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**STATUS OF CERTIFICATE ON THE BUILDING ON THE GREEN OPEN SPACE AREA (CASE STUDY OF CHANGING GREEN OPEN SPACE TO THE RIGHT OF BUILDING USE IN BANDAR LAMPUNG CITY)****Hariono**Faculty of Law, Airlangga University  
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**Abstract**

*The author raised about the status of certificate of building rights in the area of green open space. will begin by revealing the green open space as one of the spatial arrangements in urban areas, will require the land as a container of green open space development in question. Development of green open spaces built in urban areas, related to the full utilization of land directly controlled by the state in the form of pertinent building rights. To ensure the legal certainty of the land for use of the building concerned, it is necessary to do so with the registration of the right to use the building. The permission granted by the municipal government to the conversion of green open space to the right to use the building is a form of abuse of authority by the city government of Lampung.*

**Keywords:** *Certificate of Right to Build; Green Open Space; Spatial Planning; Land Registry*

**INTRODUCTION**

The development of small, medium and large cities is a natural event, because the city has a very attractive attraction for the village community. Because it is urgent in the city, because the city needs the desired work, so that the city becomes more crowded. Meanwhile, the city with all its limitations, offered with a land budget, then the local government budget is needed to upgrade the existing agricultural land in the city. According to **Supriadi**; "The city is the center of creativi-

ty, culture, office centers, trade, the center of human hard struggle that wants to fight for their lives. Cities in addition to reflecting the vitality and various human opportunities, also symbolize socio-economic progress"<sup>1</sup>.

Meeting the needs of the community for a good and healthy environment, is the most dominating homework for the government in the world, including in Indonesia. However, what is related to the framework of fulfilling a good and healthy

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<sup>1</sup> Supriadi, *Hukum Kehutanan dan Perkebunan*, Sinar Grafika, Jakarta, 2011, p. 481

environment is related to the fulfillment of land as a place to build good and healthy environmental needs in the concept of "green open space development". Development of Green Open Space (GOS), which is a primary need city, and this is the responsibility of local government and one part of the development of green open space by building urban forests.

Construction of urban forests as part of the construction of green open space (RTH) in the city, will come in direct contact with the provision of land to carry out the development in question. In fact all cities in Indonesia stand and carry out their activities on land directly controlled by the state. Provisions in Pasal 3 UUPA Tahun 1960 which are then referred to as UUPA, previously stated that the State has "State Ownership Rights". the right to control the State is a correction of the principle of the domein of the State or State property, whose meaning is in the right to control the State, the State is not the absolute ruler of the land, but the mandate of the Indonesian Nation which has authority as mentioned in Pasal 2 ayat (2) UUPA :

A. Regulates and organizes the designation, use, supply and maintenance of the earth, water and space;

B. Determine and regulate legal relations between people and earth, water and space;

C. Determine and regulate legal relations between people and legal actions concerning the earth, water, and space.

The provisions of Pasal 2 ayat (2) above, the state as the highest organization of the people delegates the provisions of Pasal 2 UUPA to the government or regional government to carry it out. Thus, the provisions in Pasal 2 UUPA are also related to spatial planning stipulated in UU Nomor 26 Tahun 2007 concerning Spatial Planning. The provisions in Pasal 28 UU Nomor 26 tahun 2007 state that:

*"Provisions for district spatial planning as referred to in Pasal 25, Pasal 26, and Pasal 27 apply mutatis mutandis for urban spatial planning, with provisions other than details in Pasal 26 Ayat (1) added: a. plan for providing and utilizing green open space; b. plan to provide and use non-green open goods; c. plan for the provision and utilization of pedestrian network infrastructure and facilities, public transport, informal sector activities, and disaster evacuation rooms, which are needed to carry out the functions of*

*the city as a center for socio-economic services and regional growth centers*"<sup>2</sup>.

Green open space as one of the spatial arrangements in urban areas, will require land as a place for the construction of the green open space in question. Therefore, land rights associated with the construction of green open space (RTH), namely the right to use the building. This is in accordance with the provisions in Pasal 37 huruf a of the UUPA stated that: "Building use rights occur a. concerning land that is directly controlled by the state; because of government determination".

