

# CONCEPT OF HANDLING LEGAL CONFLICTS FOR SPATIAL PLANNING VIOLATION BASED ON SUSTAINABLE DEVELOPMENT VALUES

HILMAN<sup>1</sup>, TATY SUGIARTI<sup>2</sup> and ENDANG SUTRISNO<sup>3</sup>

<sup>1</sup>Badan Inteljen Negara, Jakarta, Indonesia. Email: hilman92@polri.go.id

<sup>2</sup>Fakultas Hukum, Universitas Pasundan, Bandung, Indonesia. Email: tatysugiartiramlan@yahoo.co.id

<sup>3</sup>Fakultas Hukum, Universitas Swadaya Gunung Jati, Cirebon, Indonesia. Email: endangsutrisno94@gmail.com

## Abstract

The purpose of this study is to provide a scientific contribution in handling legal conflicts that occur in violations of spatial planning utilization that can affect the quality of the environment, based on an integrated-comprehensive-holistic understanding, the offer must be a policy based on the ability to build sustainable development values. Doctrinal research approach, based on written legal norms regarding spatial planning, utilization and control. Legal norms have accommodated these interests through the product of Act Number 26 of 2007 on Spatial Planning. Violation of spatial planning utilization must be prioritized with an administrative sanction approach; the content of environmental restoration has more weight in the policy domain, as long as the policies that are decided have the substance of environmentalism, the biocentrism approach in public policy is superior.

## A. Introduction

The concept of implementation in the spatial planning utilization regulation is emphasized in the corridor of achieving goals for National Resilience based on the enactment content of the Archipelago values, this is very reasonable because the Regional Autonomy era shifts in the balance of authority for the Regional Government including in spatial planning policies, spatial planning utilization, as well as aspects of control that must be considered considering that the development aspects in the regions must still be based on the harmonization of authority between the Central Government and the Regional Governments to realize the people's welfare, the values of the Welfare State shall still be put forward. The principles of spatial planning management as regulated in the legal norms must be considered in the content of the chosen public policy. The Sustainable Development perspective serves as a basic guideline on which to base decisions when it comes to environmental issues, including in spatial planning, utilization and control. The legal product of Act Number 26 of 2007 on Spatial Planning, in order to respond to challenges in facing spatial planning problems, because the Central Government and Regional Governments have a big task in formulating a framework for environmental management and preservation.

Spatial planning regulations are based on the understanding of the process system approach, which includes spatial planning, spatial planning utilization and control in spatial planning utilization. This is intended to achieve the goal of building a harmonious order between the natural environment and the artificial environment, there is synergy in the use of natural and man-made resources based on the existence of human resources, in order to embody the protection of spatial planning functions to prevent bad effects on the environment, caused by

the spatial planning policy. The whole understanding is to reconstruct in terms of utilizing the existence of a quality spatial planning for life. The reality of the approach to the study of the legal order in the description above could be used as a further understanding to examine the case of development policy that has been applied so far (Sutrisno, 2017). Examining spatial planning is inseparable from reviewing environmental management policies. In this case spatial planning plays an important role in environmental management; good spatial planning regulates the use of space by considering the environmental loads that will arise when the space is used. Environmentally friendly spatial planning will produce models of cities or villages that are familiar with the environment or what is now known as an eco-city (Herlambang, 2019: 266).

This is also how it relates to broad development planning policies. In this case, the policy for planning the development of natural resources and the environment in the future, every space user for any development activity must refer to the Regional Spatial Planning, which is based on a Strategic Environmental Assessment as well as carrying capacity and capacity; whereas any utilization of Natural Resources for any purpose must refer to the Environmental Protection and Management Plan as well as the carrying capacity and capacity (Garno, 2019: 304).

