

Juridical Analysis Of Evaluation And Supervision Of The Use Of Rights On Land Management Rights (HPL) To Strengthen Legal Certainty

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Abstract The granting of Batam Island management rights is stated in Article 6 paragraph (2) letter a of Presidential Decree Number 41 of 1973, stating that all land areas located on Batam Island are handed over with management rights to the Chairman of the Batam Island Industrial Area Development Authority (later called the Batam Authority). Referring to Article 4 of Government Regulation Number 46 of 2007, Management Rights over land under the authority of the Batam Authority and Management Rights over land under the authority of the Batam City Government located in the Batam Free Trade Zone and Free Port are transferred to BP Batam by statutory regulations. Invitation. The areas in question are Batam Island, Setokok Island, Watch Island, Nipah Island, Galang Baru Island, Rempang Island, and Galang Island. However, replacing the subject of management rights does not end existing rights on Management Rights land; these rights remain in effect until the validity period ends. Thus, currently, Batam City Management Rights are owned by BP Batam. Problems with management rights also occur in the community of Batam City. This is, of course, a result of the development of Batam City, where the land rights are mainly allocated to industrial areas, housing (residential), government, and protected forests. One of the purposes of granting Management Rights to BP Batam was to accelerate investment. However, during the process, it was discovered that the land allocated to a third party (Investor) had yet to be physically developed as agreed upon at the time of allocation. This then becomes the basis for BP Batam to carry out evaluation and control over land that is not built and built not by its intended use.

Keywords: Juridical Analysis, Evaluation and Supervision, Land Rights, Management Rights (HPL)

Introduction

The granting of management rights of Batam Island is stated in Article 6 paragraph (2) letter a of Presidential Decree No. 41 of 1973, which states that all land areas located in Batam Island shall be handed over under management rights to the Chairman of the Batam Island Industrial Area Development Authority (then called Batam Authority). Referring to Article 4 of Government Regulation No. 46/2007, the Management Rights on land under the authority of Batam Authority and Management Rights on land under the authority of Batam City Government located in the Batam Free Trade and Free Port Area shall be transferred to BP Batam by the laws and regulations. The areas in question are Batam Island, Setokok Island, Tonton Island, Nipah Island, Galang Baru Island, Rempang Island, and Galang Island. However, the replacement of the subject of the management rights does not terminate the existing rights on the Management Rights land; such rights remain valid until the validity period expires. Thus, currently, the Management Rights of Batam City are owned by BP Batam¹.

In principle, based on Article 6 paragraph (2) letter b of Presidential Decree of the Republic of Indonesia No. 41 of 1973, the Management Right of Batam City gives the Chairman of Batam Authority (BP Batam) to 1) plan the allotment and use of the land; 2) use

¹ Ibid Hlm. 5

the land to carry out his/her duties; 3) hand over parts of the land to third parties with usage rights by the provisions of Articles 41 through 43 of the Basic Agrarian Law; 4) receive revenue/ compensation and annual compulsory fees. In the third authority, based on the Decree of the Minister of Home Affairs on the Management and Use of Land in the Industrial Area of Batam Island No. 43 of 1975, the transfer of parts of the Management Rights land can also be with Building Rights Title.

The problem of management rights starts with the substance of management rights and the pros and cons of the existence of management rights itself². Problems with management rights have also occurred in the community in Batam City. This is, of course, a result of the development of Batam City, where land rights are mostly allocated for industrial, residential, government, and protected forest areas. The rapidly increasing development in Batam City has become an attraction for migrants to develop their businesses. This, of course, has led to an increase in the population of Batam City, which in turn has implications for the emergence of problems in improving services to the community, especially in the land sector.

One of the purposes of granting Management Rights to BP Batam is accelerating investment. However, on the way, it was found that the land allocated to third parties (Investors) needed to be carried out physical development as promised at the time of allocation. This then becomes the basis for BP Batam to carry out evaluation and control of land that is not built and built not by its designation³.

Research methods

This research uses normative legal research and is supported by empirical legal research. Starting from secondary data and then continuing with primary data or data obtained directly at the Batam Free Trade Zone and Free Port Agency. The approach method used is the empirical juridical approach. This research was conducted at the Office of the Batam Free Trade Zone and Free Port Concession Agency. The data obtained is analyzed qualitatively by using legal interpretation and presented in descriptive form, namely describing the issues discussed in the study so that it becomes an answer to the problem.

² Sumardjono, Maria S.W. *Tanah dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Jakarta: Penerbit Kompas, 2008.

