

LEGAL ENFORCEMENT OF LAND FUNCTION CONVERSION (CASE STUDY IN KUNINGAN DISTRICT)

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ABSTRACT

Kuningan District has enacted the Regional Regulation of the RTRW which is a guideline in establishing the Long Term Development Plan (RPJP) and the Medium Term Development Plan (RPJM), with the main objective of supporting Kuningan as an Agriculture and Tourism-based Conservation District. However, at the level of policy implementation, there is a tendency for violations of land use change. The issues discussed are how to implement law enforcement against violations of land use change, and what factors influence the law enforcement process. This research is non-doctrinal research methods with a socio-legal approach. The results of the study explain that the law on spatial planning and regional regulations concerning the RTRW has regulated the law enforcement mechanism both with administrative sanctions, civil sanctions and criminal sanctions. It's just that the sanctions that have been formulated in the law, the implementation is not optimal. Some factors that influence are economic, political and cultural factors. For this reason, it is necessary to carry out the reconstruction of regional policies in the spatial sector so that regulations and law enforcement can function optimally.

Keywords: RTRW, land use transfer, law enforcement,

INTRODUCTION

Management of spatial planning in Indonesia is regulated by Law Number 26 year 2007 concerning Spatial Planning. For its implementation, Government Regulation Number 26 year 2008 concerning National Spatial Planning and Government Regulation Number 15 year 2010 concerning Spatial Arrangement were made. For the Provincial and Regency/City levels, it is regulated in Provincial and District/City Regional Regulations concerning Regional Spatial Plans (RTRW) and Spatial Detail Plans (RDTR)¹. Various provisions of these laws and regulations are essentially aimed at maintaining spatial planning so that in planning, utilizing, and controlling spatial planning into one unit, it is hoped that it can realize

¹ Jamaludin Jahid, *Analisis Kritis terhadap Undang Undang Nomor 26 tahun 2007 tentang Penataan Ruang*, Jurnal Pleno Madani, Vol.1 No.1 tahun 2012

effective and efficient use of space and be able to support sustainable environmental management, which in turn provide welfare for the community.

In Kuningan Regency, control and utilization of spatial planning is regulated in Regional Regulation Number 26 year 2011 concerning the District Spatial Planning (RTRW) of Kuningan Regency 2011-2031. This RTRW Regional Regulation is a guideline in establishing the Long Term Development Plan (RPJP) and Kuningan Medium Term Development Plan (RPJM), which aims to support Kuningan as an Agriculture and Tourism-based Conservation District that is competitive. This is an implementation of the concept of Kuningan as a Conservation District.

Although it is not regulated in the Regional Regulation concerning the determination of Kuningan as a Conservation District, the Regional Government has issued various policies that are aligned in strengthening Kuningan as a Conservation District, including Regional Regulation Number 12 year 2007 on Conservation of Water Resources, Regional Regulation Number 11 year 2013 concerning Urban Forests, as well as various other policies. Therefore, it becomes a question in the implementation of the policies. The Regional Government has a sufficiently deep tendency to violate land function. Whereas spatial planning and utilization must also pay attention to the social functions of land as property rights, as stipulated in Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations, From the memory of explanation it is stated that those who have to fulfill social functions are all kinds of rights to land, not allowed to abuse land rights, and there must be a balance between public interest and individual interests.² According to Anis, the actualization of the social function of property rights on land is the actualization of abstract legal ideas into reality. Besides having rights, which means containing the function of facilities, the social function of land rights also contains obligations that are meaningful as a function of control of landowners.³

If the current violations of land conversion do not handle with firmly, it will cause various environmental and social problems⁴. In the last three years, Kuningan has experienced fresh water crisis, which was caused by the reduction of springs, which initially had 620 springs originating from Mount Ciremai, currently experiencing a decline to 523 springs. Likewise, in the agricultural area, a lot of agricultural land, especially rice fields that have

