

LEGAL IDEALISM AND IMPLEMENTATION: AN ANALYSIS OF THE GAP BETWEEN ENVIRONMENTAL POLICY AND THE LOCAL REGULATION IN INDONESIA

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ABSTRACT

This study seeks to analyse the philosophical ideas and objectives of legalization of environmental law in the form of spatial policy, which is legislated within the national scope, with its implementation in the local sphere. Using the study of qualitative research and socio legal approach techniques, this study attempts to describe the orientation change of the philosophical idea of environmental law and spatial regulation by the central government to its practical application at the local regulatory level, which often clashes directly with various industrial, business interests, housing, and settlements and other spatial usage. In addition, to analyse more concretely, this study took the case object of Semarang City in Central Java.

The results of this study indicate that the initial and philosophical goals of spatial policy enactment may change locally through conflict of interests and structural, legal, economic and political issues. More specifically within the scope of Semarang City, this change in policy direction is heavily influenced by economic and business considerations. The findings are expected to provide a more meaningful discourse and policy direction for policymakers in realizing the implementation of laws related to the environment in a more synchronous, effective and balanced. The originality of this research lies in the attempt to provide concrete evidence of a shift in legal orientation, by taking environmental law cases.

Keywords: Spatial Planning, Local Regulation, Legal Implementation, Environmental Law.

INTRODUCTION

Spatial area of the city is one of the most crucial urban issues today (Cohen, 2006). Physically, the development of the city is always followed by the increasingly widespread built environment. Population growth and economic activity on the one hand, and the limitation of urban land on the other hand, lead to efficient use of space to be an unavoidable demand. In this context, a series of policies have been adopted in the development of urban areas as settlements, industries, road networks, drinking water networks, public buildings, and greenways which are the means and infrastructure for spatial development (Jayaginata, 1992). Spatial arrangement in particular cities in Indonesia is still seen only limited to meet the growth of development and tend to be oriented towards efforts to achieve economic growth targets, or to meet the needs of the development of a certain region that cannot be avoided. The orientation of such an urban arrangement does not take into consideration the purpose and use of space in accordance with its designation. It should be conceptually that the spatial plan is arranged as a plan that is

comprehensively integrated by analysing all aspects and factors of development and development of the city in an integrated sequence of policy descriptions and steps that are fundamental with data and maps (McCall, 2003). As mandated by Article 33 Paragraph (3) of the 1945 Constitution states that “*earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.*” This state right is further regulated in various laws and government regulations. The provisions of the aforementioned article have been described in Act No. 24 of 1992 concerning Spatial Planning which has given the basic principles of spatial arrangement nationally. This law asserts as in Article 2 that:

“Spatial arrangement is based on the principles of utilization of space for all interests in an integrated, effective, effective, balanced, sustainable, transparent, fair and legal manner.”

In connection with this as the implementation of Law No. 24 of 1992 The Government has stipulated Government Regulation No. 47 of 1997 on the National Spatial Plan which is the guideline for the formulation of the main policy of the utilization of National Territory Space, as well as the spatial arrangement of the Provinces of Region and Region/Municipality of the Level II Region which the basic principles of spatial arrangement nationally are set forth in Article 4 Government Regulation No. 47 of 1997. The principles of spatial use were then corrected and extended again in Law No. 26 of 2007 on the National Spatial Management, which was only adopted on 26 April 2007. The new spatial principles include sustainability, transparency, togetherness and partnership, protection of the public interest, and legal certainty and justice, accountability (Lisdiyono, 2008).