³ *Ibid*

Result and Discussion

Legal Arrangement of Management Rights

The definition of management rights is stipulated in Article 1 point (2) of Government Regulation No. 40/1996 on Cultivation Rights, Building Rights, and Use Rights (the LN. Year 1996 No. 58, TLN. Year 1996 No. 3643), namely: "a right of control from the state whose implementation authority is partially delegated to the holder". The definition of Hak Pengelolaan is contained in the Explanation of Article 2 paragraph (3) letter f of Law No. 20/2000 on the Amendment to Law No. 21/1997 on Fees for Acquisition of Land and Building Rights (LN. 2000 No. 130, TLN. No. 3988), namely: a right of control from the state over land whose implementation authority is partially delegated to the right holder to plan the allotment and use of the land, use the land to carry out his duties, hand over parts of the Management Rights land to third parties and cooperate with third parties.⁴

Article 67 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancelling State Land Rights and Management Rights states that the subjects of Management Rights are Government Agencies including local governments, State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), Pesero Public Companies (PT Pesero), Authority Bodies, other Government Legal Entities appointed by the Government. The concept of land rights contained in the National Agrarian Law is divided into two forms, namely primary land rights and secondary land rights. Primary land rights consist of land ownership rights, business use rights, building use rights, and use rights. Meanwhile, secondary land rights are temporary because they are enjoyed for a limited period, and others own the rights. Secondary land rights consist of liens, profit-sharing business rights, hitchhiking rights, and leasing rights on agricultural land.

⁴ Undang-Undang Nomor 20 Tahun 2000 tentang Perubahan Atas Undang-Undang Nomor 21 Tahun 1997 tentang Bea Perolehan Hak Atas Tanah dan Bangunan.

Implementation of Evaluation and Supervision of the Use of Land Rights of Management Rights (HPL) in the Batam Free Trade Zone and Free Port Concession Agency to establish legal certainty

Directorate of Land Management Article 133 "The Directorate of Land Management has the task of carrying out the formulation and implementation of provisions in the field of land management".⁵ Pasal 135: The Directorate of Land Management consists of:

- a. Subdirectorates of Procurement and Allocation;
- b. Subdirectorates of Control;
- c. Subdirectorates of Land Documentation; and
- d. Subdirectorates of Land Legality.

Article 140 reads, "The Subdirectorates for Control has the task of carrying out the preparation of land use evaluation and land use supervision." Article 141 reads, "In carrying out the tasks referred to in Article 140, the Subdirectorates for Control carries out the following functions:

- a. Preparation of materials for the implementation of evaluation of the completeness and validity of land allocation documents and other supporting documents and supervision of the completion of land allocation data documents, as well as the issuance of invoices for Annual Mandatory Money for extension or renewal, evaluation of land use and supervision of land use and development; and
- b. Preparation of materials for issuing warning letters, cancellation letters on the results of land use evaluations, and issuance of land allocation termination letters.⁶

Article 142 reads, Subdirectorates of Control consists of: Evaluation and Supervision Section; and Compliance Section.

Article 143 reads as follows:

- (1) The Evaluation and Supervision Section has the task of carrying out the preparation of materials for evaluating the completeness and validity of land allocation documents and other supporting documents, supervising the completion of land allocation documents, and issuing invoices for Annual Mandatory Money for the extension or renewal and evaluation of land use and supervision of land use and development;

⁵ Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam Nomor 15 Tahun 2021 tentang Perubahan Atas Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam Nomor 19 Tahun 2019 tentang Susunan Organisasi dan Tata Kerja di bawah Anggota di Lingkungan Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam.

⁶ Ibid

(2) The Compliance Section has the task of carrying out the preparation of materials for the issuance of warning letters, cancellation letters on the results of land use evaluation and land use supervision, and the issuance of land allocation termination letters.⁷

Implementation of Evaluation and Supervision of Land Use on Management Rights of the Batam Free Trade Zone and Free Port Enterprise Agency is carried out by the Directorate of Land Management Cq Subdirector of Control, which organizes the functions of Preparation of materials for the implementation of evaluation of the completeness and validity of land allocation documents and other supporting documents and supervision of the completion of land allocation data documents, as well as issuance of invoices for Annual Mandatory Money for extension or renewal, evaluation of land use and supervision of land use and development; and Preparation of materials for the implementation of issuance of warning letters, cancellation letters on the results of land use evaluation and issuance of land allocation termination letters.