The provisions in Pasal 37 huruf a of this BAL, in line with the provisions in Pasal 21 of Government Regulation Nomor 40 Tahun 1996 concerning Right to Cultivate, Building Use Rights and Use Rights are stated that: "Land that can be granted with Right to Build is: a. state land; b. Land of Management Rights; c. Owned Land.

Green Open Space (RTH) is one of the important parts of a city. The existence of green spaces such as urban forests, city parks, green lanes and fields is very important for the city community. Thus, therefore the management of green open space is needed by the city planning office

<sup>2</sup> Sri Hajati, et al., Textbook on Political Law on Land, Airlangga university press, Surabaya, 2017, p. 85.

so that its functions and benefits remain optimal. One of the cities that has problems in providing land for the construction of green open space is "Bandar Lampung City"<sup>3</sup>. In the 1990s RTH in the city of Bandar Lampung was still relatively broad compared to current conditions. The city of Bandar Lampung is increasingly crowded with various kinds of development activities carried out to meet the needs of its people. Changes made make environmental conditions more critical and far from ideal conditions.

The decline in environmental quality will certainly affect living things, especially humans, both directly and indirectly, this development also causes the availability of green open space to decline. The green open space (RTH) in Bandar Lampung City is still 11.8 percent, while Pasal 29 Undang-Undang Nomor 26 Tahun 2007 concerning Spatial Planning mandates the minimum open space area of 30 percent of the area<sup>4</sup>. To reach 30 percent, it is needed the motivation of the community and the government to try to achieve it. According to Hermanislamet that: there are various motivations that encourage

<sup>3</sup> Sri Hajati, et al., Textbook on Political Law on Land, Airlangga university press, Surabaya, 2017, p. 85.

<sup>4</sup> Hermanislamet, Development Policy and Environment: Spatial Planning for Development and Environment, Papers / Materials for Amdal Basics Courses (A), Men-KLH Office and PPLH UGM Yogyakarta, 1989, h. 4-5, in Yunus Wahid, Spatial Planning Law, Prenadamedia Group, Jakarta, 2014, p. 86

people (and the government as subjects of policy makers) to change or regulate their environment, namely:

- (a) Land use in accordance with its capabilities;
- (b) Utilization of land aimed at ensuring the preservation (function) of the environment;
- (c) Supporting the wishes / needs of the community;
- (d) Achieve the highest (maximum) pattern of environmental utilization.

Fulfillment of the 30% green open space, by the Bandar Lampung Government, continues to strive to fulfill it, by building green open spaces that are handed over to the private sector. Previously, the government handed over Halim Way THK management permits to PT Way Halim Permai (WHP). This permit expired in 2001. PT.WHP controls 12.6 hectares of THK Way Halim Permai land. From 2001 to 2010, Way Halim City Forest Park should have been returned to the state or in this case the city government. But what happened was the opposite, PT WHP actually handed over the Management Rights (HPL) of THK Way Halim Permai to another private party. Then in terms of civil rights transfers, there is evidence of transactions amounting to Rp. 16.5 billion from PT. HKKB to PT WHP without any

government interference in the written evidence.

### **Formulation of the problem**

Based on the background of the situation, in this study the authors wanted to conduct research with the formulation of the following problems:

1. Validity of the Building Utilization Right Certificate Number 04 / HGB / BPN / 2010.
2. What are the legal consequences of the Building Use Rights certificate in the area of green open space?

### **PROSPERITY OF CERTIFICATE OF BUILDING RIGHTS NUMBER 04 / HGB / BPN. 18/2010 CONCERNING GIVING OF BUILDING RIGHTS TO THE NAME OF PT. OUR WORK RESULTS TOGETHER**

#### **Validity of Certificates in Relation to Building Use Rights**

Before entering the discussion on sub themes 2.1. above, then first be verified about the word "validity" in the Indonesian language terminology. According to the Big Indonesian Dictionary, the word "validity" has meaning, namely: the nature of the law, or righteousness, so that when it is associated with kebasahan the

Right to Use Building Number 04 / HGB / BPN.18/2010, it is legal or official.

