

Analysis Of Violations Construction Of Buildings In Normative Law

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Abstract

Spatial planning is one of the challenges faced by the government City due to violations of the construction of buildings by the community that not only harm the surrounding community but also disrupt the spatial order that has been planned by the city government. This study discusses several law enforcement regulations violation of the construction of buildings in the city of Semarang by using the method empirical juridical research and statute approach method conducted by reviewing legislation and interviews with the Department related to the purpose that people understand urban planning and the consequences if breaking.

Keywords: Urban Planning, Law Enforcement, Building

1. INTRODUCTION

Urban spatial planning is a form of government action in the framework of spatial planning and monitoring the development of the region has been arranged in such a way and poured into a policy. Structuring space is a challenge and a big problem faced by the government Indonesia given the geographical changes and population growth increased make the government in doing spatial planning should pay attention all aspects include economic, social, and political aspects. Urban life increasingly uncomfortable due to increasing population density, increasing the density of residential areas, and lack of green open space. Similarly with rapid construction of buildings in all corners of the city of Semarang is currently assessed increasingly uncontrolled by not paying attention to green open spaces that become source of recharge and do not pay attention to the provisions contained in the establishment permit building. So that the community economy can grow and develop, development in Semarang city must be adapted to the needs of the community. Although activities the development has a positive impact with the opening of many employment lands new so as to prosper the surrounding community, but consciously or not the consequences of this development also harm the lives of surrounding communities. The phenomenon of urban development that is

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clearly visible is the rapid growth of the city become less harmonious and less well-planned impression that has a consequence of the emergence environmental problems that have become a new problem because with the development unguided and controlled is often the case in various natural disasters.

Requirements in ensuring the functioning of spatial planning, in addition to regional settings, the necessary provisions in the regulation of the development process building to reduce the presence of violations in the construction of buildings whose designation is not appropriate and has an impact on the surrounding environment.¹ is known to be some things that deviate at the time of construction of buildings have an impact on the environment. The problem that often occurs is where the parties both individuals and private institutions often ignore the rules during the process development where they build regardless of the impact on environment around the construction area. Enactment Of Law Number 11 Year 2020 on job creation change, delete and / or set new settings to several laws, one of which is the Spatial Planning Act and building laws by simplifying the requirements basic licensing attempt to change the building permit (IMB) into Building approval (PBG) contained in Government Regulation Number 16 Year 2021 on the implementation of Law No. 28 of 2002 on Building as a derivative of Law Number 11 of 2020 on copyright Work, where in Article 1 Number 17 of the government regulation states, "PBG is a license given to the owner of the building to build new, change, expand, reduce, and / or maintain buildings in accordance technical standards of building buildings". So that PBG is a mandatory requirement for all layers community that will build a good building a simple dwelling house, house complex, office buildings, educational buildings, and buildings that designation for services to trade.

From some of the above explanations the author will discuss and analyze how law enforcement arrangements made by the city government in Indonesia against violations of spatial planning, especially against violations of development buildings that are not in accordance with the arrangement of space and violate Specific local regulations and discuss the obstacles faced by the government in enforcement proceedings against violations of construction building

2. RESEARCH METHOD

Research methods used in this study in the form of research methods Normatif approach to the method of statute approach or regulatory approach legislation that examines secondary data in the form of legislation, minutes, agreements, research results, and other references, such as laws-

Law Number 11 of 2020 on job creation, Government Regulation Number 16 of the year 2021 on the implementation of Law No. 28 of 2002 on Building.¹

3. RESULT AND ANALYSIS

Regulations on spatial set in Law Number 26 year 2007 on Spatial Planning in which several articles amended and adjusted in Law Number 11 of 2020 concerning job creation used as the basis for guidelines in implementing spatial planning and has a function to realize the protection function of space as well as to prevent the emergence of negative impacts resulting from inappropriate space utilization.² In construction of buildings, the law on spatial planning should become a basic guideline because in this law regulates the utilization of space by instructing the owner of the building on when carrying out the construction must be in accordance with the program of space utilization regions and strategic areas. Article 1 point 5 of Law No. 26 of 2007 about spatial planning States, “spatial planning is a system of spatial planning process, space utilization, and utilization control space”, so that spatial planning is a system that contains meaning that the planning, utilization, and control of space utilization should adjusted to the provisions that have been set in the National Spatial Planning, province, as well as district/city and should be interpreted as a unity can not be separated.³

Implementation of Spatial Planning under Article 3 of Law Number 26 of 2007 on Spatial Planning mention “aims to creating a national space that is safe, comfortable, productive, and sustainable based on insight into the archipelago and National Resilience with: a. the realization of harmony between the natural environment and the artificial environment; b. realization of integration in the use of Natural Resources and resources artificial resources with regard to human resources; and c. realization of space function protection and Prevention of negative impacts on environment due to space utilization.

