International Journal of Psychosocial Rehabilitation, Vol. 24, Issue 10, 2020
ISSN: 1475-7192

The Central Government's Authority in Spatial Planning

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Abstract-- *Based on the analysis in writing this article, the answer obtained is that the authority of spatial planning is the authority of the State (central government), the authority of the provincial regional government, and the authority of regency and city regional governments. The authority is divided according to levels of government. The State's authority (central government) in the spatial planning sector provided by the laws and regulations in the context of realizing the State's responsibility (the central government) as the highest power organization that has the authority to control, in the sense of regulating the supply, supply, utilization, and use earth, and water, and the natural wealth contained therein, and space to be used to the maximum prosperity of the people. In this way, order, peace, legal certainty, and social justice will be created as well as benefits as the objectives and functions of law in general, and more specifically in the application of the principle of caution in the field of spatial planning.*

Keywords: *Authority, Central Government, Spatial Planning.*

I. Introduction

He rejected the opinion of Burkens and Bagir Manan that the state as an organization of power is not only responsible for the implementation of government power, the implementation of law and public order, but the function of the state is responsible for the administration of people's welfare. To realize the implementation of responsibility for the people's welfare, the state is given the right to control and regulate the earth, water, space and natural resources contained therein for the greatest prosperity of the people.

Spatial Planning is an important activity for the country as a form of its responsibility in controlling and regulating the earth, water and space and natural resources for the maximum welfare and prosperity of the people. Spatial planning is carried out for the sake of the sustainability of national development properly, in order to realize spatial planning in harmony, harmony, balance, legal certainty, justice, benefits, and sustainability. Spatial planning work is a very complex work that starts with planning activities and ends with

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Received: 27 Feb 2019 | Revised: 20 Mar 2019 | Accepted: 30 Apr 2020

implementation and supervision and control activities. Spatial planning is the activity of planning the provision, designation, utilization, and use of space, whether in the form of land, basement, or water, and space. Thus, spatial planning activities are planning activities for the supply, utilization and use of agrarian resources, both in the context of providing public interest and spatial planning for the benefit of individuals and community groups. For this reason, the work of spatial planning must be carried out by the government in order to realize the use of space that brings to the welfare of the people.

The role of the state or central government in spatial planning activities is very important because it involves the lives of many people. Therefore, constitutionally, in the 1945 Constitution Article 33 paragraph (3) safeguards that the Earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, the provisions of Article 33 paragraph (3) are emphasized again in the Loga that is in Article 2, that the water and space earth, including the natural wealth contained therein are at the highest level controlled by the state, as an organization of power for all people ". What is meant by the word "controlled" by the state does not mean that the state has, but the state as the highest power organization of the nation is given the authority to at the highest level:

a. regulate and carry out the designation, use, supply and maintenance of the earth, water and space;

b. determine and regulate legal relations between people and the earth, water and space;

c. determine and regulate legal relations between people and legal actions concerning earth, water and space.

Constitutionally, the role of the state in spatial planning is crucial, because according to the theory of state authority from van Vallenhoven quoted by Notonegoro, the state is the highest power organization of a nation that is given power that governs everything and the state based on its position has the authority to make legal regulations . Based on this theory, the state with the authority it has the authority to regulate, meant in that it regulates the supply, collection and use of natural resources for the greatest prosperity of the people. In this article, we will examine: How is the Central Government's Authority in Spatial Planning and How is the Synchronization and Harmonization of UUPR Laws and Regulations with Provincial RTRW?

II. Methodology

The research to be conducted is research on "normative law" [17]. The first step is to conduct normative legal research based on an inventory of primary, secondary and tertiary laws relating to the environment, Civil Law, and limited company law. This research seeks a clear legal basis in laying the foundation in the perspective of civil law. In this study using a sculpture approach and conceptual approach. [1]

III. Results and Discussion

a. Understanding Authority

According to the big Indonesian dictionary, the word authority is equated with the word authority, which is defined as the right and power to act, the power to make decisions, rule and delegate responsibilities to other people / bodies.[15]

According to Frans Magnis Suseno, authority is institutionalized power. According to H.D Stoud, authority is the overall rules derived from the law of government organizations, which can be explained as all the rules relating to the acquisition and use of governmental authorities by public law subjects in public law relations.) According to Nomensen Sinamo, the authority referred to by H. Stoud is the authority delegated to the implementing agency, so it must first be determined in the provisions of the law. Meanwhile, according to S.F Marbun, authority means the ability to take a public legal action, or legally it is the ability to act given by the applicable law to conduct legal relations.[15]

