

A COMPARATIVE STUDY OF SPATIAL POLICY IN INDONESIA AND THE NETHERLANDS

Haris Budiman^{1*}, Anis Mashdurohatun², Eman Suparman³

¹ Law Doctoral Program, UNISSULA Semarang, Indonesia

^{*} Law Faculty, Universitas Kuningan, Indonesia

² Law Doctoral Program, UNISSULA Semarang, Indonesia

³ Law Faculty, Universitas Padjadjaran Bandung, Indonesia

E-mail: harisbudiman9@yahoo.co.id

Abstract

Spatial planning policy in Indonesia is not effectively implemented due to land conversions and other problems. This occurs since the spatial planning policy is sectoral especially since the enactment of regional autonomy. This research accordingly tries to explain how the management of spatial policy in Indonesia compared to the Netherlands. The method used was juridical normative. The results of the research showed that in its implementation of spatial policy in Indonesia, regional governments have the authority to make their own policy. Nevertheless, the spatial policy in the Netherlands is based on efforts to improve and secure accessible space with the first priority on users. Therefore, although the spatial policy is based on the community participation, the control remains on the Central Government's hand. In conclusion, it takes comprehensive measures and social participation to formulate spatial policy.

Keywords: comparative law, policy, spatial planning

Abstrak

Kebijakan Penataan Ruang di Indonesia dalam implementasinya tidak berjalan dengan baik karena terjadi alih fungsi lahan dan permasalahan lainnya. Hal ini disebabkan karena kebijakan penataan ruang bersifat sektoral, terutama sejak berlakunya otonomi daerah. Rumusan masalah, bagaimana pengelolaan kebijakan perencanaan tata ruang di Indonesia dibandingkan dengan pengelolaan kebijakan tata ruang di Negara Belanda. Metode penelitian bersifat yuridis normatif. Hasil penelitian menunjukkan bahwa penataan ruang yang dilakukan di Indonesia daerah memiliki keleluasaan untuk membuat kebijakan sendiri tanpa kendali dari pusat, sedangkan pengelolaan tata ruang di Negara Belanda, didasarkan pada upaya meningkatkan dan mengamankan ruang yang dapat diakses dengan prioritas pertama pada pengguna. Oleh karena itu walaupun kebijakannya berbasis partisipasi masyarakat, namun kendali pusat tetap berlaku sehingga Pemerintah Pusat memiliki tanggung jawab dalam membuat kebijakan penataan ruang yang berlaku secara nasional. Simpulan, kebijakan perencanaan tata ruang perlu dirumuskan secara komprehensif, dan melibatkan partisipasi masyarakat.

Kata kunci: perbandingan hukum, kebijakan, tata ruang

Introduction

Philosophically, the spatial planning in Indonesia is guided by Article 33 Paragraph (3) of the 1945 Constitution stating that the earth and water as well as natural resources are controlled by the State and used for the social prosperity. Therefore, Indonesian territory should be managed in order to provide social prosperity. According to Act Number 26 Year 2007, space is the territory of the Unitary State of the Repub-

lic of Indonesia as a unified one which involves land, sea and air space, including space within the earth as well as any resources. In this context, natural resources, human resources, artificial resources/regional infrastructure and business activities are elements of the space territory as well as the elements for the development of national economic which is more prevalent and equitable. Spatial planning is not limited to the spatial planning process itself. More than

that, it includes the process and the control of space utilization. As the result of the "National Economic Conference of Indonesia", it states that the spatial planning process is used as a "guidance of future actions" to create harmonious and balanced interaction between human/living creatures with their environment to achieve human welfare as well as environmental and developmental sustainability¹. In addition to a process to actualize the development goals, spatial planning is also an instrument that has a legal basis. Therefore, the space utilization as mentioned above should be carefully planned so that the implementation of spatial planning can realize the space that is safe, comfortable, productive, and sustainable as well as accommodate the dynamics of rapidly growing developments. Nevertheless, the function of order and justice is needed by the society since there are results that must be maintained, protected and secured.²

In some previous research, several strategic issues in spatial planning have been revealed, including:³ a conflict of interest among sectors, a deviation of space utilization, a lack of optimum function of the spatial planning which aims to align and integrate various sector plans and programs, the unavailability of the strict functions allocated in the Regional Spatial Planning, a lack of openness in placing the interests of the sector and region within the spatial framework, and a lack of ability to refrain from the desire to defend their own interests excessively.⁴

In this regard, the researcher conducted a comparative study of how spatial policy management implemented in Indonesia compared to

the management of spatial policy in the Netherlands which hopefully it can be used as a reference in reconstructing spatial planning policy in Indonesia. How does the management of spatial planning policy in Indonesia differ from the management of spatial planning policy in the Netherlands?

