

Legal Politics Implementing Jakarta Bay Spatial Arrangements in The Framework of Realizing Good Governance

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ABSTRACT

The aim of this research is to analyze the regulatory authority of the Provincial Government of DKI Jakarta in the spatial management of the Jakarta bay, as well as to analyze and find legal solutions regarding ideal legal politics in the spatial arrangement of the Jakarta bay which can create good government. This study uses a normative juridical legal approach. The data collection in this study used the technique of library research, observation and field research originating from primary, secondary and tertiary legal materials which were analyzed qualitatively normatively. The results of the study show that the Provincial Government of DKI Jakarta can propose the establishment of a special area in its territory to the Government which can be managed directly by the Central Government or can be managed jointly between the Central Government and the Provincial Government of DKI Jakarta in accordance with statutory provisions. The study of the ideal legal politics in the spatial arrangement of the Jakarta Bay, then this cannot be separated from the juridical considerations that form the basis for the formation or making of a statutory regulatio.

Keywords

legal politics; spatial planning; good governance

INTRODUCTION

Legal politics is the basic policy of state administrators and/or government administrators in the field of law (both *ius constituendum* and *ius constitutum*, positive law), where every field of law (in the national legal system) must originate from Pancasila and the 1945 Constitution (Hartono, 2020; Lubis, 2014). Thus, national legal politics must be formulated in a frame of thinking which is formulated in statutory regulations as legal norms.

The responsibility of Government is to realize a planned, integrated and sustainable development of national law based on Pancasila and the 1945 Constitution (Munir Fuady, 2011). If the law cannot achieve its goals, it can be judged that the law is not useful for human life (Sadjijono, 2017). Therefore the development of national law is highly correlated with "Legal Politics" which is a guideline for the direction of regulatory policy to form statutory regulations which are expected to become problem solving guidance.with the conception of Pancasila as *staatsfundamental norm* and UUD 1945 as *grundnorm*.

In addition to the strategic policy in making regulations through representative community empowerment, another significant element that must be the focus is that these laws and regulations must meet the requirements for eligibility as a legal product, the urgency of the principle of law should not be ignored, the synchronization of laws and regulations so that they do not overlap or even conflict with one another. A rule (norm) must meet the following: juridical validity (behavior, strength, and legally binding), sociological and philosophical validity (Purbacaraka & Soekanto, 2015).

In the context of legal politics in the formation of laws and regulations related to the development of the Daerah Khusus Ibukota (DKI) Jakarta Province, the flexibility of regulatory policies for the Regional Government as role players (role playing) must have moral responsibility and accountability for the interests

of the local community in order to create a welfare state through the application of the principles of good governance in the public sector becomes significant. The Provincial Government of DKI Jakarta in the development and development of certain areas, such as the spatial arrangement of the Jakarta bay which must pay attention to social justice has become a political morality that underlies all our steps as a nation in managing the country's economy – politics (Husodo, 2009).

With regard to the regulation and management of the Jakarta bay, in general the negative impacts that can arise if there is a mistake or a mistake in the spatial arrangement of the Jakarta bay are the threat of flooding, changes in the ecosystem, the threat of loss of fishermen's livelihoods, social problems, urbanization, supply of clean water and traffic dense. One of the regulatory policies of the Provincial Government of DKI Jakarta that has become polemic and is considered not to be in favor of the interests of the local community and is even considered to have damaged the regional spatial layout is the issuance of Governor's Decree Number 237 of 2020 Concerning Permits to Implement the Expansion of the Fantasy World Recreation Area (Dufan) Covering ± 35 HA (Approximately Thirty-five Hectares) and Recreation Area, Ancol East Dreamland Park, Covering an Area of ± 120 HA (Approximately One Hundred and Twenty Hectares) (Basuki, 2023).

The regulatory policies of the Provincial Government of DKI Jakarta are deemed not to have taken into account regional spatial planning including spatial arrangements for the Jakarta bay, more than that loaded with hidden interests that have nuances of abuse of power, and have not considered environmental impact analysis and flood prevention. If examined carefully, the regulatory product of the Provincial Government of DKI Jakarta in the form of Governor's Decree Number 237 of 2020 contains elements of legal defects because it does not meet the requirements for the enforceability of statutory regulations as law (Sitinjak, 2021).

