

Deconstructing the Ambiguity of the Right to Build (HGB) over the Right of Management (HPL): Delegitimizing HPL on Non-Vital Land and Reconstructing Land Law in Indonesia

Original Article

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Abstract

The Indonesian land law system faces a fundamental problem in which HGB above HPL does not fully function as an independent land right due to its structural dependency on the administrative authority of the HPL holder. This research aims to examine the ambiguity of the construction of the Right to Build (HGB) over the Right of Management (HPL), to delegitimize the applicability of HPL on non-vital land, and to formulate a land law reconstruction that provides greater legal certainty and independence of rights. This research is normative legal research employing conceptual, statutory, legal theory, and comparative law approaches. Analysis is conducted qualitatively and prescriptively using Jacques Derrida's legal deconstruction to dismantle the legitimacy of HPL, and Mochtar Kusumaatmadja's Development Law Theory as the basis for legal reconstruction. The results show that the ambiguity of HGB over HPL stems from the structural dependency of HGB on the administrative authority of the HPL holder, which causes HGB to not fully function as an independent land right. Through the deconstructive approach, it was found that the legitimacy of HPL over non-vital land no longer has a strong public basis, because such land has in fact developed into a stable private or semi-private space. The findings suggest restricting HPL to strategically vital land while transferring non-vital land to a more independent rights regime through partial HPL release, state land reclassification, and stronger HGB holder protections.

Keywords: Indonesian Land Law, Land Right of Management, Legal Deconstruction, Non-Vital Land.

1. Introduction

The relationship between the Right to Build (HGB) and the Right of Management (HPL) in the Indonesian land law system demonstrates complex dynamics and raises fundamental problems in land administration practice. Normatively, HGB is a land right that grants legal subjects the authority to construct and own buildings on land that is not their own for a specified period, as regulated in the Basic Agrarian Law (UUPA) (Law No. 5 of 1960). Meanwhile, HPL developed in land administration practice as a form of partial delegation of the State's Right of Control to government agencies or certain legal entities for the management of state land.

In practice, HPL not only functions as an administrative instrument but also serves as the primary basis for granting land rights above it, including HGB. This condition causes HGB that stands above HPL to not fully stand as an autonomous land right, but rather to exist within a structure of dependency on the HPL holder, particularly in the processes of granting, extending, and renewing rights. This demonstrates that the legal relationship between HGB



and HPL is administrative-contractual in nature, rather than being a fully independent civil law relationship (Setiawan, 2025).

HPL is an instrument born from the State's Right of Control and cannot be equated with ownership rights, but only with administrative management authority. However, in its implementation, HPL has a dominant influence over the creation of HGB above it, thereby raising issues of legal uncertainty for land rights holders (Azzahra & Dalimunthe, 2023). In land practice, this dependency relationship gives rise to serious problems, particularly concerning legal certainty and rights protection. HGB above HPL frequently encounters obstacles in the extension and transfer of rights because it requires the approval of the HPL holder, which ultimately creates legal uncertainty for rights holders (Ananda et al., 2022; Trasaenda et al., 2026).

Land disputes between HGB holders and HPL holders frequently arise due to the unclear boundaries of authority between the management function and the function of granting land rights. This shows that the Indonesian land law system still leaves a normative ambiguity in the relationship between administrative rights and civil land rights. HGB above HPL can also be used as collateral for credit, but still requires the approval of the HPL holder, demonstrating that HPL control remains dominant in the land law structure (Franciska, 2022).

Normatively, Article 33 paragraph (3) of the 1945 Constitution affirms that the earth, water, and natural resources are controlled by the state for the greatest possible prosperity of the people. This provision is then elaborated in the UUPA, which positions the state as the controller, not the owner, of land. However, in the practice of HPL, a functional expansion has occurred that gives the state or HPL holder very strong control over land, even over land that has in fact been used for commercial and private purposes.

Budiastanti (2023); Rabiah et al. (2025); and Sadono (2010) also affirm that the existence of HPL in the land law system continues to generate academic debate, particularly regarding its position as an administrative instrument that has the potential to limit the certainty of land rights. Furthermore, the development of land policy through various recent regulations shows that the Indonesian land system still faces challenges in creating legal certainty, especially in the relationship between HPL and the land rights above it (Sanjaya & Djaja, 2021).

Thus, it can be concluded that HGB above HPL in practice not only constitutes an administrative legal relationship, but also creates a structural dependency that impacts legal certainty. This condition reveals a gap between the normative concept of agrarian law, which demands certainty of land rights, and the practice of HPL implementation, which tends to expand the administrative control of the state. Therefore, a more in-depth study is needed to critique the position of HPL in the Indonesian land law system and to formulate a legal reconstruction capable of providing legal certainty for HGB holders without eliminating the state's land management function.

