



LICENSING IN THE FRAMEWORK OF URBAN PLANNING: LAW AGAINST THE GOVERNMENT

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ABSTRACT

In the context of urban planning, licensing play a very important role as a tool to regulate development activities in a particular area. The state holds authority over the wealth of natural resources, including land, which is then managed by the government. The government, wielding this authority, needs to be restrained because its actions can have legal consequences. This article elucidates how permits are regulated by the law and the legal ramifications for the government. It adopts a normative juridical approach focusing on the use of literature or secondary data. The specification utilized is analytical-descriptive. The article addresses two main questions: 1) In safeguarding the public against government actions, the law must function by providing justice, legal certainty, and utility. This also involves the emergence of preventive and repressive legal protection. 2) In terms of urban planning, especially licensing, if discrepancies arise, administrative law should take precedence to ensure compliance with jurisdictional boundaries up to its procedural regulations.

Keywords: Government Actions, Legal Consequences, Legal Protection, Licensing, Urban Planning.

INTRODUCTION

Urban planning is an important process in a country's development that aims to create an organized, sustainable, and useful environment for its residents.¹ In the context of urban planning, licensing has a crucial role as a tool to regulate and control development activities in an area.

Licensing in the framework of urban planning is an administrative process that allows the government to grant permission or approval for development activities such as building construction, land use changes, or infrastructure projects. The main purpose of this license is to maintain harmony between development and the social, economic, and environmental needs of the community.²

However, in practice, licensing in urban planning often faces challenges and controversies. One issue that often arises is how licensing is regulated by law and what the legal consequences are for the government. This is important because licensing decisions that are inappropriate or not in accordance with legal provisions can have a negative impact on the government, both in terms of legal liability and reputation.³

¹ Kementerian Pekerjaan Umum dan Perumahan Rakyat, Pedoman Umum Penyusunan Rencana Detail Tata Ruang Kawasan Permukiman, Jakarta, 2017.

² Id.,

³ Fauzan Aziman Alhamidy, Isis Ikhwansyah, & Zainal Muttaqin, Perlindungan Hukum Konsumen Akibat Pencabutan Izin Mendirikan Bangunan Apartemen (Studi Kasus di Kota Bandung), Recital Review, Vol.2 No. 1, 2020.

Licensing regulations are regulated in various laws and regional regulations that govern the licensing process and requirements. These legal provisions include licensing procedures, technical and administrative requirements, supervision mechanisms, and legal sanctions that can be given to violating parties. The legal consequences that can be inflicted on the government due to inappropriate licensing decisions include lawsuits from aggrieved parties, cancellation of permits by the court, or supervisory actions from authorized inspection agencies.

In addition, the role of law is also very important in protecting people who are harmed by government actions in the context of urban planning. In some cases, government decisions related to licensing can harm the community, such as forced evictions without proper compensation or negative impacts on the environment.⁴ One such case is the violation of the Zoning Regulation in Karawang Regency. In 2019, there was a case of violation of Regional Regulation Number 2 of 2013 concerning Spatial and Regional Planning (RTRW) Zoning in Karawang Regency, West Java. The local government granted development permits in areas that should have been protected as agricultural areas. This resulted in the loss of productive agricultural land and harmed the farming community.⁵

Another case also emerged in Yogyakarta. KPK revealed that the ex-mayor of Jogja passed the IMB for an apartment that violated the rules. Starting around 2019, the pseudonym ON as Vice President of Real Estate of PT SA Tbk submitted an IMB application to the Yogyakarta City Government Investment and PTSP Office on behalf of PT JOP for the construction of the Royal Kedhaton apartment in Malioboro. In the investigation, the Mayor of Yogyakarta for the 2017-2022 period allegedly made an agreement with ON regarding the IMB license. The results of research and study by the PUPR Office found that there were several conditions that were not met. One of them is the non-conformity of the basic rules, especially related to the position and height of the building. In the rules in the cultural heritage area, the maximum height according to the Regional Regulation is 32 meters. However, what was proposed by ON was 40 meters, thus violating the rules. So as to continue to pass the plan, the Ex-Mayor of Yogyakarta allegedly accepted bribes from ON. This is then detrimental to residents because the guarantee of groundwater availability is threatened because with the height of the apartment to be built, a minimum of 200 meters will be drilled to extract groundwater.⁶

