



The (In) Justice of Spatial Planning Law Post-Omnibus Law

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Abstract - To support job creation, the Indonesian Government has issued an Omnibus Law. This Omnibus Law is intended to simplify and reorganize various provisions of various laws which are considered to be overlapping and contradictory so that they are unable to support job creation. One of the laws whose provisions have been partially changed is the Spatial Planning Law. The issuance of the Spatial Planning Law itself aims to regulate the use of space to ensure justice for all parties who use space and preserve the environment so as to realize sustainable development. This article reviews post-Omnibus Law spatial arrangements that have not considered the principles of community rights and sustainable development in good governance. This article is based on normative juridical research conducted by the author. The author's research findings show that the Spatial Planning Law after the Omnibus Law tends to side with investors without paying attention to the goals of sustainable development and justice.

Keywords- Spatial Planning Law, Post- Omnibus Law, Good Governance;

I. INTRODUCTION

In 2020, the Government of Indonesia issued the Omnibus Law policy, also known as the Job Creation Law. The issuance of the law went through a long process because it was considered to violate the substance of the law on the Formation of Legislation and had even been challenged through a judicial review at the Constitutional Court until, ultimately, the Government still passed the Omnibus Law as a law.

The Omnibus Law is intended to facilitate business actors to open their business activities in Indonesia and is motivated by the complexity of the licensing bureaucracy caused by overlapping laws and regulations that make it difficult for investors to invest in Indonesia. Not only overlapping, there are also contradictions in some laws and regulations. Changes are not only in horizontal regulations or policies that are considered incompatible but also in vertical regulations as well. The hope is that by making changes and even revoking some laws and regulations in the Omnibus Law, it will be easier for investors, both foreign and local, to invest, which in turn will create job opportunities in Indonesia. As a law that oversees several multi-sectoral regulations, the Omnibus Law is expected to be able to reduce conflicts between regulations but also truly prioritize the principle of justice.

To support the investment climate in Indonesia, there are at least 80 laws and more than 1,200 articles revoked or amended, with 174 articles contained in the Omnibus Law. There are also at least 11 regulatory clusters contained in the Omnibus Law, one of which is licensing procedures, which is related to the spatial planning law.

The spatial planning law is one of the arrangements amended in the Omnibus Law. This spatial planning law is one of the legal products used as a licensing instrument, especially related to space utilization. Through this law, the utilization of space is regulated so that there is justice for all parties who utilize space and environmental sustainability.

This paper focuses on whether the arrangements contained in the spatial planning law have taken into account sustainable development and the principle of justice for all parties in the utilization of space.

II. METHODOLOGY

The type of research used is normative legal research, which tests and examines the norms contained in the law on spatial planning. Primary data includes laws and regulations, secondary data includes books and journals related to spatial planning. spatial

planning.[1]. The legal materials were analysed using the qualitative deductive method. The author interprets the legal norms by using a number of legal theories as a test tool to find conclusions.[2].

III. FINDINGS AND DISCUSSION

Spatial planning is a very significant instrument that becomes the initial reference in granting business activity licenses, as well as an important instrument for regional development planning at the national and regional levels. Therefore, spatial planning becomes a determining tool in granting permits [3]. Because spatial planning occupies an upstream position in the granting of licenses, improvements are made to spatial planning products that are considered overlapping, including the authority in planning and determining spatial planning. The hope is that there will no longer be overlapping spatial products that will complicate investment licensing.

Although spatial planning is an important instrument in supporting investment, what needs to be considered is that spatial planning is also an instrument to actualize sustainable development. Sustainable development is essentially development that does not only pursue profit but also development that is able to pay attention to environmental preservation and social needs. Economic development can never continue when environmental conditions are damaged, and social needs are not fulfilled. Economy, society and environment are 3 (three) important pillars that must be considered in development. Development that pays attention to these three pillars is known as inclusive development [4].

In order to realize the balance of the three pillars, spatial planning is an important key to determining which space can be utilized or cannot be utilized. Taking into account the importance of spatial planning as an instrument to achieve sustainable development, in this article, the author will criticize the spatial arrangement in the Omnibus Law. The critical analysis of the spatial arrangement in the Omnibus Law will begin with an explanation of the articles on the spatial arrangement law contained in the spatial arrangement law amended by the Omnibus Law. Furthermore, it will be critically analyzed about the implications and risks arising from the changes in the substance of the arrangements in the article.

a. The alteration of the phrase “Space Utilization Permit” to “Suitability of Spatial Use Activity.”

