

The Authority of Local Governments in Establishing Public Burial Land in the Spatial Planning of Urban Areas Purwokerto

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Abstract

The handover of the authority of the central government to the local government as a form of decentralization in the unitary state in the field of spatial planning, especially green open space in the form of public cemeteries in the Banyumas Regency area, can be said to have not been effective in utilization and management like other forms of green open space. This is because it is not in accordance with the application of spatial planning as a form of green open space because there are discrepancies in its application to regional regulations that are not in line with higher regulations. This research uses a statutory and conceptual approach method with normative juridical research specifications. Using secondary data sources are then analyzed using deductive methods. Based on the results of the study, it can be concluded that there are deviations in legal norms in the content material for the management of public cemeteries in Article 5 paragraph (3) of Banyumas Regency Regional Regulation Number 2 of 2014 concerning Burial Place Management which is contrary to Chapter II of the Provision of Green Open Space in Urban Areas in Green Open Spaces certain functions in Cemeteries listed in the Regulation of the Minister of Public Works Number 5 of 2008 concerning Guidelines for Provision and Utilization of Green Open Space in Urban Areas.

Keywords: Decentralization, Green Open Space. Public Cemetery.

Abstrak

Penyerahan kewenangan pemerintah pusat kepada pemerintah daerah sebagai bentuk desentralisasi dalam negara kesatuan di bidang penataan ruang khususnya ruang terbuka hijau dalam bentuk taman pemakaman umum di wilayah Kabupaten Banyumas dapat dikatakan belum efektif dalam pemanfaatan dan pengelolaan sebagaimana bentuk ruang terbuka hijau lainnya. Hal itu disebabkan belum sesuai dengan penerapan penataan ruang sebagaimana wujud dari ruang terbuka hijau karena terdapat ketidaksesuaian dalam penerapannya pada peraturan daerah yang tidak selaras dengan peraturan yang lebih tinggi. Penelitian ini menggunakan metode pendekatan perundang-undangan dan konseptual dengan spesifikasi penelitian yuridis normatif. Menggunakan sumber data sekunder yang kemudian dianalisis dengan menggunakan metode deduktif. Berdasarkan hasil penelitian, dapat disimpulkan terdapat penyimpangan norma hukum dalam materi muatan pada Pasal 5 ayat (3) Peraturan Daerah Kabupaten Banyumas Nomor 2 Tahun 2014 tentang Pengelolaan Tempat Pemakaman yang bertentangan dengan Bab II Penyediaan Ruang Terbuka Hijau di Kawasan Perkotaan dalam Ruang Terbuka Hijau Fungsi Tertentu pada Pemakaman yang tercantum pada Peraturan Menteri Pekerjaan Umum Nomor 5 Tahun 2008 tentang Pedoman Penyediaan dan Pemanfaatan Ruang Terbuka Hijau Pada Kawasan Perkotaan.

Kata kunci: Desentralisasi, Ruang Terbuka Hijau. Taman Pemakaman Umum.

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Introduction

The State of Indonesia is a unitary state in the form of a republic as stated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The concept of a unitary state is that there is only one sovereign government, namely the Central or National Government, but in its development the central government is no longer able to carry out its government affairs, then the authority of the central government is decentralized to local governments by providing

opportunities and discretion to local governments to implement regional autonomy. Although conceptually regional autonomy emphasizes regional freedom in organizing their households, regional autonomy cannot be interpreted as absolute independence or freedom (*absolute onafhankelijkheid*) in exercising their autonomous rights and functions according to their own wishes without considering the overall national interest (Wicaksono, 2020). Decentralization means that the authority to regulate and manage government affairs is not solely exercised by the Central Government, but also by lower units of government, both in the form of territorial and functional units. Lower units of government are entrusted with and allowed to regulate and manage some government affairs themselves (Hadjon, 1993).

The authority of the regional government to regulate, manage, and organize regional development in Article 18 of the 1945 Constitution of the Republic of Indonesia, one of which is the implementation of spatial planning which is a governmental affair at a level of government from the top government, namely the state or central government to the provincial level government, and district/city regional governments. Local governments, which are subsystems of the national governance system, have the authority to regulate and manage their own households (Is, 2021). Specific arrangements regarding the subsystem of administration within the authority of the district / city government are related to spatial planning. Spatial planning of district/city areas regulated in Article 11 of Law Number 26 of 2007 concerning Spatial Planning as the authority of the central government which is decentralized to local governments in spatial planning there are further provisions regarding Green Open Space.

