

Center Legal Instruments In The Field Of Spatial Planning As Space Utilization Control Devices

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ARTICLE INFO

Chapter history:

Received Jul 28, 2022
Revised August 19, 2022
Accepted August 31, 2022

Keywords:

Control;
Spatial Utilization;
Legal;
Instrument.

ABSTRACT

Spatial utilization control, as an integral part of spatial utilization process, is an important element, which have its function to maintain the order of spatial utilization, in accordance to planning direction. In the spatial utilization control action, instruments as a mechanism tools is a requirement, specifically related to law. The two is (spatial utilization) permit and sanctions. Permit and sanctions are closely related to spatial utilization enforcement, as a final mechanism of prosecution of spatial planning violations. To imposing a sanctions to the violators of spatial planning, legal instrument of spatial planning is a vital instrument. Its key functions is to analyze and to imposing a legal actions to spatial planning violator.

ABSTRAK

Pengendalian pemanfaatan ruang, sebagai bagian integral dari proses pemanfaatan ruang, adalah unsur vital yang berfungsi untuk menjaga arah pemanfaatan ruang agar tetap sesuai dengan arah perencanaan. Dalam kegiatan pengendalian pemanfaatan ruang, diperlukan instrumen-instrumen/perangkat yang berfungsi sebagai alat untuk melakukan mekanisme pengontrolan, khususnya yang terkait dengan hukum. Di antara perangkat tersebut terdapat dua hal yang berkaitan dengan hukum yaitu perizinan dan sanksi. Perizinan dan sanksi, terkait erat dengan mekanisme penertiban pemanfaatan ruang, sebagai mekanisme pamungkas terhadap tindakan pelanggaran terhadap rencana tata ruang. Pengenaan sanksi terhadap pelanggar rencana tata ruang, adalah tindakan yang di mana instrumen hukum bidang tata ruang memiliki peran kunci digunakan untuk melakukan dan untuk menerapkan tindakan hukum terhadap pelanggar tata ruang.

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I. INTRODUCTION

The principle of the rule of law, as referred to in chapter 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), emphasizes that in administering the government, all state administrators must base their actions on the law. Included in achieving state goals as contained in the preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the context of this paper, including law enforcement against violators of the rule of law regarding the use of space.

The principle of regional autonomy policy refers to the legislation, which has been regulated in Law Number 23 of 2004 concerning Regional Autonomy, as referred to in Chapter 9 paragraph (1),

which states that government affairs are divided between whole government affairs, concurrent government affairs, and general government affairs; other Chapter 9 paragraph (3) of Law Number 23 of 2004 concerning Regional Autonomy states that concurrent government affairs as referred to in Chapter 9 paragraph (1) of Law Number 23 of 2004 concerning Regional Autonomy are government affairs that are divided between the central government and provincial and district/city areas; then Chapter 9 paragraph (4) of Law Number 23 of 2004 concerning Regional Autonomy states that concurrent government affairs that are handed over to the regions become the basis for the implementation of regional autonomy (Indonesia, 2002) (Jeddawi, 2008).

It is explained as referred to in Chapter 11 paragraph (1) of Law Number 23 of 2004 concerning Regional Autonomy that concurrent government affairs are divided into mandatory government affairs and optional government affairs, while paragraph (2) states that (2) mandatory government affairs as referred to in paragraph (1) consists of government affairs related to basic services and government affairs that are not related to basic services. Then as referred to in Chapter 12 paragraph (1) letter c of Law Number 23 of 2004 concerning Regional Autonomy states that mandatory government affairs related to basic services as referred to in Chapter 11 of Law Number 23 of 2004 concerning Regional Autonomy are included in the work general and spatial planning. The process of law enforcement for violations of spatial planning is one of the crucial and fundamental elements in overseeing the implementation of spatial plans. Why? Because to realize a good spatial planning implementation, it must also be balanced with a control system that is as good as planning to avoid the deviation of the spatial development process that is not following the direction as outlined in the regulations, which matters in the spatial planning regime in Indonesia are regulated in the Law. Law Number 26 of 2007 concerning Spatial Planning and its derivatives (Sarundajang, 2005).

