

## State Land Management for Orderly Administration of Land in Regencies/Cities

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**Abstract:** The concept of state control over land is the underlying concept of land management in Indonesia, which is physically represented by the state land. The control of the utilization of state land is one of the sub-activities of the regency/city government. However, there has been no study on these sub-activities carried out based on the Regulation of the Minister of Home Affairs Number 90 of 2019, Law on Job Creation and its derivatives, and the concept of land administration. This paper presents the results of the study on state land management in regencies/cities. This study was conducted using content several methods: content analysis, secondary data analysis, and classification analysis based on the concept of land administration. The data collected and analyzed were laws and regulations on land and their implementation in the context of land administration in several areas in Indonesia. The results of this study indicate that there are fundamental changes in the definition of state land, where the Law on Job Creation and its derivatives do not define land that has been attached to land rights as state land. In addition, the Regulation of the Minister of Home Affairs Number 90 of 2019 and the Law on Job Creation and its derivatives have regulated the authority of the regency/city government in the administration of the control, use, development, and assessment of state land. By considering the definitions and laws and regulations regarding state land, state land management can be implemented through (1) the development of the state land cadaster system, (2) coordination with the agencies administering the control of state land, and (3) the regulation and implementation of the use, development, and assessment of state land.

**Keywords:** land administration, regency/city, state land

### INTRODUCTION

The concept of state control over land is the underlying concept of land management in Indonesia. The state's right to control is stated in Article 33 Paragraph 3 of the 1945 Constitution, which is further explained by Article 2 Paragraph 2 of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles, hereinafter referred to as the Basic Agrarian Law (UUPA). The right gives the state the authority to (a) regulate and administer the appropriation, use, supply, and maintenance of the earth, water, and space; (b) determine and regulate the legal relationship between people and the earth, water, and space; and (c) determine and regulate the legal relationship between people and legal acts concerning the earth, water, and space.

Land administration is defined as a process implemented by the government, either alone or in cooperation with the private sector, related to land ownership, use, utilization and development, and land assessment, where land administration can be implemented if there is infrastructure that encourages the implementation of land policies and land management strategies called land administration system (Williamson et al., 2011). Each component of the land administration system, namely the control system, use, utilization, and development, and land assessment, will influence each other, for instance, legal certainty of access to land will increase land productivity (Lawry et al., 2014), which will further increase the land value. The increase in land value can then be used to finance development (Blanco et al., 2016). The land administration system can function properly if there is a good cadastral system (Enemark, 2004), which is a land information system based on parcel that stores current information related to the geometric description of land parcel; rights, limitations, and responsibilities of land owners or land lords; land use, utilization, and development; and land value for fiscal, legal, setting, and achieving sustainable development goals (FIG, 1998).

State land plays an important role in land administration in Indonesia. As stated in Article 1 Paragraph (2) of Government Regulation Number 18 of 2021 concerning Right to Manage, Land Right, Apartment Unit, and Land Registration, state land, or land that is directly controlled by the state, is Land which is not attached to any right to land, not waqf land, not ulayat land, and/or not the asset owned by the state/local government. As a derivative of the state's right to control, state land can be directly used for development for the public interest without going through the process of acquiring and procuring land.

On the other hand, the land that has been attached to land rights cannot be separated from the state's right to control. Individual legal relationship is not personal simply because the land that is controlled and used is part of shared land (Harsono, 2013). In addition, as stated in Article 2 Paragraph (3) of the aforementioned government regulation, hereinafter referred to as PP 18/2021, land that has been attached to land rights can become state land again due to a stipulation based on the law or by the government, relinquishment or submission of right, release of forest areas, abandoned land, and entitled land whose time period has expired and not requested for extension and/or renewal.

State land management is the authority of the regency/city government, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), and the Ministry of Environment and Forestry (KLHK). In the list of nomenclature of land governance affairs at the regency/city level in the field of land clearing permit management program, which is stated in the annex to the Regulation of the Minister of Home Affairs Number 90 of 2019 concerning Classification, Codification, and Nomenclature of Regional Development and Finance Planning, the regency/city government is responsible for implementing the control of the use of state land. Furthermore, Article 10 Paragraph (1),

Article 23 Paragraph (1), Article 38 Paragraph (1) and Article 53 Paragraph (1) of Government Regulation 18/2021 authorize the Minister of Agrarian Affairs and Spatial Planning to grant the Right to Manage, Right to Cultivate, Right to Build, and Right to Use Over Land. The Ministry of Environment and Forestry also has a role in the control of state land. Based on Article 1 Paragraph (80), the Ministry of Environment and Forestry has the authority to conduct affairs in the forestry sector, including regulating the control of forest areas. In addition, based on Article 1 Paragraph (30) of the government regulation, the Ministry of Environment and Forestry can issue approval for the release of forest areas, which will then become state land, as will be further explained in the results section. Within the scope of the control of state land ex-forested areas, based on Article 18 of Government Regulation 18/2021, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency also has the authority to formulate and determine rates and/or annual land lease that must be paid by subjects of Right to Manage Over Land.

