

Implementing Building Permits in Wetland Environmental Areas in Banjarmasin City

Muhammad Ananta Firdaus

ananta.firdaus@ulm.ac.id

Faculty of Law, Lambung Mangkurat University, Banjarmasin

Risni Ristiawati

risni.junaidi@ulm.ac.id

Faculty of Law, Lambung Mangkurat University, Banjarmasin

Article History

Received: 05/09/22 Review: 07/09/22 Revision: 11/09/22 Available Online: 15/09/22

Abstrak

Penelitian ini bertujuan untuk memberikan evaluasi terhadap implementasi pengaturan IMB pada kawasan lingkungan lahan basah di Kota Banjarmasin, agar Pemerintah Kota Banjarmasin dapat meningkatkan fisik kawasan kota dengan menyusun formulasi kebijakan terkait eksistensi dari pengaturan IMB setelah lahirnya Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja dengan berbasis pada kelestarian lingkungan. Penelitian ini menggunakan pendekatan *socio legal*, yaitu dengan menggunakan peraturan perundang-undangan yang mengatur tentang IMB, kemudian diperkuat dengan studi lapangan menggunakan teknik *purposive accidental sampling*. Hasil dari penelitian ini adalah bahwa implementasi pelaksanaan IMB di kota Banjarmasin menghadapi beberapa kendala baik internal maupun eksternal. Sementara pasca lahirnya Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja membawa perubahan terhadap beberapa ketentuan dalam perizinan bangunan, diantaranya adalah perubahan istilah dari Izin Mendirikan Bangunan (IMB) menjadi Persetujuan Bangunan Gedung (PBG), termasuk juga ketentuan lainnya sebagaimana yang tertuang dalam Peraturan Pemerintah Nomor 16 Tahun 2021 tentang Peraturan Pelaksana Undang-undang Nomor 28 Tahun 2002 tentang Bangunan Gedung, hal ini tentu harus diikuti pula oleh peraturan perundang-undangan di tingkat daerah, yakni Peraturan Daerah Kota Banjarmasin Nomor 15 Tahun 2012 tentang Izin Mendirikan Bangunan.

Kata kunci : Implementasi, Izin Mendirikan Bangunan, dan Lingkungan Lahan Basah.

Abstract

This study aims to evaluate the implementation of the IMB arrangement in the wetland environment in the City of Banjarmasin so that the Banjarmasin City Government can improve the physical area of the city by formulating policies related to the existence of the IMB arrangement after its birth. Law Number 11 of 2020 concerning Job Creation based on environmental sustainability. This study uses a socio legal approach, namely by using the laws and regulations governing IMB, then strengthened by field studies using purposive accidental sampling techniques. The results of this study are that the implementation of the IMB in the city of Banjarmasin faced several internal and external obstacles. Meanwhile, after the enactment of Law Number 11 of 2020 concerning Job Creation, it brought changes to several provisions in building permits, including the change in the term from Building Construction Permit (IMB) to Building Construction Approval (PBG), including other provisions as stated in the Regulations. Government Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings, of course must also be followed by laws and regulations at the regional level, namely the Banjarmasin City Regional Regulation Number 15 of 2012 concerning Building Permits.

Keywords: Implementation, Building Permit, and Wetland Environment.

PRELIMINARY

A city that is undergoing development will certainly have an impact on increasing the number of residents who inhabit a city, which will be accompanied by the rate of physical development of the city as a fulfillment of needs, both the need for housing, a place of business,

as well as the fulfillment of other needs of a general nature. Along with the increasingly dense population with diverse interests in ownership of buildings with various functions, development must be arranged so that subsequent buildings function effectively and do not interfere with the public interest (Gallion and Eisner, 2014; Handy & Maulana, 2021; Handy et al., 2021). The development will have a bad impact if the government is not able to regulate according to the RT/RW that has been set, in addition to damaging the planned spatial plan, development without a permit will have bad consequences in the future, one of which is flooding in the rainy season (Irwan, 2005).

In the context of structuring urban space in which there are buildings, a policy regarding Space Utilization Control Licensing is issued, one of which regulates IMB licensing, where it is stated that for every building construction activity, the community must first take care of and obtain an IMB. IMB is a permit to establish, repair, add, change or renovate a building, including a building feasibility permit issued by the local government (Pudyatmoko, 2009). IMB is one of the policies aimed at controlling and supervising the construction of buildings, namely the creation of an orderly building structure that meets building engineering and aesthetic standards so that it is safe, comfortable, healthy and has economic value to be used as a residence or to carry out economic and socio-cultural activities for residents. or users.

Implementation of the IMB policy by the Banjarmasin City Government then regulated in the Banjarmasin City Regional Regulation Number 15 of 2012 concerning Building Construction Permits which were formed in the context of orderly implementation of building construction in accordance with the City RT/RW Banjarmasin, it is necessary to control and arrange buildings and control space utilization through IMB. This regional regulation itself was born due to the stipulation of Minister of Home Affairs Regulation Number 32 of 2010 concerning Guidelines for Granting Building Permits. Regional Regulation Number 8 of 2009 concerning Levies and Building Construction Permits that have been in effect need to be revised.

