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Legal Aspects Of Determination Of Allotment Of Land In The Implementation Of Spatial Planning In Medan City

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Abstract

The aims of this study to find out Legal Aspects of Determination of Allotment of Land in the Implementation of Spatial Planning in Medan City. This research uses doctrinal law research methods (normative legal research methods), and also empirical research methods, where normative research methods are used that isstudy on law which conceptualized and developed on the basis of certain doctrines. The result shows that The legal impacts that arise in the community due to the application of the land designation system in the implementation of spatial planning in the city of Medan, including the determination of zoning based on Regional Regulation no. 2 of 2015 caused rejection from the public, namely first, the impact on the application of the designation of Perda no. 2 of 2015 there is a lawsuit for judicial review of Regional Regulation No. 2/2015 which was submitted by PT. Agung Sarana Terminal (applicant) to the Medan City Government (the respondent) in the decision No. 13P/HUM/2017, regarding the IMB application which was rejected by the Medan City TRTB Service. The reason for the lawsuit is because the Medan City TRTB Service rejected the application for an IMB by the applicant who is located in the Waterfall Village, Medan Marelan. The IMB application is for 11 building units that will be used as a 3 kg LPG filling station by the applicant after obtaining various permits from various parties. The rejection of the IMB application by the Medan City Government is based on Article 19 paragraph (1) letter (e) Regional Regulation No. 2/2015 the plunge area is an agricultural zone.

Keywords: legal aspect; determination; spatial planning

I. Introduction

The socialization of the general plan and detailed spatial plan in the context of implementing the spatial and regional planning of the city of Medan must be carried out by the government of the city of Medan by first conducting a survey of the area to be determined for the place of spatial planning and the determination of the zoning. This is intended so that before determining spatial planning policies and zoning in a city area, the Medan City government must first know the condition of the area and the people in the area to determine spatial planning and zoning in accordance with regional conditions and people's lives in the area. the. Spatial planning and zoning policies by the city and district governments must be carried out by first conducting careful planning of the areas that will be used as spatial planning sites and zoning, to avoid disputes, resistance and disputes carried out by the community around the spatial planning area. as well as the determination of the zoning at a later date. Actions of rejection and resistance

carried out by the community around the area that is used as a place for spatial planning and the determination of zoning are caused because the spatial planning policy and zoning determination in the area are not appropriate, because they do not take into account the conditions of the area and the condition of the people living in the area as desired, get resistance or disobedience from the community around the area that has been determined by the spatial planning and zoning determination.

Based on Regional Regulation No. 2 of 2015, if there is a party who will apply for registration for the first time in the trade and service area based on its use as a residential house, the land office will not provide the type of property rights proposed by the party who does own the house as a residence for the trading zone and those services.

The state through the government does not have a position as the owner of land rights in Indonesia, but has the authority to regulate and carry out allotments, regulate legal relations between people or legal actions with the earth, water and space as stated in Article 2 paragraph (2) UUPA. Land ownership by the state through the government can only be carried out through legal procedures that apply in the field of land law for government agencies that need the land for various purposes/interests, such as constructing government office buildings, as an area of facilities and infrastructure supporting the government agency and for other interests.

The state through the government issues regulations/statutory regulations in the field of land law to distribute state land to the Indonesian people, by stipulating the types of rights that will be granted given by the state through the government to the Indonesian people. Based on the laws and regulations issued by the state through the government, various land rights are owned by the Indonesian people according to the use of the land.

In principle, the determination of land rights by the state through the government is based on the actual use of the land in the field by the Indonesian people, this is in accordance with Article 9 paragraph 2 of the UUPA. Based on the provisions of Article 9 paragraph 2 it is stated that every Indonesian citizen and his family have the right to obtain a right and obtain benefits on the land. The purpose of carrying out the administrative function (registration) of any granting of land rights to every Indonesian citizen and his family, is to provide legal certainty to every holder of land rights whose types of rights have been issued by the Ministry of ATR/BPN RI.

The granting of building use rights to people who live in areas that have determined the trade and service zoning, where the land is used by the community as a place to live (home) is a policy of the Medan City Land Office which is not in accordance with the provisions of the legislation in force in Indonesia. the field of granting land rights in this case is UUPA no. 5 of 1960 and PP No. 24 of 1997 concerning Land Registration. Every Indonesian citizen has the right to obtain types of ownership rights to the land he has occupied based on the use of the land, as long as it meets the requirements set by the applicable laws and regulations.

