

JURIDICAL ANALYSIS OF SPATIAL PLANNING VIOLATIONS BUILT BEFORE THE ESTABLISHMENT OF MATARAM CITY REGULATION NUMBER 12 OF 2011 CONCERNING SPATIAL PLANNING OF MATARAM CITY

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Abstract: *This study aims to find out and analyze about building permit holders tend to violate Mataram City Regulation Number 12 of 2011 concerning Mataram City Spatial Planning (RTRW), legal protection that violates RTRW after the enactment of Mataram City Regulation Number 12 of 2011 concerning Plans Mataram City Spatial Planning (RTRW) and the settlement of violations of Mataram City Regulation Number 12 of 2011 concerning Spatial Planning (RTRW) of Mataram City for buildings that before Mataram City Regulation Number 12 Year 2011 concerning Spatial Planning (RTRW) of Mataram City were determined .*

The results of the study show that: Building permit holders tend to violate Mataram City Regulation number 12 of 2011 concerning Mataram City Spatial Planning (RTRW) due to juridical and non-juridical factors. Legal protection that violates the RTRW after the enactment of the Mataram City Regional Regulation Number 12 of 2011 concerning the Mataram City Spatial Plan (RTRW), namely: Legal protection of individual and community rights can be in the form of preventive legal protection and repressive legal protection. Completion of violations of Mataram City Regulation Number 12 of 2011 concerning the Spatial Plan (RTRW) of Mataram City for buildings that before the Mataram City Regulation Number 12 of 2011 concerning Mataram City Spatial Planning (RTRW) were determined, namely: settlement through litigation and non-litigation.

Keywords: *regional regulation, spatial planning, city of mataram*

I. INTRODUCTION

Development is a conscious effort made by humans to achieve a better life. The essence of development is how to make the future of life better than today. However, it cannot be denied that development is always in contact with the environment. Considering the extent of the understanding of the environment, environmental development thus encompasses, various aspects of development, economic, technological, social and cultural, carried out in a cross-sectorial and multi-disciplinary manner, so that it should receive serious

attention in its utilization and management plans. So that in the Constitution of the State of the Republic of Indonesia it has regulated this matter.

The 1945 Constitution, Article 33 paragraph (3), which states "the earth, and water, and the natural wealth contained therein, are controlled by the state and are used for the greatest prosperity of the people". On the basis of these provisions, the government established Law Number 5 of 1960 concerning Basic Agrarian Principles (LN. 1960-104, TLN. 2043) known as the UUPA (Basic Agrarian Law).

This Agrarian Law (UUPA) was formed with the main objectives, namely:

1. Laying the foundations for the formulation of national agrarian law which will be a tool to bring prosperity, happiness and justice to the State and the people, especially the peasants, in the framework of a just and prosperous society;
2. Laying the foundations for unity and simplicity in national land law;
3. Laying the foundations for providing legal certainty regarding land rights for the whole people.¹

The LoGA gives the State the power to regulate the supply, allocation and use of the earth, water, space and natural resources contained in it, therefore Article 14 paragraph (1) of the LoGA assigns to the Government in the context of Indonesian Socialism, to make a general plan regarding the supply, designation and use of earth, water and space as well as to the natural wealth contained in them:

- a. For State purposes
- b. For the purposes of worship and other sacred needs, according to the basis of the Supreme Being;
- c. For the purposes of the centers of public life, social, cultural, and other welfare;
- d. For the purpose of developing agricultural, livestock and fisheries production and in line with that;
- e. For the need to develop industries, transmigration and mining.

The implementation of the general plan referred to in Article 14 paragraph 1 of the BAL is made by the Regional Government to regulate the supply and distribution of the use of the earth, water and space for the area in accordance with the conditions of their respective regions. For this reason, each Regional Government is obliged to make a Regional Regulation on its regional spatial plan. Based on the provisions of Article 14, the LoGA then the government established Law 23 of 1992 concerning Spatial Planning which was subsequently amended and replaced with Law Number 26 of 2007 concerning Spatial Planning. The implementation of spatial planning aims to create a national space that is safe, comfortable, productive, and continuation based on the Archipelago and National Resilience with:

- a. The realization of harmony between the natural environment and the artificial environment;
- b. The realization of integration in the use of natural resources and

¹ Buslianto, Efektivitas Pembuatan Akta Peralihan Hak Milik Atas Tanah Melalui Jual Beli Oleh Camat Sebagai PPAT Sementara, Tesis Magister Kenotariatan Fakultas Hukum Universitas Mataram, 2018, p 1.

