



The delegation of authority to determine land rights in land service reform in Indonesia

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Abstract

The delegation of authority to determine land rights is a crucial component of land bureaucratic reform. Regulatory changes, as outlined in Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) No. 5 of 2025 and Regulation of the Minister of ATR/BPN No. 9 of 2025, promote service efficiency, clarify authority boundaries, and increase legal certainty. This study discusses the legal basis, regulatory analysis, the concepts of delegation and subdelegation, implementation, and their impact on national land governance. This study uses a juridical-normative approach and public policy analysis to assess the effectiveness of these regulatory changes in supporting the acceleration of land services and structural agrarian reform in Indonesia.

Keywords: Delegation of authority, agrarian reform, regulation

Introduction

Background

The goals of the Indonesian are enshrined in the preamble to the Act 1995, one of which is to establish a government that protects the entire Indonesian nation and the entire Indonesian homeland and promotes general welfare. Based on these goals, the State has an obligation to strive to achieve them.

Article 33, Paragraph (3) of the Act 1995 explicitly states that the land, water, and natural resources contained therein are controlled by the State so that they can be utilized optimally for the prosperity of the people. This article indirectly explains that the State has the authority to regulate, plan, implement, supervise, manage, and utilize natural resources.

The importance of nature in Indonesia as a place to live is regulated in Article 1 Paragraph (2) of Act Number 5 of 1960 concerning Basic Regulations on Agrarian (hereinafter referred to as UUPA), which states that:

The entire earth, water, and airspace, including the natural resources contained therein, in the territory of the Republic of Indonesia as the gifts of God Almighty are the earth, water, and airspace of Indonesian nation and constitute the wealth of the nation.

Land is a gift from God Almighty, a natural resource that can be utilized for the survival of humanity. As an agrarian resource, land plays a crucial role in human life and livelihood. Therefore, it must be utilized and managed to provide significant benefits for the community's prosperity and well-being. Likewise, for the Indonesian people, land is a gift from God Almighty and a national asset. Therefore, it must be cultivated and managed to bring maximum benefits for the prosperity and well-being of its owners, the community, the nation, and the Indonesian state (Ana Silviana, 2012)^[5].

Considering that land is directly needed for life, including for agriculture or farming, for housing (houses or housing), for conducting business or trade, for industrialization, for educational facilities, and for the development of other facilities and infrastructure (Suardi, 2005)^[2], the state has an obligation to:

- a. All forms of use and utilization to increase the prosperity and welfare of society;
- b. Protect by guaranteeing all rights on the earth, in the earth, and water that can be received, produced, and enjoyed by the community; and
- c. Prevent possible actions by parties that could result in the possibility of being denied, and even the loss of absolute rights (Bagir Manan, 1999)^[1].

Land services are a public sector with a high level of complexity, both in terms of regulation and implementation. In the context of national development, land is a strategic resource related to investment, infrastructure development, environmental sustainability, and public welfare. Therefore, the government requires an effective, efficient, and adaptive institutional system to manage land affairs. Delegating the authority to determine land rights is one policy instrument to expedite services and bring them closer to the public. The National Land Agency (BPN) Regional Office and the Land Office (Kantah) have distinct roles in exercising their authority. However, the boundaries of these authorities often give rise to technical disagreements, resulting in delays in service delivery. The latest regulations attempt to address this by providing clearer boundaries.

Research Methods

According to Peter Mahmud Marzuki, legal research is conducted to find solutions to emerging legal issues. Therefore, the results achieved do not reject or accept hypotheses, but rather provide prescriptions (solutions) regarding what should be done to resolve the problems that arise. Therefore, the methods used in studying legal science also differ from those used in studying sciences other than law, such as social sciences or natural sciences (Peter Mahmud, 2006). The methodology employed in this study is normative juridical research, specifically examining legal norms/statutory regulations (law in books). This research uses a normative legal research method that is sourced from legal materials such as legislation, research results such as journals, scientific articles, theses, and other supporting data such as newspapers, websites, and so on.