To date, there are several studies related to the state land management. A study on the definition of state land has been carried out (J. Sembiring, 2016). The granting and cancellation of land rights attached to state land has been studied, both in general and within the scope of local government (Budiman, 2020; Dewanti, 2013; Jade et al., 2020; J. Sembiring, 2016; SHAM & Jarot, 2011; Tampang, 2017). The study of the regulation and control of state land in the scope of various activities, such as agrarian reform, land banks, and the utilization of abandoned land, at various levels of administration has also been carried out (Al-Zahra, 2017a, 2017b, 2019; Ismail, 2013; Limbong, 2017; Rochaeni, 2019; Sapriadi, 2015; J. Sembiring, 2016).

However, these studies have not taken the Regulation of the Minister of Home Affairs Number 90 of 2019, hereinafter referred to as Minister of Home Affairs 90/2019, into consideration. This is important considering that the control of the use of state land as one of the sub-activities at the regency/city level has never been regulated by previous laws and regulations.

The aforementioned studies were also carried out before the promulgation of Law Number 11 of 2020 concerning Job Creation, hereinafter referred to as the Law on Job Creation Law (UUCK). The Law on Job Creation regulates the use of state land in the geothermal, electric energy, and agrarian reform sectors. The above government regulation, which is a derivative of the Law on Job Creation, provides a clear description of state land along with the regulation of granting rights over it.

In addition, studies that consider all aspects of state land management in regencies/cities comprehensively based on the concept of land administration have never been carried out. Taking into account the concept of land administration mentioned above, the control of the utilization of state land cannot be implemented without a good state land administration system. First, geospatial information about the status of the state land is

needed, which forms the basis in the use of state lands (Dale & McLaughlin, 1988). Second, the control of the use of state land can only be carried out if there are regulations for land use and development and control in general, which affects state land management (Dale & McLaughlin, 1999). Third, the control of the use of state land also requires land assessment activities, both when allocating state land for public interest, for use, utilization, and development purposes by government agencies, and for use, utilization, and development purposes by other agencies (Dale & McLaughlin, 1999; Williamson et al., 2011).

This paper delivers the results of the study on state land management in regencies/cities based on the concept of land administration. The study was conducted in order to fulfill the mandate of Minister of Home Affairs 90/2019 in the scope of state land management by taking into account its changes since the promulgation of the Law on Job Creation and its derivatives as well as the concept of land administration.

## **METHODS**

This study was carried out using the data on laws and regulations on land and their implementation in the context of land administration in several areas in Indonesia. The data were collected using secondary data analysis method and analyzed using content analysis, secondary data analysis, and classification analysis methods. The content analysis method was carried out to draw conclusions through an objective and systematic process to identify the specific characteristics of the message (Bryman, 2012; Holsti, 1969). This method was employed to understand the concept and implementation of state land administration from the existing laws and regulations.

The secondary data analysis method was a method to carry out data analysis that has been published by other researchers (Bryman, 2012). In the study of state land management in regencies/cities, this method was employed to obtain the information mentioned above.

Classification analysis method was a method for problem structuring to clarify the concept used to define and classify the existing problems (Dunn, 1998; O'Shaughnessy, 1973). In addition, this method can be used to classify information obtained from the data collection process based on established parameters, such as substance relevance, degree of composure, existing differences, consistency, and hierarchical differences (Dunn, 1998).

## **RESULTS AND DISCUSSION**

### **Classification of State Land**

Based on the Government Regulation 18/2021, there are three groups of processes for the occurrence of state land, namely (a) land that was originally state land, (b) land that became state land due to an act or event, and (c) land that became state land due to the end of the period of rights and was not extended or renewed. In accordance with its definition, land

that was originally state land is land that is never attached to land rights, not waqf land, not ulayat land, and/or not an asset owned by the state/local government.

State land can also occur as a result of acts, both legal and physical acts, and events. As stated in Article 2 Paragraph (3) of Government Regulation 18/2021, legal acts that result in the occurrence of state land are the stipulation of state land based on the law or by the government, the relinquishment or submission of rights, and the release of forest areas. Land whose owner dies and does not have an heir can also be state land (R. Sembiring, 2017). Land in the form of abandoned land is categorized as state land due to actions that physically abandon the land. Land resulting from reclamation is also categorized as state land that occurs as a result of physical actions, in this case reclamation. Meanwhile, state land that occurs as a result of an event is land arising.