- c. Artificial resources with regard to human resources;
- d. The realization of protection of space functions in the prevention of negative impacts on the environment due to the use of space. "²

As a further implementation of the provisions of the UUPR, the government established Government Regulation Number 15 of 2010 concerning the Implementation of the UUPR, and Government Regulation Number 68 of 2010 concerning the Form of the Role of the Community in Spatial Planning. Spatial planning as a system of spatial planning, spatial use, and control of the benefits of space is an inseparable unity between one and the other and must be carried out in accordance with the rules of spatial planning so that: (i) can achieve effective and effective and able to support sustainable environmental management; (ii) there is no waste of space utilization; and (iii) does not cause a decrease in environmental quality. On the basis of the provisions of Law Number 26 of 2007 concerning Spatial Planning, and the NTB Provincial RTRW Regulation Number 3 of 2010, the City Government of Mataram established RTRW Regional Regulation Number 12 of 2011 in force from 2011-2031.³

Based on the description contained in the background, the author proposes the following problems: 1). Why do holders of building permits tend to violate Mataram City Regional Regulation Number 12 of 2011 concerning Mataram City Spatial Planning (RTRW)? 2). how does legal protection violate the RTRW after the enactment of the Mataram City Regional Regulation Number 12 of 2011 concerning the Spatial Plan (RTRW) of Mataram City?, 3). How is the settlement of the violation of Mataram City Regulation Number 12 of 2011 concerning the Spatial Plan (RTRW) of Mataram City for buildings which before the Mataram City Regional Regulation Number 12 of 2011 concerning the Mataram City Spatial Plan (RTRW) were stipulated?

II. RESEARCH METHOD

This research is normative legal research. Normative law is understood as the science of norms, a science that examines law as a rule or system of rules, with dogmatic law or systematic law. Normative legal research according to Mukti Fajar and Yulianto Achmad "is legal research that puts law as a building system of norms. The norm system in question is regarding principles, norms, rules of law and regulations, court decisions, agreements and doctrines."⁴

Given that this study is a normative legal research study (theory/concept, principles and per law), the main approach used is the normative approach. The type of normative approach used is the legal approach, conceptual approach, historical approach and analytical approach.

² Arba, Perlindungan Hukum Hak-Hak Masyarakat Dalam Rencana Tata Ruang Wilayah Kota Mataram Based on Perda Number 12 of 2011, Jurnal Ius Vol Ii Nomor 4 April 2014 , p. 30.

³ *Ibid.*

⁴ Mukti Fajar ND. dan Yulianto Achmad, Dualisme Penelitian Hukum, Normatif dan Empiris, (Yogyakarta, Pustaka Pelajar, Cet. I, 2010), p. 34.

The theoretical framework used by researchers in this study, namely: the theory of authority, legal protection theory, and the theory of legal effectiveness with qualitative prescriptive analysis.

III. RESULT AND DISCUSSION

3.1 Holders of building permits tend to violate the Local Regulation of Mataram City Number 12 of 2011 concerning the Spatial Plan (RTRW) of the City of Mataram

The management of diverse natural resources on land, in the oceans, and in the air, needs to be carried out in a coordinated and integrated manner with human resources and artificial resources in a sustainable development pattern by developing a spatial structure in a dynamic environmental unity while maintaining preservation of environmental capabilities in accordance with environmentally sound development, which is based on Archipelagic Insights and National Resilience.

Spatial planning outlines that the implementation of development at the central and regional levels must be in accordance with the stipulated spatial plan. Thus the use of space including the structure of space should be adjusted to the spatial plan. The tendency of these deviations can occur because at the time of preparation of the product spatial plan, it does not pay attention to the implementation aspects of spatial use or vice versa, that spatial utilization is less concerned with the spatial plans that have been prepared.