In the spatial planning management system, as stated in Law Number 26 of 2007 concerning Spatial Planning, it is clearly stated that in the spatial planning implementation, there are mechanisms for regulating, fostering, implementing, and supervising spatial planning. Along with the increasing number of spatial planning products that have been enacted in the regions, in the implementation mechanism, there is control over the use of space needed to oversee the implementation of the Regional Regulation on Regional Spatial Planning (Perda RTRW). Controlling the use of space is now mandatory to oversee the implementation of the spatial plan. As for the function of the control itself, there are two main things. The first is a curative function, namely to improve a room that is not in good condition and is in an existing condition; The second is the preventive function, which is to prevent the development process that is not following applicable regulations (I. H. J. Ridwan & Sudrajat, 2020). Both have the same goal: to direct the space development process per the established corridor (H. R. Ridwan, 2006).

Following Law Number 26 of 2007 concerning Spatial Planning, the instrument for controlling space utilization consists of zoning regulations, permits, incentives and disincentives, and sanctions. Zoning regulations can be explained as a form of regulation that directs the building space process by predetermined blocks. In the Elucidation of Law Number 26 of 2007, the Elucidation section, Chapter of General Provisions Number 6, states that zoning regulations are provisions that regulate requirements for space utilization and provisions for their control and are drawn up for each designation block or zone whose zoning is specified in a detailed spatial plan. As for licensing, certain regulations allow or disallow an activity in a certain space, whether it is allowed or not, which can be determined from the issuance or non-issuance of a permit issued by the authorities. According to Law Number 26 of 2007 concerning Spatial Planning, the Elucidation section, Chapter of General Provisions Number 7, states that space utilization permits are intended to control space utilization so that every use of space must be carried out following the spatial plan. Space utilization permits are regulated and issued by the Government and local governments following their respective authorities. Utilization of space that is not following the spatial plan, whether equipped with a permit or one without a permit, will be subject to administrative

sanctions, imprisonment, and fines. Still according to the Elucidation section, Chapter General Provisions Number 7, it is mentioned about the provision of incentives, which are intended as an effort to provide rewards for the implementation of activities that are in line with the spatial plan, whether carried out by the community or by the local government. The imposition of sanctions, which is one of the efforts to control the use of space (FORUM RAKYAT BALI TOLAK REKLAMASI (FORBALI), 2019), is intended as a tool for controlling the use of space that is not in accordance with the spatial plan and zoning regulations. Sanctions, in brief, can be explained as controlling actions taken against the use of space that is not in accordance with the Spatial Plan. According to Law Number 26 of 2007 concerning Spatial Planning, the imposition of sanctions is not only given to space utilization actors who utilize space that is not in accordance with the provisions of space utilization permits, but also to government officials who are authorized to issue space utilization permits that are not in accordance with the plan spatial (Jayadinata, 1992).

Various processes of implementing spatial plans themselves, in their development, indicate that there are various acts of colliding with spatial plans for other purposes, which in many cases can be categorized as flagrant fouls (Harahap, 2018), which are easily understood as an act of utilizing space by ignoring the spatial designation of the spatial plan. Room. In cases of this category, the actions that law enforcement can take care of as referred to in Chapter 61 and Chapter 64 of Law Number 26 of 2007 concerning Spatial Planning. Nevertheless, law enforcement in indications of spatial planning violations is carried out by adhering to the *ultimum remedium* principle, one of which is closely related to the provisions as stipulated in Chapter 62 and Chapter 64 of Law Number 26 of 2007 concerning Spatial Planning, namely the application of sanctions. Administratively against violations of space utilization (Kusumaatmadja, 2002). That is, if other enforcement efforts can be made, those efforts will be put forward first. Concerning the implementation of this spatial plan, on the other hand, there are also indications that there are many cases of omission of violations of the spatial plan that occurred. In fact, in many cases, the violation was legalized by changing the spatial plan. Existing space. Because many violations of a spatial arrangement are left unchecked, the result is the legalization of these violation indications by changing the existing spatial plan. There are indications of cases of violations of this spatial plan, which shows the need for law enforcement in the field of spatial planning, which is carried out with sanctions, which can be done using tools in the form of relevant (Manan, 2005) legal, regulatory instruments.

