

LEGAL ARRANGEMENT OF CITY ROOM UTILIZATION IN SUPPORTING GREEN OPEN SPACES IN KUPANG CITY

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ABSTRACT

Spaces in Kupang City are divided into seven (7) Parts of Urban Areas (BWK), which contain Green Open Space (RTH) with essential functions, including environmental, economic, social and educational functions. It is set in the Regional Regulation (Perda) Kota Kupang No. 12 In 2011 t Entang Detailed Spatial Plan (RDTR) Kota Kupang Year 2011-2031. The Regional Regulation comes from the mandate of Law No.26 / 2007 on Spatial Planning and Law No.32 / 2009 concerning Environmental Protection and Management that requires that in Kupang city must have a minimum green space area of 30%, consisting of 20% public green space and 10% Private green space is part of the function of the environment. This study aims to analyze the legal arrangements for the use of urban space in support of green space in the city of Kupang. The method used in this study is the study of Normative Law with data collection techniques in the form of literature studies related to aspects of spatial law, green space, and the environment. Then analyzed using Hans Kelsen's theory of the legal system. Results of the study showed that p ettings city space utilization law has not been able to support the green space in the city of Kupang. There are several Articles which are incompatible both horizontally and vertically. Incompatibility this shows the unobedient legal norms according to the theory of Hans Kelsen about the legal system. Originally the RDTR law needed to support green open space in the city of Kupang.

Keywords: *Kupang city, spatial use, legal arrangement*

INTRODUCTION

Space is "the physical appearance of a region in geographical and geometric dimensions which is a container⁶¹ for humans in carrying out their life activities.⁶² The existence of space greatly affects human survival. Therefore, in planning the area, the utilization and management of space must be as wise as possible so that harmony can be realized to support the development process. The development in question is not just about carrying out physical development, but in essence the of environmentally *sustainable development (sustainable development)*.⁶³

⁶¹ Robert Kondoatie & Roestam Syarief, Water Management, Disaster Management, Infrastructure Management, Regional Spatial Planning, Environmental Management (Yogyakarta: Andi, 2010), page. 399

⁶² Juniarso Ridwan and Achmad Sodik. Law Tata space in KonsepKebijakan Autonomous Regions, (Bandung: Nuance, 2008), page. 6

⁶³ Agri Chairunisa Isradjuningtias, 2017. Factors Cause of Irregularities in Spatial Planning for Condominium Development in the City of Bandung. Journal of Veritas et Justitia, 3 (2): 441.

The relationship between the principles of environmentally friendly development with the concept of sustainable development is compared to two sides of the same coin, so that they are interrelated.⁶⁴ This linkage requires the principle of environmentally sound development to be a key word (*keywords*) in the context of carrying out development both in the present and in the future.⁶⁵

The practice of spatial planning that has been carried out in Indonesia, both at the provincial and district / city levels, has for a number of decades been *centralized* (focusing on the executive by defining the legislative and community roles), *elitist* , *rationalist* (upholding logic and deductive assumptions and scientific procedures), *deterministic* (efforts to homogenize models and programs by sheltering behind efficiency), *dualism* (separation of the realms of theory and practice) and procedural so that there is collaboration between government bureaucracy and corporate planner consultants (*planners*) who only function as mere analysts with mere data processing ratios , then make assumptions (assumptions) that often do not see empirical phenomena.⁶⁶

Planning is not developed based on theory, but on the contrary planning theory develops as a continuation of experience regarding human efforts to overcome the state of their environment. History has noted that at the theoretical level, the *deterministic-rationalistic* approach in urban and regional planning has drawn criticism and has been declared a failure.⁶⁷ This failure appears in development that does not apply the principle of sustainability to natural resources and further damages human environmental governance.⁶⁸

⁶⁴ Daud Silalahi, AMDAL in the Indonesian Environmental Law System, (Bandung: Mandar Maju, 1995), page. 168

⁶⁵ Koesnadi Hardjasoemantri. Environmental Management Law, (Jogjakarta: Gadjahmada University Press, 1999), page. 127

⁶⁶ Imam Koeswahyono, Law on Land Stewardship and Spatial Planning in Indonesia, (Problems between Text and Context) , (Malang: UB Press, 2012), page. 104.

⁶⁷ T. Nazaruddin. 2015. Urban Planning Based on Integrative Law Towards Sustainable Urban Development. J urnal Cita Law, 3 (2): 214.

