/city RTRW, Detailed Spatial Planning for Urban Areas (RDTRKP), and or RTBL.

Based on Article 8 of the Building Law, the administrative requirements of the building include the requirements for the status of land rights, and/or utilization permits from the holders of land rights, building ownership status, and building permits. Building technical requirements include building layout requirements and building condition requirements. (Articles 13, 14 and 15 of Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings)

(Article 8 Paragraph (3) of the Building Law). The requirements for building layout include requirements for the designation and intensity of the building, the architecture of the building, and the requirements for controlling environmental impacts.

Article 24 Paragraph (1) PP Building states that RTBL is a regulation on building layout requirements as a follow-up to the regency/city RTRW and/or RDTRKP, used in controlling the spatial use of an area and as a guide for regional design to realize the unified character and quality of the building and the environment. sustainable.

Based on Article 27-29 PP Building, building reliability requirements include requirements for safety, health, comfort, and convenience. Safety requirements include the requirements for the building's ability to support loads, as well as the building's ability to prevent and cope with fire hazards and lightning hazards.

Based on Article 35-37 of PP Building, building health requirements include requirements for ventilation systems, lighting, sanitation, and the use of building materials. vibration level and noise level. In addition, the requirements for convenience include ease of connection to, from, and within the building, as well as the completeness of infrastructure and facilities in the use of the building.

Determination of the classification of Buildings, regulated in Government Regulation Number 16 of 2021, Article 9 paragraph (1) states "Buildings as referred to in Article 3 are classified based on:

- a. Complexity level
- b. Permanent rate
- c. Level of risk of fire hazard
- d. Location;
- e. Building height
- f. Ownership of buildings and
- g. Building class

Furthermore, in Article 9 paragraph (6) of PP Building, it is stated: "the classification based on the height of the building as referred to in paragraph 1 letter (e) includes super-tall buildings, skyscrapers, high-rise buildings, medium-rise buildings, buildings Low rise building.

In the explanation of Article 9 paragraph (6) of this PP it states: "classification based on height includes:

- a. Super Tall Building is a building with the number of floors above 100 (one hundred) floors;
- b. Skyscraper Building is a building with a total of 40 (forty) - 100 (one hundred) floors;
- c. High-rise Building is a building with more than 8 (eight) floors;
- d. Medium-Story Building is a building with a total floor of 5 (five) to 8 (eight) floors;
- e. Low-rise Building is a building with a number of floors up to 4 (four) floors;

Article 9 paragraph (7) states that the classification based on ownership as referred to in paragraph (1) letter (f) includes BGN and buildings other than state property.

The concept of space in the Right of Ownership to Flat Units (HMSRS) which consists of individual rights to Flats which can be owned separately, and joint rights to land, objects and shared parts. However, land, objects and these shared parts are an inseparable unit. Article 46 of Law no. 20 of 2011 states that HMSRS is a property right to an individual condominium unit whose ownership is separate from joint rights to joint shares, joint objects, and joint land, the arrangement of shares of land, objects and joint shares using calculations based on the Proportional Comparison Value (NPP). .

Based on the article, a person holding one HMSRS has two types of rights, collective rights and individual rights. The issuance of a certificate of ownership of condominium units (SHM Sarusun) shows proof of ownership (*de jure*) of the space

above the land in the form of a condominium unit. Ownership of HMSRS is also limited to the control and use of its space through shared land, which requires the suitability of the holder of the land rights.

In the Flats Law, the Building Ownership Certificate (SKBG) has the concept of renting state property in the form of land or waqf land and does not deviate from other sectoral laws that regulate BUMN and waqf land. Based on Article 48 of the Flats Law, the SKBG Sarusun is issued by a district/city technical agency that is in charge and responsible for building construction on State/Regional-owned land or waqf land by way of lease, which is an integral part with a copy of the building book, a copy of a letter of agreement on the lease of land, a drawing of a floor plan at the level of the apartment concerned, showing the condominium unit owned, and a description of the size of the share of the right to the joint portion and the joint object concerned. In the case of the transfer of SKBG Condominium, based on Article 44 of the Flats Law, the transfer is made with a Sale and Purchase Deed (AJB) by legal subjects before a notary. Thus, the SKBG Sarusun is not a land right but a right over the air space.