Discussion

The state provides legal certainty in land ownership if the community has registered the land with a land certificate as proof of legal ownership. The Basic Regulations on Agrarian Principles outline various land rights, including primary rights such as ownership, cultivation, building, and use rights, as well as secondary rights, including lease and forest harvesting rights. Based on these various land rights, methods for achieving legal certainty regarding ownership are determined (Prima *et al.*, 2023).

Land rights are the rights granted by the state to control land granted to an individual, group of individuals, or legal entity, whether Indonesian citizens (WNI) or foreign citizens (WNA) (Urip Santoso, 2010) [3]. Article 16 of the UUPA details land rights, including:

1. Ownership rights, namely the strongest and most complete rights to land and can be passed down from generation to generation;
2. Right to Cultivate (HGU), namely the right to use land where ownership is directly controlled by the State, which is granted as a business right for a maximum of 35 years and can be extended for a maximum of 25 years (Article 28 paragraph (1) in conjunction with Article 29 paragraph (1) Basic Regulations on Agrarian Principles. Article 22, paragraph (1), Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (PP 18/2021);
3. Building Use Rights (HGB), namely the right to construct or own a building on land that is not one's own. HGB on land with freehold rights is granted for a maximum period of 30 years and can be renewed with a deed of granting Building Use Rights on freehold rights (Article 37, Paragraph (2) of PP 18/2021). The term of HGB on state land and land with management rights is a maximum of 30 years, extended for a maximum of 20 years, and renewed for a maximum period of 30 years (Article 37, Paragraph (3) of PP 18/2021);
4. Right of Use, namely the right to use or collect the results from land granted by an authorized official, not a rental agreement, an agreement to cultivate land, and anything that does not conflict with the provisions (Article 41);
5. Right to Lease for Building, namely rights that can be used for utilization purposes by paying the owner with certain conditions and time, which are not accompanied by elements of extortion (Article 44);
6. Land Clearing Rights, namely the right to clear land for the benefit of citizens as regulated by the Government (Article 46);
7. The right to collect any forest products, namely the right to collect all forest products based on the provisions of statutory regulations;
8. Other rights which are not included in the rights mentioned above, and will be stipulated in the Law in the form of temporary rights (Article 53).

Government Regulation Number 24 of 1997 concerning Land Registration affirms that land registration aims to provide legal certainty and protection for holders of land rights, apartment units, and other registered rights by

proving themselves as legitimate rights holders. Proof of land ownership is evidenced by a land certificate, as stipulated in Article 19 of the Basic Agrarian Law, which states that such a certificate is valid and constitutes strong evidence of land ownership. Certificates can guarantee legal certainty for land rights holders. Legal certainty of ownership rights includes the location, area, and boundaries of a plot of land. Legal certainty provides legal protection, such as the name of the person listed on the certificate, as proof of ownership, against any disturbances or disputes with other parties (Adrian Sutedi, 2006) [4].

Land rights holders can utilize their land absolutely in accordance with their land rights. For the majority of Indonesians who own land with freehold status, they can utilize their land for various purposes, including housing, earning a living through agriculture or cultivating it, and even for economic purposes when funds are needed, using the land as collateral for the disbursement of loans.

The granting of land rights and land registration are among the duties and authorities of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The implementation of this authority is part of the state's right to control, as stipulated in Article 2 paragraph (2) and Article 4 paragraph (1) of the Basic Agrarian Law. As a government authority, the authority to grant land rights can be delegated to subordinate governments or agencies. Through this delegation of authority, it is hoped that the implementation of policies related to land rights determination and registration throughout Indonesia will be effective.

The first delegation of authority to grant land rights was granted to the Head of the Land Office based on Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1999. This authority included issuing decisions to grant ownership rights, building use rights, and use rights on state land, which were previously the responsibility of the Head of the National Land Agency Regional Office. Subsequently, the Government issued Ministerial/Head of the National Land Agency Regulations to grant greater authority to grant land rights, both to the Head of the Land Office and the Head of the National Land Agency Regional Office at the provincial level, to issue decisions to grant rights to state land, including land redistribution.