Research Methods

This research employed normative juridical research method,⁵ in which the data were obtained from literature study by using secondary data. The secondary data are not obtained directly from the field but from library materials. The data collected were then descriptively analyzed .

Discussion

Spatial Policy in Indonesia

Law Number 26 Year 2007 regulates the Spatial Policy in Indonesia in general. This provision is then followed up by Government Regulation Number 26 Year 2008 on the National Spatial Planning, Government Regulation Number 15 Year 2010 on the Spatial Management, and Provincial and Regency/Municipal Regulations on Spatial Planning (RTRW) and Detailed Spatial Planning (RDTR).

The concept of spatial planning in this Act is a system of spatial planning process, space utilization and space utilization control which considers several aspects such as the physical conditions of disaster prone areas; the potential of nature, human and artificial resources; the economic conditions, sociocultural, political, legal, environmental as well as scientific and technological aspects as a whole; and geographical, geopolitical, and geo-economic aspects.

In order to overcome various problems in the spatial planning process, spatial planning, space utilization, and space utilization control is an approach that is believed to realize a comfortable, productive and sustainable space and free from impacts on floods, landslides and ot-

¹ Edy Lisdiono, 2008, *Legislasi Penataan Ruang: Studi tentang Pergederan Kebijakan Hukum Tata Ruang Dalam Regulasi Daerah di Kota Semarang*, Dissertation, Semarang: Law Doctoral Program Universitas Diponegorop, p. 80-99.

² Haris Budiman, "Spatial Policy Dilema: Environmental Sustainability And Economic Growth", *Untag Law Review (ULREV)*, Vol. 2 Issue 1, May 2018, p.1-9.

³ Suwitno Y Imran, "Fungsi Tata Ruang Dalam Menjaga Kestabilan Lingkungan Hidup Kota Gorontalo", *Jurnal Dinamika Hukum*, Vol. 13 No. 3, 2013, p. 457-467.

⁴ Darwin Ginting, "Reformasi Hukum Tanah Dalam Rangka Perlindungan Hak Atas Tanah Perorangan dan Penanaman Modal Agrobisnis", *Jurnal Hukum Ius Qula Iustum*, Vol. 18 No. 1, January 2011, p. 63-82.

⁵ Zulfadli Barus, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis", *Jurnal Dinamika Hukum*, Vol. 13 No.3. September 2013, p. 307-318.

hers disasters.⁶ Through the spatial planning approach, the living spaces are planned based on the provisions ensuring the optimal level of productivity yet underline the aspects of sustainability to provide comfort space and maintain the balance of environmental sustainability for the community and other living creatures. Through efforts, the harmony between natural and artificial environment, the integration in using natural and artificial resources with regard to human resources, and the protection of space function and the prevention of negative impacts on the environment due to space utilization can be realized.⁷

In the new Spatial Planning Act, apart from giving incentives and disincentives, sanctions are also imposed as one of the efforts to restrict the space utilization that is not in line with the spatial planning and zoning regulations. The sanction is not only given to space beneficiaries who violate the provisions of space utilization permits also to government officials authorized to issue space utilization permits that are inconsistent with the spatial plan.⁸

To provide legal certainty, Spatial Planning Act is used as guidance in arranging regional development plans, space utilization and space utilization control in the regions, realizing alignment, interconnection, and balance among sectors, determining the location and space function for investment, and arranging space in strategic areas.⁹ The Act provides a clear description of duties and responsibilities as well as authority divisions between the central government and provincial and regency/municipal governments in implementing spatial planning, as it is mandated in the Spatial Planning Act that the Regional Government is given three years to make adjustments to their spatial plans by reviewing or completing the plan to be

in accordance with the provisions mandated in the Spatial Planning Act.

