

Application for Permit to Grants Rights to State Land in Land Arrangement in Samarinda City

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Abstract. *Land is a strategic resource that plays a vital role in people's lives and national development. Therefore, land ownership, use, utilization, and registration must be implemented based on legal provisions that provide legal certainty and protection. In the context of Samarinda City, the Regional Government issued Samarinda City Regulation Number 2 of 2019 concerning State Land Clearing Permits (IMTN) as an instrument in land administration management. The existence of IMTN raises issues regarding the authority of the regional government in granting permits for state land and its position in the national land law system. This study aims to analyze the authorities in granting permits for state land clearing and analyze the existence of Samarinda City Regulation Number 2 of 2019 in land management in Samarinda City. The study uses an empirical legal research method with a sociological juridical approach. Data were obtained through literature studies and field research through interviews with parties related to the implementation of IMTN. Data analysis was conducted qualitatively. The results of the study indicate that the authority to grant rights to state land is, in principle, the authority of the central government through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency based on national land law provisions. Local governments do not hold the position of granting rights to state land, but they can exercise administrative functions to regulate and control land use within their authority. The IMTN in Samarinda City primarily serves as an administrative instrument to regulate state land ownership, not as proof of land rights. Therefore, the implementation of the IMTN must be implemented proportionally and harmonized with higher-level laws and regulations to avoid conflicting norms and legal uncertainty.*

Keywords: Authority; Land; Management; State.

1. Introduction

Land plays a crucial role in human life. It serves not only as a place to live and conduct economic activities, but also as a social, cultural, and legal entity. The community's need for land continues to increase in line with population growth,

regional development, and economic growth. This situation makes land ownership and use a crucial issue requiring clear regulation and legal certainty.

Law Number 5 of 1960 concerning Basic Agrarian Regulations, or the Basic Agrarian Law (UUPA), is the primary foundation of the national land law system. The state, as the organization of power for all the people, has the authority to regulate the allocation, use, supply, and maintenance of land, as well as the legal relationship between people and land.

One of the primary objectives of land law enforcement is to provide legal certainty to the public. This is reflected in Article 19 of the UUPA, which mandates land registration throughout Indonesia. Land registration is necessary to provide legal certainty and protection to land rights holders.

The issue becomes more complex when it comes to land that has not yet been granted rights to an individual or legal entity and still holds state land. In practice, community control of state land can persist for quite a long time and is often based on evidence of administrative control that does not yet constitute land rights as defined in the UUPA.

This situation also occurs in Samarinda City. Population growth and regional development have led to an increasing demand for land. On the other hand, unorganized land ownership can lead to problems such as overlapping ownership, unclear land boundaries, and difficulties in the land registration process.

To implement this arrangement, the Samarinda City Government issued Samarinda City Regional Regulation Number 2 of 2019 concerning Permits to Open State Land. This regulation stipulates the IMTN (National Land Clearance Permit) as an administrative instrument for controlling state land in Samarinda City.

Subsequently, the implementation of IMTN was further regulated through Samarinda Mayoral Regulation Number 14 of 2022 concerning Technical Guidelines for the Implementation of Permits to Open State Land. This regulation replaced Samarinda Mayoral Regulation Number 61 of 2019, which was deemed no longer appropriate to the conditions and needs of IMTN implementation. Mayoral Regulation Number 14 of 2022 was subsequently amended through Samarinda Mayoral Regulation Number 73 of 2023.

On the one hand, the IMTN serves a positive administrative purpose: assisting the government in identifying and organizing state land ownership. The IMTN's implementation can also serve as an instrument to encourage communities to improve their land ownership status toward land rights registration.

However, on the other hand, issues arise regarding the status and authority of local governments in granting permits for state land. This issue relates to the principle that granting land rights is part of the authority within the national land administration system. Therefore, a distinction must be made between

administrative permits to open or control state land and decisions granting rights to state land.

This distinction is important because an IMTN cannot be equated with a land title certificate. An IMTN is essentially an administrative instrument for managing land ownership and not proof of title as defined in the UUPA.

The issue of authority is becoming increasingly important because regional regulations must not conflict with higher-level laws. The Indonesian legal system adheres to the principle of regulatory hierarchy, meaning that the content of regional regulations must fall within the scope of the regional government's authority and must not usurp authority that falls within the central government's purview.