Social reality has manifested disharmony and inconsistency in policy implementation; this is due to the occurrence of spatial irregularities in Indonesia. Some cases of environmental quality degradation can occur in the form of damage to forest ecosystems, river ecosystems, inconsistencies in policies in spatial planning, spatial utilization and control, especially in big cities because they have to intersect with the intervention of the economic dimension for development. Disharmonization of spatial planning policies becomes a problem as well, when the focus is on the implementation of this spatial planning policy. Another environmental problem is the flood that hit 75 percent of Manado in 2014, which is suspected to be the impact of the reclamation of the Manado boulevard area; environmental damage to the island of Bangka, in North Sulawesi due to abuse of spatial planning permits; floods that occurred in the Bekasi area; as well as major flooding in the South Bandung area as a result of misuse of the spatial planning permit for the North Bandung area. Based on data from the Ministry of Public Works and Housing for 2016, indications of spatial planning violations have been found in more than 788 areas in Jabotabek and Puncak and Cianjur areas, spatial planning violations are also indicated to have occurred in many other areas, such as in Makassar, and the Trowulan site area, as well as in East Java (Hilman, 2019: 23).

This condition, as a form of spatial planning implementation that does not pay attention to the principles of spatial planning integration, harmony, accord, balance, sustainability, usability and efficacy, openness, togetherness and stakeholder partnerships, protection of community interests, and dimensions of legal certainty and legal justice when the law works, it is in the process of regulating needs in the community and accountability in the administration of the spatial planning. The spatial planning implementation process focuses on the aspects of planning, utilization and control. Of the three basic components, the biggest problem with spatial planning violations is the problem of controlling implementation. This factor is weak;

monitoring and evaluation policies become indicators of priority that must be carried out in terms of spatial planning policies.

Several forms of control components related to spatial planning utilization aspects are carried out through licensing mechanisms and licensing law is the front line to regulate this matter. The level of licensing aspects for spatial planning utilization, policies for providing incentives and disincentives, and imposition of sanctions are forms of spatial planning control. The licensing aspect plays an important role in the policy of spatial planning utilization because the basis for policy making by the Government, both at the central and regional levels, must be based on the basic norms of spatial planning principles in each area. The rule of law regulates the possibilities for the application of legal sanctions, administrative and criminal sanctions.

Another form of violation of spatial planning is related to the problem of Regional Autonomy which sometimes results in different perceptions, in the spatial planning aspect the objective is to discipline and control spatial planning, but on another dimension, the issue of Regional Autonomy is due to the existence of several powers that are owned by the regions and on behalf of efforts to increase local revenue in the context of regional development, the problem of spatial planning utilization has been neglected. This social fact then raises a research question as to how appropriate the concept for handling legal conflicts in the case of violations of spatial planning utilization is based on the Sustainable Development values. This is quite reasonable considering the concept of spatial planning utilization for sustainability with reference to the ultimate goal of building community welfare, by taking into account the environmental interests that current development; the results are not only to meet the needs of today's generation, but also to meet the needs and the interests of future generations.

## **B. Research Method**

This research uses a doctrinal approach by conceptualizing law in the sense of law about rules, the texts form of written law in the form of statutory products, or other legal norms of a technical nature as a form of legal rules that implement legal provisions on it. The approach to these legal texts seeks to analyze the stages of the problem for handling legal conflicts that occur because of the spatial planning utilization policy that ignores the dimension of control so that this will marginalize the values of Sustainable Development. The choice of a doctrinal approach by emphasizing normative juridical studies considering that several policies in the form of spatial planning legislation products have accommodated the interests of the parties, this is by understanding the principles for spatial planning. This research was also carried out through a descriptive analysis, examining the problems of spatial planning using its legal basis, namely Act Number 26 of 2007 on Spatial Planning and its derivative regulations, henceforth the rule of law is used as basic norms to analyze the spatial planning problem, by referring also to existing legal concepts and theories. And the technique of collecting legal materials is done through library research and field research, either by taking inventory, tracing or studying, especially related to violations of spatial law norms.