Whereas in the Black Law Dictionary authority is interpreted more broadly, not only does the practice of power, but authority is also interpreted in the context of applying and enforcing the law, there is definite obedience, containing orders, deciding, jurisdictional supervision and even authority is associated with authority, charisma and even physical strength.[15]

Authority is a core concept in state administration law and state administration law. because in that authority contains rights and obligations, even in state administrative law the authority is described as legal power (rechtskracht). This means that only legal actions (based on authority) have legal authority (rechtskracht). Meanwhile according to Bagir Manan as quoted by Ridwan HR said that authority in legal language is not the same as power. Power only reflects the right to do and not do. At the same time authority means rights and obligations. [15]

b. Central government

In the Unitary State of the Republic of Indonesia there is a division of powers. This division of power consists of two forms, namely dividing the existing power into the tasks of state institutions and the division of power between the regional and central governments. The division of power to state institutions is threefold, the legislative body, the executive agency, and the judiciary. This division of power aims to ensure that at the time of implementation there is no accumulation of power at certain institutions and there are no unlimited powers. Because these two things cause the principles of Pancasila democracy to not work. Now that we know about state institutions, this article discusses the notions of the central and regional governments.[16]

According to the principles of autonomous law in the 1945 Constitution and strengthened Law Number 32 of 2004 concerning Regional Government, Regional Government is a government organization that organizes government affairs in the region according to the broadest possible principle of autonomy and the principle of assistance in the NKRI system. The Regional Government Administrators referred to are the governors, regents, mayors, and other instruments (heads of agencies, heads of agencies, and other work units regulated by the Regional Secretary). Legislative institutions in the regions, namely DPRD I for the provincial level and DPRD II for the kapubapaten and mayor level.[16]

c. Spatial planning

Spatial planning is regulated in Law Number 26 of 2007 concerning Spatial Planning (UUPR). In Article 1 Item 1 of the UUPR, space is a container that includes land space, sea space, and air space, including

space in the earth as a unified territory, where humans and other creatures live, carry out activities, and maintain their survival. Space itself is divided into several categories, namely:[17]

a. Land Space is a space located above and below the surface of the land, including the surface of land waters and the land side of the lowest sea line.

b. Ocean Space is a space located above and below sea level starting from the sea side from the lowest sea line side including the bottom of the sea and the part of the earth below, where the Indonesian state has jurisdiction rights.

c. Air space is a space located above land space and / or oceanic space around the territory of the country and attached to the earth, where the Indonesian state has jurisdiction rights.

Article 1 Item 2 of the UUPR explains that what is meant by spatial planning is a form of spatial structure and spatial pattern. Spatial structure in Article 1 Item 3 of the UUPR is the arrangement of settlement centers and a network of infrastructure and facilities systems that function as supporting social and economic activities of the community which are hierarchically functional. While the spatial pattern in Article 1 Item 4 is the distribution of space allotment in an area which includes the allotment of space for the protection function and the allotment of space for the cultivation function.[17]

d. The Central Government's Authority in Spatial Planning

The authority to control from the country at the central level is exercised by the central government, while at the regional level the authority is given to regional governments, both provincial and district / city governments. This is in accordance with the provisions of Article 2 paragraph (4) of the LoGA which says:

"The right to control from the state mentioned above can be empowered to the regions of Swatantra and customary law communities, only necessary and not in conflict with national interests, according to the provisions of Government Regulations".

On the basis of the authority to control, the government is obliged to regulate and carry out plans for the provision, supply, utilization and use of agrarian resources properly for the greatest prosperity of the people, both at the central government level and at the district / city level.

Considering that spatial planning is one of the activities in planning the provision, supply, utilization, and use of agrarian resources for the greatest prosperity of the people, the role of the central government and district / city government is crucial.

In the field of spatial planning, the authority of the state or central government has been regulated in UUPR as stipulated in Articles 7 and 8. The provisions of Article 7 relate to the granting of state authority to organize spatial planning, while Article 8 regulates the types of state authority in the administration of spatial planning. room. The provisions of the UUPR articles are as follows:

Article 7 states:

(1) The State shall organize spatial planning for the greatest prosperity of the people.

(2) In carrying out the tasks referred to in paragraph (1), the state grants the authority to organize spatial planning to the government and regional governments.

