

## LIMITATION OF THE AUTHORITY OF THE DISTRICT OR CITY LAND OFFICE IN THE ISSUANCE OF BUILDING USE RIGHTS CERTIFICATES (HGB)

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### ABSTRACT

The issuance of Building Use Rights Certificates (HGB) by Regency/Municipal Land Offices is part of the public service function aimed at providing legal certainty over land utilization. However, in practice, the authority of regional Land Offices has been subject to certain limitations, particularly regarding land with specific criteria that must be processed at the Regional Office or the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). This situation potentially leads to service delays, legal uncertainty, and administrative burdens for both the public and business actors. Based on these issues, this research formulates two main problems: (1) how the restriction of authority affects the quality of land services and legal certainty; and (2) what legal consequences arise from the limitation of authority of Regency/Municipal Land Offices in the process of issuing HGB certificates. This study employs a normative juridical method with statutory and conceptual approaches. Primary legal materials consist of land regulations and related legal documents, complemented by secondary legal materials such as literature and scholarly journals. The analytical techniques used are legal interpretation and legal construction to assess the consistency between normative provisions and service implementation. The results indicate that the limitation of authority is based on the principles of administrative prudence and vertical supervision to prevent abuse of power. However, its implementation creates obstacles in public service delivery through longer bureaucratic procedures, thereby reducing the effectiveness of land services and generating potential legal uncertainty. Therefore, a clearer coordination mechanism, standardized procedures, and enhanced transparency are needed so that the restriction of authority maintains legality without hindering public service and legal certainty.

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The HGB validity policy is contained in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. The validity period of HGB is 30 years. HGB certificate holders can extend their certificates up to 20 years and 30 years of ownership. HGB can be extended and renewed in accordance with applicable regulations. HGB holders must submit an application for the extension or renewal of the building use rights to the National Land Agency (BPN) before the validity period expires. The extension or renewal of this right usually requires the fulfillment of certain requirements and the payment of an administrative fee. (Alan & Wardhana, 2026)

The process of granting and issuing HGB certificates is under the authority of the Land Office which is an agency that acts as an extension of the Ministry of ATR/BPN. This authority is generally regulated in the Ministerial Regulation of BPN 16/2021. In practice, land offices at the city or district level have administrative authority to receive applications, check files, conduct measurements, and issue HGB certificates.

Problems arise when there are restrictions on the authority for the city/district level Land Office in issuing HGB, especially when it comes to:

- Land with a specific area (e.g. above 5,000 m<sup>2</sup> or 10,000 m<sup>2</sup>)
- Land that is in a strategic location or close to state assets
- Land that is in an area that also has the interests of the central or provincial government. (Irmayanti et al., 2024)

In such cases, the issuance of HGB cannot be fully completed by the municipal/district land office. There needs to be approval from the provincial BPN Regional Office or even directly from the central Ministry of ATR/BPN, depending on the complexity and status of the land.

This can have various impacts, including:

- The publishing process becomes longer and bureaucratic
- Creating legal uncertainty for the right applicant (both individuals and legal entities)
- This situation can hinder the performance of notaries and PPAT in the process of registering land rights.
- Potentially causing disputes due to overlapping authority. (September, 2024)

In addition, the difference in interpretation of regulations between land offices in one region and another also adds to confusion among the public and land law practitioners. For example, in one area, the land office can directly issue HGB on 8,000 m<sup>2</sup> of state land, but in another area it must be approved by the Regional Office first.

Based on the provisions of PP 10/1961 and strengthened by PP 24/1997, state land originating from the old customary area is a priority to be registered first. This is in line with Ps 12 (1), which stipulates that land registration for the first time includes several main activities, namely:

1. The collection and management of soil physical data is carried out to determine the location, boundaries, and area of the land so that the soil objects are clear and do not cause overlap;
2. The collection and management of juridical data along with the recording of their rights, contains information about the status of land ownership. This stage ascertains who is entitled to the land;
3. The issuance of land certificates, certificates are valid proof of land ownership. This document provides certainty and legal protection for the owner;
4. The presentation of physical data as well as juridical data is presented openly so that it is easily accessible to interested parties. (Abdillah et al., 2025)

The National Land Agency (BPN) not only carries out administrative duties, but also plays a role in formulating land policies. This policy was prepared with reference to Law 5/1960 and other related regulations. This role makes BPN an important institution in regulating land management, providing legal certainty, and supporting the creation of orderly land administration in Indonesia. The issue of land is a complex problem because it is related to the interests of a number of agencies at once.

