
OBSTACLES AND EFFORTS TO FULFILLING COMPLIANCE WITH SPACE USE ACTIVITIES IN CERTIFICATION OF LAND OWNED BY THE MALANG CITY GOVERNMENT



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Abstract

In principle, it can be seen that the granting of land rights is based on the allocation of space in accordance with the spatial plan. In its development, there are still legal phenomena in the form of violations of spatial planning. The law explicitly stipulates that the granting of land rights must be based on the use of space, including in the certification process of Regional Property as an asset security activity. Currently, the Malang City Government is actively implementing a BMD certification program in the form of land in the Malang City Area. The certification of regional government asset land is certainly not carried out without obstacles. Normatively based on the provisions of Article 115 letter c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, the Malang City Government is required to attach the requirements for the Conformity of Spatial Utilization Activities document so that the Regional Government in the process of implementing the certification of Regional Property does not carry out potential activities that can result in violations of spatial planning. However, based on the survey that the author has conducted, it is known that it seems that the fulfillment of the KKPR document cannot be carried out following the legal mandate. Moreover, it is known that many of the assets of the Malang city government are settlements utilized by the community. Therefore, further study is needed regarding the obstacles and barriers to fulfilling the suitability of spatial utilization activities (KKPR) in the certification of land owned by the Malang city government.

Keywords: Utilization of Space, Government Land, Regional Property

INTRODUCTION

Land as Regional Property (hereinafter referred to as BMD) is a type of immovable property in terms of legal concept and the registration of which is carried out to guarantee the legal certainty of the BMD itself to ensure responsible management of regional finances (Herusantoso, 2024). Legally, the security of BMD in the form of land has also been explicitly instructed as stipulated in Article 49 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2004 which states "State/regional property in the form of land controlled by the Central/Regional Government must be certified in the name of the government of the Republic of Indonesia/the relevant regional government". In line with these regulations in the legal principles of land registration formulated in "Article 19 Paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles" (hereinafter referred to as UUPA), it states that, "To guarantee legal certainty, the Government shall carry out land registration activities throughout the territory of the Republic".

Through certification activities, the Regional Government can obtain proof of land rights in the form of certificates in order to create orderly administration both in terms of land and regional finances (Holla et al., 2024). In principle, it can be seen that the granting of land rights is based on the allocation of space in accordance with the spatial plan. The law expressly stipulates that the granting of land rights must be based on the allocation of space, including in the BMD certification process as an asset security activity (Adinegoro, 2023). As stipulated in "Article 8 paragraph (2) of Government Regulation of the Republic of Indonesia Number 21 of 2021 concerning the Implementation of Spatial Planning", namely "The granting of land rights and management rights as referred to in paragraph (1) letter c is based on the allocation of space following the RTR". Furthermore, the technical rules for registering land rights also regulate the requirements for guidelines for granting land rights as stated in the provisions of "Article 115 letter c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights":

“The requirements for the Right to Use application during use include:

1. KPPR; 2. business permit for the implementation of reclamation, if the land requested is Reclaimed Land; 3. business permit for the implementation of reclamation, if the land requested is Reclaimed Land.”

With the KKPR requirements, philosophically, the granting of land rights should also be in harmony with existing spatial planning. The Regional Government, especially Malang City, without exception, must also comply with the requirements of spatial planning permit documents in the BMD certification process as a form of orderly spatial planning (Putri et al., 2024). If this is not implemented, the potential for incompatibility of spatial utilization by the Malang City Regional Government with regional assets can occur.

