

REGULATION URGENCY CONCERNING ADMINISTRATIVE SANCTION GUIDELINES IN SPACE ADMINISTRATION

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Abstract

The spatial development can be supported by sustainable development, efforts are needed to divert space through the imposition of sanctions on administration in the spatial field. In the context of a legal state, sanctions must be taken while ensuring their legality in order to provide legal protection for citizens. The problem is, the construction of administrative regulations in Law No. 26 of 2007 and PP No. 15 of 2010 contains several weaknesses so that it is not enough to provide clear arrangements for administrative officials who impose sanctions. For this reason, an administration is required which requires administrative officials to request administrative approval in the spatial planning sector. The success of the regulation requires that it is the foundation of the welfare state principle which demands the government to activate people's welfare. 15 of 2010, the main things that need to be regulated therein should include (1) the mechanism of imposing sanctions; (2) determination of the type and burden of sanctions; and (3) legal protection and supervision by the region.

Keywords: *Administrative Sanctions; Guidelines; Spatial Planning.*

A. INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) mandates that the earth and water and the natural resources contained therein be controlled by the State and used for the greatest prosperity of the people. State control over natural resources and their utilization according to Article 33 paragraph (4) must be based on several principles, including sustainable and environmentally sound principles.¹ This means that the management of

natural resources for the purpose of people's welfare must be carried out through sustainable development efforts.

The essence of the principle of sustainable development is that the interests of the environment must be an inherent part of every decision making in the management of natural resources and the environment. In this way, the balance between the aspirations of the current generation and the aspirations of future generations will be maintained and balanced with natural resources, so that the development process can

1 Jimly Asshiddiqie, *Green Constituion: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Rajawali Pers, Jakarta, 2009, P. 152.

take place from generation to generation.²

Normatively, the existence of the principle of sustainable development can be found in Law Number 32 of 2009 concerning Environmental Protection and Management (Law No. 32 of 2009). However, this principle has actually been reflected long before that, namely in various New Order era legal products, as stated in the Guidelines of State Policy (GBHN) in 1973-1978 to GBHN 1993-1998. In these documents the following statements were found:

"In the implementation of development, Indonesia's natural resources must be used rationally. The excavation of these natural resources must be endeavored so as not to damage the human environment, carried out with comprehensive wisdom and taking into account the needs of future generations".³

The explanation above shows that legally sustainable development is a necessity, and that means it is the government's obligation to make it happen. In Law Number 32 of 2009 concerning Environmental Protection and Management (Law No. 32 of 2009) various types of public legal instruments are established that can be used to realize sustainable

development. One of the many instruments is a spatial plan. The term spatial is an objective reality. Structural form and spatial use patterns can be organized and harmonious, can also be chaotic. Including that it must be understood that structural forms occur because of social, economic, technological, political and administrative processes.⁴

Regional spatial planning becomes one of the problems in the development of the city today, the development of the city is quite fast with a fairly rapid population growth, so the environmental problem becomes a problem that is quite urgent in the discussion about environmental sustainability for the future generations. Likewise, spatial planning becomes important, so each province, city / regency must have rules that guide the spatial planning and become a reference in the implementation of development.⁵

According to Law Number 26 of 2007 concerning Spatial Planning (Law No. 26 of 2007), spatial planning is the result of spatial planning, and spatial planning is a process for determining spatial structure and spatial patterns which include the compilation and determination of spatial plans. From the perspective of Administrative Law, spatial planning is one of the government instruments in the form of a plan (het plan). P. de

2 Rakhmat Bowo Suharto, *Membumikan Spirit "Green Constitution" dalam Praktik Pemerintahan di Indonesia (Sebuah Pemikiran tentang Perlunya Prinsip-prinsip Etis yang pro Lingkungan, dalam Dinamika Hukum Lingkungan: Mengawal Spirit Konstitusi Hijau*, Indepth Publishing, Bandar Lampung, 2015, hlm. 51.

