

Juridical Analysis Of Batam's Authority Of Bp On The Issuance Of Land Management Rights To New Rights Holders In Order To Realize Legal Certainty (Research Study At Batam Business Agency)

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ABSTRACT. The purpose of the study is to determine the legal regulation of the authority of the Batam Concession Agency (BP) on the issuance of land management rights for new rights holders, to determine the implementation of the authority of the Batam Concession Agency (BP) on the issuance of land management rights for new rights holders in order to realize legal certainty, to find out the constraint factors and solutions from the implementation of the authority of the Batam Concession Agency (BP) on the issuance of land management rights for new rights holders for the sake of Realizing Legal Certainty. This thesis research method is normative juridical (legal research) through literature study with an empirical juridical approach (sociological juridical) through field studies aimed at obtaining legal knowledge empirically. The results showed that according to legal arrangements, the Batam Concession Agency (BP) has special authority in terms of issuing land management rights in the Batam area. It shows Batam's strategic position and importance in the country's economic and investment map. BP Batam acts as the central authority in regulating and supervising the granting of land management rights to new rights holders, ensuring that the process is carried out in accordance with applicable rules and regulations. The exercise of authority by the Batam Concession Agency (BP) in issuing land management rights for new rights holders is a concrete effort to realize legal certainty in the Batam area. Through its authority, BP Batam ensures that every grant of land management rights is carried out based on the principles of transparency, and accountability, and in accordance with applicable regulations. It is important to ensure that new rights holders get their rights clearly and without ambiguity, so as to encourage investment and sustainable development in Batam. Exercising its authority over the issuance of land management rights, BP Batam faces a number of obstacles, including complicated bureaucracy, potential discrepancies between central and regional regulations, and inadequacy of competent human resources. These obstacles have the potential to hinder the achievement of legal certainty for new rights holders. To overcome this, intensification efforts are needed in bureaucratic reform, harmonization of regulations, and capacity building and training for BP Batam apparatus. With this solution, it is hoped that the process of issuing land management rights can run more efficiently, and transparently, and provide legal certainty expected by rights holders and investors in Batam. It is recommended that the central and local governments to continue to support BP Batam with policies that facilitate the procedure for issuing land management rights. BP Batam should develop a digital system for the issuance of land management rights that can simplify the process, increase transparency, and strengthen legal certainty for new rights holders. To establish a regular dialogue forum between BP Batam, new rights holders, and other relevant parties to identify and resolve obstacles that arise in real time.

Keywords: Authority, BP, Land Rights

Introduction

Batam City is one of the areas included in the national strategic area. According to Article 1 Point 5 of Presidential Regulation Number 87 Year 2011 on Spatial Planning of Bintan Area, Batam Area, and Karimun Area. The government prioritizes the area because it has a significant national influence on state sovereignty, defense, national security, economy, society, culture, and environment. However, the unclear land status has made the development process in Batam City stagnate and tend to slow down. This is certainly not Juridical Analysis Of Batam's Authority Of Bp On The Issuance Of Land Management Rights To New Rights Holders In Order To Realize Legal Certainty (Research Study At Batam Business Agency)

expected because it is not by the State's vision to realize accelerated development in every sector of community life, nation, and state. By looking at the privileges owned by Batam City, in this case, the government made a particular policy to regulate or manage Batam City. The year 1973 was the beginning of the Government making a particular policy towards Batam City, namely by issuing Presidential Decree No. 41 of 1973 concerning Batam Island Industrial Area. The purpose of the particular policy-making was to prepare Batam City as an industrial area, trade, ship transfer, and tourism.

Batam City has two institutions in management, namely the Batam City Government, mandated by Law No. 23 of 2014 on Local Government, and the Business Entity (BP), mandated by Law No. 46 of 2007. There is an authority overlap between the city government and the business entity. This situation is also clarified by the granting of Regional Autonomy through Law Number 23 Year 2014 on Regional Government. In this case, it gives enormous power to each region to manage its household affairs.

Therefore, the Batam City Government wants the policy related to land to be the authority of the Batam City Government; in this case, the Entrepreneur Agency refers to the Government Regulation of the Republic of Indonesia Number 46, the Year 2007, with the task of authority to carry out the management, development, and area by the functions of the area. Meanwhile, Batam City, with the spirit of regional autonomy, concluded that it was time for the authority in the field of land to be transferred to the authority of the Batam City Government.

