

CHAPTER TWO

LITERATURE REVIEW

A. Local Regulation

1. The Legal Framework of Local Regulation

Article 1 paragraph (3) of the 1945 Constitution underlines that Indonesia is a legal state. It means that the government system should be implemented on the basis of the provisions of the constitution and other legislation such as government regulations, local regulations and other legal regulations.¹⁰

President as the highest administrators based on Article 4 paragraph (1) of the 1945 Constitution has obligation to implement the government in accordance with the purpose of the state of Indonesia which stated in the Preamble of the 1945 Constitution paragraph IV. Due to the number of duties and obligations of the President, it is necessary to have the assistance from the local government, as a consequence of the form of a unitary state and the division of the territory of the Republic of Indonesia into large areas (provinces) and small areas (districts/cities) as also mentioned in Article 18.¹¹

Local Government action also has influenced central government, it means anything which happens in the region affects

¹⁰ Yusnani Hasyimzoem et al, 2017, *Hukum Pemerintahan Daerah*, Jakarta: PT Raja Grafindo Persada, pp.145-146

¹¹ Septi Nur Wijayanti dan Iwan Satriawan, 2009, *Hukum Tata Negara*, Yogyakarta: Fakultas Hukum Universitas Muhammadiyah Yogyakarta, p.157

the course of central government and vice versa. Furthermore, Article 18 Paragraph (6) of the 1945 Constitution states that local governments have the right to enact local regulations and other regulations to implement the autonomy and duty of assistance.¹²

The objective of giving the autonomy to the District Head is further to increase the role and local legislative function, both as a function of legislative, supervision function, and as budget function over the performance of local government.¹³ During the implementation, the local government has some principles which aim to limit the power in the region, namely the principle of decentralization, deconcentrating, and duty of assistance.¹⁴

From the mandate that has been given by the 1945 Constitution, the government issued Law No. 22 of 1999 on the Regional Government, further in its development, the Law was amended by Law No. 32 of 2004 and currently becomes the Law No. 23 of 2014.

Article 1 paragraph 25 of the Law No. 23 of 2014 on Local Government mentions that Local Regulation consists of Province Regulation and Regent/City Regulation.¹⁵ While Article 236 paragraph (3) stated that Local Regulation has material content as

¹² Yusnani Hasyimzoem et al, *Op.Cit*, p.146

¹³ Soenobo Wirjosoegito, 2004, *Proses dan Perencanaan Peraturan Perundangan*, Jakarta: Penerbit Ghalia Indonesia, p.35

¹⁴ Septi Nur Wijayanti dan Iwan Satriawan, *Op.Cit*, p.159

¹⁵ Yusnani Hasyimzoem et al, *Loc,Cit*, p.146

the implementation of regional autonomy and duty of assistance and further elaboration of the provisions of the higher legislation.¹⁶

Local Regulation during the earlier period was placed in the hierarchy of the legislation in the Decree of the People's Representative Assembly (*Majelis Permusyawaratan Rakyat/MPR*)¹⁷ Number III/MPR/2000 on the Source of Law and Order of Legislation Affairs. In its consideration, it stated that in order to establish the realization of regional autonomy, it is necessary to place the local regulation in the order of legislation, which then now the hierarchy of the Local Regulation refers to the Law Number 12 of 2011 on Legislation.¹⁸

2. The Definition of Local Regulation

Regulation is a general provision which addressed to things that are still abstract. Regulations that come from the government officials can be realized in written and unwritten form (oral) but the regulation that derives from writing is written in the form of regulations or decisions as defined in the legislation.¹⁹

The Local Government system has several delegations of authority that bring consequences to the supervision which is

¹⁶ Law Number 23 of 2014 on Local Governance Article 236 paragraph (3) "Local Regulation as referred to in paragraph (1) contains content material:"

- a. Implementation of regional autonomy and co-administration tasks
- b. Further elaboration of the provisions of legislation which are higher

¹⁷ The People's Representative Assembly/MPR is a bicameral legislative body which is the one of the high state institution in Indonesian constitutional system

¹⁸ Soenobo Wirjosoegito, *Op.Cit*, pp.13-14

¹⁹ *Ibid*

sourced from the policies made by the Region. In other words, the Local Regulation is a legal product in the region determined by the District Head after obtaining the approval of the Regional House of Representative²⁰ (*Dewan Perwakilan Rakyat Daerah/DPRD*) as one of the supporting elements of the region autonomous implementation.²¹

Meanwhile, according to Irawan Soejito²², the Local Regulation is a regulation stipulated by the District Head with the approval of the Regional House of Representative where the regulation has to fulfil certain formal requirements also can have legal and binding force.²³

Local Regulation is formed by the authority of Regional House of Representative which is made together with the governor, regent, and mayor (joint authority).²⁴ According to Article 69 Law No. 22 of 1999 on Local Governance, there is still the dominant role of the executive in formulating the Local Regulation, stating that the District Head shall enact a Local Regulation with the

²⁰ Regional People's Representative Council/DPRD is the institution of local representative which has position as the element of the implementation of local governance.

