

# The Urgency of Amending the Balikpapan City Regulation on License to Open State Land

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## Abstract

Through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the central government has established a national priority program called the Acceleration of Systematic Complete Land Registration (PTSL). The program is a first-time land registration process undertaken synchronously in all parts of Indonesia. The PTSL is a form of legal certainty guaranteed by the central government related to land rights to the citizens. However, as part of its regional authority, Balikpapan City regulated the ownership of a License to Open State Land (IMTN) as one of the requirements for PTSL. In the end, it creates a problem in implementing PTSL in Balikpapan City due to the time-consuming process of IMTN letter registration. Although it is disadvantageous for citizens, the requirement of an IMTN letter is in accordance with the Regional Regulation of Balikpapan City. This research is aimed to determine the legal certainty of land rights registration for Balikpapan City people. The research method used in the research is normative juridical, with a statutory approach. The research data is obtained through a literature study for primary data and obtained by direct research in 2021 for secondary data. The research shows that local regulations of Balikpapan City that require IMTN ownership as a condition for PTSL submission are, in fact, in conflict with the Regulation of the Minister of ATR / BPN. Therefore, to achieve legal certainty related to land management in Balikpapan City, it is necessary to adjust the Regional Regulation of Balikpapan City Number 1 Year 2014 on IMTN.

**Keywords:** License, Legal Certainty, License to Open State State Land



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## I. Introduction

The Constitution of the Republic of Indonesia of 1945 (UUD 1945) delineates that one of the state's efforts to create and ensure the welfare of the Indonesian populace is to position state administrators as guiding figures, policy-makers, and regulatory makers.<sup>1</sup> Furthermore, the UUD 1945 provides a constitutional framework regarding the status of regional governments with their respective authorities. This framework, called decentralization, entails distributing power or authority between the central and regional governments.<sup>2</sup>

Through this division of authority, Regional Governments are granted the autonomy to manage their affairs, except for matters that fall under the jurisdiction of the Central Government. The legal foundation for this division of authority is stipulated in Article 18, paragraph (5) of Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 on Regional Government, which states, "Regional Governments shall exercise autonomy to the fullest extent, except for governmental affairs that are designated by law as central government affairs."

Based on this regulation, Regional Governments have the authority to regulate their territories independently, except in foreign politics, defence, security, justice, national monetary and fiscal policies, and religion.<sup>3</sup> Despite the autonomy granted to Regional Governments to manage their regions, there are certain matters whose administration is mandated by law, referred to as Mandatory Government Affairs, which are related and unrelated to basic services. One of the Mandatory

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<sup>1</sup> Suhadi and Rofi Wahanisa, "Tinjauan Yuridis Normatif Berbagai Peraturan Tentang Alih Fungsi Tanah Pertanian di Indonesia," *Pandecta Research Law Journal* 6, no. 1 (2011): 69–78.

<sup>2</sup> Rodiyah, Ridwan Arifin, and Steven, "Local Autonomy and Federalism: How Indonesia Deal With Democracy in The Global Governance?," *Pandecta Research Law Journal* 15, no. 2 (2020), <https://dx.doi.org/10.15294/pandecta.v15i2.23268>.

<sup>3</sup> Article 10, "Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintah Daerah".

Government Affairs unrelated to basic services that falls under the responsibility of Regional Governments is the administration of land affairs, as outlined in Article 12, paragraph (2) of Law Number 23 of 2014 on Regional Government.<sup>4</sup>

One form of managing land affairs is registering land rights to ensure legal certainty. Therefore, it is essential that the government administer land registration to fulfill both societal needs and governmental obligations.<sup>5</sup> The responsibility for administering land and environmental affairs by Regional Governments, particularly regarding land consolidation, is intended to realize the goals of regional autonomy that are tangible, dynamic, and accountable, as explained below:<sup>6</sup>

1. Tangible refers to the necessity of being supported by factors, calculations, and policies that genuinely provide guarantees to local households;
2. Dynamic is the capacity to provide situational, conditional, and developmental advancements for the entire local community.
3. Accountable means that regional autonomy must genuinely fulfill its objectives to accelerate development within its jurisdiction as part of a comprehensive developmental framework.