The City Government and Business Entities should thoughtfully manage this condition as the holder of executive authority in Batam City. However, the synergy between the two institutions could be improved by overlapping authority. The problems between Batam Business Entity and Batam City Government include Land services. Another problem that has arisen is the existence of two types of land tax imposed on the community, namely the payment of Land and Building Tax (PBB) and the Annual Obligation of Authority (UWTO). This certainly adds to the cost burden on the community or investors, resulting in investment overruns. This situation may make investors less interested in investing in Batam.¹

¹ Azura Adawiyah Rahman, *Analisis Regulasi Kewenangan Bidang Pertanahan Di Kota Batam*, Government: Jurnal Ilmu Pemerintahan Volume 14, Nomor 1, Januari 2021, hlm. 55

Research Methods

Research is an investigation or investigation that is managed systematically based on data, critical, objective, and scientific towards a specific problem aimed at finding alternative solutions to related problems. The specifications of this research only analyze only to the level of detesis, namely analyzing and presenting facts systematically so that they can be more easily understood and concluded². Researchers researching the object of this study have determined the specifications of Normative Legal research. The specification and type of this research is normative legal research while combining with sociological (empirical) legal research using secondary data obtained directly from as the first source through field research through interviews and primary data as a source/material of information in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The approach in this research is a combination of methods between the normative approach, "legal research," and the empirical approach method, "Juridical Sociologies." The research mechanism with this combined approach method is carried out by describing the research explanation inductively, leading to a deductive way and vice versa. The location of this research was conducted in Batam City, more precisely at the Batam Concession Agency (BP) office located at Jl. Yos Sudarso No. 3, Batu Merah, Batu Ampar, Sungai Jodoh, Kec. Batu Ampar, Batam City, Riau Islands. The sample used by the author is a random technique, with details of 5 (five) people, all employees and employees in charge of the Batam Concession Agency.

This type of research falls into the category of combined research between normative legal research (library research) and observational research. In this research, data analysis is carried out qualitatively by describing the research, then comparing the data with legal theories, legal experts, and laws and regulations, where the analysis starts with data collection, data processing, and finally, data presentation. Concluding will be the deductive method; namely, the author takes data, information, and opinions, which are general, and then concludes specifically.

Result

Authority

Authority is the right to use the authority possessed by an official or institution according to applicable regulations. Thus, authority also concerns the competence of legal

² Irawan Suhartono, *Metode Penelitian Sosial Suatu Teknik Penelitian Bidang Kesejahteraan Sosial lainnya*, Bandung: Remaja Rosda Karya, 2009, hlm. 63.

actions that can be carried out according to formal methods, so authority is a formal power possessed by officials or institutions. Authority has an essential position in the study of constitutional law and state administrative law. So important is the position of this authority that F.A.M. Stroink and J.G. Steenbeek call it the core concept in constitutional law and state administrative law.³

Bagir Manan states that in Constitutional Law, power describes the right to do or not to do. Authority means rights and obligations. Rights contain the freedom to take or not take specific actions or demand other parties to take certain actions. Obligations contain the obligation to take or not take specific actions. In state administrative law, government authority originating from laws and regulations is obtained through attribution, delegation, and mandate.

Overview of the Batam Concession Agency

Batam Island is geographically very strategically located on the international trade route of the Strait of Malacca, which is the second busiest international trade route after the Strait of Dover in the UK. It is also strategically positioned only 20 km or 12.5 nautical miles from Singapore, with a distance of only 45 minutes by sea, with easy accessibility to other countries in other parts of the world. Batam Island is one of the largest islands of a series of 329 surrounding islands in the Riau Islands, which has an area of 415 km2 or 67% of the area of Singapore.⁴

Batam Free Trade and Free Port Area has become one of the strategic centers of economic activity in Indonesia that contributes significantly to national economic growth. In its management efforts, the Batam Free Trade and Free Port Area Management Agency (BP Batam) has a vital role in regulating and supervising the operation and development of the area.⁵

The government's policy to establish the Mayor of Batam as the ex officio Head of the Batam Concession Agency has received sharp criticism from various parties. The policy emerged in 2019 through Article 2A paragraph (1a) of Government Regulation No. 62/2019 on the Second Amendment to the Batam Free Trade and Free Port Area, which states that

³ Ridwan HR. *Op.cit.* hlm. 99.

