

The Authority of The Local Government of the City of Samarinda in Giving License to Open State Land (Study on Samarinda City Regional Regulation Number 2 of 2019 concerning Land Clearing Permits (IMTN) in Samarinda City)

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Abstract

This article is entitled "The Authority of the Samarinda City Government in Giving Permits to Open State Land (Study on Samarinda City Regional Regulation Number 2 of 2019 concerning Land Clearing Permits (IMTN) in Samarinda City)" with 2 (two) main issues, namely: (1) Who has the authority to grant permits to open State land according to positive law in Indonesia? (2) How is the existence of the Regional Regulation of the City of Samarinda Number 2 of 2019 concerning Permits to Open State Land (IMTN) in the City of Samarinda. This research is a type of legal research with a normative juridical research method. Besides, this research uses a statutory research approach and a conceptual approach. The results of this article research indicate that substantially the existence of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land violates the concept of authority for the regions. One of them is as referred to in Regional Regulation Number 2 of 2019 concerning Permits to Open State Land where there are 3 parties authorized in issuing permits, namely the Camat, Regional Secretary and Mayor, which violates the provisions in technical regulations, namely Decree of the Head of BPN Number 2 of 2003 concerning Norms and Standard Mechanisms for the Management of Government Authorities in the Land Sector Implemented by District/City Governments that granting permits to clear land is the authority of the Regent/Mayor. As a permit, the government carries out a control function over activities carried out by the community so that they are in accordance with the provisions of the applicable laws and regulations, one of which is clearing land. The conclusion from the author is that the Central Government is the authorized party in granting permits to open state land. This can be seen in the substance of TAP MPR No. IX of 2001 which then issued Presidential Decree No. 34 of 2003 concerning National Policy in the Land Sector, and Decree of the Head of BPN No. 2 of 2003 concerning Norms and Standards of Mechanisms for the Management of Government Authority in the Land Sector Implemented by District/City Government.

Keywords

Authority; local government; permit to open state land



I. Introduction

The position of the State as the ruler is obliged to regulate various land rights as stated in Article 16 paragraph (1) of the Basic Agrarian Law. The granting of several types of land rights to individuals and legal entities, in addition to giving the authority to manage the land in accordance with the rights they hold and as long as they do not conflict with the applicable restrictions, also imposes obligations on the holders of these rights to register

their land rights in the context of legal certainty. . This is confirmed in Article 19 paragraph (1) of the Basic Agrarian Law promulgated in Jakarta on September 24, 1960.

If you look at the application of the land sector in Samarinda City itself, in relation to the role of the Camat/Village Head as PPATS, this is regulated through the Samarinda City Regional Regulation Number 2 of 2019 concerning Permits to Open State Land. Although this Regional Regulation was issued on the basis of opening and/or utilizing state land in the City of Samarinda, it is growing rapidly so that licensing arrangements in the land sector are needed that are not only able to foster an investment climate, but also side with the welfare of the community and maintain the preservation of environmental functions. However, the existence of this Regional Regulation worries the people of Samarinda City. Further details regarding the case in Samarinda City can be seen as follows:

Through the Samarinda City Regional Regulation Number 2 of 2019 concerning Permits to Open State Land, each holder of a Right of Land (SPPT/leter C) is withdrawn by an authorized official, then must apply for an IMTN before applying for land rights. This condition, through the results of the author's observations, causes the public to be restless because IMTN must be managed according to Article 6 paragraph (11) and Article 10 of the Samarinda City Regulation Number 2 of 2019 concerning Permits to Open State Land, rights do not have different economic values from SPPT/letter C issued by the sub-district head have economic value can be traded. On the other hand, Samarinda City Regulation Number 2 of 2019 concerning Permits to Open State Land encourages the public to immediately upgrade the seal/petok D letter to IMTN. This condition is also emphasized through Mayor Regulation (Perwal) Number 61 of 2019 concerning Permits to Open State Land as the implementer of Samarinda City Regulation Number 2 of 2019 which confirms that the Camat as PPATS may no longer issue a Land Ownership Statement/or letter C.

Further exploring the results of the author's observations in the community, many people are restless because IMTN as the basis for rights has no different economic value from the Land Tenure Statement issued by the Camat before the issuance of the Samarinda City Regional Regulation Number 2 of 2019 concerning Permits to Open State Land. This makes the community nervous because IMTN cannot be traded and forces the community to immediately upgrade the IMTN to a certificate within a period of 3 years, if within 3 years it is not upgraded to a certificate, the land will return to the state.

