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Juridical Review of Spatial Planning and Control of Space Utilization in the Situ Kayu Antap Area in the South Tangerang City Area in the Perspective of National Land Law

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Abstract

Secara yuridis, terdapat permasalahan hukum dimana Situ Kayu Antap yang berlokasi di kota Tangerang Selatan memiliki ketidaksesuaian pada pemanfaatan ruangnya yaitu terjadi penerbitan hak atas tanah tanpa disertai hasil analisis atau kajian atas data fisik dan data yuridis yang relevan, sehingga perlu dilakukan pengendalian terhadap pemanfaatan ruang pada kawasan situ di wilayah kota Tangerang Selatan tersebut dalam perspektif hukum tanah nasional. Jenis penelitian dalam penelitian ini adalah penelitian hukum normatif yaitu penelitian terhadap asas hukum, teori hukum, konsep hukum serta peraturan perundang-undangan yang berhubungan dengan penelitian ini. Teori, asas dan konsep hukum tersebut digunakan untuk menentukan bahwa lokasi Situ Kayu Antap merupakan sumber air pedalaman di wilayah kota Tangerang Selatan yang ditetapkan sebagai salah satu Kawasan Strategis Nasional dan merupakan kawasan lindung yang harus dilestarikan keberadaannya demi kesejahteraan rakyat. Berdasarkan penelitian penulis, PT. Hana Kreasi Persada yang saat ini memiliki Hak Guna Bangunan atas kawasan Situ Kayu Antap dapat dicabut hak atas tanahnya atas dasar kepentingan umum dan dapat diberikan ganti rugi oleh pemerintah kota Tangerang Selatan berdasarkan ketentuan peraturan perundang-undangan yang berlaku.

I. Introduction

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One of the authority of the state through the right of control from the state is to plan the allotment and use of land. Based on this, planning the allocation and use of land throughout Indonesia is one of the problems in today's urban development. Environmental issues are one of the problems of allotment planning and land use that is not well managed by the state. Therefore, urban

spatial planning is an important and interesting thing to discuss. The importance of spatial planning in urban areas is realized through the provisions contained in Article 78 paragraph (4) of Law Number 26 of 2007 concerning Spatial Planning (hereinafter referred to as UUPR) which states that: "every provincial area, and district or city must have rules that become guidelines in spatial planning and become a reference in the implementation of development." In addition to planning, the state also needs to control the use of space, for the establishment of the rule of law in the context of spatial planning. Weak law enforcement in spatial planning and utilization causes social, ecological, and juridical problems. One of the conditions regarding weak law enforcement that causes social, ecological, and juridical problems was reviewed in the Kompas daily newspaper on October 10, 2019 which stated that since 2017, the government has been trying to protect situ, lakes, reservoirs and reservoirs (hereinafter referred to as SDEW) in Jabodetabek. According to the newspaper, the 208 (two hundred and eight) sites in Jabodetabek are managed by the central government. Of the many sites, only 4 (four) sites have been successfully certified, namely Situ Pagam, Situ Cogreg, Situ Tanjung Udik, and Situ Rawa Lumbu.¹

Furthermore, as mentioned above that the central government through the Ciliwung Cisadane River Area Center (for the next one called BBWSCC) the Ministry of Public Works and Public Housing carried out data collection, the results of which were 208 (two hundred and eight) sites located in the Jabodetabek area. However, not all situ areas in Jabodetabek are controlled by the state and are intended for the greatest prosperity of the people.² It is recorded that 30 (thirty) sites are controlled by companies and individuals through certificates of property rights (SHM), Building Use Rights (HGB), and Business Use Rights (HGU). The control of situ through the issuance of SHM and other land rights caused a number of situ in Jabodetabek to switch functions. It no longer functions as a water catchment area or flood control. Although the main function of situ as one of the water bodies to maintain the availability of raw water and flood control, the government's protection of situ in Jabodetabek is still weak. For example, in the same newspaper, it is rumored that throughout September 2019, the Kompas Team has revealed that there is control of situ by individuals and corporations that have even been for many years, one of which is Situ Kayu Antap which is located in Rempoa Village, East Ciputat District, South Tangerang City, Banten Province.