The management of land affairs through land registration can be specifically categorized as an effort towards land consolidation. Land consolidation is a conceptual approach to resolving issues in land affairs

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<sup>4</sup> Albert Morangki, "Tinjauan Terhadap Kewenangan Pemerintah Daerah Dalam Penyelenggaraan Urusan Di Bidang Pertanahan," *Repository Universitas Sam Ratulangi* XX, no. 3 (2012): 65, [http://repo.unsrat.ac.id/276/1/TINJAUAN\\_TERHADAP\\_KEWENANGAN\\_PEMERINTAH\\_DAERAH.pdf](http://repo.unsrat.ac.id/276/1/TINJAUAN_TERHADAP_KEWENANGAN_PEMERINTAH_DAERAH.pdf).

<sup>5</sup> Putu Astika Yasa and Nyoman Bagiastra, "Kedudukan Sertipikat Hak Atas Tanah Terkait Sistem Publikasi Negatif Di Indonesia," *Jurnal Magister Hukum Udayana* 10, no. 4 (2021): 828, <https://ojs.unud.ac.id/index.php/jmhu/article/view/77982>.

<sup>6</sup> T.B. Silalahi, *Otonomi Ditinjau Dari Aspek Sumber Daya Manusia* (Jakarta: Pustaka Sinar Harapan, 2001).

through the reorganization of land tenure, ownership, and usage, involving community participation to achieve orderly land management.<sup>7</sup>

As a holder of autonomous authority, the Regional Government of Balikpapan City possesses the prerogative to administer land affairs independently. One manifestation of this administration can be observed through the policy concerning the Issuance of a License to Open State Land (IMTN). The IMTN is a requirement that must be fulfilled by the residents of Balikpapan City who wish to register land rights within the city. This policy is fundamentally established to reduce instances of overlapping land ownership in Balikpapan.

The legal basis for the administration of IMTN in Balikpapan City is governed by Regional Regulation Number 1 of 2014 concerning the Issuance of a License to Open State Land (PERDA Balikpapan on IMTN). The implementation of the IMTN is further detailed in the Mayor's Regulation of Balikpapan City Number 33 of 2017 concerning the Implementation of Regional Regulation Number 1 of 2014 on the Issuance of a License to Open State Land.

In addition to implementing the IMTN, the Regional Government of Balikpapan City also conducts other land-related programs that the Central Government prioritizes. The Central Government, through the Minister of Agrarian Affairs and Spatial Planning/National Land Agency, has established a National Priority Program known as the Acceleration of Systematic Complete Land Registration (PTSL). This program involves the simultaneous or collective land registration for the first time within a designated area at the village or equivalent level.<sup>8</sup>

PTSL is governed by Ministerial Regulation Number 6 of 2018 concerning Systematic Complete Land Registration (PERMEN

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<sup>7</sup> Juniarto Ridwan and Achmad Sodik, *Hukum Tata Ruang Dalam Konsep Kebijakan Otonomi Daerah* (Bandung: Nuansa Cendekia, 2023).

<sup>8</sup> Septina Marryanti and Yudha Purbawa, "Optimalisasi Faktor-Faktor Yang Mempengaruhi Keberhasilan Pendaftaran Tanah Sistematis Lengkap," *BHUMI: Jurnal Agraria dan Pertanahan* 4, no. 2 (January 5, 2019): 190, <https://doi.org/10.31292/jb.v4i2.278>.

ATR/BPN on PTSL). The establishment of this Ministerial Regulation was prompted by issues encountered in implementing Ministerial Regulation Number 12 of 2017 concerning the Acceleration of Systematic Complete Land Registration. Therefore, it can be stated that PERMEN ATR/BPN on PTSL was created as a refinement to ensure that its implementation can be carried out more effectively.<sup>9</sup>

As a National Priority Program, the PTSL initiative is also being implemented in Balikpapan City. Unfortunately, the execution of the PTSL program has not been optimal in Balikpapan, as reflected in reports from the Land Office (Kantah)/National Land Agency (BPN) of Balikpapan City, indicating that as of October 2023, only 20% of the target of 20,000 land certificates has been issued.<sup>10</sup>

The suboptimal results of the PTSL program in Balikpapan can partly be attributed to the requirement for applicants to possess an IMTN as a prerequisite for claiming land rights under PTSL. This concern is further reinforced by the statement of Laisa Hamisa, the Chair of Commission I of the Balikpapan City Regional House of Representatives, who noted that residents had expressed frustrations regarding the lengthy duration required for the issuance of the IMTN.<sup>11</sup>