Land rights that expire can also become state land. As stated in Article 2 Paragraph (3) of the Government Regulation 18/2021, land that expires will only become state and if no extension and/or renewal is requested or due to the policy of the Central Government that the land rights cannot be extended for a period of time.

Government Regulation 18/2021 a new point of view on state land. Before the enactment of the Government Regulation 18/2021, all land parcels were state land, both common and non-common state land (Mujiburohman, 2016; Santoso, 2010). Common state land is a land that is free altogether from one's rights. Common state land may occur due to the process of nationalizing assets of Dutch-owned companies, as regulated by Law Number 86 of 1958 concerning the Nationalization of Dutch-Owned Companies. Ex-private state land is state land that occurs due to the removal of private land, as regulated by Law Number 1 of 1958 concerning the Removal of Private Land. Ex-Western state land is State Land which occurs due to the conversion rules of land rights, as regulated by the Basic Agrarian Law. In addition, there is state land that occurs due to the control of agricultural land that is more than the maximum limit as regulated by the Basic Agrarian Law and Law Number 56 of 1960. The definition of common state land is still in accordance with the definition of state land in the Government Regulation 18/2021.

On the other hand, the term non-common state land is no longer used in the Government Regulation 18/2021. Non-common state land is defined as land parcels that have been attached to land rights (Santoso, 2010). In the Government Regulation 18/2021, land parcels that have been attached to land rights are not categorized as state land.

### **State Land Management in Regencies/Cities**

In this section, the results of the identification of the regulation of control, use and development, and assessment of state land are presented. Based on the concept of land administration, the control of state land consists of subjects, objects, and legal relationships between subjects and objects attached to state land. The objects of state land have been

explained in the Classification of State Land section. As regulated by Article 4, Article 21, Article 36, Article 51 Paragraph (1), and Article 71 Paragraph (1) of Government Regulation 18/2021, the legal relationship between the subject and object can be in the form of Right to Manage, Right to Cultivate, Right to Build, Right to Use, or Right to Own Apartment Unit. Based on Article 5 Paragraph (1) of Government Regulation 18/2021, the subjects of the Right to Manage are the central government, regional government, state-owned or regional enterprises, land bank companies, or legal entities appointed by the central government. Meanwhile, based on Article 19 and Article 34 of Government Regulation 18/2021, the subjects of the Right to Cultivate and the Right to Build are Indonesian Citizens (WNI) or legal entities established according to the Indonesian law and domiciled in Indonesia, hereinafter referred to as legal entities. According to Article 49 Paragraph (2) of Government Regulation 18/2021, the subjects of the Right to Use with Time Period are Indonesian citizens, legal entities, foreign legal entities that have representation in Indonesia, religious and social entities, or foreigners. Meanwhile, according to Article 49 Paragraph (3), the subjects of the Right to Use During Use are the central government, regional government, village government, or representatives of foreign countries or representatives of international agencies. According to Article 67 Paragraph (1) and Paragraph (2) of Government Regulation 18/2021, the subjects of the Right to Own Apartment Unit are Indonesian citizens, legal entities, foreigners with permits in accordance with statutory provisions, foreign legal entities with representation in Indonesia, representatives of foreign countries and international agencies that are located or have representation in Indonesia, the central government, or regional government.

Furthermore, according to Article 10 Paragraph (1), Article 23 Paragraph (1), Article 38 Paragraph (1), and Article 53 Paragraph (1) of Government Regulation 18/2021, the Minister of Agrarian Affairs and Spatial Planning has the authority to grant the Right to Manage, Right to Cultivate, Right to Build, and Right to Use Over Land. However, as regulated in Article 11 Paragraph (2), Article 24 Paragraph (2), Article 39 Paragraph (2), and Article 54 Paragraph (2) of Government Regulation 18/2021, the aforementioned land rights can only occur since they are registered to the Land Office.

Land use, land use monitoring, and land development are the main activities in the scope of administration of land use and development (Williamson et al., 2011). As regulated by Article 11 of the Law on Job Creation, regency/city spatial planning is the authority of the regency/city government. In addition, in the Regulation of the Minister of Home Affairs 90/2019, the determination of the Regional Spatial Planning (RTRW) and the Detailed Spatial Plan (RRTR) of the Regency/City is the authority of the regency/city government. The above-mentioned Regulation of the Minister of Home Affairs also gives authority to the regency/city government to implement land administration programs. Thus, the state land administration in regencies/cities becomes part of the authority of the regency/city government.