² Anis Mashdurohatun, 2016, *Mengembangkan Fungsi Sosial Hak Cipta Indonesia (Suatu Studi pada Karya Cipta Buku)*, UNS Press, page 94

³ Ibid, page 95

⁴ Elvie Dyah Fitriana, dkk, *Implementasi Kebijakan tata Ruang Wilayah Dalam mewujudkan pembangunan Kota Berkelanjutan*, Jurnal Administrasi Publik, Vol.2 No. 2, tahun 2016

changed functions. In the last three years, rice fields in Kuningan have shrunk by 262 ha or from 29,078 ha to 28,816 ha.⁵

Spatial management which is regulated in local regulations is ruled out and enforced when there is a desire to implement development with an orientation to increasing Regional Original Revenue. Investment interest in order to boost the rate of economic growth and regional income is often seen as a basis for changing or revising the adjusted spatial plan as a means of improvement for investment activities, whereas the problem faced at this time is not just a matter of formal legality, but the demands of the desired conditions so that the law is seen in a broader framework that is developing in society.⁶

Problem Formulation

From the explanation above, the problem formulation for this study is how is the implementation of law enforcement against violations of land use conversion? and what factors influence the law enforcement process in violation of land use conversion?

Research methods

The research method used was non-doctrinal research method. Where the law was conceptualized as the overall principles and rules governing human life in society and includes processes that realize the application of those rules in society.⁷ Thus, in this study tried to see the relationship between legal factors with extra-legal factors relating to the object under study.

The research approach used to discuss the problem, this research used socio-legal, because the research conducted focused on the implementation of local government policies in enforcing violations of land use change.

DISCUSSION

1. Law Enforcement against violations of land functions

According to Satjipto Rahardjo⁸, law enforcement is the enforcement of ideas or concepts about justice, truth, social benefits, and so on. So law enforcement is an attempt to

⁵Haris Budiman, *Spatial Policy Dilemma: Environmental Sustainability and Economic Growth*, Jurnal Untag Law Review (ULREV), Vol 2, Issue 1, May 2018, PP 1-9

⁶Esmi Warassih, *Pranata Hukum Sebuah Telaah Sosiologis*, (Badan Penerbit Universitas Diponegoro, Semarang, 2011) page 111-112

⁷Soetandyo Wignjosoebroto, *Silabus metode penelitian Hukum*, Program Pascasarjana Universitas Airlangga, Surabaya, page 1-3

⁸Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung, Penerbit Angkasa, 1991), page 115

realize these ideas and concepts into reality. Law enforcement against land conversion is imposed if there are irregularities in the laws and regulations governing spatial planning. Violations of land use change can have juridical consequences in the form of administrative sanctions, civil sanctions and criminal sanctions.

a. Administrative Sanctions

Administrative Sanctions are regulated in Article 61 to Article 63 of the Spatial Planning Act, in which each person is obliged to obey spatial plans, utilize space in accordance with permits, comply with the stipulated provisions, and provide access to areas that are stipulated by legislation as public property.

Violations of these provisions can be subject to administrative sanctions ranging from written warnings to the imposition of administrative fines. Article 108 of the Regional Regulation on Spatial Planning stipulates the procedures for imposing administrative sanctions which include, (1) written warnings for three times, (2) temporary suspension can be made through temporary cessation of activities, (3) temporary suspension of public services, (4) location closure can be done through location closure orders, (5) revocation of permits, (6) cancellation of permits, (7) demolition of buildings, (8) restoration of space functions, and (9) administrative fines.