3 *Ibid.*

4 Nina Mirantie Wirasaputri, The Process Of Spatial Planning Arrangement In Relation To Environmental Function Sustainability, *Kanun Jurnal Ilmu Hukum*, No. 62, Th.XVI (April, 2014).P.129-146

5 Muhar Junef, Law Enforcement Within The Scope of Spatial Lay-Out for The Purpose Of Sustainable Development, *Jurnal Penelitian Hukum DE JURE*, Vol. 17 No.4 Desember 2017, P.373-390

Haan defines a plan as a systematic and coordinated preparation and implementation of decisions based on a work plan related to the objectives and ways of implementing them.⁶ Meanwhile, from a management perspective, planning is a thought process and the determination of things that will be done in the future in order to achieve the goals that have been determined.

Space needs to be arranged in order to maintain environmental balance that can provide comfortable support to humans and other living creatures in carrying out activities and maintaining their optimal survival. Each district / city needs to have guidelines in the use of space as set out in the Regional Spatial Plan. Regional Spatial Planning in Regency is a plan for regional spatial use which is prepared to maintain the harmony of development between sectors in the framework of developing district development programs in the long term. The function of Regency RTRW is as a reference in the use of space / district development.⁷

Based on Act Number 26 of 2007, the position of the national spatial planning system is one part of the realization of the objectives of the national development planning system, namely the provision of the creation of integration, integration, and synergy between the spheres of

the Republic of Indonesia.⁸ If the definition above is related to the spatial plan, it can be concluded that the spatial plan is basically the result of careful thought and determination of how the spatial is arranged, so that it can be a reference for citizens' activities in spatial use so as to achieve the spatial planning objectives that have been achieved. set. Spatial planning as regulated in Law No. 26 of 2007 which is then regulated further in Government Regulation Number 15 of 2010 concerning Spatial Planning (PP No. 15 of 2010), is a system of processes that includes three stages of activities, namely: (1) spatial planning; (2) spatial use; and (3) control of spatial use.

The three stages of these activities are interrelated and cannot be separated, because spatial planning will produce a product plan in the form of spatial plans in which spatial structures and spatial patterns are determined. The realization of the planned spatial structure and pattern is carried out through spatial use. So that the use of space carried out in accordance with the plans that have been set, then control the use of space. In such construction, controlling the use of space occupies a strategic position because it contains activities to realize orderly spatial planning. For the purpose of control, Article 35 of Law No. 26 of 2007 jo. Article 148 PP No. 15 of 2010 has provided several types of instruments that can be utilized, namely: (1)

6 Ridwan HR, *Hukum Administrasi Negara*, PT. Radja Grafindo, Jakarta, 2006, P.197.

7 Asyifa Fujiastuti, Bitta Pigawati, Evaluasi Penyusunan Norma, Standart Dan Kriteria Pemanfaatan Ruang Kabupaten Kudus Tahun 2010, *Jurnal Geografi*, Vol.11 No. 1 Januari 2014, P.14-31

8 Agus Sugiarto, Implementasi Pengendalian Pemanfaatan Ruang dan Sanksi Administratif dalam Rencana Tata Ruang Wilayah Kabupaten Sidoarjo, *JKMP (Jurnal Kebijakan dan Manajemen Publik)*, 5 (1), Maret 2017, P.41-60

zoning regulations; (2) licensing; (3) incentives and disincentives; and (4) imposition of sanctions.

The imposition of sanctions is the final stage of government action within the framework of law enforcement in the field of spatial planning. To realize the principle of the law, every action of the government, including actions in enforcing the law, must be done while still ensuring legal protection for the citizens of the community. Citizens can guarantee their legal protection if government actions can be verified. This is where the importance of legislation that functions clearly and surely guides administrative officials in exercising authority, procedures, and substance when making decisions and / or carrying out concrete actions.

In order to think like that, the question is whether the regulation of administrative sanctions as stipulated in Law No. 26 of 2007 and PP No. 15 of 2010 has been able to provide clear and definite guidelines for administrative officials in carrying out a series of administrative law enforcement actions in the field of spatial planning? The question is not only relevant to the theoretical aspects as mentioned above, but also relevant to the empirical aspects that the authors observed when the writer had the opportunity to be involved in a spatial planning law enforcement program conducted by the Ministry of Agrarian Affairs and Spatial Planning for local governments.

