REFORM POLICY FOR MANAGEMENT OF BUILDING USAGE RIGHTS (HGB) ABOVE LAND MANAGEMENT RIGHTS (HPL) BASED ON HALAL PRINCIPLES ACCORDING TO ISLAMIC LAW

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Abstract

In its development, land has various important functions in people's lives, this is because land is a support for the development of various kinds of human activities on this earth, including in Indonesia. The important position of the land resulted in the birth of the development of the concept of land use rights. Previously, the use of HGB was only subject to the Basic Agrarian Law Number 5 of 1960 and Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights, in its development the management of HGB is also regulated in Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property. In its development, Article 29 of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property states that the duration of HGB above HPL is only for five years, whereas in the Basic Agrarian Law Number 5 of 1960 and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights The old use of HGB over HPL ends when the time set by the HPL holder has been completed, this is as intended in Article 35 of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights , and Land Use Rights. so it is clear that there is disharmonization between Article 29 of Government Regulation Number 27 of 2014 and Article 35 of Government Regulation Number 40 of 1996 concerning Cultivation Rights may result in injustice for HGB holders. This shows that the discussion related to "Disorientation of the Value of Justice in the Policy of Management of Building Use Rights (HGB) on Land with Management Rights (HPL)" is interesting to be discussed further.

Keywords: *Disorientation, Building Use Rights (HGB), Management Rights****(HPL), Policy, Value of Justice.***

A. Introduction

Indonesia is a country based on law, this is explicitly mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This fact has the consequence that every field of people's life in this country must be based on laws made legally. clear by this country. This includes ownership.

This can be observed in Article 28G paragraph (1) which states that:

Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.

In its development, there are several land rights which are regulated in full in Article 4, Article 16, and Article 53 of Law Number 5 of 1960 Regarding Basic Agrarian Provisions. Article 4 of Law Number 5 of 1960 Regarding Basic Agrarian Provisions clearly states that:

1. On the basis of the state's right to control as referred to in Article 2, it is determined that there are various types of rights to the earth's surface, called land, which can be given to and owned by people, either alone or together with other people and entities. -legal entity.
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 as necessary for interests directly related to the use of the land within the limits according to This Act and

other higher legal regulations.

Then Article 16 of Law Number 5 of 1960 Regarding Basic Agrarian Provisions states that:

1. Right of ownership,
2. Cultivation Rights,
3. Building rights,
4. usufructuary rights,
5. lease rights,
6. land clearing rights,
7. Right to collect forest products, and
8. Other rights that are not included in the rights mentioned above which will be stipulated by law as well as rights of a temporary nature as mentioned in article 53.

Then Article 53 of Law Number 5 of 1960 Regarding Basic Agrarian Provisions states that:

1. Temporary rights as referred to in Article 16 paragraph (1) letter h, namely lien rights, profit-sharing business rights, boarding rights and agricultural land rental rights are regulated to limit their characteristics which are contrary to this Law and other rights. It is attempted to remove it in a short time.
2. The provisions in article 52 paragraphs (2) and (3) apply to the regulations referred to in paragraph (1) of this article.

Based on the various explanations above, it is clear that the politics of agrarian law in Indonesia has clearly regulated land rights so that land use in terms of socio-cultural, economic, and national development interests will be easily implemented in this country. However, in its development, not all land rights are able to realize harmonious relations between land users and land rights holders.

These problems can be seen in the process of using Building Use Rights over Land Management Rights. Building use rights in their development can also apply to land with land management rights held by the government or abbreviated as HPL. In its development, arrangements related to the conversion of management land functions, one of which is as HGB over HPL, must be in accordance with the approval of the HPL holder. This is in accordance with Article 22 of Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights which states that "Building Use Rights on Land Management Rights are granted with a decision on granting rights by the Minister or an appointed official based on is the proposal of the holder of the Management Right".

Over time, the construction of various buildings for business purposes with Building Use Rights over Management Rights has become increasingly widespread in Indonesia. The rise of building construction with HGB certificates on HPL land is also directly proportional to the increasing issue of HGB over HGU.

The issue of the extension of HGB above HPL often results in complicated problems and is detrimental to HGB holders, both individually and in groups, like the HGB certificate owners from housing above the HPL. Article 3 paragraph (1) Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Settlement of the Granting of Rights to Parts of Land for Management and Registration, expressly states that:

> The granting of land use which is part of the land management rights to a third party, must be made in a written agreement where the agreement contains a grace period for land use and opportunities to extend the use of HPL land.