²¹ Samsul Wahidin, 2013, *Hukum Pemerintahan Daerah Pendulum Otonomi Daerah dari Masa ke Masa*, Yogyakarta: Pustaka Pelajar, p.106

²² Irawan Soejito is a government experts in Indonesia

²³ Djoko Prakoso, 1985, *Proses Pembuatan Peraturan Daerah dan Beberapa Usaha Penyempurnaanya*, Jakarta Timur: Ghalia Indonesia, p.43

²⁴ Law No. 22 of 1999 on Local Government

approval of DPRD.²⁵ This formulation is in line with the provisions of the powers of forming the law with the approval of Parliament.

Under this provision, it has been rearranged in the new constitutional provisions, which in Article 5 paragraph 1 of the 1945 Constitution mentioned the President is only entitled to submit the Draft of Law²⁶, and in another part of the first amendment of the 1945 Constitution said that People's Representative Council (*Dewan Perwakilan Rakyat/DPR*) hold the power to create the Law.

Furthermore, with the new constitutional amendment, there should be a change in the authority which is made by the regional regulation so that the DPRD which has the power to make a Local Regulations and District Heads only has the right to purpose the bills of Local Regulation to draft/bills and discuss and ratifies it after the approval of DPRD.²⁷

The position of local government is at the core or centre of all activities in society. Therefore, in accordance with the 1945 Constitution, the government has obliged to spearhead the development. Friedman in his book "Law in a Changing society"

²⁵ Article 69 of Law No. 22 of 1999 on Local Government stated, "The District Head determined the Local Regulation with the approval of Regional Representative Assembly in the enforcement of Local Autonomous and for further explanation from the higher legislation."

²⁶ The 1945 Constitution of Republic of Indonesia Article 5 (1) "The President shall be entitled to submit bills to the DPR"

²⁷ Ni'matul Huda, 2009, *Hukum Pemerintahan Daerah*, Bandung: Penerbit Nusa Media, pp.211-212

explained the functions of government apparatus are: as protector, as a dispenser of social service, as an industrial manager, as economic controller and as arbitrator, still need to be added with another important function that is, as the agent of development.²⁸

As the agent of development, it has the function as a vital communication tool between National leadership with the society and as the translator of policies, including the local regulation.²⁹

B. Spatial Plans

1. The Meaning of Spatial Plans for Local District (City)

Spatial is derived from the word "*tata*" in Bahasa, which means the spatial or area which arrange in order to create economic, socio-cultural and political needs, as well as benefits for the development of the community of the region.³⁰

Moreover, based on Article 1 Number 1 of Law No. 26 of 2007 on Spatial Planning, space is a place which includes space of land, space of sea, and space of air, including space within the earth as a unity of territory, where the humans and other living creatures, perform activities, and maintain their sustainability of life.

²⁸ Djoko Prakoso, *Op.Cit*, p.17

²⁹ *Ibid.*, p.18

³⁰ Yunus Wahid, 2015, *Pengantar Hukum Tata Ruang*, Jakarta: Kencana Prenadamedia Group, p.6

Meanwhile, according to D.A Tisnaamidjaja³¹, the definition of space can be interpreted as a physical form of the region in dimensions and geometric which is the place for humans in carrying out its life activities properly.³²

Furthermore, Article 1 paragraph 2 Law No. 26 of 2007 on Spatial Planning, describes spatial is a form of structural and system of the space.³³ Therefore, spatial plans mean a process of planning which the result is in the form of plan where the planning as a component which is important in every social decision, every family, group, society, even the government which are involved in that plan.³⁴

Spatial planning is an effort which tries to formulate the utilization effort of space/land optimally and efficiently for human activities in their areas in the form of sectorial development, region, and society which can be achieved within a certain time. Without the existence of the arrangement of space or land as the right principle of spatial planning, may cause to the inefficient and the ineffective development efforts, and affect wider differences between developed area and underdeveloped area.³⁵

³¹ Doddy Achdiat Tisna Amidjaja is an educational figure and researcher, professor of Biology of Institute Technology of Bandung (ITB) and fifth rector of ITB or the twenty-one rector of Ganesha Campus

