

SPATIAL PLANNING POLICY FOR THE NEW STATE CAPITAL CAPITAL IN PENAJAM PASER UTARA REGENCY AND KUTAI KARTANEGARA REGENCY IN EAST KALIMANTAN PROVINCE AND THEIR PROBLEMS

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ABSTRACT

The plan to move the capital city of Indonesia from Jakarta to East Kalimantan requires consideration of several aspects such as in terms of benefits, facilities, economic impact, risks, and spatial planning. the preparation and management of spatial planning for the new capital city should pay attention to the welfare of the community and resolve problems that may arise in the middle of the process. This study aims to identify problems in the spatial planning process in the New Capital City of Indonesia. The method used is descriptive analysis from various primary and secondary data sources as well as legislation, case approach, and conceptual approach. The results obtained from this study are the need for continuity of spatial planning documents in stages,

Keywords: decentralization, new state capital, East Kalimantan, spatial planning

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INTRODUCTION

East Kalimantan Province is one of the provinces in the middle of the territory of the Republic of Indonesia. East Kalimantan Province (hereinafter referred to as Kaltim) is one of the strategic areas in Indonesia because in addition to having the second largest area after Papua Province, namely 127,346.92 km², it also has abundant natural resource potential, especially in the mining, forest and other sectors which act as producers. Indonesia's main foreign exchange. East Kalimantan Province consists of seven regencies and three cities, namely Paser Regency, West Kutai Regency, Kutai Kartanegara Regency, East Kutai Regency, Berau Regency, North Penajam Paser Regency (PPU), Mahakam Ulu Regency (Mahulu), Balikpapan City, Samarinda City, and Bontang City (Husaini, 2019). Of the ten districts and cities,

The Governor of East Kalimantan at that time, Dr. Awang Faroek Ishak in November 2015 in a speech inaugurating the Buluminung Maritime Industrial Estate of PPU Kaltim promoting many projects. These projects include the railroad project, coal port, Benoa Taka technopark, National Maritime Science & Technology Park, nuclear technology science, PKT 5 factory, Telake DAM barrage and PLTU so that all projects are integrated in Buluminung, Penajam which is expected to boost East Kalimantan's economic growth, at the end of his speech East Kalimantan was declared a candidate for the new capital city before President Jokowi (Gunawan, 2019).

The following are the points of the contents of the official announcement:

- 1) Whereas the new capital city is located between two connected regencies in East Kalimantan, namely part of North Penajam Paser Regency and part of Kutai Kartanegara Regency
- 2) That the reasons for choosing East Kalimantan as the capital of the new state are:
 - a. Minimal disaster risk, either flood, earthquake, tsunami, forest fire and landslide
 - b. The location is considered strategic because if the coordinates are drawn, the location is in the middle of Indonesian territory
 - c. The location is near cities that have already developed, namely the City of Balikpapan and Samarinda City
 - d. Already have a relatively complete infrastructure
 - e. Only in this location there is government land, which is 180,000 hectares
- 3) That the relocation of the capital city from Jakarta to East Kalimantan was not because of the DKI Jakarta Provincial Government, but because of the huge burden on the Indonesian economy to the islands of Java and Jakarta, which are the centers of government, business, finance, trade and services.
- 4) That the government will prepare a draft law as a legal umbrella for the relocation of the capital city. Therefore, President Jokowi has written to the Chairman of the DPR regarding the decision by attaching the results of a study on the candidate for the new capital city
- 5) Whereas the source of funding for the construction of the new capital city is estimated at ± Rp 466 trillion, 19% of the APBN will come from the asset management cooperation scheme which will be in the new capital city with the one in Jakarta, while the rest will come from Government Cooperation with Business Entities or PPP and private and state-owned direct investment.
- 6) That starting in 2020, the government has begun to finalize the master plan and spatial design regulations, which are expected to be completed no later than 2024 (Rafie, 2019).

The Minister of National Development Planning/Head of Bappenas outlines the potential benefits of relocating IKN based on an economic impact analysis study, namely as follows:

1. Provide a positive impact on national economic growth
2. Reducing disparities between income groups
3. Minimizing additional national inflation
4. Encouraging trade between regions in Indonesia
5. Encouraging investment in IKN Province and its surroundings

This study has not been fully realized because there are still challenges, disturbances, and obstacles to the implementation of the IKN transfer plan, which is proven by many other countries that have failed. Based on these problems, there are also problems related to spatial planning in the new state capital area in North Penajam Paser Regency and Kutai Kartanegara in East Kalimantan Province. Writing this article aims to identify problems in spatial planning in the New Capital City.