The process of issuing land rights certificates by BPN involves applicants, land owners, village officials, and authorized agencies. Each party plays a role in providing information and supporting documents that are the basis for land rights. The involvement of these various parties is important to ensure the validity of the data, so that the certificates issued do not cause legal defects. One of the common forms of disputes is disputes over the ownership of certificates, especially when there is a takeover of control over land. For example, a property company in Malang Regency submitted an HGB application for a piece of state land with an area of about 15 hectares. The company plans to build an integrated residential area along with commercial facilities on the land. (Octaviani & Hendrawarman, 2025; Wirawan & Simanjuntak, 2025)

Procedurally, the HGB application was first submitted to the Malang Regency Land Office. The land office then conducts field inspections, measurements, and soil history research. However, when the process enters the certificate issuance stage, obstacles arise. Based on the provisions in Government Regulation No. 18 of 2021 and the ATR/BPN technical regulations, the district land office is only authorized to issue HGB for land plots with a certain area (for example, under 5 hectares). Because this company's application exceeds the limit of authority, the process must be delegated to the BPN Regional Office of East Java Province.

As a result of these restrictions, companies have to wait longer because application files are reprocessed at the provincial level. From a legal perspective, this mechanism is valid because it is in accordance with applicable regulations. However, in terms of public services, the company feels disadvantaged because the certificate processing time has become longer.

This case shows that the restriction of authority is indeed made to maintain control over the control of large and strategic land tenure, but on the other hand it can cause obstacles in the smooth running of services. This condition is often a dilemma: on the one hand rules are necessary for prudence, but on the other hand the community or business actors expect services to be fast and simple. (Pellock et al., 2025; Rahman et al., 2025)

Based on the problems that occurred, the researcher felt the need to further examine the issue in a study entitled "Restrictions on the Authority of Regency or City Land Offices in the Issuance of Building Rights Certificates". This research departs from the issue of restricting land authority at the city/district level which has direct consequences on the quality of land services as well as legal certainty received by the community and business actors. The restriction of authority is understood not only as an administrative arrangement, but also as a legal policy that has the potential to affect the effectiveness of public services in the land sector. In this context, the study analyzes how restrictions on authority can have a positive or negative impact on the speed, procedural certainty, and clarity of land service results, especially in ensuring legal certainty of land rights for communities and business actors. This analysis is important because the quality of land services is one of the main indicators of good governance and business certainty.

This study is specifically limited to the effect of land authority restrictions on service quality and legal certainty, without expanding the discussion to the political aspects of policy or institutional reform in general. The focus of the research is directed at the juridical and administrative implications of the restriction of authority, especially in the process of issuing Building Use Rights (HGB) certificates at the city/district level. Thus, the study does not discuss other types of land rights, except to the extent relevant to strengthen the analysis of HGB as a widely used legal instrument in investment and development activities.

## **METHOD**

This research uses a type of normative legal research that focuses on the study of positive legal norms, legal principles, and doctrines related to the authority of land offices in the issuance of Building Rights Certificates (HGB). The main analysis is directed at the applicable laws and regulations, especially Law Number 5 of 1960, Government Regulation Number 24 of 1997, and technical regulations in the field of land. The approach used includes a legislative approach to identify and assess the boundaries of the authority of land offices at the city/district level, as well as a conceptual approach to examine the theory of authority, public services, and legal certainty as the basis for normative

analysis. Through the combination of these two approaches, this study not only describes legal norms, but also assesses the harmony between regulations and their relevance to the principles of state administrative law. (Muhammad, 2024)

The legal materials analyzed consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, journals, doctrines, and jurisprudence, and tertiary legal materials to support the understanding of legal concepts. The collection of legal materials is carried out through literature studies and document studies, while the analysis of legal materials uses normative qualitative methods through legal interpretation and construction. The analysis process is directed to answer whether the restriction of the authority of the land office in the issuance of HGB is in accordance with applicable legal norms and the principle of legal certainty, as well as to examine its implications on the quality of land services. The results of the analysis are presented argumentatively to produce logical, critical, and systematic legal framework-based conclusions.