Furthermore, it can be seen together that the period of use of his HGB over HPL basically depends on the HPL holder. Therefore, if the application for an extension of a HGB above HPL is not approved by the HPL, the HGB is declared null and void by law. This can be seen in Article 35 paragraph (1) letter (a) of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights which states that "the expiration of the period as stipulated in the decision to grant or extend it or in the grant agreement". This in its development has resulted in many injustices for consumers in the property business sector. In its development, information related to the status of property or housing

development on HPL land has been hidden by most property business actors in this country. This is shown by the rarity of property developers who inform the status of the land where the property building is standing through a Building Construction Permit and Functionality Certificate to existing property consumers. This has resulted in many consumers being trapped in buying property on state land, even though the property consumers only have ownership rights to flat units which are very weak in terms of protecting property asset ownership, this is because if a HGB is not approved for its extension by the HPL holder then HMSRS (Ownership of the Flat Unit) is also considered null and void. In fact, if you look at Article 35 of Law Number 5 of 1960 concerning Basic Agrarian Provisions, it is clear that the HGB on HPL is only for 30 years which can only be extended for 20 years when the government approves this, so that after 50 years the HGB cannot be extended and automatically HGB owned by most property owners on HPL land also cannot be extended after the HGB is declared non-renewable.

Then in Article 29 paragraph (2) of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property, it states firmly that "the rental period for state or regional property is for five years and can be extended". The way in which state or regional property can be extended is regulated in Article 29 paragraph (3) Number 27 of 2014 concerning Management of State and/or Regional Property which states that:

> The rental period for state/regional property as referred to in paragraph (2) Article 29 can be more than five years, in the event that state/regional property is used for:
>
> 1. Cooperation in infrastructure sector;
> 2. Activities that take more than five years; and
> 3. Determined otherwise by law.

The provisions regarding the lease period for state/regional property in its development also have an impact on HGB owners on HPL land. Basically, the provisions of Article 29 Number 27 of 2014 concerning Management of State and/or Regional Property has contradicted the provisions of Article 35 of Law Number 5 of 1960 concerning Basic Agrarian Provisions, which is Article 35 of Law Number 5 of 1960 concerning Basic Provisions Agrarian states that the HGB can be valid for thirty years and be extended for another twenty years. So it is clear that there has been a synchronization between Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property.

This discrepancy can be seen in the preamble and the legal basis of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property, which does not contain Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights. So that the concept of state or regional property in the form of HPL land is contrary to the concept of HPL land in Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights. has resulted in the violation of the mandate of Article 28D paragraph (1) Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so it is clear that this issue also violates the First, Second, and Fifth Precepts of Pancasila. In the case above, it can be seen that there has been disharmony between *das sollen* and *das sein.*

The view above shows clearly that Article 29 paragraph (2) of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property is in conflict with Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights in terms of the concept of HGB validity period. This has clearly resulted in the violation of the mandate of Article 28D paragraph (1) Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so it is clear that this issue also violates the First, Second, and Fifth Precepts of Pancasila. In the case above, it can be seen that there has been disharmony between *das sollen* and *das sein.* So that the law is no longer able to realize its task which is none other than realizing justice, benefit, and order in Indonesian society.

Based on the existing explanation, it can also be stated that the issue of extending the HGB above the HPL has resulted in a problem of injustice for the consumers of the building located on the HGB land which is on the HPL land. This is due to the lack of clarity regarding legal protection for holders of property rights certificates for flat units located on HPL land in this country. Such problems clearly result in disharmony between the mandated values of social justice which are realized in the mandate of religious norms, social norms, and legal norms which in the end result in the legal politics of consumer protection on HPL land being useless which in the end results in disruption of the social order in the economic sector. and socio-cultural.

In the economic sector in the form of economic losses, consumers have to buy properties above HPL at high prices and have to be willing to sell them at low prices due to the lack of certainty of legal protection for their property. In the socio-cultural sector, this will result in the proliferation of problematic property developers and lead to a decline in public confidence in the property business in the country which has an impact on the economic sector in the form of a decrease in the level of property purchases in the country, especially in the form of apartments. Departing from the various kinds of problems that exist, it is necessary to write a dissertation related to " Reconstruction of the Extension of Building Use Rights (HGB) on Management Rights (HPL) Based on Benefit and Dignified Justice". The problem to be discussed in this article is related to the legal force of Building Use Rights over Management Rights after the birth of Article 29 paragraph (2) of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property.