In its development, with the requirements for the Suitability of Spatial Utilization Activities (hereinafter referred to as KKPR), philosophically, the granting of land rights should also be in harmony and in accordance with existing spatial planning. The Regional Government, especially Malang City, without exception, must also comply with the requirements for spatial planning permit documents in the BMD certification process as a form of orderly spatial planning. In line with this statement, based on the results of the Pre-Research that the author has conducted at the Malang City Land Office, it can be seen that there are 8,264 plots of land assets of the Malang City Government, with details of 3,844 plots of land that have been certified. However, after the enactment of Article 115 letter c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, the Malang City Government has not been able to meet the KKPR document requirements as required with the following details:

Table 1
Certificate Application at the Malang City Land Office

Year	Number of Land Registration Applications	Attaching KKPR
< 2023	70	0
2023	201	0
2024	102	0

Source: Primary Data, Processed 2025

With the data on the fulfillment of KKPR obligations as in the table above and the fact that the implementation of BMD certification has not been carried out as a whole, there has been an imbalance between *Das Sollen* and *Das Sein*, especially regarding the certification of land assets of the Malang City Government which are used as settlements in the form of Non-Business KKPR permits. For that reason, the author feels the need to conduct research in order to produce solutions that can solve the problem in order to provide input for the certification activities of BMD Malang City and the fulfillment of spatial planning documents. Thus, gradually, the implementation of asset security according to the mandate of the constitution also implements the orderly use of space as a mandate of the Spatial Planning Law.

RESEARCH METHOD

The type of research used is empirical legal research (Socio Legal), namely legal research conducted on real conditions that occur in the application of legal practices in society, and analyzing the actions of legal agencies related to the existence of these problems, which aim to provide legal certainty (Marzuki, 2007). In this study, the author uses a sociological legal research approach. The sociological legal research approach is an approach that is used to analyze and provide answers to make the entire legal institutional structure work effectively. After conducting research using the sociological legal method, the researcher must ultimately solve the problem.

In this research, the author uses prescriptive data analysis techniques, which are analytical techniques with the aim of getting suggestions about what should be done to overcome certain problems. Prescriptive means that the object of legal science is the coherence between legal norms and legal principles, the coherence between legal rules and legal norms, and the coherence between individual behavior and legal norms (Efendi & Susanti, 2018).

RESULTS AND DISCUSSION

Before conducting an initial discussion on the obstacles and barriers to fulfilling KKPR in the BMD certification process of the Malang City Government, the author can first explain the current conditions and general description of the Malang City Government's assets as follows:

Table 2
Progress Table of BMD Asset Certification of Malang City Government

No	Total Assets of Malang City Government	Already Certified	Year
1	8.264 plot	2.757 plot	2022
2	8.264 plot	3.462 plot	2023
3	8.264 plot	3.844 plot	As of December 2024,

Source: Primary Data, Processed 2025

Continuing the discussion of other supporting data, the use and designation of land assets of the city government vary in each region. Such conditions certainly affect the aspect of spatial planning permits because, in principle, the implementation of spatial utilization must follow the existing spatial plan. As a general description in 2024, the author can describe the various uses of land assets owned by the Malang City Government as follows:

Table 1.3
Land Use Based on Malang City Government Certificate Data Issued by the Malang City Land Office in 2024

Number	Land Use	Amount per field
1	Residential House	109
2	Green open space	3
3	Public facilities	26
4	Trade and Services	5
5	Agriculture	17
6	Office	2

Source: Primary Data, Processed 2024

As the data presentation above, we can see that there are various uses of government agency asset land. Most of the Malang city government asset land is used for residential houses by the community. In addition, it can also be seen that there are government agency assets that are used for public facilities, agriculture, offices, trade and services, and Green

Open Spaces (Prakoso et al., 2024). In line with the implementation of space utilization, the use of land rights should be in accordance with the existing spatial plan. Not only limited to the suitability of spatial utilization, in the Malang City Government asset certification procedure, it must also be equipped with KKPR licensing documents as stipulated in Article 115 letter c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021. To analyze the obstacles and barriers to fulfilling KKPR, the author refers to the theory of legal effectiveness. According to Soerjono Soekamto, the effectiveness or ineffectiveness of a law is determined by 5 (five) factors such as legal aspects, law enforcement, means and facilities, society, and culture (Zahro et al., 2023). For this reason, the author will explain in more detail as follows:

Effectiveness is reviewed from the legal factors themselves

In general, KKPR applications by the community are based on attachments of proof of ownership in the form of a certificate of rights. Meanwhile, in the regulation of Article 115 letter c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021, KKPR documents are required as a condition for granting land rights. This ultimately creates a paradox and confusion between the requirements for KKPR applications and the requirements for issuing certificates. At the same time, the requirements for KKPR applications must include clear land ownership information, but on the other hand, the issuance of certificates requires KKPR document requirements.