Building rights (HGB) built on green open land are rights stipulated in Article 35 of the LoGA stated that: (1) Building Use Rights are the right to establish and own buildings on land that is not his own, with a period of time 30 years at the most. (2) at the request of the right holder and keeping in mind the requirements and the condition of the buildings, the period referred to in paragraph (1) can be extended for a maximum of 20 years. (3) building usufructuary rights can be transferred and transferred to other parties.

In line with the provisions in Article 35 above, building usufructuary rights are rights that are carried out on land owned by another person, and are burdened for a maximum of 30 years. Then it can be extended for a maximum of 20 years, if associated with the needs or condition of buildings concerned. Thus, those who are the legal subjects of building usufructuary rights are regulated in Article 1 paragraph (1) Article 36 of the LoGA stated that: (1) Those who can have the building use rights are a. citizen; b. legal entity established under Indonesian law and domiciled in Indonesia. Meanwhile, the provisions relating to building use rights are more specifically regulated in Article 21

of PP Number 40 Tahun 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights stated that: Land that can be granted with Building Use Rights is: a. State Land; b. Land of Management Rights; c. Ownership Land.

Regarding the provisions stated in Article 21 of PP Number 40 of 1996 above, registration rights need to be registered as a manifestation of the provision of legal protection to the holders of the right to use the building in question. This is in accordance with the provisions in Article 23 of PP No. 40 of 1966 stated that: (1) The granting of building use rights as referred to in Article 22 is registered in the land book at the Land Office. (2) Land use rights for State land or management rights land have occurred since it was registered by the Land Office. (3) As proof of rights to the building rights holders the building is given a certificate on the land.

Regarding the validity of the Building Use Right certificate, is the land use rights certificate included in the category of authentic deed or official deed? building usufructuary certificate Number 04 / HGB / BPN.18 / 2020, then including authentic deed qualifications, because it is made by an authorized official, namely the Land Deed Making Officer. This is in

accordance with the provisions in Government Regulation Number 24 of 1997 concerning Land Registration stated that: Article 1 number 24 states that: "Land Deed Maker Officer, hereinafter referred to as PPAT, is a General Officer who is authorized to make certain land certificates".

Authentic or Authentiek is general, occupational, gives perfect proof (from a letter): especially in words: authentiek deed. The official of a special land deed is appointed to make an authentic deed either at the request or by order; however, some state officials have the right to make it concerning matters relating to their work duties.

## **LEGAL DUE TO THE CERTIFICATE OF THE BUILDING IN GREEN OPEN SPACES**

### **Legal Basis of State Authority in Utilizing Green Open Space**

The concept of a modern state is now more of a function of service to the community, or the Lasim concept is called the "welfare state". Indonesia has entered into the health category because the 1945 Constitution of the Republic of Indonesia states that in Article 33 paragraph (3) it is stated that: "The earth and water and natural resources contained therein are con-

trolled by the state and are used for the amount of prosperity of the people".

According to **S.F. Marbun** that: "theoretically the authority or authority to administer a state administration can generally be distinguished: a. statutory legislative power; b. power to exercise judicial power (statutory judicial power); c. power is governing (statutory administrative power)<sup>5</sup>.

Refer to S.F view. Marbun above, is then linked to the basic authority of the Government in the use of land for green open space, the third theoretical entry into it. Because, the Government has the authority as the organizer of the three powers concerned, the power to make this regulation is the main task of the Government to make regulations to regulate all matters relating to the interests of the state, and secondly the power to organize government, this is the second main task that must be carried out Government in order to realize the objectives of the Republic of Indonesia.

Related to the availability of land for green open space, in the theoretical context consists of green open space for private or private purposes, and the function of public green open spaces. The

<sup>5</sup> S.F. Marbun, ..., Op, cit, p. 45

provisions in Article 29 of Law Number 26 of 2007 state that: (1) green open spaces as referred to in Article 28 letter a consist of public green openings and private green open spaces. (2) the proportion of green open space in the city area is at least 30 (thirty) percent of the total area of the city. (3) the proportion of green space in the public pssds of the region at least 20 (twenty) percent of the total area of the city.