Green open space (*RTH*) is actually intended to maintain the harmony and balance of the urban environmental ecosystem and realize the balance between the natural environment and the artificial environment in urban areas and improve the quality of a healthy, beautiful, clean and comfortable urban environment. not only that, green open space also functions as securing the existence of urban protected areas, controlling pollution, and damage to soil, water and air, protecting nephrotic plasma and biodiversity and controlling water management and not to forget as a means of urban aesthetics. The existence of this space not only makes the city a healthy and livable place but also comfortable and beautiful (Supriatna, 2021).

One of the manifestations or implementation of green open space in the Spatial Planning Law in Indonesia is a public cemetery which is a form of green open space and is categorized as green open space in the district/city administrative area. Based on its type, *RTHKP* includes city parks, nature tourism parks, recreational parks, neighborhood parks for housing and settlements, neighborhood parks for offices and commercial buildings, botanical forest parks, urban forests, protected forests, landscapes such as mountains, hills, slopes, and valleys, nature reserves, botanical gardens, zoos, public cemeteries, sports fields, (*SUTT* and *SUTET*), river borders, beaches, buildings, situ and swamps, road safety lines, road medians, railways, gas pipelines and pedestrians, green areas and paths, buffer zones, airfields, and roof top gardens (Supriatna, 2021). One of the green

open space objects is a public cemetery located in Purwokerto Urban Area, Banyumas Regency. Provisions regarding the management of public cemeteries as green open spaces in the Banyumas Regency area are regulated in Banyumas Regency Regional Regulation Number 27 of 2016 concerning Green Open Space Management and Banyumas Regency Regional Regulation Number 2 of 2014 concerning Cemetery Management, but public cemeteries as green open spaces in Urban Areas in Banyumas Regency have problems such as not being in accordance with the application of spatial planning as a form of green open space; There are discrepancies in the application of district/city regulations that are not in line with higher regulations; and problems regarding spatial planning will have an impact in the future if this problem is not taken seriously and green open space is currently experiencing many changes to built-up land (Aswad, 2004). It is undeniable that green open spaces in many cities in Indonesia have been converted into residential areas, hotels, restaurants, shops, offices, roads, parking lots, gas stations, street vendors and other areas.

All these areas convert green open space into other uses, creating a scarcity of green open space in many urban areas in Indonesia. The poor condition of green open spaces limits people's movement and reduces the environment's ability to reduce pollutants. This can cause health and psychological problems for children, adolescents, parents and even seniors because they do not have adequate space to move around. Therefore, an environmentally sound urban development planning process is urgently needed in all urban areas in Indonesia. By utilizing open spaces that have not been or are underutilized, their utilization must be maximized, such as cemeteries. Cemeteries are one form of urban green open space that has not been effective.

Research Problems

First, what is the authority of the Regional Government in determining public burial grounds as green open spaces in urban areas in Banyumas Regency? and second, how is the deviation of legal norms in the determination of the regulation of burial land in the implementation of green open space by the Banyumas Regency Government?

Research Methods

This research uses normative juridical research methods with a statutory approach by reviewing and analyzing laws and regulations that are related to the legal problems being handled (Sunggono, 2016). Analysis of the statutory research approach using the legal inventory method, the research intended is to collect various positive laws that apply in a country, the positive law in question regarding legislation that is currently still used in regulating something specified in the regulation (Adi, 2004). This research focuses on public cemeteries as green open spaces located in the Banyumas Regency area in the concept of spatial planning. The reason for the object of research on public cemeteries as green open spaces in Banyumas Regency is because it has not been maximized in its application in accordance with applicable regulations. The source of data used in normative legal research through secondary data is data obtained by a researcher indirectly from

his object, but through other sources both oral and written. For example, books, texts, journals, magazines, newspapers, statutory documents, and so on (Bachtiar, 2018).