## RESULT AND DISCUSSIONS

### The Effect of Restrictions on Land Services Quality and Legal Certainty for the Community and Business Actors

The restriction of the authority of the Regency/City Land Office should be seen as part of the political administrative law aimed at upholding the principle of legality and increasing vertical control. However, as Bagir Manan stated, the effectiveness of public law is not only measured by adherence to norms, but also by the extent to which the law is able to meet the social and administrative needs of the community. In this case, the restriction of authority that is not balanced with public service innovation will create a distance between the law and the real needs of the community.

Meanwhile, in terms of legal protection, Ridwan HR stated that every government action that harms the community due to excessive authority must be accompanied by an administrative recovery mechanism. In this context, if the HGB certificate is rejected or postponed due to reasons of restriction of authority, the public has the right to obtain a written explanation and access to administrative efforts as stipulated in Ps 75-78 of the Local Government Law.

The limitation of authority in the structure of land administration basically cannot be separated from the basic concept of distribution of *administrative authority* which aims to create an internal supervision system within the body of government. In the context of state administrative law, authority is not only a tool to act (*bevoegdheid tot handelen*), but also a limitation on the action itself (*bevoegdheidsbeperking*). This means that every authority of a government official always contains an element of restriction in it. (Harris & Meilana, 2025; Scott, 2025)

Within the framework of land law, the restriction of the authority of the Regency/City Land Office in the issuance of HGB certificates is a manifestation of the government's efforts to consolidate the national land registration system to make it more uniform and measurable. Ps 2 (2) letter b of the UUPA affirms that the state has the authority to "regulate and organize the designation, use, supply, and maintenance of the earth, water, and space". In administrative practice, the authority is delegated to the Minister of Agrarian and Spatial Planning/Head of BPN as the executor of national land affairs. Thus, the limitation of authority at the regional level is a form of delegated authority from the central government which is regulated hierarchically through a Ministerial Regulation.

Although normatively the restriction aims to maintain uniformity and integrity of land policies, at the level of implementation it can have an effect on the efficiency of public services. According to Boedi Harsono, one of the main functions of the land registration system is to provide convenience and speed of service to the community in obtaining proof of land rights. Therefore, if the restriction of authority actually prolongs the service process and causes administrative uncertainty, then the policy is contrary to the essence of land law as a means of certainty and legal protection. (Alan & Wardhana, 2026; Prabowo et al., 2023; Rahman et al., 2025)

From the perspective of public service theory, as explained by Moenir, good public services must meet the elements of convenience, speed, openness, and accountability. Restrictions on authority without being balanced with

an effective coordination mechanism between the Regency/City Land Office and the Regional Office can result in bureaucratic distortion. This phenomenon can give rise to what Satjipto Rahardjo calls "insynchronization between law and social justice", where rules intended to create order actually create a new burden for society.

Furthermore, the limitation of authority also needs to be understood within the framework of the principle of proportionality and the principle of subsidiarity. Both of these principles require that restrictions of authority be exercised to the extent necessary to achieve legitimate governmental objectives, without diminishing the effectiveness of public services at a lower level. In this context, the government should take into account the capacity of human resources, the availability of infrastructure, and the workload in each Land Office before setting the limits of authority uniformly throughout Indonesia. An approach that is too centralistic can cause administrative inequality between regions, making it *difficult for the principle of administrative justice* to be realized.

The quality of good land services is also closely related to public trust in government institutions. In this context, restrictions on authority can affect public perception of the performance of the Land Office. When the authority of local officials is strictly limited, people tend to feel distant from the center of decision-making, and this can reduce the effectiveness of citizen-centered services. Therefore, the authority system in the land sector should be designed to bring services closer to the community, not the other way around. (Rusdiananto et al., 2025; Sahnan et al., 2019; September, 2024)