In its implementation, the local government does not prepare the necessary facilities and infrastructure, so that the imposition of sanctions does not run optimally. This is allegedly not causing a deterrent effect for violators of land use change. The Regional Government through the Office of the Civil Service Police Unit has carried out the control of the parties suspected of violating land conversion, but because the sanctions from enforcement are administrative only, law enforcement is not yet effective.

b. Civil Sanctions

Law enforcement with Civil sanctions is regulated in articles 66 and 67 of the Spatial Planning Law and Article 111 of the Regional Regulation of the RTRW (Regional Spatial Planning). This provision gives guarantees to the public to file a civil suit to court if they feel disadvantaged in the transfer of land functions. Article 111 The Regional Regulations of the RTRW regulate the Right of the Community, namely that everyone has the right to, know the spatial plan, enjoy the added value of space as a result of spatial planning, obtain adequate compensation for losses arising from the implementation of development activities in accordance with the spatial plan, raise objections to the competent authority for non-development, submits a demand for cancellation of the permit and an unsuitable termination

of use, and submits a claim for compensation to the government and / or permit holder if the development activity is not in accordance with the spatial plan.

In its implementation, there have been no cases of disputes or civil claims relating to the conversion of land that was brought to legal channels. The problem of land conversion is always attempted to be resolved by deliberation and consensus. This indicates that the community does not fully trust the judicial process to solve the problem.⁹ The court was deemed ineffective in handling disputes, and was not independent. As a result, the Court's institutions which concretely carried out the task of enforcing the law were considered as a place to resolve disputes that were ineffective and inefficient.

c. Criminal sanctions

Criminal provisions are not regulated in the Regional Regulation of the Spatial Plan, but are regulated in the Spatial Planning Law. Parties who violate land use change apply the provisions of Article 69 paragraph (1) of the Spatial Planning Law, which regulates criminal sanctions for every person who does not obey the spatial plan with a 3 (three) year imprisonment or a maximum fine of Rp. 500,000,000 (five hundred million).

For the authorized official proven to abuse his authority, according to Article 73, is subject to the threat of imprisonment of 5 (five) years or a fine of a maximum of Rp. 500,000,000 (five hundred million rupiahs).

In the implementation, no criminal cases have been processed in court, even though allegations of violations of land use change occurred. There has been no genuine effort from the authorities authorized to process violations of criminal land use transfer to a person or company that violates land conversion functions or for authorized officials who give permission to use spatial planning that is not in accordance with its allocation.

The weak law enforcement according to Soerjono Soekanto is caused by the influence of law. It is not only limited to the emergence of obedience or compliance with the law, but includes the total effect of the law on the attitude or behavior of both positive and negative. Legal behavior can be used as an indicator of the problem of community legal awareness as stated in the indicators of legal behavior patterns.¹⁰

Violations of land use change tend to be resolved in the Regional Spatial Planning Coordinating Board (BKPRD) as stipulated in the Minister of Home Affairs Regulation Number 50 of 2009 concerning Guidelines for Regional Spatial Planning Coordination. The

⁹ Eman Suparman, *Arbitrase dan Dilema Penegakan Keadilan*, (Jakarta, PT Fikahati Aneska, 2013) page 2-3

¹⁰ Soerjono Sekanto, *Mustafa Abdullah*. (1980), *Sosiologi Hukum Dalam Masyarakat*. CV Rajawali, Jakarta, page 59

ad hoc body was formed to support the implementation of the Spatial Planning Law in the region.

2. Factors affecting law enforcement

Factors affecting law enforcement against violations of land use conversion can be described below:

a. Influence of Economic Power

The main problem faced by Kuningan Regency is the low Regional Original Revenue (PAD). Therefore the regional government has made the tax and tourism sectors become the biggest contribution to PAD Kuningan. The result is the loosening of permits for investment in housing development and other economic sector development.

The high regional desire to continue to increase PAD often results in the executive and legislative parties. They easily issue licenses in the investment sector with the hope that they will contribute greatly to regional revenues. Local governments do not empower the resources they have by paying attention to the capabilities, authority and trust¹¹. As a result, policies are sectorial regardless of implications and impacts in the future.

b. Influence of Political Power

There has not been any political will from the local government to immediately establish a Spatial Detail Plan (RDTR) as mandated by the RTRW Regional Regulation. This shows that the position of the Regional Head as a decision maker determines the decision making process that can prioritize the wants and needs of the community rather than merely the interests of the group or class, because this will lead to policies that are not good to implement.