4. Regulation of the Above Ground and Underground Space in the Job Creation Act

a. Granting of Land Rights in the Upper Land and Underground Space

According to Article 146 of Law Number 11 of 2020 concerning Job Creation, paragraph (1) "land or space formed in above-ground and/or underground spaces and used for certain activities may be granted building use rights, use rights or management rights"

Paragraph (2) limit of land ownership in the space above the land by the holder of land rights is given in accordance with the basic coefficient of the building, the coefficient of the floor of the building and the spatial plan determined in accordance with the provisions of the legislation.

Paragraph (4) The use and utilization of land in the above-ground space and/or underground space by different rights holders may be granted building use rights, use rights or management rights.

Furthermore, Article 147 states that proof of land rights, ownership rights to flat units, management rights, and or mortgage rights, including deed of transfer of land rights and other documents related to land can be in electronic form.

With the concept as formulated in Article 146 of the Job Creation Law, it has also been formulated in Law Number 5 of 1960 (UUPA).

In article 4 paragraph (1) and paragraph (2) of the Basic Agrarian Law, in principle, it stipulates that individuals or legal entities who already have land rights, namely on the surface of the land, automatically have the right to use the space under the ground and above the ground. as long as it is necessary for interests that are directly related to the use of the land it owns.

b. Implementation of the Granting of Spatial Rights on Land according to the Employment Copyright Act.

The granting of space rights over land and basement which is the problem is how to implement the application of the concept, where the basic principle of this rule by the State regulates that the land or space formed above and/or below the ground can be used for certain activities, and can be used for certain activities. the right to use the building, the right to use and the right to manage.

The fundamental difference with what is regulated in the work copyright law is that in the work copyright law, the right to space is granted the same way a person or legal entity is granted land rights. However, in the basic agrarian law, the right to space is only limited to its use which is attached to land rights. Practically, before the Employment Copyright Act, a person or legal entity that owns a building on the ground level can automatically use the ground below to build a foundation or use the space above the land to build up to a height limit of several floors. However, when a person or legal entity does not own a building on the ground level, they also do not have the right to use or utilize the underground space and above ground space. In contrast, after the emergence of Article 146 of the Job Creation Law, a person or legal entity can have the right to space, namely by constructing buildings below ground or buildings above ground. Even when the legal subject does not own a building at ground level. That means, maybe in the next few years we will see that there are lots of buildings built underground or above ground with different legal subject ownership (individuals or legal entities). Example. A is the owner of the basement, B is the owner of the ground floor and C is the owner of the above ground. In simple terms, by referring to Article 4 paragraph (1) and paragraph (2) of the Basic Agrarian Law, a legal subject can build a building along with a basement and a connecting bridge (skywalk) which becomes an integral part of the building. With Article 146 of the Copyright Act, it is possible for a basement and a skywalk in a building to be owned by different legal subjects.

With the conflict of regulations that occurs between the Job Creation Act and the Basic Agrarian Law, it may be difficult for the State to implement it. The Job Creation Act does not revoke the provisions in the Basic Agrarian Law, meaning that the provisions in the Basic Agrarian Law are still valid. The basic concept in the basic agrarian law is that the right to use a building, the right to use, or the right to manage is given to the right to the surface of the land, not to the right to the basement or above the land. In terms of social life, the granting of rights to the space is prone to creating new problems in the land sector. Because there will be conflicts of interest with three different legal subjects (Article -146-verse-1-Uu-Creation-Work).

Although the Implementing Regulation as mandated by Article 146 of the Job Creation Law has not been made, but to implement the provisions of Article 142 and Article 185 letter b of Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 18 of 2021 concerning Management Rights, Rights to Work has been issued. Land, Flats Unit, and Land Registration.

In Chapter VI Government Regulation Number 18 of 2021 regulates Land Rights or Management Rights in Upper Land and Underground Spaces (Government Regulation No. 18 2021).

Part One, Above Ground and Dungeon Objects

Article 74 paragraph (1) The use and utilization of land parcels owned by land rights holders are limited by:

- a. The height limit is in accordance with the basic building coefficient and the building floor coefficient as stipulated in the spatial plan; and
- b. The depth limit stipulated in the spatial plan or up to a depth of 30 (thirty) meters from the ground surface in the event that it has not been regulated in the spatial plan.

Paragraph (2) states: Land which is structurally and/or functionally separate from the holder of land rights as referred to in paragraph (1) is a land area or basement which is directly controlled by the State.

The second part; Occurrence of Management Rights, Building Use Rights, and Use Rights in the Upper Land or Underground Space.

Article 76

Regulates the utilization of space above ground or underground space obtained in accordance with the suitability of space utilization activities issued by the Minister.

