

Authority of Regional Governments In Issuing Permits to Open State Land (IMTN) In Samarinda City

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Abstract. *This study discusses the authority of the Regional Government in granting Permits to Open State Land (IMTN) in Samarinda City. IMTN is an important instrument in land management related to the use of state land by the community or legal entities. However, in practice, the implementation of this policy often faces various challenges, both from legal, administrative, and social aspects. This study uses a normative legal method with a legislative approach and analysis of regional policies related to IMTN. The results of the study indicate that the Regional Government has limited authority in granting IMTN, because there is still overlapping regulation between central and regional authorities. In addition, several obstacles were found in the implementation of IMTN in Samarinda City, such as lack of coordination between agencies, limited human resources, and potential land conflicts with the community. Based on these findings, this study recommends the need for synchronization of regulations between the central and regional governments in managing state land, increasing the capacity of the apparatus in managing land permits, and strengthening supervision to prevent abuse of authority. Thus, the IMTN policy in Samarinda City can be more effective in supporting sustainable development and ensuring legal certainty for the community.*

Keywords: Authority; Regional Governments; Issuing Permits; IMTN.

1. Introduction

Land is a gift created by God Almighty to humans for the sake of human survival. Land has a very important position so that the State as the highest organization in a region is present to regulate land ownership, both in the form of individuals and in the form of associations or legal entities. In Indonesia, the law governing

land is known as the Basic Agrarian Law (UUPA) Number 5 of 1960 Basic Agrarian Regulations were enacted in Jakarta on September 24, 1960.

According to UUPA, land in Indonesia is divided into two, namely; Land controlled by the State and Land Rights. State land has two elements, namely directly or fully controlled by the State and land that has not been attached to any land rights. To obtain the land above, it is obtained in two ways, namely; 1) Originair or acquisition of rights due to government stipulations, either in the form of conversion or land registration for the first time. The position of the land can be obtained through a rights application. 2) Derivative or land obtained through certain legal acts such as buying and selling, grants, inheritance, auctions or inbreng.

With the delegation of authority from the central government to the regional government, it opens up opportunities for regions to grant permits to legal subjects as a basis for land control, especially in Samarinda City, with the issuance of Samarinda City Regional Regulation Number 73 of 2023 concerning Technical Instructions for the Implementation of State Land Opening Permits (IMTN) in Samarinda City. Becoming the basis for control over state land. However, the designation of land with the State Land Opening Permit (IMTN) label is misused. Basically, IMTN is only a basis for control over state land to realize legal certainty and as a follow-up to increasing certificates. The object of IMTN itself is not intended for land commercialization. The transfer of state land with IMTN status will be a time bomb and result in unavoidable conflict if the people in Samarinda do not have legal awareness of the consequences of the transfer of land with IMTN status.

Constitutionally, the management of state land is based on Article 33 paragraph (3) of the 1945 Constitution which states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Maria SW Sumardjono emphasized that the concept of "controlled by the state" cannot be interpreted as "owned", but rather in the sense that the state is given the authority to regulate, manage and supervise.¹

In practice, the provision of IMTN in Samarinda City faces various challenges and problems. Boedi Harsono identified that one of the main problems in managing state land is the overlapping authority between the central and regional governments.² This often gives rise to legal uncertainty in the process of granting permits and managing state land.

Complexity of problems also arises related to the technical aspects of the implementation of IMTN. Adrian Sutedi stated that an unordered land

¹Maria SW Sumardjono, "Land Policy: Between Regulation and Implementation", Kompas, 2015, p. 62.

²Boedi Harsono, "Indonesian Agrarian Law: History of the Formation of UUPA", Djambatan, 2013, p. 245.

administration process can result in prolonged land conflicts.³In Samarinda City, this problem is reflected in the many cases of overlapping land ownership and unclear status of state land.

Urip Santoso further emphasized the importance of harmonizing regulations in managing state land.⁴Samarinda Mayor Regulation Number 73 of 2023 must be in line with higher laws and regulations, including the UUPA and its various implementing regulations. However, in practice, there is often disharmony between regional regulations and higher regulations.