(3) The arrangement of spatial planning as referred to in paragraph (2) shall be carried out while respecting the rights owned by people in accordance with statutory provisions.

Article 8 states:

(1) Government authorities in the management of spatial planning include:

a. regulating, guiding and supervising the implementation of national, provincial and district / city regional spatial planning, as well as the implementation of national, provincial and district / city strategic regional spatial planning;

b. implementation of national spatial planning;

c. implementation of national strategic area spatial planning; and

d. cooperation in spatial planning between countries and facilitating spatial cooperation between provinces.

(2) Government authorities in implementing national spatial planning include:

a. national spatial planning;

b. spatial use of national territory; and

c. controlling the use of national territory.

(3) The authority of the Government in the implementation of spatial planning of national strategic areas includes:

a. stipulation of national strategic areas;

b. national strategic area spatial planning;

c. spatial use of national strategic areas; and

d. controlling the use of national strategic areas.

(4) Spatial utilization and control of spatial use of national strategic areas as referred to in paragraph (3) letter c and letter d can be carried out by regional governments through deconcentration and / or co-administration.

(5) In the framework of organizing spatial planning, the Government is authorized to draw up and stipulate guidelines for spatial planning.

(6) In the exercise of authority as referred to in paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), the Government:

a. disseminating information related to:

1) general plan and detailed spatial plan in the framework of implementing national spatial planning;

2) zoning regulations directives for the national system compiled in the context of controlling the use of national space; and

3) spatial planning guidelines;

b. set minimum service standards in spatial planning.

Listening to the provisions of Article 8 above, there is an important authority of the state / government, namely to conduct inter-state spatial planning cooperation and inter-provincial spatial planning cooperation as regulated in Article 8 paragraph (1d). These provisions are further explained in the explanation of Article 8 paragraph (1d) which states as follows:

"Spatial cooperation cooperation between countries involves other countries so that there are aspects of inter-state relations which are the authority of the Government. Which includes spatial planning cooperation between countries is spatial cooperation cooperation in the country's border areas. The granting of authority to the government in facilitating inter-provincial spatial planning cooperation is intended so that spatial cooperation cooperation provides optimal benefits for all provinces that work togethe".

In addition to the authority as mentioned above, the state is also given the authority to determine the strategic spatial planning as stipulated in Article 8 paragraphs (3) and (4), and further explained in its explanation, namely as follows:

"The authority of the Government in the use of space and controlling the use of space in national strategic areas includes aspects related to strategic values which form the basis for determining strategic areas. The provincial government and regency / city government still have authority in the implementation of aspects that are not related to the strategic value which is the basis for determining the strategic area. In accordance with the provisions of the legislation, deconcentration is given to the Governor as a representative of the Government in the region, while the task of assistance can be given to the Governor and Regent / Mayor ".

State authority, in this case the central government in planning spatial planning as regulated in Article 8 and further regulated in Article 9 which states as follows, namely:

The arrangement of spatial planning is carried out by a Minister. (2) The duties and responsibilities of the Minister in the management of spatial planning as referred to in paragraph (1) include:

a. the arrangement, guidance and supervision of spatial planning;

b. implementation of national spatial planning; and

c. coordinating the implementation of cross-sector, cross-regional and cross-stakeholder spatial planning.

The provisions of Article 9 give authority and responsibility to the minister in this case the Minister of the Interior to carry out spatial planning in all regions of Indonesia. Therefore, based on the provisions of Article 7, 8 and 9 above, the authority for national spatial planning is in the central government carried out by the Minister. The national spatial planning organized by the government is a guideline as well as a direction for the planning of provincial and regency / city spatial areas throughout Indonesia.

Regarding the state's authority in organizing spatial planning, it is explained further in the general explanation in number 9 of the Act as follows:

a. division of authority between the Government, provincial regional government, and district / city regional government in the management of spatial planning to provide clarity of duties and responsibilities of each level of government in realizing national space that is safe, comfortable, productive, and sustainable;

b. spatial planning arrangements made through the stipulation of legislation including spatial planning guidelines as a reference for organizing spatial planning;

c. fostering spatial planning through various activities to improve the performance of spatial planning;

d. implementation of spatial planning which includes spatial planning, spatial use, and spatial use control at all levels of government;

e. supervision of spatial planning which includes supervision of the performance of the arrangement, guidance, and implementation of spatial planning, including supervision of the performance of meeting minimum service standards in spatial planning through monitoring, evaluation, and reporting activities;

f. the rights, obligations and role of the community in the management of spatial planning to ensure the involvement of the community, including indigenous peoples in every process of spatial planning;

g. dispute resolution, both disputes between regions and among other stakeholders with dignity;

h. investigation, which regulates the investigation of civil servants along with the authority and mechanism of action taken;

i. provision of administrative sanctions and criminal sanctions as a basis for law enforcement in the management of spatial planning; and

j. the transitional provisions governing the necessity of adjusting spatial use to the new spatial plan, with a transition period of 3 (three) years for adjustment.