Implementation of Management Rights by the Batam Free Trade Zone and Free Port Enterprise Agency

Law No. 11 of 2020 and PP No. 18 of 2021 emphasize that management rights are control rights from the state whose implementation authority is partially delegated to the right holder. The right holder in question is the holder of the management right. Based on Article 4 and Article 10, paragraph (1) of Government Regulation No. 18 of 2021 stipulates that Management Rights can originate from State and Customary Land as stipulated by a ministerial decree. State Land, as referred to in Article 2 paragraph (1), or land directly controlled by the state, is all land in the territory of the Unitary State of the Republic of Indonesia, which is not owned by any rights by other parties. In addition, based on the formulation of Article 1 point (8) of Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest (PP No. 19 of 2021) stipulates that State Land is land directly controlled by the state and is not attached to any Land Rights, not waqf land, not customary land and not an asset of State / Regional Property.

The granting of management rights is given on state land with a decision to grant rights on state land.⁸ State Land includes Land stipulated by Law or Government Stipulation, Land

⁷ Ibid

⁸ Pasal 137 ayat (3) UU No. 11 Tahun 2020

reclamation, Land arising, Land derived from the release/surrender of rights, Land derived from the release of forest areas, Abandoned Land; Land rights that expire and are not requested for Extension and Renewal; Land rights whose term expires and due to Central Government policy cannot be extended; and Land that initially had the status of State Land.

Part of the authority of the right to control from the state in the form of land can be given management rights to Central Government Agencies, Local Governments, Land Bank Agencies, State-Owned Enterprises/Region-Owned Enterprises, State/region-owned legal entities, or Legal entities appointed by the Central Government.⁹ The Central Government Agencies whose main tasks and functions are not directly related to land management may be granted Management Rights after obtaining the approval of the minister who organizes government affairs in the field of finance.¹⁰ State-owned enterprises/region-owned enterprises also include subsidiaries owned by state-owned enterprises/region-owned enterprises based on state capital participation in other state-owned enterprises/region-owned enterprises.¹¹ The Land Bank Agency, as referred to, is regulated in Article 125 to Article 135 of Law No. 11 of 2020. The Central Government establishes a land bank agency that manages explicitly land. The land bank agency functions to carry out planning, acquisition, procurement, management, utilization, and distribution of land.¹²

Land Rights on Management Rights that are cooperated with other parties can be encumbered with mortgage rights, transferred, or released, and any legal action, including being used as debt collateral encumbered with mortgage rights against Land Rights on Management Rights, requires the recommendation of the Management Rights holder and is contained in the Land utilization agreement.¹³

Evaluation and Monitoring

The Sub directorate of Control evaluates the Directorate of Land Management, whose duties and functions are to carry out the preparation of land use evaluations and supervision of land use and:

- a. Preparation of materials for the implementation of evaluating the completeness and validity of land allocation documents and other supporting documents and supervising the completion of land allocation data documents, as well as the issuance of invoices for

⁹ Pasal 137 ayat (1) UU No. 11 Tahun 2020 jo. Pasal 5 ayat (1) PP No. 18 Tahun 2021

¹⁰ Pasal 6 ayat (2) PP No. 18 Tahun 2021

¹¹ Pasal 6 ayat (3) PP No. 18 Tahun 2021

¹² Pasal 125 UU No. 11 Tahun 2020

¹³ Pasal 13 PP No. 18 Tahun 2021

Annual Mandatory Money for extension or renewal, evaluation of land use and supervision of land use and development; and

- b. Preparation of materials for issuing warning letters, cancellation letters on the results of land use evaluation, and issuance of land allocation termination letters.¹⁴

The Subdirectorate of Control consists of the Evaluation and Supervision Section and the Compliance Section, which carry out the following tasks:

- (1) The Evaluation and Supervision Section has the task of carrying out the preparation of materials for evaluating the completeness and validity of land allocation documents and other supporting documents, supervising the completion of land allocation documents, and issuing invoices for Annual Mandatory Money for the extension or renewal and evaluation of land use and supervision of land use and development;
- (2) The Compliance Section has the task of carrying out the preparation of materials for the issuance of warning letters, cancellation letters on the results of land use evaluation and land use supervision, and the issuance of land allocation termination letters.

Criteria for land allocation recipients that the Subdirectorate of Control will evaluate include¹⁵: Non-fulfillment of conditions or obligations stipulated in the KPT and PPT; Default; Non-fulfillment of statutory provisions; Voluntarily released by the Land Allocation Recipient before the period ends for re-allocation-to the party that will realize the investment/development; Voluntarily released by the Land Allocation Recipient before the period ends; Land Allocation is used for the public interest; Court decisions that have permanent legal force; Overlapping; Not by applicable spatial planning; and The land is destroyed.