due to the issuance of the Banten High Court decision Number 13 / PDT / 2012 / PT.Btn of 2012, Situ Kayu Antap can be owned and controlled by PT Hana Kreasi Persada on a legal basis in the form of a land permit which according to

¹ Satrio Pangarso Wisanggeni; et. al, 'Situ Hilang, Bencana Datang', *Kompas*, 2019, p. 11.

² Satrio Pangarso Wisanggeni; et. al.

the author is invalid in its legal application. The dispute related to the legal status of Situ Kayu Antap arose because the High Court Judge issued a judgment which according to the author, there was a discrepancy between the designation and use of the object of dispute (situ Kayu Antap area) juridically with the existing reality, as well as the occurrence of administrative violations of spatial planning to deviations from the principles of national land law. The above legal problems occur due to the control of space utilization that is far from the mandate of the 1945 Constitution, UUPA, and UUPR. Therefore, based on the title of the research and as a form of the provisions of Article 14 of the UUPA, namely the principle of planning, the city of South Tangerang requires a Regional Spatial Plan (hereinafter referred to as RTRW) as a guideline for controlling the use of space in the area in the South Tangerang city area. Based on current positive law (*Ius Constitutum*), The rtrw of South Tangerang city that applies is the Regional Regulation of South Tangerang City Number 9 of 2019 concerning Amendments to Regional Regulation Number 15 of 2011 concerning the Spatial Plan of the South Tangerang City Area 2011 - 2031 (Perda RTRW South Tangerang year 2019). In relation to Hamlet and Neighbourhood (RTRW) of South Tangerang city, in Article 29 paragraph (3) letter b number 2, it is stated that Situ Kayu Antap is listed as one of the water resources (hereinafter referred to as SDA). In fact, juridically Situ Kayu Antap has a discrepancy in the use of its space, there is a issuance of land rights without the results of analysis or study of physical data and relevant juridical data. Taking into account the juridical condition of Situ Kayu Antap which has discrepancies in the use of its space, it is necessary to control the use of space in the situ area in the South Tangerang city area, especially in this juridical research, namely Situ Kayu Antap which today has changed its function.

Based on the author's research title, namely Juridical Review of Spatial Planning and Control of Space Utilization in the Situ Kayu Antap Area in the South Tangerang City Area in the Perspective of National Land Law which is sourced from several literature both in the form of laws and regulations and supported by relevant secondary and tertiary legal materials, then for further understanding, the author needs to raise several issues, namely about how the review is juridical towards spatial planning and control of space utilization in the situ area in the South Tangerang city area in the conception of national land law and regarding legal analysis of changes in the designation of the function of Situ Kayu Antap in the South Tangerang City area in the decision of the Banten High Court Number 13 / PDT.G / 2012 / PT.Btn. The purpose of this study in general is to increase knowledge or insight for the author about spatial planning and controlling the use of space in the area, and the author can find out practically the procedures for controlling the use of space in the area. Meanwhile, the specific purpose of this study is, among others, to explain and know the

² duties and authorities of the government in the context of spatial planning and the implementation of control over the use of space in the situ area in the South Tangerang city area as well as explain and find practical solutions to deviations in the use of space in the situ area that have not received too much attention from the government.

¹⁴ Based on the title of the study, namely Juridical Review of Spatial Planning and Control of Space Utilization in the Situ Kayu Antap Area in the South Tangerang City Area in the Perspective of National Land Law which is sourced from several literature both in the form of laws and regulations and supported by relevant secondary and tertiary legal materials, then for further understanding, the author needs to raise several issues, namely regarding how the form of review juridical on spatial planning and control of space utilization in the Situ Kayu Antap area in the South Tangerang city area in the conception of national land law and how is the legal analysis of changes in the allocation of situ Kayu Antap functions in the South Tangerang City area in the decision of the Banten High Court Number 13 / PDT.GX 2012 / PT.Btn.