II. RESEARCH METHOD

Chapter 1, paragraph (15) of Law Number 26 of 2007 concerning Spatial Planning states that the notion of control is an action taken to realize spatial order. According to Muhajir (2017: 189), controlling space utilization is part of spatial planning activities that have been prepared since the beginning of the spatial planning process. The concept of control begins before the spatial plan is implemented by including indicators of achievement of results as the basic criteria needed when the plan is implemented and after implementation (Marbun & MD, 1987).

As stated in Chapter 61 of Law Number 26 of 2007 concerning Spatial Planning, in the use of space, everyone is obliged to (Umum, 2007):

1. Adhere to the spatial plan that has been determined;
 2. Utilize space following the space utilization permit from the authorized official;
 3. Comply with the provisions stipulated in the requirements for space utilization permits; and
 4. Provide access to areas declared as public property by the provisions of laws and regulations.
- Anyone who does not comply with Chapter 61 can be subject to sanctions, as referred to in Chapter 62 of Law Number 26 of 2007 concerning Spatial Planning, for not carrying out obligations in space utilization. Actions to control the use of space are carried out by imposing administrative sanctions (Alotia, 2020).

III. RESULT AND DISCUSS

3.1. Application of Space Utilization Control Instruments in Indications of Cases of Violation of Space Utilization "The Lost Word Castle."

An example of the application of legal instruments in the field of spatial planning in the process of controlling space utilization is a violation of space utilization in the form of the construction of tourist facilities made "The Lost World Castle" in Padukuhan Petung, Kepuharjo Village, Cangkringan District, Sleman Regency, Special Region of Yogyakarta. The previous use of space in the said location was a protected area. Started being built in 2013, but for some time, the construction was "undetected" by the authorities until the building started operating around 2016. The case handling process was then carried out in 2017 and continued, and at the same time, the construction process was still ongoing, even with tourism activities (Mustafa, 1990).

The indicated violation is the construction and development of artificial tourism facilities and infrastructure in the Disaster-Prone Area III Merapi. This area is prohibited from development because it is located right in the slide area of the eruption of Mount Merapi, only five kilometres from the peak of Merapi. The Lost World Castle (TLWC) was built after the Sleman Regency Regional Spatial Planning Regulation (RTRW) (Muhajir, 2017) was enacted and promulgated, with the use of space that is not following the spatial plan and does not have permission from the authorities. In this case that has caught the public's attention, the competent agency, namely the Land and Spatial Planning Office, has given a written warning letter to the relevant parties. However, development activities and tourism activities are still ongoing. This tourist facility building also does not have information and does not have a permit (IMB) and permits related to AMDAL. Based on the existing chronology, the authorities have carried out more strict sanctions against building owners and/or managers.

Indications of violations that occurred were in the form of a mismatch of functions and allocations between the spatial pattern plan maps listed in Regional Regulation Number 12 of 2012 concerning the Sleman Regency Spatial Plan for 2011-2030 and Presidential Regulation Number 70 of 2014 concerning the Spatial Plan for the Mountain National Park. Merapi. In the Spatial Pattern Plan Map, the location is designated as a Protected Area (water catchment) and a Geological Hazard Prone Area (III), while the existing condition is in the form of The Lost World Castle building and other supporting facilities. The violation points for this The Lost World Castle case are:

