



The Role of Spatial Planning Audit in Law Enforcement

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Abstract: Spatial planning plays an essential role in disaster prevention because it can ensure the proper distribution of land use in accordance with the environment's carrying capacity. Uncontrolled land use has the potential to cause disasters in addition to the problems of environmental damage and pollution. Spatial audit in Indonesian law is one of the instruments used to implement spatial use control. Audit results can be used to support law enforcement. This article discusses how spatial audit can have a role in supporting law enforcement processes that are based on more comprehensive scientific data and analysis. This article results from dogmatic legal research based on data and analysis of Indonesian spatial legal norms. This research found that spatial audits need to be optimally implemented. In general, audits are conducted in response to public compliance, in the event of a disaster, or when the spatial plan is revised. In the future, it is recommended that audits be conducted regularly to support the effectiveness of spatial use control.

Keywords: disaster; environment; law enforcement; spatial audit; spatial planning.

1. Introduction

The function of spatial planning in preventing environmental damage and pollution is still ineffective (Imran, 2013). Many disasters caused by environmental damage have occurred due to the neglect and violation of spatial planning (Chang et al., 2023; Cilliers & Cilliers, 2019; Sagala et al., 2021). It is important for spatial planning to be consistently implemented to make it as a tool for disaster prevention. Spatial planning helps in minimizing the impact of disasters, facilitating efficient evacuation and relocation processes, and ensuring the effective allocation of resources during emergency situations. By considering factors such as hazard mapping, land-use zoning, and infrastructure development, spatial planning can mitigate the impacts of disasters and facilitate a more coordinated and efficient response (Alrehaili et al., 2022;). Thus, spatial planning plays a crucial role in effective disaster management.

Furthermore, spatial planning helps in creating resilient communities. When spatial planning is integrated into disaster management strategies, communities can reduce the risks and vulnerabilities associated with disasters. Integrating spatial planning principles into disaster management strategies will enable communities to effectively reduce risks and vulnerabilities associated with disasters. (Park et al., 2021; Rega & Bonifazi, 2020; Zuraidi et al., 2021)

Although space utilization control is important, it still needs to work optimally. There are three problems related to the implementation of land use control (Safitri et al., 2021). The first problem is the large amount of land use that does not follow the zoning plan and laws and regulations (Isradjuningtias, 2017; Putri et al., 2021). This can be seen in illegal land conversion, land use activities that do not comply with land use permits, or land use permits that do not comply with laws and regulations. The second problem relates to incomplete regulatory instruments (Sagala et al., 2021; Tsana et al., 2022; Widowati, 2022). Norms, standards, procedures, and criteria (NSPK) are insufficient to support the optimization of spatial control and supervision

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implementation. The third problem is the unstructured institutions of spatial control and supervision.

Spatial audit is one of the tools to support the control of spatial use. A spatial audit provides spatial data and information, as well as supporting documents, to evaluate a report or finding suspected to indicate a spatial planning violation.

One of the problem events that prompted the conduct of spatial audits in Indonesia was a disaster due to reduced environmental carrying capacity. The National Board for Disaster Management (BNPB) reported that in 2022, there were 3,544 disaster events throughout Indonesia, 61 percent of which were floods and landslides. Both are closely related to spatial planning violations (BNPB-Badan Nasional Penanggulangan Bencana, 2023). For example, the Jabodetabek-Punjur region is highly vulnerable to floods and landslides. A spatial audit was conducted for this area in 2015. However, disasters continue to occur as spatial violations persist. Therefore, the government plans to conduct another spatial audit in the Jabodetabek-Punjur area.

Spatial audits, therefore, play an important role in supporting spatial use control and law enforcement. With an excellent spatial audit, science-based law enforcement can be implemented. Law enforcement officers today need to develop their skill, knowledge and ability with an evidence-based method (Ari Vidali et al., 2020). The question is to what extent the existing legal construction of spatial audit allows for this. This is the focus of this article.