As an essential reference in the technical implementation of the IMB policy, the City of Banjarmasin refers to the Regulation of the Minister of Public Works Number 24/PRT/M/2007 concerning Technical Guidelines for Building Permits. This technical guideline is intended to serve as a reference for local governments, especially technical agencies for building construction management, in establishing operational policies for building IMBs (Pudyatmoko, 2009). This technical guideline aims to realize buildings that are erected by fulfilling administrative requirements and technical requirements of buildings in accordance with their functions, in order to realize functional buildings, in accordance with

harmonious building arrangements and in harmony with their environment, which are carried out in an orderly manner to ensure the technical reliability of buildings. buildings, as well as the realization of legal certainty in the administration of buildings (Pudyatmoko, 2009; Firdaus et al., 2021).

However, in line with the latest developments, Law Number 11 of 2020 concerning Job Creation has been ratified, the government abolished IMB, and instead the government established a new provision called Building Approval (PBG). Several implementing regulations for the Job Creation Act have also been issued by the government, including Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings, which have replaced Government Regulation Number 36 of 2005 concerning Implementing Regulations of Law Number 36 Year 2005. building law. This Government Regulation Number 16 of 2021 certainly has implications for changes, one of which is regulating various provisions, including PBG which replaces the term IMB, including changes to the regulations under it (in this case the Banjarmasin City Regulation Number 15 of 2012 concerning Building Permits). Based on these problems, it is deemed necessary to conduct research on the implementation of IMB in the wetland environment in Banjarmasin City.

METHOD

From what is mentioned above, it is necessary for the Banjarmasin City Government to evaluate the regulation on IMB and its existence after the birth of the Job Creation Act. Although the regulation on IMB has been regulated in the Banjarmasin City Regulation, its effectiveness is still lacking, for example, there are still many illegal settlements found in the river border area which is one of the wetland environmental areas in Banjarmasin City. In addition, the lack of supervision by the government in terms of granting IMBs also impacts order in the implementation of the construction of buildings that are not following the RTRW of Banjarmasin City.

The method used in the preparation of research on "Implementation of Building Permits in Wetland Environmental Areas in Banjarmasin City" is to take a socio legal approach, namely by utilizing social science assistance in conducting legal research, in order to obtain conformity between *das sollen* and *das sein*. This is to fulfill the need for a more detailed and thorough explanation of legal issues in a more meaningful way by making a comparison between law in book and law in action. The methodology itself is carried out by applying a social scientific perspective to legal studies, namely the sociology of law, by first analyzing the normative framework of a problem. The consequence of legal research that uses the socio-legal paradigm

as the main paradigm is to use a combination of normative juridical methods with qualitative sociological methods. The research uses a normative juridical approach (documentary research), meaning that it examines and examines secondary data, namely using library data in the form of positive law related to the laws and regulations governing river boundaries.

To strengthen the results of the research, field studies were also conducted to collect primary data to obtain the data needed for the sharpness of the analysis. The field study was carried out using interview and observation techniques. Informants were obtained by using a purposive accidental sampling technique, considering the characteristics of the research population that cannot be known with certainty, the number is spread over a relatively wide geographic area. Primary data were obtained directly from informants by referring to structured interview guidelines which were compiled to obtain data related to wetlands, especially IMB in Banjarmasin City.

RESULTS AND DISCUSSION

A. Implementation of Building Permit Arrangements in the City of Banjarmasin

Since the state (government) interferes in many fields of activity and services in the community, legal intervention is also increasingly intensive, one of which is providing public services in the field of licensing. From the point of view of State Administrative Law, a permit is a decision issued by a government organ, in which contains a content of things that are concrete, individual, and final (Atmosudirjo, 1983). As a KTUN, the permit must meet the elements of the KTUN as regulated in the Law of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to the Law of the Republic of Indonesia Number 5 of 1986 concerning the State Administrative Court, so that the permit as a form of KTUN is one of the dimensions of the juridical relationship between the government and its citizens.

National spatial planning is contained in Law Number 26 of 2007 concerning Spatial Planning, where the RTRWP is developed based on the National RTRW and City/Regency RTRW is developed based on the RTRWP. The role of the government in carrying out spatial planning is a mandate that must be carried out for the prosperity of the people. Controlling the use of space is carried out by establishing zoning regulations, licensing, providing incentives and disincentives and imposing sanctions (Firdaus, 2013).

Law Number 28 of 2002 concerning Buildings regulates the function of buildings, building requirements, building management, including regulating the rights and obligations of building owners and users at every stage carried out to carry out building management, provisions regarding the role of building owners and users. community and guidance by the government, and the sanctions. The entire purpose and intent of the existence of these

regulations is based on the principles of usefulness, safety, balance, and harmony of the building with the environment and the people who need it. With the law that regulates this matter, all building operations including construction and utilization, carried out in the territory of the Republic of Indonesia, whether carried out by the government, private sector, community, and by foreign parties, must comply with all the provisions contained in this Law Building Act.