To protect people's rights, the law plays a role in providing legal guarantees, fair trials, and sanctions against government actions that violate citizens' rights.⁷ Laws also provide effective oversight mechanisms for government actions, such as complaints to the ombudsman or administrative judicial processes.⁸

⁴ Anna S. Wahongan & Sarah D. L. Roeroe, *Perlindungan Hukum bagi Penerima Ganti Rugi dalam Pengadaan Tanah untuk Kepentingan Umum*, Lex Crimen, Vol.11 No.4, 2022.

⁵ Antara Megapolitan, "Pembangunan Pollux Technopolis Karawang Diduga Melanggar Perda RTRW", 2019, <https://megapolitan.antaranews.com/berita/47825/pembangunan-pollux-technopolis-karawang-diduga-melanggar-perda-rtrw>.

⁶ Detik News, "KPK Ungkap Modus Eks Walkot Jogja Loloskan IMB Apartemen yang Salahi Aturan", 2022, <https://news.detik.com/berita/d-6109011/kpk-ungkap-modus-eks-walkot-jogja-loloskan-imb-apartemen-yang-salahi-aturan>.

⁷ Abdul Latif, *Jaminan UUD 1945 dalam Proses Hukum yang Adil*, Jurnal Konstitusi, Vol. 7 No. 1, 2010.

⁸ Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, *Panduan Pengelolaan Pengaduan Masyarakat*, Jakarta, 2017.

Based on the above explanation, this article seeks to provide answers to the following two main questions: 1) How does the law play a role in the context of protecting people harmed by government actions? 2) How is licensing in the framework of urban planning regulated by law and what are the legal consequences for the government?

METHOD

This article uses a normative juridical approach that focuses on the use of literature or secondary data. The specification used is descriptive analytical, regarding licensing in urban planning and law against the government.

RESULTS AND DISCUSSION

The Role of Law in Protecting People Harmed by Government Action

Speaking of the role of law in protecting the people, of course it also talks about legal protection because government actions have legal consequences. The principles of legal protection in Indonesia itself are based on Pancasila as the ideology and philosophy of the state which is based on the concept of the "Rechstaat" and "rule of the law". Where the principle of Indonesian legal protection emphasizes the principle of legal protection on the dignity of human beings based on Pancasila. Meanwhile, legal protection against government action is derived from the recognition and protection of human rights. These concepts, inspired by Western history, focus on the limitation and enforcement of obligations by society and government.⁹

Government legal actions are actions that by their character cause legal consequences. The most important characteristic of legal actions taken by the government is their unilateral nature. Decree as a legal instrument of the government in taking unilateral legal action. Unilateral legal action can be the cause of legal violations against citizens, especially in modern legal states that give the government broad authority to interfere with life (dominantly). Therefore, legal protection is needed for citizens against government legal action.¹⁰

Why is this necessary? There are several reasons: first, because in many ways citizens are depend on government decisions. Therefore, citizens need legal protection, especially to obtain legal certainty and security; second, because the relationship between government and citizens does not run in an equal position, meaning that citizens are the weaker party compared to the government; third, the various disputes between citizens and the government are related to decisions, as an instrument of the government that is unilateral in intervening in the lives of citizens. There are two kinds of government actions that may cause harm to the community or to an individual. The first is government action in the field of making laws and regulations legislation (regeling), the second is government action in issuing decisions (bessichikking).¹¹

The law against the government relates to legal protection for the people against government actions. One of the legal bases that regulates this is Article 66 of Law No. 26 Year

⁹ Philipus M. Hadjon, *Perlindungan hukum bagi rakyat Indonesia*, Surabaya: Bina Ilmu, 1987.

¹⁰ Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*, Jakarta, PT. Raja Grafindo Persada, 2014, pp.274.

¹¹ Marhcel R. Maramis, *Kajian Atas Perlindungan Hukum Hak Ulayat dalam Perspektif Hak Asasi Manusia*, Jurnal Hukum UNSRAT, Vol. XXI No. 4, 2013.