²⁶ 2. Research Method

This type of research is normative legal research. It is said to be normative law because this research includes research on legal principles, legal theories, legal concepts and laws and regulations related to this research. The data obtained are then systematically compiled, studied and then conclusions are drawn in relation to the problem under study. In this study, the source of the data was obtained from secondary data that can be used as the object of research writing. The data in question are primary, secondary, and tertiary legal materials.

The data collection technique used in this study was to use literature studies. Document study is an initial technique used in every legal research, because legal research always starts from normative equalization based on the provisions of applicable laws and regulations. Regarding the study of literature carried out on legal materials that are relevant to the researcher's problem. In his book entitled "Introduction to Legal Research", Soerjono Soekanto stated that "the processing, analysis and construction of normative legal research data can be done by analyzing legal rules and then construction is carried out by inserting articles into categories on the basis of the understandings of the legal system."³ The data that has been collected will then be analyzed by qualitative data analysis, namely:

³ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2006)

1. Collecting legal materials, in the form of an inventory of laws and regulations related to spatial planning and controlling the use of space in the area.
2. Sorting out the legal materials that have been collected and further systematizing legal materials in accordance with the problem.
3. Analyze legal materials by reading and interpreting them to find the rules, principles and concepts contained in the legal materials.
4. Finding the relationship between these laws, principles and rules by using legal theory, especially in the field of State Administrative Law as an analysis knife.

In addition, drawing conclusions to answer problems is carried out using deductive thinking logic. The deductive method is carried out by reading and interpreting and comparing the relationships of related concepts, principles and rules, so that conclusions can be obtained in accordance with the purpose of the writing formulated.

P/V (ETS)

3. Results and Discussion

In connection with the Provisions of the People's Consultative Assembly of the Republic of Indonesia Number IX / MPR / 2001 concerning the Renewal of Agrarian Law and Natural Resources Management (hereinafter referred to as the MPR TAP), based on the MPR TAP, the national long-term development plan in the land sector is contained in the fourth point of the Annex to Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005 - 2025 (hereinafter referred to as Law No. 17 of 2007) and explains that it is stated that it is stated that it is the state needs to implement an efficient, effective land management system, and implement law enforcement of land rights by applying the principles of justice, transparency, and democracy. Looking at the slight explanation of Law No. 17 of 2007 above, it can be concluded that spatial planning rules demand a development in realizing a system of integration between spaces as the main characteristic. In this regard, the existence of a national policy on spatial planning that combines various spatial utilization policies is very necessary. Along with the intention of these conditions, the implementation of development by the central and local governments and the community must be carried out in accordance with the established spatial plan, so that the use of space by anyone must not conflict with the rules of the spatial plan.

In accordance with the direction of development in the field of spatial planning above, spatial planning becomes a policy reference for the development of an area, so hierarchically UUPR is obliged to spawn spatial policies in every region in Indonesia both at the Provincial and Regency / City levels. In the spatial

policy, the existing spatial structure and pattern must also be determined. This is in accordance with the mandate of Article 1 letter h in the UUPR regarding "spatial planning", which is "a process to determine the structure of space and spatial patterns in the form of preparing and determining spatial plans." According to Prajudi Atmosudirjo, a plan is "a form of state administrative law act that creates a binding legal relationship between the ruler and the citizens." Furthermore, according to him, from the point of view of the science of state administrative law the plan is "one of the forms of deeds of state administrative law that create a binding legal relationship between the ruler and the citizen." Furthermore, according to him, from the point of view of the science of state administrative law the plan is "a unified set of measures with the aim of creating an orderly state, when such unified actions have already been completed are realized." Furthermore, he also stated that the aforementioned instrument of measures "needs to be poured into one decision of the administration of the state which is of the nature of the acts (*rechtshandeling*) so as to create the consequences of state administrative law that bind the people concerned to the state to one another to ensure that the orderly state of affairs can really be realized."