Discussion

1. Local Government Authority in Designating Cemetery Land as Green Open Space in Urban Areas in Banyumas Regency

The decentralization of authority granted by the Central Government to the Banyumas Regency Regional Government in the form of a Banyumas Regency Regional Regulation states that regional government authority includes the authority to make regional regulations (*zelf wetgeving*) and the administration of government (*zelfbestuur*) which is carried out democratically. Article 6 of Law Number 23 of 2014, which has been amended by Law Number 9 of 2015 concerning Regional Government, explains the relationship between the central government and regional governments: "The Central Government sets policies as the basis for organizing Government Affairs." Regional government arrangements stipulated in Law Number 23 of 2014 concerning Regional Government as a juridical basis for local governments to regulate and manage their own households, as well as concurrent government affairs submitted to the regions become the basis for implementing regional autonomy. Concurrent government affairs as intended are government affairs that are shared between the central government and provincial and district / city regions. Concurrent government affairs as the authority of the region consists of mandatory government affairs and optional government affairs.

Mandatory government affairs are regulated in Article 12 paragraph (1) of Law Number 23 of 2014 concerning Regional Government which reads:

- a. education;
- b. health
- c. public works and spatial planning
- d. public housing and settlement areas
- e. peace, public order, and community protection; and
- f. social.

The provisions of Article 12 paragraph (1) letter c explain that public works and spatial planning are mandatory affairs of local governments, so local governments are required to have policies regarding regional spatial plans in their respective regions and regarding spatial planning this is a form of business that is decentralized by the central government to local governments which has also been regulated in Article 17 paragraph (1) of Law Number 23 of 2014 concerning Regional Government that, the Region has the right to establish regional policies to carry out government affairs which fall under regional authority. In order to realize this goal, the local government has the authority through local regulations as a more specific regulation in regulating and planning spatial planning for its own region. Arba explained that the implementation of spatial planning is a government matter that is divided into levels of government, starting from the top level of government, namely the State (Central Government) to the provincial level government, and district/city governments (Arba, 2017).

The authority decentralized to local governments in the context of spatial planning in the district/city area is further regulated in Law Number 26 of 2007. Regional authorities that have been normatively detailed with the provisions of laws and regulations, which will then be further regulated in regional government policies (Is, 2021). The authority of the district/city government in the context of spatial planning is regulated in Article 11 paragraph (1) and (2) of the Spatial Planning Law as follows, the authority of the district/city government in the implementation of spatial planning includes: regulation, guidance, and supervision of the implementation of spatial planning of district/city areas and strategic district/city areas; implementation of spatial planning of district/city areas; implementation of spatial planning of district/city strategic areas; and cooperation in spatial planning between districts/cities, and the authority of the district/city government in the implementation of spatial planning of district/city areas as referred to in paragraph (1) letter b includes: spatial planning of district/city areas; spatial utilization of district/city areas; and control of spatial utilization of district/city areas.

The authority of the district/city government in the context of spatial planning is regulated in Article 11 of the Spatial Planning Act. Paragraph 1, the authority of the regency/city government in the implementation of spatial planning includes: regulation, guidance, and supervision of the implementation of spatial planning of the regency/city and strategic areas of the regency/city; implementation of spatial planning of the regency/city area; implementation of spatial planning of strategic areas of the regency/city; and cooperation in spatial planning between regencies/cities. Paragraph 2, the authority of the district/city regional government in the implementation of spatial planning in the district/city area as referred to in paragraph (1) letter b includes: district/city spatial planning; district/city spatial utilization; and control of district/city spatial utilization. Paragraph 3, in the implementation of district/city strategic area spatial planning as referred to in paragraph (1) letter c, district/city governments carry out: determination of district/city strategic areas; district/city strategic area spatial planning; district/city strategic area spatial utilization; and control of district/city strategic area spatial utilization. Paragraph 4, in exercising the authority as referred to in paragraph (1) and paragraph (2), the district/city government refers to the guidelines in the field of spatial planning and its implementation instructions. Paragraph 5, in exercising the authority as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the district/city government: disseminates information relating to general plans and detailed spatial plans in the context of implementing spatial planning in the district/city area; and implements minimum service standards in the field of spatial planning. Paragraph 6, in the event that the district/city government cannot fulfill the minimum service standards in the field of spatial planning, the provincial government can take steps to resolve in accordance with the provisions of laws and regulations.