The first change is that the nomenclature of "space utilization permit" has been changed to "suitability of spatial use activity". The phrase "space utilization permit" was changed in consideration of simplifying the licensing bureaucracy. Space utilization licensing is considered to add to the length of the licensing process to start business/investment activities. It has been explained above that the Omnibus Law aims to improve the investment climate and business activities, hence the simplification of business licensing requirements.

One of the efforts to simplify the basic requirements of business licensing is to change the phrase "space utilization permit" to "Suitability of Spatial Use Activity (SSUA)." As explained in Article 14, paragraph (1) of the Omnibus Law, what is meant by the suitability of spatial use activity is the suitability of the investment activity location plan with the Detailed Spatial Plan (DSP). This arrangement means that an investment activity no longer requires a license, but it is sufficient to obtain confirmation that the investment activity to be carried out is in accordance with the designation of the area as contained in the spatial plan document.

Furthermore, Article 14 paragraph (2) of the Omnibus Law regulates that in order to make it easier to determine the suitability of spatial utilization activities, local governments are obliged to compile and provide maps in digital format and according to standards. The spatial map in digital format must be connected to the licensing service portal. This arrangement changes the procedure for conformity of spatial utilization before the Omnibus Law. Prior to the Omnibus Law, investors had to find out whether the location of their business/investment activities was in accordance with the spatial plan map and had to obtain physical spatial plan documents (hard copy) in a bureaucratic manner. As a result, there was no transparency of spatial plan products.

In the event that the local government does not yet have Regional Spatial Plan (RSP) and provides digital maps, business actors/investors can apply for DSP approval to the central government. In granting DSP approval, the central government refers to spatial plans at a higher hierarchy, namely the Regional Spatial Plan at the regency/city level, the national spatial plan, or the national strategic area spatial plan..

This arrangement becomes a problem if we consider the scale of the map used as the basis for granting DSP approval. In order to be certain, the size of the map in the policy plan and the original data in the village environmental records must be adjusted. For example, the original 1:5,000 scale data tends to be different from the planning data. This difference causes disputes in implementation and utilisation. The large scale of map accuracy makes it difficult to determine whether the planned location of investment activities is in accordance with the land use designation or not. This arrangement degrades the principle of accuracy in granting DSP approval. This neglect of the principle of accuracy is feared to lead to land conflicts related to land status, area zoning,

the rights of indigenous peoples and so on [5]. This condition has the potential to cause over-exploitation of natural resources and to be utilized by investors who are only interested in taking profits through the Omnibus Law arrangement.

Other problems caused are related to the commitment and consistency of government officials as regulators to control spatial utilization. As a result of a weak commitment to controlling space utilization, there are many existing dynamics of development in the field that cause deviations in space utilization. The Regulation of the Minister of Agrarian Affairs and Spatial Planning has regulated this, including the pattern of preparation, review, amendment, and reissuance due to the approval of the substance of the initial data in the village, sub-district, district/city, and province, namely in Article 31 paragraph (1) the review of the spatial plan is carried out every 5 (five) years. The dynamics of rapid regional development and not maximizing the control of regional spatial planning, it is possible that there is a mismatch between the existing conditions of spatial utilization and spatial planning. This situation makes investors get a blank map that is unable to provide an accurate picture of the spatial conditions of the area where business activities will be built [6].

b. The Centralized Regime of Spatial Planning Policy

There has been a paradigm shift in the governance system since the issuance of the Omnibus Law. While since 1998, the governance system in Indonesia has promoted the spirit of decentralization, since the Omnibus Law, it has changed to the spirit of centralization. The centralised policy orientation is evident in the Omnibus Law, which reduces the active role of local governments and communities, which are indigenous groups.

As an implementing regulation of spatial planning law after the Omnibus Law, the government issued a Government Regulation (GR) on the Implementation of Spatial Planning. Stipulated in the GR, a document that states the conformity of space utilization activities with the RSP is referred to as DSP confirmation. However, suppose the local government does not yet have an RSP. In that case, the government can issue DSP approval by considering the suitability of the space utilization activity based on the spatial plan with a hierarchy above the RSP, namely the RSP.

Space has various natural resources that have potential as well as can be utilized as economic resources. With the potential for enormous economic resources, the space of the region is contested by various interests. If space is used arbitrarily, it will damage environmental sustainability, which will ultimately interfere with the achievement of sustainable development goals. Therefore, the role of the state in carrying out spatial planning is needed in order to create environmental sustainability. Through spatial planning will be able to balance various interests, both economic, food, energy, social and environmental interests [7].