This situation is ironic, considering that the PTSL program was originally conceived to ensure legal protection concerning land utilization in Balikpapan City. The policy regarding IMTN was developed in response to the extensive opening and/or utilization of land in the region. Through the IMTN program, the Balikpapan City Government aims to foster an investment climate that ensures legal certainty, supports community welfare, safeguards environmental sustainability, and is a

<sup>9</sup> Mira Novana Ardani, "Peran Kantor Pertanahan Dalam Kegiatan Pendaftaran Tanah Sistematis Lengkap," *Gema Keadilan* 6, no. 1 (June 13, 2019): 44, <https://doi.org/10.14710/gk.6.1.44-62>.

<sup>10</sup> Rikip Agustina, "Ombudsman Desa Perda IMTN Balikpapan Ditinjau Ulang," *Berita, Prokal: Portal Berita Kalimantan*, October 17, 2023, <https://www.prokal.co/kalimantan-timur/1773959241/ombudsman-desak-perda-imtn-di-balikpapan-ditinjau-ulang>.

<sup>11</sup> "Komisi I DPRD Balikpapan Dorong Perda IMTN Dilonggarkan," *kaltimtoday.co*, August 10, 2022, <https://kaltimtoday.co/komisi-i-dprd-balikpapan-dorong-perda-imtn-dilonggarkan>.

preventive measure against overlapping land ownership issues in Balikpapan.

The above description indicates that, rather than facilitating and providing legal certainty for the community, the administration of IMTN has become a barrier for those seeking to submit claims for land rights through PTSL. Therefore, a thorough examination of the legal conflicts between the Balikpapan City Regional Regulation on IMTN and the Ministerial Regulation ATR/BPN on PTSL is necessary to address this issue. This review is essential to guarantee legal certainty for Balikpapan City residents and all civil servants responsible for implementing the IMTN and PTSL programs.

The article employs a normative legal research methodology, focusing on conflicting norms between the Regional Regulation of Balikpapan City concerning IMTN and the Ministerial Regulation of Agrarian Affairs and Spatial Planning/National Land Agency Number 6 of 2018 regarding the Acceleration of PTSL. The approach used in this research is the statutory approach. The legal materials were collected through document studies, where the previously gathered legal materials were analyzed using qualitative analysis methods.

## **II. Registration of Land Rights in Balikpapan City**

The requirements for registering land rights as property are governed by the Ministerial Regulation of Agrarian Affairs and Spatial Planning/National Land Agency (Menteri ATR/BPN). According to this regulation, the registration of land rights as property can be undertaken under the following conditions:<sup>12</sup>

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<sup>12</sup> “Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 18 Tahun 2021 Tentang Tata Cara Penetapan Hak Pengelolaan Dan Hak Atas Tanah” (n.d.).

- a. A photocopy of the identity proof and citizenship documentation of the Republic of Indonesia;
- b. If the applicant is a legal entity, a photocopy of the establishment deed or its regulations and a copy of the appointment decision following applicable legislation;
- c. Juridical data, including certificates, *girik*, land parcel letters, documents proving the release of rights and payment for land and/or houses purchased from the Government, PPAT, release of rights deeds, court decisions, and other documents proving land acquisition;
- d. Physical data, consisting of measurement documents, situational drawings, and Building Permits (IMB), if available;
- e. A statement from the applicant regarding the number of parcels, area, and status of the land owned by the applicant, including the parcel of land being claimed.

The registration of land serves the following purposes:<sup>13</sup>

1. To provide legal certainty and protection to the holder of rights over a parcel of land;
2. To furnish information to interested parties; and
3. To ensure orderly land administration.

Unfortunately, the crucial and essential role of land in community life gives rise to certificate forgery practices. As the value and benefits derived from land increase, the incidence of forgery of land ownership documents, particularly false certificates, also escalates.<sup>14</sup> The emergence of false certificates as proof of land ownership is attributed to several reasons, including:<sup>15</sup>

1. Misunderstandings in comprehending, applying, and identifying the origins of false certificates;

<sup>13</sup> “Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah” (n.d.), 24.