This research aims to analyze the ambiguity of the construction of the Right to Build (HGB) over the Right of Management (HPL) in the Indonesian land law system, to delegitimize the applicability of HPL on non-vital land through a legal deconstruction approach which understood here as the dismantling of HPL's assumed legitimacy by exposing the internal contradictions between its administrative origins and its dominant civil law effects and to formulate a land law reconstruction based on the distinction between vital and non-vital land in order to realize legal certainty and independence of land rights. In this context, vital land refers to land directly related to strategic public interests, including public infrastructure, national defense, and essential utilities, whereas non-vital land encompasses

land that has in practice developed into stable commercial or residential spaces governed predominantly by private legal relationships.

This research offers novelty in three main aspects. First, this research not only examines the ambiguity of HGB above HPL normatively, but also uses a legal deconstruction approach to dismantle the legitimacy of HPL as a non-final construction, particularly on non-vital land. Second, this research introduces the conceptual distinction between vital and non-vital land as a normative basis for restricting HPL, which has not been systematically formulated in previous land law studies. Third, this research formulates a legal reconstruction model based on functional land governance, which shifts the paradigm from administrative control toward alignment between land function and the form of its rights.

2. Literature Review

2.1. The Theory of Legal Reconstruction

The theory of legal reconstruction emphasizes the importance of reforming legal systems that no longer align with the needs of society and the principles of justice. In the context of Indonesian land law, reconstruction is necessary due to the ambiguity in the relationship between HPL and HGB, which impacts legal certainty, the proportionality of state authority, and the protection of citizens' private rights. The progressive legal theory developed by Rahardjo (2009) views law as a means to achieve substantive justice, not merely to maintain a rigid formal structure. Based on this perspective, the reconstruction of land law must be directed toward reaffirming the status and limitations of HPL, particularly regarding non-vital land, while simultaneously strengthening legal certainty for HGB holders. Furthermore, the responsive legal theory developed by Philippe Nonet and Philip Selznick asserts that the law must be capable of adapting to social needs and the interests of society. Therefore, the reformulation of HPL within Indonesia's agrarian system is essential for creating a land governance system that is more just, consistent, and provides legal certainty.

2.2. The Concept of State Control and the Status of HPL

Land management in Indonesia is fundamentally based on the concept of State Control, as stipulated in Article 33, paragraph (3) of the 1945 Constitution and further elaborated in the 1960 Basic Agrarian Law (UUPA). Under this concept, the state is not positioned as the owner of the land, but rather as the party with the authority to regulate, manage, and oversee the use of land for the greatest possible prosperity of the people. Over time, the Right of Management (HPL) emerged as a form of delegation of state authority to government agencies, state-owned enterprises, or local governments to manage specific land. However, the status of HPL remains a subject of debate because it is not explicitly defined as a land right in the UUPA but has developed through various administrative regulations. This situation creates ambiguity regarding the legitimacy of HPL within Indonesia's agrarian legal system, particularly when HPL, in practice, resembles a right of ownership over land. According to the views of Harsono (2013) and Sumardjono (2007), the state should only perform regulatory and supervisory functions, not act as the absolute owner of land, which could unduly restrict the rights of the community.

2.3. Regulations Governing HGB on HPL Land

The Right to Build (HGB) is one of the land rights recognized under the Basic Agrarian Law (UUPA) and grants individuals and legal entities the authority to construct and own buildings on land that they do not own. In practice, HGB can be granted on state-owned land, privately owned land, or land with HPL status (Putri & Setyadji, 2024). The legal relationship

between HGB and HPL is problematic because HPL holders often retain strong administrative control over land to which HGB has been granted (Aji et al., 2021). Consequently, HGB holders remain dependent on the approval, recommendations, or extensions from HPL holders, leading to overlapping authority and legal uncertainty. This situation prevents the HGB from being fully independent as a land right, particularly in the investment, housing, and other commercial sectors. The existence of two forms of authority, public authority through the HPL and private rights through the HGB which indicates inconsistencies in Indonesia's land law structure regarding the balance between state control and the protection of private rights.

2.4. HPL Application on Non-Vital Land

The application of HPL to non-vital or non-strategic land has drawn widespread criticism in studies of Indonesian agrarian law. Initially, HPL was intended as an instrument for managing state-owned land for strategic public interests, such as port areas, airports, industrial zones, and other public facilities. However, in practice, HPL has been increasingly applied to commercial, residential, and business areas that do not serve a direct strategic function for the state. This situation has led to an expansion of state intervention in private legal relationships regarding land matters and has blurred the line between public land management and the use of land for private interests. Furthermore, the use of HPL on non-vital land tends to position the state or the institution holding the HPL as a quasi-landowner, which contradicts the philosophy of the Land Law (UUPA) that rejects the concept of absolute state ownership of land. The overly broad application of HPL also has the potential to create legal uncertainty for HGB holders because it depends on the administrative authority of the HPL holder. Hence, limiting the use of HPL to only land that is vital and strategic is considered important to maintain the consistency of the national agrarian legal system and to provide legal certainty regarding land rights.