So there is a tug of war between the Malang City Land Office and the Malang City DPMPTSP in the case that the land requested is free state land and which is not yet certified and does not have proof of ownership, which will raise doubts for the DPMPTSP to issue a KKPR, while the Malang City Land Office requires a KKPR as a prerequisite for issuing a Land Rights Certificate.

Effectiveness in terms of law enforcement.

In terms of law enforcement, the author can explain that efforts to enforce the law on spatial planning violations have not been implemented because legally, the regulation regarding the Detailed Spatial Plan has only been regulated in the Malang Mayor

Regulation Number 18 of 2024 concerning the Detailed Spatial Plan for Malang City for 2024-2044 which was just stipulated by the Acting Mayor of Malang on October 14, 2024 and has not been integrated with the Online Single Submission system (hereinafter referred to as OSS). This means that before the stipulation of the Malang Mayor Regulation Number 18 of 2024, there was a legal vacuum in the detailed spatial plan instrument used as a reference for enforcing spatial planning law. Although as of October 14, 2024, the Detailed Spatial Planning Regulation has been stipulated, its implementation requires a transition period for legal implementation.

Effectiveness is reviewed in terms of means or facilities that support law enforcement

In this aspect, the author can explain that in terms of the means or facilities that support law enforcement against the obligation to fulfill KKPR documents in the series of BMD certification processes, there is a lack of law enforcement efforts against spatial planning violations due to the unavailability of supporting facilities for law enforcement which are dominated by the lack of civil servant investigators, the lack of certain functional positions in spatial planning and budget realization that is not in line with the achievement of the set performance index targets.

Effectiveness is viewed from the perspective of society, namely the environment in which the law applies or is implemented

According to the author's analysis, it can be said that the level of public compliance with spatial planning laws is still low due to the lack of public understanding and awareness supported by the attitude of officials in the Malang City Government who have an urgent need to secure assets through certification without paying attention to spatial planning rules.

Effectiveness is viewed from a cultural perspective as a result of creative work and feelings based on human will in social interaction

Thus, based on the results of the author's analysis, it can be explained that the dominant factor of legal culture that influences the effectiveness of the obligation to fulfill KKPR documents is the culture of solving problems through discretion and the culture of providing dispensation for service requests submitted by fellow state institutions to maintain solidarity and harmony between ministries and institutions.

With the description of the facts of the obstacles to the implementation of the law that the author has described previously, a solution is needed to resolve the existing problems using existing legal theories (Hadi & Permana, 2022). According to Jan Michiel Otto, the details of the factors that are elements of legal certainty are divided into several aspects, including the following (Mertokusumo, 2005):

- a. Agencies that have power (government) follow the rules of law consistently and obey them;
- b. There are clear, consistent, and easily accessible rules;
- c. Judges who are independent and neutral in enforcing the law, carrying out the process of resolving legal disputes, and implementing judicial decisions in real terms;
- d. A society that, in principle, can adjust its attitudes/behavior to these rules.;
- e. The implementation of court decisions is carried out in a concrete manner.

From several elements of legal certainty, the author chooses two dominant factors that can be used as a reference for analyzing to providing solutions to the problems that occur, namely:

Based on the results of the evaluation meeting for the implementation of BMN certification in the form of land in 2024, one of the main topics of discussion was related to obstacles and constraints on asset certification. In the discussion of the meeting, it seems that the points of obstacles and constraints on asset certification are still influenced by the licensing requirement document factor due to obstacles in fulfilling the KKPR document and the cost of applying for the KKPR document. As is known, these constraint factors also affect BMN certification in 2023, which the author has discussed in the previous chapter. Based on the results of the author's interviews with informants, it is known that the solution to dealing with the problem of stagnation, which is an annual problem in every BMN/BMD certification activity (Holla et al., 2024).