Article 17 Number 29 of Law Number 11 of 2020 on job creation mention the provisions in Article 61 of Law No. 26 of 2007 about spatial planning changed that, “in the utilization of space, each person mandatory: a. comply with the spatial plan that has been set; b. utilizing space in accordance with the spatial plan c. comply with the provisions set forth in the appropriateness of utilization activities Space; and d. provide access to

¹ Ariman Sitompul, Metode Penelitian Hukum Normatif (Strategi Praktis Penulisan Skripsi, Tesis & Disertasi), Mazda Media, Malang, 2022, pp. 109 lihat juga Bambang Sunggono, Metodologi Penelitian Hukum, PT Raja Grafindo Perseda, Jakarta, 2009 pp. 41

² Pranata, Y. 2013. Pemerintahan Daerah dalam Meningkatkan Kualitas Pelayanan Ijin Mendirikan Bangunan (IMB). Jurnal Administrasi Publik, Vol.1, No. 2013.

³ Yunus Wahid. 2014 Pengantar Hukum Tata Ruang. Jakarta : PT. Kharisma Putra Utama, 2014, pp.9 lihat juga Ridwan, Hukum Administrasi Negara, P.T Raja Grafindo, Jakarta, 2006, pp.234

the area by the provisions of legislation- invitations are declared public property.

For anyone who violates any provisions in the utilization of space will be subject to administrative sanctions provided for in Article 63 of the law Number 26 of 2007 on spatial planning, namely: a. "written warning; b. temporary suspension of activities; c. temporary suspension of public services; d. location closure; e. revocation of license; f. revocation of license; g. demolition of buildings; h. restoration of space functions; and / or i. administrative fines."⁴

In addition to administrative penalties imposed on violators of structuring space, criminal sanctions are also given against anyone who does not obey the spatial planning. Article 17 number 32 Law Number 11 year 2020 on job creation mentions the provisions in Article 69 paragraph (1) of the law- Law No. 26 of 2007 on Spatial Planning, "every person in doing business and / or activities utilizing the space that has been set without having approval of the appropriateness of the use of space as referred to in Article 61 letter A which results in a change in the function of space shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp 1,000,000,000.00 (one billion rupiah). Further in Article 69 paragraph (2) it says, "if the crime referred to in Paragraph (1) resulting in loss of property or damage to goods, perpetrators sentenced to a maximum imprisonment of 4 (four) years and a maximum fine a lot of Rp 2,500,000,000.00 (two billion five hundred million rupiah)." When the action the crime resulted in the death of the person, in accordance with Article 69 paragraph (3), "perpetrators shall be punished with a maximum imprisonment of 15 (fifteen) years and a fine at most IDR 8,000,000,000.00 (eight billion rupiah)."

Furthermore, Article 61 letter b has mentioned that, "utilizing spatial planning in accordance with the spatial plan", but in fact although there are already rules that jelsapun still occur violations of regulations in the process development that does not pay attention to spatial planning, so in accordance with Article 17 Number 33 of Law Number 11 of 2020 on job creation mention the provisions in Article 70 of Law No. 26 of 2007 about the arrangement of space:

- a) "Any person who makes use of space not in accordance with the planning permission of tata Chamber of the Competent Authority referred to in Article 61 letter b which resulted in changes in the function of space shall be punished with criminal maximum imprisonment of 3 (three) years and a maximum fine of Rp 1,000,000,000.00 (one billion rupiah).

⁴ Nugradi, Identifikasi ruang terbuka hijau Kota Semarang. Jurnal Teknik Sipil dan Perencanaan, Vol.11, No. 1, 2016 lihat juga N.M Spelt dan J.B.J.M ten Berge, "Pengantar Hukum Perizinan", yang disunting oleh Philipus M. Hadjon, Surabaya: Yuridika, 1993 , pp. 2.

- b) If the crime referred to in Paragraph (1) resulted in loss of property or damage to goods, the perpetrator shall be punished with maximum imprisonment of 4 (four) years and maximum fine Rp2, 500, 000, 000.00 (two billion five hundred million rupiah).
- c) If the crime referred to in Paragraph (1) resulted death of the person, the perpetrator shall be punished with imprisonment for a maximum of 15 (five twelve) years and a maximum fine of Rp8, 000, 000, 000.00 (eight billion rupiah).”