IMB is one of the legal products to realize a certain order so as to create order, security, safety, comfort as well as legal certainty. The implementation of IMB by the regional government is an effort to encourage administrative order in regional development and is one of the licensing rights held to obtain regional income to finance the running of the government. The existence of this IMB functions so that the government can control in the context of city physical data collection as a fundamental basis for planning, monitoring and controlling urban development that is directed and very useful for building owners because it provides legality (legal certainty) for the establishment of the building in question and will make it easier for the building owner. owner of the building for a purpose, including the transfer of building rights to other parties (such as buying and selling, inheritance, grants and so on) as well as to prevent enforcement actions if they do not have IMB (Sutedi, 2010).

Following the Banjarmasin City Regulation Number 15 of 2012 concerning Building Permits, the existence of IMB also plays a role in influencing the form of urban spatial planning, including to overcome the existence of illegal buildings that stand without a permit or do not meet the requirements of the boundaries of the area that have been set. by the city government. Based on this regional regulation, IMB is a permit granted by the city government except for buildings and non-building buildings, a special function by the government to building owners to build new, change, expand, reduce, and/or maintain buildings in accordance with the requirements. administrative and technical requirements that apply.

Permission is one of the authorities of the government whose embodiment is in the form of regulation. Licensing arrangements can be in the form of fulfilling requirements, obligations, or prohibitions. The implication is that if the requirements, obligations and prohibitions requested in the permit are not met, it will impact the permit itself. One form of non-fulfillment of the requirements, obligations or prohibitions is the occurrence of violations that will lead to legal sanctions for a person or civil legal entity who commits a violation. The occurrence of such violations in society is very likely to occur considering that in that society there are individuals with diverse attitudes in terms of compliance with the law. So that the implementation of these rules can always be within the legal corridor, then in the

implementation of the licensing regulations, sanctions are needed to ensure legal certainty, consistency in law implementation, and also law enforcement in the licensing sector.

Although local regulations have been regulated, and those who have received permits should properly implement each rule, the problem of buildings that are not following the IMB such as buildings jutting into the river is very common, this is also due to the socio-historical factors of the Banjar people themselves. cannot be separated from river culture, where it should be necessary to arrange community settlements so that the area can be seen properly and beautifully. The community should also be involved in policy making because the issuance of permits will also affect their lives, as is the case in Australia, New South Wales, which calls through their community advertisements if the government wants to grant a permit (Siahaan, 2005). The factor of public awareness of the importance of managing IMB for each building owned is also a problem, this low awareness has an impact on optimizing the application of the rules in question, which if left unchecked will certainly result in the failure of the purposes and objectives of the ratification of the regional regulations.

In carrying out the regulating function attached to it, government officials in this case can apply coercive elements, so that the legal regulations formed are obeyed by all levels of society, because in essence the authority given by Administrative Law to government officials is equipped with regulating and controlling powers. The sanction itself can be in the form of criminal sanctions, civil and administrative sanctions. In a sociological context, sanctions are a form of law enforcement efforts. Law enforcement is a process to make legal wishes come true. These desires are the thoughts of the legislature that are formulated in legal regulations (Rahardjo, 1984). Sanctions are an important closing part of the law. This is a form of coercion from the state administration (government) against citizens in the event of orders, obligations, or prohibitions regulated in laws and regulations issued by the state administration (government).

Sanctions are used to realize law enforcement, against a provision that usually contains a prohibition or which requires and is also expected to have a deterrent effect so that it becomes an example for other people not to repeat it. Therefore, there are 2 (two) main elements in the enforcement of Administrative Law, namely (Hadion, 1995):

1. Supervision

Supervision is a management function that is closely related to the achievement of organizational goals, so that supervision in any organization is absolutely necessary. This is as expressed by GR Terry who said that in order to achieve the goals of an organization, including the state as the largest power organization, it should carry out management

functions consisting of planning (planning), organizing (organizing), giving encouragement (actuating), and supervision (controlling). Supervision or control of the actions of government officials is needed so that the implementation of the assigned tasks can achieve the goals and avoid deviations (Anwar, 2004).

The purpose of holding supervision is to find out the performance carried out by a person or an agency in carrying out their duties according to the provisions that have been set, as well as to understand what went wrong for future improvements, and direct all activities in the context of implementing a plan so that it can be expected. a maximum result. Soekarno K. stated the following main points (Soekarno, 1980):

- a. To find out whether the implementation has been in accordance with the outlined plan;
- b. To know whether everything is carried out according to the instructions and principles that have been instructed;
- c. To know the difficulties, and weaknesses in work;
- d. To know if everything is running efficiently;
- e. To find a way out, if it turns out that difficulties, weaknesses or failures are found towards improvement.