Such spatial arrangement pattern enables the realization of several things, such as the implementation of environmentally space utilization, implementation of spatial use arrangement of protected area and cultivation area, the achievement of the utilization of quality spatial to realize the protection of space function. Moreover, spatial arrangement is to prevent and cope with the impact on the environment and is to realize the balance of welfare and security interests. In a similar sense, the spatial law also idealizes to create a safe, comfortable, productive and sustainable national territory based on national insight and national security. This research seeks to know and explain about the policy of national spatial law, as well as the phenomenon of shifting policy of national spatial law arrangement in regulation area, by taking concrete case in Semarang City, and its impact to social values of space usage. Here, there are two fundamental things that are the focus of this study, firstly, revealing the factors behind the shift in spatial law policy in terms of social, cultural, political and economic factors, and second, revealing the consequences that arise of the policy shift towards environmental damage. More importantly, the study also seeks to see a gap between the principles of regulated environmental law in Indonesia, with conflicts of interest that usually occur at the regional level. In addition, as originality offered, the study attempts to provide concrete evidence that legal changes can be very likely, in which environmental law, here, becomes an important proof of the existence of such shifts.

RESEARCH METHOD

This research includes qualitative research, using socio legal approach to see the process of law work, both at the level of formulation and implementation in relation to social, cultural,

economic and political dynamics. In short it can be argued that socio legal studies try to photograph law in the dynamics of social life in a broader context. Research does not depart from a theory but from social facts surrounding the process of legal work to be processed, analysed and interpreted to build a more ideal theoretical framework of spatial law. Determination of data sources, depending on the character of the data to be searched. In general, the data required includes primary and secondary data. Primary data sources are determined by purposive sampling, i.e. those who are considered to be most aware of the spatial law policy of Semarang city and the impact of deviation from the policy, among others members of legislative of city and province, and Semarang City government in the case of the related office consists of Development Planning Agency at Sub-National Level of City and Provincial, City Planning Office, City Planning and Spatial Office, and Law Department and Semarang City Law. Respondents who are expected to provide information on primary data are set as many as 20 people. While the secondary data source is the Bureau of Statistics as an institution or institution that stores, documents, and has document data recorded, either in the form of decisions, research results, or regulations related to the policy of spatial planning Semarang City. According to the data type and sources as mentioned earlier, there is several data collection techniques used in this study. First, study documents regarding the decisions and regulations concerning the spatial arrangement of the city. Second, the field observations to obtain data on the impact of deviation on spatial policies, while interviews and observations to informants to explore the primary data were also conducted, with the researchers themselves as the main research tool. The use of such data collection methods, researchers are directed to uncover complete information from all data sources.

Fundamentals of Spatial Planning in Indonesian Law

The basic idea of spatial planning as Law No. 24 of 1992 which has been amended by Law No. 26 of 2007 on Spatial Management in Article 3 implies that “*in principle spatial planning is aimed to make: (1) realization of harmony between the natural environment and the artificial environment; (2) realization of integration in the use of natural resources and artificial resources with respect to human resources; (3) the realization of protection of spatial function and the prevention of negative impact to the environment due to space utilization*”. Based on the provisions of the above article, the purpose of spatial planning is to regulate the relationship of various activities with spatial function in order to create quality space utilization. Meanwhile, protected area arrangements are forms of space utilization in protected areas such as conservation, rehabilitation, research, environmental tourism and others, so as to achieve optimal protected area layout and improve the function of protected areas. Regulation of the utilization of spatial area in the cultivation area such as mining exploitation, cultivation of forestry, cultivation of agriculture, and settlement, industry, tourism and other similar activities, so as to achieve the spatial of cultivated area. Thus, in the formation of spatial or spatial structure there must be harmony between biological and non-biological natural resources, so that arises the balance of space function (Budihardjo & Hardjohubojo, 1992). If the unstructured, unplanned, unused and untreated space use creates a negative image of the surrounding environment. The decline of environmental quality is one of them caused by the use of space that is not in accordance with environmental conditions and potential of the region.

It is important to firstly consider that the existence of natural resources is not evenly distributed, but varies; each space has a limited capacity to support the use of space on it. To anticipate this matter has been mandated in the Decree of the People's Consultative Assembly No. 9 of 2001 on Agrarian Reform and Natural Resource Management. There is philosophically stated that

“A fair, sustainable, and environmentally natural resources management should be done in a coordinated, integrated manner and accommodating the dynamics, aspirations and resolve conflict.”