The aspect of supervision and control in granting IMTN is also a crucial issue. Irawan Soerodjo emphasized the importance of an effective supervision system to prevent abuse of authority in granting land permits.⁵Samarinda Mayor Regulation Number 73 of 2023 has regulated the monitoring mechanism, but its effectiveness needs to be studied further.

In addition, there are issues related to inter-agency coordination in the implementation of IMTN. Julius Sembiring identified that weak coordination between local governments and the Land Office often becomes an obstacle in managing state land.⁶This can result in inefficiencies in service delivery and potentially give rise to conflicts of authority.

Based on the complexity of the problem, a comprehensive study is needed regarding the implementation of the authority of the Samarinda City Government in providing IMTN. This analysis is important to provide a theoretical and practical basis in developing a more effective and equitable state land management policy.

Based on the description above, the author would like to raise the research title, namely: Legal Analysis Related to the Authority of the Samarinda City Government in Granting Permits to Open State Land (IMTN). Case Study of Samarinda Mayor Regulation Number 73 of 2023 Concerning Technical Instructions for the Implementation of Permits to Open State Land (IMTN) in Samarinda City.

2. Research Methods

Normative legal research is a type of legal research conducted by reviewing primary and secondary legal materials, and emphasizing positive legal norms that apply in a legal system. This research does not aim to observe social phenomena directly in the field, but focuses on library research on relevant laws, doctrines, and court decisions. The selection of this type of research is based on the consideration that the research aims to analyze the implementation of the

³Adrian Sutedi, "Transfer of Land Rights and Its Registration", Sinar Grafika, 2013, p. 112.

⁴Urip Santoso, "Agrarian Law: A Comprehensive Study", Kencana, 2014, p. 178.

⁵Irawan Soerodjo, "Legal Certainty of Land Rights in Indonesia", Arkola, 2012, p. 187.

⁶Julius Sembiring, "State Land", STPN Press, 2016, p. 89.

authority of the Samarinda City Government in granting IMTN based on Mayor Regulation Number 73 of 2023 in practice in the field.

The sociological legal approach in this study is used to examine legal and social aspects simultaneously. The sociological legal approach allows researchers to understand law in its social context.⁷This approach is relevant because the granting of IMTN does not only concern legal-formal aspects, but is also related to social realities in society.

In the context of this research, several aspects that will be studied include:

Legal Aspects:

Analysis of laws and regulations related to IMTN.

Authority of Samarinda City Government.

Procedures and mechanisms for administering IMTN⁸.

Sociological Aspects:

Implementation of policies in the field.

Community response and participation.

Impact of policy on society⁹.

The approach method used in this study is the socio-legal approach. The socio-legal approach is an approach that examines the correlation between law and the social environment in which the law applies.¹⁰In the context of this research, this approach is used to analyze the implementation of the authority of the Samarinda City Government in granting IMTN, both from the formal legal aspect and its implementation practices in the field.

The legal approach in this research is applied through analysis of various laws and regulations relating to IMTN, including:

- a. The 1945 Constitution as a constitutional basis.
- b. UUPA No. 5 of 1960.
- c. Law No. 23 of 2014 concerning Regional Government.

⁷Bambang Sunggono, "Legal Research Methodology", Rajawali Pers, 2012, p. 73.

⁸Soerjono Soekanto & Sri Mamudji, "Normative Legal Research", Raja Grafindo Persada, 2013, p. 14.

⁹Satjipto Rahardjo, "Legal Science", Citra Aditya Bakti, 2014, p. 332.

¹⁰Soerjono Soekanto, "Introduction to Legal Research", UI Press, 2014, p. 51.

d. Samarinda Mayor Regulation No. 73 of 2023.¹¹

Law cannot be seen as a stand-alone phenomenon, but must be understood in its social context.¹² Therefore, the sociological approach in this study is used to examine:

- a. Effectiveness of implementation of the Mayor's Regulation.
- b. Public response to IMTN policies.
- c. The social impact of providing IMTN.
- d. Obstacles in implementation¹³.

