

Research Article

Implementation of Space Utilization Control Post Law Number 11 in the Year 2020 About Work Creation

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ORCIDArif Firmansyah: <https://orcid.org/0000-0002-3208-3117>**Abstract.**

The implementation of spatial planning in Indonesia refers to Law Number 26 of 2007 concerning Spatial Planning and Law Number 11 of 2020 concerning Job Creation and its derivative regulations. Spatial planning, as stated in Article 3, "the implementation of spatial planning aims to create a safe, comfortable, productive, and sustainable national space based on the Archipelago Insight and National Resilience and the realization of the protection of space functions and prevention of negative impacts on the environment due to space utilization. In order to realize the objectives of spatial planning, these regulations must be enforced. The testing of the implementation of Law Number 26 of 2007 concerning spatial planning and Law Number 11 of 2020 concerning job creation was carried out with the theory of the legal system of Lawrance Friedman with normative juridical research methods. The approaches used were legal and conceptual. The results of the research show that the implementation of controlling space utilization after Law Number 11 of 2020 concerning job creation cannot be implemented properly, because the legislation in the field of spatial planning has not been able to support the control of space utilization. In addition, from law enforcement it is necessary to increase resources, such as human resources and infrastructure, the legal culture of the community.

Keywords: implementation, spatial planning, legal system

1. Introduction

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." [1] In Article 33, paragraph (3) of the 1945 Constitution, there are two powerful words, namely the words "controlled" and "used." The word "controlled" is the basis of state authority. [2] According to the general explanation, the State is given the authority or mandate by the Indonesian people to control the earth, water, and space, including the natural resources contained therein. The State's mandate in regulating the allocation of space is regulated in Article

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2 paragraph (2) of Law Number 5 of 1960. The Basic Agrarian Regulations define the State's right to control this land as the State's authority to a. regulate and administer the designation, use, supply, and maintenance of earth, water, and space.

n carrying out the mandate of the state's right to control that the state regulates and administers the allocation, use, and supply of land, the state establishes a regulation on spatial planning, namely Law Number 26 of 2007 concerning Spatial Planning. Law Number 26 of 2007 concerning Structuring Law Number 11 of 2020 concerning Copy-rights Spatial work states that spatial planning is a system of spatial planning processes, space utilization, and control. These processes are interrelated and complementary to create a safe, comfortable, productive, and sustainable national territory based on Archipelago Insight and National Resilience.

In 2019 the Ministry of ATR/BPN noted that based on an audit of controlling space use violations conducted from 2015-2018, 6,621 locations in Indonesia were indicated to be in violation, and the distribution was primarily found in the Java Island area of 5,286 locations.[1] While the audit results in the Batam area, there are 38 locations for violation of spatial use, and for the Ambon area, which represents the eastern region, there are 120 violations of spatial use. The violation of spatial use is the overlap between the existing spatial patterns in the province and the national strategic area and the use of space that is not by the spatial plan in the protected area. In addition, there are also violations of spatial planning that intersect with the customary rights of customary law communities. So with some forms of violation, it is necessary to formulate a practical concept in the implementation or enforcement of law in controlling space utilization to achieve the goal of orderly space.

2. Research methods

The research method used is normative juridical, namely legal research that uses secondary data sources [3] by compiling a conceptual framework by formulating the provisions contained in the laws and regulations that are the research's basis.[4] The approach to the legislation consists of the 1945 Constitution, Law No. 11 of 2020 concerning Job Creation, and Law No. 26 of 2007 concerning Spatial Planning. The specification of analytical descriptive research is research that aims to discuss the problem by collecting data, compiling, classifying, and analyzing the implementation.

3. Discussion

Article 33, paragraph (3) of the 1945 Constitution states, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The realization of this article is stated in Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, namely that the State is given the authority to regulate and administer the allocation, use, supply, and maintenance of earth, water, and space. Furthermore, in Article 14 of the Basic Regulations on Agrarian Principles, it is explained that in order to achieve the nation's aspirations, the Government shall make a General Plan regarding the supply, designation, and use of earth, water, and space for the various interests of the people and the State. The embodiment of the regulation to regulate and implement the allocation, use, and supply of spatial planning is regulated in Law Number 26 of 2007 concerning Spatial Planning as amended by Law Number 11 of 2020 concerning Job Creation.[5]

In Law No. 11 of 2020 concerning job creation, spatial planning is a system of spatial planning, space utilization, and control. Spatial planning is a process of determining the spatial structure and pattern, including the preparation and determination of the spatial plan. The utilization of space is an effort to realize the spatial structure and pattern in accordance with the spatial plan through the preparation and implementation of programs and their financing. Controlling the use of space is an effort to create an orderly spatial arrangement.