Based on this description, this research is important to be conducted to analyze the authority in granting permits for opening state land and the position of Samarinda City Regional Regulation Number 2 of 2019 in the national land law system.

2. Research Methods

This study uses an empirical legal research method with a sociological juridical approach. Empirical legal research is used to examine the application of legal provisions in practice, particularly regarding the implementation of IMTN in Samarinda City. A legal approach is used to examine laws and regulations relating to state land, government authority in the land sector, land registration, and the National Land Agency (IMTN). A sociological approach is used to determine the implementation of these provisions in government and community practices in Samarinda City. The research data consists of primary and secondary data. Primary data was obtained through interviews with parties involved in the implementation of IMTN, including officials at the Samarinda City Land Office and Samarinda City Government officials who handle IMTN services. Secondary data was obtained through literature studies which included laws and regulations, law books, scientific journals, previous research results, and documents related to the research object. Data analysis was conducted qualitatively. The data obtained were then classified based on the research problem, analyzed using applicable legal provisions and relevant legal theories, and conclusions were drawn to answer the research questions.

3. Results and Discussion

3.1. Authority in Granting Permits for Opening State Land

Authority is a crucial concept in state administrative law. Every government action must have a legitimate basis for authority. This authority can be obtained through attribution, delegation, or mandate.

In the land sector, state authority stems from the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, 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.

These provisions are then outlined in the UUPA. The state has the authority to regulate and organize the allocation, use, supply, and maintenance of land, water, and space, as well as to determine the legal relationship between people and land, water, and space.

Thus, state control over land does not mean that the state is the owner in the civil sense, but rather the state has public authority to regulate legal relations regarding land.

In the context of granting rights to state land, this authority rests within the central government's land administration system, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Certain authorities may be exercised by land officials or agencies in accordance with the delegation of authority under statutory regulations.

This must be distinguished from the authority of the Samarinda City Government in implementing IMTN.

The IMTN cannot be viewed as granting land rights. It is an administrative instrument used to regulate the control and development of state land in Samarinda City. Therefore, the issuance of an IMTN does not automatically grant an individual ownership rights, building use rights, cultivation rights, or other rights as defined in the UUPA.

Samarinda Mayoral Regulation No. 14 of 2022 explicitly defines IMTN as a permit related to state land ownership and regulates the subjects, objects, authorities, procedures, administrative requirements, and revocation of IMTN. This regulation was subsequently amended through Mayoral Regulation No. 73 of 2023 to provide legal certainty in its implementation.

Thus, there are two realms that must be distinguished:

First, the regional administrative realm in the form of issuing IMTN as an instrument for arranging state land ownership.

Second, the realm of granting land rights as an authority in national land administration.

This distinction is important to prevent the public from mistaking an IMTN for a land title certificate. IMTN holders still need to undergo further processes to obtain land title and register it in accordance with land law.

3.2. Existence of Samarinda City Regional Regulation Number 2 of 2019

Samarinda City Regional Regulation Number 2 of 2019 is the regional legal basis for implementing IMTN in Samarinda City.

The creation of these regulations is inextricably linked to the need to regulate state land ownership in Samarinda City. Prior to the IMTN system, community land ownership could be proven through various forms of ownership documents, which could potentially cause problems if not supported by adequate physical and legal data.

From a land management perspective, the existence of IMTN has several benefits.

First, IMTN can help local governments conduct inventories and identify state land ownership.

Second, IMTN can help reduce the potential for overlapping land ownership by examining data and the physical condition of the land.

Third, IMTN can encourage communities to improve their land ownership status towards land rights registration.

Fourth, IMTN can be an instrument for controlling land use so that land use takes into account regional spatial planning.

However, the existence of the IMTN must also take into account the limits of regional government authority. Regional governments cannot, through regional regulations, create new forms of land rights that fall outside the land rights system established by the UUPA.

Therefore, IMTN must be understood as a regional administrative instrument and not as a form of land rights.

The main issue lies not solely in the existence of the IMTN, but in how it is positioned within the national land law system. If the IMTN is understood as an administrative permit to acquire or open state land and then becomes part of the process leading to land rights registration, its existence could benefit land administration.