The sociological legal approach allows researchers to understand law in the context of society (law in action) and not only as written regulations (law in books).¹⁴

3. Results and Discussion

3.1. Research result.

In terms of land registration, it is necessary to organize orderly administration in the land sector. This land registration activity is carried out by the government continuously, regularly and continuously, which includes data collection, processing, then bookkeeping, presentation and maintenance of physical data and legal data, both in the form of a list map, regarding land plots and apartment units. By providing a certificate of proof of rights to land plots, and ownership rights to apartment units, and other rights. Orderly land administration is carried out with the purpose of land registration, which is regulated in Article 3 of Government Regulation Number 24 of 1997, namely:

- 1) To provide legal certainty and legal protection to rights holders of land plots and apartment units and other related rights;
- 2) Providing information to interested parties to obtain the necessary data regarding registered land plots and apartment units;
- 3) As well as the implementation of orderly land administration.

In order for the orderly administration of land to run well, the BPN is given the task and authority to supervise and regulate it, which has been regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the

¹¹Soerjono Soekanto & Sri Mamudji, "Normative Legal Research", Raja Grafindo Persada, 2013, p. 14.

¹²Satjipto Rahardjo, "Legal Science", Citra Aditya Bakti, 2014, p. 332.

¹³Peter Mahmud Marzuki, "Legal Research", Kencana, 2013, p. 93.

¹⁴Bernard Arief Sidharta, "Reflections on the Structure of Legal Science", Mandar Maju, 2009, p. 218.

National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL). The BPN has the task of carrying out government duties in the land sector nationally, regionally, and sectorally.¹⁵ If there are problems in the land sector, the National Land Agency (BPN) must handle the problems that arise.¹⁶ Good administrative order will be achieved if land registration practices are carried out efficiently in society.

Throughout the validity period of the Basic Agrarian Law in the land registration system in East Kalimantan, especially Samarinda City, land seals are still recognized as a means of proving land ownership. This land seal is in the form of a letter or deed of land ownership and/or transfer of land rights made privately (on sealed paper or stamped paper) affixed with the signatures/fingerprints (thumbs) of the land owner, witnesses, the head of the RT (Neighborhood Association) and government officials (Lurah and Camat) also signed by the land owner, witnesses, then completed with the signatures of the Head of the RT, Lurah and Camat, either only to the extent of knowing and/or registering the letter in their respective register books. The element of proof in the land seal that can be used as a basis for ownership is because it is known and signed by the village/RT head and government officials regarding the boundaries, chronology of the land and/or others. So this proof is considered weak because it is not explained by the official land agency. As a result, control of this land has the potential to cause disputes due to the absence of validation and recording of land ownership. The use of seals as proof of land rights has increased and made land ownership conflicts in Samarinda increasingly complex, this is due to:

1. On the same land there is more than 1 (one) land ownership because there are different seals;
2. Over time and with environmental changes, the location of the land becomes unclear (especially land that uses natural boundaries, buyers who do not inspect the location of the land, the buyer's heirs who do not know the location of the land, and so on);
3. There is a chance of seal forgery, this is because the sub-district does not know the truth of the information contained in the land seal letter;
4. At the time of land division (grant, sale and purchase, inheritance) only a note is provided on the reduction in land area;

¹⁵Urip Santoso, Authority of District/City Government in the Land Sector, Adil: Jurnal Hukum, Volume 3 Number 2, 2012, p. 249.

¹⁶Mira Novana Ardani, Implementation of Orderly Land Administration to Support the Implementation of the Authority, Duties and Functions of the National Land Agency, Administrative Law & Governance Journal, Volume 2 Issue 3, 2019, p. 8.

5. Incorrect measurement methods and lack of administrative checks/completeness cause errors in legal and physical land data; and

6. The number of personnel and the skills of the personnel are not commensurate with the requests of the land owners which creates/increases the legitimacy of their land ownership.

This background then became one of the considerations/legis ratios for the issuance of the Samarinda City Mayor Regulation Number 73 of 2023 concerning Technical Instructions for the Implementation of State Land Opening Permits. However, due to the conditions of the laws and regulations that do not positively regulate technical matters related to the technicalities of State Land Opening Permits, the existence of this Regional Regulation concerning State Land Opening Permits is a form of Regional response to the special conditions in its Region (Land problems), this can be based on Article 14 of Law Number 12 of 2011 concerning the Formation of Legislation that the Content of Provincial Regional Regulations and Regency/City Regional Regulations contains content in the context of implementing regional autonomy and assistance tasks and accommodating special regional conditions and/or further elaboration of higher Legislation. However, the conditions of Article 14 must also note that in forming Legislation, it must be carried out based on the principles of the Formation of good Legislation, one of which is the suitability between the type, hierarchy, and content. So that there is the hierarchy of each type of Legislation based on the principle that lower Legislation must not conflict with higher Legislation.