1. Non-compliance with Presidential Regulation Number 70 of 2014 concerning the Spatial Plan for the Mount Merapi National Park Area, namely carrying out development activities that are not allowed in the L2 zone (zone L2: Geological Hazard Prone Areas that are directly affected), as referred to in Chapter 30 letter b and explained in Chapter 32 paragraph (1), paragraph (2), and paragraph (3);
2. Non-compliance with Regional Regulation Number 12 of 2012 concerning Spatial Planning for Sleman Regency, namely the addition of infrastructure and facilities in areas affected by the 2010 eruption of Mount Merapi. III) while the existing condition is in the form of The Lost World Castle building;
3. Do not have a permit following Sleman Regent Regulation 71 of 2018 concerning Stages of Granting Permits.

The owner and/or manager of The Lost World Castle, according to UUPR 26 2007, is indicated as not complying with the obligations as stipulated in Chapter.

Based on the existing data on indications of violations, a brief recommendation for the application of sanctions for the owner and/or manager of The Lost World Castle can be made as follows:

Table 1. Recommendations for the Implementation of Sanctions for Owners and/or Managers of The Lost World Castle Artificial Tourist Facilities

Indication of Violation	Description of Chapter Violated	Penalty
a. Indicated in violation of Law	Chapter 69 paragraph (1) of Law Number 26 of	Criminal

<p>Number 26 of 2007 concerning Spatial Planning.</p>	<p>2007 concerning Spatial Planning: Development that results in changes in the function of space. jo. Chapter 61 letter a of Law Number 26 of 2007 concerning Spatial Planning: In spatial planning, everyone is obliged to: a. comply with the established spatial plan. jo. Chapter 74 of Law Number 26 of 2007 concerning Spatial Planning: paragraph (1): In the event that the crime as referred to in in Chapter 69, Chapter 70, Chapter 71, and Chapter 72 committed by a corporation, other than criminal imprisonment and fines for the administrators, criminal that can be imposed on corporations in the form of: fined with a weighting of 3 (three) times of fines as referred to in Chapter 69, Chapter 70, Chapter 71, and Chapter 72; paragraph (2): In addition to the fine as referred to in paragraph (2): paragraph (1), corporations may be subject to additional penalties in the form of: a. revocation of business license; and/or b. revocation of legal entity status.</p>	
<p>b. Indicated in violation of Law Number 28 of 2002 concerning Buildings.</p>	<p>Chapter 44 of Law Number 28 of 2002 concerning Buildings: Every owner and/or user who does not fulfill the obligation to fulfill the function, and/or requirements, and/or operation of the building as referred to in this law is subject to administrative sanctions and/or criminal sanctions.</p>	<p>Criminal</p>
<p>c. Presidential Regulation Number 70 of 2014 concerning Spatial Planning for the Mount Merapi National Park Area.</p>	<p>Chapter 30 letter b Presidential Regulation Number 70 of 2014 concerning the Spatial Plan for the Mount Merapi National Park Area: Protected Zone 2 (Zona L2) which is a Geological Natural Disaster-Prone Area that is affected direct. jo. Chapter 29 Presidential Regulation Number 70 of 2014 concerning the Spatial Plan for the Mount Merapi National Park Area: paragraph (1): The plan for the spatial pattern of the Mount Merapi National Park Area is set to improve environmental protection, controlling the sustainable use of natural resources, and improve the conservation of water resources and protect the Community from the risk of Geological Natural Disasters in the Mount Merapi National Park Area; paragraph (2) point a: The spatial pattern plan as referred to in paragraph (1) consists of the designation plan: Protected Areas.</p>	<p>Criminal</p>