⁶⁸ David Silalahi. Environmental Law in the Indonesian Environmental Law Enforcement System , (Bandung: Alumni, 1999), page. 18

For the sake of achieving environmental sustainability, the determination of the area with certain functions needs to consider the potential and conditions of an area,⁶⁹ it must be in accordance with the capability, suitability and carrying capacity of the land.⁷⁰ In line with this, a strong legal product is needed and is able to provide certainty in the context of the realization of environmental sustainability in a spatial planning.

Spatial planning in Indonesia experiences fundamental developments and changes. Initially the science of planology was only applied to urban planning and the nature of its use was leaning towards the physical aspect now developing towards *regional development planning*. Spatial planning is not just spatial planning, but also includes spatial use and control.⁷¹ This is an inseparable unity between one and the other and must be done in accordance with the rules of spatial planning.⁷² This is the concept of Law Number 26 Year 2007 concerning Spatial Planning which is present with the aim of controlling and controlling spatial planning in Indonesia.

Law Number 26 Year 2007 regarding Spatial Planning has mandated that each city in its spatial plan is required to allocate at least 30% of its space or territory to Green Open Space (RTH), where 20% is allocated for public green space and 10% is allocated for Private green open space on land owned by the private sector or the community. The development, structuring and fulfillment of green open space for all components of the urban environment is the responsibility of all stakeholders, whether the central, provincial or regional government, the private sector, and the community.⁷³

The principle of spatial planning according to the spatial planning law mentioned above includes: *first*, the use of space for all interests in an integrated, efficient and effective,

⁶⁹ Raharjo Adisasmita, *Regional Development and Spatial Planning*, (Yogyakarta: Graha Ilmu, 2010), page 4

⁷⁰ Mahfudz Ali. 2016. Implementation of Semarang City Government Policy in Organizing Industries in Simongan Village, West Semarang District. *UNTAG Scientific Journal Semarang*, 5 (1): 100

⁷¹ T. Nazaruddin. 2015. *Op Cit*, page. 217

⁷² Helmi, *Environmental Licensing Law*, (Jakarta: Sinar Grafika, 2012), page. 115.

⁷³ Ni Putu Depi Yulia Peramesti. 2016. Implementation of Regional Spatial Planning Policy in Provision of Green Open Space in South Jakarta Administrative City, DKI Jakarta Province. *Journal of Politology*, 3 (1): 1.

harmonious and balanced and sustainable manner; and *second* , Openness, equality, justice and legal protection,⁷⁴ achieving environmentally sustainable development according to the concept of Law Number 32 Year 2009 on Protection and Environmental Management .

Achieving environmentally friendly development in the context of the availability of green space does not only require good planning but also requires supervision in the implementation of the plan. Meanwhile in the aspect of regional autonomy, spatial planning is carried out systematically for the benefit of the community primarily in their respective regions, resulting in an all of types, even contrary to national spatial plans, provincial spatial plans, also in contradiction with surrounding spatial plans.⁷⁵

Condition depicted is one of the problems in the development of today's cities, urban development fairly quickly with a fairly rapid population growth becomes an urgent issue in the discussion on environmental sustainability for future generations of successors. Spatial planning becomes important, so every province, city / regency must have rules as guidelines in spatial planning and references in the implementation of development.⁷⁶

Spatial Plan Space (RTRW) Kota Kupang in detail regulated in Bylaw (Perda) Kota Kupang Number 12 In 2011 about Detailed Spatial Plan (RDTR) Kota Kupang Year 2011-2031 . As a follow up to the Kupang City Regulation No. 11 of 2011 concerning Kupang City Spatial Planning. The Regional Regulation comes from the mandate of Law Number 26 of 2007 concerning Spatial Planning and Law Number 32 of 2009 concerning Environmental Protection and Management which requires that every city in Indonesia including Kupang city must have a minimum green space area of 30%, consisting of 20% of public green open space and 10% private green open space are part of the environmental function.

⁷⁴ Fence M. Wantu. 2012. Realizing Legal Certainty, Justice and Utilization in Judge's Decisions in Civil Court, *Journal of Legal Dynamics* , 12 (3): 484

⁷⁵ Suharyo. 2017. Problems of Law Enforcement on *Spatial Planning in the Implementation of Regional Autonomy (Problem Enforcement of Spatal Planning Law in the Implementation of Regional Autonomy)* . *Journal of Rechts Vinding Media for National Law Development*, 6 (2): 181.