3. Methods

This research is normative legal research that examines the ambiguity of the Right to Build (HGB) over the Right of Management (HPL), delegitimizes HPL on non-vital land through a deconstructive approach, and formulates a land law reconstruction based on the distinction between vital and non-vital land. The approaches employed include conceptual, statutory, legal theory, and comparative law approaches.

The statutory approach is conducted by examining various regulations that form the basis for the regulation of HPL and HGB, including Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) as the primary foundation of national agrarian law. In addition, this research also refers to Government Regulation Number 18 of 2021 concerning the Right of Management, Land Rights, Flat Units, and Land Registration, which updates the regulation of HPL and its relationship with other land rights, including HGB. Government Regulation Number 24 of 1997 concerning Land Registration governs the administrative aspects and legal certainty of land rights, as well as implementing provisions from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) relating to the granting, extension, and management of HGB above HPL. These regulations are analyzed to identify ambiguities, normative tensions, and potential legal gaps in the practice of the HPL and HGB relationship.

The conceptual approach is used to examine the meaning of the state's right of control, HPL, HGB, and the concepts of vital and non-vital land. The legal theory approach uses Derrida's deconstruction to dismantle the legitimacy of HPL over non-vital land, and Mochtar Kusumaatmadja's Development Law Theory to formulate a more just and functional legal

reconstruction. The comparative law approach is used to examine alternative models for regulating land rights in other legal systems.

Legal materials consist of primary legal materials (UUPA 1960, PP 24/1997, PP 18/2021, and court decisions related to HPL and HGB disputes), secondary legal materials (books, journals, and doctrine), and tertiary legal materials (dictionaries and encyclopedias). Collection of materials was conducted through library research, while analysis was conducted qualitatively and prescriptively through the identification of normative ambiguities, deconstruction of HPL legitimacy, and formulation of legal reconstruction. The research results show that the ambiguity of HGB above HPL stems from the expansion of HPL to non-vital land, that such legitimacy can be theoretically deconstructed, and that legal reconstruction needs to restrict HPL to vital land while strengthening a more independent rights regime for non-vital land.

4. Results and Discussion

4.1. Normative Ambiguity of the Right to Build (HGB) above the Right of Management (HPL) in the Indonesian Land Law System

The normative ambiguity of the Right to Build (HGB) above the Right of Management (HPL) is one of the most significant conceptual problems in Indonesian land law, demonstrating that harmonization between the basic norm, derivative regulations, and land administration practice has not yet been achieved. Normatively, Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) does not explicitly recognize HPL as a type of land right, but only affirms the concept of the state's right of control and types of land rights such as Ownership Rights, Cultivation Use Rights, the Right to Build, and Use Rights. However, in the development of modern agrarian policy, HPL emerged as an administrative instrument that grants authority to government agencies or certain legal entities to plan, use, and transfer portions of land to third parties. This position creates ambiguity because HPL cannot be fully categorized as a land right, but more closely resembles a delegative public authority from the state. In the agrarian law literature, HPL is understood as a derivative of the state's right of control that is administrative in nature, not a private right as with other land rights, thereby giving rise to conceptual dualism in the Indonesian land law system (Setiawan, 2025).

This ambiguity becomes more complex when HGB is placed above HPL, which in practice is regulated through Government Regulation Number 18 of 2021 concerning the Right of Management, Land Rights, Flat Units, and Land Registration. Under these provisions, the HPL holder is granted the authority to grant land rights above it to third parties, including HGB. However, this regulation does not provide clear boundaries regarding the legal relationship between HPL and HGB, particularly concerning the independence of HGB when it is situated above HPL. This causes HGB to not stand as a fully autonomous right, but to be heavily dependent on the approval and policies of the HPL holder. In land administration practice, this condition renders HGB above HPL conditional in nature, because its continuity is determined by utilization agreements and administrative decisions of the HPL holder, rather than solely by the character of the land right itself (Sekarini & Suhadi, 2025).

The legal relationship between HGB and HPL demonstrates a character that is not entirely consistent with the agrarian law principles of the UUPA. Theoretically, HGB is a civil right that grants its holder the authority to construct and own buildings on land for a specified period, with relatively strong guarantees of legal certainty. However, when HGB is situated above HPL, that right becomes subordinate to the administrative authority of the HPL holder,

creating an asymmetric relationship structure. In contemporary juridical construction, this relationship is understood as an administrative-contractual relationship, in which HGB does not originate purely from the state as the rights grantor, but rather through a delegation mechanism from the HPL holder who previously obtained authority from the state.