2007 on Spatial Planning. This article authorizes people who feel harmed by the implementation of spatial planning to file a lawsuit through the court.

In the case of violations of the granting of IMB for apartments that violate the rules in Yogyakarta (as mentioned in the background section) by looking at the people's rights that can be threatened (groundwater security), it can be clearly seen that the granting of IMB is not guided by the rules of spatial planning and ignores the calculation of the quality of the national spatial area to maintain its sustainability.

In Article 66, there are two important points that regulate the mechanism for public lawsuits against the government.

(1) Masyarakat yang dirugikan akibat penyelenggaraan penataan ruang dapat mengajukan gugatan melalui pengadilan.

(1) People who are harmed by the implementation of spatial planning can file a lawsuit through the court.

(2) Dalam hal masyarakat mengajukan gugatan sebagaimana dimaksud pada ayat (1), tergugat dapat membuktikan bahwa tidak terjadi penyimpangan dalam penyelenggaraan penataan ruang.

(2) In the event that the community files a lawsuit as referred to in paragraph (1), the defendant can prove that there is no deviation in the implementation of spatial planning.

The first point states that people who feel aggrieved can file a lawsuit through the court. This shows that the law provides opportunities for people to defend their rights and fight for justice in the context of spatial planning implementation.

The second point in Article 66 explains that the defendant, i.e. the party being sued, can prove that no irregularities have occurred in the implementation of spatial planning. Thus, proof of the government's responsibility lies with the defendant, which indicates legal protection for the people against actions that harm them.

In this context, legal protection for people who are harmed by government actions can be divided into two, namely preventive legal protection and repressive legal protection. Preventive legal protection involves prevention efforts through the establishment of clear rules and regulations, strict supervision of government actions, and active community participation in the decision-making process. The purpose of preventive legal protection is to prevent actions that harm the people. Meanwhile, repressive legal protection aims to provide law enforcement mechanisms and sanctions against government actions that have harmed the people. Through lawsuit mechanisms and judicial processes, people can fight for their rights and get justice for harmful government actions.¹²

With the existence of preventive and repressive legal protection, the law plays an important role in safeguarding the interests of the people and providing oversight of government actions. Such legal protection creates a balance of power between the government and the people, and ensures accountability and transparency in governance. In other words, the role of law, namely in legal protection, is a protection given to legal subjects in the form of

¹² Philipus M. Hadjon, *Perlindungan hukum bagi rakyat Indonesia*, Surabaya: Bina Ilmu, 1987.

law, both preventive and repressive, both written and unwritten. Which is not to forget that it is expected to be implemented in the function of law where the law can provide justice, certainty, and expediency. Which in this case the topic is also in line with the statement of Article 28D Paragraph 1 of the 1945 Constitution of the Republic of Indonesia “*Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum*” (“Everyone has the right to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law”).

Licensing in the Framework of Urban Planning: Legal Regulations and Their Consequences for the Government

A license is an approval from the authorities based on laws and regulations. Thus, in principle, laws and regulations contain prohibitions and approvals that are the basis for exceptions (permits).¹³

There are at least six legal bases for urban planning, namely:

- *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria* (Law No. 5 of 1960 on Basic Agrarian Regulations)
- *Peraturan Pemerintah Nomor 16 Tahun 2004 tentang Penatagunaan Tanah* (Government Regulation No. 16 of 2004 on Land Stewardship)
- *Undang-Undang Nomor 26 Tahun 2007 tentang Penataan Ruang* (Law No. 26 of 2007 on Spatial Planning)
- *Peraturan Pemerintah Nomor 15 Tahun 2010 tentang Penyelenggaraan Penataan Ruang* (Government Regulation No. 15 of 2010 on the Implementation of Spatial Planning)
- *Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan* Law Number 30 of 2014 on Government Administration
- *Peraturan Pemerintah Nomor 21 Tahun 2021 tentang Penyelenggaraan Penataan Ruang* (Government Regulation No. 21 of 2021 on the Implementation of Spatial Planning)