Article 77

Utilization of Upper Land Space or Underground Space can be granted with Management Rights, Building Use Rights and Use Rights with a decision on granting rights by the Minister. Including HGB and HP in the above-ground space and the basement given above the HPL for the above-ground or basement space given with a decision on granting rights by the minister with the approval of the HPL holder.

Article 78

Regulating the granting of use and utilization of space on land that interferes with the public interest, then approval from the central government is required, and if it interferes with the interests of the holder of land rights on a parcel of land, approval from the holder of land rights is required, with an authentic deed accompanied by compensation in the form of money. or other forms.

Article 80

Regulating the granting of HPL, HGB or HP in the above ground or basement must be registered with the Land Office, and be given proof of ownership in the form of a certificate.

Part Three : Subject, Term, Imposition, Transfer and Release, and Cancellation of HPL, HGB, and HP in the Upper Ground Room or Underground Room.

Article 81

Provisions regarding the subject, time period, imposition, transfer and release, and cancellation of HPL, HGB, and HP on land apply mutatis mutandis to provisions regarding the subject, period, imposition, transfer and release and cancellation of HPL, HGB and HP on land space. or basement.

Article 82

Set the deletion of HPL, HGB and HP in the Above ground and dungeons. Furthermore, the rights to the space above the land or the space below are registered electronically (article 84 PP 18/2021).

5. Arrangements for Control and Utilization of Space Rights on Air Land in the Netherlands and Singapore

Dutch law applies the principle of *accession* or *accessie* where the owner of an object is the owner of all components of the object. Everything that is attached above and below the land belongs to the holder of the land rights [Henson Mulianto Salim, Suparjo Sujadi , 2019]. Unlike in Indonesia, with the enactment of the UUPA, the *accessie principle* is no longer valid, while what applies is the principle of horizontal separation, where the owner of an object is not directly the owner of the object component attached to it.

Based on Article 5 Paragraph 21 of the *Dutch Civil Code* , land ownership rights give the owner the right to use it, including using the air space above it. However, there is a possibility for other people to use the space above ground level, if that person uses it above a height or depth that will not be used by the owner of the land rights.

In Dutch law it is known as *opstalrecht* , the right to own, hold and manage buildings or plants, which are on the surface or on the surface of land belonging to other parties. This right gives the acquisition of ownership of a building or construction that is separate from ownership of land. On the basis of a notarial deed of *opstalrecht*, it can give birth to an obligation for the holder of the right to pay a certain amount of money (ground rent) to the holder of the land right. In addition, the deed can also be given restrictions on the use of using, constructing, destroying buildings. When this right is completed, the ownership of the building, construction, and plants attached to the land by law becomes the property of the holder of the land right.

Opstalrecht gives an exception to the principle of *superficies solo cedit* , the right to the surface includes the right to the inside of the land in question. This arrangement in Indonesia is similar to the concept of a permit for the use of space on land where there are two different legal subjects in land tenure with the control of space on the land in question. Airspace is not included in the definition of land but buildings and constructions attached to the ground. There is a right to use space on land if the person uses it above a height or depth that will not be used by the owner of the land right. In contrast to the UUPA which defines land as the surface of the earth only with rights to land, then from these land rights the attributive authority of the authority to use space on land is born, the legal subject of the holder has the authority to use the space above the land, limited on the authority to use it.

The Land Title (Strata) Act of 1967 introduced a strata title registration system that facilitates the subdivision of buildings or land into strata units. Strata title is a grant, grant with due payment or payment for goods of perpetual value, or lease of state land in any form issued or granted by *the Crown, the State or the East India Company*. The strata concept separates the building from the land into two parts, both of which are given rights on a grant or lease basis.

The separation of land and buildings has been recognized in Indonesian law, both in the UUPA and in customary law with the principle of horizontal separation. However, Singapore Law views buildings and spaces (*lots*) as ownership rights regardless of what land rights are under them, so Singaporean Law still recognizes the existence of space ownership regardless of the attachment of a space to the land below it, as well as registration. right to space. This is different from Indonesian law which recognizes the ownership of space if given the authority from the status of the land under it.

According to Article 3 of the *Land Titles Strata Act*, *stratum* is all parts of land that consist of all basement or air space or part of basement or ground air space, where the dimensions have been described. All buildings can be divided into several airspace plots, so that the building and its airspace plots are separated from the ground. Joint ownership of public facilities is assessed by proportional distribution of ownership of public facilities. Thus, the concept of land space in Singapore is completely separate and is not related to the land under it which is regulated in a *strata title legal system*. (Henson Muliando Salim, Suparjo Sujadi, 2019).