Despite its essential role, spatial audit has yet to attract much interest from legal researchers in Indonesia. Some existing studies analyze the neglect of spatial plans, even by local governments. Mandey, for example, describes the powers of the North Sulawesi provincial government in controlling land use. One of them is establishing a civil servant investigator for spatial planning (PPNS-PR) (Mandey, 2015). However, Sodikin found that many PPNS-PR did not optimally perform their law enforcement duties due to the lack of a detailed regulatory device regarding institutional and employment status. Similarly, facilities, unplanned work programs, and unclear budgets are also obstacles (Sodikin, 2017).

In Bandung City, although there is already a regional regulation for spatial control (West Java Regional Regulation Number 2 of 2016 on Guidelines for Controlling the North Bandung Area), its implementation has yet to be effective. Local governments do not fully comply with the provisions of the regulation, which mentions the need for the governor's recommendation in granting environmental permits. In addition, government supervision of spatial use has yet to be maximized (Adharani & Nurzaman, 2017). Local government disobedience to spatial planning was also mentioned by Suharyo and found by Afriyana, et al. in the city of Jambi. The issuance of building permits there also needs to refer to the spatial plan fully. (Suharyo, 2017)

The above studies show that the authority to control and supervise the use of space, which exists in local governments, has yet to guarantee the achievement of spatial order. However, it is not known how Spatial Audit plays a role in implementing this control authority. (Wahyuni, 2019)

Spatial audit is an empty field in spatial law studies in Indonesia. Many studies, as mentioned above, discuss violations of spatial plans by the central government, municipalities, or companies. Another group of studies highlights the implementation of spatial law enforcement. Jazuli, for example, found that spatial planning policies are challenging to achieve sustainable development goals because they are not integrated with environmental law enforcement. In addition, sanctions for legal violations are weak and do not deter perpetrators of spatial planning violations as stated by Mujahir (Jazuli, 2017; Muhajir, 2017). The role of spatial audits still needs to be integrated into the control and enforcement of the law. Findings of this research is expected to support the development of science-based law enforcement in the field of spatial planning and environmental management

2. Materials and Methods

This research is dogmatic legal research that uses a legal approach. This research aims to explain the characteristics and quality of legal norms related to spatial use control, especially regarding spatial audits and their ability to support law enforcement.

Legal research collects primary, secondary, and tertiary legal materials according to the research problem. Primary legal materials include Law No. 26 of 2007 on Spatial Planning, Law No. 6 of 2023 on the Establishment of Government Regulations in Lieu on Job Creation Law, Government Regulation No. 21 of 2021 on the Implementation of Spatial Planning, and Regulation of the Minister of Agrarian and Spatial Planning Affairs/Head of the National Land Agency No. 21 of 2021 on the Implementation of Spatial Utilization Control and Spatial Planning Supervision. Secondary legal materials include relevant journal articles related to spatial law and tertiary legal materials in the form of spatial dictionaries. The legal analysis is carried out descriptively by examining the nature and scope of norms related to spatial use control and law enforcement.

3. Results and Discussion

3.1 Overview of Indonesian Spatial Planning Law

Spatial planning in Indonesia is regulated by the Spatial Planning Law (Law No. 26/2007, as amended by Law No. 6/2003) and several operational regulations, such as Government Regulation (GR) No. 21/2021 on the Implementation of Spatial Planning, several Presidential Regulations on Regional Spatial Plans, and Regulations of the Minister of Agrarian and Spatial Planning Affairs. The legal framework states that spatial planning includes planning, using, and controlling land use.

Spatial planning involves the preparation of spatial plans in the form of general and detailed spatial plans. The general spatial plan is prepared on the basis of an administrative area approach. This plan contains substance, including spatial structure plans and spatial utilization plans. Detailed spatial plans are prepared on the basis of strategic areas and/or regional activities. The content may extend to the designation of blocks and sub-blocks.