Referring to the provisions of Article 29 above, it has described the importance of the availability of green space in a city, and the availability of at least 30 (thirty) percent of the total area of the city, and specifically for green open spaces for public openings of at least 20 (two hundred percent of the total area of the city. The availability of green space at least 20 (twenty) percent, is a very rational provision, because the availability of the green open space in question is needed by the community to develop their creativity in enjoying the beauty of the green open space.

In line with government actions related to legal action, the government in the concept of government administration can also carry out government actions in the form of policies or commonly called "Ermessen or discretionaire freies". Theoretically

the meaning of Ermessen freies, is the authority given to the Government to take action to resolve an urgent issue, which comes suddenly where there are no regulations. So the policy was taken without being based on general regulations, which gave the state administration the authority to make this policy.

The official issued the policy, because to solve problems that suddenly appeared, while there were no regulations that regulated them. Therefore, to test the validity of the relevant government policy actions, it can be seen in the following elements:

Ad. 1. There is freedom that is possible by law for the state administration to act on its own initiative.<sup>6</sup>

This element is related to the principle that states, every state administration official is obliged to make a decision to resolve a problem that is submitted to him. The official may not reject it on the grounds that there is no law that regulates the settlement. This principle has long been known in the world of judicial environment, where judges may not reject a case that was submitted to him on the grounds that there is no or no law governing it. The judge must be considered to know the law (*ius curia vovit*). If the law

<sup>6</sup> S.F Marbun, ...*Op.cit*, p. 12

does not find written law, it is obligatory to explore, follow and understand the values that live in society<sup>7</sup>.

Regarding the implementation of the Lampung City Government's actions to convert the function of green open spaces into building use rights, on the one hand there is freedom of the regional government to carry out acts in the interests of developing the city. However, on the other hand, the actions they do must not conflict with other laws and regulations. This is where the legal problem arises, because as if the actions taken by the city government of Lampung, are actions that do not violate the law. Therefore, the government in carrying out actions related to policies, needs to be done with caution, because if it is negligent, the consequences will be detrimental to the government itself.

Ad. 2. There are important and urgent issues to be resolved immediately.

The use of *Ermessen freies* by the state administrative body must pay attention to these two elements, namely the existence of "important" and "urgent" issues. The need for these two elements is fulfilled, because maybe sometimes there is an important problem, but the problem is not so urgent to be resolved immediately. On the contrary it might also sometimes

arise an urgent problem, but it is not so important to be resolved immediately. A problem can be categorized as an important issue, if the problem concerns public interests according to the applicable laws and regulations. The issue of public interest still refers to Law Number 2 of 2012 concerning Procurement of Land for Public Interest.

Regarding the public interest, it needs clear terminology, because the provision of green open space is the responsibility of the Government in guiding the green open spaces of urban areas. This is in accordance with the provisions in Article 17 of the Regulation of the Minister of Home Affairs Number 1 of 2007 stated that: (1) The Regent / mayor carries out guidance and supervision of the arrangement of urban green open spaces (RTHKP). (2) The Governor coordinates the guidance and supervision of the arrangement of green open spaces in the Regency / City urban areas. (3) The Governor of DKI Jakarta conducts guidance and supervision on the arrangement of green open spaces in urban areas.

Ad. 3. Must be morally and legally accountable

This third element limits the state administration officials in using *Ermessen freies*. This means that even though it is

<sup>7</sup> S.F. Marbun, ... *Op.cit*, p. 174-177



given freedom to state administration officials, but in using the policy it must not be carried out indefinitely and arbitrarily.

Referring to the benchmark for measuring the state administrative actions that are policy or *ermessen* above, if associated with the actions of the government of Lampung to divert green open space into building use rights (houses and shops), then this action is not an act of wisdom or *Ermessen* fries. Because, the actions of the Lampung government have violated the law, because it is clear that green open space is a green open space linked to Law Number 26 of 2007 concerning Spatial Planning, Government Regulation Number 63 of 2003 concerning Urban Forests. According to Sjahran Basah, the implementation of *Ermessen* freis by state administration officials must be accountable:

1. Morally: based on Pancasila and Jabatan Oath. Appointment Position.
2. Legally: a. upper limit; must obey the rules of the order of Indonesian legislation, both vertically and horizontally and not violating the law; b. lower limit; may not violate the rights of citizens to work and livelihoods that are appropriate for humanity.