⁴ https://bpbatam.go.id/profil/latar-belakang/ diakses pada tanggal 20 September 2023

⁵ Dean Lapadca Mirzah, Pengelolaan kawasan Batam Melalui Badan Pengusahaan Batam Serta Kaitannya Dengan Peraturan Pemerintah Daerah Menurut Undang-Undang Nomor 32 Tahun 2004, Fakultas Hukum Universitas Andalas, 2014

"The Head of the Batam Free Trade and Free Port Area Concession Agency as referred to is held ex-officio by the Mayor of Batam".⁶

Legal Arrangements for the Authority of the Batam Concession Agency (BP) for the Issuance of Land Management Rights to New Right Holders

The Batam Concession Agency (BP) has the authority to issue Land Management Rights in Batam City. These Land Management Rights include Building Use Rights, Business Use Rights, and Use Rights by Government Regulation No. 40 of 1996 on Business Use Rights, Building Use Rights, and Land Rights. However, the Right of ownership cannot be on top of Land Management Rights because it contradicts the original nature of the Right of ownership.

The Batam City Government has the authority over the land in its area based on the local government law. At the same time, this contradicts the existence of BP Batam, which aims to manage Batam City as a free trade and free port area. In addition, there is also a problem related to the issuance of a certificate of property rights over land management rights. This occurred due to a misinterpretation that resulted in the issuance of a recommendation letter for Property Rights over Management Rights by the Head of the Concession Agency. In this case, the research shows that selecting the head of BP Batam, who can synergize with the Batam city government, can reduce disharmony between the two institutions and develop Batam city in synergy.

Regulation of the Head of the Batam Free Trade Zone and Free Port Concession Agency Number 27 Year 2017 on the Implementation of Land Allocation regulates several main matters as follows:

This regulation provides definitions and meanings of various terms used in the context of land allocation, such as Batam Concession Agency, Management Rights, Land, Land Rights, Land Allocation, Applicant, Land User, Land Allocation, Land Allocation, Annual Mandatory Money (UWT), Land Allocation Announcement, and Land Allocation Application.

This regulation covers the implementation of land allocation-related services such as Land Allocation, Extension of Land Allocation or Renewal of Allocation, Recommendation of Land Rights, Permit for Transfer of Rights, Splitting and Combining of PL, Amendment or replacement of Land Allocation Documents, Cancellation of Land Allocation, and Approval

⁶ Putra, Bayu, Dampak Dualisme Kewenangan dalam Pelayanan Administrasi Penananaman Modal : Studi Kasus Implementasi Desentralisasi di Kota Batam, Yogyakarta : Tesis MAP UGM, 2014.

of Encumbrance of Mortgage Rights.⁷ The authority of Batam Concession Agency shall be exercised by the Head and, in its implementation, may be partially delegated to the Officials of Batam Concession Agency. This delegation of authority shall be stipulated in a Decree of the Head. Batam Concession Agency was established with the primary objective of accelerating economic development and investment in Batam, one of the most important economic and trade centers in Indonesia.

Definition of Land Rights

Land rights as referred to in Article 16 paragraph (1) of Law Number 6 of 1960 concerning Basic Agrarian Regulations states: right of ownership, Cultivation Rights, Building rights, use rights, lease rights, land clearing rights, forest product harvesting rights. Article 20 Paragraph 1 of Law No. 6/1960 on Basic Agrarian Regulations states, " Right of ownership is a hereditary, strongest and fullest right that people can have over land, bearing in mind the provisions of Article 6". This provision can be explained if the right of ownership is hereditary. The purpose of hereditary rights is rights that can decline to heirs if the heir or right holder dies.

Based on this provision, the characteristics of the Right of ownership distinguish it from other rights. Property rights are hereditary, the strongest and most whole rights people can have over land. The words hereditary mean that the right of ownership to land does not only last during the life of the right holder, but if a legal event occurs, namely the death of the right holder, it can be continued by his heirs. Article 20, paragraph (2) of the UUPA stipulates that a right of ownership can be transferred and assigned to another party. The word transfer means that a property right can be transferred to another party due to a legal event. In the event of a legal event, namely the death of the right holder, the property right passes from the right holder to his heirs so that the heirs are obliged to register the rights transfer due to land inheritance.

Cultivation Rights in Article 28 of the UUPA, is the right to cultivate land controlled by the State within a period stipulated in Article 29 for enterprise, agriculture, fisheries, or animal husbandry. In other words, HGU is bound by a specific period. According to Article 29 of the same law, HGU is granted for a maximum period of 25 years or specific companies, and it can be granted for a maximum period of 35 years. The land area of HGU is for individuals with a minimum area of 5 hectares and a maximum of 25 hectares. As for legal

 ⁷ Baskara, Ilham. Badan Pengusahaan Batam: Sejarah dan Kewenangan, Andi Offset: Yogyakarta,
2018.

entities, the minimum area is 5 hectares, and the head of the National Land Agency determines the maximum.⁸