A number of people have complained about the implementation of the Regional Regulation (Perda) of Samarinda City Number 2 of 2019 and the Regulation of the Mayor (Perwali) of Samarinda Number 61 of 2019 concerning Permits to Open State Land (IMTN). So, the Samarinda City DPRD plans to review the two regulations. There is an effort to conduct a re-examination because there are a number of issues with the points of the IMTN Regional Regulation. Among them, IMTN is a mandatory requirement for obtaining land certificates. So that the role of the government is greater in managing land issues in the region.

Based on the above conditions, although the purpose of this regional regulation is that the Camat as PPATS can no longer arbitrarily issue land seals, so that overlapping ownership of land seals is expected to decrease. Communities must apply for certificates to obtain land rights. IMTN itself will be very difficult to fake because in its issuance it goes through several stages of verification. Such as verification of history or land history, for example equipped with previous land seals. Then verification in the field such as land tenure at the location. Then the boundary agreement with the owner of the land in the vicinity. The team from the City Government will also take measurements of the requested land.

Based on the case explanation above, although conceptually IMTN cannot be sold, even when it has been running for three years, the IMTN is not subject to a land certificate, so the land is returned to the State. Unlike the SPPT/leter C, the validity period has no time limit. In the author's initial view (hypoarticle) that there are problems juridically, where the Samarinda City Regional Regulation Number 2 of 2019 violates higher provisions, or in this case it is said that the norms adopted by the Regional Regulations experience legal conflicts. In the language of conflict, the law comes from the words conflict and law. Conflict comes from the Latin *configere* which means hitting each other. Sociologically, conflict is defined as a social process between 2 or more people and can be a group, where one party tries to get rid of the other party or destroys or makes it powerless.

II. Review of Literature

2.1 The Party Who Has the Authority to Give Permits to Open State Land according to Positive Law in Indonesia

Permit to Open State Land, which is included in the field of public law, is a single-sided government legal act, in which the Government determines its own will based on the desire of the legislators to achieve a certain order desired by the Government, namely so that the people who control the State land both have a good foundation. rights or not, must apply for a return permit, with control in the form of this permit as an orderly and regulator, so that land use activities are carried out in accordance with their designation. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

If one observes the three powers as regulated in Article 2 paragraph 2 of the LoGA above, it can be interpreted that the state acts as the ruler of all natural wealth both on the surface of the earth and in the earth (including land) in the territory of the Republic of Indonesia. The right of control from the State is one form of control over land which is rooted in the constitution of the Republic of Indonesia, namely Article 33 paragraph (3) of the 1945 Constitution which reads: Earth and water and the natural resources contained therein are used as much as possible for the prosperity of the people. . These provisions are then further elaborated in Article 2 paragraph (1) of the Basic Agrarian Law. The State's Right to Control as embodied in Article 33 paragraph (3) of the 1945 Constitution means that the state acts as the highest land tenure right holder, which is further emphasized in Article 2 paragraph (1) of the Basic Agrarian Law. Which states that the state as an organization of power for all the people holds supreme power over the earth, water, space, and the wealth contained therein.

The concept of the right to control does not mean that the people/community are under the state. In the principle of the state controlling then in the relationship between the state and society/people. The community/people cannot be subordinated to their position under the state, because the state actually receives power from the community/people to regulate the allotment, supply and use of land as well as legal relations related to land. So the state only acts as a fair arbiter who determines the rules of the game that are obeyed by all parties and the state is also subject to the rules made by itself when it plays a role as an actor in its activities to use land.

In the Basic Agrarian Law, the definition of the right to open land is not clearly regulated. However, in Article 16 Paragraph (1) of the Basic Agrarian Law letter f, the term land clearing rights is stated. So it can be emphasized that the right to clear land is one of the rights to land as stated in Article 46 of the Basic Agrarian Law. According to Boedi Harsono, clearing this land is not a real land right, because this right does not give the authority to use the land. For example, with the contents of Article 46 (2) of the Basic Agrarian Law, the legal use of the right to collect forest products does not mean automatically granting rights, especially property rights, to the user. The concept of clearing state land is found in the provisions of Article 16 (1) letter f of the Basic Agrarian Law with the word Land Opening Right, meaning that one of the efforts to expand the area of agricultural land is by clearing the land.