Strictly speaking in article 4 of the Decree of the People's Consultative Assembly it is stated that natural resource management shall be carried out in accordance with the following principles. Moreover, the ideal is aimed at maintaining the integrity of the Unitary State of the Republic of Indonesia, giving respect and uphold human rights, respect the rule of law by accommodating diversity in legal unification, the welfare of the people, especially through improving the quality of Indonesian human resources. On broader sense, the spatial planning policy is regulated to go hand in hand and as one of the implementation process of developing democracy, legal compliance, transparency and optimization of people's participation as well as of achieving justice including gender equality in the control, ownership, use, utilization and maintenance of agrarian and natural resources. Spatial law and regulations are to maintain sustainability that can provide optimal benefits for both present and future generations, while taking into account the carrying capacity of the environment. Another important ideal in the social context of spatial policy is to implement social functions, sustainability, and ecological functions in accordance with local socio-cultural conditions. With the increasing integration and coordination among development sectors and regions in the implementation of agrarian reform and natural resource management, spatial policy is also directed to recognize, respect, and protect the rights of indigenous and tribal people's cultural diversity of agrarian resources/natural resources as well as to strive for a balance of rights and obligations of all levels of government (central, provincial, district/city and village or that is equivalent), communities and individuals. In addition, spatial policy is conducted as a basis for governmental system as a means to implement decentralization in the form of division of authority at national, provincial, district/city and village level or equivalent, related to the allocation and management of agrarian resources/natural resources.

Environmental Law Philosophy and the Conflict of Interest

The determination of spatial policy is clearly not a simple matter. Modern law applied in Indonesia is highly pursued in harmony with the system of nationhood, customs and traditions of the nation (Ghofur & Susilo, 2017). As such, the ideal of national spatial arrangement is expected to be achieved through the embodiment of a harmony between the natural and artificial environments, cohesiveness in the use of natural resources and artificial resources with respect to human resources, and protection of spatial function and impact prevention negative to the environment due to space utilization. However, there will always emerge conflict of interest that will affect the determination of the spatial policy. The conflict between the need for environmental conservation and the demand for economic growth is through industrialization, community settlements and agricultural land interests. Conflict also occurs between

economically weak groups of marginalized communities in urban areas with dominant economic forces requiring large areas for various businesses such as industry, real estate, mining, plantations and so on (Hudalah and Woltjer, 2007). Such circumstances then bring up spatial policy which is generally inconsistent with the spatial plan as a philosophy that has been established by Law No. 24 of 1992 and has been amended by Law No. 26 of 2007. According to Budihardjo (1997), spatial change occurs because of the strength of certain groups, the unity of a particular society, the social system, the position, the role and even the sacrifice of the values of interest in society. Hence, if the spatial policy is understood as something that is not neutral from various interests, then to find the philosophical basis of Spatial Planning No. 24 of 1992 which amended by Law No. 26 of 2007 there will be a substantial shift when translated into spatial planning policy, then used system theory framework from Talcott Parsons (1977) as the base of analysis. In accordance with the basic scheme of the theory, it is assumed that every social system always has four dimensions: interrelated cultural, social, political and economic. In line with this, it can be said that there are four factors that potentially affect the shift, i.e. value factor, norm factor, structure factor and economic factor. Value factor is related to the conception or understanding of something that is considered valuable and at the same time considered quite useful to be noticed and embodied in the real policy. The legal norm factor is related to the presence or absence of clear rules that can guide policy formulation. Clear rules can serve as rules of the game that unite the steps together intersubjectively. According to Palumbo, as cited in Blau et al. (1987), the unclear policy in the legislation is the main cause of the failure of its implementation. Therefore, in general weak formation order will result in weak implementation of the policy. Related to the issue of substance or rule of law Act No. 24 of 1992 which amended by Law No. 26 of 2007 concerning Spatial Planning, there are some important issue, such as whether changes to spatial planning rules are needed, whether the formulation of the rule is clear and explicit, whether there is no contradiction between the rules with each other, whether there are sanctions equivalent to the deed by either the policy maker or user, and whether the rules are still in line with existing social realities.