The granting of land rights is related to the subject and object and the process of granting these rights, including the granting of HGU. The subject of HGU is regulated in Article 2 of Government Regulation No. 40/1996. HGU has a maximum period of 35 years and can be extended for 25 years (Article 29 UUPA). Article 8 of Government Regulation No. 40 of 1996 for the first time for a maximum of 35 years, extended for a maximum of 25 years, and renewed for a maximum of 35 years.⁹

Building rights is another land rights regulated in the Basic Agrarian Law. According to the provisions of Article 35 of the Basic Agrarian Law, which stipulates the following:

- Building rights has a right to construct and own buildings on land that is not one's own for 30 years.
- (2) At the request of the right holder and considering the needs and conditions of the buildings, the term referred to in paragraph (1) may be extended for a maximum period of 20 years.
- (3) Building rights may be transferred and assigned to another party.

Use Rights over land are the same as Ownership Rights, Business Use Rights, and Building Use Rights, primary rights. Use Rights on land differ from Business Use Rights and Building Use Rights because Use Rights have the most subjects compared to these rights.¹⁰ Granting Rights of Use over land to holders of Rights of Use is not the same as granting rights to land for Business Use Rights and Building Use Rights. The granting of Usage Rights over land has characteristics that will not be found in rights other than the Usage Rights. This is by Article 39 of Government Regulation Number 40 of 1996, which regulates subjects that can have Use Rights over land, namely:

- a. Indonesian citizens.
- b. A legal entity established according to Indonesian law and domiciled in Indonesia.
- c. Departments, non-departmental Government Institutions, and Regional Government.
- d. Religious and social bodies.
- e. Foreigners domiciled in Indonesia.
- f. Foreign legal entities that have representatives in Indonesia.
- g. Representatives of foreign countries and representatives of international bodies.

⁸ Urip Santoso, *Op.cit*, halaman 99

⁹ Urip Santoso, *Op.cit*, halaman 100

¹⁰ Supriadi, Op. cit, halaman 118-124

Use Rights on state land are granted by the decision of the minister or authorized official. In contrast, Use Rights on Management Rights land are granted by a decision granted by the appointed minister or official based on the recommendation of the Management Rights holder. Therefore, the procedures and conditions for granting rights to state land and Management Rights are further regulated by Presidential Decree Article 42 paragraphs (1, 2, and 3).

The granting of Usage Rights over land, whether on state land or Management Rights, must still be registered at the Land Office in the land book; as proof of rights, the holder of the Usage Rights is given a certificate of land rights under Article 43 paragraphs (1, 2 and 3).

Meanwhile, Usage Rights on Owned Land occur by granting land by the Ownership Rights holder, which the Land Deed Official makes. Usage rights can be granted for 25 years and renewed for 20 years. Extension of the Right to Use must be submitted two years before the end of that period.

The right to rent, according to Article 44 of the UUPA, is the right to use land belonging to another person for building purposes by paying rent to the owner. A person or legal entity has the right to lease land if he or she has the right to use someone else's land for building purposes by paying the owner a certain amount of rent.

Regulation of Transfer of Land Rights

Article 19, paragraph (1) of the Basic Agrarian Law, the purpose of land registration is determined as follows, "To ensure legal certainty, the government conducts land registration throughout the Republic of Indonesia according to the provisions regulated by Government Regulation."

The legal certainty in question is certainty regarding the person/legal entity that holds the land rights. Certainty regarding who is the holder of the land right is called certainty regarding the subject of the land right. Certainty regarding the location of the land, the boundaries of the land, and the length and width of the land. Certainty regarding the location, boundaries, length, and width of the land is called certainty regarding the object of land rights.¹¹

The making of a deed by a Land Deed Official (PPAT) in the transfer of land rights is attended by the parties to the legal act and is also attended by at least two witnesses who meet the specified requirements.

¹¹ Boedi Harsono, Op.cit, halaman 20-21

Implementation of the Authority of the Batam Concession Agency (BP) regarding the Issuance of Land Management Rights to New Rights Holders to Achieve Legal Certainty

The Batam Concession Agency is an institution tasked with regulating and facilitating the development of Batam as one of the main economic and investment centers in Indonesia. One of BP Batam's vital authorities is to regulate the issuance of Land Management Rights (HPL) for new rights holders. The main objective is to create legal certainty for investors and rights holders, promoting sustainable investment and controlled development in the Batam area.

Obstacle factors in the Implementation of the Authority of the Batam Concession Agency (BP) regarding the Issuance of Land Management Rights to New Rights Holders in Order to Achieve Legal Certainty

In issuing Land Management Rights (HPL) by the Batam Concession Agency (BP), several obstacles are often faced, affecting legal certainty and the efficiency of implementing its authority. Here are the five main obstacle factors:

1. Document Incompleteness

Application: One of the main obstacles often faced is incomplete documents when applicants submit an HPL application. Many applicants need to include all required documents or submit accurate ones. This can slow down the verification and evaluation process and increase the potential for conflict in the future.