To deal with this problem, the solution that can be implemented by government agencies is the implementation of Article 206 of the Regulation of the Minister of Agrarian

Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, which states, When this Ministerial Regulation comes into effect:

- a. Applications for Management Rights and/or Land Rights which have been received complete and meet the requirements but for which a decision on granting rights has not yet been issued, shall be completed in accordance with the provisions before the enactment of this Ministerial Regulation.
- b. Location Permits or other similar permits issued before this Ministerial Regulation comes into effect remain valid and may be used in applications for Management Rights and/or Land Rights as long as the term has not expired.

In the transitional provisions, it is explained that similar permits issued before the enactment of this ministerial regulation can still be used as a basis for applying for land rights (Santoso, 2010). Through these legal provisions, asset-owning agencies that wish to apply for land rights certification but do not yet have the KKPR requirement documents can use other similar licensing documents. This means that the use of the KKPR document requirement in this study is not something that must be absolutely fulfilled (Doly, 2011). Through these provisions, it can be seen that the law provides optional steps for the community and government agencies to overcome the stagnation of the land rights certification process, especially the obligation to fulfill the KKPR document. By using other similar licensing documents as attachments to the certification application, the fulfillment of the licensing requirements in the spatial planning sector will continue to be carried out properly.

To strengthen the solution to the obstacles in fulfilling the obligation of non-business KKPR documents by the Malang City Government, the central government is trying to take legal measures that can clarify the provisions of Article 206 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021. One of these concrete efforts was carried out by the Ministry of ATR/BPN, especially the Directorate General of Determination of Land Rights and Registration, by issuing a circular letter number: AT.02/960-400/IX/2022, dated September 21, 2022.

Referring to the provisions of the circular, it can be seen in point number 4 that there is an explanation that if the application for the Right of Use for as long as it is used by a government agency whose land was acquired before October 27, 2021, does not require a KKPR document but is sufficient to be accompanied by a location permit or other permit that is still valid when the land was acquired.

Thus, the agency that applies for the right to use must still attach other permits when acquiring the land. Such conditions can certainly be a middle ground for government agencies that wish to apply for the land rights certification process, so that their obligation to attach permit documents can still be carried out. In line with the two solution concepts that the author has explained, the Malang City Government that wishes to apply for asset certification, especially land used by the community for residential areas or non-business activities, can be followed by attaching a building permit document that has been issued previously without having to renew it with a KKPR document. Thus, for the sake of realizing the implementation of spatial planning, it continues to take place despite changes in the times and demands of development.

CONCLUSION

Based on the results of the research and discussion, it can be concluded that the provisions of Article 115 letter c, of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights are not running effectively. This is because the problems reviewed from a sociological aspect have not been fully accepted by the Malang City Government. In terms of law enforcement, it can be explained that the implementation of Article 115 letter c is not running effectively because there has been no optimal law enforcement effort. Furthermore, in terms of law enforcement facilities and facilities, it is known that efforts to enforce violations of spatial planning law are not yet equipped with skilled human resources, especially the lack of civil servant investigators and heavy equipment to carry out law enforcement executions. Furthermore, in terms of the effectiveness of the implementation of Article 115 letter c in the community, it has not been implemented effectively because the level of community compliance with spatial planning

law is still low and is accompanied by a lack of public understanding and awareness. Next, the effectiveness of the law reviewed from a cultural perspective can be seen that the dominant factor of legal culture that influences the effectiveness of the obligation to fulfill KKPR documents is the culture of solving problems through discretion and the culture of providing dispensation for service requests submitted by fellow state institutions to maintain solidarity and harmony between ministries and institutions.

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