Unclear regulation between the Regional Development Planning Agency (BAPPEDA), Integrated Licensing Management Agency (BPPT), and Public Works and Spatial Planning (PUPR) is one of the factors not yet in place for the licensing system. Bureaucratic reform in the licensing sector has not yet touched the licensing in the field of housing construction.

c. Effect of Cultural Strength

As a society that respects Customary Law, the Kuningan community has a style described by Hilman Hadikusumah, namely¹²: traditional, meaning that it is hereditary,

¹¹ Anggiat M Sinaga dan Sri Hadiati, *Pemberdayaan Sumber Daya Manusia*(Jakarta, Lembaga Administrasi Negara, 2001) page 21

¹² Tolib Setiady, *Intisari Hukum Adat Indonesia: Dalam kajian Kepustakaan*, (Bandung, Penerbit Alfabeta, 2013) page 32-36

religious, togetherness, open and simple, meaning that it can accept the entry of elements that come from outside as long as it does not conflict with the legal soul custom itself.

This attitude is reflected in managing the living environment that has characteristics, lack of understanding of spatial management patterns that are consistent with the characteristics of protected areas and disaster-prone areas. The view that environmental conservation efforts are a cost burden that can reduce profits, and the economic scale of activities is too small, so the benefits obtained are not able to cover the costs needed to implement the pattern of management of activities that are environmentally sound.

CONCLUSION

1. Although there has been land use transfer that could have an impact on people's lives and the environment, but the law enforcement process has not run optimally, cases of violations of land use change are only resolved at the ad hoc Coordination Agency level.
2. Some factors that influence the process of law enforcement so that it is not optimal include economic strength, political factors and cultural factors.

REFERENCES

- Anggiat M Sinaga dan Sri Hadiati, 2001, *Pemberdayaan Sumber Daya Manusia*, Jakarta, Lembaga Administrasi Negara,
- Anis Mashdurohatun, 2016, *Mengembangkan Fungsi Sosial Hak Cipta Indonesia (Suatu Studi pada Karya Cipta Buku)*, UNS Press
- Eman Suparman, 2013, *Arbitrase dan Dilema Penegakan Keadilan*, Jakarta, PT Fikahati Aneska
- Endang Sutrisno, 2013, *Rekonstruksi Budaya Hukum Masyarakat Nelayan Untuk Membangun Kesejahteraan Nelayan*, Genta Press, Yogyakarta
- Elvie Dyah Fitriana, dkk, 2016, *Implementasi Kebijakan Tata Ruang Wilayah Dalam Mewujudkan Pembangunan Kota Berkelanjutan*, Jurnal Administrasi Publik, Vol.2 No. 2,
- Esmi Warassih, 2011, *Pranata Hukum Sebuah Telaah Sosiologis*, Badan Penerbit Universitas Diponegoro, Semarang,
- Haris Budiman, 2018, *Spatial Policy Dilemma: Environmental Sustainability and Economic Growth*, Jurnal Untag Law Review (ULREV), Vol 2, Issue 1, May 2018

- Jamaludin Jahid, *Analisis Kritis terhadap Undang Undang Nomor 26 tahun 2007 tentang Penataan Ruang*, Jurnal Pleno Madani, Vol.1 No.1 tahun 2012
- Satjipto Rahardjo, 1991, *Hukum dan Masyarakat*, Bandung, Penerbit Angkasa
- Soerjono Soekanto, 1980, *Mustafa Abdullah. Sosiologi Hukum Dalam Masyarakat*.CV Rajawali, Jakarta,
- Tolib Setiady, 2013, *Intisari Hukum Adat Indonesia: Dalam kajian Kepustakaan*, Bandung, Penerbit Alfabeta
- Umar Said Sugiarto, 2013, *Pengantar Hukum Indonesia*, Jakarta, Sinar Grafika