The general spatial plan includes the national, provincial, and district/city spatial plans. Meanwhile, detailed spatial plans include island/island spatial plans, spatial plans for strategic areas at the national, provincial, and district/city levels, and detailed district/city spatial plans. At the same time, the detailed spatial plan is for operationalizing the general spatial plan and as a basis for establishing zoning regulations. The zoning regulations regulate the requirements for the use and control of the land and are prepared for each designation block/zone defined in the detailed zoning plan. The county/city's detailed zoning plan and the zoning regulations that supplement it become one of the bases for controlling land use.

Space utilization includes both vertical space utilization and space utilization within the earth. Space utilization is carried out about the function of the space, whether it is a protected or cultivated function. Space utilization is carried out through the development of land stewardship, water stewardship, air stewardship, and stewardship of other natural resources. Land use must be in accordance with the land use plan. The implementation of land use shall be synchronized with the land use in the surrounding administrative regions. In order to ensure that land use does not conflict with the objectives of spatial planning, it is necessary to control land use.

The implementation of spatial utilization is carried out based on the suitability of spatial utilization activities (KKPR) and the synchronization of spatial utilization programs with spatial plans. Conformity of Space Utilization Activities (KKPR) is the suitability of the activity/business location plan with the Detailed Spatial Plan (RDTR).

Conformity of Space Utilization Activities or KKPR is applied to space utilization plans for business and non-business activities. Business licenses can only be ob-

tained if the business actor owns the KKPR. The business activities are divided into micro and small enterprise (MSE) and non-MSE business activities. For non-MSMEs, KKPR is obtained in two ways: KKPR Confirmation and KKPR Approval. KKPR Confirmation is carried out if the location already has a Detailed Spatial Plan (RDTR). Meanwhile, KKPR Approval is for sites where there is no RDTR. For MSEs, KKPR is only obtained with a KKPR self-declaration. If it is found in the future that this self-declaration does not comply with the Spatial Plan (RTR), the government will provide guidance.

Synchronization of land use programs is the responsibility of the central and local governments. Both synchronize development programs with the existing spatial plan. This synchronization aims to harmonize regional development programs as contained in the RTR and sectoral programs. These are often incompatible and hinder the achievement of spatial planning objectives and overall development goals. GR 21/2021 states that the government do this synchronization activity for 5 (five) year medium-term programs and 1 (one) year short-term development programs. The synchronization document becomes an input for the preparation of development plans and the review of the RTR.

GR 21/2021 states that the control of land use aims to promote the implementation of spatial planning under the RTR. The control of the use of space is carried out to encourage everyone to comply with the RTR that has been established, use space in accordance with the RTR, and comply with the provisions established in the requirements for the conformity of the use of space activities.

The control of land use is conducted through the assessment of the implementation of the conformity of land use activities and the self-declaration of MSE actors, the assessment of the implementation of the RTR, the provision of incentives and disincentives, the imposition of sanctions and the settlement of land use disputes.

3.2 Spatial Law Enforcement

Spatial law enforcement is carried out through administrative law enforcement mechanisms, criminal law enforcement and spatial dispute resolution. Spatial law enforcement since 2021 has tended towards administrative law enforcement as can be evidenced by the change of one criminal provision in the old regulation to the object of administrative sanctions. In addition, fines tend to be more severe than imprisonment. The following describes administrative law enforcement and criminal law enforcement in spatial planning.

3.2.1 Administrative Law Enforcement

Administrative law enforcement states that everyone is obliged to obey the spatial plan that has been determined and utilize the space under the spatial plan. In addition, there is an obligation to comply with the requirements in the Conformity of Space Utilization Activities and provide access to areas declared as public property.

There are three groups of actions that can be subject to administrative sanctions: (a) Not complying with the Spatial Plan to cause changes in the function of the space; (b) Not complying with the provisions of space utilization in the Spatial Plan; and (c) Administrative sanctions can also be imposed on anyone who obstructs access to areas declared as public property.