II. Review of Literature

2.1 Historical Basis for Determination of Zones/Areas Related to Spatial Planning by the Pemko Medan in an effort to determine the area/region of Medan City

The city of Medan, with a population of more than two million people, has been designated in the National Spatial Plan (RTRWN) and the Provincial Spatial Plan (RTRWP) of North Sumatra as a National Activity Center (PKN). This means that the City of Medan has the task of not only serving its

administrative area but also serving national and wider scale activities, namely the province and several provinces which are marked by the presence of Kuala Namu International Airport and Belawan Port as ports of International Relations.

2.2 Land Law Arrangements in Indonesia Before and After the issuance of UUPA No. 5 of 1960

The word agrarian comes from the Latin "ager" which means land or a plot of land. Meanwhile, according to the Big Indonesian Dictionary, agrarian means agricultural affairs or agricultural land, as well as land ownership affairs. Even the term agrarian laws in the Black's Law Dictionary are often used to refer to a set of legal regulations aimed at dividing large areas of land in order to more evenly distribute control and ownership.39

Problems or affairs of the land and all that is in and on it. While in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, commonly referred to as the LoGA, does not provide a direct explanation of agrarian matters. However, it can be seen in Article 1 paragraph (2) of the UUPA that the scope of agrarian matters is the earth, water, space, and the natural resources contained therein. From these provisions, it can be seen that agrarian has a wider scope than just land or land.

III. Research Method

In research in the field of land law, the type of research used according to AP. Parlindungan must combine normative legal research with empirical legal research to obtain valid data to support writing in this research so that it can describes a concrete and synchronous research result between normative legal research and the empirical legal research.

This research uses doctrinal law research methods (normative legal research methods), and also empirical research methods, where normative research methods are used that is study on law which conceptualized and developed on the basis of certain doctrines. Meanwhile, Jhony Ibrahim defines normative legal research as a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side.30 The empirical legal research referred to in this study is field legal research in the form of data collection using direct interviews with the parties involved. such as the Head of the Sub-Section for Land Use and Spatial Planning on Land, the Head of the Sub-Section for Land Registration at the Land Office City The field in this research have the capacity as informants and resource persons.

IV. Result and Discussion

4.1 Population Policy During Turki Utsmani 1512-1566 M

The existence of Regional Regulations (abbreviated: Perda) in the administration of regional government, is an inseparable part of decentralization known as regional autonomy. It has two essences of authority, namely "regulating" and "managing". This "regulation" authority means that the region has the right to make legal decisions in the form of laws and regulations which are then (among other things) given the name Regional Regulations, which are implementing regulations of a nationally applicable law to regulate certain legal fields such as spatial planning. as regulated in Law No.26 of 2007, as well as local regulations governing a particular legal field regardless of the implementation of a particular law.

Decentralization embodies the principles of regional autonomy, namely broad, real and responsible. The juridical consequences of decentralization of regional authority, one of which is decentralization in law and legislation. There is a dispersal of

authority (spreiding van machten) in forming laws and regulations to autonomous regions, this is one of which produces regional regulations.

The regional regulations referred to are not just implementing regulations from the legislation above, but more than that they must be able to absorb and accommodate special regional conditions for regional independence (zelfstandingheid) and local community aspirations. Autonomous as an independent government unit has attributive authority, especially as a legal subject (public rechtsperson, public legal entity), then has the authority to make regulations to organize its household. The authority to regulate this rests with the Regional Government (state administration officials) and the DPRD as the holder of legislative functions in the regions.

Regional regulations can be seen as a form of law that is local in nature, as a product of the legislature (legislative acts), the difference is only in the territorial scope of application. Argumentatively, local regulations cannot be equated with statutory regulations under other laws, such as Government Regulations, Presidential Regulations. Both are mere regulatory products (executive acts). In addition, the authority of the Regional Government to form a regional regulation is able to absorb the aspirations of the local community according to the special conditions of the region. This is the main characteristic (as an identifier) of the existence of a government unit autonomous person who has the right to regulate and manage his household independently (zelfstandingheid). The general understanding states that regional legal products made by local governments cannot at all be separated from the national legislation system. It is an important concern in making legal products at the regional level, that legal products do not only look at the limits of formal competence or the interests of the region concerned, but also the possible impact on other regions or national interests.