Violation of space utilization provisions stipulated in Article 17 number 34 of Law Number 11 of 2020 concerning job creation States provisions in Article 71 of Law No. 26 of 2007 on structuring Space, namely “everyone who does not comply with the provisions set forth in space utilization permit requirements as meant in Article 61 letter c, shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine Rp1, 000, 000, 000.00 (one billion rupiah).”⁵

Spatial planning is essentially a means to realize sustainable development that includes environmental considerations in the wisdom of development so that development is not only for solve the problem of improving the current well-being, but also to improved long-term well-being Regulations on the maintenance of buildings have been established and made in such a way that the building will be built worthy to be occupied so it will create an environment that is comfortable to live in.⁶ In order implementation of building construction, government forming and passed Law No. 28 of 2002 on buildings then some provisions in the Act were amended by law- Law No. 11 of 2020 on job creation to make it easier for community in obtaining permits, one of which is to change the permit Establish building (IMB) into building approval (PBG). Differences between IMB with PBG is IMB is a permit that must be obtained applicant / owner of the building before or when erecting the building with attach technical building, while PBG is more as a licensing rule which governs how buildings are erected.⁷

Sometimes in the construction of buildings there are violations deliberately done by the owner of the building with no regard to what has been listed and allowed in the PBG, because in the PBG already contained details buildings in the form of building functions, building boundaries are allowed to wake up, when the owner of the building deliberately committed a violation resulting in harm to the environment, the sanctions will be imposed through the parties the authorities. Penalties given to offenders in the form of sanctions PBG administrative as referred to in Article 24 Number 42 of the job creation law, which refer to the provisions of Article 45 of Law No. 28 of 2002 on building The building was changed, namely:

- a) "written warning,

⁵ Denis Ventidinata Munif, Penegakan Hukum Terhadap Pelanggaran Pembangunan Bangunan Gedung di Kota Semarang, *Magistra Law Review*, Vol. 3 No. 2, 2022, pp. 128-129

⁶ Ariman Sitompul, Kebijakan Kriminal Dalam Sistem Penanggulangan Kejahatan Di Indonesia, *Mazda Media*, Malang, 2023, pp.39.

⁷ Roman Situngkir, Peralihan Izin Mendirikan Bangunan Menjadi Persetujuan Bangunan Gedung Berdasarkan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, *Jurnal Juris Studia*, Volume 2 Nomor 3, Oktober 2021, pp. 665

- b) Restrictions on development activities,
- c) Temporary or permanent suspension of construction work,
- d) Temporary or permanent termination of building utilization;
- e) Building approval freeze;
- f) Revocation of building approval;
- g) Freezing certificate of building function;
- h) Revocation of building function certificate; or
- i) Building demolition orders.”

Indeed, administrative sanctions are less effective when given to violators of building construction, especially when the consequences of violations this causes both material and immaterial losses. So that the criminal threat can also be given to violators of the construction of buildings such as listed in Article 47 of Law No. 28 of 2002 on building Building, namely:

- a) “Any person or entity that by negligence violates the provisions that have been stipulated in this law so as to result in the building is not eligible the function can be punished with confinement and / or a fine.
- b) Imprisonment and / or fine as meant in Paragraph (1) covers: maximum imprisonment of 1 (one) year and / or maximum fine 1% (one-hundredth) of the value of the building if it resulted in loss of other people's property; b. maximum imprisonment of 2 (two) years and / or maximum fine 2% (two-hundredths) of the value of the building if it resulted in accident to others giving rise to lifelong disability; c. maximum imprisonment of 3 (three) years and / or maximum fine 3% (three-hundredths) of the value of the building if it resulted in loss of other people's lives.”

4. CONCLUSION

Law enforcement arrangements against violations of the construction of buildings related to the arrangement of space poured in some legislation, namely Law No. 26 of 2007 on Spatial Planning, Law Number 11 of 2020 on job creation, Local Regulations Of The City . Efforts to control violations construction of buildings also has obstacles in the form of lack of personnel from the Department Spatial planning, access and construction sites are difficult to reach and lack of the cooperativeness of building violators so that it buys time for the enforcement of Related Agencies. City Government shall take part in the supervision of development based on the regulation of the mayor of Semarang No. 38 of 2012 on supervision and control of the implementation of the building by coordinating with the Municipal Police at the time of controlling in accordance with the duties, functions and authorities set in Government Regulation No. 16 of 2018 on Civil Service police units.

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