According to JBJM ten Berge, supervision is a preventive measure to enforce compliance (Spelt & Berge, 1993). The supervisory authority is exercised by the agency responsible for implementing regional regulations. Supervision is not always followed by the application of sanctions, unless it has gone through certain procedures, but according to its purpose, supervision is always followed by efforts to encourage people to obey the rules, in practice called coaching.

In the provisions contained in Regional Regulation Number 15 of 2012 concerning Building Construction Permits, in Chapter IX concerning Supervision and Control Article 32, it is stated that:

- (1) Supervision and control over building management is carried out by regional work units in charge of licensing and/or supervision.
- (2) The supervisory activities as referred to in paragraph (1) include checking the function of the building, the technical requirements of the building, and the reliability of the building.
- (3) The control activities as referred to in paragraph (1) include site inspection, checking information on public complaints, and imposing sanctions.

Regarding the authority to supervise IMB in the City of Banjarmasin, it is still not running optimally, this is because there is no clarity regarding the job description of the institution that is given the authority to supervise the implementation of the IMB in the City of

Banjarmasin. This is of course important so that there is no overlap in the implementation. In addition, the obstacle also faced is the limited number of human resources in accordance with the required competencies, which also contributes to the not running optimally Regional Regulation Number 15 of 2012 concerning the Permit to Construct the Building.

2. Penalty

Administrative sanctions according to JBJM ten Berge are the core of administrative law enforcement (Spelt & Berge, 1993). According to P. de Haan, in State Administrative Law, the use of administrative sanctions is the application of government authority, where this authority comes from written and unwritten Administrative Law rules. JJ. Oostenbrink argues that administrative sanctions are sanctions that arise from the relationship between the government and citizens, which are carried out without third party intermediaries (judicial powers), but can be directly implemented by the administration itself.

Types of administrative sanctions can be seen in terms of targets, namely:

- a) reparatory sanctions, meaning sanctions that are applied as a reaction to the violation of norms, which are intended to return to their original condition before the occurrence of the violation, for example *bestuursdwang*, *dwangsom*.
- b) Punitive sanctions, meaning that sanctions are intended to punish someone, for example in the form of administrative fines.
- c) regressive sanctions are sanctions that are applied as a reaction to non-compliance with the provisions contained in the issued decrees.

The difference between administrative sanctions and criminal sanctions is that if the administrative sanctions are aimed at acts, reparator-condemnatoir nature, the procedure is carried out directly by the TUN officials without going through a trial. While criminal sanctions are aimed at the perpetrator, the condemnatoir nature must go through a judicial process (Ridwan, 2006). There are several kinds of administrative sanctions that can be imposed on licensing violations, namely government coercion (*bestuurdwang*), withdrawal of favorable decisions, imposition of forced money by the government (*dwangsom*), and imposition of administrative fines (administrative boete).

1. Government Force (*bestuursdwang*)

Government coercion is a real action carried out by a government organ or on behalf of the government to move, vacate, hinder, restore to its original state what has been done or is being done., contrary to the obligations specified in the legislation. Government coercion must pay attention to applicable legal provisions, both written and unwritten laws, namely the

principles of proper governance such as the principle of accuracy, the principle of balance, the principle of legal certainty and others.

The authority to carry out government coercion (*bestuurdwang*) is free authority. This implies that the authority is a right and an obligation in carrying out certain legal actions. This freedom of authority means that the government is given the freedom to consider, according to its own initiative, whether to use government coercion (*bestuurdwang*) or not, even apply other sanctions. In the event that a licensing violation has occurred, the government organ before imposing sanctions in the form of government coercion (*bestuurdwang*), must carefully examine the facts of the violation of the law. Basically, the facts of the violation can be divided into two types, namely:

- 1) Non-substantial violations
- 2) Substantial violations

The imposition of sanctions for violations that are substantial and non-substantial in nature can be different. As an example of a non-substantial violation, a person builds a house in a residential area without an IMB. The government should not immediately use government coercion by dismantling the house, because it can still be legalized by ordering the owner of the house to take care of the IMB. If the order to take care of the IMB is not carried out, then the government can apply the *bestuursdwang* in the form of demolition.

Examples of violations of a substantial nature, for example, are industrial developments in residential areas, which means building buildings that are not in accordance with the RTRW set by the government, the government can immediately implement *bestuursdwang*. The implementation of the *bestuursdwang* is preceded by a written warning that is set forth in the form of a KTUN. This written warning usually includes the following:

- a) The warning must be definitive;
- b) The authorized organ must be named;
- c) Warnings must be addressed to the right people;
- d) The provisions that have been violated are clear;
- e) Actual violations must be clearly delineated;
- f) Contains determination of time period;
- g) Giving clear and balanced load;
- h) Unconditional loading;
- i) The burden contains the reasoning;
- j) Alerts contain news about charging fees.

Government coercion in the regulation of IMB can be applied to violations in the form of organizing and constructing buildings; violates the obligation of the permit that has been set; or misuse the license that has been issued. In accordance with the purpose of administrative sanctions, government coercion that can be applied is in the form of temporary cessation of activities; demolition; fulfill the obligations that are violated; whitening/legalization; and restore conditions damaged by these activities.