The Spatial Planning Act describes the authorities possessed by each level of regional governments as written in the provision of Article 11 paragraph (1) concerning the implementation of spatial planning which include: The arrangement, guidance and supervision on the implementation of spatial planning of regency/municipal territory and regency/municipal strategic areas; The implementation of spatial planning of the regency/municipal territory; The implementation of spatial planning of regency/municipal strategic areas; and The cooperation between districts/cities concerning the spatial planning. In addition, the provision of paragraph (2) concerning the implementation of Spatial Planning sets forth that the authorities include: Spatial planning of regency/municipal territory; Space utilization of regency/municipal territory; and Space utilization control of regency/ municipal territory.

Thus, in a hierarchical spatial planning, there are three categories of policy: policies aimed at transforming the rural economy and thereby reducing the rate of urban expansion; policies aimed at restricting the growth of large cities through migration control, and policies that seek to slow the growth of big cities by stimulating new urban centers.¹⁰

Spatial Problems in Indonesia

In general, spatial problems in Indonesia are land conversions and conflicts among sectors. A large number of green areas such as protected forests and agricultural areas are converted into residential areas.¹¹ Moreover, Law Number 23 Year 2014 on Regional Government states that regional government is given authority to manage their own affairs for the commun-

⁶ Siti Aminah, "Konflik dan Kontestasi Penataan Ruang Kota Surabaya", *Jurnal Sosiologi Masyarakat*, Vol. 2 No. 1, January 2005, p.59-79.

⁷ Abdul Wahid, "Identifikasi Penyimpangan Tata Ruang Wilayah Provinsi Sulawesi Selatan", *Jurnal SMARTek*, Vol. 7 No. 2, Mei 2009, pp 108.

⁸ Edy Lisdiono, *op.cit.*, p. 182-185.

⁹ Haris Budiman, *op.cit.*, p. 1-9.

¹⁰ Dian Ekawati Ismail, 2018, *Rekonstruksi Hukum Penataan Ruang Terhadap Pemukiman Kumuh Sebagai Upaya Peningkatan Kualitas Hidup Masyarakat di Kota Gorontalo*, Disertasi, Semarang: Law Doctoral Program Universitas Sultan Agung, p.112-115.

¹¹ Nia Kurniasih Pontoh, "Hubungan Perubahan Pengguna Lahan Dengan Limpasan Air Permukaan: Studi Kasus Kota Bogor", *Jurnal Perencanaan Wilayah dan Kota*, Vol. 16 No. 3, Desember 2005, p.130.

ity welfare including managing and planning the space utilization in their region.

This situation creates a the Regional Regulations on Spatial Planning (RTRW) policy that is inconsistent with the national spatial plan as defined in Law Number 26 Year 2007. According to Budihardjo, the change of spatial planning occurs due to the strength of certain groups, certain society groups, social system, position, roles, even disregarding the values of interest in the society. The spatial problems become more crucial when there are factors encouraging land conversions such as enormous populations, the increased demand for constructions, the inappropriate space utilization, the decreased protected areas, the decreased water absorption areas, the increased critical watersheds, and the spatial planning has not functioned optimally in order to synchronize and integrate various plans and programs, as well as the deterioration or degradation of environmental quality.¹²

Spatial Policy in the Netherlands

How about the spatial plan in the Netherlands? The Netherlands is a small country with twelve provinces located in northwestern Europe, on the coast of the North Sea. The Netherlands is one of the most populous countries in Europe and in the world. The Dutch even call themselves the *Netherlander* which means "low country." This name fits as nearly a quarter of the country's territory lies beneath the sea surface. The Netherlands has implemented comprehensive national spatial policies as exemplified by the creation of polders following the flood in 1916 and the delta plan subsequent to the flood in 1953.¹³

The policy on spatial planning in the Netherlands was based on the 1901 Housing Act

(*Woningwet*) which was then renewed in 1960. Spatial policy in the Netherlands began with the development of growth centers outside the Metropolitan area and market-oriented urban policies. As regards regional policies, regional disparities within the country have been very limited as compared to other European countries. Although support had traditionally been provided mainly to regions in the periphery, the country decided in 2006 to end traditional regional policies and place emphasis on supporting regions that contribute to the national economic development in order to enhance its competitiveness and promote innovation.