<sup>14</sup> Adrian Sutedi, *Sertifikat Hak Atas Tanah* (Jakarta: Sinar Grafika, 2011).

<sup>15</sup> “YBKI Usul dibentuk Mahkamah Pertanahan Guna Menuntaskan Kasus Sertifikat Aspal” (Pikiran Rakyat, 2001).



2. The lack of understanding among individuals and legal entities regarding the institutions authorized to effectuate the transfer of land rights and ownership, coupled with negligence towards errors occurring in the application process for land registration and the transfer of ownership;
3. Actions taken outside the authority of PPAT during the documentation process, which ultimately results in defective legal documents, a situation that should not occur since the drafting of the transfer deed cannot be executed by PPAT;
4. The existing land administration system is still inadequate and insufficiently effective in preventing the occurrence of false certificates.

The existence of false certificates in society inevitably leads to new issues, such as the emergence of double certificates. Double certificates refer to a situation where more than one ownership certificate for land rights exists, arising from differing perceptions, assessments, or opinions regarding interests in a specific parcel of land.<sup>16</sup> Additionally, double certificates are recognized as issues of overlapping land ownership among two or more parties.

As a consequence of implementing regional autonomy, land authority in Indonesia can be held by both the Central Government and Regional Governments. Thus, a public service permit must be established through regional regulations to carry out its duties as the executor of regional autonomy.<sup>17</sup>

Therefore, the local government of Balikpapan City, in exercising its authority in the field of land, has established a regulation regarding the License to Open State Land (IMTN), which aims to reduce the

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<sup>16</sup> Angger Sigit Pramukti and Erdha Widayanto, *Awas Jangan Beli Tanah Sengketa (Panduan Mengurus Peralihan Hak Atas Tanah Secara Aman)* (Yogyakarta: Media Pressindo, 2015).

<sup>17</sup> Dita Dwi Arisandi and Lilik Pudjiastuti, "Pengawasan Pemerintah Pusat Terhadap Peraturan Daerah Kabupaten/Kota di Bidang Perizinan," dalam *Pengawasan Pemerintah Pusat Terhadap Peraturan Daerah Kabupaten/Kota di Bidang Perizinan*, 2017, <http://hdl.handle.net/11617/9410>.



occurrence of overlapping land ownership in Balikpapan City.<sup>18</sup> The IMTN letter is one of the prerequisites for applying for land rights registration in Balikpapan City.

Applying for the IMTN letter in Balikpapan City is done through the following process. First, the applicant applies to the District Office following the location of the land or at the Office of Land and Spatial Planning (DPPR) of Balikpapan City. The determination of the authority responsible for issuing the IMTN letter is specifically adjusted according to the area of the land to be applied for. If the land area exceeds 5,000 m<sup>2</sup> (five thousand square meters), the application for the IMTN letter is processed through the DPPR; if the land area is below 5,000 m<sup>2</sup> (five thousand square meters), the application is submitted through the District Office according to the location of the land.<sup>19</sup>

The administrative requirements that the applicant must fulfil to apply for the IMTN letter include:<sup>20</sup>

- a. A photocopy of the applicant's Identity Card;
- b. If the applicant is not a local resident (outsider) or has an Identity Card of another region, the person can only apply for the IMT of land with *Alas Hak*;
- c. A photocopy of the applicant's Family Card;
- d. A photocopy of the Identity Card of witnesses, including witnesses to the land boundaries and witnesses who know the chronology of the land possession being applied for;
- e. A photocopy of evidence of legal possession of State Land (if any);
- f. Proof of payment of Rural and Urban Land and Building Tax (PBB) for the last year (if any);

<sup>18</sup> Ratna Luhfitasari et al., "Perlindungan Hukum Bagi Pemegang IMTN Berdasarkan Peraturan Daerah Kota Balikpapan No. 1 Tahun 2014 Tentang Izin Mendirikan Tanah" 12, no. 1 (April 2020).

<sup>19</sup> "Prosedur Permohonan IMTN," DPPR Balikpapan, accessed on December 3, 2023, <http://dppr.balikpapan.go.id/content/144/prosedur-permohonan-imtn>.