Conceptually, land use and development monitoring consists of the activity of granting building permits in accordance with spatial plans and building standards. In particular, land development monitoring consists of the activity of granting permits to split land parcels (Williamson et al., 2011). Based on the Regulation of the Minister of Home Affairs 90/2019, the regency/city government is responsible for implementing the building arrangement program, where the granting of Building Permit (IMB) and Certificate of Functioning (SLF) are some of the authorities of the regency/city government in the aforementioned program. The granting of land development permit based on a spatial planning is also the authority of the regency/city. As regulated by the Regulation of the Minister of Home Affairs 90/2019, the sub-activities of substance approval, evaluation, consultation and determination of the regency/city Regional Spatial Planning and Detailed Spatial Plan are the authority of the regency/city government. Within the scope of government affairs in the field of land, as regulated by the Regulation of the Minister of Home Affairs 90/2019, the granting of location permits, inventory and utilization of vacant land, and the granting of permits to open land are the authority of the regency/city government. The authority also applies to the monitoring of the state land development.

Regarding the granting of splitting land parcel permits, there have been no laws and regulations that regulate this matter specifically. Written approval is only required in the case of splitting land parcels that are encumbered with mortgages and the written approval is given by the mortgage holder or other parties authorized to approve the removal of the relevant expenses, as stipulated in Article 48 Paragraph (3) of Government Regulation Number 24 of 1997 concerning Land Registration.

The regency/city government also has the authority to carry out land assessments, both for public and for state land. Based on Law 28 of 2009 concerning Regional Taxes and Regional Retributions, the regency/city government is authorized to administer Land and Building Tax. In addition, the Regulation of the Minister of Home Affairs Number 90 of 2019, the regency/city government has the authority to carry out sub-activities of land value zone mapping, settlement of damage and land compensation for development, and compensation for the maximum excess land and absentee land programs in the regency/city administration area.

By taking into account the results of the study in the Results section, there are several important activities that are directly or indirectly part of the state land administration in general and the control of the use of state land in particular in regencies/cities. These activities are (1) the development of the state land cadaster system, (2) coordination with the agencies administering the control of state land, and (3) the regulation and implementation of the use, development, and assessment of state land.

### **Development of the State Land Cadaster System**

As stated in the Background section, land administration in general and state land in particular can only be carried out if it is supported by a good cadaster system. As stated in the Background section, the cadaster system stores the latest information related to control; use, utilization, and development; and land value. The cadaster system is a geographic information system used to organize geospatial information about land, which consists of the activities of collecting, processing, storing, and distributing information and/or geospatial data (Williamson et al., 2011) as well as the use of geospatial information based on Article 25 of Law Number 4 of 2011. In this paper, geospatial information and data include information and physical or geometric data of land parcels that can be represented on maps and juridical information and data of land parcels which are descriptions of subjects, objects, and legal relationships between subjects and objects.

The implementation of geospatial information on state land is important because the status of state land is dynamic. First, state land can occur at any time due to an act or event. As a result, the number and area of state land can increase at any time. Second, there is a period of ownership and/or control of state land. As a consequence, geospatial information about state land must be carried out so that state land can be immediately used and utilized when the period of ownership and/or control of state land ends. Third, the identification of state land that was originally in the form of state land can be based on (a) existing geospatial information about state land or (b), implementation of geospatial information about state land, if there is no geospatial information about state land. If there is no geospatial information about state land, the state land administration can generally be carried out by collecting, processing, storing, and using geospatial information related to (a) land that has been attached to land rights, waqf land, ulayat land, and/or state-owned or regional assets so that land that is not attached to land rights, not waqf land, not ulayat land, and/or not state-owned or regional assets can be identified; (b) the basis of the rights and history of land attached to land rights over state land and its duration so that the time of the re-occurrence of state land after being attached to land rights; and/or (c) the acts and/or events that encourage the occurrence of state land.

Subsequently, state land cadaster can also function as land banking. Land banking is a process or policy in which local governments acquire property and increase property productivity through the use and utilization of property or utilize the property as a land reserve as a long-term strategy for the public good (Alexander, 2015). Taking into account the above definition of state land, state land cadaster keeps state land information as a land reserve and can be used as a reference for planning the use, utilization, and development of state land.



### **Coordination of the Arrangement of State Land Control**

The regency/city government needs to carry out coordination with agencies that carry out the regulation of state land control. As stated in the Background Section, the regulation of State Land control is carried out by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Environment and Forestry. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has the authority to regulate the control of state land that was originally state land or land whose rights expired. Meanwhile, the Ministry of Environment and Forestry has the authority to regulate the control of forest areas, including issuing approval for the release of forest areas into state land. In addition, legal acts, physical acts, and events that result in the occurrence of state land cannot be fully controlled by the regency/city government.