This regional regulation, apart from being a further elaboration of higher laws and regulations, is also a legal instrument (and as a wettelijke regelingen) made by regional governments in exercising their authority to realize their autonomy. The essence of regional regulations as a means of elaborating or concretizing laws on national laws and regulations, only contains as a regulatory instrument for each delegation of tasks (plichten) based on co-administration tasks (medebewind) for regions that are requested for assistance. It means that the regency/municipality no longer has a deconcentrated relationship with a higher government unit, then the Regency/City Perda as an elaboration of higher legislation is only possible in “assistance tasks.196

If the existence of the Regional Regulation is seen from the perspective of the science of legislation (science of legislation, gezetgebungslehre), it can be found. The implementation of spatial planning aims to realize a safe, comfortable, productive, and sustainable national space based on the Archipelago Insight and National Resilience by:

a. The realization of harmony between the natural environment and the artificial environment
b. The realization of integration in the use of natural resources and artificial resources with due regard to human resources; and
c. the realization of the protection of the function of space and the prevention of negative impacts on the environment due to the use of space.

The term regional autonomy has many meanings which then often lead to various interpretations. Regional autonomy can also be interpreted as the authority attached to an organization or organizational unit to develop certain functions.201

Based on Law no. 23 of 2014 concerning Regional Government Article 1 point 6 defines regional autonomy as the rights, powers and obligations 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.

Laws are made by the House of Representatives with the joint approval of the President. It should be noted that the law is a joint product of the president and the DPR (a legislative product), in the formation of this law the president may submit a bill that will become law if the DPR approves it, and vice versa.

Laws have the position as the rules of the game for the people to consolidate political and legal positions, to regulate life together in the context of realizing goals in the form of a state.

Based on Law Number 11 of 2012 concerning the Formation of Legislations, in forming laws and regulations it must be carried out based on the principles of the formation of good laws and regulations, which include: 205

1. The principle of clarity of purpose

   The principle of clarity of purpose is that the formation of legislation must have a clear goal to be achieved.

2. Institutional principles or proper forming officials

   The principle of proper institutions or forming officials is that every type of legislation must be made by state institutions or officials forming laws and regulations who have the authority. Legislation, can be canceled or canceled by law if made by state institutions or officials who are not authorized.

3. The principle of conformity between types, hierarchies, and content materials

   The principle of conformity between types, hierarchies, and content material is that the formation of laws and regulations must really pay attention to the right content material in accordance with the type and hierarchy of laws and regulations.

4. Principles can be implemented

   The principle that can be implemented is that the formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically.

5. The principle of usability and usability

   The principle of usability and usability is that laws and regulations are made because they are really needed and useful in regulating the life of society, nation and state.

6. The principle of clarity of the formulation

   The principle of clarity of formulation is that every statutory regulation must meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation.

7. Principle of openness

   The principle of openness is that the formation of laws and regulations starts from planning, drafting, discussing, ratifying

   / determination, and promulgation that are transparent and open. Thus, all levels of society have the widest opportunity to provide input in the formation of legislation.

In addition to the above principles, according to the content of the legislation, it can also reflect other principles in accordance with the legal field of the relevant legislation, such as: 206

a. In criminal law, for example, there is the principle of legality, the principle of no punishment without guilt, the principle of fostering prisoners, and the principle of presumption of innocence; or
b. In civil law, for example, contained in contract law, among others: the principle of agreement, freedom of contract, and good faith.

In the principle of the formation of laws and regulations Article 6 paragraph (1) of Law number 10 of 2004 it is also regulated that the material content of laws and regulations must reflect the principles of Protection, Humanity, Nationality, Family, Archipelago, Unity in Diversity, Justice, Equality of position in law and government, order and legal certainty; and/or Balance, harmony, and harmony.

The term governance denotes a process by which people can manage their economy, institutions and social and political resources not only for development, but also for creating integration, cohesion and for the welfare of the people. Governance is a neutral concept, from which we can format a healthy (good) model, so that the term good governance emerges; or an unhealthy (bad/disgusting) model, a model or governance that does not healthy-bad governance. The issue of governance or good governance arose following the end of the cold war era.207

In the context of the rule of law itself, governance is directed at the administration of government based on the constitution as regulated in laws and regulations. Conceptually, the meaning of the word good (good) in terms of good governance contains two understandings, namely: 208

1. Values that uphold the wishes or will of the people, and values that can increase the people's ability to achieve the national goals of self-reliance, sustainable development and social justice.
2. Functional aspects of an effective and efficient government in carrying out its duties to achieve these goals.

The definition of good governance is a term that comes from the parent of the European language, Latin, namely Gubernare which is absorbed by English into govern, which means steer (steer, control), direct (direct), or rule (govern). The main use of this term in English is to rule with authority.

In the Legal Dictionary the term, good governance is translated as good governance. However, there are those who translate it as good governance. In addition, another meaning is good governance as a trustworthy government. In the context of the rule of law itself, governance is directed at government administrators who based on the constitution as regulated in the laws and regulations.