In the case of urban planning law, it is administrative law that comes first. This means that if administrative law has been proven, only then can criminal and civil proceedings be pursued. The concept of administrative law enforcement consists of three. The first is the validity of authority. Licenses can basically be issued by looking at the limits of existing authority. With the intention that every authority is limited by material, space and time. It is also important to pay attention to how the source of authority is obtained, whether attribution, delegation, or mandate. Second, is the validity of the substance. That there are appropriate bases or principles. Third is procedural validity. That is, the process must be in accordance with the stages that have been determined based on statutory regulations.¹⁴

Regional spatial plans ranging from the National Spatial Plan (RTRWN), Provincial Spatial Plan (RTRWP), and Regency/City Spatial Plan (RTRWK), each operate at different levels of government administration. In terms of substance, the RTRWN contains directions for spatial structure and spatial utilization patterns that have national strategic value (national system). The RTRWP contains directions for the spatial structure and pattern of space utilization that constitute the provincial system with due regard to the national system stipulated

¹³ Spelt. N.M. dan J.B.J.M. Ten Berge, Pengantar Hukum Perizinan, disunting oleh Philipus M. Hadjon, Yuridika, Surabaya, 1993.

¹⁴ Mirwansyah Prawiranegara, Pemahaman Dasar Tentang Hukum dan Administrasi Perencanaan Wilayah dan Kota (Konsep, Konteks, dan Komponen Pokok), Modul Hukum dan Administrasi Perencanaan, 2016.

in the RTRWN. Meanwhile, the RTRWK contains directions for the spatial structure and pattern of spatial utilization in its region by considering matters that have been regulated in spatial plans in the hierarchy above it. This hierarchical spatial plan must be implemented by taking into account the authority possessed by each level of government, to avoid overlapping regulations on the same object. In other words, hierarchical planning fulfills the principle of complementarity.¹⁵

The case of violation of the RTRW regulation in Karawang, with the granting of development permits in areas that should be protected as agricultural areas, has actually violated Article 73 of Law No. 26 Year 2007.

(1) Setiap pejabat pemerintah yang berwenang yang menerbitkan izin tidak sesuai dengan rencana tata ruang sebagaimana dimaksud dalam Pasal 37 ayat (7), dipidana dengan pidana penjara paling lama 5 (lima) tahun dan denda paling banyak Rp500.000.000,00 (lima ratus juta rupiah).

(1) Any authorized government official who issues a license that is not in accordance with the spatial plan as referred to in Article 37 paragraph (7), shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

(2) Selain sanksi pidana sebagaimana dimaksud pada ayat (1) pelaku dapat dikenai pidana tambahan berupa pemberhentian secara tidak dengan hormat dari jabatannya.

(2) In addition to the criminal sanctions as referred to in paragraph (1), the perpetrator may be subject to additional punishment in the form of dishonorable dismissal from his/her position. This is reinforced by the statement that the district spatial plan becomes the basis for the issuance of development site licenses and land administration, as stated in Article 26 paragraph (3).

The legal consequences to the government regarding licensing within the framework of urban planning may vary depending on the violation or non-compliance with legal provisions. Some of the legal consequences that may arise are as follows:

1. Administrative Sanctions: The government may be subject to administrative sanctions due to violations in licensing. Such sanctions may include warnings, reprimands, administrative fines, or license revocation.¹⁶
2. Lawsuits: The government may face lawsuits from parties who are harmed by licenses that are not in accordance with legal provisions. These lawsuits may be in the form of civil suits, compensation claims, or other legal proceedings.
3. Permit Cancellation: If a permit is granted illegally or in violation of legal provisions, the permit can be canceled by the competent authority. Cancellation of a license can result in negative impacts for the government, such as financial loss or tainted reputation.

CONCLUSION

¹⁵ Bayi Priyono, Perizinan sebagai Sarana Pengendalian Penataan Ruang dalam Perspektif Pemanfaatan Ruang di Daerah, Jurnal Administrasi Pemerintahan Daerah, Vol 8 No. 2, 2016, pp. 24.

¹⁶ Ivan Fauzani & Ratna Dewi, Penegakan Hukum Sanksi Administrasi Terhadap Pelanggaran Perizinan, Jurnal Ilmu Hukum, Vol. 15 No. 2, 2014.