### C. Theoretical Foundation

An understanding of the environmental law rule must be understood in the domain of functions for control, including controlling human behavior in interacting with nature. The focus of thought on the stages of human activity in interacting is not only paying attention to economic aspects, profit as a priority orientation but also must side with the issue of natural interests. The focus of the paradigm has shifted no longer only on anthropocentrism but has shifted to biocentrism. Social interaction supports more of a tendency in consideration of economics for profit interests, ignoring the environmental interests of the development approach and putting more emphasis on an anthropocentrism approach instead of a biocentrism approach (Sutrisno, 2019). For this reason, in the case of spatial planning utilization issues, a change in the paradigm approach must be considered, the authority possessed by the Central Government and Regional Governments in terms of environmental management based on the concept of the Welfare State which is based on the values contained in the Constitution Article 33 of the Republic of Indonesia in 1945 must still refer to the interests of the biocentrism approach.

However, to explain the welfare state, in affirming the constitution which states that Indonesia is based on a rule of law, an orderly law makes the basic pattern for solving all problems that occur, including in terms of environmental problems, so that Act Number 26 of 2007 and its implementing regulations must be the guideline, so law is used as a means of renewing society, its meaning is for the purpose of welfare for the nation. Law as a tool of social engineering, a tool is understood as a means, so the rule of law becomes an important means of changing the behavior patterns and behavior patterns of the community, including in implementing the legal products of the Spatial Planning Law, regional and central policy holders and business actors in carrying out their actions must understand in accordance with the mandate of the constitution and legal products of spatial planning, likewise the society in which the law lives and grows must always be based on the objective of spatial planning as part of the legal objective of spatial planning utilization.

The characteristics of a rule of law can be examined in several important components regarding the existence of elements of human rights protection, and we are fully aware that everyone has the right to a clean and healthy environment so that environmental problems are human rights issues and violations of them are violations of human rights. For this reason, policy holders must pay attention to environmental problems carefully and wisely, it is not only profits that must be prioritized. Siding with the interests of nature is an absolute prerequisite for the concept of Sustainable Development.

Some of the characteristics of the rule of law are: first, the law is implemented to fulfill the interests of the people, not solely the interests of the authorities. In this case the people are the subject of the law and not the object of the law; second, the law is made according to and based on the will of the people. The people are the source and play a decisive role in the laws formation so as to produce responsive laws, namely laws that are in accordance with the will of the people; third, the power of the state government must be subject to the law (under to the law), not above the law. Every power must be followed by accountability (geen macht zonder verantwoordelijkheid or no power without accountability); fourth, there is a guarantee of

human rights, both civil rights, political rights and social rights; fifth, the implementation of justice that is impartial (impartiality), the power of the judiciary, the judiciary and judges must be free from the influence or interference of other powers; sixth, there is a guarantee of protection and convenience in channeling opinions (Panca Astawa, I Gde, 2005).

Every aspect of human life, law is always there and plays a very important role in all changes in society. In fact, with that law, an order is desired, meaning that without law there will be chaos. Chaos can arise because human nature is greedy and always wants to dominate others who are weak. In modern social life like today, life aspects are very complex. Law does not only play a role for order, but also that the law must be able to provide certainty, guarantee justice and benefit in society. That is, law as a system of norms is enforced on society by the government for a desired interest, namely to provide direction and encouragement to community development in order to achieve an orderly, just and prosperous society.

#### **D. Discussion**

These legal provisions must be consistently enforced even though the facts prove that the problem of law enforcement in Indonesia is a major problem in itself that requires in-depth study because law enforcement will involve many components. (Sutrisno, 2015) stated that “Indonesia today is faced with a very unique problem of legal performance regarding the formal truth of being treated as the most dominant consideration of legal decision making. An approach that can be used is still in further discussion through a more holistic alternative paradigm”. Law must be at the forefront of the vanguard level, to regulate social life so that legal norms are positioned in a position to carry out their functions for social order. The government must be able to give affirmation to the community, the law that is made leads to the interests of the community and oriented towards social justice (Sutrisno, 2019). Environmental issues must be carried out through an integral, comprehensive and holistic approach because environmental problems are a common problem, for that the legal norms that are built must be able to accommodate, be responsive to the needs that exist in society and must also have a progressive dimension of values that views that law is used as a benchmark in order to build legal justice for the environment because nature also requires the existence of law and justice. In the end, law in the development process demands changes because almost all social changes that occur must be followed by changes in legal norms (Sutrisno, 2009: 56). Likewise, when entering the era of Sustainable Development concept, the law must be able to respond to these needs, the law must be responsive to change.