Tarigan provides a definition of space as follows: "Space is a container that includes land space, ocean space, and air space, including land or land, water, air and other objects as well as power and conditions, as a unity of regions where humans and creatures others live and carry out activities and maintain their survival."⁵

The people of Mataram City have a tendency to violate the Mataram City Regulation number 12 of 2011 concerning the Mataram City Spatial Plan (RTRW), this can be measured by the effectiveness of a regulation in this case the Mataram City Regulation number 12 of 2011 concerning Spatial Planning (RTRW) of Mataram City. The effectiveness of the law according to Soerjono Soekanto, is that the effectiveness of a law is determined by 5 (five) factors, namely:

- a. Legal factors or laws;
- b. Law enforcement factor;
- c. Factors of facilities and facilities;
- d. Community factors;
- e. Cultural factors

Based on the study of Mataram City RTRW Regulation No. 12 of 2011 concerning the Mataram City RTRW shows that the Mataram City government has a good desire to protect the rights of individuals and communities by regulating rights, obligations and community participation in the RTRW Perda. But on the side of society, the people of Mataram City have a tendency to violate Mataram City Regulation number 12 of 2011 concerning the Spatial Planning (RTRW) of Mataram City because the legal culture and legal compliance of some communities has not been maximized as evidenced by the number of

⁵ Tarigan Robinson., *Perencanaan Pembangunan Wilayah*, Bumi Aksara, Jakarta, p. 43.

buildings that violate river boundaries and Street. Likewise in the substance of the Regional Regulation of the city of Mataram number 12 of 2011 concerning the Spatial Plan (RTRW) of the City of Mataram has not been aligned with the mandate of the Act on the Law, Government Regulation Number 15 of 2010, and Government Regulation Number 68 of 2010.

3.2 Legal protection that violates the RTRW after the enactment of the Mataram City Regional Regulation Number 12 of 2011 concerning the Spatial Plan (RTRW) of the City of Mataram

The State of the Republic of Indonesia has stated in Article 14 of the LoGA regulating the authority of the State to carry out spatial planning in all regions of Indonesia. As a further implementation of these provisions, the government has established Law Number 24 of 1992 concerning Spatial Planning which was subsequently amended and replaced with Law Number 26 of 2007 concerning Spatial Planning, and subsequently further regulated by Government Regulation Number 15 Year 2010 concerning the Implementation of Spatial Planning.

Every legal subject, whether individually or in groups always gets legal protection. Legal protection is to provide protection for human rights that are harmed by others and that protection is given to the masses so that they can enjoy all the rights given by law. It is said to be protected by law if something is regulated and protected by the applicable laws.

Protection of the rights and participation of the community in planning spatial planning is regulated more specifically in Government Regulation Number 68 of 2010 concerning the Form and Procedure of the Role of the Community in Spatial Planning. In the PP, what is referred to as the community are individuals, groups of people including customary law communities, corporations, and / or other non-government stakeholders in spatial planning (Article 1 point 8); and what is meant by the role of society is the active participation of the community in spatial planning, spatial use, and control of spatial use (Article 1 point 9).

In addition to rights, the community is also burdened with an obligation related to regional spatial planning as stipulated in Article 97 as follows: In the use of space, each person and / or entity is obliged to: a. comply with a predetermined spatial plan; b. utilizing space in accordance with the permit to use space from authorized officials; c. comply with the provisions stipulated in the requirements for permits to use space; and D. provide access to areas where the provisions of the laws and regulations are stated as public property.

According to Philip M. Hadjon Legal protection for the people as preventive and repressive government actions, namely:

- a. Preventive legal protection aims to prevent the occurrence of disputes, which directs government actions to be careful in making decisions based on discretion.
- b. Repressive protection aims to resolve disputes, including handling them in the judiciary.⁶
- c. Preventive law enforcement on the use of spatial planning that supports environmental preservation can be done by preventing various activities in the form of policy making that can be indicated as damaging the environment and providing awareness to the community and spatial users about the importance of spatial use according to needs.

⁶ Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya, 1987, p. 29.

Preventive law enforcement on the use of spatial planning that supports environmental preservation can be done by preventing various activities in the form of policy making that can be indicated as damaging the environment and providing awareness to the community and spatial users about the importance of spatial use according to needs.

Repressive law enforcement must be taken firmly to anyone who commits violations in utilizing spatial and environmental conditions, both to policy makers and the public and entrepreneurs who are found to be damaging to the environment in the form of criminal sanctions (imprisonment and fines), civil sanctions (compensation and or certain actions) and administrative sanctions (government coercion, forced money, and revocation of licenses).