RESEARCH METHOD

The types of approaches used include a statutory approach, a case approach, and a conceptual approach. The data sources used by the authors consist of two types, namely:

1. Primary materials are in the form of online news, academic manuscripts of the Capital City Bill, applicable laws and regulations and have something to do with the problems discussed in this paper.
2. Secondary materials are textbooks, journals, papers, dictionaries, encyclopedias, and others.

Data is collected by collecting data and examining documents or literature that can provide information or information needed by the author. Data related to problems are systematized and analyzed by reading and studying primary and secondary data sets related to the object of writing.

Data processing was carried out using descriptive analysis method, namely the data were analyzed through a qualitative approach to primary data and secondary data. Descriptive analysis study is used to examine the concepts that include understanding, norms and administrative systems related to this writing. This is closely related to the task of normative (dogmatic) administrative science, namely to examine, systematize, interpret and evaluate the procedures applicable to the study of the subject matter.

The focus of important writing is presented in a qualitative writing. The substance contains details of the problem of writing so as to clarify and provide direction to describe the fabric of the social phenomena under study. The data analysis used by the author is descriptive analysis in the form of descriptions in the form of tables, descriptions of social phenomena and so on. The data used can be either quantitative or qualitative data (generally quantified, for example in the form of an ordinal scale).

RESULTS AND DISCUSSION

Based on the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government as amended several times, most recently by the Law of the Republic of Indonesia Number 9 of 2015 concerning the Second Amendment to the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government (UU Pemda), Decentralization is one form of administering government power in the form of handing over government affairs by the central government to autonomous regions based on the principle of autonomy. Regional autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in the system of the Unitary State of the Republic of Indonesia. Based on Article 6 paragraph (2) letter c of the Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance jo. Article 4 Government Regulation Number 12 of 2019 concerning Regional Financial Management, the delegation of authority is realized by granting autonomy to regional heads in regional financial management. Regional financial management is carried out efficiently, economically, effectively, transparently, and responsibly by taking into account the sense of justice, propriety, and benefits for the community as well as the implementation of performance-based budgeting. So with decentralization, local governments have a very large role in policy-making, development processes and regional spatial planning. transparent, and accountable by paying attention to the sense of justice, propriety, and benefits for the community as well as the implementation of performance-based budgeting. So with decentralization, local governments have a very big role in making policy, development processes and regional spatial planning.

The role of decentralization by local governments is a manifestation of the concept of the welfare state or known as the material law state by Prof. Kranenburg said that apart from the task of fostering law and order, the state is also responsible for fostering and realizing prosperity for its people. The theory is then widely practiced in developing countries, including Indonesia (Manan, 1996). In its use, it must be remembered about Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which states: Earth, water and the natural resources contained therein are used as much as possible for the prosperity of the people.

The constitutional basis for the right to the state in Article 33 paragraph (3) of the 1945 Constitution states that the state has the right to control the earth, water, space and other natural

resources contained therein (BARAK) and is obliged to use them for the greatest prosperity of the Indonesian people. The government also stipulates the Republic of Indonesia Law Number 5 of 1960 concerning Agrarian Principles (UUPA) which regulates the objectives of establishing the UUPA, namely:

1. Laying the foundations for the formation of a national agrarian law that serves national interests and goals.
2. Laying the foundations for the unity and simplicity of Agrarian Law.
3. Laying the foundations to provide legal certainty regarding land rights for the whole people.

Elucidation of Article 2 paragraph (2) of the LoGA regarding the notion of controlling from the state, namely:

1. Regulate and administer the designation, use, supply and maintenance of the earth, water and space;
2. Determine and regulate legal relations between people and the earth, water and space,
3. Determine and regulate legal relations between people and legal actions regarding earth, water and space.

Based on the first objective above, there is the principle of the right to control the state (rejecting domain verklaring) which contains 3 state authorities in the state's right to control the state in the UUPA, namely the state determines the allocation, supply, use, and maintenance of earth, water, space, and natural resources. others contained therein (BARAK). One form of state authority is spatial planning. In addition, the state as the highest authority organization has the authority to determine to legal subjects who has rights to certain lands as regulated in Article 4 paragraph (1) of the UUPA..If one observes the government's authority from Article 4 paragraph (2) and 9 paragraph (2) of the LoGA that the right given to a person to use land for the purposes of supporting himself and his family, then as implied in Article 13 paragraph (1) of the LoGA, the possibility is given to to changes in land use.