1. In order to protect people who are harmed by government actions that give rise to legal consequences, the law provides justice, legal certainty and benefits. Legal protection for disadvantaged communities can be divided into preventive and repressive legal protection. Preventive legal protection includes prevention efforts through the establishment of clear laws and regulations, strict supervision, and active community participation. Repressive legal protection aims to provide a mechanism for law enforcement and sanctions against government actions that harm citizen. With preventive and repressive legal protection, the law has an important role in protecting the interests of the people and providing supervision of government actions.
2. The complex legal framework governing licensing in urban planning operates through meticulous laws and regulations, allowing exceptions via permits. Six legislative foundations underpin urban planning laws, guiding spatial organization and land use. Administrative law takes precedence, ensuring licenses adhere to authority limitations, substantive principles, and procedural regulations. Hierarchical spatial planning spans national to regional levels, imparting strategic values and directives for spatial structures. However, government repercussions for licensing breaches are severe. Violations may incur administrative sanctions like warnings, fines, or license revocation. Legal consequences could involve lawsuits, demanding compensation or annulment of illicit permits, leading to financial loss and reputational damage. In essence, adherence to legal provisions is crucial. Violations carry significant penalties, emphasizing the need for strict compliance to maintain governmental credibility in urban development.

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BIBLIOGRAPHY

Journal Articles

- Alhamidy, F. A., & Muttaqin, Z. (2020). Perlindungan Hukum Konsumen Akibat Pencabutan Izin Mendirikan Bangunan Apartemen (Studi Kasus di Kota Bandung). *Recital Review*, 2(1), 90-99.
- Latif, A. (2010). Jaminan UUD 1945 dalam proses hukum yang adil. *Jurnal Konstitusi*, 7(1), 049-066.
- Maramis, M. R. (2013). Kajian Atas Perlindungan Hukum Hak Ulayat Dalam Perspektif Hak Asasi Manusia. *Jurnal Hukum UNSRAT*, 21(4), 890.
- Priyono, B. (2016). Perizinan sebagai sarana pengendalian penataan ruang dalam perspektif pemanfaatan ruang di daerah. *Jurnal Ilmiah Administrasi Pemerintahan Daerah*, 8(2).
- Raharja, I. F. (2014). Penegakan hukum sanksi administrasi terhadap pelanggaran perizinan. *INOVATIF| Jurnal Ilmu Hukum*, 7(2).
- Tamo, W. M. T., Waongan, A., & Roeroe, S. (2022). Perlindungan Hukum Bagi Penerima Ganti Rugi Dalam Pengadaan Tanah Untuk Kepentingan Umum. *LEX CRIMEN*, 11(4).

Book

- Hr, R. (2014). Hukum Administrasi Negara Edisi Revisi. *Jakarta: RajaGrafindo Persada*.
- Mirwansyah Prawiranegara, S. T. (2016). Pemahaman Dasar Tentang Hukum dan Administrasi Perencanaan Wilayah dan Kota, Universitas Terbuka.
- Spelt, N. M., Ten Berge, J. B. J. M., & Hadjon, P. M. (1993). *Pengantar hukum perizinan*. Yuridika.

Online document

- Kementerian Pekerjaan Umum dan Perumahan Rakyat (2017) Pedoman Umum Penyusunan Rencana Detail Tata Ruang Kawasan Permukiman. Jakarta.
- Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi (2017) Panduan Pengelolaan Pengaduan Masyarakat. Jakarta.

Website

- Antara Megapolitan (2019) Pembangunan Pollux Technopolis Karawang Diduga Melanggar Perda RTRW. <https://megapolitan.antaranews.com/berita/47825/pembangunan-pollux-technopolis-karawang-diduga-melanggar-perda-rtrw>. Accessed December 19, 2023.
- Detik News (2022) KPK Ungkap Modus Eks Walkot Jogja Loloskan IMB Apartemen yang Salahi Aturan. <https://news.detik.com/berita/d-6109011/kpk-ungkap-modus-eks-walkot-jogja-loloskan-imb-apartemen-yang-salahi-aturan> . Accessed December 18, 2023.