2. Withdrawal of favorable decisions (decision)/revocation of license

Withdrawal of profitable KTUN is carried out by issuing a new decree whose contents are withdrawing and/or declaring that the previous provision is no longer valid. This is applied in the event that if there is a violation of the rules or conditions attached to the written determination that has been given, there can also be a violation of the law relating to the permit held by the violator. The withdrawal of this provision raises juridical problems, because in State Administrative Law there is the principle of *het vermoeden van rechtmatigheid or presumtio justea causa*, namely that in principle every decision issued by the State Administration Agency or Official is considered correct according to law. Therefore, the KTUN that has been issued is basically not to be revoked, until proven otherwise by a judge in court.

The Law of State Administration provides the possibility to revoke a profitable KTUN as a result of the mistake of the recipient of the KTUN, so that the revocation of the permit is a sanction. The reasons for the revocation of the KTUN as a sanction occur if the interested party does not meet the restrictions, requirements or statutory provisions associated with permits, subsidies, or payments. If the interested party at the time of submitting an application for a permit, subsidy, or payment has provided data that is so incorrect or incomplete, that if the data is provided correctly or completely, the decision will be different, for example the refusal of a permit.

The withdrawal of the decision as a sanction is closely related to the nature of the decision itself. If the decision is binding, then the decision must be withdrawn by the organ or agency that issued the decision. This withdrawal is only possible if the laws and regulations that form the basis for the issuance of the decision have already regulated it before the decision is issued. While the decisions are free, the withdrawal is sometimes determined in the legislation, sometimes not (Sinambela, 2006).

Revocation of a license is one of the most recent administrative sanctions to be imposed, because in the revocation of a license there are many non-legal factors that are very influential, for example the credibility of the company, but it is possible that this sanction will be imposed, if after careful consideration and supported by the right reasons. But in reality, until now the

revocation of permits for buildings located in river border areas, for example, has not been carried out optimally.

3. Imposition of Forced Money (*dwangsom*)

According to Administrative Law, the imposition of this forced money can be imposed on a person or citizen who does not comply with or violates the provisions set by the government as an alternative to government coercion. The imposition of forced money by the government (*dwangsom*) is considered a reparatory sanction. This sanction is applied if a citizen commits a violation. In relation to the issuance of favorable KTUN, permit applicants are usually required to provide a security deposit. If a violation occurs or the violator (permit holder) does not immediately end it, the security deposit is deducted as *dwangsom*. So, the security deposit is mostly used when the implementation of *bestuurdwang* is complex.

The government in determining forced money, determines whether the forced money is paid in installments or must be paid once based on a certain time. The government must also determine the maximum amount of forced money and pay attention to compatibility with the severity of the interests that are violated and (in accordance) to determine the determination of forced money. In the application of forced money as a punishment or fine, the amount of forced money is seen and based on the conditions in the agreement, which should have been paid because it was not done, did not do it perfectly or did not comply with the stipulated period, in this case it is different from the fee. arising from interest payments, compensation, and damages.

4. Imposition of Administrative Fines (*administratieve boete*)

The imposition of administrative fines is different from the imposition of forced money which is intended to obtain a concrete situation that is in accordance with the norms; administrative fines are nothing more than a reaction to the violation of norms, which are aimed at adding to a definite punishment. In the imposition of these sanctions, the government must continue to pay attention to the principles of Administrative Law, both written and unwritten. Administrative fines can be applied in relation to the violation of the obligation to pay money, both towards the payment of required IMB taxes and/or levies.

In Regional Regulation Number 15 of 2012 it is regulated regarding administrative sanctions that can be imposed on Article 104 paragraph (1) in the form of:

- a) written warning;
- b) limitation of development activities;
- c) orders for temporary or permanent cessation of construction work;
- d) an order to temporarily or permanently stop the utilization of the building;
- e) freezing of building permits;

- f) revocation of building permits;
- g) freezing of building function-worthy certificates;
- h) revocation of the certificate of proper function of the building; or
- i) order for demolition of the building.

In addition to the imposition of administrative fines, a maximum fine of 10 percent of the value of the building being or has been constructed is also regulated, which is further regulated in a Mayor Regulation. In addition to administrative sanctions, Regional Regulation Number 12 of 2015 concerning Building Construction Permits also regulates provisions for criminal sanctions. The nature and function of criminal sanctions is to give sorrow to violators, so that violators are deterrent and no longer commit violations. Article 105 states that any person and/or entity that violates the provisions of Article 17 letter a (does not have an IMB) is subject to a maximum imprisonment of 6 (six) months or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah), as regulated in Regional Regulation Number 12 of 2015.

Regarding sanctions, there are several criteria that must be met: need to be noted, namely:

- 1) The elements on which the sanctions are based are applied;
- 2) Types of sanctions imposed;
- 3) The period of imposition of sanctions;
- 4) Procedure for determining sanctions;
- 5) Mechanism for removing sanctions.