In principle, the definition of a plan according to national land law if it is linked to the conceptions of planning above is in the form of state administrative decisions contained and regulated in the UUPA and UUPR. This is important to explain because according to Article 1 letter c of the UUPR, it determines that spatial planning is a process system of spatial planning, space utilization, and space utilization control. To realize such a legal conception, based on Article 14 of the UUPA, the government is obliged to plan the provision, allocation, use, and utilization of the earth, water, space and natural wealth contained therein, for the benefit of the nation and state. Based on the explanation of Article 14 of the UUPA, the government is then mandated to form a UUPR. In the general explanation of the number 5 (five) of the second paragraph of the UUPR explains that "spatial planning based on the characteristics, carrying capacity of the environment, and the carrying capacity of the environment, and supported by appropriate technology can improve the harmony, harmony, and balance of the subsystem." Considering that the management of one subsystem will affect the other subsystem and may ultimately affect the national spatial area system as a whole, the author reminds again that spatial arrangements demand the development of an integrated system as the main characteristic. This condition requires the need for a national policy on spatial planning that can combine various spatial utilization policies. In line with this intention, the implementation of development carried out, both by the central, regional and community governments, must be carried out in accordance with the established spatial plan and must not conflict with the spatial plan regulations.

Furthermore, in the book entitled "The Law of Spatial Planning and Land Stewardship", Hasni stated that "spatial planning activities themselves consist of 3 (three) interrelated activities, namely spatial planning, space utilization, and control of space utilization, with spatial plan products in the form of Regional Spatial Plans (RTRW) which hierarchically consist of the National Regional Spatial Plan (RTRWN), Provincial Spatial Plan (RTRWP), and Regency/city Spatial Plan (RTRW District/city)." Meanwhile, according to the provisions of Article 1 number 15 of the UUPR, it is stated that the control of space utilization is "an effort to realize spatial order (Article 1 number 15 of the UUPR) which is carried out through zoning determination (zoning regulations are provisions that regulate the use of space and control elements compiled for each allocation zone in accordance with the detailed spatial plan), licensing, providing incentives and disincentives, and the imposition of sanctions."⁴ Control of space utilization is carried out in accordance with the spatial plan to minimize the discrepancy in space utilization so that the suitability of space utilization with the spatial function that has been determined by the spatial plan is maintained.

In the context of this juridical research, it is a protected area (local protection area) which is in accordance with the concept of spatial planning of the Jabodetabekpunjur National Strategic Area (hereinafter referred to as KSN) which has a role as a reference for the implementation of national development by paying attention to water and soil conservation, as well as groundwater and surface water supplies.⁵ In addition, based on the provisions of Article 96 of Presidential Regulation Number 60 of 2020 and Article 67 of the South Tangerang RTRW Regional Regulation of 2019, it is also a flood and landslide control tool, as part of the concept of disaster mitigation in spatial planning in which there are also summarized rules regarding directions for controlling the use of space. Related to the above, the role of spatial data in spatial planning and disaster risk reduction is very important to pay attention to. Therefore, the government issued a new spatial planning regulation related to urban areas that are part of the KSN, namely Presidential Regulation Number 60 of 2020 replacing the previous regulation, namely Presidential Regulation Number 54 of 2008, as a form of spatial planning development in accordance with the mandate of Article 2 of the MPR TAP on The Renewal of Agrarian Law and Natural Resources Management.

People today see it as only a water reservoir. The general public has not seen it as one of the important parts of water bodies or water resource bodies that must be considered and must be maintained for various purposes, such as water

⁴ Hasni, 'Hukum Penataan Ruang Dan Penatagunaan Tanah', in *Edisi II* (Jakarta: PT Raja Grafindo Persada, 2010), p. 194.