This normative ambiguity is further reinforced by the lack of synchronization between the UUPA as the basic agrarian law and its derivative regulations, particularly Government Regulation No. 18 of 2021 and various ministerial regulations from ATR/BPN. The UUPA as *lex generalis* does not recognize the HPL construction, while derivative regulations have made HPL a central instrument in state land management. This condition causes a paradigm shift from a system of individual and private land rights toward a system of management based on administrative authority. In normative studies, this lack of synchronization is viewed as a form of regulatory disharmony that directly impacts legal certainty, particularly in the aspects of extension, transfer, and cancellation of HGB above HPL (Alviola & Silviana, 2023).

In practice, the dependency of HGB on HPL also gives rise to various legal consequences, particularly concerning the certainty of rights for HGB holders. Several empirical studies show that HGB above HPL cannot be extended automatically, but must obtain approval from the HPL holder, thereby opening considerable space for administrative discretion. The absence of clear parameters for the extension or termination of rights often creates administrative obstacles and legal uncertainty. In some cases, the expiration of the utilization agreement with the HPL holder can have implications for the termination of the HGB itself, which demonstrates the weakness of legal protection for HGB holders within this legal structure (Suhail et al., 2023).

Research by Setiawan (2025) shows that the construction of HGB above HPL continues to generate conceptual debate regarding the legal status of HPL itself. Some views position HPL as an administrative instrument of the state that does not fall under the category of land rights, while in practice HPL functions like a possession right that has a direct impact on the private rights above it. This creates a “quasi property right” concept that does not fully reside in either the domain of public law or private law. As a result, the legal relationship between the HPL holder and the HGB holder is not entirely clear, thus requiring conceptual clarification to prevent multiple interpretations in the implementation of land policy.

Thus, it can be concluded that the normative ambiguity of HGB above HPL stems from three main aspects, namely the ambiguity of the legal status of HPL within the UUPA structure, the dependency of HGB on the administrative authority of the HPL holder, and the lack of regulatory synchronization between the UUPA and its implementing regulations. The combination of these three factors produces a hybrid legal structure between public law and private law, thereby generating legal uncertainty in land practice. Therefore, a more comprehensive normative reconstruction is needed to affirm the position of HPL in the national agrarian law system and to clarify the legal relationship between HPL and HGB so as to create certainty, justice, and consistency in the Indonesian land system.

4.2. Derrida’s Deconstruction of the Right of Management (HPL) over Non-Vital Land in the Indonesian Agrarian Law System

In the Indonesian agrarian law system, the Right of Management (HPL) has a normative basis that cannot be separated from the provisions of Article 2 paragraphs (1) and (2) of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), which mandates the state, as the organizational power of all the people, to control the earth, water, and airspace. However, this control is doctrinally not interpreted as a private property right, but as a public function of regulation (*regeling*), administration (*bestuur*), and supervision (*toezicht*) as affirmed by Boedi Harsono in his concept of the State’s Right of Control (HMN).

In regulatory development, HPL was subsequently formalized through Government Regulation Number 40 of 1996 and updated in Government Regulation Number 18 of 2021, which positions HPL as an administrative instrument for state land management that can serve as the basis for granting the Right to Build (HGB) to third parties. Theoretically, HPL is not included in the regime of primary land rights as under Article 16 of the UUPA, but rather resides in the domain of derivative and delegative administrative state authority.

From the perspective of Jacques Derrida's deconstruction, legal structures never possess stable meaning, but always contain internal tensions that open space for shifts in interpretation. This is evident in the construction of HPL, which is formally understood as a public instrument but in practice often shifts into a form of possession resembling a state property right over land. Binary oppositions such as state/people, public/private, and control/ownership cannot be maintained as fixed hierarchical structures, because in the practice of Indonesian agrarian law, the state does not only act as a regulator but also as an exclusive controller of access to land resources. In this context, Urip Santoso affirms that HPL in practice is often treated as "a separate land right" despite doctrinally not possessing the character of a pure property right, thereby opening a space of normative ambiguity in the Indonesian land law system (Harsono, 1975).

The relationship between HPL and the Right to Build (HGB) reveals structural tensions that become increasingly apparent when analyzed through a deconstructive approach. Based on Government Regulation Number 40 of 1996, HGB situated above HPL can only be created with the approval of the HPL holder, so that normatively HGB becomes a derivative right dependent on the existence and administrative will of the HPL holder. This condition shows that HGB does not fully stand as an autonomous property right, but rather occupies a subordinate position within the state's control structure. In a number of land disputes examined by the State Administrative Court (PTUN), including cases related to the management of industrial areas and regional government assets, it was found that the existence of HGB can become ineffective when changes occur in HPL management policy, thereby generating legal uncertainty for rights holders.

Derrida's deconstruction becomes relevant in re-reading the public-private opposition in the context of HPL over non-vital land. Formally, land under HPL is constructed as part of the public domain controlled by the state for the public interest. However, in socio-economic reality, much of the HPL land has changed function to become stable private spaces, such as commercial areas, hotels, trade zones, and residential areas. The inconsistency between formal legal status and actual function shows that the meaning of "public" in HPL is not final, but is always deferred by social and economic practice. From Derrida's perspective, this condition reflects "*differance*," that is, the continuous deferral of meaning between the legal text and social reality, so that the law never reaches its final meaning.