Further regulation regarding spatial planning is regulated by Government Regulation No. 15 of 2010 concerning the Implementation of Spatial Planning (State Gazette of the Republic of Indonesia No. 2010 No. 21, Supplement to the Republic of Indonesia Official Gazette No. 5103). This PP also regulates state (central government) authority in spatial planning as regulated in Articles 3, 4 and 5 as follows:

Article 3 states:

"Spatial planning arrangements are prepared and determined by the Government, provincial government, and district / city government in accordance with their authority".

Thus, on the basis of the authority granted by these laws and regulations, it is clear which is the authority of the central government, and which is the authority of the provincial region and which is the authority of the regency / city area in the context of spatial planning. Each level of government will organize spatial planning in accordance with its territory with the approval of the DPR, Provincial DPRD, and Regency / City DPRD.

e. Synchronization and Harmonization of Laws UUPPLH, UUPR, with Provincial Regulations on RTRW

The word synchronization comes from the Indonesian word "synchronous" which means in line, in line, in line, in harmony. The word synchronous to the word "synchronization" means to align, synchronize, harmonize. In the English dictionary the word synchronous comes from the word "synchronize" which means to operate, move, shift at the same time with the same speed. While the word harmonization comes from the Indonesian word. "Harmony" which means harmony, harmony, and henceforth becomes the word "harmony" which means harmony, efforts to find harmony, compatibility. In the English dictionary the word harmony comes from the word "harmonize" which means harmony, harmony, correspondence.

Listen to the notion of synchronization and harmonization as stated above, the same meaning, but the use of these two terms tends to be different. In general, the use of the word synchronization regarding matters related to harmony, a match between a higher position and a lower position, such as synchronizing local

government programs. While harmonization tends to be used to juxtapose, harmonize, harmonize between the two things or conditions in an equal position, such as the condition of the family in the household.

In law the meaning of legal harmonization is broader than synchronization. Synchronization is part of the harmonization study, but synchronization cannot be applied in the study of legal or transnational norms and systems.[5]

Examining law synchronization and harmonization will find what is called a "conflict of norms". Arief Sidharta said that legally conflicting norms in legislation can occur due to several possibilities as follows:

1. There is a vertical inconsistency in terms of the format of the regulation, which is a lower statutory regulation that contradicts a higher regulation, for example between a law and a government regulation, or with a local regulation.

2. There is a vertical inconsistency in terms of time, that is, some rules are hierarchically parallel, for example fellow Laws but one applies first than the other.

3. Horizontal inconsistencies occur in terms of the substance of regulations, namely several regulations that are hierarchically parallel, for example fellow laws but the substance of one regulation is more general than the substance of other regulations.

4. Horizons inconsistency occurs in terms of substance in the same regulation, for example article 1 is contrary to article 15 of the same law.

5. Inconsistencies occur between different formal sources of law, for example between the law and the judge's decision or between the law and customary law.

Law is a system, so this legal principle is important to pay attention to. As the legal system assumes itself as a complete order, so there is no desire for conflict with one another. If there is a conflict, the legal system will seek its own solution. So the legal system already has its own resolution mechanism (legal remidies) against general conflicts.

Conflicts of norms usually occur in a normative order. Norms or rules are rules that have a clear formula to be used as a code of conduct. There are rules that are more abstract than norms, namely principles. Above there is the most abstract rule, which is value. If arranged hierarchically, then the principle is actually higher than the norm. That is why when conflicts occur between legal norms, resolution is sought through legal principles.[4]

Satjipto Rahardjo said that:[10]

"The principle of law is not a rule of law, but there is no law that can be understood without knowing the legal principles contained therein. Therefore to understand the law of a nation as well as possible can not only look at the legal regulations, but can dig it up to the principles of law. It is this legal principle that gives ethical meaning to legal regulations and the rule of law ".