The preliminary results show there are problems in the enforcement of Administrative Law in the field of spatial planning which are sourced from the regulatory aspects. For example, related to the type of

administrative sanctions imposed, whatever and however the type and weight of the violation are always preceded by sanctions in the form of written warnings. Another example relates to the basis for determining the types and weights of administrative sanctions. Such determination is rarely really based on criteria as regulated in Article 187 PP No. 15 of 2010. Other problems related to regional differences in the resonance of the construction of PP no. 15 of 2010 in their local legal products.

What is explained above shows the urgency of the presence of regulations that can guide administrative officials in imposing administrative sanctions, so that every decision and / or concrete action is taken in the framework of Administrative Law enforcement in the field of spatial planning, guaranteed certainty in the aspects of procedures and accuracy in the aspects of its substance.

The article in this article tries to discuss the construction of regulations on administrative sanctions in Law No. 26 of 2007 and PP No. 15 of 2010, then evaluates its ability to direct the actions of administrative officials in law enforcement. The results of this evaluation are expected to be input for further research to be able to formulate the regulatory principles needed for the formation of legislation that will regulate more clearly and in detail about the procedures for imposing administrative sanctions in the field of spatial planning.

B. DISCUSSION

1. The Position of the Guidelines as Instruments in Government Administration

The importance of a guideline for administrative officials in exercising their authority can be traced at the root of the development of the welfare state concept. The idea of the welfare state has shifted the tasks of the government which was limited to maintaining the security of its citizens, becoming more responsible for the welfare of the community.⁹

Consequently, the government must be actively involved in almost every aspect of the lives of its people in order to realize the welfare of its citizens. This active nature of power makes it impossible for the Government to merely have the power to implement the law. He must be given broad authority in order to realize the welfare of citizens.¹⁰ This wide-ranging authority is often called the *ermessen freies* or discretion.

According to Bachsan Mustafa, this discretionary authority determines the logic of having a permit by the government to regulate *bestuurszorg*, namely the implementation of public welfare. The state administration official approved the freedom of self-determination to settle claims that had not yet been approved,

because they had not been made by a state body tasked with making laws.¹¹

Even though the government is given the authority of discretion, but in a legal country the necessity of submission to this law is then transformed into the principle of legality in the administration of government.¹² According to Philipus M. Hadjon, the principle of *rechtmatigheid van bestuur* arises because it is against freedom (*vrij bestuur*), the *wetmatigheid* principle is no longer sufficient. In this sense, to guarantee its legality, free authority approval is placed under *rechtmatigheidscontrole*, including *beginner van behoorlijk bestuur*, or which in Indonesian is often used with good general principles of security.

One of the general principles of good governance that has the most fundamental position and is rooted in legal awareness is the principle of equality. The meaning of this principle is that the same thing must be changed by the same. To ensure the realization of this principle, the government compilation is faced with new tasks within a framework that must be taken a lot and / or action, so the government asks for rules or guidelines. If the government itself compiles the rules or

9 Moh. Mahfud MD, *Hukum dan Pilar-pilar Demokrasi*, Gema Media, Yogyakarta, 1999, P. 130.

10 *Ibid.*

11 Bachsan Mustafa, *Pokok-pokok Hukum Administrasi Negara*, Alumni, Bandung, 1979, hlm. 28

12 Philipus M. Hadjon, *Pemerintah Menurut Hukum (Wet-En Rechtmatig Bestuur)*, Yuridika, Surabaya, 1993, hlm. 4.

guidelines to give direction to the agreement of its freedom, then it is called the policy rule (beleidsregels / policy rules).

Philipus M. Hadjon menyatakan bahwa suatu peraturan kebijaksanaan pada hakekatnya merupakan produk dari perbuatan tata usaha Negara yang bertujuan "*naar buiten gebracht* schriftelijk *beleid* (menampak keluar suatu kebijakan tertulis) namun tanpa disertai kewenangan pembuatan peraturan dari badan atau pejabat tata usaha Negara yang menciptakan peraturan kebijaksanaan tersebut.¹³ Menurut J.H.van Kreveld, peraturan kebijaksanaan memiliki ciri-ciri sebagai berikut:¹⁴

- a. The regulation is direct or indirect, not based on the provisions of formal laws or the constitution that gives authority to regulate the organ or its maker;
- b. The regulation can be in the form of a series of decisions or it can be in written form that looks out like a regulatory product;
- c. The regulation provides general instructions on how government agencies exercise their authority.