Referring to **Sjahran Basah's** view above, it illustrates that, the actions of

state administration officials, in carrying out the wheels of government, need to consider carefully the consequences that will arise if taking actions that have no legal basis. Because, the administration officials of the country concerned, have a tendency to take action on development, let alone squeeze the rights of the people, then the action concerned becomes fatal. The cancellation of the actions of state administration officials, when associated with the act of transferring green open space by the Lampung government, actually commits moral violations as human beings and at the same time violates the law, because it violates laws and regulations governing the green open space<sup>8</sup>.

Related to the views related to government policy actions that are issued, because they want to take an action to overcome a certain problem, then the action does not have a backing, including actions that should not be carried out. **S.F. Marbun** said that:

"*Ermessen* freies or *dicretionare* has become one of the sources that cause many disputes between state administration officials and citizens, especially in the case of the issuance of a decision (*beschikking*). *Ermessen* is carried out in a form of deci-

<sup>8</sup> Legal Protection for Acting on State Administration, scientific speech, Padjajaran University Bandung, 1996, p.2-3.

sion, if it causes harm to someone or civil legal entity, can be considered as a decision that is contrary to the applicable laws and regulations (onrechtmatige overheidsdaad) or assessed as an act (decision) issued on an arbitrary basis (willikeur or bus de droit) or misuse of authority (detournement de pouvoir). As a result of the use of Ermese freies as mentioned above, it can be declared contrary to the law and even a violation of human rights, causing harm to the citizens. For this reason, the presence of administrative law and general principles of proper governance and administrative justice is very important, more so for a country that adheres to the concept of rechtsstaat which he built on the philosophy of individualism and lieberalism.

Referring to the view of Ermessen freis as a government action that is policy or policy, a government action on one side to overcome a problem that must be dealt with quickly, but on the other hand, the government's actions do not have a legal basis stipulated in legislation. Therefore, if it is associated with the actions of the Lampung government, it shifts the function of green open space to become a building usufructuary, so if it is said by the concept of Ermessen freies as stated

by **S.F. Marbun**, this is an act of fighting or breaking the law<sup>9</sup>.

### **Licensing in Building Construction in Green Open Space.**

Conceptually, the presence of the government and regional government as state administrators to provide the best service to the community. Services provided by the government in carrying out its government are carried out in the form of state action decisions or administrative decisions in the form of permit documents. " One form of action by officials notes that the state's efforts in controlling development activities in its area are issuing permits or permits in legalizing or ratifying an activity needed to provide services to the community<sup>10</sup>.

Etymologically the permit has a meaning, namely the statement of granting (not prohibiting); approval permits, thus if it is associated with licensing in the construction of buildings in open spaces, then etymologically is something that is permitted, or not prohibited. Meanwhile, licensing from the point of view of state administrative law has a meaning<sup>11</sup>, namely: "an agreement from the authorities

<sup>9</sup> *Ibid*

<sup>10</sup> Large Indonesian Dictionary, Second Edition, Ministry of Education and Culture of the Republic of Indonesia, Balai Pustaka, Jakarta, 1991, p. 391

<sup>11</sup> N.M. Spelt and J.B.J. ten Berge, in Philipus M. Hadjon, Introduction to Licensing Law, Yuridika, Surabaya, 1993, p. 2-3

based on the law or government regulations for certain circumstances deviates from the provisions of the prohibition of legislation (permission in the narrow sense). On the other hand, according to **Van der Pot**, "permission is a decision that allows for acts which are in principle not prohibited by regulators<sup>12</sup>. Meanwhile, according to **Prajudi Atmosudirdjo**, "permission (vergunning) is a stipulation which is a dispensation on a prohibition by law<sup>13</sup>.