Some Basic Constrains in Spatial Utilization

There are some basic challenges and constraint in effectively implementing spatial policy, such as structural, bureaucratic, legal, economic and political issues (Firman, 1997). First, structural factors related to institutions, elements of apparatus, facilities and infrastructure. Concerning the apparatus factor, it means talking about the human factor that makes the policy. Here the problem is to what extent the apparatus feels bound to the existing rules, to what extent the synchronization of assignments given to the apparatus so as to exercise its authority appropriately, to what extent is the capability, integrity and commitment of the apparatus, to what extent is the officer permitted discretion make decisions appropriately and contextually, and what kind of example should apparatus be shown to the community to be credible. According to Van Doorn as cited in Rahardjo (1986), there are several factors that work in an officer as a human being, namely personality factors, social origins, economic interests, political beliefs and outlook on life. Facilities and infrastructure factors, related to the availability of supporting resources that assist the policy-making process. There are a number of issues concerning the facilities and infrastructure, among others: are available facilities and infrastructure needed, whether the available facilities, equipment, finance, etc. are still adequate

and still usable whether the existing facilities have been used effectively, and what tools need to be held to support the policy-making process. Organizational and bureaucratic factors are linked to organizational and institutional pressures in the policy-making process. The institution or organization usually has its own estimates of what is normal in relation to its workload (Friedman, 1966). Decision-making institutions as a modern institution, bureaucratically arranged, certainly do not escape from the rational-economic considerations, which seek to obtain things that benefit their own organizations, and try to suppress the maximum burden that suppresses the organization. This phenomenon can be seen as a logical consequence of the logic of a bureaucracy or organization, namely an obsession with administrative efficiency improvements, speed, accuracy, indecision, subtraction, shifting and material and personnel costs. All these efficiencies aim to optimize bureaucratic administration strictly.

Moreover, the economic factors associated with the offer of material benefits will be obtained from a policy, there is always open the possibility of cost and benefit considerations behind the formulation of a policy (Lisdiyono & Suatmiati, 2017). According to the rational choice theory (Coleman & Fararo, 1992), humans are essentially active organisms that take into account ways of acting that enable them to maximize profits and minimize losses. This is the essence of Homans (1934) thinking, that social behaviour is nothing but an exchange between two parties, both visible and hidden, and more or less manifested in the expenditure of cost and acceptance of rewards. The view of this theory suggests that every individual when faced with an offer from the outside, then basically he is always motivated by the calculation to gain profit and try to avoid losses. For Homans (1934), the goal of human action is economic to increase profits. All social phenomena, including force that compels, stratification, authority and other differences can be analysed as a form of exchange (Johnson, 1981). Consideration of profit and loss as the basis of a person's behaviour is something that is general. That is, everyone's behaviour always contains consideration of profit-loss in making decisions. Such considerations are analogous to the type of action aimed at according to Habermas (1984), stating that actions based on objective rationality tend to prioritize efficiency and yield of results at the lowest possible cost, regardless of normative values. The action is something that is typical of Max Weber's rationality. In this framework we can better understand the thesis put forward by Hovland et al. (1953) which states that

“Social behaviour can be understood through a response stimulus analysis.”

A given stimulus can affect a person's attitude or behaviour, depending on the quality of the stimulus communicated to it.