Violating these obligations will bring a person to face administrative sanctions in the form of written warnings, temporary suspension of activities, temporary suspension of public services, site closure, license revocation, license cancellation; demolition of buildings, restoration of spatial functions; and / or administrative fines.

The imposition of administrative sanctions is carried out based on four things, namely based on the results of the assessment of the implementation of the provisions of

the Conformity of Space Utilization Activities, the results of spatial planning supervision, the results of the Spatial Audit and complaints of spatial planning violations. Judging from this provision, Spatial Audit plays an important role in law enforcement, especially administrative law enforcement.

GR No. 21/2021 applies second-line enforcement supervision. Article 194 states that the imposition of administrative sanctions is carried out by the Central Government and local governments, in accordance with their authority. However, if a regent/mayor or governor does not impose administrative sanctions, the upper government can take over the authority.

Administrative sanctions are imposed on violations of space utilization, with criteria based on the size of the impact caused by violations of space utilization, public losses due to violations and the value of benefits that will be obtained if sanctions are given. The imposition of administrative sanctions is carried out through a preliminary process in the form of case inventory and deepening of material, data and information, technical and legal studies. After that, the determination of sanctions to be given and socialization is made. Finally, administrative sanctions are imposed.

3.2.2 Criminal Law Enforcement

The subjects of spatial criminal law are individuals, state officials, and legal entities. Criminal offenses applicable to persons include acts of using designated space without a permit for the suitability of space use, resulting in changes in spatial function, using space not by spatial plans of authorized officials, resulting in changes in spatial function, and failure to comply with the provisions stipulated in the requirements for the suitability of space use activities, resulting in changes in spatial function. Criminal offenses for government officials relate to issuing permits that do not follow zoning plans.

Any person who, in the conduct of his/her business and activities, uses the designated space without the approval of suitability of space utilization, resulting in changes in the function of the space shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of IDR 1,000,000,000 (one billion rupiahs) or US \$ 64 thousands. If the offense results in loss of property or damage to goods, the perpetrator shall be punished with imprisonment for a maximum of 4 (four) years and a maximum fine of two billion five hundred million rupiah. If the offense results in the death of a person, the perpetrator shall be imprisoned for a maximum of 15 (fifteen) years and a maximum fine of eight billion rupiah.

Any person who uses space not by the spatial plan of the authorized official, resulting in a change in the function of the space, shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine one billion rupiah. If the offense results in loss of property or damage to goods, the perpetrator shall be punished with imprisonment for a maximum of 4 (four) years and a maximum fine of IDR 2,500,000,000,000. If the offense results in the death of a person, the perpetrator shall be punished with imprisonment for a maximum of 15 (fifteen) years or a maximum fine of eight billion rupiah.

Any person who fails to comply with the provisions outlined in the Requirements for Conformity of Space Utilization Activities resulting in changes in the function of the space shall be punished with imprisonment for not more than 3 (three) years and a maximum fine of one billion rupiah.

Government officials who are authorized to issue permits that are not following the spatial plan shall be punished with imprisonment of up to 5 (five) years, a fine of up to five hundred million rupiah, and additional punishment in the form of dishonorable dismissal from office shall remain in effect.

For crimes committed by a corporation, in addition to imprisonment and fines against its management, fines may also be imposed with an aggravation of 1/3 (one-third) of the penalty. In addition to fines, corporations may be subject to additional penalties in the form of revocation of business licenses and/or legal entity status.

3.3 *Spatial Planning Audit and Law Enforcement*

Spatial audit is a part of space utilization control. Spatial audit is required as one of the bases for imposing administrative sanctions. In addition, the spatial audit also assesses the occurrence of changes in the function of space (Art. 189 Par. 2 PP 21/2021). This is necessary for declaring the occurrence of a criminal event.

Article 189, paragraph (4) of GR 21/2021, states that the central government and regional governments conduct spatial audits in accordance with their authority. The audit results are determined by a decree of the Minister of Agrarian Affairs and Spatial Planning or by a decree of the regional head.