⁷⁶ Darmawati, Choirul Saleh, Imam Hanafi. 2015. Implementation of Regional Spatial Planning (RTRW) Policy in the Perspective of Sustainable Development. *Journal of Social Sciences and Political Sciences*, 4 (2): 378

In accordance with the Regional Regulation in the context of green space as part of the environmental function, there is a Kupang City Regulation No. 7 of 2000 concerning Green Open Space that is present to realize sustainable and environmentally sound development in order to increase development benefits. The existence of these two Regional Regulations gives their own color in the development.

Based on the background mentioned above, the purpose of this study for analyzing regulation laws against the use of urban space in favor of green space in the city of Kupang.

MATERIALS AND METHODS

This study uses normative legal methods that are used in analyzing legal material by referring to legal norms set forth in legislation. Data collection techniques in the form of literature study through the identification procedure and inventory of legal materials include:

1. Primary legal materials, namely legal materials that are authoritative in the form of legislation,⁷⁷ related to spatial planning, green space, and the environment.
2. Secondary legal material, namely legal material that provides an explanation of the primary legal material,⁷⁸ in the form of expert opinions obtained from various literatures both from books, government reports and various journals related to this study.
3. Tertiary legal materials are legal materials that provide explanations and instructions for primary and secondary legal materials.⁷⁹ Obtained from legal dictionaries, Indonesian dictionaries, English dictionaries, and Encyclopedias.

⁷⁷ Peter Mahmud Marzuki, *Method of Legal Research* (Jakarta : Kencana, 2005), page. 141.

⁷⁸ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI-Press, 2007), page. 52

⁷⁹ *Ibid*, page. 52

The legal material obtained, inventoried and identified then analyzed qualitatively refers to Hans Kelsen's theory of the legal system which is a ladder system with tiered rules namely the lowest legal norms must hold to higher legal norms .

RESULTS AND DISCUSSION

For the sake of realizing environmentally sustainable development, a legal arrangement that is tiered, consistent and has comprehensive content is needed, both in the field of spatial planning and the environment.

Appropriate consideration of the establishment of Regional Regulation Kupang Nomor 12 Year 2011 about Plan Details money Kupang Year 2011-2031 contained in letter (a), (b) and (c) that the establishment of these regulations is born of the provisions of Article 27 paragraph (1) of Law Number 26 Year 2007 concerning Spatial Planning, the Regional Government shall be given the authority to administer City spatial planning.⁸⁰ Furthermore, that in accordance with the Regional Regulation No. Kupang. 11 of 2011 concerning the Kupang City Spatial Plan, it needs to be followed up with more detailed urban spatial planning⁸¹ which aims to direct the use of space in the Kupang City area in an effective, effective, harmonious, balanced and sustainable manner for improving community welfare and development order security, as well as building construction permits, it is necessary to draw up detailed spatial plans for the city.⁸²

In line with this, the formation of Kupang City Regulation Number 7 of 2000 concerning Green Open Space with 2 points of consideration that: to realize sustainable development and environmentally sound and in order to increase development benefits that can be enjoyed by all levels of society, it is necessary to strive for harmony and sustainability

⁸⁰ Regional Regulation Kupang No mor 12 Year 2011 t Entang Plan Tata Details R money Kupang Year 2011-2031 , K onsid e ran weigh in subparagraph (a)

⁸¹ Ibid , Konsideran weigh in subparagraph (b)

⁸² Ibid, Konsideran weigh letters (c)

of the environment,⁸³ to increase right development in various fields, especially development in urban areas has resulted in an increase in the welfare of urban living, it still had a negative impact on the environment from the aspect of city space management, in the form of reduced space of Green Open area which serves to maintain the sustainability of ecosystems city, so it needs to be controlled and regulated through Regional Regulations.⁸⁴

If judging from the consideration of the presence of both of these rules then demonstrate their suitability in the form of an arrangement that is mutually supportive to keep space of Green Open that serves to maintain the sustainability of ecosystems cities with the rapid development of spaces woke up and maintain balance, harmony, and harmony between the room woke up with RTH. The two Regional Regulations were also present in view of Law No.26 of 2007 concerning Spatial Planning and Law No.32 of 2009 concerning Environmental Protection and Management.⁸⁵

However, such considerations are not fully optimally consistent in conformity in the regulation of loading material and its legal norms. This can be seen in a number of Articles which do not correspond either horizontally or vertically to the spatial planning law and the environment. These can be displayed as follows:

1. Discrepancy Settings horizontally

Kupang City Regional Regulation No. 12 Year 2011 about Plan Space Details money Kupang Year 2011-2031, organize Space Open Green and Conservation namely in Article 22 Paragraph (1) to (9), namely:

(1) Urban conservation area in the form of green space with a percentage of 30% of the total area and Urban Forest with a percentage of area ranging from 30% of the area of the Watershed (DAS).