<sup>20</sup> "Peraturan Walikota Kota Balikpapan Nomor 33 Tahun 2017 Tentang Peraturan Pelaksanaan Peraturan Daerah Nomor 1 Tahun 2014 Tentang Izin Membuka Tanah Negara" (n.d.).

- g. For legal entity applicants, a photocopy of the company establishment deed and photocopies of the Principle Permit and Location Permit for applications above 5,000 m<sup>2</sup> (five thousand square meters);
- h. Evidence of a legal relationship between the applicant and the land object being applied for;
- i. A land status certificate from the Land Office (if there are indications of a certificate);
- j. Measurement results conducted by a registered surveyor (a surveyor registered with the DPPR);
- k. A photocopy of the boundary land documents (for applications without a legal basis); and
- l. Recommendations from Government/BUMN/BUMD agencies if the location of the land being applied for borders or is suspected to be on land owned by the said agency (for applications without *Alas Hak*).

In addition to processing the IMTN letter, the residents of Balikpapan City also carry out land registration through the Land Office. The administrative requirements for land registration through the Land Office of Balikpapan City, as the regional office of the National Land Agency (BPN) of East Kalimantan Province, include:<sup>21</sup>

- 1. A completed application file signed by the applicant or authorized representative on sufficient stamped paper;
- 2. A Power of Attorney if delegated;
- 3. A photocopy of identity proof, including the Identity Card (KTP) and Family Card (KK) of the applicant and the authorized representative if applicable. These documents must be verifiable against the originals by the counter staff;

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<sup>21</sup> Nina Windialika, "Pelayanan Pendaftaran Tanah Pertama Kali - Pemberian Hak - Hak Guna Bangunan - Hak Guna Bangunan Perorangan Pelayanan Publik," SIPPAN, April 8, 2024, <https://sippn.menpan.go.id/>.

4. A statement from the applicant regarding the area and status of the land owned;
5. When registering the rights, the applicant must present a photocopy of the current year's Land and Building Tax (PBB) statement. This document must be verified for authenticity by the counter staff;
6. Submission of proof of tax payment (SSP/PPh) following applicable regulations.

In general, the requirements for land registration through the Land Office in Balikpapan City are quite similar to those for land registration in other regions. However, one distinguishing factor is the obligation to possess an IMTN letter before applying for land registration.

The requirement to hold an IMTN letter as one of the prerequisites for land registration in Balikpapan City is undoubtedly disadvantageous for its residents. Generally, the time taken for land registration is already quite lengthy: it takes 38 days for land parcels under 2,000 m<sup>2</sup> (two thousand square meters), 57 days for parcels exceeding 2,000 m<sup>2</sup> (two thousand square meters) up to 150,000 m<sup>2</sup> (one hundred fifty thousand square meters), and 97 days for parcels over 150,000 m<sup>2</sup> (one hundred fifty thousand square meters).<sup>22</sup>

Based on the description, it is evident that the timeframe for completing land registration is approximately one to three months. Meanwhile, the application for the License to Open State Land (IMTN) also has a similar timeframe, taking around 30 to 90 working days.<sup>23</sup> This duration may also depend on whether there are objections or challenges submitted by third parties regarding the land object for which the IMTN is requested.<sup>24</sup> The requirement to possess an IMTN before

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<sup>22</sup> Nina Windialika.

<sup>23</sup> Admin, "DPRD Balikpapan Tanggapi Keluhkan Masyarakat Perihal Pengurusan IMTN Lama," 2022, <http://poskotakaltimnews.com/read/7015/dprd-balikpapan-tanggapi-keluhkan-masyarakat-perihal-pengurusan-imtn-lama>.

<sup>24</sup> Deasy Ratna Sari, "Practice of License to Open State Land in Balikpapan," *Unram Law Review* 1, no. 2 (February 14, 2018), <https://doi.org/10.29303/ulrev.v1i2.11>.

initiating land registration will undoubtedly prolong the registration process, which is detrimental to the residents.

Given the considerable time required for processing the IMTN as a prerequisite for land registration, residents may utilize existing legal documents as substitutes for the IMTN, as stipulated in Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration.<sup>25</sup> This exemption from possessing an IMTN is only applicable if the land intended for registration already has *Alas Hak* as legal documentation. However, if the land to be registered lacks documentation, residents are first required to obtain an IMTN.