2. Incompatibility of the Development Plan with the Batam Masterplan

The development plan submitted by the applicant must align with the master plan and Batam's development vision. However, sometimes the proposed plan is not by or even conflicts with the master plan. This can result in delays or rejection of applications, as well as affecting the balance between economic growth, environmental conservation, and social welfare.

3. Lack of Human Resources and Institutional Capacity

BP Batam, like many other government agencies, sometimes needs more human resources and adequate information technology infrastructure. This can slow down the HPL issuance process and reduce the effectiveness of supervision and law enforcement.

4. Land Ownership Conflict

Problems often arise in claims or conflicts over land ownership between new rights holders and other parties, such as local communities or previous rights holders. This conflict

could make it difficult for BP Batam to determine the legal status of land and give rise to potential disputes in the future.

5. Economic and Political Pressure

BP Batam may face pressure from various parties, economic stakeholders, and political actors to speed up or slow the HPL issuance process. This pressure can cloud the objectivity and integrity of the publishing process and potentially reduce legal certainty for rights holders.

Solutions to the Implementation of the Authority of the Batam Concession Agency (BP) on the Issuance of Land Management Rights to New Rights Holders in order to Realize Legal Certainty

1. Increasing Human Resources Capacity

BP Batam can invest time and resources to provide regular training for its staff, especially those related to the HPL issuance process so that they have the in-depth understanding and expertise required. Hiring individuals with specialized expertise in land law, conflict management, and administration can help speed up and streamline the rights issuance process.

2. Infrastructure and Technology Development

Investments in digital technology, such as database management systems and land monitoring applications, can speed up the application and evaluation process and increase data transparency and accuracy. In the digital era, reliance on sophisticated technology and infrastructure is becoming increasingly vital, especially for government institutions such as the Batam Concession Agency (BP), responsible for issuing Land Management Rights (HPL).

3. Participatory Approach in Conflict Resolution

Involve stakeholders, including local communities, in the decision-making process. This will promote understanding and cooperation between BP Batam, the new rights holder, and the local community. Mediation by a neutral third party can be an effective solution to resolve land ownership conflicts.

4. Strengthening Regulations and Policies

Revise and strengthen regulations related to HPL issuance to ensure that all aspects, including environmental, social, and economic, are considered in the evaluation process. Adopt an evidence-based approach to decision-making, where decisions are based on comprehensive data and analysis, not economic or political pressures.

5. Increased Transparency and Accountability

Make the HPL issuance process more transparent by publishing evaluation criteria, application status, and decisions taken. Establishing an independent monitoring mechanism and providing opportunities for the public to provide input or report irregularities can increase public trust and reduce the potential for conflict.

Conclusion

Based on the description in the previous chapter, this thesis is concluded as follows:

- 1. The legal regulation of the authority of the Batam Concession Agency (BP) regarding the issuance of land management rights to new rights holders is specifically regulated in the Regulation of the Head of the Batam Free Trade Zone and Free Port Concession Agency Number 27 of 2017 concerning the Implementation of Land Allocations. The Batam Concession Agency has the authority to administer Rights Management of Land, including planning the allocation and use of certain parts of land from Management Rights, using Land to carry out the main functions and duties of the Batam Concession Agency, handing over the use of certain parts of Land and Management Rights to Land Users with the terms and conditions specified determined by the Batam Business Board.
- 2. The implementation of authority by the Batam Concession Agency (BP) in issuing land management rights for new rights holders is a concrete effort to realize legal certainty in the Batam area. Through its authority, BP Batam ensures that every grant of land management rights is carried out based on transparency, accountability, and applicable regulations. This is important to ensure that new rights holders receive their rights clearly and without ambiguity to encourage investment and sustainable development in Batam. Therefore, BP Batam's role is crucial in creating a conducive business environment where legal certainty is one of the main pillars.
- 3. In implementing its authority regarding issuing land management rights, the Batam Concession Agency (BP) faces several obstacles, including complicated bureaucracy, potential discrepancies between central and regional regulations, and insufficient competent human resources. These obstacles have the potential to hinder the achievement of legal certainty for new rights holders. To overcome this, intensification efforts are needed in bureaucratic reform, harmonization of regulations, and capacity building and training for BP Batam officials. With this solution, it is hoped that the process of issuing land management rights can run more efficiently and transparently and provide the legal certainty expected by rights holders and investors in Batam.

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