B. Research Method

To answer the writing questions that have been formulated above, the authors will use the normative research method

where the research carried out is literature and law research which is then equipped with sociological data in the community. The research specifications used in this study used descriptive analytical.

C. Result and Discussion

1. Disharmonization of Policies Related to HGB on Current HPL Land

The existence of Article 29 paragraph (2) of Government Regulation Number 27 of 2014 has resulted in the issue of HGB being above the HPL. In its development, HGB above HPL often has problems, this can be observed in the case of the Mediterania Palace Residence in Kemayoran, East Jakarta. The apartment owned by property developer Agung Podomoro Groupb was built on land owned by the Ministry of State Secretariat whose HGB period on the HPL expires in 2022. The dilemma for consumers who own property in the apartment only finds out about the issue of the HGB period on the HPL after buying the property. in the Mediterranean Palace Residence. The term for the extension of the HGB above the HPL was circumvented by replacing it with the term *"strata title"*.

Meanwhile, the term *strata title* does not exist in the legislation. This ambiguity will obviously result in various legal protection issues for property consumers, particularly regarding the legal force of the certificate of building an apartment unit or certificate of property rights which in the end does not function. This has resulted in a new dilemma, namely a decrease in the selling price of properties that have been purchased at high prices on HPL land. Furthermore, issues related to the extension of Building Use Rights over Management Rights have become increasingly complicated with the issuance of Government Regulation No. 27 of 2014 concerning Management of State and/or Regional Property.

This is because Article 29 paragraph (2) of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property states firmly that "the rental period for

state or regional property is for five years and can be extended". The way in which state or regional property can be extended is regulated in Article 29 paragraph (3) Number 27 of 2014 concerning Management of State and/or Regional Property which states that:

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a. Cooperation in infrastructure sector;
b. Activities that take more than five years; and
c. Determined otherwise by law.

The provisions regarding the lease period for state/regional property in its development also have an impact on HGB owners on HPL land. Basically, the provisions of Article 29 Number 27 of 2014 concerning Management of State and/or Regional Property has contradicted the provisions of Article 35 of Law Number 5 of 1960 concerning Basic Agrarian Provisions, which is Article 35 of Law Number 5 of 1960 concerning Basic Provisions Agrarian states that the HGB can be valid for thirty years and be extended for another twenty years. So it is clear that there has been a synchronization between Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property.

This synchronization can be seen in the preamble and legal basis of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property, which does not contain Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights. So that the concept of state or regional property in the form of HPL land is contrary to the concept of HPL land in Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights. has resulted in the violation of the mandate of Article 28D paragraph (1) Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so it is clear that this issue also violates the First, Second, and Fifth Precepts of Pancasila. In the case above, it can be seen that there has been disharmony between *das sollen* and *das sein.*

Stufenbau theory or *stufen theory* or Hans Kelsen's tiered legal theory states that legal norms are basically tiered and multi-layered in a hierarchy (organization), in the sense that a lower norm applies, originates and is based on a higher norm. even higher to a norm that cannot be traced further and is hypothetical, namely the Basic Norm or *Grundnorm. Grundnorm* or basic norm is a norm that is no longer formed by a norm, the basic norm is a norm that was formed in advance by the community and becomes a hanger for other norms under it so that the basic norm is said to be *presupposed.*

In its development, Kelsen's theory positioned Pancasila as the G *rundnorm.* So it can be said that Pancasila is the basic norm on which to hang the legal norms under it, this is in accordance with the various explanations above regarding Pancasila as the basic philosophy and as the source of all sources of law in Indonesia. Furthermore, based on Kelsen's theory and also based on Article 2 and Article 7 paragraph (1) of Law Number 12 of 2011 a pyramid of legal hierarchy can be drawn up, the following is the pyramid of legal hierarchy in question:

Perda Kabupaten/Kota

= The above legal norms will always overshadow and become the basis and foundation for the legal norms below.

= Legal norms below will always depend on and based on and based on legal norms above.

(Chart I: Hierarchy of Indonesian Legislation in the *Stufenbau* Theory)

The view above shows clearly that Article 29 paragraph (2) of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property is in conflict with Law Number 5 of 1960 concerning Basic Agrarian Provisions and Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights in terms of the concept of HGB validity period. This has clearly resulted in the violation of the mandate of Article 28D paragraph (1) Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so it is clear that this issue also violates the First, Second, and Fifth Precepts of Pancasila. In the case above, it can be seen that there has been disharmony between *das sollen* and *das sein.* So that the law is no longer able to realize its task which is none other than realizing justice, benefit, and order in Indonesian society.