Not all administrative sanctions must be preceded by a spatial audit. Persons who do not comply with the provisions on land use in the spatial plan may be subject to administrative sanctions directly without having to wait for a spatial audit. On the other hand, those who do not comply with the spatial plan and cause changes in spatial functions will be subject to administrative sanctions if a spatial audit has been carried out beforehand.

More detailed regulations regarding spatial audits are contained in the Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 21 of 2021, which states that spatial audits shall be carried out in accordance with the needs. The need arises from reports or complaints from the public about alleged violations in the field of spatial planning, findings of indications of violations in spatial planning, or disasters allegedly caused by violations in the field of spatial planning.

The stages of a spatial audit include forming a team, planning, implementing and determining the typology of violations. The audit team consists of the Central and Regional Spatial Audit Teams. Each has its authority. The Central Spatial Audit Team can conduct spatial audits of national strategic areas, national activity centers, and inter-regional provincial areas. The Provincial Spatial Audit Team can conduct spatial audits of provincial strategic and cross-district/city areas. Meanwhile, the Regency/City Spatial Audit Team can conduct spatial audits in the relevant regency/city area.

Beyond its designated authority, the Central Spatial Audit Team may conduct audits of spatial events that have a national impact or potentially cause government-to-government, government-to-community, and/or community-to-community conflicts. In addition, the Central Team can also conduct a Spatial Audit if there is a request from the Provincial Government or Regency/City Government to conduct a Spatial Audit in the area under their jurisdiction. The Provincial Audit Team can do the same. This team can conduct audits outside its area of jurisdiction if there is a request from the Regency/City Government.

The results of the Spatial Audit are followed up with the establishment of policies and/or implementation of activities by the recommendations of the Spatial Audit Implementer by the relevant parties or agencies. If there are indications of spatial criminal violations, an investigation is conducted by the Spatial Planning Civil Servant Investigator.

3.4 *Discussion*

With the above explanation, spatial audits are necessary to implement administrative and criminal sanctions in enforcing spatial law. The government should prioritize the implementation of this audit as a form of spatial supervision. Audit results become the basis for law enforcement. However, the implementation of audits does not seem to be

optimized. The author interviewed an investigating official at the Ministry of Agrarian Affairs and Spatial Planning in 2021. The official explained that audits are generally conducted when there is a community report, a disaster, or a revision of the spatial plan. The audit assesses the suitability of the land use with the Spatial Plan. If it is not appropriate, a study is conducted that includes an analysis of the spatial plan, social and environmental impacts, and permitting. So far, the audit's focus has been on licensing, where administrative sanctions are imposed if violations are found.

Regarding administrative sanctions, the audit will help determine whether the land use is in accordance with the spatial plan or the land use permit. Similarly, the audit can assess whether access to public areas such as coastal watersheds, rivers and lakes, water sources, parks and green spaces, pedestrian facilities, disaster evacuation routes, or public roads has been closed. Meanwhile, in terms of law enforcement, spatial audits help assess whether there has been a change in spatial function.

The results of a spatial audit provide comprehensive data and analysis that facilitate the law enforcement process, whether administrative or criminal. Spatial audits provide science-based data support for the spatial law enforcement process. Investigating how audits are conducted in the field and the extent to which audit results are considered in controlling spatial use and law enforcement is of interest for further research.

4 Conclusions

Some disasters occur because spatial plans are not followed. Spatial use control and monitoring are important to prevent spatial violations that can lead to disasters. Concerning the implementation of spatial use control, spatial audits are an important tool, but they still need to be optimally implemented. Spatial audits are a source of data and scientific analysis that can support the law enforcement process. Currently, audits are conducted when community compliance, disaster, and spatial plan revisions exist. In the future, to develop a more comprehensive spatial use control strategy, the government may consider conducting audits regularly. The proper concept and implementation of spatial audit can enhance the quality of law enforcement. The spatial audit has been proven to be one of the effective ways to provide evidence-based spatial control that is important to improve law enforcement in the field of spatial planning and environmental management.

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