⁵ Perencanaan Tata Ruang Kawasan Strategis Nasional Direktorat Tata Ruang dan Pertanahan Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional, *Tinjauan Kebencanaan* (Jakarta: BPPN, 2013).

conservation, filling groundwater, tackling floods, maintaining micro temperatures, maintaining air humidity, recreation and tourism, agriculture, fisheries, and so on.⁶ With various conditions of situ in the South Tangerang city area that are so concerning, both the government and the community are expected to realize the importance of maintaining a situ. Based on its ecological function, it serves to hold water and replenish groundwater, provide air humidity, and maintain environmental quality. In addition, it also functions as a water reserve, fishery, tourism, recreation, breeding sites for certain flora and fauna, tidal agriculture, irrigation, clean water, and also as a flood control as the author has previously explained. With so many functions from it, in the future efforts need to be made to preserve it. It is very necessary to create new sites (artificial or the result of revitalization), so that the water needs of each region, especially the South Tangerang city area to be met by sites that are built and preserved continuously.

To ensure the ecological function of it that always pays attention to the principle of harmony, balance, harmony, and sustainability, management activities in the area must be emphasized on efforts to protect it as well as the area *green belt* in the vicinity. The existence of real rules can be one of the factors that can prevent or anticipate problems that occur in the use of situ and the surrounding area that do not pay attention to ecological functions. Then related to the policies and directions for space utilization as explained above, according to Article 10 letter d of the 2019 South Tangerang RTRW Regional Regulation, one of the planning in terms of space structure is "a strategy for developing and improving the quality and reach of services for the city infrastructure system in an integrated, equitable and sustainable manner by prioritizing environmental sustainability." Normatively, one of the spatial utilization strategies that prioritizes environmental sustainability according to Article 13 paragraphs (1) and (2) of the South Tangerang RTRW Regional Regulation 2019 is "a strategy for developing protected areas and strategies for controlling pollution and/or environmental damage."

In addition to requiring planning in terms of spatial structure, spatial planning for situ also pays attention to planning the spatial pattern. According to the provisions of Article 15 paragraph (1) of the South Tangerang RTRW Regional Regulation of 2019, the city area space structure plan consists of an activity center system and an infrastructure system in the city area. Surface water resources (including situ) in south Tangerang city structure planning activities are referred to as "water resource network system plans." These provisions are regulated based on Article 20 paragraph (1) letter d of the 2019 South Tangerang

⁶ Agus Maryono, *Reformasi Pengelolaan Sumber Daya Air* (Yogyakarta: Gadjah Mada University Press, 2017).

RTRW Regional Regulation. The spatial planning activities other than the use of space against the above are control over the use of space. In addition to the general provisions of zoning regulations in order to realize the orderly spatial planning, space utilization control activities have other legal remedies through legal actions (*rechtshandelingen*) of state administration in the form of a form of state administrative determination (*beschikking*) that provides benefits to an agency, agency, company, or individual called a permit (*vergunning*). The author needs to add Prajudi Atmosudirjo's quote that the content of the country's administrative legal relations can be in the form of:⁷

- a. An obligation (*bondo, verplichting*) to do, or not to do, or to allow something;
- b. A right to charge or solicit;
- c. A permit or consent to something that is generally prohibited;
- d. A grant of status to someone or something, so that a certain set of legal relationships arises.

Based on the explanation of the determination of state administration above, there is a form of determination of state administration that provides advantages, one of which is permission (*vergunning*). According to Prajudi Atmosudirjo, "a permit is an injunction that is a dispensation rather than a prohibition by law." He added that "in general the article in the applicable law explains the term 'prohibited', it has details of the conditions, criteria and so on that the petitioner needs to meet in order to obtain dispensation from the prohibition, accompanied by the establishment of procedures and implementation instructions to the officials of the state administration concerned." In other words, through the licensing system, the authorities intervene in or over the process of carrying out certain activities in society administratively.