The spatial planning is implemented by the National Spatial Planning Agency, The Ministry of Housing, Spatial Planning and the Environment (*Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieu or VROM*). This agency arranges a spatial planning that can accommodate the use of space in a limited number but interesting, livable and able to create a prosperous society. To create this spatial planning, the Agency sets out the spatial planning criteria:¹⁴ Spatial diversity, with the distinction between town and village, peace and quiet; Economic and spatial functions: interrelated housing, employment and mobility; Cultural diversity: space for different cultural and recreational activities; Social justice: eliminating inequality between social groups or regions; Sustainability: conservation or restoration of valuable ecological areas; Aspects of attraction; and Aspects of human dimension

The Spatial Planning Act (*Wet op de ruimtelijke ordening/WRO*) made since 1965 has been amended several times. WRO has been valid since July 1st, 2008. WRO sets the Netherlands landscape today and in the future. In the latest WRO, there are several changes such as the Municipal authorities should make zoning plans then the planning documents should be

¹² Devi Deviyanti, "Studi Tentang Partisipasi Masyarakat Dalam Pembangunan Di Kelurahan Karang Jati Kecamatan Balikpapan Tengah", *Ejournal Administrasi Negara*, Vol. 1 No. 2, 2013, p. 380-394.

¹³ Ministry of Infrastructure and the Environment, 2014, *Summary national policy strategy for infrastructure and spatial planning*. <https://www.government.nl/topics/spatial-planning-and-infrastructure/documents/publications/2013/07/24/summary-national-policy-strategy-for-infrastructure-and-spatial-planning>, Accessed on August 12th 2018.

¹⁴ Ministry of Infrastructure and the Environment, 2014, *Summary national policy strategy for infrastructure and spatial planning*, available on: <https://www.government.nl/topics/spatial-planning-and-infrastructure/documents/publications/2013/07/24/summary-national-policy-strategy-for-infrastructure-and-spatial-planning>. Accessed 12 August 2018.

available in the digital format along with the hard copy.¹⁵

This latest Spatial Planning Policy provides a large portion of the society's involvement in policy-making. Through this strategy, the government wants to create more space for development as well as gives greater responsibility to various developmental actors such as city council, community institutions, and citizens themselves. In addition, this spatial strategy regulates space for nature, space for water, space for rivers, national landscape, green zone, Randstad region, as well as coordination with other development policies.

Spatial Planning (Randstad) for urban areas in the Netherlands comprises 4 major cities namely Amsterdam, Rotterdam, The Hague, and Utrecht. Randstad's current plan is Randstad towards 2040 with a vision to create the Randstad region evolves into one of the sustainable regions and has an international competitiveness in Europe. Randstad 2040 sets the details of Randstad space planning from the port plan (in Rotterdam and Amsterdam), making The Hague as a city of law, peace and security, to an attractive urban park plan. In addition to the above planning documents, there are many other planning documents with a lower rank.

Spatial planning in the Netherlands involves a national strategy on land and water resource allocation for sustainable economic and social development. Coordinating national policies and strategies in spatial planning includes ensuring the implementation of EU regulations in national legislation. The main land uses in the Netherlands are: housing, industrial and commercial activities, agricultural production, transportation and infrastructure, and activities related to nature and biodiversity. Here, the provinces and municipalities are given greater authority. For example, they can decide which locations are best for new business parks. To do so, they will examine all aspects of spatial planning, including accessibility, feasibility and security. In accordance with the government coa-

lition agreement, the strategy is a contribution of the national spatial planning to a strong economy as well as a safe, livable and interesting country.¹⁶

Conclusion

In general, spatial planning policy in Indonesia is regulated by Law Number 26 Year 2007 on Spatial Planning, Government Regulation Number 26 Year 2008 on National Spatial Planning, and Government Regulation Number 15 Year 2010 on Spatial Management. In its implementation in the regions, the policy concerning the Regional Regulations on Spatial Planning (RTRW) and Detailed Spatial Plan (RDTR) are formulated. Central Government's policy that gives authority to regional governments to manage their own territory causes spatial policy in regions sectoral and not in line with the concept of national spatial planning which then result in many land conversions and spatial problems.