Sudikno Mertokusumo said:[9]

"The principle of law is not a concrete law that is contained in or behind every legal system incarnated in a statutory regulation and judge's decision which is a positive law that can be found by looking for the characteristics or characteristics that are common in these concrete regulations. "

Therefore, the role of the principle of law is to resolve a problem of conflicting legal norms or norms that are not synchronous. The legal principles used in resolving conflicting norms both vertically and horizontally are as follows:[9]

1. Lex superior derogate legi inferiori, (higher level rules override lower regulations.
2. Lex posteriori derogate legi priori, (the new rules rule out the old rules).
3. Lex specialis derogate legi generali, (more specific rules rule out more general rules).
4. Lex dura sed tamen scripta, (laws cannot be contested).
5. The law does not apply retroactively.

The problem of law synchronization arises because in a legal system that recognizes the existence of a legal hierarchy, namely that the formation of lower legal rules must refer to higher legal rules. The existence of a legal hierarchy is caused by the government of our country consisting of the central government and provincial governments, and district and city regions, each of which has the authority to form legislation to regulate development implementation in accordance with the respective levels of government.

The 1945 constitution as a result of the amendment has changed the Indonesian state government system from a centralized government system to a decentralized government system, where government affairs are divided between the central government and regional governments, and each has the right to manage their own households. This provision is regulated in Articles 18, 18A, and 18B, which states as follows:

Article 18

1) The Unitary State of the Republic of Indonesia is divided into provinces and the province is divided into districts and cities, each of which has a regional government, which is regulated by law.

2) Provincial, regency and municipal governments govern and manage their own government affairs according to the principle of autonomy and assistance.

3) Provincial, regency, and city governments have Regional Representative Houses whose members are elected through general elections.

4) Governors, Regents and Mayors respectively as provincial, regency and city regional government heads are democratically elected.

5) Regional governments carry out the broadest possible autonomy, except governmental affairs which are determined by law as the affairs of the Central Government.

6) The regional government has the right to stipulate other regulations to carry out autonomy and assistance tasks.

7) The composition and procedures for carrying out regional government are regulated in law.

Article 18A

1) The relationship of authority between the central government and regional, provincial, district and city governments, or between provinces and regencies and cities, is regulated by law with due regard to regional specialties and diversity.

2) Financial relations, public services, utilization of natural resources and other resources between the central government and regional governments are regulated and carried out fairly and in accordance with the law.

Based on these provisions, every development must be based on laws and regulations, both national-scale development and regional development of the province, district, and city areas, bearing in mind that the implementation of the development must be planned well in the short term, long term medium, or long term.

Every development activity both on a national scale as well as regional and provincial and regency and city development will be related to space, both land, sea and air space, spatial planning is needed based on the Laws and Regional Regulations. Therefore, the government, with the approval of the Indonesian Parliament, formed the UUPR. UUPR is used as a reference for provincial and district and city governments in the framework of making regional spatial plans. Provincial regional governments, make provincial regulations to be used as a reference for district and city governments in making spatial plans. On this basis, it raises the issue of legal synchronization, which finally found insynchronization or non-synchronization.

Thus, there is a level / hierarchy of laws and regulations in the field of spatial planning, so this section will discuss the study of synchronizing these laws and regulations. Vertical synchronization of laws and regulations that are examined whether a statutory regulation that applies to a particular area of life is not in conflict with each other, when viewed from the perspective of the existing legal hierarchy.

In connection with this, the theory used in analyzing this problem is the theory of the level of norms put forward by Hans Kelsen and Hans Nawiasky. Hans Kelsen said that the formation of legal norms must be based on higher legal norms. Lower legal norms must be based on higher legal norms. Higher legal norms determine the formation of lower norms. The constitution ranks highest in national law. So the principle of law that applies in this study is: Lex superior derogate legi inferiori (The higher law has a higher position than the lower law), thus, the formation of lower law must not conflict with higher law.

IV. Conclusion

Based on the results of the analysis the answers obtained are that the authority of spatial planning is the authority of the State (central government), the authority of the provincial regional government, and the authority of the regency and city government. The authority is divided according to levels of government. The State's authority (central government) in the spatial planning sector provided by the laws and regulations in the context of realizing the State's responsibility (the central government) as the highest power organization that has the authority to control, in the sense of regulating the supply, supply, utilization, and use earth, and water, and the natural wealth contained therein, and space to be used to the maximum prosperity of the people. In this way, order, peace, legal certainty, and social justice will be created as well as benefits as the objectives and functions of law in general, and more specifically in the application of the principle of caution in the field of spatial planning.

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