⁸³ Regional Regulation Kupang Number 7 Year 2000 of the Green Open Space, K onsideran weigh letters (a),

⁸⁴ Ibid, K onsideran weigh the letter (b),

⁸⁵ Ibid, preamble given the number 10 and Regulation of Urban Kupang No mor 12 Year 2011, *Op Cit*, K onsideran given the number 23.

- (2) Urban conservation areas in the form of green open space, urban forests, river borders , coastal borders, springs borders, *buffers* , and *catchment areas* allocated are distributed in each BWK of Kupang City;
- (3) Green open spaces in each BWK in Kupang City are:
 - a) public open space in the form of conservation includes green open spaces such as city parks, mangrove forest areas, campsites, protected forests, river borders, beach borders, spring waters, reservoir borders, Kolhua weir borders, graves and land directed as *Catchment Area* ; and
 - b) private open space in the form of garden land is directed to maintain and secure trees, greening can function as a shelter element, air filter, aesthetic element and support rainwater absorption for ecological balance and environmental preservation .
- (4) Green procedures for funerals are directed towards the types of vegetation used are strong plant species, do not require intensive care and their roots do not affect the construction of buildings and soil structures.
- (5) Green system for road dividers and roadside is recommended for the types of vegetation used are strong plant species which do not collapse quickly, do not require intensive maintenance and their roots do not affect the construction of buildings and soil structures.
- (6) Public green open space in each Kupang City BWK in the form of city parks is allocated to every part of the city area (BWK) and environmental units;
- (7) around 10% of private green open space should be allocated to each house arranged in the Building Intensity; and
- (8) Approximately 20% of the public green open space should be allocated and scattered and what is now needed is structuring, namely:

- a) development of the existing city park at the BWK II Roundabout at El Tari II Road and Sasando Monument park at BWK II at Kartini Street;
 - b) construction of a new city park on the Reclamation land of the Old City center area at BWK I around the central area of Kota Baru village of Kelapa Lima (city square), City Public Park and Nostalgia Park at BWK II Jl. Eltari Kelurahan Kelapa Lima; and
 - c) Urban Forest in BWK VI Naioni and Fatukoa Sub-Districts.
- (9) Land area for green space in each Kupang City BWK as follows:
- a. BWKI area of RTH 329.75 Ha;
 - b. BWK II area of RTH 152.93 Ha;
 - c. BWK III area of RTH 315.12 Ha;
 - d. BWK IV area of RTH 824.90 Ha;
 - e. BWK V area of RTH 209.68 Ha;
 - f. BWK VI area of RTH 2,240.18 Ha;
 - g. BWK VII area of RTH 784.50 Ha.

TOTAL RTH 4,857.06 Ha or 29.38 percent .

Settings Article 22 Regulation RDTR material horizontally opposed cargo with Article 1 letter (f) Regional Regulation of RTH , that green open spaces is :⁸⁶ part of urban spatial planning that functions as a city park green area, urban forest green area, urban recreation green area, sports area green area, cemetery green area, agricultural green zone, green belt area and green yard area. These articles are opposed horizontally to Article 22 as a percentage of 30% is only shown in the area of the Watershed (DAS) and the Forest of the city.

⁸⁶ Kupang City Regulation Number 7 of 2000 concerning Green Open Space, Article 1 letter (f)

Article 22 of the well is not in accordance with Article 5 Paragraph (1) RTH Rule, visible restriction on the scope of RTH in perspective of location of development in areas allotment of urban space, namely:

- a. Parks and Sports Fields;
- b. Cemetery Park Area;
- c. Industrial Borders;
- d. River Border Area;
- e. Beach border area;
- f. Cliff and Hill Green Areas;
- g. Green Road Area;
- h. Agricultural Area;
- i. City Forest Zone;

Starting from Article 5 Paragraph (1) above only points d and i are the perspective of green space in urban space, so it can be said that the regulation of Article 22 of the RDTL Regional Regulation has a narrow perspective than the green space concept stipulated in Article 5 paragraph (1) of the Regional Regulation RTH based on the RTH function is not only on the extent of watersheds and urban forests but rather on : Parks and Sports Fields; Cemetery Park Area; Industrial Borders; Beach border area; Cliff and Hill Green Areas; Green Road Area; and Agricultural Areas.