The system of controlling the use of space other than zoning regulations, the imposition of incentives and disincentives as well as licensing mechanisms are the imposition of sanctions consisting of administrative sanctions (Article 62, Article 63, and Article 64 of the UUPR), civil sanctions (Article 75 of the UUPR) and criminal sanctions (Article 69, Article 70, Article 71, Article 73, and Article 74 of the UUPR). Administrative sanctions are further regulated in Articles 182 to 186 pp No. 15 of 2010. The Government Regulation only regulates the criteria and procedural law of administrative sanctions.

Then related to the lives of community members who always utilize water

⁷ Prajudi Atmosudirjo, *Hukum Administrasi Negara* (Jakarta: Ghalia Indonesia, 1994).

resources, the government needs to invite community members to jointly realize their rights and obligations as citizens in managing water resources. This is regulated in the provisions of Article 61 and Article 62 of the Natural Resources Law. The description of the two articles indicates that juridically, rules have been established to balance the rights and obligations of the community in efforts and efforts to manage water resources, including the use of the area as one of the potential water resources. In the context of controlling the use of space in the area, both the government and the community need to be aware of the existing directives or rules as a reference to actively participate in managing the water source so that its benefits can be maintained properly.

Due to the neglect of its duties in maintaining the sustainability of protected areas such as Situ kayu Antap, the state should be responsible for enforcing the law in the context of spatial planning through existing space utilization control instruments. The operationalization that needs to be carried out juridically related to the UUPA in order to restore protected areas as originally intended is to carry out the revocation of land rights on the basis of the public interest and the provision of proper compensation to land rights holders who are entitled to social functions, it needs to be based on the provisions of Article 6 of the UUPA and Article 18 of the UUPA. Based on this, the meaning of Article 6 of the UUPA which states that "all land rights have a social function" is:⁸

- a. Each subject of rights/holder of land rights must use the land according to the land allotment stipulated in the RTRW made by the local government concerned.
- b. In the event of a dispute between the general interest and the interests of the individual, the won or precedence is the public interest without neglecting the interests of the individual. As proof of an individual's interests not being denied is to be given compensation or compensation to individuals whose land rights are sacrificed in the public interest. To find out which part of the land will be used for public interest, an RTRW is needed.

Then the next explanation is about the provisions of Article 18 of the UUPA which states that "This article is a guarantee for the people regarding their rights to land. Disenfranchisement is possible, but it is bound by conditions, for example, it must be accompanied by the provision of proper indemnity. In connection with these rules, in order to protect the public interest, including the interests of the nation and the state and the common interests of the people, land rights can be revoked, by providing appropriate compensation and in the manner

⁸ Hasni.

regulated by law.” As for the compensation mechanism which is the operational level (law implementation), it is not regulated in the UUPA which only regulates the values, norms, and methods of land law in general, but through more detailed statutory provisions in the field of spatial planning, namely the UUPR and its implementing regulations (PP Number 15 of 2010).

In the event that the state has granted the right to land to an individual or legal entity to use a certain space or area, then the holder of the right to the land must still use it in accordance with the original purpose of its grant and still maintain its sustainability for the benefit of all parties at large. Therefore, for the granting of HGB (through the issuance of a deed of transfer of rights) to PT Hana Kreasi Persada (PT. HKP) by the state in the context of buying and selling can be switched and transferred to other parties (Article 35 paragraph 3 uupa). HGB can also be deleted among others because; terminated before its term expires because some condition is not met; repealed in the public interest; or displaced (Article 40 UUPA).

Furthermore, according to the Natural Resources Law, the area is also not allowed to be owned in part or in full by individuals or legal entities. The natural resources law confirms in Article 5 that it is the state that controls water resources to be used as much as possible for the prosperity of the people. In other words, based on the provisions of the Natural Resources Law, juridically and ecologically, Situ Kayu Antap is one of the sources of water needed for its ecosystem (for example: the surrounding community). Because the benefits of water sources are intended for the public interest, not individuals or legal entities (such as PT. HKP), then the control of the location of Situ Kayu Antap becomes inappropriate and contrary to the Natural Resources Law.