Coastal reclamation (water areas) should not cause negative impacts from many aspects, such as spatial planning aspects, legal aspects, social aspects and other aspects that can affect the performance of the Central Government and DKI Jakarta Provincial Government so as to undermine the spirit of realizing good governance. good governance. Judgments about justice are generally only reviewed from one party (the party receiving the treatment), but must be seen from two parties (the treating party and the recipient of the treatment) (Nasution, 2013). Because in the context of discussing various social phenomena which are the responsibility of the DKI Jakarta Provincial Government (Jakarta bay spatial planning), it becomes very significant to understand the Government's legal politics in issuing regulations, laws, and synchronizing them with the regulatory policies of the DKI Provincial Government Jakarta in carrying out state administration or government administration tasks in realizing good government towards the idea of a welfare state.

In connection with the thought of synchronizing regulations made by the Regional Government with the Central Government, the concept of "regulations made by agencies or officials of a lower level may not conflict with regulations made by agencies or officials of a higher level" (Pranata, 2021), s it is necessary to examine normatively juridically the regulations made by the Provincial Government of DKI Jakarta in terms of spatial arrangement of the Jakarta bay with related laws while still being guided by legal politics based on Pancasila as the ideal foundation (philosophical validity) and the 1945 Constitution as constitutional basis (juridical enforcement).

As revealed by the facts based on studies showing the major premise, namely complaints about the Indonesian bureaucracy generally lead to an assessment that the bureaucracy in Indonesia is not neutral. In practice, there is an impression that shows as if officials are allowed to use their position in the bureaucracy for their own and group interests. This can be proven by the presence of inefficient and long-winded forms of bureaucratic practices (Mustafa et al., 2013).

Spatial planning as a manifestation of spatial patterns and structures is formed naturally and also as a manifestation of the results of natural processes as well as the results of social processes due to continuous learning process (Makkasau, 2021). Thus, the spatial layout and the efforts to change it have actually been realized before we formally made efforts to change the structured spatial layout which we call spatial planning. The process of continuous "learning" is the fruit of human experience which in life is in an endless cycle in the form of: utilization - monitoring - evaluation (learning) - control action - planning (efforts to improve, anticipate the future and decide on action) - utilization – etc (Rustiadi, 2018).

METHODS

In essence, the research approach is a way of conducting research (Arikunto, 2013). This study uses a normative juridical legal approach (Ibrahim, 2006), namely the statute approach and conceptual approach consisting of bureaucracy (Purbacaraka & Soekanto, 2015), government (Mustafa, 2013), governance (Sedarmayanti, 2004; Hadjon et al., 2010), good governance (Hadjon et al., 2010; Mustafa, 2013; Hadin, 2013), and Constitutional Law (Mahfud, 2001).

Data collection in this study used library research techniques, observation and field research as supporting elements if needed, sourced from legal materials (Marzuki, 2005) consisting of primary legal materials (1945 Constitution, Law Number 9 of 2015, Law Number 29 of 2007, and Governor Decree Number 237 of 2020), secondary legal materials (results of research, works from legal circles and doctrine), and tertiary legal materials (dictionaries, encyclopedias, websites, and so on). Legal materials that have been collected through various sources are compiled in a systematic and complete manner and then described and analyzed qualitatively normatively.

RESULTS

Implementation of Jakarta Bay Spatial Arrangements in the Context of Realizing Good Governance

DKI Jakarta Province as The nation's capital of Republic Indonesia, is the center of government and as an autonomous region, faces various problems with very complex characteristics. among others; urbanization, security, transportation, environment, management of special areas, and other social problems that require solving/problem solving synergistically through various instruments. Based on various aspects of consideration, the Central Government issued Law Number 29 of 2007 (as contained in the 2007 State Gazette No. 93, and Supplement to State Gazette 4744). Law Number 29 of 2007 regulates the specificity of DKI Jakarta Province as the National Capital.