The granting of authority over spatial planning by the central government to the local government is then carried out spatial planning aimed at the Banyumas Regency Regional Government to carry out the preparation of spatial planning in

the Banyumas Regency area, regarding the preparation of spatial planning in the district area is regulated in Article 25 to Article 27 of the Spatial Planning Law which is written in Article 25 paragraph 1 regarding the preparation of the district spatial plan refers to: National Spatial Plan and provincial spatial plan; guidelines and implementation instructions in the field of spatial planning; and regional long-term development plans, and paragraph 2 regarding the preparation of district spatial plans must pay attention to: the development of provincial problems and the results of the assessment of the spatial planning implications of the district; efforts to equitable development and economic growth of the district; alignment of district development aspirations; carrying capacity and environmental capacity; regional long-term development plans; spatial plans of bordering districts; and district strategic area spatial plans. Article 26 paragraph 1 regarding the district spatial plan contains: objectives, policies, and strategies of district spatial planning; district spatial structure plan which includes urban systems in the region related to rural areas and district infrastructure network systems; district spatial pattern plan which includes district protected areas and district cultivation areas; district strategic area designation; district spatial utilization direction which contains indications of five-year medium-term main programs; and district spatial utilization control provisions which contain general provisions of zoning regulations, licensing provisions, incentive and disincentive provisions, and sanction directions, paragraph 2 regarding district spatial plans become guidelines for: preparation of regional long-term development plans; preparation of regional medium-term development plans; space utilization and control of space utilization in the district area; realizing integration, interconnectedness, and balance between sectors; determining the location and function of space for investment; and spatial planning of district strategic areas, paragraph 3 regarding the district spatial plan becomes the basis for the issuance of licenses for development locations and land administration, paragraph 4 regarding the period of the district spatial plan is 20 (twenty) years, paragraph 5 regarding the district spatial plan as referred to in paragraph (1) is reviewed 1 (one) time in 5 (five) years, paragraph 6 regarding certain strategic environmental conditions related to large-scale natural disasters stipulated by legislation and / or changes in the territorial boundaries of the state, provincial territory, and / or district territory stipulated by law, the district spatial plan is reviewed more than 1 (one) time in 5 (five) years, and paragraph 7 district spatial plans are stipulated by district regulations. Also, article 27 paragraph 1 regarding detailed spatial plans as referred to in article 14 paragraph (3) letter c is stipulated by district regulations and paragraph 2 regarding provisions regarding content, guidelines, and procedures for preparing detailed spatial plans as referred to in paragraph (1) shall be regulated by Ministerial regulation.

The transfer of authority by the Central Government to the Banyumas Regency Government in terms of spatial planning in accordance with the mandate of the Spatial Planning Law, a regulation was made regarding spatial planning in the Banyumas Regency area, namely Banyumas Regency Regional Regulation Number 10 of 2011 concerning the Regional Spatial Plan of Banyumas Regency Year 2011 - 2031 and Banyumas Regency Regional Regulation Number 6 of 2019

concerning the Detailed Spatial Plan for Purwokerto Urban Area Year 2019 - 2039. Banyumas Regency Regional Regulation Number 10 of 2011 covers Banyumas Regency which is then detailed in the scope of its area in the Purwokerto Urban Area which is regulated in Banyumas Regency Regional Regulation Number 6 of 2019. The Banyumas Regency Spatial Plan, hereinafter referred to as the Regency *RTRW*, is the direction of policies and strategies for spatial utilization of the Banyumas Regency area which serves as a guideline for spatial planning and is the basis for preparing development programs in the Detailed Spatial Plan for the Purwokerto Urban Area, hereinafter abbreviated as the *RDTR* for the Purwokerto Urban Area.

RDTR Purwokerto Urban Area Year 2019 - 2039 is a spatial plan that sets blocks in the spatial pattern, as a description of activities into the form of space and pay attention to the relationship between activities in an area with the aim of creating a harmonious space and environment between the main activities and supporting activities. In realizing the goal of creating a harmonious space and environment, an area is needed which is included in the *RDTR* of Purwokerto Urban Area in the form of a green area, namely green open space to ensure the balance of the city ecosystem and increase the availability of clean air needed by the community. According to Arba, green open space is in the form of green areas for urban gardens, green areas for urban forests, green areas for recreation, green areas for sports activities, green areas for cemeteries, green areas for agricultural areas, green areas for yards, green areas for greenways, and green areas along beaches and rivers, and lakes (Arba, 2019). Utilization of the area in question in the form of green open space as a protected area determined by the Regional Government to create a harmonious spatial arrangement must require a harmonious legislation between regulations at a high level to regulations at the lower level so that there is a coordination in spatial planning (Ridwan, 2008).