A site review is carried out to determine whether the land allocation falls into the category of abandoned land or not. A Minutes of Site Review Results is issued on the review results. Then, a notification letter is issued to the recipient of the allocation that the allocation is indicated to be included in the category of abandoned land; if within 60 days it does not respond or heed the letter, a first warning letter will be issued as evidenced by the issuance of the Minutes of the Location Review Results, if within 30 days it does not respond or heed the letter, if within 30 days do not respond or heed the letter, a 2nd Warning Letter will be issued

¹⁴ Peraturan Kepala BP Batam Nomor 15 Tahun 2021 tentang Perubahan Atas Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas Dan Pelabuhan Bebas Batam Nomor 19 Tahun 2019 Tentang Susunan Organisasi Dan Tata Kerja Unit Kerja Di Bawah Anggota Di Lingkungan Badan Pengusahaan Kawasan Perdagangan Bebas Dan Pelabuhan Bebas Batam

¹⁵ Hasil Wawancara dengan Bapak Gaung Unggul Wibowo, selaku Kepala Subdirektorat Pengendalian BP Batam, dilakukan pada tanggal 23 Oktober 2023, pukul 10.30 WIB.

as evidenced by the issuance of the Minutes of the Results of the Site Review, if within 30 days do not respond or heed the letter, a 3rd Warning Letter will be issued as evidenced by the issuance of the Minutes of the Results of the Site Review if within 30 days do not respond or heed the letter, a Decision Letter on Cancellation of Land Allocation will be issued as evidenced by the issuance of the Minutes of the Results of the Site Review.¹⁶

Factors that become obstacles/ constraints in the implementation of evaluation and supervision of the use of land rights of BP Batam Management Rights, among others¹⁷: Submission of changes in the Company's correspondence address; Completeness of documents in the evaluation (lacking); Lack of Human Resources to carry out activities; Administration of correspondence in the court stage.

Solutions for the implementation of evaluation and supervision of the use of land rights of BP Batam Management Rights, among others¹⁸: Adding Human Resources in order to achieve performance; Informing all companies if there is a change of Address / Correspondence to be immediately informed to BP Batam; Organizing the archives of each document in order to facilitate the administration of correspondence. In order to realize legal certainty in the implementation of evaluation and supervision of the use of land rights of Management Rights of the Batam Free Trade Zone and Free Port Agency, it is necessary to fulfill development obligations on land allocated to third parties.

Conclusion

1. The implementation of Evaluation and Supervision of Land Use Rights of Management Rights (HPL) to establish Legal Certainty is by implementing the provisions as stipulated in the Regulation of the Head of Batam Free Trade Zone and Free Port Concession Agency on the Implementation of Land Management and Operational Standards and Procedures applicable in the Directorate of Land Management, particularly in the Subdirectorate of Control. The purpose of such Evaluation and Supervision is to emphasize the authority of Batam Concession Agency as the holder of Land Management Rights in Batam Island.
2. Implementation of the Evaluation and Supervision of the Use of Land Management Rights (HPL) to establish Legal Certainty, namely by conducting a site review to determine whether the land allocation is included in the category of abandoned land or not, then issuing Minutes of Site Review Results on the results of the review. Then, a notification

¹⁶ *Ibid.*

¹⁷ *Ibid*

¹⁸ *Ibid*

letter is issued to the recipient of the allocation that the allocation is indicated to be included in the category of abandoned land; if within 60 days it does not respond or heed the letter, a first warning letter will be issued as evidenced by the issuance of the Minutes of the Location Review Results if within 30 days it does not respond or heed the letter if within 30 days they do not respond or heed the letter, a 2nd Warning Letter will be issued as evidenced by the issuance of the Minutes of the Location Review if within 30 days they do not respond or heed the letter, a 3rd Warning Letter will be issued as evidenced by the issuance of the Minutes of the Location Review if within 30 days they do not respond or heed the letter, a Decision Letter on Cancellation of Land Allocation will be issued as evidenced by the issuance of the Minutes of the Location Review.

3. Awareness of land allocation recipients in fulfilling their obligations as agreed in the Land Allocation Agreement Letter, namely taking care of the documents required in licensing and carrying out development on the allocated land by the designation that has been given. So that in the future, there will be no more land included in idle land and to increase economic growth in Batam City.

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