Permit to Open State Land (IMTN) is a permit granted by the mayor or an appointed official to individuals or legal entities to open and/or take advantage of and use land directly controlled by the state to function as the basis for the application for rights. IMTN is expected to function as a substitute for land seals which will later be stored by the District Office in a land certificate as a State archive. However, the fact is that the evidence in the form of land seals/SPPT in Samarinda City is an overlapping problem that hinders the land registration process, IMTN is one of the requirements for registering old rights in the form of land seals to the National Land Agency to be upgraded to a certificate of ownership of land. Along with developments in Samarinda City, IMTN was implemented after the ratification of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land. However, before enacting the provisions in Regional Regulation Number 2 of 2019 concerning Permits to Open State Land, implementing regulations are needed so that the government stipulates Regulation of the Mayor of Samarinda Number 61 of 2019 concerning Permits to Open State Land.

So to answer who has the authority to grant permits to open state land according to positive law in Indonesia, it can actually depart from the substance of the Decree of the Head of BPN No. 2 of 2003 concerning Norms and Standards for Mechanisms for the Management of Government Authority in the Land Sector Implemented by Regency/City Governments. Where there are some important notes that need to be understood.

III. Result and Discussion

3.1 The existence of the Regional Regulation of the City of Samarinda Number 2 of 2019 concerning Permits to Open State Land (IMTN) in the City of Samarinda

The state is an organization that is given the authority to control, represent the people in managing and regulating natural resources, legal actions and legal relations on land and the control of all resources is for the prosperity of the people. Agrarian reform in the context of equitable distribution of agrarian resources as well as for optimization in sustainable natural resource management. In order to realize equitable development in accordance with the conditions of the people in their respective regions, MPR Decree Number IX of 2001 concerning Agrarian Reform and Management of Natural Resources was issued. In the context of implementing the MPR TAP, there are 9 (nine) authorities in the land sector carried out by the Regency/City Government as stipulated in Article 2 paragraph (2) of Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector, namely:

- 1) Granting a location permit;
- 2) Implementation of land acquisition for development purposes;
- 3) Settlement of arable land disputes;

- 4) Settlement of the problem of compensation and land compensation for development;
- 5) Determination of subject and object of land redistribution, as well as compensation for maximum excess land and absentee land;
- 6) Determination and resolution of ulayat land issues;
- 7) Utilization and resolution of vacant land problems;
- 8) Granting permission to clear land;
- 9) Land use planning for the Regency/City area.

For legal certainty in maintaining their land tenure rights, residents who have a certificate from the sub-district head can apply for ownership rights at the land office. Prior to the enactment of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land, an application for land rights can be applied on the basis of the camat certificate of title (seal) as one of the evidences for the basis of the rights recognized in the Elucidation of Article 24 paragraph (1) letter m in Government Regulation 24 of 1997, namely other forms of written evidence as referred to in the provisions concerning the conversion of the Basic Agrarian Law, which reads:

The proof of ownership basically consists of proof of ownership in the name of the right holder at the time the Basic Agrarian Law comes into effect and if the right is subsequently transferred, the evidence of successive transfer of rights reaches the right holder at the time the book of rights is recorded.

With the IMTN issued by the District, the land certificate which was originally proof of a person's ownership of a land seal is no longer valid, because it has been replaced with the issuance of the IMTN (Permit to Open State Land), in this case IMTN in Samarinda City as substitute for land seals and as proof of land ownership. The process to obtain this IMTN certificate is not easy and takes about 3 months because of waiting for objections or rebuttals from third parties that can be submitted if there are legal subjects who feel that the land is their property and proof of ownership is only in the form of a land seal, it cannot be upgraded to a land certificate, this can prevent someone from getting a certificate on their land. However, the condition in which the legal certainty to be fulfilled through Regional Regulation Number 2 of 2019 concerning Permits to Open State Land does not reflect legal certainty, this condition is because in Regional Regulation Number 2 of 2019 concerning Permits to Open State Land stipulates that every legal base must be applied for IMTN before requesting land rights is contrary to the technical norms of BPN Decree No. 2 of 2003 concerning Norms and Standards of Mechanisms for the Management of Government Authorities in the Land Sector Implemented by District/City Governments as a technical provision of Presidential Decree 34 of 2004 which is the implementation of TAP MPR IX/2001 concerning Agrarian Reform and Natural Resources Management where the granting of permits to clear land is not granted to legal subjects who have received permits to clear land previously. This condition clearly violates the context of normative legal certainty because the regulations are made and promulgated uncertainly and the rules referred to in it are not clear and contradictory. This condition then creates doubts (multi-interpretation) and illogicality in the sense of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land to break away from the norm system with other norms so that they do not clash or cause conflicting norms.