In essence, there are currently quite a number of regulations governing coastal reclamation policy activities that apply, including: (1) Law Number 9 of 2015; (2) Law Number 29 of 2007, (3) Governor Decree Number 237 of 2020 is considered inappropriate and very much in conflict with the aim of realizing good governance. In the context of carrying out the duties and functions of the Special Capital Region Government of Jakarta for the spatial arrangement of the Jakarta Bay (essentially no exception for regional spatial planning of DKI Jakarta Province), any policy in whatever form that will be issued by the Regional Government must be synergistic with the direction and policy of National Development. determined by the Central Government. If the Regional Government policies are not synergistic or even contradictory to the Development Law Politics that have been designed and initiated by the Central Government, this will cause chaos due to abuse of power (*douternement de pouvoir*, abuse of power) which is considered as an attitude of action/policy that is not appropriate or inappropriate. Therefore, so that the spatial planning arrangements for DKI Jakarta Province do not become biased and overlap with the national spatial planning arrangements and spatial planning arrangements for other provinces.

From a formal juridical perspective, the authority of the Provincial Government of DKI Jakarta in the management of Jakarta Bay is described in Law Number 9 of 2015, CHAPTER V Concerning the Authority of Provincial Regions in the Sea and Provincial Areas Characterized by Islands. Further embodiment regarding the juridical basis for the use of the authority of the Provincial Government of DKI Jakarta in carrying out spatial arrangements for the Jakarta bay is stated in Article 50 paragraph (2) of Law Number 1 of 2014. Other legal norms that confirm further provisions regarding the authority of the Provincial Government of DKI Jakarta which used as a reference for regulations related to the spatial arrangement of the Jakarta Bay are Presidential Regulation Number 122 of 2012.

Referring to statutory regulations as positive law (*ius constitutum*, positive law) that apply in Indonesia, basically the policy of regulating the Jakarta Bay spatial planning and reclamation of coastal areas is a political will originating from the initiation of the Central Government, which is then handed over/delegated to the Provincial Government The DKI Jakarta area as the National Capital has the authority and special duties to run it. The transfer or delegation of authority is intended with the hope that planning for National Development and Regional Development in connection with the implementation of the Jakarta Bay spatial arrangement can be realized effectively for the sake of national interests and to provide benefits for land functions in DKI Jakarta

Province as the state capital in the arrangement of the city of Jakarta to avoid various impacts. ecology, ecosystem and social community due to reduced land area, urban forests and population density.

The implementation of reclamation activities as a form of spatial regulation of the Jakarta Bay should not only build a concept to have a positive impact on increasing investment, economic development and regional revenue generation (in this case DKI Jakarta Province), but also need to identify other negative impacts on The surrounding environment must focus and concentrate on the urgency of state sovereignty, the value of benefit for national interests and the protection of the human rights of the surrounding communities who are directly affected by the DKI Jakarta North Coast reclamation activities related to efforts to regulate the spatial layout of the Jakarta Bay.

Presidential Regulation Number 122 of 2012 is a guideline that regulates applications for obtaining location permits and reclamation implementation permits submitted to the Minister, Governor, or Regent or Mayor. The provisions in the Perprs require that the Minister grant location permits and permits for the implementation of reclamation in Certain National Strategic Areas (KSNT), cross-provincial reclamation activities, and activities in fishing ports managed by the Government. However, specifically for certain National Strategic Areas (KSNT) and inter-provincial reclamation, it can be granted after receiving consideration from the Regent or Mayor and Governor. The paradox of the rule norms in the Presidential Decree,

Other inconsistencies can be seen in the normalization of the rules set forth in Article 50 paragraph (1) of Law Number 1 of 2014, which states that the Minister has the authority to grant and revoke location permits and management permits for waters, coastal areas and inter-provincial islands, strategic areas. (KSN), certain national strategic areas (KSNT), and national conservation areas. On the other hand, there are norms in the law which stipulate that the Governor has the authority to grant and revoke location permits and management permits in coastal waters and small islands and the Regent or Mayor has the authority to grant and revoke permits in coastal waters and small islands.

The regulatory policy for the reclamation of the North Coast of DKI Jakarta is a political will which indicates conditions with controversy and violations of the law is the fact how very vulnerable the regulations for spatial planning of the Jakarta Bay which have been used as the basis of the DKI Jakarta Provincial Government's discretion. The vulnerability to abuse of power is not only due to regulations that do not explicitly regulate sanctions, but also correlates with the moral responsibility of DKI Jakarta Provincial government officials, especially personnel who conduct discussions on draft regional regulations related to reclamation and spatial planning of Jakarta Bay. Therefore, the decision making process in determining regulatory policies,

It can be stated that the problems and challenges faced by DKI Jakarta Province as the National Capital include problems and challenges related to regional infrastructure, environmental and natural resource carrying capacity, social and cultural resilience, as well as government capacity and quality, regional cooperation, and economic competitiveness the area itself such as transportation systems, floods and inundation, housing and settlements, green open spaces, and spatial planning. In addition, at the policy level of the Provincial Government of DKI Jakarta to regulate the spatial layout of the Jakarta Bay with regard to reclamation, there are several impacts (implications) that directly intersect with national interests and the interests of the community impact on economic and socio-cultural, environmental and social aspects (climate and marine, ecology, and geology).