The Gap between the Ideals and the Implementation

The reduced environmental quality can also occur if the utilization of space and of existing natural resources exceeds environmental capacity, including the occurrence of the transfer of space functions. Furthermore, the gap between the ideals and the implementation should take a concrete form as an example, which in this case takes Semarang City in Central Java. The gap of such spatial functions is also occurring in the development of Semarang City, where the areas that should be conserved are converted to the development of industrial areas, trade, settlements and others. In particular the dynamics of the development of the city of

Semarang can be observed from the Dutch era based on the “*Stadvormings Ordonantie (SVO)*” 168/1948 and “*Stadvormings Verorderings (SVV)*” 40/1949, Ministerial Circular Letter on the Preparation of City Plans and Presidential Instruction No. 1 of 1976 on City Development. Furthermore, Semarang city spatial law policy is regulated in Regional Regulation Number 5 of 1981 about Semarang City Plan from 1975 until 2000 that has changed with Local Regulation No. 02 of 1990. Changes made with the new law, especially concerning the concept of City Master Plan which should be read as the concept of City General Spatial Plan. In Article 1 letter A, Government Regulation No. 02 of 1990, it not only sees urban development as a stand-alone activity, but also is more conceptualized as a plan integrated with analysing all aspects and factors of development of the city in an integrated series of policy descriptions and steps that are fundamental with data as well as maps of space usage. If the concept of City Plan is more partial and limited, then the concept of urban development that refers to City General Spatial Plan is more emphasized that the city development plan should be seen as part of overall spatial planning activities (earth, water and space) to optimize sustainability, balance and harmony of the environment for the prosperity of society. Thus, General Spatial Plan includes urban space utilization plans, main urban service level plan plans, major transportation system plans, municipal utility network system plans, raw water mapping plans, indications of municipal service units and development management plans.

Starting from the concept of urban development with various considerations, then Government Regulation of Semarang City No. 02 of 1990 set four development area of Semarang city space with their respective purposes as follows. Area I covers most of the old Semarang municipality and parts of Genuk sub-district as the centre of Semarang City. Area II covers part of Tugu Sub district and part of Genuk District as industrial estate. Area III covers part of Semarang Municipality (the area around Alastuwo, Kedungmundu, Banyumanik and some Tugu subdistricts) as a service and settlement development area, while area IV development area covers Gunungpati sub-district of Mijen sub-district and Tugu sub-district as open space for agriculture, plantation and livestock. Further developments indicating that part of Region IV-particularly the Mijen sub-district-which was originally designated as an open space for agrarian activities to convert to an agrarian and sub-urban urban area as secondary extension through Local Regulation No. 2 of 1990, will be increasingly concentrated for human settlements. Similarly, in the further development, the Regional Regulation No. 2 of 1990 and the Regional Regulation No. 1 to 10 of 2004 have mapped the area of Semarang City to ten municipal sections, which have consequences for changes in land or urban space functions. The section that is directed to settlements, trade and services, offices, specific cultural interest is located in section I in central, eastern and southern Semarang. Section II including Candisari and Gajahmungkur is regulated as settlements, trade and services, offices, colleges, sports and recreation. Section III located in West and North Semarang is as transportation, warehousing, recreation areas, settlements, trade and services, offices. Section IV is for industry, transportation, aquaculture, settlement. Section V in Pedurungan and Gayamsari and section VI in Tembalang is directed as settlements, trade and services, universities, industry, transportation. Banyumanik included in section VII is as settlements, offices, trade and services, special areas of the military, conservation, transportation. Section VIII in Gunungpati as agricultural conservation, college, tourism/recreation, settlement, trade and services. While two others, section IX in Mijen is as agriculture, settlement, conservation, tourism/recreation, trade and

services, education, industry and techno park and section X in Ngaliyan and Tugu is directed for industries, settlements, trade and services, ponds, recreation and warehousing.

Viewed the provisions of the spatial law of the city of Semarang that should apply until 2010, but in the development of Semarang city spatial plan has been revised again for the next 20 years during the period of 2010 to 2030. Revision of local regulation was done to adjust to the development of the city forward and then practically will result in changes in space function. Changes in urban space function, according to Hadi (2011), have caused the absorption of water to be reduced so that water easily runs downstream. Unlike Hadi (2011), Division Head Marketing and Business Development PT. Karyadeka Alam Lestari actually argues that the change of designation of Mijen sub-district from plantation land to industrial estate and housing is an inevitable step, and it is possible because based on map of water conservation zone of Mijen region is in blue zone which is not the main catchment area in Semarang. Furthermore, Hadi (2011) pointed out that historically such deviations of urban space use have occurred since the 1980s. Through the Urban Spatial Detail Plan 1995-2000 Semarang City Government approved these changes through Local Regulation No. 2 of 1990. The Mijen region, for example, in the 1980s was designated an agrarian area, but the area has been transformed into an area settlement, conservation, tourism/recreation, trade and services, education, industry and Techno Park.