Within the scope of the state land administration by the regency/city government, the expected results of the coordination of the regulation of state land control with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency are the sharing of (1) geospatial data of state land that was originally state land, (2) geospatial data of land that is protected by rights and will expire, and (3) geospatial data of state land that occurs as a result of legal acts, physical acts, or events. As for coordination with the Ministry of Environment and Forestry, the expected output is the sharing of geospatial data of forest areas that have been approved for release.

### **The Use, Development, and Assessment of State Land**

State land administration in regencies/cities cannot be separated from the activities of identifying, planning, implementing, and controlling the implementation of plans for the use, utilization, and/or development of state land. Assuming that there has been a state land cadaster and coordination with agencies regulating the control of state land, in order for the state land administration to be implemented, information regarding the existing conditions of use and utilization of state land is needed. In addition, considering the spatial plan in the location of state land, this condition becomes the basis for planning the use, utilization, and development of state land. Planning, implementing the plan, and controlling the implementation of the plan must be carried out by taking into account the various spatial plans of the regency/city.

State land assessment also affects the planning, implementation of the plan, and control of the implementation of the plan for the use, utilization, and development of state land. With the existence of state land value the regulation of the use, utilization, and development of state land can be carried out based on the state land value. For example, if the state land value is high, the state land can be planned for the use, utilization, and development of upper-middle settlements. If the state land value is low but wants to be used, utilized, and developed for upper-middle settlements, a special strategy is needed,

for instance, preparing the access roads to activity centers and supporting facilities and infrastructure, such as shopping centers, schools, activity centers, and the like.

In terms of the use, utilization, development, and assessment of state land, institutional capacity and human resources play an important role in order to encourage the achievement of sustainable development in regencies/cities. Therefore, the development of institutional capacity and human resources needs to be implemented. The capacity development can start from mapping the competencies of institutions and human resources in the regency/city, which then becomes the basis for developing programs that are in accordance with the existing capacity of the institutions and human resources. These capacity development programs can be implemented not only for state land administration, but can also be part of the capacity development program of land administration in regencies/cities in particular.

With the existence of institutional capacity development programs and human resources in regencies/cities, institutions and human resources involved in the state land administration specifically and land administration in regencies/cities in general can develop a good land administration system. A good land administration system has a function in ensuring the successful implementation of land policies and land management strategies. On the other hand, a land administration system was developed based on good land policies, legislation to implement land policies, and good land management strategies. Therefore, in addition to being able to manage the land administration system properly, the development of institutional capacity and human resources is expected to also build institutions and human resources that are able to implement land policies, laws and regulations, and good land management strategies.

## CONCLUSIONS

The regulation of state land management in regencies/cities is developed based on the concept of land administration and laws and regulations related to state land in particular and land administration in Indonesia. As stated in the Background section, the control of the utilization of state land, which is the authority of the regency/city, cannot be carried out without the implementation of the process of state land administration.

By taking into account the classification of state land and the concept and regulations of state land administration and land administration in general, there are three main activities that underlie these activities in regencies/cities. These activities are (1) the development of the state land cadaster system, (2) coordination with the agencies administering the control of state land, and (3) the regulation and implementation of the use, utilization, development, and assessment of state land.

The state land cadaster system serves as the key to the state land administration in regencies/cities. The system manages geospatial information and data related to mastery, use, utilization, and development, and state land assessment. The state land cadaster

system facilitates the regency/city government to identify the status and changes in status as well as the plan, implementation, and monitoring of the implementation of the plan for the use, utilization, and development of the state land. The system can also be used in the implementation of land banking.

Coordination with agencies that carry out state land administration by the regency/city government needs to be carried out because the regency/city government does not have authority in this matter. The regency/city government is expected to coordinate with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Environment and Forestry.

On the other hand, the planning, implementation of the plan, and control of the implementation of the plan for the use, utilization, and development of state land shall be the authority of the regency/city government. In order for the regency/city government to perform this authority, in addition to the need for the state land cadaster system and coordination with the implementing agencies for the state land administration, the regency/city government is expected to (1) integrate various regency/city spatial plans, (2) integrate the land assessment system, and (3) implement programs for the development of institutional capacity and human resources in the state land administration and land administration in general. Through these programs, it is hoped that the regency/city government will have competent institutions and human resources in establishing land policies, laws and regulations, and land management strategies as well as managing the state land administration system and the land administration system in general.

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