For district areas, the procurement and provision of green open space (*RTH*) is carried out in the context of protection and preservation of natural resources and the environment which is oriented towards productive open space. Productive open space in district areas consisting of sub-districts and rural areas is generally provided for forest areas (protected forests, wildlife parks, cultivation forests or production forests, and other forests), and provided for agricultural areas, livestock, fisheries, and plantations, as well as cultivation parks, recreation and tourist parks and cemeteries. As for urban areas, the procurement and provision of green open space to be used as a place to create recreational parks, city parks, urban forests, green areas for sports, cemeteries, yards, agriculture, cultivation parks, fisheries, coastal and river buffers, and others (Arba, 2019).

Law No. 26/2007 on Spatial Planning requires that city spatial planning include a plan for the availability and utilization of green spaces with a minimum area of 30% of the city area (Article 29 (2) of Law No. 26/2007 on Spatial Planning). The 30% proportion is a measure that makes the balance of the city ecosystem, both the balance of hydrological and microclimate systems, as well as other ecological systems that can increase the availability of clean air needed by the community. The achievement of 30% urban area can be realized gradually by

taking into account typical urban land. This provision is also contained in the Minister of Public Works Regulation No. 5 of 2008 concerning Guidelines for the Provision and Utilization of Green Open Space in Urban Areas (Paramesti, 2016).

Regulation of the Minister of Public Works No. 5 of 2008 as a guideline for the provision and utilization of green open space in Purwokerto Urban area which synergizes with other Ministerial Regulations in regulating green open space for urban areas, namely the Minister of Home Affairs Regulation No. 1 of 2007 concerning Green Open Space Arrangement in Urban Areas which contains the same provisions and contains the objectives, functions, and benefits of green open space in Urban Areas. Both Ministerial Regulations as further provisions regarding the provision and utilization of green open space and non-green open space as referred to in Article 28 letter a and letter b are regulated by Ministerial Regulation (Article 31 *UUPR*).

One form of green open space that has not been optimized like other forms of green open space in urban areas, especially in the Purwokerto Urban Area, is the public cemetery park, that the public cemetery park as a form of green area managed and controlled by the Regional Government in accordance with the urban planning and green area of the cemetery contained in the Regulation of the Minister of Home Affairs on Guidelines for the Provision and Utilization of Green Open Space in Urban Areas and Regulation of the Minister of Public Works and Article 6 regarding types of green open space in the Regulation of the Minister of Home Affairs Number 1 of 2007 concerning Green Open Space Arrangement in Urban Areas.

The provision and utilization of green open space in cemeteries regulated by the Ministerial Regulation is the basis for the management and control of public cemeteries carried out by the Regional Government, further provisions regarding public cemeteries in Banyumas Regency are regulated in Banyumas Regency Regional Regulation Number 2 of 2014 concerning Management of Cemeteries. The importance of public cemetery parks as green open spaces in addition to having the main function as a public service place for the burial of bodies, also functions as green open space which is further regulated in Banyumas Regency Regional Regulation Number 27 of 2016 concerning Green Open Space Management with the aim of adding to the beauty of the city, water catchment areas, protectors, ecosystem supporters, and unifying urban space, so that the existence of green open space that is organized in the cemetery complex can eliminate the scary impression. The existence of public cemeteries must exist and be maintained in the midst of metropolitan city life, because according to Eko Budiharjo, cemeteries are a major component in the city's life cycle, *condition sine qua non*, an absolute requirement that cannot be negotiated. In addition, the cemetery should be seen as an asset, potential, and long-term investment of the city, as a destination for urban ecotourism and healthy and environmentally friendly cremation services (economic value), historical tombs of famous people and spiritual spaces for citizens, as well as urban conservation parks, which are proven to be able to fund the sustainability of maintenance and development of the cemetery. (Wulandari, 2014).