6 In the context of Situ Kayu Antap, in addition to the need to pay attention to the implementation of detailed spatial planning and spatial control directions based on the 2019 South Tangerang City RTRW Regional Regulation, the government also needs to pay attention to the provisions of Presidential Regulation Number 60 of 2020. Detailed spatial planning rules according to the Presidential Regulation need to be established in order to implement the provisions of Article 21 paragraph (1) of the UUPR before revision (it has been revised *mutatis mutandis* by Law Number 11 of 2020 concerning Job Creation) taking into account the provisions of Article 140 of Presidential Regulation Number 60 of 2020. In relation to the direction of controlling the use of space in this study, it is only explained related to the main points through the UUPR, while a more detailed explanation related to the direction of controlling space utilization in the Situ Kayu Antap area will be described through the South Tangerang City RTRW Regional Regulation of 2019 and Presidential Regulation

Number 60 of 2020.

Juridically, control of space utilization is an effort to realize spatial order (Article 1 number 15 of the UUPR) which is carried out through zoning determination, namely provisions governing the use of space and elements of control prepared for each allocation zone in accordance with the detailed spatial plan), permits, providing incentives and disincentives, as well as the imposition of sanctions.⁹ Based on Article 37 paragraph (1) of the UUPR, the five instruments of controlling the use of space above will be regulated by the central government and local governments according to their respective authorities in accordance with laws and regulations. Furthermore, according to Article 153 paragraph (3) of PP Number 15 of 2010 as the implementing rule of the UUPR, it is regulated that district/city zoning regulations are the basis for providing incentives and disincentives, granting permits, and imposing sanctions at the district/city level. This provision, if it is related to this study, is known that the use of space for the Situ Kayu Antap area must refer to the direction of the zoning regulations stipulated by the 2019 South Tangerang RTRW Regional Regulation.

Based on the Decree of the Regent of Tangerang Number: 591/006/IL.DTRP concerning the Granting of Location Permits to PT. HKP for the Purposes of Acquiring Land covering an Area of 17,650 M2 Rempoa Village, Ciputat District, Tangerang Regency for the purposes of housing development, the decision to grant a location permit by the Tangerang Regency Government must be based on the provisions contained in the regulations regarding location permits that apply before the date of issuance of location permits for the use of space in the Situ Kayu Antap area dated April 20, 2007, namely the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 2 of 1999 concerning Location Permits (hereinafter referred to as Permenag/KaBPN No. 2 of 1999). In addition to having to refer to permenag / KaBPN No. 2 of 1999, the implementation of space utilization of the area requested by PT. HKP must comply with the provisions contained in the Location Permit Decree and Space Utilization Permit Decree issued by the Tangerang Regent to PT. HKP. It is explained in permenag/kabpn No. 2 of 1999, in Article 8 paragraph (3) that implicitly in the implementation of its development or business activities, PT. HKP must respect, pay attention to and protect the public interest, and not close or hinder the accessibility of the community to areas that have not been liberated (waiver or transfer of land rights) by The Corporation.

In addition, a similar arrangement as the above, namely the obligation to protect the public interest is also further explained in the 1st Dictum number 8

⁹ Undang-Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang. Pasal 35.

letter c in the 2007 Location Permit Decree mentioned above. As for the 3rd Dictum of the Decree granting Location Permits to PT. The HKP above is emphasized that if in the future there are changes to the RTRW or Detailed Spatial Plan (hereinafter referred to as RDTR) in the area, PT. HKP must be willing to make adjustments regarding its space utilization activities. If these adjustments are not made, then according to the arrangements contained in the 4th Dictum of the Location Permit Decree mentioned above, PT. HKP will be categorized as committing irregularities and/or omissions, the legal consequence of which is the revocation and/or cancellation of the 2007 Location Permit Decree. Regarding the consequences of the revocation and/or cancellation of the 2007 Location Permit Decree, it is a form of affirmation from the 5th Dictum of the Location Permit Decree above which states that "all consequences of the issuance of this decision are the burden of PT. Hana Kreasi Persada."