In relation to the era of regional autonomy, according to article 14 paragraph (2) of the UUPA and the relevant regulations, including Article 12 of the Republic of Indonesia Law Number 23 of 1997 concerning Environmental Management and Article 8 paragraph (4) of the Republic of Indonesia Law Number 26 of 2007 concerning Management In space (UUPR), regional governments regulate the supply, designation and use of earth, water and space for their regions, in accordance with the conditions of each region. With regard to regional autonomy, with the enactment of the Regional Government Law, the authority of regional governments covering land services including across districts or cities is a mandatory provincial affair on a provincial scale, as well as those on a district or city scale..

In the spatial planning of the new state capital across the North Penajam Paser and Kutai Kartanegara regencies, it has become a mandatory business for the East Kalimantan Provincial Government. One of the prominent spatial planning sub-systems is land use management in addition to other sub-systems that are separated from other sub-systems (Andjarwati, 2007). Then, according to land law expert, Dr.Jur. Any Andjarwati, SH, M.Jur. that the matters and obligations of the community in the process of preparing the spatial plan must be accompanied by the obligations of the state first.

The UUPA has regulated the rights and obligations of the state in the process of preparing spatial planning. Based on Article 14 paragraph (1) of the LoGA, the government in the context of Indonesian socialism shall make a general plan regarding the supply, designation and use of earth, water and space as well as the natural resources contained therein: (a) for the purposes of the State; (b) for worship and other sacred purposes, according to the basis of the One Godhead; (c) for the purposes of community, social, cultural and other life centers; (d) for the purpose of developing agricultural, livestock and fishery production and in line with it; (e) for the purposes of developing industry, transmigration and mining.

Based on Article 14 paragraph (2) of the LoGA, the general plan in paragraph (1) of the above article and considering the relevant regulations, local governments regulate the supply, designation and use of earth, water and space for their regions, in accordance with the conditions of each region. respectively. Article 14 paragraph (3) of the LoGA, the regional government regulations referred to in paragraph (2) of this article shall come into force after obtaining ratification, regarding Level I Regions

from the President, Level II Regions from the Governor/Head of the Region concerned and Level III Regions from the Regent/ The Mayor/Head of the Region concerned. Meanwhile, Article 52 of the LoGA regulates the imposition of criminal sanctions for anyone who violates the provisions of Article 15 of the LoGA.

According to Article 1 point 1 UUPR, space is a container that includes land space, ocean space, and air space as a unitary area, where humans and other creatures live and carry out activities and maintain their survival. The space regulated in the law is the space in which the Republic of Indonesia has jurisdictional rights including sovereign rights in the territorial area as well as outside the territorial area based on the provisions of international conventions relating to ocean space and air space. Porigin 1 point 3 UUPR, explains the definition of spatial planning as a process of spatial planning, space utilization, and controlling space utilization. Spatial planning as a process of spatial planning, space utilization, and controlling space utilization is a unified system that cannot be separated from one another.

Spatial planning is carried out through the process and procedure for the preparation of which the plan is determined based on the provisions of the applicable laws and regulations. The next process after spatial planning is the use of space based on the determination of the spatial plan. Utilization of space is carried out through the implementation of a space utilization program and its financing, which is based on a spatial plan. The utilization of the space is carried out in stages according to the time period specified in the spatial plan.

Spatial planning is a process to realize development goals and is also a product that has a legal basis (legal instrument) to realize regional development goals. The embodiment of the concept of regional development which contains goals and targets that are regional in nature in Indonesia can be pursued through spatial planning efforts consisting of 3 (three) main processes, namely:

1. The process of regional spatial planning, as a producer of RTRW. Apart from being a “guidance of future actions”, the RTRW is basically a form of intervention carried out so that the interaction of humans or living things with their environment can run harmoniously, in harmony, in balance to achieve prosperity and maintain environmental sustainability and development sustainability.
2. The process of using space, as a form of operationalization of the spatial plan or the implementation of the development itself.
3. The process of controlling the use of space which consists of licensing and controlling mechanisms for the implementation of development so that it remains in accordance with the RTRW and the objectives of spatial planning.