2. Deviation of Legal Norms in the Determination of the Regulation of Public Cemeteries in the Implementation of Green Open Space by the Regional Government of Banyumas Regency

The implementation of spatial planning for public cemeteries located in the Banyumas Regency area in Banyumas Regency Regional Regulation Number 2 of 2014 concerning Cemetery Management as a form of decentralization from the Spatial Planning Law in its management and control is carried out by the Regional Government in accordance with the city planning. The transfer and/or granting of authority over government affairs to the Regional Government to make regional legal products is certainly not easy because juridical issues will arise related to the relationship between the Central Government and the Regional Government. An important aspect that always becomes a problem is the synchronization and harmonization of Local Regulations with other aspects concerning the supervision of Local Regulations both at the provincial and district/city levels so that they do not conflict with higher regulations. The embodiment of regulation as an integral part of the spatial planning implementation system is carried out by the embodiment of arrangements in laws and regulations ranging from laws, government regulations, presidential regulations to regional regulations. However, there are discrepancies in the formation of Banyumas Regency Regional Regulation Number 2 of 2014 concerning Cemetery Management which does not elaborate further with higher regulations, namely the Minister of Public Works Regulation Number 5 of 2008 concerning Guidelines for the Provision and Utilization of Green Open Space in Urban Areas. Public cemeteries in Banyumas Regency as a form of green open space in the spatial pattern are guided by higher regulations in the Regulation of the Minister of Public Works which regulates the provision of green open space for cemeteries, so the provisions for the form of cemeteries are as follows:

- a. the size of the grave is 1 m x 2 m;
- b. the distance between one grave and another is at least 0.5 m;
- c. each grave is not allowed to be pierced / paved;
- d. the cemetery is divided into several blocks, the area and number of each block is adjusted to the conditions of the local cemetery;
- e. the boundary between cemetery blocks is in the form of a 150-200cm wide pedestrian with a row of protective trees on one side;
- f. the outer boundary of the cemetery is in the form of a hedge or a combination of artificial fences with hedges, or with protective trees;
- g. cemetery green space including cemeteries without pavement is at least 70% of the total cemetery area with a vegetation coverage level of 80% of the green space area.

It says in letter a that the size of the grave is 1 m x 2 m. The meaning of the sentence is clear that the size of the grave for public cemeteries is 2 meters long and 1 meter wide. The burial provision in the Ministerial Regulation contradicts Article 5 paragraph (3) of Banyumas Regency Regional Regulation Number 2 Year 2014 on Cemetery Management which reads: "The use of grave land for each corpse is a maximum of 250 cm (two hundred and fifty centimeters) long x 150 cm (one

hundred and fifty centimeters) wide with a minimum depth of 150 cm (one hundred and fifty centimeters) and the distance between graves is no more than 50 cm (fifty centimeters)."

The sentence "maximum length 250 cm (two hundred and fifty centimeters) x width 150 cm (one hundred and fifty centimeters)" contradicts the sentence in the higher regulation. Thus, the sentence will make discretion for the general public in making the size of the tomb. Thus, there is a contradiction with higher regulations and is not in accordance with Article 14 of the Law on the Formation of Legislation, "The content material of Provincial Regional Regulations and Regency/City Regional Regulations contains content material in the context of implementing regional autonomy and assistance tasks and accommodating special regional conditions and / or further elaboration of higher laws and regulations."

The contradiction between the higher regulations in the Ministerial Regulation and the lower regulations in the Regional Regulation is related to the principle of statutory norms in Indonesia with the principle of *lex superior derogat legi inferiori* which means that higher laws (norms/legal rules) negate the validity of lower laws (norms/legal rules). According to the theory of positive law proposed by Hans Kelsen as the law forms a hierarchical arrangement of positive legal norms starting from the norm with the highest hierarchical position, namely the basic norm (*grundnorm*) becomes the basis for the enactment of lower norms. All norms are interconnected with each other in a hierarchical-vertical manner, there is a higher norm that becomes the basis for the validity of a lower norm, and there is a lower norm whose validity depends on the higher norm above it. between superior legal norms (*superior*) and subordinate legal norms (*inferior*) are subject to representation as a static legal theory or *nomo stastic* as a dynamic legal theory or *nomo dynamic*. Determining whether a norm has a higher position than other norms is certainly not a difficult matter because legal states generally have a hierarchically arranged written legal order. In the Indonesian legal system, the types and hierarchy of laws and regulations are regulated in the provisions of Article 7 and Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation (Irfani, 2020), which is written in Article 7 paragraph 1 regarding the types and hierarchy of laws and regulations consisting of: a) Constitution of the Republic of Indonesia Year 1945; b) Decree of the People's Consultative Assembly; c) Law/Government Regulation in Lieu of Law; d) Government Regulation; e) Presidential Regulation; f) Provincial Regional Regulation; and g) Regency/City Regional Regulation, and paragraph 2, the legal force of Legislation in accordance with the hierarchy as referred to in paragraph (1).