The legal basis for delegating authority within the ATR/BPN structure continues to evolve in line with the needs of bureaucratic modernization. Several key regulations governing the mechanism for delegation of authority are:

1. Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 16 of 2022 (revoked)
2. Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 2 of 2025 (revoked)
3. Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 5 of 2025
4. Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 9 of 2025 (amendment to Regulation 5/2025)

No.	Application Type	Regulation of the Minister of ATR/KBPN No. 5 of 2025			Regulation of the Minister of ATR/KBPN No. 9 of 2025			
		Head of Land Office	Head of Regional Office	Minister	Head of Land Office	Head of Regional Office	Center	
							Directorate General of Land Rights Determination and Registration	Minister
3.	Granting of Ownership Rights (Religious Legal Entities and/or Social Legal Entities) based on PP Number 38 of 1963	Have no authority	Area up to 50,000 m2 (>5 Ha) Article 5 paragraph (1) letter c	Area more than 50,000 m2 (>5 Ha)	Fixed	Fixed	-	Fixed
4.	Issuing Freehold Land Acquisition Permits for: a. State Bank b. Agricultural Cooperative c. Religious Bodies and appointed Social Legal Bodies have property rights	Have authority Article 10 paragraph (2)	Have no authority		Fixed	Fixed	-	Fixed
II. Right to Cultivate								
1.	Granting/Extension/Renewal of Building Use Rights (Individual) on State Land or Land Management Rights	Area 50,000 m2 to 250,000 m2 Article 11 Paragraph (1)	Have no authority		Fixed	Fixed		
2.	Granting/Extension/Renewal of Building Use Rights (Legal Entity) on State Land or Land Management Rights	Have no authority	up to 1,000,000 m2 (Specifically for Class II and Class III) Article 6 Paragraph (2)	All Cultivation Rights from Regional Office K I and more than 1,000,000 m2 (Specifically K II and K III)	Fixed	1. Up to 2,500,000 m2 (Java and Bali) 2. Up to 5,000,000 m2 (Outside Java and Bali) Article 6	1. More than 2,500,000 m2 up to 5,000,000 m2 (Java and Bali) 2. More than 5,000,000 m2 up to 10,000,000 m2 (outside Java and Bali) Article 4A	1. More than 5,000,000 m2 (Java and Bali) 2. More than 10,000,000 m2 (Outside Java and Bali)
III. Building Use Rights								
1.	Granting/Extension/Renewal of Building Use Rights (Individual) on State Land or Land Management Rights	Area up to 10,000 m2 Article 12 Paragraph (1)	More than 10,000 m2 up to 20,000 m2	If the area exceeds the provisions, it must be in the form of a Legal Entity and have a Business License.	Fixed	Fixed		
2.	Granting/Extension/Renewal of Building Use Rights (Legal Entity) on State Land or Land Management Rights	1. for the purpose of developing housing for low-income communities 2. Extension/renewal of Building Use Rights resulting from the division/separation/merger by/and still in the name of the housing developer with an area of up to 600 m2 Article 12 letters b and c	KI: up to 30,000 m2 KII: up to 50,000 m2 KIII: up to 100,000 m2 KIV: up to 250,000 m2 Article 7 letter b	KI: > 30,000 m2 KII: > 50,000 m2 KIII: >100,000 m2 KIV: > 250,000 m2	up to an area of 30,000 m2 Article 12	More than 30,000 m2 up to 250,000 m2 Article 7	More than 250,000 m2 up to 1,000,000 m2 Article 4B	More than 1,000,000 M2
IV. Right of Use								
3	Granting of Rights to Use (Legal Entity) Agricultural and Non-Agricultural Land	Have no authority	KI: up to 30,000 m2 KII: up to 50,000 m2 KIII: up to 100,000 m2 KIV: up to 250,000 m2	KI: > 30.000m2 KII: >50.000 M2 KIII: >100.000m2 KIV: >250.000m2	Up to 30,000 m2 Article 13	More than 30,000 m2 up to 250,000 m2 Article 8	More than 250,000m2 up to 1,000,000m2	More than 1,000,000m2
3	Granting of Usage Rights for use by the Central Government, Regional Government, Village Government, Foreign Country Representatives and International Agency Representatives	Have authority			Fixed			
IV. Recommendation for Re-establishment of Land Rights after 1 Cycle of the Rights Term Expires								
1	Recommendation for Re-establishment of Land Rights after 1 Cycle of the Rights Term Expires	Have no authority	For individuals	Director General of Land Rights Determination and Registration for Legal Entities	Fixed	In terms of determining land rights, this is the authority of the head of the defense office. Article 4 Paragraph (2) Letter b	Have no authority	In terms of determining land rights, this is the authority of the minister or head of the regional office. Article 4 Paragraph (2) Letter a