Regarding the licensing above, the purpose of the issuance or permissibility of an actual activity is prohibited, then what permit do you want to go to? According to Sri Pudyatmoko that, the purpose of the licensing system, because through permission, the government is involved in citizen activities. In this case the government directs its citizens through juridical instruments in the form of permits. Sometimes government policies to engage in community activities don't even stop at one stage, but through a series of policies. After the permit has been processed, supervision is still underway, permit holders are required to submit reports regularly and as such. Meanwhile,

<sup>12</sup> Van der Pot, in Utrech and Moh. Saleh Djindang, Introduction to Indonesian State Administrative Law, eighth print, Publisher and Ichtiar Book Hall, Jakarta, 1985, p. 143

<sup>13</sup> Prajudi Atmosudirdjo, State Administrative Law, Ghalia Indonesia, Jakarta, 1983, 94

according to Spelt and Ten Berge that: "the motives for using the permit system can be in the form of a desire to direct (control / sturen) certain activities, prevent a danger to the environment, protect the certain objects, want to divide objects that are a little, and direct by selecting people and activities<sup>14</sup>.

### **Legal Policy in Utilizing the Right to Use for Green Open Space and Construction of National Agrarian Law.**

The use of green open space (RTH) as a building use right is a government action in the policy category. The government in carrying out its obligations as a community service is constrained by the existence of regulating regulations, and the nature of this regulation if it is not based on regulations. acts that violate authority. Because, urban green open space is an area that is intended for structuring the city in order to become a city that is comfortable, beautiful and clean, so that people feel the presence of urban green open spaces as a fun and proud for them<sup>15</sup>.

Utilization of urban green open space is an integrated part of the condition of regional spatial planning and district / city spatial layout. The provisions in Article 9 of the Minister of Home Affairs

<sup>14</sup> Sri Pudyatmoko, Licensing, Pobleml and Improvement Efforts, Pt Grramedia Widiasarana Indonesia, Jakrata, 2009, h.11

<sup>15</sup> N.M Spell and Ten Bege, ..., Op.cit, h. 4

Regulation Number 1 of 2007 concerning Urban Area Green Spatial Planning are stated that: (1) The ideal area of Urban Green Open Space is at least 20% of the total urban area. (2) The area of urban green open space (RTHKP) as referred to in paragraph (1) covers the green open spaces of public and private urban areas. (3) The extent of the green open space of the public urban area as referred to in paragraph (2) is the responsibility of the regency / city government which is carried out in stages in accordance with the capabilities of each region. (4) Private urban green space as referred to in paragraph (2) the provision is the responsibility of private parties / institutions, individuals and communities that are controlled through space utilization permits by the district / city government, except the DKI Jakarta Province by the provincial government.

Related to the issuance of permits for the use of green open space of Bandar Lampung city to be a building construction using building use rights, if associated with the provisions in Article 9 of the Minister of Home Affairs Regulation No. 1 of 2007 above, the green open space in Bandar Lampung City is urban green open spaces intended for public (public) purposes. Thus, the existence of the green open space of Bandar Lampung city must

be made in the form of regional regulations. This is in accordance with the provisions in Article 11 of the Minister of Home Affairs Regulation No. 1 of 2007 stated that: (1) Planning for urban green open space development as referred to in Article 10 is further elaborated in the form of urban green open space development and stipulated by Regency Regional Regulation / City, except for DKI Jakarta Province stipulated by Provincial Regulations, and for the Aceh Government stipulated by Aceh Qanun, as well as for Regency / City Governments in Aceh stipulated by regency / city qanun. (2) Planning for the development of urban green open space as referred to in paragraph (1) shall be poured into the Regional Long Term Development Plan (RJPPD), Regional Medium Term Development Plan (RPJMD) and Regional Government Work Plan (RKPD).

Referring to the provisions in Article 9 and Article 10 of the Minister of Home Affairs Regulation No. 1 of 2007 above, the Bandar Lampung green open space is included in the green open spaces of urban areas for public or for the benefit of the public in general. Thus, if there is a change in function green open space to use or use outside of its function, then the function is functioned, and this change of

function is very difficult because this has become a Regional Regulation. Because, changes in regional regulations, are not done by only giving permission to change their use or utilization, but must be changed. with regional regulations too.