Thus, based on the explanation above, the existence of the Samarinda City Mayor Regulation Number 73 of 2023 concerning Technical Instructions for the Implementation of Permits to Open State Land is an effort to support the activities of opening and/or utilizing state land in Samarinda City which is starting to develop rapidly so that licensing regulations are needed in the land sector that are not only able to foster an investment climate. However, in substance, the existence of the Samarinda City Mayor Regulation Number 73 of 2023 concerning Technical Instructions for the Implementation of Permits to Open State Land violates the concept of authority for the regions. One of them is as stated in the Regulation of the Mayor of Samarinda City Number 73 of 2023 concerning Technical Instructions for the Implementation of Permits to Open State Land where there are 3 parties authorized to issue Permits, namely the Sub-district Head, Regional Secretary and Mayor, which violates the provisions in the technical regulations, namely the Decree of the Head of BPN Number 2 of 2003 concerning Norms and Standards for the Mechanism for Implementing Government Authority in the Land Sector Implemented by the Regency/City Government that granting permits to open land is the authority of the Regent/Mayor.

3.2. Discussion

As a Permit, the government carries out a control function on activities carried out by the community to comply with the provisions of applicable laws and regulations, one of which is Land Clearing. The author's conclusion is that the Central Government is the authorized party in Granting Permits to Clear State Land. This can be seen in the substance of TAP MPR No. IX of 2001 which then issued Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector, and Decree of the Head of BPN Number 2 of 2003 concerning Norms and Standards for the Implementation Mechanism of Government Authority in the Land Sector Implemented by the Regency/City Government. Thus, there is a conflict of norms between the Presidential Decree and the Decree of the Head of BPN with the Samarinda City Regional Regulation Number 2 of 2019 concerning Permits to Clear State Land. The consequence is that the authority in IMTN must be returned to the Ministry of ATR/BPN, so in order to resolve the conflict of norms, it must be interpreted as being returned to the Minister of ATR/BPN because the Minister of ATR/BPN has the authority related to state land that is not land rights, and not in forest areas based on Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

The existence of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land must be adjusted to the Hierarchy of Norms/stufentheorie theory. Although Regional Regulation Number 2 of 2019 concerning Permits to Open State Land exists as an effort to support the activities of opening and/or utilizing state land in Samarinda City which is starting to develop rapidly so that licensing regulations are needed in the land sector that are not only able to foster an investment climate. Although the existence of this Regional Regulation can be said to be a response to special conditions in the Region (land conditions). However, in substance, Regional Regulations must pay attention to the principle of "conformity between type, hierarchy, and content material", so that the existence of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land violates the concept of authority for the region. One of them is as stated in Regional Regulation Number 2 of 2019 concerning Permits to Open State Land where there are 4 (four) parties authorized to issue Permits, namely the Sub-district Head, Head of Service, and Regional Secretary and Mayor, which violates the provisions in technical regulations, namely the Decree of the Head of BPN Number 2 of 2003 concerning Norms and Standards for the Mechanism for Implementing Government Authority in the Land Sector Implemented by the Regency/City Government, that granting permits to open land is the authority of the Regent/Mayor.

4. Conclusion

This study confirms that the Samarinda City Government policy in the form of Mayor Regulation Number 73 of 2023 concerning the Permit to Open State Land

(IMTN) is not fully in line with the applicable national legal principles. There were conflicts of authority, legal uncertainty, and quite significant social impacts in the community. Land policy arrangement must be carried out harmoniously between the central and regional governments so as not to cause dualism of authority. Regional laws, in this case the mayor's regulations, must not exceed or deviate from the authority that has been determined in higher laws. By considering the principle of legal certainty and protection of community rights, every regional regulation—especially those concerning land rights—must be drafted with careful legal considerations and sensitivity to social realities. This is important to avoid policy failure and minimize the potential for land conflicts in the future.

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