The same tension also arises in the state-people opposition. Constitutionally, Article 33 paragraph (3) of the 1945 Constitution affirms that state control over agrarian resources must be aimed at the greatest possible prosperity of the people. However, in the practice of HPL over non-vital land, the position of the people is often subordinate because access to certainty of rights is heavily dependent on the discretion of the HPL holder. In several land cases, including disputes involving long-term control of land by private parties over HPL land, it can be seen that legal protection for HGB holders is not always balanced with the administrative authority of the HPL holder, thereby creating tension between formal legality and substantive justice.

Based on this analysis, it can be understood that HPL cannot be treated as a neutral and stable legal structure. On the contrary, HPL must be understood as a legal construction that is

always open to shifts in meaning, particularly when applied to non-vital land that has in fact functioned as an established private space. Therefore, normative restrictions on the use of HPL are needed to prevent it from exceeding its constitutional function as an instrument for state land management. Derrida's deconstruction in this context is not intended to eliminate HPL, but to limit its absolute claim by showing that legal meaning is always open, non-final, and dependent on the power relations that surround it.

4.3. Determination of the Boundaries between Vital and Non-Vital Land in the Delegitimization of HPL

The distinction between vital and non-vital land is a normative response to the fundamental problem in the Right of Management (HPL), namely its nature as something not explicitly regulated in the Basic Agrarian Law (UUPA), yet developing as a very broad administrative instrument of the state. In the land law literature, HPL is understood as a derivative of the State's Right of Control that in practice often undergoes an expansion of authority that exceeds mere regulatory function. This is affirmed in research showing that HPL is an administrative authority derived from the State's Right of Control that remains within the public domain, but whose implementation often intersects with the private rights of the community (Setiawan, 2025).

The Right of Management (HPL) in the Indonesian land law system is one of the juridical constructions not explicitly formulated in Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), yet its existence arose through interpretation of the fundamental concept of the State's Right of Control (HMN) as regulated in Article 2 of the UUPA. Under this provision, the state is not positioned as a private land owner, but as a holder of public authority with the power to regulate, plan, determine the allocation of, and supervise the use of land in order to achieve the greatest possible prosperity of the people. Thus, the HMN is conceptually functional in nature and not absolute, as it must be exercised within the framework of public interest and social justice.

In the historical and regulatory development, the concept of HMN subsequently underwent institutionalization through the formation of HPL as an administrative land instrument. HPL fundamentally grants authority to government agencies, regional governments, and certain delegated legal entities to manage, plan the allocation of, and utilize state land. This transformation demonstrates a shift from the concept of general state control toward a more technically operational form of control, in which the state no longer merely acts as a regulator but also provides direct management mandates to specific subjects. In practice, HPL often serves as the basis for the issuance of its derivative rights, particularly the Right to Build (HGB), which then stands above land with HPL status.

HPL can be found in Government Regulation Number 18 of 2021 concerning the Right of Management, Land Rights, Flat Units, and Land Registration. This regulation affirms that HPL is an authority originating from the state, part of whose exercise is delegated to the rights holder to plan the allocation of, use, and utilize land in accordance with spatial planning and land policy. However, this provision also contains considerable interpretive space, particularly regarding the boundary between the delegative authority of the HPL holder and the substantive control of the state. The ambiguity of this boundary has the potential to create normative ambiguity, especially when HPL is used as the basis for granting derivative rights with long-term legal consequences for third parties.

From the perspective of legal certainty, the principle of land registration as regulated in Government Regulation Number 24 of 1997 concerning Land Registration affirms that all land rights must be registered to provide guarantees of legal certainty and protection for rights holders. This land registration system is fundamentally intended to create orderly land

administration by clearly affirming the subject, object, and legal status of land. However, in the context of HPL, the implementation of this principle becomes more complex because the legal relationship between HPL and HGB is not simple, but rather layered and hierarchical.

In practice, HGB standing above HPL does not fully possess the legal independence of HGB on state land or freehold land, because its existence remains dependent on the approval and policies of the HPL holder. This dependency covers aspects of granting permission, extension of rights, and changes in land allocation, all of which are within the administrative control of the HPL holder. Consequently, although a land registration system formally exists with the aim of providing legal certainty, in practice HPL creates a complex legal relationship structure that does not fully provide strong certainty for rights holders at the lower level.

Thus, the construction of HPL in the Indonesian land law system reveals a tension between the original purpose of HMN as a public regulatory function and the practice of HPL institutionalization that has developed into a layered management mechanism. This tension then contributes to the emergence of legal uncertainty in the relationship between HPL and its derivative rights below it, particularly HGB, which in practice is heavily dependent on the administrative structure of the HPL holder.