The explanation above shows that the rules or guidelines needed to give direction to the implementation of the authority of administrative officials, so that the actions of administrative officials in addition to realizing the

principle of equality can also be guaranteed its validity. Associated with the focus of the discussion in this article, then when the government is faced with the obligation to carry out enforcement of Administrative Law in the spatial planning field, regulations or guidelines are needed, among others in the implementation of the imposition of administrative sanctions against spatial offenders. With this guideline the principle of equality can be realized and can be guaranteed the validity of every action of Administrative Law enforcement in the field of spatial planning.

2. Construction of Administrative Sanction Arrangement in PP No. 15 of 2010

PP No. 15 of 2010 regulates administrative sanctions in Articles 182 to Article 197. The main provisions on administrative sanctions in the PP begin with a statement that everyone who commits violations in spatial planning is subject to administrative sanctions, as confirmed in Article 182 paragraph (1). Regarding the types of violations that can be subjected to administrative sanctions, are described in Article 182 paragraph (2), which is further detailed in Articles 183-186, namely:

- a. Spatial use that is not in accordance with the spatial plan, which includes:
 - 1) use the space with a permit for the use of space in a location that

13 Philipus M. Hadjon, *Loc., Cit.*, P.152.

14 Ridwan HR, *Op Cit.*, P.185-186.

- is not in accordance with its designation;
- 2) use the space without permission to use the space in the location that is intended for its purpose; and / or
 - 3) use the space without permission to use the space in a location that is not in accordance with its purpose.
- b. Spatial use that is not in accordance with the spatial use permit granted by the competent authority, which includes:
- 1) not following up on the space utilization permit that has been issued; and / or
 - 2) use of space is not in accordance with the function of the space listed in the space utilization permit.
- c. Use of space that is not in accordance with the requirements of the permit granted by the authorized official, which includes:
- 1) violates the specified boundary;
 - 2) violates the provisions of the building floor coefficient that has been determined;
 - 3) violates the provisions of the basic building coefficient and the green basic coefficient;
 - 4) make changes in part or in whole building functions;
 - 5) change part or all of the land function; and / or
 - 6) not providing social facilities or public facilities in accordance with the requirements in the space utilization permit.
- d. obstruct access to areas declared by law as public property, which includes:
- 1) Close access to the coast, rivers, lakes, ponds, and natural resources and public infrastructure;
 - 2) Close access to water sources;
 - 3) Close access to parks and green open spaces;
 - 4) Close access to pedestrian facilities;
 - 5) Close access to disaster evacuation locations and routes; and / or
 - 6) Closing access to public roads without the permission of the authorized official.
- The violations mentioned above according to Article 182 paragraph (3) will be subjected to administrative sanctions, which can take the form of:
- a. written warning;
 - b. temporary suspension of activities;
 - c. temporary suspension of public services;
 - d. location closure;
 - e. revocation of license;
 - f. cancellation of permission;
 - g. demolition of buildings;
 - h. recovery of space functions; and / or
 - i. administrative fines.
- The imposition of the above types of administrative sanctions

according to Article 187 is based on the following considerations:

- a. big or small impact caused by violations of spatial planning;
- b. the value of the benefits of sanctions given for violations of spatial planning; and / or
- c. public losses incurred due to violations of spatial planning.

The mechanism for the imposition of administrative sanctions is regulated in Articles 188-197, which in essence, any violation of the use of space will be subject to sanctions in the form of written warnings carried out through the issuance of written warning letters from authorized officials. The written warning letter contained several things, namely: (a) details of violations in spatial planning; (b) the obligation to match spatial use activities with spatial plans and technical conditions for spatial use; and (c) sanctions to be imposed in accordance with statutory provisions. A written warning is given at most 3 (three) times. If written warning letters are disregarded, authorized officials take action in the form of the imposition of other types of administrative sanctions. Specifically regarding administrative sanctions in the form of fines, Article 197 emphasizes that administrative fines may be imposed separately or together with the imposition of other administrative sanctions.