Basically the law has an uneasy task, namely combining two different worlds, namely the ideal world and the real world, therefore it is impossible for people to wait for a legal vacuum, so people often demand that rules be made that are able to cover the legal vacuum, this is clearly related Closely related to legal capacity, it is not an ideal order nor is it related to people's habits. [1]Then Satjipto Rahardjo stated that the law is a human work in the form of norms that contain instructions regarding human behavior. In other words, the law is a reflection of human will regarding how to develop humans and how to direct humans in social life, of course. Therefore, the law contains a record of human ideas that are always based on the value of justice.

Furthermore, in its development, law is different from morality because law binds itself to the community which is its social basis, so that the law always pays attention to the needs and interests of the community and always serves the community. With regard to the issue of justice, the law in realizing it is not easy so that it requires proper reflection and weighing with a time that cannot be taken in a short time. In its development, society does not want a law that is just and able to serve its needs and interests, but must also be able to realize legal certainty that is able to ensure a sense of security in people's lives both in interacting or realizing mutual needs between one member of the community and other community members. [2]Basically, in realizing an order in society, three things are needed, namely justice, decency, and legal certainty. These three things are stated by Gustav Radbruch as basic legal values. The three basic values include:

a. Value of justice

In fact, the concept of justice is very difficult to measure because fairness for one party is not necessarily felt by the other party. The word justice comes from the word fair, which means that it can be accepted objectively. [3]Furthermore, according to Aristotle, there are several notions of justice, including equality-based, distributive, and corrective justice. [4]Equality-based justice, based on the principle that the law binds everyone, so that the justice to be achieved by law is understood in the context of equality. The similarity referred to here consists of numerical similarity and proportional similarity. Numerical equality is based on the principle that everyone is equal before the law, while proportional equality is giving everyone what is their due. Distributive justice, this is identical to proportional justice, where distributive justice stems from the granting of rights according to the size of the service, so that in this case justice is based on equality, but according to their respective portions (proportional). Corrective justice is basically justice that relies on correcting a mistake, for

1 *Ibid,* page. 18.

2 *Ibid,* page. 19.

3 Algra, et al., Beginning *of Law* , Jakarta, Binacipta, 1983, page. 7.

4 Aristotle, (384 BC – 322 BC) was a Greek philosopher. He wrote on a variety of different subjects, including physics, metaphysics, poetry, logic, rhetoric, politics, government, ethnicity, biology, zoology, natural sciences and the arts. Together with Socrates and Plato, he is considered to be one of the three most influential philosophers in Western thought. Quoted from http://id.wikipedia.org/wiki/Aristotle/keadilan.. page. 1.

example, if there is a mistake in someone who causes harm to another person, then the person causing the loss must provide compensation (compensation) to the party who received the loss to restore his condition as a form of compensation. as a result of the mistakes made.[5]

Meanwhile, according to Thomas Aquinas, justice can be divided into two, namely general justice and special justice. General justice is justice that is formulated in laws and regulations that must be obeyed in the public interest. As for special justice, justice is based on equality or proportionality.[6]

Furthermore, Hans Kelsen is of the view that a social order is a just order. This view means that the system regulates human actions in ways that can provide happiness for the whole community. Justice is a social happiness that humans as individuals cannot find and try to find in society. Therefore, the human yearning for justice is essentially a longing for happiness . This means that there is public recognition of the resulting justice, that justice can only be obtained from the order. [7]Furthermore, according to Socrates as quoted by Ahmad Fadlil Sumadi said that, "the nature of the law in giving a just decision must be: impartial, stick to the right facts, and not act arbitrarily on its power.[8]

Then according to Satjipto Rahardjo as quoted by Syafruddin if he said that, "justice is the essence or essence of law." [9]Justice can not only be formulated mathematically that what is called fair is when someone gets an equal share with others. Because real justice is behind something that appears in these figures (metaphysical), it is formulated philosophically by law enforcers, namely judges. [10]Then according to LJ Van Apeldoorn said that "justice should not be seen as equal to equality, justice does not mean that everyone gets the same share." This means that justice requires that each case must be weighed separately, meaning that what is fair to one person is not necessarily fair to another. The purpose of the law is to regulate the peaceful association of life if it leads to fair regulations, meaning regulations where there is a balance between protected interests, and everyone gets as much as possible who is his share. [11]Furthermore LJ Van Apeldoorn added that:[12]

> Justice should not be seen as synonymous with equality. Justice does not mean that everyone gets an equal share. ...Order of law that does not have general rules, written or unwritten is impossible. The absence of general rules means serious uncertainty as to what is fair or unjust. Uncertainty will lead to discord. So the law must determine general rules, must generalize. Justice forbids generalizing; justice demands that each case must be weighed separately....the more laws meet the requirements, fixed rules, which eliminate as much uncertainty as possible, the more precise and sharp the legal regulations, the more pressing justice will be. That is the meaning of summum ius, summa iniuria, the highest justice is the highest injustice.