Even though the new state capital was established in North Penajam Paser Regency and Kutai Kartanegara in East Kalimantan Province, based on the results of some literature searches, the East Kalimantan region still has several main problems, namely:

1. East Kalimantan still has the potential for flooding in areas close to the upstream watershed (DAS) (CNBC Editor, 2019).
2. The availability of groundwater resources in East Kalimantan is still low because there is only the Samboja reservoir as a raw water source.
3. The IKN area and its surroundings are habitats and roaming spaces for several key species, including orangutans, proboscis monkeys, sun bears, dolphins, and dugongs (Pebrianto, 2020).
4. There are 109 mine pits that require further treatment.
5. East Kalimantan has a high ecological footprint in Kalimantan.

The process of relocating the new state capital began when formulating a strategy in the national spatial plan, Kalimantan island spatial planning, and East Kalimantan spatial planning. According to Bernardus Djonoputro, this is necessary in order to ensure the carrying capacity, land suitability, structure, and macro spatial patterns at the island level and at the provincial level (Prabowo, 2019). The results of this conformity will be the basis for detailed plans, zoning regulations, and regional master plans which will be legalized in the form of regional regulations (perda). Thus, the suitability of planning documents starting from the vision, strategy, strategic plan, spatial plan, and master plan in the IKN area will be integrated.

The location of the IKN has an area of ± 180,965 Ha and is divided into three rings, namely the core government area of 5,644 hectares, the national capital area ring of 42,000 hectares, and the expansion of the national capital 133,321 hectares. IKN locations cover four sub-districts, namely Sepaku and Penajam in North Penajam Paser Regency, as well as Samboja and Muara Jawa in Kutai Kartanegara. Furthermore, the facts show that on the land there are many plantation companies, industrial forest plantations, and coal mines. License holders identified as many as 162 concession holders for mining, forestry, oil palm plantations, and coal power plants (Nugraha, 2019). Concession is the granting of rights, permits, or land by the government, companies, individuals, or other legal entities with the model of implementing a government-private partnership (PPP) or production sharing contract. Mining concessions consist of two types, namely mining business permits or IUPs which were previously issued by regents or mayors which have now been transferred to the governor and the second is coal mining concession work agreements or PKP2B issued by the central government (Jatam, 2019). By choosing the location of the capital city, it indicates that the entrepreneur will benefit by avoiding reclamation obligations.

Based on Article 10 letter n and Article 11 of the Republic of Indonesia Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (UU 2/20212), IKN development includes land acquisition for public purposes which must be carried out by the Government and subsequently owned by the Government or Regional Government. In this regard, after the Governor and the Agency requiring land announce the determination of the location for the IKN development, the implementation of land acquisition consists of: inventory and identification of control, ownership, use, and utilization of land; compensation assessment; deliberation to determine compensation; granting compensation; and release of agency land.

Regarding lands located in the IKN area, which are industrial plantation concessions (HTI) from ITCI Hutani Manunggal (IHM), then based on the provisions of Government Regulation of the Republic of Indonesia Number 104 of 2015 concerning Procedures for Changes in the Designation and Function of Forest Areas, related to the simplification of the change process the allocation and function of forest areas on concession lands does not need to be compensated, but the area is reduced and taken back by the state. In connection with this objective, the government has revoked the concession rights because the area is in the IKN planning as stipulated through the Decree of the Minister of LHK Number S.866/Menlhk/PKTL/PLA.2/10/2019 regarding the revocation of the Concession covering an area of 41.

Based on the principle of horizontal separation, it is found that there is a difference between the owner of the land and the building on it, which was later adopted in the LoGA so that it cannot be separated from the obligation to compensate for the building on it even though land rights are the main rights. Article 33 of Law 2/2012 explains that compensation is not limited to land alone, as well as above-ground and underground space, buildings, plants, objects related to land, and/or other losses that can be assessed. Thus, even though the company holding the concession has been revoked, everything that is on the land attached to the concession should be compensated because it has value even though it is not the same as the owner of the land rights in full.

CONCLUSION

Based on an analytical study of problems regarding spatial planning in the East Kalimantan region which was designated as the new capital city, several conclusions were obtained including:

1. There is a need for continuity between spatial planning documents in stages;
2. It is necessary to involve professionals and practitioners regarding the details of planning and designing the IKN area;
3. It is necessary to create job openings in environmentally friendly IKN areas;
4. There is a need for an alignment strategy between the concept of IKN spatial planning and socio-culture or local wisdom of local residents around the IKN area;
5. It is necessary to make a policy related to compensation for business and building losses of companies holding HTI concessions whose rights are revoked because more or less these companies contribute to the Indonesian economy.

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