On the other hand, restrictions on authority also have a positive function as a means of administrative supervision. By limiting authority at the regional level, the Ministry of ATR/BPN can tighten control the process of issuing HGB certificates that are prone to irregularities. However, overly dominant supervision from the central government without being accompanied by proportional decentralization of decision-making can lead to structural inefficiencies. Therefore, it is necessary to implement a supervision model based on trust and verification, which is to provide limited autonomy space to the regions while maintaining national service standards. Therefore, it can be emphasized that the limitation of the authority of the Regency/City Land Office is not only an administrative problem, but also a philosophical and juridical issue related to the balance between legality and legal utility. Administrative law must not stop at a formalistic level, but must be directed towards the achievement of the substantive values of law, namely legal certainty, utility, and justice, as stated by Gustav Radbruch. The application of legal policies that overemphasize the legality aspect without considering the benefits and justice has the potential to turn the law into a rigid tool of power that is not responsive to the needs of society. (Maula et al., 2025; Sandika et al., 2023; Susilo & Alfath, 2026)

Based on the description above, it is concluded that the restriction of the authority of the Regency/City Land Office in the issuance of HGB certificates has a strong legal basis as a form of application of the principles of legality and administrative supervision. However, this policy also has consequences for the effectiveness of public services and legal certainty for the community and business actors. When restrictions are carried out without considering the institutional capacity in the regions and without an efficient coordination mechanism, then the legal goals of usefulness and justice will not be achieved.

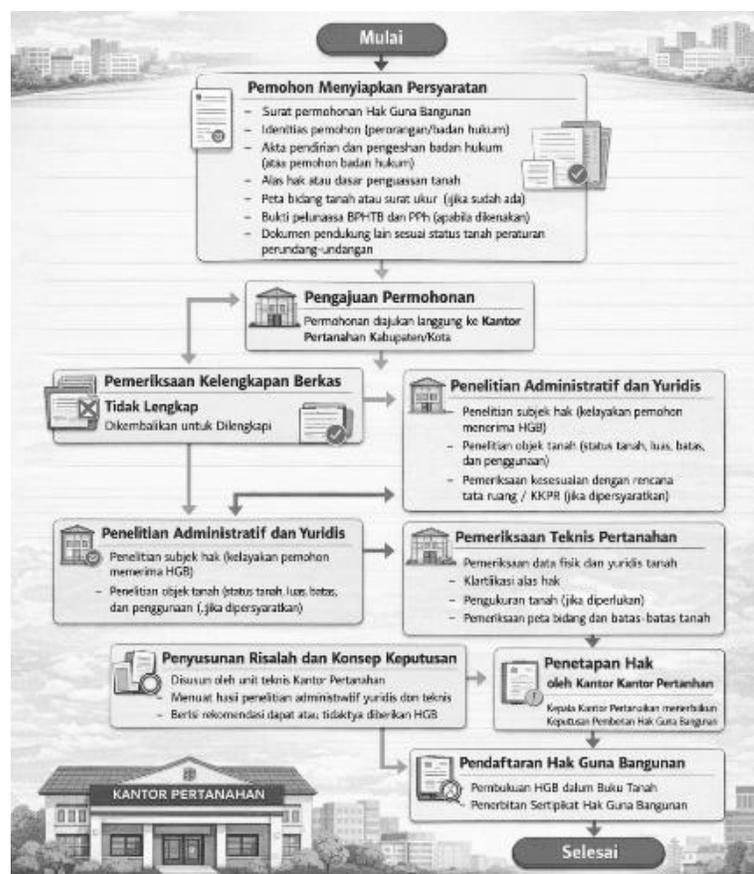
Therefore, the direction of the policy of limiting authority needs to be directed at the application of the principles of proportionality, subsidiarity, and utility. This means that routine and non-strategic authorities should still be delegated to the Regency/City Land Office to ensure fast service and legal certainty, while cases that are strategic or of high value can be handled by the Regional Office or Ministry. Thus, the restriction of authority is not an obstacle to service, but rather a means of strengthening administrative laws that are effective, efficient, and fair for the community.

### **Legal Consequences of Restrictions on Land Authority at the City/Regency Level in the Process of Issuing HGB Certificates**

The restriction of the authority of the Regency/City Land Office in the issuance of HGB certificates is a legal phenomenon that not only has an impact on the governance of land administration, but also has consequences for the validity of official decisions, legal certainty for rights holders, and the form of legal responsibility inherent in state administrative officials. From an administrative law perspective, every action of a government official that causes legal consequences must be carried out based on legitimate authority. Thus, when an authority is limited by a higher legal provision, an action outside the limits of that authority will give birth to certain legal consequences, both against the resulting decision and against the official who implements it.