In this context, the concept of vital land can be understood as an effort to maintain the legitimacy of HPL only on functions that genuinely relate to core public interests. Empirically and normatively, HPL remains relevant for land used for strategic state functions such as public infrastructure, ports, defense areas, and core utilities. This is consistent with the finding that HPL was fundamentally designed as an instrument for land management by the state to support development and public interests, not as a private property right (Hutomo, 2022). Thus, on land with vital functions, the existence of HPL still has legal justification because it functions to maintain the continuity of public services.

However, the primary problem arises when HPL also attaches to land that has in fact developed into a permanent socio-economic space, such as housing, commerce, and industry. Under these conditions, land no longer requires intensive administrative control from the state. In practice, HPL is often granted over land that is subsequently utilized for long-term commercial and residential activities, including through the scheme of the Right to Build (HGB) above HPL (Putri & Setyadji, 2024). This condition reveals a functional shift of HPL from a public instrument to a structure resembling semi-private control.

This weakness becomes even more apparent when HGB above HPL creates legal uncertainty due to dependency on HPL holder approval, particularly in the extension and transfer of rights. Aji et al. (2021) note that the legal relationship between HGB and HPL holders is administrative-contractual in nature, creating uncertainty for land rights holders at the lower level. In this context, non-vital land can be categorized as land that no longer requires direct administrative intervention from the state because it already has a stable and independent pattern of use.

Therefore, the distinction between vital and non-vital land becomes important as an instrument for limiting state authority so that overreach does not occur in HPL practice. From the perspective of agrarian conflict, the expansion of HPL without clear boundaries has been proven to give rise to tensions between the state and the community, particularly when HPL intersects with the living space of communities or land that has been used across generations or commercially (Herwansyah, 2025). This shows that without function-based differentiation, HPL risks losing its social legitimacy.

From the perspective of modern land law systems, there is a need to align the form of rights with the actual function of land. Consistent with research by Trasaenda et al. (2026) on HGB above HPL, which shows that the inconsistency between legal structure and the actual

use of land causes legal uncertainty and prolonged disputes. Thus, non-vital land that has become a private or semi-private space should no longer be subject to strict administrative state control, but should instead be transferred to a more independent rights regime that provides full legal certainty.

On this basis, the classification of vital and non-vital land is not merely a theoretical concept, but also a corrective instrument for the structural problem of HPL. Vital land maintains the legitimacy of HPL because it is directly related to public interests, while non-vital land demonstrates the need for legal reconstruction so that it is no longer subject to excessive state administrative control. This approach simultaneously reinforces the principle that the state's right of control is functional in nature, not absolute ownership, as affirmed in various modern agrarian law literature.

4.4. Conceptual Reconstruction with Development Law Theory

After the legitimacy of the Right of Management (HPL) over non-vital land has been deconstructed, the next issue that arises is how to reconstruct a legal construction that is more appropriate to social needs and the development of society. In this context, the Development Law Theory introduced by Mochtar Kusumaatmadja becomes relevant as an analytical framework. This theory positions law not merely as a collection of static norms, but as a means of social renewal (law as a tool of social engineering) that must be responsive to social, economic, and national development dynamics. Within this framework, land law must not stop at formal justification of existing institutional structures, but must be capable of restructuring the relationship between the state and the people to be more just, certain, and functional for development.

From the perspective of Development Law Theory, the problem of HGB above HPL demonstrates the inefficiency of a land law structure that remains too administrative and hierarchical. The dependency of HGB on HPL in various aspects, such as the extension of rights, transfer, and utilization, creates a complex and non-simple legal structure. This condition has the potential to impede legal certainty, which should be the primary foundation for investment, housing, and community economic activities. In agrarian law literature, legal certainty is regarded as the primary prerequisite for the success of land-based economic development, because uncertainty of rights increases transaction costs and reduces utilization efficiency (Santoso, 2017).

In practical terms, the proposed reconstruction by removing non-vital land from the HPL regime and establishing a more independent land rights structure directly addresses these inefficiencies. When HGB holders are no longer required to seek layered administrative approvals from HPL holders for every extension, transfer, or utilization decision, transaction costs are substantially reduced. This in turn strengthens investment certainty, as prospective investors and rights holders can rely on a more stable and predictable legal framework when making long-term land-based economic commitments.

At this point, the law no longer fully functions as a means of development as intended by development law theory, but rather becomes a factor that perpetuates structural uncertainty in land legal relationships. This instrument often not only functions as a tool for state land management, but also creates a layered legal relationship between the state, the HPL holder, and the HGB holder, which ultimately generates ambiguity in the certainty of rights (Silviana, 2025).

Based on these conditions, the conceptual reconstruction offered in this article rests on two main principles. First, the state must still be maintained as the holder of public authority over vital land that has strategic functions for the public interest, such as defense, primary infrastructure, ports, and core public services. Second, non-vital land that has in fact

developed into a socio-economic space of the community must be removed from the HPL regime and transferred to a form of land right that is more independent and provides stronger legal certainty. Thus, Development Law Theory is not used to justify the expansion of state administrative control, but to redesign the structure of land law to be more proportionate to the socio-economic needs of society.