Considering that each permit is regulated in a separate statutory regulation, in the process of stipulating it, it must take into account the statutory regulations on which it is based.

B. The existence of a building permit arrangement in a wetland environment in the City of Banjarmasin after the enactment of the Job Creation Act

Buildings are physical forms space utilization and is the result of a construction work that is integrated with its domicile, partially or wholly located above and/or in the land and/or water, which functions as a place for humans to carry out their activities, whether for housing or residence, religious activities, business activities, social, cultural, and special activities. According to the Regulation of the Minister of Public Works Number 24 of 2008 concerning Guidelines for Building Maintenance, the functions of buildings include residential, religious, business, social and cultural functions and special functions are provisions regarding the fulfillment of administrative requirements and technical requirements of buildings. Therefore, the building arrangement still refers to the spatial arrangement in accordance with the

provisions of the legislation. To ensure legal certainty and order in the operation of buildings, every building must meet the administrative and technical requirements of the building.

With the enactment of Law Number 11 of 2020 concerning Job Creation, the government abolished IMB and stipulates a new provision called PBG. Provisions regarding PBG are completely regulated in Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings which is one of the derivative rules of the Job Creation Act. Previously, Government Regulation Number 36 of 2005 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings used the term IMB, but this regulation has been revoked so that now the term IMB is no longer used and replaced with PBG.

In Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings, it is explained that the functions and classifications of buildings are included in the PBG, Certificate of Feasibility of Function (SLF) and also Proof of Building Ownership (SBKKBG). According to Article 1 number 17 of Government Regulation Number 16 of 2021, PBG is a permit granted to building owners to build new, modify, expand, reduce and/or maintain buildings in accordance with building technical standards. Compliance with technical standards is a standard that must be met to obtain PBG. By definition, the difference between PBG and IMB lies in the reference used in granting the permit. For IMB, permission is granted if it complies with the applicable administrative and technical requirements. Meanwhile, PBG is given if it is in accordance with the technical standards of the building. So, PBG is only limited to the provisions on building technical matters.

Table 1. IMB and PBG based on Government Regulation Number 16 of 2021

No	Building Permit (IMB)	Building Approval (PBG)
1	Has the meaning of Building Permit.	Has the meaning of Building Approval.
2	Apply for a permit before constructing a building.	Does not require the building owner to apply for a permit before constructing the building and reporting the function of the building.
3	The owner must continue to convey the function of the building.	The government provides an alternative if a building has a mixed function in its PBG.
4	A building permit may only be used for one function.	With this mixed function, a building can have more than one function, such as housing and business.
5	There are no sanctions for changing the function of the building.	Owners who make changes in function are required to report. Otherwise, there will be sanctions.
6	To apply for an IMB there are several conditions, namely:	PBG only provides the following requirements:

	<ul style="list-style-type: none"> a. Recognition of the status of land rights. b. Utilization permit from right holder, building ownership status. c. Building permit. 	<ul style="list-style-type: none"> a. The need for planning and design of buildings according to building layout. b. Reliability. c. Design prototype or prototype.
7	There are no provisions for post-disassembly	Things to note after disassembly: <ul style="list-style-type: none"> a. Management of material waste, building waste. b. Quality improvement efforts.

Source: Data Processed (2022).

Fulfillment of building technical standards by taking into account the function of the building as determined by the building owner. This provision is still the same as the previous rule, which consists of residential functions, religious functions, business functions, social and cultural functions, and special functions. However, Government Regulation Number 16 of 2021 stipulates that the function of the building can be in the form of mixed functions.

The granting of PBG itself includes two processes, namely planning consultation and publishing. First, to be able to obtain PBG, the owner must submit a technical plan document to the Regional Government or the Central Government prior to construction. The technical plan document must be reviewed and approved in the planning consultation process. In the planning consultation process, there are three stages, namely registration, inspection of compliance with technical standards, and statements of compliance with technical standards. To check the fulfillment of technical standards, must go through two stages of inspection. First, an architectural plan document will be examined. If this stage has met the technical standards, then proceed to the next stage, namely checking the structural, mechanical, electrical, and plumbing plan documents.

Second, after the planning consultation has been completed, then proceed to the stage of issuing the PBG. Based on Article 261 paragraph (1) of Government Regulation Number 16 of 2021, the issuance of PBG includes the determination of the value of regional levies, payment of regional retributions, and the issuance of PBGs carried out by the Office of Investment and One Stop Integrated Services (DPMPSTSP). If the PBG has been issued, the building owner can start construction.

Finally, in the transitional provisions, Government Regulation Number 16 of 2021 also regulates buildings that have obtained an IMB before the enactment of Government Regulation Number 16 of 2021, then the permit is still valid until the expiration of the permit. Then for buildings that have been established and do not yet have PBG, they must take care of SLF

based on the provisions in Government Regulation Number 16 of 2021 to be able to obtain PBG.