³² Juniarso Ridwan dan Achmad Sodik, *Op.Cit*, p.23

³³ Law No. 26 of 2007 on Spatial Plans Article 1 number 2

³⁴ Juniarso Ridwan dan Achmad Sodik, *Op.Cit*, pp.24-25

³⁵ Yunus Wahid, *Op.Cit*, p.9

Meanwhile, what is meant by Spatial Plans for Local District/RTRWK (*Rencana Tata Ruang Wilayah Kabupaten/Kota*) is the plan that refers to National Spatial Plans (*Rencana Tata Ruang Wilayah Nasional/RTRWN*), Spatial Plans of Province (*Rencana Tata Ruang Wilayah Provinsi/RTRWP*), guidance and guidelines of the implementation in spatial planning fields and Long-Term Development Plan of the Region (*Rencana Pembangunan Jangka Panjang Daerah/RPJPD*).³⁶

In the arrangement of RTRWK, it also should observe several things, among others: the development of national problems and the results of the assessment of the implications of spatial planning of the district, efforts of equal distribution of development and economic growth of the district, carrying capacity and environmental capacity and RTRWK which conterminous with the Article 25 paragraph (1) and (2) of Law Number 26 of 2007 on Spatial Planning.

RTRWK has become the basis for the issuance of permit for the development site and the land of administration³⁷. Based on Article 23 paragraph (5)³⁸ the validity period of RTRWK is 20

³⁶ Arif Anindita, 2013, “*Konsep Tata Ruang Provinsi Daerah Istimewa Yogyakarta dalam Perspektif Yuridis Peraturan Daerah Istimewa Yogyakarta Nomor 2 Tahun 2010 tentang Rencana Tata Ruang Wilayah*”, available at <http://bem.feb.ugm.ac.id/konsep-tata-ruang-provinsi-daerah-istimewa-yogyakarta-dalam-perspektif-yuridis-peraturan-daerah-istimewa-yogyakarta-nomor-2-tahun-2010tentang-rencana-tata-ruang-wilayah/> accessed on November 9th, 2017, at 4:15 p.m

³⁷ Yunus Wahid, *Op.Cit.*, pp.100-101

³⁸ Law Number 26 of 2007 on Spatial Planning Article 23 (5) “In certain strategic environmental conditions related to large-scale of natural disasters that are determined by

years and it is reviewed once in five years, under certain conditions.³⁹

2. The Arrangement of Spatial Plans

Generally, the basic concept of spatial law is described and arranged in the Preamble of the fourth paragraph of the 1945 Constitution which states “shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order”.⁴⁰

Furthermore, the idea is formulated more concretely in the Article 33 paragraph (3) of the 1945 Constitution which explicitly gives the “the rights to control” to the state against all the natural resources in Indonesia and give the “obligation to the state” to use it for the prosperity of the people.

The arrangement on the spatial plan was first enacted by the government in the Law No. 24 of 1992 on Spatial Planning explicitly mentioned in the Government Regulation No. 47 of 1997 on National Spatial Plan which becomes the basis for Province and Region/City Spatial Plan arrangement.

legislation and / or the changes of the territorial boundaries of the country and / or provincial areas which is determined by the Act, the provincial spatial plan is reviewed more than 1 (one) times in 5 (five) years.”

³⁹ Ditta, 2017, “*Pelaksanaan Penyediaan Ruang Terbuka Hijau Publik di Kota Yogyakarta Berdasarkan Peraturan Daerah Kota Yogyakarta Nomor 2 Tahun 2010 Tentang Rencana Tata Ruang Wilayah Kota Yogyakarta*”, available at <http://e-journal.uajy.ac.id/11505/> accessed on November 9th, 2017, at 1:00 p.m

⁴⁰ Juniario Ridwan dan Achmad Sodik , *Op.Cit*, p.28

Furthermore, to optimize the concept of spatial the basic law on spatial regulated was amended through the Law No. 26 of 2007 on Spatial Planning and explicitly mentioned in the Government Regulation No. 26 of 2008 on National Spatial Plan and become the basis for Province and Region/City Spatial Plan in Indonesia.⁴¹

Basically, the important foundations on the idea of the spatial plan arrangement are:

- 1) The spatial territory of the Republic of Indonesia, within its diversity of ecosystems, is a natural resource which needs to be managed and protected for the welfare of human life (across generations)
- 2) Natural Resources Management (space: land, sea, and air) needs to be carried out in a coordinated and integrated manner with human resource and artificial resource, according to the development principles of the environment.
- 3) To realize environmental development
- 4) To maintain the harmony in the implementation of authority among regional and between central and region, in order to avoid the discrimination

⁴¹ *Ibid.*, p.29

- 5) To realize space as a safe, comfortable, productive and sustainable place
- 6) Disaster mitigation, especially for natural disasters as an effort to improve the safety and the comfort of human life.

Therefore, spatial arrangements at all levels, national, provincial, and district/city are always based on those ideas so that the spatial and the natural resource can be maintained optimally and continuously.⁴²

⁴² Yunus Wahid, *Op.Cit*, p.15