Empirical data from the DKI Jakarta Provincial Government's policy in managing the spatial layout of the Jakarta Bay which is not in accordance with the authority it has and is abuse of power can be argued that the reclamation project that is in the public spotlight is the Jakarta Bay reclamation project resulting in people no longer believing in the Government's program to realize good governance. The authority given to the Provincial Government of DKI Jakarta should be used as a means to carry out ex officio duties and responsibilities that confirm various Central Government policies at the regional government level.

In the context of discussing the making of regulations related to governance or regulation of Jakarta Bay, the corruption meant is in the form of extortive corruption, nepotistic corruption and autogenic corruption. based on the author's research, in addition to the corruption model as described above, the classification is almost similar with regard to policies and/or discretion in making laws and regulations in the form of bribery, fraud, favoritism, violating applicable laws, harming the state, and secrecy.

The mistake in the formal juridical approach to the issuance of Governor's Decree Number 237 of 2020 is because the DKI Jakarta Provincial Government is only guided by Law Number 23 of 2014 and Law Number

29 of 2007. In other aspects, what is *lex specialis* actually ignores Law Number 1 of 2014 and Presidential Regulation Number 122 of 2012. Therefore, to prevent acts of abuse of power in the context of the Jakarta Bay spatial planning policy as described based on the series of juridical-theoretical above, it is necessary to revitalize the function of law as a controller government policy. The function of law is intended to regulate the relationship between the state or community, citizens, and relations between humans, life in society runs smoothly and in an orderly manner.

Ideal Legal Politics in Jakarta Bay Spatial Arrangements that Can Realize Good Governance

Law enforcement comes from society, and aims to achieve peace in society. Therefore, viewed from a certain angle, society can influence law enforcement (Soekanto, 2008). Law enforcement in the context of the use of authority by the Provincial Government of the Capital City of DKI Jakarta must reflect good governance, so that the spatial arrangement of the Jakarta bay does not cause polemics and is even felt as a discriminatory policy and nuances of abuse of power because its only benefit is enjoyed by certain groups of people.

The spatial arrangement of the Jakarta Bay is no longer just a matter of development policy which creates juridical implications at the level of law enforcement, but has entered the area of political economy and political ecology where aspects of social harmonization experience friction at the pro and con urgency level. Thus, so that the spatial arrangement of the Jakarta bay does not cause new problems that are increasingly biased towards the behavior of the local government, it must be tightened at the level of supervision of its implementation. Controlling the behavior of the Regional Government in the decision making process in terms of bureaucratic management needs to be consistently emphasized.

Based on the facts that have happened so far, the many behaviors of bureaucrats within the Regional Government of the DKI Jakarta Province who are trapped in a circle of "college policies" in issuing discretion including in making regulations on spatial planning (including reclamation) of the Jakarta bay, it is necessary to make a reference paradigm permanent. This reference paradigm is the embodiment of "Ideal Legal Politics" in the governance arrangements of the Jakarta bay to realize good governance in the concept of the welfare state. The political law must represent the ideals of social justice, public benefit and community welfare. As an instrument to achieve these aims and objectives, the function of law as a controller and parameter of public policy must be enforced consistently.

Law enforcement in relation to law development is the consistent implementation of all legal provisions regardless of the subject of the law. The principle of law enforcement embodies fair law enforcement for all parties without exception, upholds human rights (basic rights) and pays attention to the values that live in society. Likewise, regional governments in accordance with their authority must support the upholding of the supremacy of law by conducting various counseling on laws and regulations and reviving the values and norms that apply in society. In addition, the Regional Government needs to seek wise and effective Regional Regulations, supported by fair and proper law enforcement. Local government,