Within this framework, HPL is not understood as a universal instrument over all state land, but as a mechanism limited to land that genuinely requires direct management by the state. This approach is consistent with Sari and Kharismawan (2025), who affirm that the lack of clear normative boundaries for HPL in the UUPA has created wide interpretive space in land practice, necessitating more precise conceptual restrictions. Meanwhile, from the perspective of modern land governance, effective land law must be capable of aligning land use with land tenure. Inconsistency between the two will generate systemic inefficiency and increase the potential for conflict. This is also visible in the practice of HGB above HPL, which shows an imbalance between legal structure and the actual use of land, thereby causing prolonged legal uncertainty (Aji et al., 2021).

Development Law Theory also rejects the rigid dichotomy between legal certainty and development needs. In many land administration practices, HPL is often justified on the basis of the efficiency of state management. However, administrative efficiency cannot be used as a reason to sacrifice legal certainty for society. Development law literature affirms that good law is not only law that is effective for the state, but also law that is capable of providing protection and certainty for society as the primary subject of development.

In the context of agrarian conflict, unrestricted expansion of HPL without clear boundaries has also been proven to generate social tension, particularly when it intersects with the living space of communities or land that has been used across generations or commercially. The ambiguity of HPL boundaries can worsen agrarian conflict due to the absence of a clear distinction between land that genuinely requires state control and land that has become the living space of communities (Herwansyah, 2025).

In this way, the reconstruction of land law through Development Law Theory is not sufficient if conducted merely through re-interpretation of HPL and HGB, but requires a change in the way of understanding land itself. As long as land is still primarily understood as an object of state control, HPL will tend to expand. Conversely, if land is understood based on its actual socio-economic function, the law will be driven to draw a clear distinction between vital and non-vital land as the basis for limiting state authority.

Thus, Development Law Theory functions as a complement to the preceding deconstruction process. Deconstruction dismantles the legitimacy of HPL over non-vital land, while this theory provides a direction for normative reconstruction, namely maintaining HPL only on vital land and transferring non-vital land to a more independent land rights regime that provides stronger legal certainty for society. This approach simultaneously affirms that land law must be positioned as an instrument of development that is not only oriented toward the effectiveness of state administration, but also toward certainty and social justice in the control and utilization of land.

Based on the framework of deconstruction and reconstruction that has been built through the separation between vital and non-vital land and the use of Development Law Theory, the next conceptual stage is the formulation of a final reconstruction model for the relationship between the Right to Build (HGB) above the Right of Management (HPL). This model can no longer be understood within the traditional framework that positions HGB as a derivative right fully dependent on HPL, because that structure has proven to produce legal uncertainty, transactional inefficiency, and excessive administrative dependency.

In the proposed reconstruction model, the relationship between HGB above HPL must be differentiated based on the classification of vital and non-vital land. On vital land, HPL is maintained as a state control instrument because its public function is strategic and cannot be fully transferred to a private mechanism. In this context, HGB remains within the HPL structure but with strengthened procedural certainty and restrictions on administrative discretion so as not to create uncertainty for rights holders. Conversely, on non-vital land that has in fact developed into a permanent socio-economic space, the HGB relationship must be reconstructed to be more independent and no longer substantively dependent on layered approval from the HPL holder.

This reconstruction produces a paradigm shift from administrative land control toward functional land governance, that is, a model of land control that no longer rests on administrative state dominance, but on alignment between land function and the form of rights attached to it. This transformation simultaneously corrects the structural problem of HPL that has long created legal uncertainty due to overlapping authority among the state, the HPL holder, and the HGB holder.

4.5. Operational Reconstruction of HPL-HGB Regulation

The operational reconstruction of the regulation of the Right of Management (HPL) and the Right to Build (HGB) offered in this article is a further stage of normative critique against the dominance and expansion of HPL on non-vital land. This reconstruction is not intended to eliminate HPL entirely, but rather to impose a functional restriction on the scope of HPL so that it realigns with the basic principles of the State's Right of Control (HMN) as regulated in Article 2 of Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA), which affirms that the state is only authorized to regulate and manage land for the greatest possible prosperity of the people, not to own or control it absolutely.

Within the framework of positive law, this reconstruction is most realistically linked to the development and refinement of Government Regulation Number 18 of 2021, which has regulated the HPL regime, HGB, release of rights, and the extinguishment of land rights. However, this regulation still has normative gaps in operational aspects, particularly regarding: (i) the mechanism for partial release of HPL parcels, (ii) normative criteria for land that can be released, (iii) legal protection for existing rights holders, and (iv) the transformation of HGB above HPL into independently standing HGB on state land. These gaps cause the implementation of HPL to remain administrative in nature and not yet based on the functional classification of land.