The emergence of the terminology Sustainable Development was first born from the World Commission on Environment and Development (WCED) for the theme Our Common Future which can be interpreted as an understanding of development that meets the needs of the present generation without reducing the ability of future generations to meet their needs. Understanding this matter is not easy, especially in the realm of policy making by the Central and Local Governments, especially in planning policies, spatial planning use and control because it often intersects with non-legal, meta-juridical dimensions, especially economic aspects for development in the context of increasing public welfare. However, the shift in the



paradigm approach in understanding the rule of environmental law is no longer based on anthropocentrism but turns into biocentrism, so that the policies carried out must still carry the spirit of "go green", policies and legal norms that are "green", meaning that there is alignment for the needs and the interests of preserving and managing the environment as mandated by Act Number 32 of 2009 and Act Number 26 of 2007. The continuum between economic activities for development and the interests of nature must be integrated as a whole within the framework of achieving law goals, through the biocentrism approach as a study of ecological aspects.

The cases of spatial planning violations are caused by the very large pull of economic energy so that neglect of the environmental order, the objectives and principles of spatial planning are not considered, even though in some cases the products of spatial planning law have clearly outlined several possible violations that can be drawn in criminal domain as regulated in Chapter XI Article 69, Article 70, Article 71, Article 72, Article 73, Article 74 and Article 75 of Act Number 26 of 2007 on Spatial Planning. Legal product texts accommodate the application of sanctions for perpetrators who commit violations, but on the other hand, law enforcement must also be understood in the corridor of support from other stakeholders, in this case the authority held by the Central Government and Regional Governments, the concept of building a Welfare State in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, Article 33, must be carried high so that it can be understood that the welfare of society can be realized. And law is used as an emphasis on changing the behavior of thought patterns and patterns of action (engineering) in the understanding of law (a tool) as a means of being able to change the mindset and action to create a policy model based on environmental interests, so that the ultimate goal of overall policy implementation environmental sector in the form of Regional Spatial Planning policies, Strategic Environmental Studies, Environmental Protection and Management Plan policies, Green Open Space policies, Detailed Spatial Planning policies, still refers to the objectives of law, namely legal justice, legal certainty and benefits for the good of living together. The application of criminal sanctions in environmental violations is not the only best way to restore the environment, other means are still needed.

Legal imposition in terms of spatial planning implementation must be carried out in an integrated-comprehensive-holistic manner, the policies carried out must be an integral part of understanding the functions of the environment for conservation, harmony, natural balance, as a whole in the means of achieving the goal, namely Sustainable Development, in order to pay attention to the needs of the generation will come. For this reason, in the case of spatial planning implementation, community involvement must also be required, active community participation is one of the keys to building spatial planning utilization, for that it is obligatory for community members to obey spatial planning regulations, use space in accordance with issued permits and provide access to an area declared by legal norms as public property. The substance of the regulation on this matter is contained in Article 61, Article 65 of the provisions of the Spatial Planning Law.

In the context of violations of the use of spatial planning, the substance of the law has been regulated in Article 62 of the Spatial Planning Law for the application of administrative sanctions, this can be understood because the function of the virtue of law (a tool) in the corridor changes the mindset and action patterns (engineering) in the domain control so that any administrative sanctions such as written warnings, temporary suspension of activities, temporary suspension of public services, closure of locations, revocation of permits, cancellation of permits, demolition of buildings, restoration of spatial planning functions and administrative fines, are appropriate (legal) means to optimize the process of working of the law in the midst of society. The regulatory provisions are further regulated in Article 62, Article 63 and Article 64 of the Spatial Planning Law.

So the handling of legal conflicts in violating the use of spatial planning has a priority tendency to be carried out through the concept of administrative legal settlement, compared to the application of criminal law, this is fully realized for environmental restoration, towards harmony, accord, balance, sustainability, usefulness and efficacy within the framework. Restoring the function and capacity and carrying capacity of the environment is more focused on issues of public policy, in this case the licensing aspects that must be considered, licensing management in accordance with its designation, procedures for issuing permits that are clean from burdensome economic energy elements, simple permits based on the principles of environmental management as environmental regulations have regulated it.