3.3 Settlement of violations of Mataram City Regulation Number 12 of 2011 concerning Spatial Planning (RTRW) of Mataram City for buildings which before the Mataram City Regional Regulation Number 12 of 2011 concerning Mataram City Spatial Planning (RTRW) were determined

Spatial Planning is a form of spatial structure and spatial pattern. Spatial structure is the arrangement of settlement centers and infrastructure systems and facilities that function as supporters of the socio-economic activities of the community that have a functional relationship (Article 1 number 2 of Law Number 26 of 2007 concerning Spatial Planning). Whereas the spatial pattern according to Article 1 Number 4 of Act Number 26 of 2007 concerning Spatial Planning is the distribution of allotment of space in an area which includes the allocation of space for the function of protection and allocation of space for the function of cultivation. Thus, spatial planning is a settlement structure and network of facilities and infrastructure that supports the socio-economic activities of the community as regulated based on the allocation of space for the function of protection and spatial allocation for the function of cultivation. Then spatial planning according to Article 1 number 5 of Act Number 26 of 2007 concerning Spatial Planning is a system of spatial planning processes, spatial use, and control of spatial utilization. In the process of spatial planning, planning related to spatial planning is needed for both space utilization and space control.

On the other hand, the weak law enforcement against spatial violations and the lightness of sanctions imposed are the main problems in the occurrence of these violations, even though the Spatial Planning Law has regulated the application of sanctions, namely administrative sanctions (Article 62-64) civil sanctions (Article 66, 67 and 75) and criminal sanctions (Articles 69-74). The criminal sanctions stipulated in Articles 69 to 71 are aimed at behavior that violates the obligations stipulated in Article 61, namely: (a) Obeying the stipulated spatial plan; (b) Utilizing space in accordance with the permit for utilization of space from authorized officials; (c) Comply with the provisions stipulated in spatial use permits and (d) Provide access to areas that are declared public property by law. However, Article 62 and 63 provide administrative sanctions for similar behavior, so that in its application it will create confusion regarding sanctions to be given. In addition, the threat of punishment imposed is still relatively mild as stipulated in Article 63, namely written warnings; temporary suspension of activities; temporary termination of public services; location closure; revocation of permit; cancellation of permit; demolition of buildings; recovery of space functions; and / or administrative fines.

Therefore, the enforcement of environmental law is not only intended to punish destroyers or environmental polluters. But it is also intended to prevent acts or actions that

can cause environmental damage and / or pollution. Therefore the enforcement of environmental law is not only repressive, but also preventive,⁷ So that environmental law works in saving, protecting, preserving the environment and protecting the sustainability of human life from possible environmental damage.⁸

Preventive law enforcement on the use of spatial planning that supports environmental preservation can be done by preventing various activities in the form of policy making that can be indicated as damaging the environment and providing awareness to the community and spatial users about the importance of spatial use according to needs.

Likewise repressive law enforcement must be taken firmly to anyone who commits violations in utilizing spatial and environmental regulations, both to policy makers and the public and entrepreneurs who are found to be environmentally damaging in the form of criminal sanctions (imprisonment and fines), civil sanctions (compensation and / or certain actions) and administrative sanctions (government coercion, forced money, and revocation of licenses).

Mas Achmad Santosa⁹ states that administrative law enforcement in the environmental field has several strategic benefits compared to other law enforcement tools (civil and criminal), namely: a) can be optimized as a preventive (preventive) device. Administrative (preventive) law enforcement can be more efficient in terms of financing than criminal and civil law enforcement; b) financing for administrative law enforcement (routine cost of field supervision and laboratory testing) is cheaper than the effort to collect evidence, field investigations, employ expert witnesses to prove aspects of causality (cause and effect) in criminal and civil cases, and c) provide opportunities that more on community participation carried out starting from the licensing process, monitoring the arrangement, supervision, and filing objections as well as asking state administration officials to impose administrative sanctions.

This is in line with Ten Berge's view which states that administrative law enforcement instruments include the supervision and enforcement of sanctions. Supervision is a preventive step to impose compliance that can be done by the government (central and regional) and the community, while the application of sanctions is a repressive step to implement compliance.¹⁰ Sanctions are at the core of administrative law enforcement,¹¹ in general, there are several kinds of sanctions in administrative law, namely: coercive government (bestuursdwang); withdrawal of favorable decisions (permits, subsidies, payments, etc.); imposition of forced money by the government (dwangsom); and imposition of administrative fines (administratieve boete).