If PP No. 15 of 2010 would be used as a guideline in the

imposition of administrative sanctions in the field of spatial planning, the construction of the arrangements contained several weaknesses. These weaknesses can be explained as follows:

- a. The arrangements in the series of articles tend to be uniform and compartmentalized. It is said so because for every application of each type of administrative sanctions is always preceded by a written warning, then if the warning is ignored, then the authorized official can only apply one other type of administrative sanction. The problem is, the complexity of violations in the spatial field often demands the imposition of administrative sanctions that are not single, but tiered, ranging from mild to severe administrative sanctions. In fact, it is actually possible to apply non-tiered administrative sanctions. For example, for certain types of violations, sanctions may be imposed in the form of termination of activities without precedence by a warning letter because of the magnitude of the impact, urgency and / or emergency. In addition, for certain types of violations administrative cumulative sanctions can also be imposed. For example, sanctions in the form of temporary suspension of

activities are accompanied by sanctions in the form of the obligation to restore the function of space or fines. Related to sanctions for the restoration of spatial functions, Article 196 PP No. 15 of 2010 confirms that if the person who commits the violation is deemed incapable of financing spatial function recovery activities, the Government / regional government may submit a court decision so that the recovery is carried out by the Government / regional government at the expense of the person who committed the violation in the future. Meanwhile, related to sanctions in the form of administrative fines, Article 197 PP No. 15 of 2010 confirms that sanctions can be imposed separately or together with the imposition of other administrative sanctions.

- b. In Article 187 there is a regulation concerning the criteria on which administrative sanctions are based which include: (1) the size of the impact caused by violations of spatial planning; (2) the value of the benefits of providing sanctions given for violations of spatial planning; and / or (3) public losses incurred due to violations of spatial planning. These three criteria will be the basis for determining the types of

sanctions to be applied. The problem is, there is no regulation that can describe how to measure the three criteria, and how to determine the type of administrative sanctions that will be imposed by using the results of the measurement of the three criteria.

- c. PP No. 15 of 2010 is a master regulation which is a reference for the formation of various regional legal products that govern administrative sanctions in the field of spatial planning. In various regional legal products, it turns out that the construction of PP no. 15 of 2010 was resonated differently. There are limited local regulations and order further regulations with regional head regulations. There are also those who regulate it in more detail such as PP No. 15 of 2010 and do not order further arrangements. For example, Semarang City Regulation Number 14 of 2011 concerning Spatial Planning for Semarang City in 2011-2031 regulates the same as PP No. 15 of 2010, both concerning the types of violations, the types of administrative sanctions, as well as the mechanism for applying sanctions. Whereas in Palembang City Regulation Number 15 of 2012 concerning the Regional Spatial Plan

(RTRW) of the City of Palembang in 2012-2032, the types of violations and mechanisms for imposing administrative sanctions are the same as PP No. 15 of 2010, but in it there are different types of administrative sanctions. This arrangement is similar to Medan City Regulation Number 13 of 2011 concerning Medan City Spatial Planning 2011-2031.

What has been explained above shows that the imposition of administrative sanctions will deal with the complexity of the types of violations on the ground, and the types of administrative sanctions that must be imposed should be commensurate with the weight of the violations and are able to have an effect in accordance with the purpose of applying the sanctions. Therefore, there is a need for a regulation that regulates the mechanism for imposing administrative sanctions that is more technical and detailed, to ensure certainty of the procedural aspects, and the accuracy of the substance aspects concerning the type and weight of administrative sanctions imposed. Inaccuracies in determining the type and weight of sanctions, can lead to weak law enforcement capabilities to cause a deterrent effect due to the application of sanctions that are too weak, or can also cause harm to the offender due to the application of sanctions that are too heavy.

3. Urgency of Further Regulation PP No. 15 of 2010 which regulates the Guidelines for the Application of Administrative Witnesses in Spatial Planning

What has been explained in number 2 above, shows that the regulation is more strict and detailed about the procedures for imposing administrative sanctions in the field of spatial planning, it is a necessity to be used as a guide for regions in implementing administrative sanctions in order to guarantee their validity in their implementation.

Related to how a legal regulation is formulated, J.B.J.M. ten Berge said that there are several aspects that must be considered, namely:

- a. a rule must allow as little space as possible for different interpretations;
- b. Exception provisions must be limited to a minimum;
- c. Rules must be as much as possible directed to the reality that can be objectively determined;
- d. Regulations must be enforceable by those affected by them and those burdened with law enforcement duties.