In another sense, according to Satjipto Rahardjo as quoted by Syafruddin, if he emphasized that, "formulating the concept of justice how to create justice based on the values of

5 *Loc, cit.*

6 Thomas Aquinas (1225-1274) was born in Roccasecca near Naples, Italy. He was a philosopher and theologian from Italy who was very influential in the Middle Ages. Thomas Aquinas' famous work is Summa Theologiae (1273), which is a book which is a synthesis of Aristotle's philosophy and the teachings of the Christian Church. Quoted from http://id.wikipedia.org/wiki/Thomas/Aquinas/keadilan. page. 2.

7 Hans Kelsen (1881-1973). Kelsen was born in Prague, Austria on October 11, 1881. He was a jurist and philosopher of the Pure Theory of Law. In 1906, Kelsen received his doctorate in law. Kelsen began his career as a legal theorist. According to Kelsen, the legal philosophy that existed at that time was said to have been contaminated by political ideology and morality on the one hand, and had been reduced by science on the other. Kelsen found that these two reducers had weakened the law. Quoted from http://id.wikipedia.org/wiki/hans/kelsen/keadilan accessed 13 December 2016,. page. 1.

8 Ahmad Fadlil Sumadi, "*Social Law and Justice*" quoted from http://www.angle Hukum.com, 2016, page. 5.

9 Syafruddin Kalo, "*Law Enforcement that Guarantees Legal Certainty and a sense of Community Justice*" quoted from http://www.academia.edu.com, page. 5.

10 *Loc, cit.*

11 LJ Van Apeldoorn, *Introduction to Law*, trans. Oetarid Sadino, Jakarta, Pradnya Paramita, 1993, page. 11.

12 *Ibid,* page. 11-13

balance on equal rights and obligations." [13]Then according to Ahmad Ali MD said that, "justice a legal decision handed down by a judge against justice seekers must be taken based on substantive truth, giving something to those who are entitled to receive it."[14]

b. certainty value

According to Syafruddin Kalo said that, "legal certainty can be seen from two angles, namely certainty in the law itself and certainty because of the law." Furthermore, Syafruddin Kalo stated that:[15]

> Certainty in law means that each legal norm must be formulated with sentences that do not contain different interpretations. As a result, it will bring behavior to obey or disobey the law. In practice many legal events arise, where when faced with the substance of the legal norms that govern them, sometimes they are not clear or imperfect so that different interpretations arise which consequently will lead to uncertainty. Certainty in law means that each legal norm must be formulated with sentences that do not contain different interpretations. As a result, it will bring behavior to obey or disobey the law. In practice many legal events arise, where when faced with the substance of the legal norms that govern them, sometimes they are not clear or imperfect so that different interpretations arise which consequently will lead to uncertainty.

Furthermore, Satjipto Rahardjo as quoted by Syafruddin Kalo said that:[16]

> One aspect of legal life is certainty, meaning that the law intends to create certainty in the relationship between people in society. One that is closely related to the issue of certainty is the problem of where the law comes from. Certainty regarding the origin or source of the law has become important since the law has become an increasingly formal institution

Furthermore Husain Hasibuan and Rahmi Purnama Melati said that:[17]

> In practice in the field, it turns out that we can see a lot of people seeking justice, especially the weak economy, who feel that they do not get legal certainty. This is because the judicial process in Indonesia is relatively long, and the costs are quite expensive, even though one of the purposes of the establishment of the court is to obtain legal certainty.

Therefore, about what the meaning of a legal certainty is a very important thing for the community, legal certainty as outlined in the judge's decision is a result based on court facts that are juridically relevant and considered with conscience. Judges are always required to always be able to interpret the meaning of laws and other regulations that are used as the basis for application.[18]

c. Benefit value

According to Jeremy Bentham as quoted by Mohamad Aunurrohim, "the law can only be recognized as law, if it provides the greatest benefit to as many people as possible." [19]Basically, according to Satjipto Rahardjo, among the three basic legal values, there is often tension or *spannungsverhltnis.* This means that the three basic values have different demands. This is because in every process of realizing these three basic values, it is inseparable from

13 Syafruddin Kalo, "*Law Enforcement that Guarantees Legal Certainty and a sense of Community Justice*" quoted from http://www.academia.edu.com, page. 5.