Broadly speaking, if analyzed Settlement of violations of Mataram City Regulation Number 12 of 2011 concerning Spatial Planning (RTRW) of Mataram City for buildings that before Mataram City Regulation Number 12 of 2011 concerning Spatial Planning (RTRW) of the City of Mataram was determined then, because regulations cannot apply retroactively so

⁷ Sri Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional* (Surabaya: Airlangga University Press, second edition, 2000. p 209-210.

⁸ Syahrul Macmud, *Penegakkan hukum Lingkungan Indonesia*, Yogyakarta Graha Ilmu 2012, p 21.

⁹ Ahmad Jazuli, *Penegakan Hukum Penataan Ruang Dalam Rangka Mewujudkan Pembangunan Berkelanjutan*, *Jurnal RechtsVinding*, Vol. 6 No. 2, August 2017, p. 282.

¹⁰ Ridwan HR, *Hukum Administrasi negara*, Jakarta Raja Grafindo Persada, 2006, p. 311.

¹¹ *Ibid.*

buildings that are identified as violating Mataram City Regulation Number 12 of 2011 concerning Mataram City Spatial Planning (RTRW) are still subject to sanctions by referring to Law Number 26 of 2007 concerning Spatial Planning, Government Regulation Number 15 Year 2010 concerning the Implementation of Spatial Planning and Regional Regulation No. 25 of 2006 concerning Direction for Utilization of the Mataram City Space, and its resolution through litigation if the permit holder or the community is dissatisfied with the actions of administrative officials in law enforcement and through non-litigation with the permit holder's records or society Willing to participate and submit to the applicable regulations by not closing the possibility of sanctions in the form of Criminal, Civil and Administrative.

IV. CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

Building permit holders tend to violate Mataram City Regulation number 12 of 2011 concerning the Mataram City Spatial Planning (RTRW) due to juridical and non-juridical factors, juridical factors due to Mataram City Regulation number 12 of 2011 concerning Spatial Planning (RTRW) The city of Mataram has not been in harmony with the mandate of UUPR, PP No. 15 of 2010, and PP No. 68 of 2010. Whereas non-juridical factors are due to the legal culture and legal compliance of some communities that have not been maximized as evidenced by the number of buildings that violate river boundaries and roads violation of the use of the specified permit.

Legal protection that violates the RTRW after the enactment of the Mataram City Regional Regulation Number 12 of 2011 concerning the Mataram City Spatial Plan (RTRW), namely: Conceptually, legal protection for individual rights and community rights is one of the basic rights for individuals and communities who must be obtained from the government / country. The legal protection of individual and community rights can be in the form of preventive legal protection and repressive legal protection. Preventive legal protection against the use of spatial planning that supports environmental preservation can be done by preventing various activities in the form of policy making that can be indicated as damaging the environment and providing awareness to the community and also users of spatial planning about the importance of spatial use in accordance with needs. Repressive legal protection must be taken firmly to anyone who commits a violation in utilizing spatial and environmental conditions, both to policy makers and the public and entrepreneurs who are found to be damaging to the environment in the form of criminal sanctions (imprisonment and fines), civil sanctions (compensation and or certain actions) and administrative sanctions (government coercion, forced money, and revocation of licenses).

Completion of violations of Mataram City Regulation Number 12 of 2011 concerning the Spatial Plan (RTRW) of Mataram City for buildings which before the Mataram City Regulation Number 12 of 2011 concerning Mataram City Spatial Planning (RTRW) were determined, namely: settlement through litigation channels if permit holders or the public are dissatisfied with the actions of administrative officials in law enforcement and through non-litigation channels with a note that the permit holder or the public is willing to participate and comply with the applicable regulations by not allowing sanctions in the form of Criminal, Civil and Administrative.

4.2 *Recommendations*

1. It is expected that the Government of Mataram City will increase the legal awareness of the community holders of permits to use spatial planning in accordance with existing regulations.
2. It is hoped that the City Government of Mataram can provide legal protection that is fair and equitable to the permit holders in relation to spatial planning policies.
3. It is hoped that the City Government of Mataram and the permit holders will take a path that prioritizes benefits in resolving violations of the RTRW regulation in the City of Mataram.

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