The change of function of the space was only legalized in 1990 with Law No. 2 of 1990, and then further strengthened by Local Regulation No. 2 of 1999. The deviation has been done and just followed by the change of local regulation to be legalized, omen there has been a shift in the substance of urban spatial policy. Spatial shifts are also sometimes done to accommodate the willingness of the outside, especially from the owners of capital to influence the direction of urban spatial policy. Semarang City spatial policy shift also occurred with the development of area on the north coast with the issuance of Decree of Mayor of Semarang No. 590/2004 dated August 31, 2004 on Approval of Land Use and Implementation of Reclamation in Marina Beach Area. On the basis of the Decree of the Mayor, a company of PT. IPU has been legalized to carry out the planned reclamation of the Marina Beach area of 200 hectares in Tambakharjo Urban Village, West Semarang Sub-district which should be conserved. The reclamation of Marina Beach has caused controversy, because it is estimated not to be done through an adequate environmental assessment so that it will have an adverse impact on society. The results of Sasongko's (2005) observations show that the impact of the reclamation will threaten the ponds around the north coast, residential areas such as Griya Padma Housing, Ahmad Yani International Airport, and recreation area located in the north-east of Semarang. The development of Semarang city layout in the period of 1990-2000, especially in the area of the green line has been a real shift policy by the Semarang City Government by ruislag the golf course at the Temple area known Semarang golf centre (SGC) built by the Dutch around 1926. The golf course, which was first built by the Dutch Government with historical value, has changed its function with the change of the 1995-2000 Urban Layout Plan, despite getting protests from various parties ranging from the community around the field and environmental experts eventually remain in turn function to be a luxury residential location. Changes in the function of urban space also occur in the area of Genuk which is still included in the area of Demak Regency designated as a residential area and ponds. However, when the Genuk area entered the Semarang City area in 1976, the area switched to an industrial estate in 1984. As a

logical consequence of the establishment of the Genuk area as an industrial zone, the educational facilities built in the area such as the University of Sultan Agung Campus become very irrelevant or contrary to the spatial policy of Semarang City. Moreover, industrial development in the area is very fast when compared to other industrial zones such as Tugu and Plamongsari, so it seems it is no longer possible to do educational activities. Aware of such conditions, the education manager wishes to merge and relocate elsewhere, but the newly selected location is not approved by the government because it is included in the buffer zone. Utilization of urban space that is not appropriate allocation, will have an impact on the efficiency factor, and on the other side may cause a conflict of interest because each occupant seeks to optimize their respective interests. Therefore, the city spatial plan is expected to prevent the symptoms so that space used by the community can be more efficient and in accordance with the common interest as a whole (Heurunan, 1999).

CONCLUSION

From the above analysis, it can be concluded that the legalization of the Law on Spatial Planning philosophically seeks to improve the realization of harmony between the natural environment and the artificial environment, the integration of the natural resources and artificial resources with respect to human resources, and the realization of protection of spatial function and the prevention of negative effects of spatial utilization. Basically, before these spatial regulations are enacted at a more specific and lower administrative level, such as a province or district, some structural obstacles and challenges are faced. However, the barrier form becomes more apparent once the spatial regulations are implemented at the local level. Some forms of conflict, such as business interests, industry, housing, and real estate are usually some of the main obstacles in spatial implementation, beyond structural, organizational, bureaucratic, legal and political issues. As a result, the rules within the national scope and its philosophical ideal become quite neglected. In this context, regional development in Semarang City can be an evidence of a gap between the Law's idealism and local implementation.

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