Activities The implementation of spatial planning consists of 3 (three) interrelated activities, namely: spatial planning, space utilization, and space utilization control, with the product of a spatial plan in the form of a Regional Spatial Plan (RTRW), which hierarchically consists of a Spatial Plan. National Territory (RTRWN), Provincial Spatial Planning (RTRWP), and Regency/City Spatial Planning (Regency/City RTRW). The implementation of spatial planning can be described as follows:[6]

Number 26 of 2007 concerning Spatial Planning and Law Number 11 of 2020 concerning Job Creation and its derivative regulations. Spatial Planning, as stated in Article 3, The implementation of spatial Planning aims to create a safe, comfortable, productive, and sustainable national space based on the Archipelago Insight and National Resilience by realizing harmony between the natural environment and the artificial environment; the realization of integration in the use of natural resources and artificial resources with due regard to human resources; and the realization of the protection of

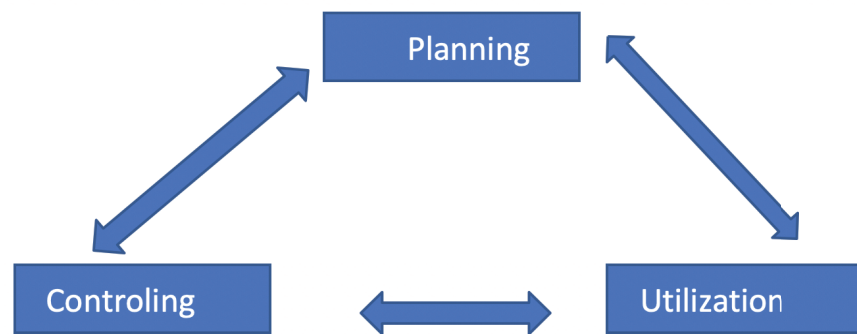


Figure 1: Implementation of Spatial Planning.

the function of space and the prevention of negative impacts on the environment due to the use of space.

The central government in the implementation of spatial planning includes regulation, guidance, and supervision of the implementation of spatial planning in the national, provincial, and city districts, as well as in the implementation of spatial planning for national strategic areas; providing technical assistance for the preparation of spatial plans for provincial, district/city areas, and detailed spatial plans; technical guidance in the preparation of provincial spatial plans, district/city spatial plans, and detailed spatial plans; implementation of national spatial planning; implementation of national strategic area spatial planning; and cooperation in spatial planning between countries and facilitating cooperation in spatial planning between provinces.

The authority of the central government and local governments in implementing spatial planning includes spatial planning, spatial utilization, and control of space utilization. In this paper, we will discuss the implementation of spatial use control in three areas, namely Manokwari (West Papua Province), Ambon City (Maluku Province), and Manggarai Regency (East Nusa Tenggara Province). Space utilization control is carried out through the provisions of the Suitability of Spatial Utilization Activities; providing incentives and disincentives; and imposition of sanctions on the central government in the implementation of spatial planning, including regulation, guidance, and supervision of the implementation of spatial planning in the national, provincial, and city districts, as well as in the implementation of spatial planning for national strategic areas; providing technical assistance for the preparation of spatial plans for provincial, district/city areas, and detailed spatial plans; technical guidance in the preparation of provincial spatial plans, district/city spatial plans, and detailed spatial plans; implementation of national spatial planning; implementation of national strategic area spatial planning;

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

Law enforcement is a series of processes to describe values, ideas, and ideals that are pretty abstract which are the goals of the law. These values must be able to be realized in actual reality (can be implemented or not). According to Soerjono Soekanto, conceptually, the core and meaning of law enforcement lie in harmonizing the relationship of values outlined in solid rules and manifesting attitudes and actions as a series of final stage value elaborations to create, maintain and maintain a peaceful social life.[6] According to Satjipto Rahardjo, law enforcement is essentially the enforcement of these abstract ideas or concepts.[7] Law enforcement is an attempt to make these ideas a reality. Law enforcement is a concrete form of law application in society that affects legal feelings, legal satisfaction, and the needs or legal justice of the community.[8]

Lawrence M. Friedman presented a Theory of Legal System (the Theory of Legal System) in which there are three main legal system elements: Structure, Substance, and Culture. The substance is the rules, norms, and patterns of actual human behavior within the system.[9] The substance also means the "product" produced by people in the legal system, their decisions, and the new rules they make. Structure The legal system has a framework structure, the part that survives, the part that gives some form and limitation to the whole. This component refers to the existence of institutions created by the legal system, in which institutions have inherent, separate functions in the operation of the legal system. These institutions include the Police, the Prosecutor's Office, the Courts, and Lawyers. In short, it can be said that this structural component allows people to expect how a legal system should work (law in the books). Legal Culture (Culture) Legal culture is the human attitude toward the law and the legal system of beliefs, values, thoughts, and expectations. In other words, legal culture.[10]

Talking about the substance of the law, we must look at the reality of a pluralistic social order. In addition, we also refer to the basic philosophy of the state, namely Pancasila. Based on this, the legal substance results from actualizing the values and legal rules that live in a society (living law), both in the sense of written law and unwritten law. For this reason, respect and strengthening local wisdom and customary law must be a particular concern. So, the *volksgeist* referred to by Savigny is well accommodated in statutory regulation. In the end, the legal product that was born becomes functional in the life of the nation and state (positive law).[11]