Therefore, while the principle of applying for land registration through the Systematic Complete Land Registration (PTSL) program allows for the use of *Alas Hak* as a substitute when the IMTN is not available, this alternative also highlights the disparity in regulatory requirements for land registration between the local government of Balikpapan City and the Central Government. Such inconsistencies are likely to create various problems in the future, making it imperative for the local government of Balikpapan City to review and amend the regulations regarding the IMTN as soon as possible.

### **III. Harmonizing Regional Regulation No. 1/2014 and Ministerial Regulation No. 6/2018 on Land Registration**

The types and hierarchy of legislation currently in effect in Indonesia are governed by Law Number 12 of 2011 concerning the Formation of

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<sup>25</sup> Ratna Luhfitasari et al., “Perlindungan Hukum Bagi Pemegang IMTN Berdasarkan Peraturan Daerah Kota Balikpapan No. 1 Tahun 2014 Tentang Izin Mendirikan Tanah.”

Legislation. According to this law, the types and hierarchy of legislation in Indonesia are as follows:<sup>26</sup>

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decrees of the People's Consultative Assembly;
- c. Laws/Regulations in Lieu of Laws;
- d. Government Regulations;
- e. Presidential Regulations;
- f. Provincial Regulations; and
- g. Regency/City Regulations.

In detail, the content of regency/city regulations specifically pertains to the implementation of regional autonomy and delegated tasks, as well as adjustments to the specific conditions of the region and/or further explanation regarding higher legislation.<sup>27</sup> Therefore, regulations regarding the IMTN, as a policy measure in the context of regional autonomy in land management, must be established through regional regulations.

The regulation requiring the possession of the IMTN as a prerequisite for land rights registration in Balikpapan City was enacted by the local government to mitigate the issues of overlapping land ownership in the city. The regulation concerning the issuance of the IMTN is fundamentally in line with the authority granted to local governments as specified in the law. This is articulated in Attachment J of Law Number 23 of 2014 concerning Regional Government, which states that the issuance of licenses to open state land is a subdomain of the local government's authority.<sup>28</sup>

The local government of Balikpapan City, through Mayor Instruction Number 590/467/PE regarding the management of the

<sup>26</sup> "Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234)," n.d.

<sup>27</sup> Nurul Qamar and Farah Syahrezah, *Ilmu Dan Teknik Pembentukan Peraturan Perundang-Undangan* (Makassar: CV Social Politic Genius, 2020). Hlm 48

<sup>28</sup> Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintah Daerah (Lembaran Negara Tahun 2014 Nomor 244, Tambahan Lembaran Negara Nomor 5587).

PTSL program directed at district heads, district officials, and the Office of Land and Spatial Planning (DPPR), aims to expedite the land registration process by streamlining the IMTN application policy.<sup>29</sup> Previously, the issuance of the IMTN letter as a prerequisite for land registration in Balikpapan City was limited to the authority of district heads and the DPPR. This situation was based on the 2004 Mayor Decree, which remained in effect until 2023, stating that district heads were prohibited from signing land documents.<sup>30</sup>

The existence of this decree effectively restricted the authority over land management to district heads and the DPPR. This limitation does not align with the PTSL program policies initiated by the Central Government. Consequently, the 2004 decree has become legally void and was refined by the issuance of Mayor Instruction Number 590/467/PE, which subsequently permitted sub-district heads to engage in land management to support the PTSL program.<sup>31</sup>

The discrepancies and inconsistencies in procedures regarding the authorities responsible for land management indirectly validate that Regional Regulation Number 1 of 2014 concerning the IMTN and Ministerial Regulation Number 6 of 2018 regarding the PTSL ultimately resulting in legal uncertainty for the residents of Balikpapan City, especially for those seeking to register land. This situation is further reinforced by statements from the Regional Ombudsman of East Kalimantan, who noted that from the outset, the implementation of the

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<sup>29</sup> Zulkifli Asisten I Kota Balikpapan in izak-Indra Zakaria, "Dukung PTSL, Regulasi IMTN di Balikpapan Dipangkas - Prokal," Dukung PTSL, Regulasi IMTN di Balikpapan Dipangkas - Prokal, 2023, <https://www.prokal.co/kalimantan-timur/1773809086/dukung-ptsl-regulasi-imtn-di-balikpapan-dipangkas>.