Furthermore, with regard to the imposition of sanctions, PT. HKP is one of the corporations that in 2011 suffered losses due to the emergence of the RTRW of South Tangerang city. But at the same time, PT. The HKP also closed access to the area which was declared by law to be public property as a source of water. Paying attention to this, if you look at the legal actions that have been carried out by PT. HKP based on the chronology of the issuance of location permits and legal remedies pursued by the legal entity, PT. HKP may be subject to sanctions according to what is meant by Article 186 letter a and letter b of PP No. 15 of 2010 (blocking and closing access to water sources). Supposedly, PT. Hkp once it learns that the location of the SHGB it owns is a body of water and knows the RTRW of South Tangerang city appears, can immediately ask the government for proper compensation. But instead of doing so, PT. The HKP instead took legal action through the courts to control the location of what the public property was supposed to be. This is what underlies the author to discuss the application of administrative sanctions and criminal sanctions for PT. HKP, so that it can immediately stop its activities that are not in accordance with the use of its space.

4. Conclusion (bold, 14 pt)

1. The implementation of regional development based on spatial planning should be carried out in an integrated manner by involving all development actors (stakeholders) in the local area in the order of sustainable development patterns (sustainable development) and developing a humanopolis spatial plan (prioritizing the interests of the community and creating a beautiful environment) based on the insight of the archipelago and national resilience, in accordance with laws and regulations that are part of the land law national. The spatial planning process consists of three series of activities, namely planning, utilization, and control of space utilization in KSN and protected

areas, especially spatial planning in the situ area (including Situ Kayu Antap) in the city of South Tangerang so that its implementation is based on and guided by laws and regulations that are part of the national land law regulations, including Article 33 paragraph (3) of the 1945 Constitution, UUPA, UUPR, SDA Law, Article 17 of the Job Creation Law, related Government Regulations, Presidential Regulation Number 60 of 2020, instruments for controlling space utilization regulated through the 2019 South Tangerang City RTRW Bylaws and other operational regulations.

2. Related to the Situ Kayu Antap area which is a protected area (as a water catchment zone), with various legal facts that the use of Situ Kayu Antap by PT. Hana Kreasi Persada, which was originally for agricultural purposes but in fact changed its function to cultivation activities (construction of housing clusters) and by paying attention to the principle of social functioning in Article 6 of the UUPA and one of the legal principles of spatial planning, namely the protection of public interests, it can be seen that the condition of space utilization in the Situ Kayu Antap area is not in accordance with the provisions in the UUPA and UUPR. Although the process of granting these rights has gone through the correct and valid legal procedures, but because the designation is not in accordance with the changes in the RTRW rules in the South Tangerang city area, in accordance with the provisions of Article 6 of the UUPA and Article 18 of the UUPA, it is known that the SHGB owned by PT. Hana Kreasi Persada can be abolished by the state (*waiver of land rights*) by revoking it for the public interest.
3. Furthermore, based on the legal relationship between the regulation of the UUPR which was partially revised by the Job Creation Law regarding the Suitability of Space Utilization Activities with the legal facts that occurred on Situ Kayu Antap along with the theory regarding licensing that has been put forward by legal experts, it can be concluded that PT. Hana Kreasi Persada does not have the good faith to follow the administrative legal procedures provided by the government by placing her location permit as a permit that is not in accordance with the use of her space. Considering that SHGB belongs to PT. Hana Kreasi Persada can be abolished by the state on the basis of public interest and the location permit owned can be revoked due to the law if in reality it is not in accordance with the development of the RTRW and the use of its space, then PT. Hana Kreasi Persada can ask for her rights in the form of proper compensation to the government in accordance with the provisions of Article 168 PP No. 15 of 2010.

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