On the other hand, if IMTN is seen as proof of ownership or rights to land, it could cause legal confusion and uncertainty for the community.

Regulatory developments also demonstrate the Samarinda City Government's efforts to adjust the IMTN mechanism. Mayoral Regulation No. 14 of 2022 was issued to replace Mayoral Regulation No. 61 of 2019, as the previous provisions were deemed no longer appropriate to the current situation. Subsequently, Mayoral Regulation No. 14 of 2022 was amended by Mayoral Regulation No. 73 of 2023.

This shows that IMTN regulations are still developing and require ongoing harmonization with national land laws.

3.3. IMTN as a Land Management Instrument

Land management is basically not only related to granting land rights, but also includes control, use, utilization, registration and control of land.

In the context of Samarinda City, IMTN can be seen as an administrative instrument to determine who controls a piece of state land, the location of the land, the area of the land, its boundaries, and the purpose of its use.

This process has important value because land ownership without good administration has the potential to cause conflict.

Based on research findings, one of the underlying issues behind the implementation of IMTN is the potential for overlapping land ownership. Therefore, the IMTN process, which includes document review, field inspection, measurement, and boundary verification, can be a preventative measure to reduce the potential for disputes.

However, this preventive function must be accompanied by public understanding of the position of IMTN.

People need to understand that:

- 1) IMTN is not a land title certificate;
- 2) IMTN is not proof of ownership like a certificate of title;
- 3) IMTN does not replace the authority of the Land Office in granting and registering land rights;
- 4) IMTN holders must still follow the procedures for registering land rights in accordance with statutory regulations.

Thus, the existence of IMTN should be part of the land management process and not the final goal of the land ownership legalization process.

3.4. Forms of Documents Relevant to IMTN Implementation

In implementing IMTN there are various administrative documents that have a function in the inspection and permit issuance process.

These documents include an IMTN application, applicant identity documents, grounds for land ownership, a statement of ownership, land boundary documents, minutes of inspection or measurement, and other documents required by the IMTN implementing regulations.

In the context of notaries and PPAT, it is necessary to provide a clear boundary between IMTN administrative documents and authentic deeds made by a notary or PPAT.

An IMTN is not a PPAT deed. Issuing an IMTN is an administrative government action. Meanwhile, a PPAT has the authority to issue certain authentic deeds concerning legal acts regarding land rights and ownership rights to condominium units in accordance with statutory provisions.

Therefore, documents related to the IMTN cannot be automatically referred to as "State Land Establishment Permit Deeds." This terminology needs to be considered because it can lead to misunderstandings regarding the nature and status of the document.

The IMTN document is basically an administrative document issued by authorized officials based on applicable Regional Regulations and Mayoral Regulations.

If, after obtaining the IMTN, the holder carries out the process of granting or registering land rights and then carries out certain legal actions regarding these rights, a PPAT deed can be made as long as all legal requirements have been fulfilled.

Therefore, the Notary/PPAT's position in the IMTN issue must be properly positioned. Notaries/PPATs are neither the parties granting the IMTN nor the parties granting rights to state land.

4. Conclusion

Based on the research results and discussion, the following conclusions can be drawn: First, the authority to grant rights to state land is in principle the authority of the government in the national land administration system through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency in accordance with the provisions of laws and regulations. The Samarinda City Government does not have the authority to grant rights to state land in the sense of granting Ownership Rights, Building Use Rights, Cultivation Use Rights or other land rights. The regional government can exercise administrative authority in the context of arranging and controlling land ownership and utilization through the IMTN mechanism. Second Samarinda City Regional Regulation Number 2 of 2019 serves as the basis for regional regulations regarding the IMTN (National Land Use Permit). Its administrative purpose is to create orderly control and utilization of state land in Samarinda City. However, the IMTN must be positioned as an administrative instrument and should not be equated with land rights or land title certificates. Its implementation must also be consistently harmonized with higher-level laws and regulations. Third The IMTN document is a government administrative document and not a PPAT deed. This document can be used as part of the administrative process for arranging state land ownership and further steps toward land rights

registration. Notaries and PPATs have different authorities and may only exercise their authority in accordance with statutory provisions.

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