<sup>30</sup> Eddy Alfonso Anggota DPRD Balikpapan dalam Faisal Balpos, "Legislator Bakal Ajak Camat dan Lurah Bahas Solusi Masalah Pertanahan - Balpos," Legislator Bakal Ajak Camat dan Lurah Bahas Solusi Masalah Pertanahan - Balpos, April 8, 2024, <https://www.balpos.com/dprd-kota-balikpapan/1793222940/legislator-bakal-ajak-camat-dan-lurah-bahas-solusi-masalah-pertanahan>.

<sup>31</sup> Diskominfo, "Pemkot Balikpapan Lakukan Penyesuaian IMTN ke PTSL," ccessed on September 14, 2024, <https://web.balikpapan.go.id/berita/read/9412>.

IMTN in Balikpapan City has been prone to issues that necessitate corrective actions.

The Regional Ombudsman elaborated that the IMTN policy in Balikpapan City poses a potential for maladministration due to its lack of synchronization with the land registration procedures outlined by the Central Government's regulations. To address these issues, the Regional Ombudsman has recommended the urgent revision of Regional Regulation Number 1 of 2014 concerning the IMTN. However, as of the writing of this article, the local government of Balikpapan City has yet to revise the IMTN-related Regional Regulation.<sup>32</sup> However, as of the writing of this article, the local government of Balikpapan City has yet to formalize the regional regulation concerning the License to Open State Land (IMTN).

In Gustav Radbruch's perspective, a new regulation can only be considered law if it benefits the public.<sup>33</sup> In relation to this theory, the Regional Regulation of Balikpapan City Number 1 of 2014 concerning the IMTN cannot be categorized as a law because it does not reflect any benefits for the public. This condition is evident from the hindrance faced by the national PTSL program due to the requirement to possess the IMTN as a prerequisite for applying for PTSL. The PTSL program is a national priority program aimed primarily at providing legal assurance regarding land rights owned by the community.<sup>34</sup>

The obstruction of this national priority program due to the IMTN policy is illustrated by the low achievement rate of the target for land certificate issuance. As of October 2023, the PTSL program in

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<sup>32</sup> Rikip Agustina, "Ombudsman Desa Perda IMTN Balikpapan Ditinjau Ulang."

<sup>33</sup> Richo Andi Wibowo et al., *Kontrak Pemerintah: Konsep, Ragam, Perkembangan Regulasi, Dan Kajian Putusan* (Jakarta: Kencana, 2021).

<sup>34</sup> Almadinah Putri Brilian, "Panduan Bikin Sertifikat Tanah dengan PTSL: Syarat, Tahapan, hingga Biaya," *detikproperti*, 2024, <https://www.detik.com/properti/tips-dan-panduan/d-7149384/panduan-bikin-sertifikat-tanah-dengan-ptsl-syarat-tahapan-hingga-biaya>.



Balikpapan City has only achieved 20% of its target issuance of 20,000 land certificates.<sup>35</sup>

From the perspective of the hierarchy of legislation in Indonesia, the Balikpapan City Regulation on the IMTN holds a lower hierarchical level compared to the Ministerial Regulation on PTSL. Therefore, in light of the legal principle *lex superior derogat legi inferiori*, the PTSL regulation should take precedence over the IMTN regulation, as the Ministerial Regulation has a higher status than the Regency/City Regulation. The principle *lex superior derogat legi inferiori* asserts that a higher regulation supersedes a lower one, except in cases where the higher regulation contains provisions that pertain to matters under the jurisdiction of the lower regulation.<sup>36</sup>

Inconsistencies or conflicts between norms, as seen in the IMTN and PTSL Regulation, should ideally be avoided. However, in practice, such issues can be resolved through the application of three legal principles: *lex generalis*, *lex specialis*, and *lex posterior*. Consequently, the local government of Balikpapan City should not continue to overlook and allow the conflict between these two norms to persist.<sup>37</sup>

Although the local government has issued Mayor Instruction Number 590/467/PE concerning the management of PTSL, this remains a temporary solution and does not resolve the underlying regulatory conflict affecting the expedited land registration process in Balikpapan City. The issuance of this mayoral instruction does not provide any legal certainty regarding the issues surrounding the IMTN and PTSL. This will likely lead to new legal complications for IMTN administrators in the future.