Regarding the change in Bandar Lampung's green open space into the construction of houses and shops by permission of the Bandar Lampung Government, it is a government action or action that is of a policy nature, but the actions or actions of the government that are not in accordance with the laws and regulations. Therefore, the prohibition on the conversion of urban green open spaces regulated in Article 12 of the Regulation of the Minister of Home Affairs Number 1 of 2007 states that:

- (1) Utilization of green open spaces in urban areas includes new development, maintenance and security of green open spaces.
- (2) The utilization of green open spaces in public urban areas is managed by the Regional Government by involving development actors.
- (3) Green open space for public urban areas cannot be converted.
- (4) The utilization of open space for the urban public area as referred to in paragraph (2) can be cooperated with third

parties or between regional governments.

(5) The utilization of green open spaces in private urban areas is managed by individuals or institutions / legal entities in accordance with the laws and regulations.

(6) Utilization of green open spaces in urban areas is enriched by incorporating various local wisdom in spatial planning and construction of park buildings that reflect local culture.

The arrangement and utilization of green open spaces in urban areas is a reflection of the provisions in Article 6 of the LoGA which stipulates that: "all rights to land have social". The social functions contained in Article 6 of this LoGA are related to the interests of the community as a whole, and not to its use for the benefit of a certain group of people. Green open space for urban areas is a very basic need for the city, by which it requires careful planning in the use of the earth, water, space and natural resources contained within it. The use of the earth as part of the interests requires good planning, this is in accordance with the provisions in Article 14 of the BAL, stated that:

- (1) Bearing in mind the provisions in Article 2 paragraph (2) and paragraph (3), Article 9 paragraph (2)

and Article 10 paragraph (1) and paragraph (2), the Government in the context of Indonesian socialism, makes a general plan concerning inventory, designation and use of earth, water and space as well as natural resources contained therein: a. for state purposes; b. for the purposes of worship and other sacred purposes, in accordance with the basis of the One Godhead; c. for the purposes of the centers of public life, social, cultural and other health; d. for the purposes of developing agricultural, livestock and fisheries production and in line with that; e. for the need to develop industry, transmigration and mining.

- (2) Based on the general plan referred to in paragraph (1) of this article the relevant regulations apply, the Regional Government regulates the supply, allocation and use of the earth, water and space for the area, according to the conditions of each region. referred to in paragraph (2) of this article shall be effective after obtaining ratification, concerning the Level I Region of the President, the second Regional Office from the Governor / Re-

gional Head concerned and the Level III Region from the Regent / Mayor / Regional Head concerned.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **CONCLUSION**

The validity of land certificates in relation to Hak Guna Bangunan is an illustration that all land rights have certificates that guarantee legal certainty over land. Therefore, the Government of the City of Lampung has the authority to regulate matters relating to Building Use Rights, but is limited to granting permits, not on the basis of granting Building Use Rights. Thus the occurrence of the conversion of green open spaces into Building Use Rights, is a legal act that violates the rules of invitation, namely Agrarian Law and Minister of Home Affairs Regulation concerning green open space in urban areas and now according to the decision of the Supreme Court Number 19 / Pdt.2016 / PT TJK.

1. The legal consequences of the Lampung City Government in granting permits for Building Rights in green open areas of urban areas are an action that is inherent in the Lampung City Government. One of the authorities inherent in the City Government of Lampung is one-sided government

action, namely permit. Then the permit to change the function of the green open space into the Right to Use Building, is one form of abuse of authority in the City of Lampung. Measure of abuse of authority if government actions conflict with laws and regulations, and this government action has been canceled by the decision of the Supreme Court Number 19 / Pdt / 2016 / PT TJK.

## SUGGESTION

The Government of Lampung City should prioritize the function of green open space rather than the use of the Building Use Right.

The Lampung City government should protect the good name attached to it, so that its actions do not cause legal crimes that harm the community and the regional government itself.

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