In contrast, the Spatial Policy in the Netherlands is based on development goals to enhance competitiveness by strengthening economic and spatial structures, enhancing and securing accessible space with first priority on users, as well as securing a sustainable and secure environment that preserves the natural resources, cultural and historical values. Therefore, although the spatial policy is based on the community participation, the control remains on the Central Government's hand so that Central Government has a responsibility to make national spatial planning policies with Dutch concept which is competitive, accessible, livable and secure.

Suggestion

The results of spatial planning compared to the Netherlands show that the Government should have control in spatial planning implementation in the regions. Therefore, the policy making should be based on community participation and regional aspirations.

¹⁵ Dian Ekawati Ismail, *op.cit.*, p. 89.

¹⁶ Ministry of Infrastructure and the Environment, *loc.cit.*

References

- Aminah, Siti. "Konflik dan Kontestasi Penataan Ruang Kota Surabaya". *Jurnal Sosiologi Masyarakat*. Vol. 2 No. 1. January 2005. Pp. 59-79. DOI: 10.7454/mjs.v20i1.4751;
- Barus, Zulfadli, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis", *Jurnal Dinamika Hukum*. Vol. 13 No.3. September 2013. Pp. 307-318. DOI : 10.20884/1.jdh.2013.13.2.212;
- Budiman, Haris. "Pelanggaran Hak Asasi Manusia Dalam Kebijakan Daerah di Bidang Tata Ruang di Kabupaten Kuningan". *Jurnal Unifikasi*. Vol. 04 No. 1. 2017. Pp. 25-34. DOI: 10.25134/unifikasi.v4i1.475;
- Budiman, Haris. "Spatial Policy Dilema: Environmental Sustainability And Economic Growth". *Untag Law Review (ULREV)*. Vol. 2 Issue 1. May 2018. Pp 1-11;
- Deviyanti, Devi. "Studi Tentang Partisipasi Masyarakat Dalam Pembangunan Di Kelurahan Karang Jati Kecamatan Balikpapan Tengah". *Ejournal Administrasi Negara*. Vol. 1 No. 2. 2013. Pp. 380-394;
- Ginting, Darwin. "Reformasi Hukum Tanah Dalam Rangka Perlindungan Hak Atas Tanah Perorangan dan Penanaman Modal Agrobisnis". *Jurnal Hukum Ius Qula Iustum*. Vol. 18 No. 1. January 2011. Pp. 63-82;
- Imran, Suwitno Y. "Fungsi Tata Ruang Dalam Menjaga Kelestarian Lingkungan Hidup Kota Gorontalo". *Jurnal Dinamika Hukum*. Vol. 13 No. 3. 2013. Pp. 457-467. DOI: 10.20884/1.jdh.2013.13.3.251;
- Ismail, Dian Ekawati. 2018, *Rekontruksi Hukum Penataan Ruang Terhadap Pemukiman Kumuh Sebagai Upaya Peningkatan Kualitas Hidup Masyarakat di Kota Gorontalo*. Dissertation. Semarang: Law Doctoral Program Universitas Sultan Agung;
- Lisdiono, Edy. 2008. *Legislasi Penataan Ruang: Studi tentang Pergederaan Kebijakan Hukum Tata Ruang Dalam Regulasi Daerah di Kota Semarang*. Dissertation. Semarang: Law Doctoral Program Universitas Diponegoro;
- Ministry of Infrastructure and the Environment. 2014. *Summary national policy strategy for infrastructure and spatial planning*. Available on <https://www.government.nl/topics/spatial-planning-and-infrastructure/documents/publications/2013/07/24/summary-national-policy-strategy-for->. Accessed 12 August 2018;
- Pontoh, Nia Kurniasih. "Hubungan Perubahan Penggunaan Lahan Dengan Limpasan Air Permukaan: Studi Kasus Kota Bogor". *Jurnal Perencanaan Wilayah dan Kota*. Vol. 16 No. 3. December 2005. Pp. 1-15;
- Wahid, Abdul. "Identifikasi Penyimpangan Tata Ruang Wilayah Provinsi Sulawesi Selatan". *Jurnal SMARTek*. Vol. 7 No. 2, May 2009. Pp. 92-109.