The legal basis for any licensing fundamentally consists of interrelated legislation and regulations, creating a framework for

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<sup>35</sup> Rikip Agustina, "Ombudsman Desa Perda IMTN Balikpapan Ditinjau Ulang."

<sup>36</sup> Sirajuddin, *Perda Berbasis Norma Agama* (Yogyakarta: PT Raja Grafinda Persada, 2023). pp. 51

<sup>37</sup> P.W. Bouwer et.al, *Coherence and Conflict in Law* (Zwolle: W.E.J Tjeng Willink, 1992).

authority, substance, procedures, and enforcement.<sup>38</sup> Therefore, regulations should be developed systematically, considering the hierarchical structure of applicable laws, to establish a more robust framework.

In relation to the IMTN regulation in Balikpapan City, while the local government does have the authority to regulate and issue IMTNs, it must align its policies with higher legislation.

The formation of laws should be based on three foundations: juridical, sociological, and philosophical. The need to amend the Balikpapan City Regulation on the IMTN currently meets the criteria of juridical foundations for law-making. The juridical foundation pertains to legal issues related to the substance or material to be regulated, indicating a necessity for a new legal framework. Some of these legal issues include:<sup>39</sup>

- Regulations that are outdated or no longer relevant;
- Regulations that are not harmonious or overlapping;
- Existing regulations that are inferior to laws, thereby diminishing their enforceability;
- Regulations that exist but are inadequate; and
- Regulations that do not exist at all.

In the context of land management in Balikpapan City, the Balikpapan City Regulation on the IMTN can be said to have fulfilled several legal issues mentioned in points a, b, c, and d, thus necessitating the creation of a new regulation.

The need for this new regulation arises from various factors, one of which is the obsolescence of the Balikpapan City Regulation on the IMTN, which was established in 2014. The considerable time elapsed

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<sup>38</sup> Tatiek Sri Djatmiati, "Perizinan Sebagai Instrumen Yuridis Dalam Pelayanan Publik" (Penguahan Jabatan Guru Besar dalam Bidang Hukum Administrasi, Fakultas Hukum Universitas Airlangga: Airlangga University Press, 2007).

<sup>39</sup> "Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234)."

since the issuance of this regulation has rendered it outdated and irrelevant due to the introduction of newer regulations that, hierarchically, take precedence and conflict with the substance of the Regional Regulation, consequently leading to a lack of harmony or overlap.

The irrelevance of the Balikpapan City Regulation on the IMTN indicates a significant urgency for amending this regulation, as it meets the requirements for the juridical foundation of law-making. Therefore, the local government of Balikpapan City should promptly undertake the revision of the Balikpapan City Regulation on the IMTN.

Amending the regional regulation is essential to address the inconsistencies between the IMTN regulations in Balikpapan City and the land registration regulations under the PTSL framework established by the Central Government. Issues regarding authority, registration procedures, and IMTN application requirements need to be aligned with PTSL provisions to facilitate the land registration process for residents and to fulfill the primary objective of establishing IMTN policies: to provide legal certainty regarding land ownership while also addressing the problem of overlapping land ownership in Balikpapan City.

## **IV. Conclusion**

The adjustment of the Regional Regulation on the License to Open State Land (Balikpapan City Regulation on IMTN) by the local government of Balikpapan is essential to support the implementation of the national priority program for Systematic Complete Land Registration (PTSL) under the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Minister of ATR/BPN). This adjustment is necessary because the Balikpapan City Regulation on IMTN has become outdated

and no longer aligns with or contradicts the Ministerial Regulation on PTSL.

The revision of Balikpapan City Regulation Number 1 of 2014 on IMTN must be based on the regulations outlined in Ministerial Regulation Number 6 of 2018 regarding Systematic Complete Land Registration. The local government of Balikpapan must align the Balikpapan City Regulation on IMTN with the higher regulations to ensure the order of norms and legal certainty for the citizens of Balikpapan. This adjustment can be achieved by repealing or amending the existing regulation by reconstructing Balikpapan City Regulation Number 1 of 2014 on IMTN. Through these adjustments, it is hoped that the implementation of the PTSL program and the issuance of IMTNs in Balikpapan City can proceed more effectively with greater legal certainty.

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