Based on the theory of Lawrence M. Friedman, what is meant by a legal substance or legal substance is the rules, norms, and patterns of actual human behavior in the system. So the substance of the law concerns the applicable laws and regulations that

have binding power and become guidelines for law enforcement officers. The legal or legal substance is an essential element that determines whether or not the law can be implemented.[12]

Legally, spatial use control is related to spatial planning in Manokwari, Ambon City, and Manggarai Regency. The fundamental problem is that the Regional Spatial Plan made by the region does not meet the standard requirements for a spatial plan because many facts are found that are not accommodated. Objects in the structural plans and spatial patterns. In addition, there is a discrepancy between the technical material and the regional regulations, and the zoning regulations are not described in detail. Another thing is the preliminary and detailed indication of the program to be implemented from the spatial plan that has been prepared. In addition, the spatial plan that should provide community welfare is inversely proportional to the spatial planning goal. So law enforcement for controlling the use of space cannot be implemented. Even if the spatial planning regulations are implemented, it will hinder the development and welfare of the area because the spatial plan is no longer to the existing conditions.

In Lawrence M. Friedman's theory, the legal structure, or what is commonly referred to as the legal structure, is an essential element that determines whether or not the law can be appropriately implemented. Without credible, competent, and independent law enforcement officers, the law cannot run or be enforced. So, the legal structure consists of existing legal institutions intended to carry out existing legal instruments.[12]

In carrying out law enforcement in spatial planning, the central and regional governments have their respective authorities. In Article 17 point (3) of Law Number 11 of 2020 concerning job creation, the central government's authority is planning for national spatial planning, utilization of national territory space, and controlling the utilization of national territory space. The authority of the central government in implementing the spatial planning of national strategic areas includes

1. determination of national strategic areas, spatial planning of national strategic areas;
2. utilization of national strategic area space; and
3. controlling the use of space in the national strategic area.

Meanwhile, the regional government's authority includes spatial planning for provincial / district/municipal areas, utilization of provincial/district/city area space, and controlling the spatial use of the province/regency/city area. Controlling the use of space in Manokwari Regency, Ambon City, and Manggarai Regency in a legal structure or law

enforcement, namely the availability and limitations of human resources in the area, is one of the problems in enforcing spatial planning law. Availability Lack of supervision and control in space utilization from the relevant agencies and institutions on the implementation of development in the area, so there are many indications of violations of space utilization. In addition, the quality of human resources for controlling space utilization. The permit issuance system carried out by the relevant agencies/institutions do not go through the correct stages and procedures and does not refer to the spatial plan as the basis for issuing permits.

Legal culture is the values, thoughts, and expectations of the rules or norms in the community's social life. In legal practice, fundamentally (grounded dogmatic), the cultural dimension should precede the other dimensions because, in the cultural dimension, there is a set of values (value system). Furthermore, this value system becomes the basis for formulating policies (policy) followed by law making as juridical signs and codes of conduct in everyday people's lives, which are expected to reflect the noble values possessed by the nation. Concerned. According to Friedman, "the legal culture (legal culture) precedes the other two elements of the three elements that make up the legal system.[13]

Therefore, legal culture is one part of such a broad human culture. Legal culture is the same general response of certain people to legal phenomena. The response is a unified view of legal values and behavior. So a legal culture shows the pattern of individual behavior as community members that describes the same response (orientation) to the legal life that is lived by the community concerned. The law made in the end is primarily determined by the legal culture in the form of values, views, and attitudes of the community concerned. If the legal culture is ignored, it is sure that there will be a failure of the modern legal system, which is marked by the emergence of various symptoms such as misinformation regarding the content of legal regulations to be conveyed to the public, discrepancies between what is required by law and the practice carried out by the law. Public. People prefer to continue to behave by what has become the values and views in their lives. The description of legal culture in the elements of the legal system is that the legal structure is likened to a machine that produces something, the legal substance is like a product produced by a machine,[14] and legal culture is anything or anyone who decides to run the machine and limit the use of the machine. So, the urgency of strengthening this legal culture has become an unavoidable need. Therefore, the development of legal culture must be carried out through a targeted and measurable development strategy through policy formulation, legal culture strategy, and

efforts to develop legal culture.[15] Strengthening this legal culture is part of creating transformative citizenship in Indonesia.

If this is done, harmonization is created between legal substance and structure. However, the most important thing is how these rules can live, have value, and be used as guidelines in social life. So it is considered essential to improve the legal culture of the community. Even though these rules are accommodative and responsive, the public does not know and realize them, so actually, these rules are only limited to formal rules that are ineffective and effective in behavior. If this is the policy, there will be harmonization between legal structure, legal substance, and legal culture. One of the efforts made to improve legal culture and legal awareness is through education and socialization of various laws and regulations in order to comply with and comply with the law and enforce the rule of law. One of the efforts made to increase legal culture and awareness is through education and socialization of various laws and regulations to comply with and obey the law and uphold the rule of law. One effective way is to conduct legal counseling.[16]

4. CONCLUSION

The implementation of controlling the use of space after Law Number 11 of 2020 concerning Job Creation has not been appropriately implemented because the laws and regulations in the field of spatial planning have not been able to support the control of space utilization. Infrastructure, and the last is related to the legal culture of the community.

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