Since the enactment of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land, the people who control the State land are obliged to apply for Permits to Open State Land, hereinafter referred to as (IMTN) before applying for land rights as stated in Regional Regulation Number 2 of 2019 concerning Article 10 State Land Clearing Permit related to the provisions of rights and obligations, reads:

IMTN holders have the right to open and/or utilize state land in accordance with statutory provisions.

Every existing holder of the right to land is required to apply for IMTN before applying for land rights.

In order for the orderly administration of land to run well, the National Land Agency 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 National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL). BPN has the task of carrying out government duties in the land sector nationally, regionally and sectorally. If there are problems in the land sector, the National Land Agency (BPN) must handle the problems caused. A well-run administrative order will be achieved if the practice of land registration is carried out efficiently in the community.

Throughout the validity period of the Basic Agrarian Law in the land registration system in East Kalimantan, especially the City of Samarinda, land seals were 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 which is made under hand (on seal paper or stamped paper) affixed with the signature/fingerprint (thumb) of the land owner, witnesses, and head of the RT (Rukun). Neighbors) and government officials (Lurah and Camat) are also signed by the land owner, witnesses, then accompanied by the signatures of the Head of RT, Lurah and Camat, both only limited to knowing and/or registering the letter in their respective register books. The element of proof in the land seal that can be used as the basis for ownership is because it is known and signed by the village/RT head and government officials regarding boundaries, land chronology and/or others. So this evidence is considered weak because it was not explained by the official land agency. As a result, this land tenure has the potential to cause disputes from the absence of validation and registration of land ownership.

The existence of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land is an effort to support activities to open and/or utilize state land in Samarinda City which is starting to develop rapidly so that licensing arrangements in the land sector are needed that are not only able to foster an investment climate. However, in substance the existence of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land violates the concept of authority for regions. One of them is as referred to in Regional Regulation Number 2 of 2019 concerning Permits to Open State Land where there are 3 parties authorized in issuing permits, namely the Camat, Regional Secretary and Mayor, which violates the provisions in technical regulations, namely Decree of the Head of BPN Number 2 of 2003 concerning Norms and Standard Mechanisms for the Management of Government Authorities in the Land Sector Implemented by District/City Governments that granting permits to clear land is the authority of the Regent/Mayor.

IV. Conclusion

- a. As a permit, the government carries out a control function over activities carried out by the community so that they are in accordance with the provisions of the applicable laws and regulations, one of which is clearing land. The conclusion from the author is that the Central Government is the authorized party in granting permits to open state land. This can be seen in the substance of TAP MPR No. IX of 2001 which then issued Presidential Decree No. 34 of 2003 concerning National Policy in the Land Sector, and Decree of the Head of BPN No. 2 of 2003 concerning Norms and Standards of Mechanisms for the Management of Government Authority in the Land Sector

Implemented by District/City Government. Thus, there is a conflict of norm between the Presidential Decree and the Decree of the Head of BPN and the Samarinda City Regulation Number 2 of 2019 concerning Permits to Open State Land. The consequence is that the authority in IMTN should be returned to the Ministry of Home Affairs, but because there is a Ministry of ATR/BPN, in order to resolve the conflict of norm, it must be interpreted as returning to the Minister of ATR/BPN because the Minister of ATR BPN has the authority related to State lands that are not lands. rights, and not on forest areas based on Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

- b. The existence of the Regional Regulation Number 2 of 2019 concerning Permits to Open State Land must be adjusted to the Norm Hierarchy/stufentheorie theory. Although Regional Regulation Number 2 of 2019 concerning Permits to Open State Land exists as an effort to support activities to open and/or utilize state land in Samarinda City which is starting to develop rapidly so that licensing arrangements in the land sector are needed that are not only able to foster an investment climate. Even though the existence of this Regional Regulation can be said to be a form of *Freies ermesen*, it appears as an alternative to fill the shortcomings and weaknesses in Positive Legal conditions. However, in substance the Regional Regulations that regulate state administrative actions also need to pay attention to the principle of Legality as the Law of the Republic of Indonesia Number 30 of 2014 concerning Administration, so that the existence of Regional Regulation Number 2 of 2019 concerning Permits to Open State Land needs to pay attention to the principle of legality in the Act. This law violates the concept of authority for the regions. One of them is as referred to 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 Camat, Head of Service, and Regional Secretary and Mayor, which violates the provisions in the technical regulations, namely the Decree of the Head of State. BPN Number 2 of 2003 concerning Norms and Standards of Mechanisms for the Management of Government Authorities in the Land Sector Implemented by District/City Governments, that granting permits to clear land is the authority of the Regent/Mayor.

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