	jo. Chapter 32 Presidential Regulation Number 70 of 2014 concerning Spatial Planning for the Mount Merapi National Park Area: Paragraph (1) The L2 Zone as referred to in Chapter 30 letter b is determined to provide protection to the maximum extent possible for the possibility of Geological Natural Disasters to humans, settlements, and infrastructure; paragraph (2) The L2 zone as referred to in paragraph (1) is an area that has the potential to be affected again The eruption of Mount Merapi in the form of hot clouds and other hot materials and has a major impact on the people, settlements, and infrastructure; paragraph (3) point b: The L2 zone as referred to in paragraph (2) covers the Geological Natural Disaster Prone Area which is directly affected by the eruption of Mount Merapi, which is located in some areas: a. ... b. Cangkringan District in Sleman Regency.	
d. Indicated in violation of Government Regulation No. 15 of 2010 concerning the Implementation of Spatial Planning.	Chapter 182 paragraph (2) point a Government Regulation Number 15 of 2010 concerning the Implementation of Spatial Planning: The use of space is not in accordance with the spatial plan.	Criminal
e. Indicated in violation of Regional Regulation Number 5 of 2019 concerning the Spatial Planning of the Special Region of Yogyakarta 2019-2039.	Chapter 96 Regional Regulation Number 5 of 2019 concerning Spatial Planning for the Special Region of Yogyakarta 2019-2039: paragraph (2): any person who commits a violation in the field of spatial planning is subject to administrative sanctions and/or criminal sanctions; paragraph (3 point a): everyone is prohibited from doing: use of space that is not in accordance with the spatial plan. jo. Chapter 97 letter c Regional Regulation Number 5 of 2019 concerning Spatial Planning for the Special Region of Yogyakarta 2019-2039: utilizing space without a space utilization permit in a location that is not in accordance with its designation. jo Chapter 31 Regional Regulation Number 5 of 2019 concerning Spatial Planning for the Special Region of Yogyakarta 2019-2039: The water catchment area as referred to in Chapter 29 letter b covering an area of 49,850.90 (forty nine thousand eight hundred fifty point nine zero) hectares is located in: Sleman Regency covers ..., Cangkringan District, with an area of 24,293.76 (twenty four thousand two hundred ninety three point seven six) hectares. jo	Criminal and/or Administrative

<p>f. Indicated in violation of Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032.</p>	<p>Chapter 49 Regional Regulation Number 5 of 2019 concerning Spatial Planning for the Special Region of Yogyakarta 2019-2039: Geological natural disaster-prone areas as referred to in Chapter 48 letter a are volcanic eruption-prone areas located in Turi District, Pakem District, and Cangkringan District in Sleman Regency, with an area of 3,355.86 (Three thousand three hundred fifty five point eight six) hectares.</p> <p>Chapter 79 letters a and b of Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032:</p> <p>General provisions for zoning regulations for geological protected areas as referred to in Chapter 74 letter e with the following provisions:</p> <p>a. it is not allowed to develop living dwellings in areas directly affected by the 2010 Merapi eruption;</p> <p>b. It is not allowed to add new infrastructure and facilities in areas directly affected by the 2010 Merapi eruption.</p> <p>jo.</p> <p>Chapter 106 paragraph (1) and paragraph (2) of Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032:</p> <p>paragraph (1): any person who utilizes space does not have a space utilization permit as referred to in Chapter 90 paragraph (3) shall be punished with imprisonment for a maximum of 3 (three) months and/or a fine of a maximum of Rp. 50,000,000.00 (fifty million rupiah);</p> <p>paragraph (2) Anyone who performs space utilization activities resulting in a discrepancy in the function of space in accordance with the spatial plan as referred to in Chapter 102 shall be subject to a criminal sanction as referred to in Chapter 69 to Chapter 75 of Law Number 26 of 2007 concerning Spatial Planning.</p> <p>jo.</p> <p>Chapter 102 letter a of Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032:</p> <p>In the use of space, everyone is obliged to: comply with the established spatial plan.</p> <p>jo.</p> <p>Chapter 99 paragraph (1) and paragraph (3) points a and b of Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032:</p> <p>paragraph (1): violation of the spatial plan is subject to administrative sanctions.</p> <p>paragraph (3): types of violation of spatial planning as referred to in paragraph (1) include:</p> <p>a. violation of the function of space;</p> <p>b. violation of space utilization intensity;</p> <p>jo.</p> <p>Chapter 90 paragraph (1) and paragraph (3) of</p>	<p>Criminal and/or Administrative</p>
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Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032:

(1) Licensing provisions as referred to in Chapter 61 paragraph (1) letter b are administrative and technical processes that must be met before space utilization activities are carried out, to ensure the suitability of space utilization with spatial planning, consisting of:

- a. principle permit;
- b. location permission;
- c. land use permit;
- d. building permit; and
- e. other permits based on the provisions of laws and regulations.

Paragraph (3) In the use of space, every person is obliged to have a permit in the field of space utilization and is obliged to carry out every permit provision in the implementation of space utilization.

jo.

Chapter 75 letter f of Regional Regulation Number 12 of 2012 concerning Spatial Planning of Sleman Regency 2012-2032:

General provisions of regional zoning regulations that provide protection for subordinate areas as referred to in Chapter 74 letter a in the form of general provisions of zoning regulations for water catchment areas with the following provisions:

not allowed for all types of activities that interfere with the function of water absorption.

Chapter 2 Sleman Regent Regulation Number 71 of 2018

About the Stages of Granting Permits:

Every individual or entity that carries out a business and/or activity

certain activities are required to have permits and documents according to the type of activity.

Chapter 69 paragraph (1) of Law Number 26 of 2007 concerning Spatial Planning:

Development that results in changes in the function of space.

jo.

Chapter 61 letter a of Law Number 26 of 2007 concerning Spatial Planning:

In spatial planning, everyone is obliged to:
a. comply with the established spatial plan.

jo.

Chapter 74 of Law Number 26 of 2007 concerning Spatial Planning:

paragraph (1): In the event that the crime as referred to in

in Chapter 69, Chapter 70, Chapter 71, and Chapter 72

committed by a corporation, other than criminal

imprisonment and fines for the administrators, criminal

that can be imposed on corporations in the

g. Indicated in violation of Sleman Regent's Regulation

Administrative

h. Indicated in violation of Law Number 26 of 2007 concerning Spatial Planning.

Criminal

form of:
 fined with a weighting of 3 (three) times of
 fines as referred to in Chapter
 69, Chapter 70, Chapter 71, and Chapter 72;
 paragraph (2): In addition to the fine as referred
 to in paragraph (2):
 paragraph (1), corporations may be subject to
 additional penalties
 in the form of:
 a. revocation of business license; and/or
 b. revocation of legal entity status.

IV. CONCLUSION

Spatial control, in essence, is one of the three main forms of spatial planning, namely planning, actuating, and controlling. Spatial control is the embodiment of the controlling function to realize a productive and sustainable spatial arrangement by holistically prioritizing economic, environmental, and social interests. Balanced: The process of regional spatial planning, which produces a Regional Spatial Plan (RTRW), in addition to being a “guidance of future actions”, RTRW is a form of intervention carried out so that human/living things interact with their environment can run harmoniously, in harmony, balance to achieve human/living things welfare as well as environmental sustainability and development sustainability; The process of using space, which is a form of operationalization of the spatial plan or the implementation of the development itself, requires supervision to maintain the direction of the spatial planning; The process of controlling space utilization, which is one of its specific forms is in the form of spatial control, which in its specific form is in the form of spatial control, takes the form of applying punishment to the implementation of space use that deviates from the spatial plan. The process is carried out through checks and re-checks on permits and legal actions to maintain the direction of spatial planning following the spatial plan. The process of controlling the use of space is highly dependent on the existence of a good and complete planning document. Without a good and complete planning document, taking action against violators of spatial use will be hampered if it is associated with proving which points have been violated and with the imposition of chapters to ensnare the violators.

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