The local government, as a representative of the state, is the party that knows the details of the conditions, situation and potential of natural resources and the limits of space utilization for development purposes. Local government is the party that understands the structure and pattern of space in the area. Suppose the Central Government takes the role of local government in granting DSP Approval. In that case, it can be predicted that it will lead to ineffectiveness in balancing various interests in space utilization in the region.

The effort to shift the spirit of decentralization into centralization is also evident with the insertion of article 34A in the Spatial Planning Law, which is regulated through the Job Creation Law. Article 34A explains that if the Central Government has a strategic national policy that has not been accommodated/regulated in the spatial plan, then the Central Government can still implement the strategic national policy. This arrangement shows that the Central Government ignores the function of spatial planning. As is known, the function of spatial planning is to actualize the structure and pattern of space so that development remains environmentally oriented [8].

c. The Absence of Integration of Environmental Preservation and Spatial Planning Policies

Starting from the idea of spatial planning that developed in Europe in 1999, the aim of spatial planning is to harmonize social, economic, environmental preservation interests for sustainable development and balance development between regions [9]. With this paradigm, it is very clear that spatial planning must be placed as an instrument for environmental preservation. By preserving the environment, it will improve the social welfare of society.

Article 14 of the Environmental Protection and Management Act and its supporting Environmental Strategy Plan (ESP) emphasise spatial planning for the prevention of environmental pollution and damage. The strategy document specifically ensures that the principles of sustainable development apply integrally with local government, as well as provisions on natural disasters. The strategy document is very important, especially Article 15 paragraph (2) of the Environmental Law which elaborates on this in the Regional Spatial Plan (RSP).[10]. Noting the important nature of SEA documents, Article 15 paragraph (2) of the PPLH Law explains that the Government is obliged to make Strategic Environmental Assessment (SEA) and include it in the Provincial and Regency/City Spatial Plans.

However, in the Omnibus Law, the obligation to include SEA material in spatial planning is reduced. The Omnibus Law explains that the Spatial Planning Law adds Article 14A paragraph (1) letter a, where the preparation of spatial plans is carried out by taking into account the carrying capacity and capacity of the environment and SEA. The use of the phrase "paying attention to" can be interpreted as not an obligation to include in spatial planning as stipulated in the Environmental Law.

In the absence of an obligation to include SEA material in spatial planning, it is feared that the Government will override the calculation of carrying capacity, capacity and the level of vulnerability to natural disasters. With no obligation to include the materials contained in the SEA document, of course, spatial planning will ignore environmental aspects. It can be predicted that spatial utilization plans without considering the carrying capacity and capacity of the environment will lead to the inability to support sustainable development.

d. Protection of the Rights of Indigenous Peoples in Post-Omnibus Law Spatial Planning

The attachment of the social, religious and economic life of the *Adat* (Indigenous) Law Community to their environment is very strong. The strong bond between the existence of the *Adat* Law Community and the environment has become a special concern for activists to protect the rights of the *Adat* Law Community. In order to protect the existence of Indigenous Peoples with all their ownership rights, certainty is needed in spatial planning. Through spatial planning, utilization as well as control of spatial utilization will be planned so that it will reduce the conversion of land that is usually used for economic activities such as factories, plantations, mining and others [11].

Spatial planning arrangements have recognised the rights of indigenous peoples. This is due to the active involvement of indigenous peoples in development planning, management and control. While guarantees of indigenous peoples' rights existed before the Omnibus Law was issued, they were reduced after the Omnibus Law was issued. This can be seen in the definition that reduces indigenous peoples, namely in Article 65 paragraph (3) of the Omnibus Law, the community consists of individuals and business actors without Masyarakat Hukum Adat. They as legal subjects are placed in a passive position, only receiving planning results without being involved in planning up to controlling spatial utilisation..

IV. CONCLUSION

The issuance of the Omnibus Law, on the one hand, has a good purpose to open up employment opportunities through ease of investment in Indonesia. However, paying attention to several regulatory articles, especially in the spatial planning cluster, the Omnibus Law is more nuanced in favor of investors than paying attention to achieving sustainable development goals and ignoring the rights of indigenous peoples that reside in Indonesia. It is highly necessary to reconstruct the arrangements in the spatial planning cluster in the Omnibus Law in order to be able to support the achievement of sustainable development and justice.

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