The concept of governance refers to the institutions, processes, and traditions that determine how power is exercised, decisions are made, and citizens' voices are heard. A similar definition is put forward by the Institute on Governance (IOG) that: "Governance refers to the institutions, processes and traditions which define how power is exercised, how decisions are made, and how decisions are made on issues of public concerns." refers to the institutions, processes and traditions that determine how power is exercised, how decisions are made, and how decisions are made on issues of public concern).

In principle, the standard definition of the concept of governance is that: "Governance as the manner in which power is exercised in management of a country economic and social resources for development".

Furthermore, the World Bank put forward a standard definition of the concept of governance that: "Governance as the manner in which power is exercised in management of a country economic and social resources for development". and social for development).

Legislation as an important component in the unity of the national legal system, must be built with integrity to provide guarantees that national development can run in an orderly manner, have legal certainty and provide benefits for the fulfillment of a sense of justice and community prosperity as mandated in the 1945 Constitution.

Based on Article 236 paragraph 1 of Law Number 23 of 2014 concerning

Regional Government, it is stated that, to carry out regional autonomy and assistance tasks, the Regions form a Regional Regulation. The definition of perda itself based on Law Number 12 of 2011, Regency/City regional regulations are statutory regulations established by the Regency/City Regional People's Representative Council with the mutual consent of the Regent/Mayor. The purpose of making a Regional Regulation is to serve as a guide for officials and the local community of a certain area in carrying out community and government life.

To produce a 'Regional Regulation' product that is good and in accordance with the demands of the community's needs, it needs to be carried out based on procedures for the preparation of Regional Regulations to be more directed and coordinated. In making Regional Regulations, careful and in-depth preparations are needed, including:

a. Having knowledge of the content material to be regulated in Regional Regulations;
b. The existence of knowledge about how to put the content into regional regulations briefly but clearly, with a good choice of language and easy to understand, arranged systematically based on good and correct Indonesian language rules.

Regional regulation itself is a product of regional law which in the process of its formation has a legal basis that must be obeyed. The process of forming a regional regulation is contained in Law Number 12 of 2011 concerning the Establishment of Legislation which is a substitute for Law Number 10 of 2004, Law Number 23 of 2014 concerning Regional Government, and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2014 concerning the Establishment of Regional Legal Products. 212

In article 237 paragraph (2) of Law Number 23 of 2014 concerning Regional Government, the formation of regional regulations includes various stages guided by the provisions of laws and regulations including Planning, Preparation, Discussion, Determination and Invitation.

In addition to the formation, Article 237 of Law Number 23 of 2014 concerning Regional Government, specifically in paragraph (1), also regulates the principles of formation and the content of Regional Regulations which are guided by the provisions of Law No. 12 of 2011 concerning the Establishment of Legislations.

The principles referred to are as follows:

a. clarity of purpose;
b. the appropriate forming institution or official;
c. suitability between types, hierarchies, and payload materials
d. can be implemented;
e. usability and effectiveness;
f. clarity of formulation; and
g. openness.

Meanwhile, the content of the Regional Regulations referred to in Law Number 12 of 2011 contains material for the implementation of regional autonomy and assistance tasks and accommodates special regional conditions and/or further elaboration of higher Legislations. The process for the formation of Regional Regulations in Law Number 12 of 2011 concerning the Establishment of Legislations is:

a. District/City Regional Regulation Planning.
b. Preparation of Regency/City Regional Regulations.
c. Discussion and ratification/Stipulation of Draft Regional Regulations (RANPERDA).
d. Promulgation of Regional Regulations.

In addition to Law Number 12 of 2011 concerning the Establishment of Legislation which is a replacement for Law Number 10 of 2004 and Law Number 23 of 2014 concerning Regional Government, the process of forming Regional Regulations is also contained in the Regulation of the

Minister of Home Affairs Number 1 Year 2014 concerning the Establishment of Regional Legal Products

In terms of operational land use, it is regulated in Government Regulation No. 16 of 2004 concerning Land Use, in principle, as regulated in Article 1 PP TGT, the pattern of land use management which includes control, use and utilization of land in the form of consolidated land use through institutional arrangements related to land use. land use etc. So in essence it is a matter of land management or management, the second emphasizes the use or function of land resources. Third, in understanding properly land use, it is not only based on mere rules/norms but with a holistic understanding covering social, economic, and social aspects. politics, culture, geography, planning techniques, environment and other disciplines.