Normatively, the legal framework that regulates the division of land authority is sourced from Law 5/1960, which in Article 2 paragraph (2) of this Authority includes regulations regarding the designation, utilization, and maintenance of land, water, and space with the aim of achieving the greatest prosperity for the people. The implementation of this authority is carried out by the government through the National Land Agency (BPN) as the implementing institution. (Ananda et al., 2022; Manurung & Setyadji, 2025)

The following is a diagram of the flow diagram for the issuance of HGB certificates by the Land Office.



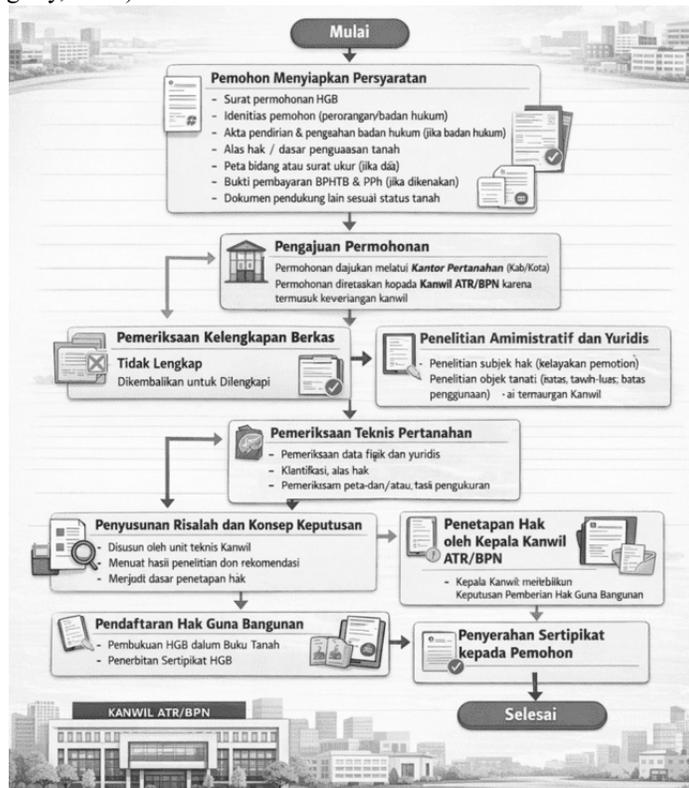
Source: Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights

The application for HGB at the Regency/City Land Office begins with the applicant preparing all administrative and technical requirements according to the provisions. These requirements include an HGB

application letter, the identity of the applicant, both an individual and a legal entity, a deed of establishment and ratification of a legal entity for the applicant in the form of a legal entity, the basis of rights or basis for land tenure, a map of land plots or survey letters if available, proof of BPHTB and Income Tax repayment if applicable, and other supporting documents in accordance with the status of the land and laws and regulations. The completeness of this document is the basis for further processing.

After the requirements are prepared, the applicant submits an application directly to the local Regency/City Land Office. The application file received was then checked for completeness by the officer. If the results of the examination show that the file is incomplete or inappropriate, the application is returned to the applicant to be completed. On the other hand, when the file is declared complete, the application is registered and proceeded to the research stage.

The next stage is the determination of HGB by the Head of the Regency/City Land Office. If the application is approved, the Head of the Land Office issues a Decision on the Granting of HGB. This decision is the legal basis for the registration of land rights. After the decision is issued, the registration of the Building Use Rights is carried out by means of HGB bookkeeping in the Land Book and the issuance of the HGB Certificate. The final stage of this process is the submission of the HGB certificate to the applicant, which marks the completion of the entire series of HGB applications at the Regency/City Land Office in accordance with the provisions of laws and regulations. (Dewi & Herma Setiasih, 2025; Lugarty, 2024)



Source: Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights.

After the requirements are complete, the applicant submits an application through the local Regency/City Land Office. Because the HGB application includes the determination authority by the Regional Office, the Land Office

forwards the application file to the ATR/BPN Regional Office. The next stage is to check the completeness of the file. If the results of the examination show that the documents are incomplete or not suitable, the application is returned to the applicant to be completed. However, if the file is declared complete, the application is continued to the research stage.