In addition to building new buildings, this PBG is also required for a building that will undergo a change in function, or is called a PBG change. For buildings that have been established and do not yet have a PBG certificate, the building owner must first take care of the SLF before being able to obtain PBG. Regarding the existence of SLF which is a certificate issued by the regional government to declare the feasibility of a building's function, both administratively and technically before its utilization, legally this has actually been regulated in Law of the Republic of Indonesia Number 28 of 2002 concerning Buildings, which states that every building must always be in a solid and functional condition. As legal evidence, local governments can issue building SLFs.

SLF is so important that developers who do not have this certificate cannot issue a Sale and Purchase Deed (AJB), cannot open a bank branch in the building, and cannot collect service fees from residents. With SLF ownership, the developer can carry out the process of transferring the ownership rights to the buyer, recovering each unit and making an acquisition deed. So far, many people think that in the process of constructing a building (other than a house) until it is functioned/used, it is enough to have an IMB, even though, there are other important documents that need to be completed, namely the SLF.

The next thing that is also regulated in Government Regulation Number 16 of 2021, namely SBKKBG is a letter of proof of rights to the status of building ownership (Article 1 number 19 of Government Regulation Number 16 of 2021). The technical office will follow up the statement letter of function feasibility by issuing SLF and building ownership certificate which includes SBKKBG, certificate of ownership of apartment building or certificate of ownership of apartment unit. SBKKBG includes SBKKBG documents and attachments to SBKKBG documents (Article 275 paragraph (2) Government Regulation Number 16 of 2021). According to Article 275 paragraph (3) of Government Regulation Number 16 of 2021, the SBKKBG document regulates information regarding:

- a. Ownership of a building or part of a building
- b. Building address
- c. Land rights status
- d. PBG number
- e. SLF number or SLF renewal number

As for the attachment of the SBKKBG document according to Article 275 paragraph (4) Government Regulation Number 16 of 2021 includes information:

- a. Land use agreement letter
- b. Deed of separation
- c. Image situation
- d. Fiduciary deed if encumbered with rights

Based on Article 276 of Government Regulation Number 16 of 2021, the SBKBG is issued together with the SLF through the SBKBG website. The process of issuing SLF and SBKBG is carried out no later than 3 (three) working days since the statement letter of function eligibility is uploaded through the SBKBG. In the event that a collection of buildings are built in one area and have the same technical plan, the SLF and SBKBG are issued by the Regency/City Government for each building. If the building uses a prototype/prototype design, the process of issuing the SLF and SBKBG is carried out no later than 1 (one) working day after the statement of function eligibility is uploaded through the Building Management Information System, this has been regulated in Article 276 of Government Regulation Number 16 of 2021.

CONCLUSION

So far, the implementation of the IMB in the City of Banjarmasin has faced several obstacles, including: 1) Internal constraints include, a. If that supervision of the implementation of the IMB still faces a shortage of human resources by the required competencies; b. In terms of related institutional aspects, it is essential to pay attention from policymakers in the distribution of authority regarding implementing IMB in Banjarmasin City; and c. There is still a limited capacity of information technology resources that can provide optimal services for licensing related to IMB. 2) External constraints, namely the low level of public awareness of the importance of IMB management, but in general it does not cause serious disturbances or obstacles. Meanwhile, after the enactment of Law Number 11 of 2020 concerning Job Creation, it brought changes to several provisions in building permits including the change in the term from IMB (Building Permit) to PBG (Building Approval), including other provisions as contained in Government Regulations. Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings, this of course must also be followed by laws and regulations at the regional level, namely the Banjarmasin City Regional Regulation Number 15 of 2012 concerning Building Permits. Therefore, it is necessary to immediately revise the Banjarmasin City Regulation Number 15 of 2012 concerning Building Permits following the new provisions and the need for regulations related to PBG retribution in Banjarmasin City. In addition, supervision of building permits in the City of Banjarmasin must be improved and also a need for improvements to institutional functions in the

implementation of IMB/PBG in the City of Banjarmasin. About human resources, it is necessary to involve the sub-district and kelurahan parties in this supervision and provide incentives for the supervisors.