Associated with the construction of regulations on administrative sanctions, the formulation of provisions on how administrative sanctions in the field of spatial planning should be imposed is done in a clear and complete editorial to avoid multi-

interpretation spaces. Thus, when the regulation in PP No. 15 of 2010 only regulates in general and is unclear, so it should be the duty of lower regulations to regulate further so that the norms become clearer and more detailed.

If it is observed there is not a single article in PP No. 15 of 2010, which ordered to further regulate the procedures for imposing administrative sanctions. The absence of such provisions is certainly not an obstacle to be regulated in ministerial regulations, bearing in mind Article 8 of Law Number 12 of 2011 concerning Formation of Regulations of Laws as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Formation of legislation, opening space for the stipulation of ministerial regulations, despite regulation PP No. 15 of 2010 did not order this. Referring to the authority of the ministry as the Central Government apparatus as regulated in Article 9 paragraph (2) letter a of Law no. 26 of 2007, Article 4 paragraph (1) letter c PP No. 15 of 2010, and Article 16 paragraph (1) and paragraph (3) of Law Number 23 of 2014 concerning Regional Government (Law No. 23 of 2014), these arrangements can be contained in the form of technical ministerial regulations whose duties and functions are in spatial planning, the Minister of Agrarian Affairs and Spatial Planning.

If at any time further regulation on administrative sanctions in a Ministerial

regulation is to be made and so that the regulation is able to become a guideline for administrative officials both at the central and regional levels in imposing administrative sanctions, there are several key aspects that need to be regulated, namely:

- a. Aspects of the mechanism, procedure, or administrative procedure that must be taken by every authorized official when they want to apply sanctions, starting from receiving input from the results of supervision, determining the types and weights of sanctions, formulating sanctions decisions, announcing and / or delivering sanction decisions, and providing opportunities to object to sanctions that have been imposed.
- b. Substance aspects that will be used as a basis in determining the type and weight of sanctions. It should not only be limited to the impact factors of violations, the benefits of sanctions, and losses suffered by the public as stipulated in Article 187, but it also needs to be considered about the things that existed for the offenders, such as records of compliance or violations, motives, whether or not cooperative, etc. Specifically relating to the basis for the consideration of the imposition of

sanctions as stipulated in Article 187, it is necessary to regulate how to measure the three criteria, and how to determine the type of administrative sanctions to be imposed using the results of the measurement of the three criteria.

- c. The aspect of legal protection for violators and / or citizens in general, it is necessary to regulate mechanisms regarding procedures for objection and / or administrative appeals that can be adopted by violators if they object to the sanctions specified. In addition, it is also necessary to regulate the mechanism of public participation in the imposition of administrative sanctions.
- d. The aspect of control over regional efforts in regulating administrative sanctions in their local legal products, by emphasizing that the regulation of administrative sanctions by regions must refer to these regulations / guidelines. It is important, so that no local legal products issued by the region are not in line with or even contrary to established guidelines.

C. CONCLUSION

The Theoretically, in the administration of government, rules or guidelines are needed to give direction to the implementation of the authority of administrative officials, so that the actions of administrative officials in addition to realizing the principle of equality can also be guaranteed its validity; If PP No. 15 of 2010 would be used as a guideline in the imposition of administrative sanctions in the field of spatial planning, the construction of regulations in it contains several weaknesses because the arrangements tend to be uniform and compartmentalized, there is no regulation on how to measure the criteria that are the basis for the imposition of administrative sanctions, and because their lack of clarity results PP No. 15 of 2010 regulation No. PP. 15 of 2010 was resonated differently by the regions; and If at any time a Ministerial regulation is to be drawn up governing the imposition of administrative sanctions in the field of spatial planning, there are a number of key aspects that need to be regulated, which include: (1) mechanism, procedure, or administrative procedure that must be adopted by each authorized official when want to apply sanctions; (2) aspects of the substance that will be used as the basis for determining the type and weight of sanctions; (3) aspects of legal protection for violators and / or citizens in general; and (4) aspects of control over regional efforts in regulating administrative sanctions in their local legal products.

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