The ATR/BPN Regional Office then conducted administrative and juridical research. Administrative research includes checking the feasibility of the subject of rights, while juridical research includes examining the status of the land, the area and boundaries of the land plot, the basis of the rights used, and the suitability of land use with the spatial plan or the suitability of Space Utilization Activities (KKPR) if required. This stage aims to ensure that legally and administratively the land is eligible to be granted HGB. (Adimansyah, 2025; Fitriyana et al., 2025)

In practice, restrictions on authority that are not followed by the modernization of the service system actually cause structural inefficiencies. Local officials must wait for approval from the top level to issue certificates, even though the data and documents are complete at the local level. This is contrary to the principle of *doelmatigheid* (utility) in administrative law which requires that government actions provide optimal benefits to the community. Therefore, the policy of restricting authority needs to be accompanied by innovation in the digital service system and conditional technical delegation, where regional officials are given limited authority with a strict online supervision system.

It should also be noted that the legal consequences of the limitation of authority are not singular, but can be distinguished into two main forms, namely:

1. The result of normative law, namely changes in the structure of officials' responsibilities and the distribution of authority between levels of administration. This is internal in the government organization.
2. Factual legal consequences, namely direct impacts on the community, in the form of service delays, legal uncertainty, and potential land disputes. (Pransisto, 2023; Sarrahisdas, 2024)

The second legal consequences show that the limitation of authority is not only about the enforcement of administrative discipline, but also about social justice and citizen protection. Therefore, public policy in the land sector needs to balance these two dimensions so that the law does not stop as a rule, but functions as a means of building a just and orderly society.

Finally, in the context of bureaucratic reform, the restriction of the authority of the Land Office should be seen as a stage towards more transparent and accountable land governance, not as a bureaucratic obstacle. By applying the principle of "less discretion, more accountability", the state can ensure that every administrative action in the land sector is carried out in accordance with the law, but remains adaptive to the needs of the community. The synergy between central supervision and the effectiveness of regional services is the key to realizing a modern, fast, and legal certainty for all parties.

Thus, the legal consequences of the restriction of the authority of the Regency/City Land Office reflect two faces of administrative law: as an instrument of control over power, and at the same time as a tool of public service. If implemented with due regard to the principles of proportionality, legal protection, and accountability, the limitation of authority will strengthen the foundation of the Indonesian legal state which is based on a balance between legal certainty, utility, and justice.

## CONCLUSION

The restriction of the authority of the Regency/City Land Office in the issuance of Building Rights (HGB) certificates has a legal basis as a form of administrative control based on the principle of legality in state administrative law. The authority is delegative from the Minister of ATR/BPN, so restrictions through the Minister of ATR/BPN are part of the vertical supervision mechanism to maintain administrative order and prevent abuse of authority. However, the findings of the study show that this policy has a direct impact on the quality of land services, especially in terms

of the efficiency and speed of the HGB issuance process. The centralization of authority causes bureaucratic procedures to be longer and has the potential to reduce the effectiveness of public services, thus creating tension between the principle of legality and the principle of usefulness (*doelmatigheid*).

From the perspective of legal certainty, restrictions on authority that are not accompanied by procedural clarity, service time standards, and uniform technical guidelines have the potential to cause administrative uncertainty. The indefinite transfer of authority between levels of institutions and a clear division of responsibilities can hinder the main goal of land registration, which is to ensure legal certainty for land rights. This condition has a significant impact on the community and business actors, especially in the context of investment, because the delay in the issuance of HGB certificates can hinder economic activities and reduce trust in the land administration system.

This study also found that the restriction of the authority of the Regency/City Land Office causes serious legal consequences if not complied with consistently, especially related to the legality of administrative decisions. HGB certificates issued by unauthorized officials have the potential to be null and void and cause losses to rights holders. Therefore, restrictions on authority must be applied proportionally and subsidiarily, accompanied by strengthening coordination between agencies, increasing the capacity of regional apparatus, and a transparent supervisory system. This approach allows the law to function in a balanced manner as an instrument of controlling authority as well as a means of public service that ensures certainty, justice, and the usefulness of the law for the community.

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