The control and use of space on land in Indonesian law is closely related to land rights, where space on land exists as a legal consequence of the granting of land rights in the form of authority that gives legal subjects to use the space on the land in question in accordance with Article 4 of the UUPA. This is also known in Customary Law where objects above the land have a legal relationship with the land below. Utilization of space on land is adjusted to the form of land rights given, so that the purpose of using space on land can be reflected in land rights such as HGB, then the use of space is to construct buildings.

Space on land in customary law in relation to land is also attached with active responsibilities as stated by Herman Soesangobeng, *beheersrecht*, as well as social responsibility as stipulated in Article 6 of the LoGA. The control and utilization of space on land to fulfill the responsibilities mandated by Customary Law and the LoGA is controlled by being limited to interests directly related to the use of the land in question, zoning regulations, licensing, providing incentives, and imposing sanctions as described in Article 35 of the Spatial Planning Law. The control is then further regulated at the level of regional regulations such as the DKI Jakarta Provincial Regulation No. 1 of 2014 which regulates the boundaries of space utilization such as height, land controlled and planned, as well as the amount of open space in the construction of buildings.

The implementation of land use and control in Indonesia can be seen in the practice of the Jakarta MRT Infrastructure and the connecting bridges between buildings. Elevated stations and elevated rail roads are based on IMBs issued individually per station, on the basis of land rights from government agencies. In addition, it is also based on a utilization permit from the DKI Jakarta Provincial Government for PT MRT Jakarta to operate the MRT infrastructure.

The control and utilization of the space on the land is controlled through the IMB which is issued on the basis of consideration of the spatial plan, building law, and technical and administrative regulations regulated by the regional government and sectoral government such as the Railway Master Plan, so that the function of the land space is can be in accordance with the public interest as regulated in Article 48 of the LoGA. The control and use of other land spaces such as the Senen Multipurpose Bridge and Pondok Indah Mall Bridge which cross public infrastructure and/or facilities in DKI Jakarta, in this case public roads are also based on permits managed by the Regional Asset Management Agency, which need to fulfill obligations such as payment levies to the state, technical guidelines Regulation of the Minister of Public Works no. 20/PRT/M/2010. This form of space utilization is manifested in the Permit for Utilization of Space Above Infrastructure and/or Public Facilities issued by the Governor through the Office of Highways, as well as being the basis for the issuance of IMB.

New land rights are needed to accommodate the tenure and use of land space. The necessary arrangements are implementing regulations that explain the forms of control and use of land space, the scope of land space, the boundaries of the authority of land rights holders, limits for granting land rights, the purpose of using space on land, the legal basis for ownership of the material used. is in the basement.

As the strata title which is regulated in its own regulations in Singapore and in accordance with the agrarian regulations in that country. The concept of space in the Ownership of Flats (HMSRS) and SKBG in Law no. 20 of 2011 which has shown the authority to control and use space on land, where the regulation of space on land is still very limited to residential functions. Therefore, the authors suggest to issue implementing regulations in the form of government regulations as guidelines for the implementation of space on land with the legal institution of the Authority for Control and Use of Space on Land. Government regulations as an implementation of the mandate of Article 4 and Article 48 of the LoGA that the authorities in the right to use space are regulated by a Government Regulation. Apart from that, it also serves as a guide and a liaison for spatial planning that has been implemented so far, so that it is clear that there are legal relationships, both *de facto* and/or *de jure*, which are governed by their control and use in such a way as to achieve the objectives of spatial planning itself. The reason it is not called a right is because the concept of space which is very dependent on the land rights that support it contains active rights and obligations. Active obligation to fulfill the obligations required to maintain the principles contained in spatial planning such as the principles of security and comfort. The regulation of control and utilization of space on land which regulates the principles of space, the nature of space on land, institutions of space on land, forms of rights and obligations, restrictions on legal subjects, tenure period, and procedures for transition.

4. CONCLUSION

The granting of rights to air space or space above ground, if the legal subject of the holder of the right on the ground surface is the same as the legal subject of the holder of the right to the space above the air or the space above the ground, then the rights

granted to the air space or space above the ground are the same, and if the subject rights in the space above the air are different from the subject of rights holders on the ground surface, then different rights can be granted to them, and arrangements regarding the subject, assignment, transfer and release, as well as cancellation of rights, apply mutatis mutandis to provisions regarding the subject, assignment, transfer and release. as stipulated in the UUPA.

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