This regulation provides the basis for distributing authority between central and regional officials in determining land rights. These changes illustrate the dynamics of public policy, informed by the evaluation of land service performance. Delegation is the process of transferring authority from an official with original authority to a subordinate official. In administrative law, delegation implies that responsibility for implementing the authority shifts entirely to the delegatee. Subdelegation is the re-transfer of authority previously obtained through delegation. In the context of the ATR/BPN, delegation is generally carried out by the Minister to the Head of the Regional Office, while the Regional Office carries out subdelegation to the Head of the Regional Office.

The following is a matrix of changes to the provisions in Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Regulation Number 9 of 2025:

Regulatory changes were made to meet the need for improved public services. The main objectives of updating ATR/BPN Regulation No. 9 of 2025 include:

1. Reaffirming the limits of authority of the Regional Office and the Land Office.
2. Simplifying the delegation mechanism to make it easier to practice.
3. Clarifying the scope of rights and services that can be performed by regional officials.
4. Increasing legal certainty in land decision-making.
5. Supporting service acceleration through adjustments to the authority structure.

These objectives are based on the principles of public service: effectiveness, efficiency, accountability, and legal certainty. Ministerial Regulation 9/2025 has had a significant impact on improving the quality and speed of services. Some implementation implications include:

1. Improving the effectiveness of public services.
2. Strengthening the function of the Land Office as the spearhead of service.
3. Reducing the administrative burden of Regional Offices on operational services.
4. Reducing the potential for conflict of authority between officials.

However, challenges remain, including the need to increase human resource capacity, adjust information systems, and harmonize regulatory interpretations at the regional level. Regulations on the delegation of authority provide greater clarity regarding the boundaries of authority. This contributes to:

1. Reducing the potential for administrative disputes.
2. Preventing overlapping authority.
3. Ensuring decision-making is in accordance with legal principles.
4. Strengthening coordination between work units.

Legal certainty in land services is crucial because it relates to investment, development, and guaranteeing community property rights.

The national agrarian reform agenda requires strong institutional support. Delegation of authority is a crucial instrument in:

1. Accelerating the issuance of land certificates.

2. Simplifying the Complete Systematic Land Registration process.
3. Optimizing digital land services.
4. Supporting equitable access to land ownership.
5. Encouraging transparent and accountable agrarian governance.

With the delegation of authority, services can be delivered closer to the community and reduce dependence on the central government.

Conclusion

The delegation of authority for determining land rights is a crucial element in land bureaucratic reform in Indonesia. The aim is to accelerate services and bring them closer to the public. Changes to the regulations regarding the delegation of authority for determining land rights, through Ministerial Regulations of the Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) 5/2025 and 9/2025, have had a positive impact on accelerating land services. Clearer authority boundaries support legal certainty, encourage efficiency, and improve the quality of public services. Implementation of this policy requires the support of competent human resources, an integrated technology system, and strong internal oversight to optimally achieve the objectives of the delegation of authority. Overall, the changes to the regulations regarding the delegation of authority for determining land rights represent a step forward in agrarian reform. Clearer authority boundaries will support legal certainty, encourage efficiency, and improve the quality of public services.

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