Article 8 paragraph 1 explains, the types of laws and regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or the Government by order of Law, Provincial People's Representative Council, Governor, Regency/City Regional People's Representative Council, Regent/Mayor,

Village Head or equivalent, and paragraph 2 explains, the laws and regulations referred to in paragraph (1) are recognized and have binding legal force to the extent that they are ordered by higher laws and regulations or formed based on authority.

In practice, the validity of a legal norm is often confirmed by reality so that the justification of a norm will point to a certain fact. Such an understanding is actually incorrect because in essence the basis of the validity of a norm is always a norm, not a fact. The search for the basis of the validity of a norm leads us not to reality but to other norms that are the basis for the birth of the norm. The statement 'reality' is true because it corresponds to the reality of sensory experience, while the statement 'must' is a norm that is only valid if it belongs to a valid system of norms, if it is derived from a basic norm that is postulated to be valid. The foundation of the truth of a 'reality' statement is its conformity to empirical reality, while the foundation of the validity of a norm is the postulate, which is the norm that is postulated as an essentially valid norm, namely the basic norm (*grundnorm*). All norms whose validity can be traced to the same basic norm form a system of norms or an order of norms. This primary source norm is the binder between all the different norms that form a norm order. A norm belonging to a certain norm system or normative order can be tested only by confirming that the norm derives its validity from the basic norm that forms the norm order (Irfani, 2020).

In addition to the problem of hierarchical conflict of regulations, it also has an impact in the form of legal uncertainty on the conflicting sentences to the people in Banyumas Regency. According to Peter Mahmud Marzuki, normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multiple interpretations) and logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts (Is, 2021). Certainty is one of the characteristics that cannot be separated from the law, especially for written legal norms (Is, 2021) and in accordance with the principles in legislation.

Conclusion

- a. The authority of the Banyumas Regency Government in establishing public burial parks as an implementation of regional autonomy which is regulated in the form of Banyumas Regency Regional Regulation Number 2 of 2014 concerning Management of Burial Places and Banyumas Regency Regional Regulation Number 27 of 2016 concerning Green Open Space Management which is guided by Law Number 23 of 2014 concerning Local Government and Law Number 26 of 2007 concerning Spatial Planning.
- b. The deviation of legal norms in the management of public cemeteries in Banyumas Regency is found in the content material of Article 5 paragraph (3) of Banyumas Regency Regional Regulation Number 2 of 2014 concerning the Management of Cemeteries which reads "The use of grave land for each corpse has a maximum length of 250 cm (two hundred and fifty centimeters) x width of 150 cm (one hundred and fifty centimeters) with a minimum depth of 150 cm

(one hundred and fifty centimeters) and the distance between graves is no more than 50 cm (fifty centimeters)" or with a length of 2, 5 m (two point five meters) x 1.5 m (one point five meters) wide which contradicts Chapter II of *RTH* Provision in Urban Areas in Specific Function *RTH* in Cemeteries listed in the Regulation of the Minister of Public Works Number 5 of 2008 concerning Guidelines for the Provision and Utilization of Green Open Space in Urban Areas which determines "the size of the tomb is 1 m x 2 m" or with a size of one meter wide and two meters long. Based on the principle of legality, if a problem like this occurs, the principle of *lex superior derogat legi inferior* applies or higher regulations negate lower regulations.

Suggestion

Public cemetery parks that function as green open spaces to add to the beauty of the city, water catchment areas, protectors, and ecosystem supporters should be an important consideration in organizing spatial planning in the Purwokerto Urban Area. The need for socialization that can be done is to provide understanding and understanding in the implementation of public burial parks to the community regarding guidelines in the management of public graves and related to conflicts in the content material in the Banyumas Regency Regional Regulation on the Management of Burial Places, it is necessary to follow up through judicial review on the grounds that Banyumas Regency Regional Regulation Number 2 of 2014 is contrary to the Regulation of the Minister of Public Works No. 5 of 2008 as a higher legislation in terms of regulating the size of tombs in public burial grounds.

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