Operationally, the first reconstruction that must be built is the regulation of partial release of HPL parcels on non-vital land. This concept is important because the proposed changes do not eliminate HPL, but restrict its applicability only to land that has vital functions for the public interest (Pramanthana et al., 2023). In practice, HPL has tended to be comprehensive over an entire area, making it impossible to differentiate land functions within it. However, in modern governance, the effectiveness of land management is greatly determined by the capacity of the legal system to distinguish land functions at the micro level rather than treating them uniformly (Alviola & Silviana, 2023). A parcel qualifies for partial release when it no longer serves a direct public function, has developed into a stable commercial or residential space, does not compromise the integrity of the remaining HPL area, and is consistent with applicable spatial planning designations.

The second step is the formation of normative criteria for vital and non-vital land as a legal basis in decision-making regarding the release of HPL. These criteria must be objective and measurable, encompassing: the actual function of the land, its relation to core public services, its impact on the integrity of the primary HPL management, its conformity with

spatial planning, and the status of the state or regional asset. From the perspective of institutional theory, the clarity of these criteria is important to avoid excessive discretionary power in land administration.

The third step is granting priority to good-faith HGB holders in the process of converting land resulting from HPL release. This is important because many non-vital HPL parcels have long been encumbered with HGB and have given rise to long-term legal relationships. In the context of property rights certainty theory, protection of good faith possessors is a fundamental principle for maintaining the stability of land transactions and investment.

The fourth step is the application of the continuity rule, namely the principle of continuity of rights, which guarantees that a change in the status of land from HPL to state land must not automatically extinguish rights. Buildings, investments, and third-party legal relationships must remain protected during the transition period. In the land tenure security literature, certainty regarding the continuity of rights is a primary factor determining economic stability and avoiding agrarian conflict.

The fifth step is ensuring that once non-vital land exits the HPL regime, it enters the regime of independent HGB on state land, without further dependence on layered approval from the HPL holder. This is a crucial point of reconstruction because it ends the layered administrative character that has long been a source of legal uncertainty. This transformation proceeds through three stages: first, the issuance of a partial HPL release decree declaring the relevant parcels as state land; second, the automatic conversion of existing HGB certificates into independent HGB on state land without requiring a new application from good-faith rights holders; and third, the registration of converted certificates at the Land Office, after which rights holders are fully released from any obligation to obtain the former HPL holder's approval for extension, transfer, or encumbrance of the land. From the perspective of modern land administration systems, an effective rights structure must minimize the layer of authority so as not to impede transactional efficiency and legal certainty.

Normatively, all of these mechanisms demonstrate that the operational reconstruction of HPL-HGB cannot be achieved solely through procedural adjustments, but requires a paradigm shift in viewing land as a legal object. As long as land continues to be understood as a comprehensive object of state administrative control, HPL will continue to expand. Conversely, if land is understood based on its socio-economic function, the law will be driven to implement structural differentiation between vital and non-vital land as the basis for limiting state authority.

Thus, this operational reconstruction does not aim at the elimination of HPL, but at the re-structuring of the scope of HPL based on land function, so that HPL is retained only on vital land, while non-vital land is transferred to a more independent rights regime. This approach is consistent with the principles of modern land governance that emphasize alignment between land function, the form of rights, and legal certainty as prerequisites for sustainable development.

5. Conclusion

The ambiguity of the Right to Build (HGB) above the Right of Management (HPL) is a structural problem in Indonesian land law that stems from the lack of synchronization between the character of HGB as a private right and the dominance of HPL as an administrative state control instrument. The dependency of HGB on the approval, policies, and continuity of HPL demonstrates that HGB does not function as an autonomous right, but as a derivative right that is administratively subordinate. Through the deconstructive

approach, this research demonstrates that the legitimacy of HPL over non-vital land is not something final, but a legal construction that can be questioned. On land that has in fact developed into a stable space for housing, commerce, and economic activity, HPL loses its public justification. Therefore, the applicability of HPL on non-vital land is appropriately restricted.

Based on Development Law Theory, the solution to this ambiguity is not sufficient if carried out through administrative improvements, but requires legal reconstruction that aligns land function with the form of its rights. Within this framework, HPL is maintained in a limited way only on vital land related to strategic public interests, while non-vital land is reconstructed into a more independent land rights regime that provides stronger legal certainty.

Operationally, this reconstruction is carried out through the mechanism of partial release of HPL parcels, the designation of released land as state land, protection of existing rights holders through the principle of continuity of rights, and the strengthening of HGB as a right that stands independently without layered administrative dependency. Thus, the ambiguity of HGB above HPL can only be resolved fundamentally through the restriction of HPL legitimacy and the restructuring of the land law system based on land function. This approach affirms a shift from administrative control toward land governance that is more adaptive, certain, and just in accordance with the constitutional objective of the prosperity of the people.

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