Land use is carried out through two means, namely:

land use policy and land use administration (Article 5 PP TGT). TGT objects according to Article 6 of PP TGT are imposed on: land parcels rights to which rights have been attached, whether registered or not, state land, customary land of customary law communities. For the types of land as referred to in Article 6, the use and utilization of the land must be in accordance with the Regional Spatial Planning (RTRW). As a strategic resource and has the nature as the author described at the beginning, various forms of legal relations between the subjects of land rights in the form of land rights give authority to the subjects of rights in accordance with the nature and purpose of their rights based on inventory, designation. , its use and maintenance (Article 4 of the LoGA).

Another important point is that in the issue of land use planning there is an essential element that according to Kivell, that land resources are the basis of the planning system because: "Most of the justification for the planning system is that the planning system aims to resolve competing claims over resource use. power (especially land), trying to balance the unequal distribution of power and protect the interests of the weaker groups.From the point of view of the state, it has the authority to regulate (regelendaad), administer (bestuursdaad), manage (beherensdaad), and supervise (toezichthoudensdaad).

Referring to Article 3 of Law No. 30 of 2014 it is stated that the objectives of regulating government administration are:

a. Achieve orderly government administration
b. Creating legal certainty

IV. Conclusion

The legal impacts that arise in the community due to the application of the land designation system in the implementation of spatial planning in the city of Medan, including the determination of zoning based on Regional Regulation no. 2 of 2015 caused rejection from the public, namely first, the impact on the application of the designation of Perda no. 2 of 2015 there is a lawsuit for judicial review of Regional Regulation No. 2/2015 which was submitted by PT. Agung Sarana Terminal (applicant) to the Medan City Government (the respondent) in the decision No. 13P/HUM/2017, regarding the IMB application which was rejected by the Medan City TRTB Service. The reason for the lawsuit is because the Medan City TRTB Service rejected the application for an IMB by the applicant who is located in the Waterfall Village, Medan Marelan. The IMB application is for 11 building units that will be used as a 3 kg LPG filling station by the applicant after obtaining various permits from various parties. The rejection of the IMB application by the Medan City Government is based on Article 19 paragraph (1) letter (e) Regional Regulation No. 2/2015 the plunge area is an agricultural zone. However, if you look at the conditions in the

field, the zoning determination is very contradictory to the facts, because around the location of the applicant there are residential housing, public facilities in the form of a swimming pool and car washing which is quite large. Based on this fact, the area does not reflect the agricultural area designated as agricultural zoning. In the judicial review lawsuit, the applicant's request was granted by the Supreme Court whose zoning rules state that Perda no. 2 of 2015 concerning the Detailed Spatial Planning and the Medan City Spatial Zoning Regulations for 2015-2035 do not have binding legal force. Based on the description, Perda No. 2 of 2015 does not yet have a strong position in its implementation, and contains many legal weaknesses that cause harm to the community and lead to resistance from the community, even to the point of conducting a material review of Perda no. 2 of 2015. Second, the impacts that arise in the community, which include not being able to obtain ownership rights to the status of the land that they apply for rights to the BPN, namely land originating from land that is directly controlled by the state, even though its use as a place to live. Creating a slum area in Medan City. Causes social injustice for some people who only use land for building a house or a place to live, who have to pay PBB even to the point of conducting a material test of Perda no. 2 of 2015. Second, the impacts that arise in the community, which include not being able to obtain ownership rights to the status of the land that they apply for rights to the BPN, namely land originating from land that is directly controlled by the state, even though its use as a place to live. Creating a slum area in Medan City. Causes social injustice for some people who only use land for building a house or a place to live, who have to pay PBB even to the point of conducting a material test of Perda no. 2 of 2015. Second, the impacts that arise in the community, which include not being able to obtain ownership rights to the status of the land that they apply for rights to the BPN, namely land originating from land that is directly controlled by the state, even though its use as a place to live. Creating a slum area in Medan City. Causes social injustice for some people who only use land for building a house or a place to live, who have to pay PBB despite its use as a residence. Creating a slum area in Medan City. Causes social injustice for some people who only use land for building a house or a place to live, who have to pay PBB despite its use as a residence. Creating a slum area in Medan City. Causes social injustice for some people who only use land for building a house or a place to live, who have to pay PBB with a fairly high price in accordance with the determination of the land use zoning that has been determined by the Medan City Government which is supported by the Medan City Land Office. The non-achievement of the spatial and regional planning objectives referred to by the Medan City Government which basically creates an orderly, orderly, humane and well-organized Medan City space and area due to the determination of land use zoning which is not based on accurate and thorough research and planning first. before the implementation of the zoning designation for land in the city of Medan.

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