Legal politics related to regulations or laws and regulations regarding the spatial arrangement of the Jakarta Bay that currently exist when viewed from Law Number 1 of 2014, as well as Presidential Regulation Number 122 of 2012 can be said to be inconsistent in realizing good governance in accordance with state goals Indonesia which is formulated in the fourth paragraph of the Preamble to the 1945 Constitution. In addition, the meaning of norms in the two laws and regulations can be translated differently by the Provincial Government of DKI Jakarta so that at the level of implementation it provides an opportunity for the Provincial Government of DKI Jakarta to commit abuse of authority by making regulations that are contradictory and counter-productive to the two laws and regulations such as actions DKI Jakarta Provincial Government issued Governor's Decree Number 237 of 2020 concerning Permits to Implement the Expansion of the Fantasy World Recreation Area (DUFAN) for ± 35 HA (approximately thirty-five hectares) and the East Ancol Dream Park Recreation Area for ± 120 HA (approximately one hundred and twenty hectares).

Therefore, according to the researcher, a reorientation of the government's legal politics must be carried out regarding the spatial arrangement of the Jakarta Bay by amending Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands, as well as Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands. This reorientation includes the basic substance formulated in Article 33 of the 1945 Constitution.

The government's legal politics in the formation of laws and regulations must involve certain groups of participants in order to know the opinion and will formation that is the hope of the community or represent the public interest. So that the legitimacy of a political law in the process of making laws and regulations is obtained through a deliberation process that accommodates people's aspirations in the public space and the process of legal legislation by the legislature in the political system.

If the discussion on the spatial arrangement of the Jakarta Bay is confronted between Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, and Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Islands – Pulau Kecil, with Governor Decree Number 237 of 2020 concerning Permits to Implement the Expansion of the Dunia Fantasi Recreation Area (Dufan) of ± 35 HA (Approximately Thirty-five Hectares) and Recreation Area Taman Impian Ancol Timur Recreation Area of ± 120 HA (Approximately one hundred and two tens of hectares), it will be clear that there is a conflict of norms taken into consideration in the Governor's Decree. Therefore, it is time for the Government of Indonesia to build a good legal political system, directed and consistent in setting the spatial layout of the Jakarta Bay. Based on such legal politics, the policies for forming laws and regulations relating to the management of the Jakarta Bay are truly based on accommodating national interests and the needs of the community and reflecting the goals of the state as set forth in the Preamble of the 1945 Constitution, namely protecting the entire Indonesian nation and all spilled waters. Indonesian blood and to advance public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice

In the context as referred to above, the urgent effort to be made is the Government's political will in regulating the spatial layout of the Jakarta Bay, namely taking into account aspects of national interests and the interests of the community in making various regulations, both at the urgency level of laws and other organic regulations. Decision-making related to ideal legal politics in managing the Jakarta Bay spatial planning must also prioritize inclusive principles, namely involving all stakeholders, and be carried out in an open and transparent manner according to the *welvaarstaat* principle.

In essence, Law No. 27 of 2007 does not provide certainty about community participation in order to prevent conflicts. Public participation is not a procedural requirement for the implementation of reclamation. Public participation in reclamation projects always refers to Law No. 32 of 2009 concerning Environmental Protection and Management related to the process of preparing an Environmental Impact Assessment. In fact, reclamation planning and implementation is very important to be carried out in a participatory and transparent manner. In Presidential Regulation No. 122 of 2012, there are many processes that must be passed in the implementation of reclamation such as determining the location, preparing a reclamation master plan, feasibility study and detailed reclamation planning. In addition, Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands, which has been issued by the government, is considered unable to provide adequate state authority and responsibility for the management of coastal waters and small islands, so that the issue of Coastal Reclamation, especially those that occur in the DKI Jakarta area, has caused polemics that are not sustainable, which until now has not been completed.

CONCLUSION

At the level of Legal Political theory in the context of determining the direction, form and content of the law to be formed, the Government (in this case the Central Government) based on regulations can establish and/or establish special areas in the DKI Jakarta Province to carry out certain governmental functions that are specifically for the national interest in accordance with the provisions of the legislation. Although on the other hand, the Provincial Government of DKI Jakarta can propose the establishment of a special area in its territory to the Government which can be managed directly by the Central Government or can be managed jointly between the Central Government and the Provincial Government of DKI Jakarta in accordance with statutory provisions.. The study of the ideal political law in the spatial arrangement of the Jakarta Bay, then this cannot be separated from the juridical considerations that form the basis for the formation or making of a statutory regulation.

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