



ARMA Update: 22 March 2022

(English Version)

ESG Update: National Land Agency Circular Letter No. 4 of 2022 Policy on Land Use in Protected Areas

General Overview

The Minister of Agrarian and Spatial Planning/National Land Agency (*Menteri Agraria dan Tata Ruang/Badan Pertanahan Nasional* or “**ATR/BPN**”) has issued a Circular Letter of the Minister of Agrarian and Spatial Planning/National Land Agency Number 4/SE-100.PG.01.01/II/2022 of 2022 regarding the Policy on Land Use in Protected Areas (“**ATR/BPN CL 4/2022**”) which has been enacted since 24 February 2022 to provide legal certainty regarding the control, use, and utilization of land in protected areas.

This ARMA update will discuss the essential matters of ATR/BPN CL 4/2022 and the implications of the issuance of this circular letter.

The Scope of Protected Areas

The protected areas referred to in ATR/BPN CL 4/2022 are designated to protect environmental sustainability, including natural resources and artificial resources. Protected areas encompass the areas that protect the subordinate areas as follows:

- 1) peat areas, water catchment areas;
- 2) local protected areas which include coastal border, river border, area around lake/reservoir, the area around springs, green open area including urban forest;
- 3) nature reserve areas which include a nature reserve area, a wildlife reserve;
- 4) nature conservation areas which include national parks, grand forest parks, nature tourism parks;
- 5) areas of cultural heritage land;
- 6) areas prone to natural disasters, which include areas prone to volcanic eruptions, earthquakes, landslides, as well as tidal waves and floods; and
- 7) other protected areas include hunting parks, biosphere reserves, germplasm protection areas, animal refuge areas, and mangrove forested coastal areas.



Land Rights

With the enactment of ATR/BPN CL 4/2022, there is a legal certainty regarding granting land rights in protected areas that had previously been regulated in Article 11 of Government Regulation No. 16 of 2004 concerning Land Use (“**GR 16/2004**”). ATR/BPN CL 4/2022 regulates granting land rights in protected areas, including the first land registration and maintenance of land registration data. If land registration is carried out in a protected area on a state land status, the land rights are granted for a period of time according to the subject of the rights. Further, if it is carried out in a protected area with an ex-customary land status, then land rights are given in the form of ownership rights or other land rights in accordance with the subject of the rights.

Restriction

In line with the provision in GR 16/2004, ATR/BPN CL 4/2022 also stipulates a restriction on forest areas as objects of land registration in protected areas or **in other words, the protected areas located in forest areas (including the protected forest) are not regulated under ATR/BPN CL 4/2022 but shall refer to the relevant forestry laws and regulations.**

In addition, ATR/BPN CL 4/2022 also stipulates that land rights in protected areas are granted by the applicable regional spatial plan, as stipulated in Article 13 of GR 16/2004.

The land registration is applicable with the restrictions and obligations in the form of Right, Restriction, and Responsibility (“**RRR**”), which are recorded in the land book and certificate, including:

- 1) The rights holders are prohibited from constructing buildings that reduce the function of embankment conservation, border conservation functions, or other conservation functions;
- 2) The use and utilization of land in protected areas must not interfere with natural functions and must not change the landscape and natural ecosystems;
- 3) The rights holders are prohibited from destroying natural resources and preserving environmental capabilities;
- 4) The rights holders are required to maintain the land, including elevating its fertility and preventing its damage as well as preserving the environment;
- 5) The rights holders are required to maintain the function of water body border conservation or other conservation functions;
- 6) The use and utilization of land in a protected area in accordance with the function of the area in the regional spatial plan;
- 7) Other provisions in accordance with the laws and regulations.



If the above provisions are violated, the land rights can be revoked based on the prevailing laws and regulations.

Implication

Before the issuance of ATR/BPN CL 4/2022, there have been questions regarding the implementation of land registration in protected areas. ATR/BPN CL 4/2022 serves as a policy that provides legal certainty to implement the provisions contained in GR 16/2004 regarding the granting of land rights in protected areas.

On the other hand, questions are raised regarding the supervision of land rights in protected areas. The main function of a protected area is to protect environmental sustainability that includes natural resources and artificial resources including high conservation values area (HCV area). Thus, with the possibility of land rights given to protected areas, it must be balanced with monitoring arrangements and the fulfillment of the RRR principles for land rights in protected areas.

Furthermore, Presidential Instruction No. 5 of 2019 concerning Termination of New Permits and Improving Governance of Primary Natural Forests and Peatlands (“**PI 5/2019**”) regulates not only a moratorium on permits on peatlands, but also new land rights in the form of Right to Cultivate (*Hak Guna Usaha*) and Use of Rights (*Hak Pakai*) over Other Use Areas based on Indicative Map of Termination of Issuance of New Permits. Thus, with the implementation of land registration in protected areas based on ATR/BPN CL 4/2022, there are questions about the status of granting land rights in peatlands that are included in the indicative map of the moratorium based on PI 5/2019. Further clarification from ATR/BPN is needed to address the issue of differences in provisions in ATR/BPN CL 4/2022 and PI 5/2019.

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