Sustainable Development Goals (SDGs) focus on the aspects of sustainable development, the content contained in it includes the problems of efforts to overcome community poverty, aspects of development in the health sector, the realization of community welfare, including aspects of education, employment, infrastructure development based on values siding with the environment and opening access to policies and laws for all levels of society. This dimension of sustainable development must be based on the values of integrated-comprehensive-holistic spatial compliance in terms of the planning, utilization and control processes through environmental law principles. For this reason, we must always pay attention to the concept of the goals of Sustainable Development, the pressure on the carrying capacity and carrying capacity of the environment is getting bigger, this is very reasonable considering the pressure and energy of the economic dimension - is getting bigger in the name of development. Mainstreaming the economic dimension must continue to take into account and take sides with the interests of the environment. Environmental problems such as pollution of the environment, air, water, soil and damage to the quality of forest functions, degradation of river functions, floods, rob are some examples caused by human actions that do not side with the interests of nature. Regulations and policies no longer carry the "green" mainstream, that is, "green policy, green regulation" is neglected. On the other hand, this is also caused by inconsistencies in planning, utilization and control policies over existing spatial planning.

## **E. Conclusion**

Mainstreaming the contents of the values of Sustainable Development must be understood by means of a credible legal norm and public policy arrangement in the implementation stage, as

well as monitoring and evaluation. The process of law enforcement in spatial planning utilization must be prioritized on the side of recovery in efforts to conserve the environment. Degradation of natural quality regarding the carrying capacity and carrying capacity must be repositioned in a good condition, therefore the administrative legal approach is the right solution to understand the process of handling legal conflicts in the environmental sector. Criminal means are the last means that can be used. The principle of law as a tool of social engineering is more intended to use law as a "means" of engineering the mindset, action patterns of stakeholders who are directly or indirectly involved in environmental management through spatial planning regulations through administrative law "means".

## References

### Books:

- Garno, Yudi. (2019). *Lingkungan Hidup, Materi Pokok Bidang Studi Sumber Kekayaan Alam*, Jakarta:Lemhannas RI.
- Herlambang, A. (2019), *Sumber Daya Air, Materi Pokok Bidang Studi Sumber Kekayaan Alam*, Jakarta: Lemhannas RI.
- Hilman. (2019). *Optimalisasi penanganan Kejahatan Tata Ruang*, Kertas Karya Ilmiah Perorangan(Taskap), Lemhannas RI.
- Sutrisno, E, (2009). *Bunga Rampai Hukum & Globalisasi*, Genta Press, Yogyakarta.

### National - International Journals:

- Panca Astawa, I Gde. (2005), *Penegakan Hukum Dalam Kerangka Demokrasi*, Jurnal Hukum, Padjadjaran Review, Bandung, Volume 01 No. 01.
- Sutrisno, E. (2015). *Tracing the performance of law in Indonesia (A perspective of Thomas Kuhn's normal science)*. *Journal of Law, Policy and Globalization*, International Institute for Science, Technology & Education Accelerating Global Knowledge Creation and Sharing, 37(126), 1896-1915.
- Sutrisno, E. (2017). *Strategic Environmental Assessment Policy of Cirebon Coastal Area for Sustainable Development*, Vol.17, No.3, *Jurnal Dinamika Hukum*, Fakultas Hukum Jenderal Soedirman, page 268.
- Sutrisno, E. (2019). *Relations between Legal Culture and Economic Emporwerment among Marginalized Group of Farmers*, *Journal of Legal, Ethical and Regulatory Issues* Volume 22, Issue 3, 1544-0044-22-3-329.
- Sutrisno, E. (2019). *The Licensing Policy for Groundwater Extraction and Management for Hospitality Industry in Cities in Developing Countries*. *Journal Water Policy*, Vol.21, Issue 4, IWA Publishing, page 758-767.