14 Ahmad Ali MD, "Legal Justice for the Poor," *Journal of the Pulpit of Law and Justice*, (Jogjakarta) Issue 1, 2012, page. 132.

15 Syafruddin Kalo, *op, cit,* page. 4.

16 *Ibid,* p. 4 and 16.

17 Husain Husain Hasibuan and Rahmi Purnama Melati, "*Principles of Legal Certainty in the Indonesian Judiciary*" quoted from http://www.amiyorazakaria.blogspot.com page. 1.

18 Syafruddin Kalo, *op, cit,* page. 4.

19 Mohamad Aunurrohim, " *Justice, Certainty, and Legal Benefits in Indonesia* " quoted from http://www.academia.edu.com accessed 9 December 2016, page. 7.

the interests of individuals or groups in society in a complex manner.[20]

Based on the existing explanation, it can also be stated that the issue of extending the HGB above the HPL has resulted in a problem of injustice for the consumers of the building located on the HGB land which is on the HPL land. This is due to the lack of clarity regarding legal protection for holders of property rights certificates for flat units located on HPL land in this country. Such problems clearly result in disharmony between the mandated values of social justice which are realized in the mandate of religious norms, social norms, and legal norms which in the end result in the legal politics of consumer protection on HPL land being useless which in the end results in disruption of the social order in the economic sector. and socio-cultural.

2. Agreement Management of HGB over HPL which is Halal according to Islam

The purpose of law according to Islam is basically regulated in the *maqsid al-Shariah principle, in the maqsid al-Syariah* principle it is explained that the law must be able to protect five things, while the five things are:[21]

1) Religion;
2) Intellect;
3) Soul;
4) Property;
5) Descendants.

Then realizing justice, justice according to Islam in this case is equating something with other things both in value and in size so that it is not one-sided or in favor of one another. Furthermore, fair also has the meaning of siding with the truth.[22]

Basically Allah SWT is referred to as "The Most Just and Wise towards His servants, meaning that all human actions will not affect the justice of Allah SWT, good and bad human actions will receive their own rewards. This can be seen in the Quran Chapter 41 Verse 46 which states that "things" Whoever does righteous deeds, his reward is for himself, and whoever does evil deeds, then his sins are for himself, and your Lord will never wrong his servants." [23]Meanwhile *Jumhur Ulama* agreed to state that all the companions of the Prophet SAW are fair and there is no need to discuss the justice of the companions of the Prophet SAW which can be seen in the narration of Hadith.[24]

Various problem not sure law in HGB settings on top of the HPL that has been many harmful HGB holder in his development has contrary with various type Islamic teachings including halal principles that require existence fair protection _ for HGB holders above HPL.

D. Conclusion

Based on the explanation above, it can be concluded several things, namely:

1. That the existence of Article 29 paragraph (2) of Government Regulation Number 27 of 2014 concerning Management of State and/or Regional Property has contradicted the provisions related to the regulation of HGB above HPL as set forth in Law Number 5 of 1960 concerning Basic Agrarian Provisions and Regulations Government Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights in terms of the concept of the validity period of HGB. This has clearly resulted in the violation of the mandate of Article 28D paragraph (1) Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so it is clear that this issue also violates the First, Second, and Fifth Precepts of Pancasila;
2. This is different from the management of state-owned land as in Japan and America. Where the state of Japan always makes a master plan for the designation of land functions that are able to

20 Satjipto Rahardjo, *Introduction to Law,* Citra Aditya Bakti, Bandung, 2014 , page. 19-20.
21 *Ibid,* page. 48.
22 *Ibid,* page. 51.
23 Tohaputra Ahmad, *Al-Qur'an and its Translation,* CV. As Syifa, Semarang, 2000, p. 185.
24 *Ibid,* page. 1072.

minimize the friction of the need for land. Meanwhile, in America, community involvement in the plan to transfer community land into land designated for the construction of public facilities is highly considered, so as to minimize the friction of interests in land acquisition for both HGB and for the benefit of the state. This is indicated by the involvement of the community in determining the duration of use and the amount of the cost of renting state-owned land for private purposes.

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