BIBLIOGRAPHY

- Anwar, S. (2004). *Sendi-Sendi Hukum Administrasi Negara*. Glora Madani Press.
- Ash-Shidiqqi, E. A. M. (2022). *PENGANTAR HUKUM ADMINISTRASI NEGARA*. Penerbit Lakeisha.
- Atmosudirdjo, S. P. (1983) *Hukum Administrasi Negara*. Balai Buku Ichtiar.
- Attamimi, A. H. S. (1994). *Deer Rechtsstaat Republik Indonesia Dan Prespektifnya Menurut Pancasila Dan UUD*. FH Universitas 17 Agustus.
- Azhary, M. T. (2010). *Negara Hukum*. Kencana.
- Effendi, L. (2010). *Pokok-Pokok Hukum Administrasi*. Bayumedia.
- Firdaus, M. A. (2013). Penerapan Pengaturan Rencana Tata Ruang Wilayah di Provinsi Kalimantan Selatan. *Cakrawala Hukum*, 2(1), 137-150.
- Firdaus, M. A., Ristiawati, R., & Saphira, S. (2021). FORMULASI KEBIJAKAN PELAKSANAAN PERLINDUNGAN KAWASAN SEMPADAN SUNGAI DI KOTA BANJARMASIN. *Jurnal Ius Constituendum*, 6(2), 424-441.
- Gallion, A. B., & Eisner, S. (2014). *Pengantar Perancangan Kota : Desain dan Perencanaan Kota*. Erlangga.
- George, H. F. (1994). *Administrasi Negara Baru*. LP3ES.
- Hadjon, P. M. (1995). Penegakan Hukum Administrasi Dalam Pengelolaan Lingkungan Hidup. *Jurnal Hukum*, 2(4).
- Handy, M. R. N., & Maulana, I. (2021, February). Revitalization of Green Open Space to Fulfill the Needs of Urban Communities. In *2nd International Conference on Social Sciences Education (ICSSE 2020)* (pp. 223-225). Atlantis Press.
- Handy, M. R. N., Mutiani, M., Putra, M. A. H., Syaharuddin, S., & Putro, H. P. N. (2021). Adaptation of Riverbanks Community to Urban Green Open Space Development. *The Innovation of Social Studies Journal*, 2(2), 127-134.
- Huda, N. (2007). *Pengawasan Pusat Terhadap Daerah Dalam Penyelenggaraan Pemerintah Daerah*. FH UII Press.
- Indradi, S. S. (2019). *Hukum Administarsi Negara*. Setara Press.
- Irwan, Z. D. (2005). *Tantangan Lingkungan dan Lansekap Hutan Kota*. Bumi Aksara.
- Jeddawii, M. (2006). *Pemerintahan Suatu Dalam Suatu Kajian Beberapa Perda Tentang Penanaman Investasi Daerah*. UII Press.
- Kencana, S. I. (2016). *Sistem Administrasi Negara Republik Indonesia*. Bumi Aksara.
- Manan, B. (1992). *Pemikiran Negara Berkonstitusi*. FH Universitas Padjadjaran.
- Manan, B. (1996). *Kedaulatan Rakyat, Hak Asasi Manusia dan Negara Hukum*. Gaya Media Pratama.
- Manan, B. (2000). *Wewenang Provinsi, Kabupaten, Dan Kota Dalam Rangka Otonomi Daerah*. FH Universitas Padjadjaran.
- Marbun, S. F. (2001). *Dimensi-dimensi Pemikiran Hukum Administrasi Negara*. UII Press.
- Marbun, S. F., & Mahfud MD, M. (2004). *Pokok-Pokok Administrasi Negara*. Liberty.
- Muin, F. (2008). *Peran Asas-Asas Pemerintahan Yang Layak Dalam Mewujudkan Pemerintahan Yang Bersih*. UII Press.
- Prijono, T & Manurung, M. (2010). *Paradigma Administrasi Publik dan Perkembangannya*. Rineka Cipta.
- Pudyatmoko, Y. S. (2009). *Perizinan, Problem dan Upaya Pembenahan*. Grasindo.
- Rahardjo, S. (1984). *Masalah Penegakan Hukum – Suatu Kajian Sosiologis*. Sinar Baru.

- Rahmadi, T. (2015). *Hukum Lingkungan Di Indonesia*. Raja Grafindo Persada.
- Ridwan H. R. (2006). *Hukum Administrasi Negara*. Raja Grafindo Persada.
- Sampebulu, H. P. (2019). Penegakan Hukum Penerian Izin Mendirikan Bangunan di Wilayah Bali. *Mimbar Keadilan*, 12(2).
- Santosa, A. (2001). *Good Governance Hukum Lingkungan*. KDT, ICEL.
- Siahaan, L. O. (2005). *Prospek PTUN Sebagai Paranat Penyelesaian Sengketa Administrasi Di Indonesia*. Percetakan Negara RI.
- Sinambela, L. P. (2006). *Reformasi Pelayanan Publik – Teori, Kebijakan, dan Implementasi*. Bumi Aksara.
- Soekarno, K. (1980). *Dasar-Dasar Manajemen*. Firma Tekad.
- Spelt, N. M., & Ten Berge, J. B. J. M. (1993). *Pengantar Hukum Perizinan*. Yuridika
- Sunarno, S. (2006). *Hukum Pemerintahan Daerah*. Sinar Grafika.
- Suseno, F. M. (2003). *Etika Politik (Prinsip-prinsip Moral Dasar Kenegaraan Modern)*. Gramedia Pustaka Utama.
- Sutedi, A. (2010). *Hukum Perizinan Dalam Sektor Pelayanan Publik*. Sinar Grafika.
- Sutyoso, B., & Puspitasari, S. H. (2005). *Aspek-aspek Perkembangan Kekuasaan Kehakiman di Indonesia*. 1 ed. UII Press.