The definition of urban forest in relation to the provision of land in the city, by the Mayor of Kupang, has specifically regulated the issuance of the Kupang Mayor's Regulation No. 14A of 2011 concerning the Determination of Urban Forest Areas in the Kupang City Region. Determination of the Mayor of Kupang in connection with the use of the El Tari Kupang Air Force Base land area of 20 ha to be used as a forest area of the City of Kupang. Regional law is needed to regulate the special interests faced by local governments

related to regional environmental protection. Thus the terms of regulation regarding existing regional legal material are still limited in scope of the regulations.

The above concept confirms that green space in the form of urban forest is identical to its function and role, among others : as an area of recreation, social, cultural, aesthetic, physical city, ecological (environment) , education and has a high economic value for humans and for urban development . Green open space has an important role in providing freedom of movement for its users, because the activities and developments of the city are increasingly developing in accordance with the demands and needs of the people who live in them. This freedom cannot be narrowed with a 30% perspective only from the extent of watersheds and urban forests.

2. Incompatibility Settings of Vertical

Vertical discrepancies are apparent in the provisions of Article 22 (9) of the RDTR Regional Regulation with Article 29 Paragraph (2) of Law No. 26 of 2007 concerning Space Mapping. Explanatory follows:

Article 22 (9) regulates the area of land for green space in each B WK Kupang City as follows: a. BWK I area of RTH 329.75 Ha; b. BWK II area of RTH 152.93 Ha; c. BWK III area of RTH 315.12 Ha; d. BWK IV area of RTH 824.90 Ha; e. BWK V area of RTH 209.68 Ha; f. BWK VI area of RTH 2,240.18 Ha; g. BWK VII RTH 784.50 ha area, and account RTH 4857.06 hectares or 29.38 percent. This percentage is not in accordance with the proportion of RTH 30% regulated in Article 29 Paragraph (2) of Law No. 26 of 2007 concerning Spatial Mapping, that the proportion of green open space in urban areas is at least 30 (thirty) percent of the total area of the city.

Incompatibility second article above appeared in percentage of green space area, the RTH at Rule RDTR only 29.38 per cent and not 30% as the minimum condition stipulated in the Law on Spatial Planning. This shows the inconsistency as well as

disobedience from the normative aspect. In line with this, if guided by the content of Article 22 (9) the Regional Regulation on RDTR places more emphasis on the concept of a definitive and non-compliant spatial concept.

Incompatibility some settings chapter between the two regulations are above both horizontally and vertically by Act design room showed that the legal arrangements of spatial detail in the city of Kupang unobey the norms according theory of Hans Kelsen states that the legal system is a system of stairs with tiered rules. The relationship between norms governing the actions of other norms and other norms can be called a super relationship and subordination in a spatial context.⁸⁷ Norms that determine the making of other norms are superior, whereas norms are made inferiorly. Making that is determined by a higher norm becomes the reason for the validity of the overall legal system that forms a unity.

Kelsen states that: *"The unity of these norms is constituted by the fact that the creation of the norm - the lower one-is determined by another-the higher-the creation of what is determined by a still higher norm, and that this regressus is terminated by the highest, the basic norm which, being the supreme reason of validity of the whole legal order, constitutes its unity"*⁸⁸ ("Unity of these norms is based on the fact that the creation of the norm - lower - is determined by the other - higher - the creation of which is determined by the norm of a higher, and that regression is terminated by a norm highest, the basic norm which as the highest reason for the validity of the entire legal order, is the unity).

Based on the theory of Hans Kelsen above that plan detailed spatial urban area Kupang not ignore the existence of RTH and only definitive that put more emphasis on the concept of spatial rather than the green concept (concept environment) which has a function and essential role late with the development of development of space in the city of

⁸⁷ Asshiddiqie, Jimly, and Safa'at, M. Ali, Theory Hans Kelsen About Law, Cet I, Secretariat General & Registrar of the Indonesian Constitutional Court, Jakarta, 2006, page.110

⁸⁸ Kelsen, Hans, General Theory of Law and State, Translated by Annders Wedberg, Harvard University Printing Office Cambridge, Massachusetts, USA, 2009, page.124

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