

Investigation of Implementation and Spatial Policy Shift: A Legal Perspective of Spatial Planning in Semarang City Indonesia

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Abstract: This study aims to analyze the reason behind the shift in the implementation of spatial planning policies in local government from the formulation of spatial planning in national legislation. Further, this study analyzes the impacts of the spatial policy shift in regarding the social values of spatial use. This is a case study of legal perspective in Semarang City, Central Java Indonesia. The results of this study, showed that the process of spatial policy-making is supposed to develop participatory-responsive principle especially the participation of society in legislative process. Participatory aspect refers to a process of society involvement in the development process realizing the importance of the involvement. Responsive feature refers to a principle allowing a law to survive and capable to collect the demands and wishes of the society. This principle emphasizes the combination openness and integrity to improve the spatial policy-making.

Key words: Spatial policy shift, legal perspective, spatial planning, implementation, Semarang City, capable

INTRODUCTION

Nowadays, city spatial planning has been becoming a crucial issue (Douvere, 2008; Eggenberger and Partidario, 2000). The city growth is indisputably followed by the increase of developed area (Fujita *et al.*, 1999; Moseley, 2013). The growing population, economy activity and limited area initiate the implementation of spatial use efficiency. In this case, spatial policy of local government include the development of city in the forms of residency industry, road network, water network, public buildings and green lane as a means and infrastructure of spatial development. Spatial planning, especially in Indonesia is limited on the development growth and tends to orient towards the economic achievement or the development of certain areas (Winarso and Firman, 2002; Goldblum and Wong, 2000; Hill, 1996; Hudalah and Woltjer, 2007; Taranova *et al.*, 2015).

Legitimately, several laws are established by Indonesian government (Law No. 24 Year 1992, Law No. 47 Year 1997) aiming to create effective spatial use by managing the space and its function appropriately. Meanwhile, the control of protected area is the use of space in protected areas for conservation, rehabilitation, research, tourism and so on. Therefore, the spatial use of the areas is optimized and the function of the area is improved. Thus in spatial planning, it is necessary to harmonize the biological and non-biological resources in order to create spatial use balance (for instance, Firman, 1997; Brockhaus *et al.*, 2012). If the spatial use is

unstructured, unplanned, not used and not maintained, the reputation of the surroundings will be negatively affected (Hudalah *et al.*, 2010).

The environment degeneration can occur if the use of available space and nature resources exceeds the environment capacity including the shift of space use (Lisdiyono, 2008). The shift also happens in the development of Semarang City in which conserved areas are used for industry, trade, residency and so on. The inappropriate spatial use has an impact on the efficiency and creates conflict of interests because each party tries to optimize their own interests. Ideally in modern era, this conflict needs to be managed by guided spatial policies in order to create an ideal and orderly spatial planning. However, the spatial policy making is not followed by a serious consideration causing a negative impact.

THE ETHICS OF LAW FORMULATION AND CHANGES

Ethics refers a moral philosophy or science critically discussing and reviewing issues regarding moral issues and the taken concrete action (Keraf, 2002; Peursen *et al.*, 1990; Noddings, 2013; Urmson, 1953). This critical view includes the view of norms and values, the view of particular critical situation and varied views followed by society. The followed view is important to select and prioritize the moral value in everyday life and dilemmatic situation (Keraf, 2002; Peursen *et al.*, 1990). The big question to this case is whether the law change can be

morally accountable. Wolcher (2016) suggests that the role occupant of law to have the attitude of humanity, justice, decency and honesty.

According to Bredemeier (1962), the law in social order is supported from several aspects including economy, politics and culture. The process of law formulation contains the primary input containing ideal description of social issues and the law implementation as the output. This process frequently fails because the legislative body is under the influence of politics.

BASIC PRINCIPLE AND MECHANISM OF LAW FORMULATION

Thomas Aquinas (1225-1274) states that the main objective of forming the law is to make every individual lives well since law is the mandate of the leaders given to subordinates (Feinberg and Gross, 1975; Bourke, 1974). In line with this, Bentham (1996) argues that “public benefit” supposes to be the objective of legislators. In addition to the principle of public benefit, the principle of aesthetic should also be the basis for law making. This principle is intended to restrain self-pleasure in space use policy.

According to Bentham (1996), the healthy legal relationship refers a relationship having the logical, ethical and aesthetical legitimacy or validity in jurisdiction (Friedman, 1969; Manan, 2005). Logically juridical meaning according to common sense in the legal and judicial framework where the legal relationship that starts from the background of making to its existence that has been through the legal process that the truth. Ethically juridical means when measured from a moral point that underlies the relationship, then the legal relationship and existence are fair and reasonable. Absolute moral standards that should be used since morality can not be separated from the law, because the law itself is always set human life in a reasonable state is certain to be immoral. While aesthetically juridical means when measured from the elements of art and the beauty of the law where the law does not violate the norms of law or any other social norms.

Planning as conceptualized by Davidoff and Rainer, Robinson, Salet and Faludi is a process to determine the future through a sequence of choices. Meanwhile, according to Dror planning is a process of preparing a set of decisions to take action in the future. From all these ideas, Scholnick and Friedman (1987, 1993) concluded that the plan is a strategy for earlier decision making as an activity of making and implementation.

Bolan (1980) and Forester (1981) argued that the social aspect is important in development planning. Therefore, planning is a “moral activity”. This requires a

participatory planning model for interaction and communication and public involvement in helping identify problems, set goals, understand the situation and identify solutions on how to solve the problems in question.

In principle, the law-making process takes place in three major phases, namely the initiation stage, the stage of socio-political and juridical stage (Rahardjo, 1991). First, the initiation stage is a stage which marks the birth or the emergence of an idea in the community about the need for regulation of a matter through the law. Secondly, the activity that goes on socio-political stage begins with the process, talking (to discuss), criticize, defend the initial idea coming from the community through the exchange of opinions between the various factions and forces in society. Later in the third stage, the juridical stage is the final stage in which the ideas formulated more technically are legal provisions including establishing legal sanctions.

Bentham (1996) argued that the former law (legislation) should be able to give birth to the law to reflect fairness in order to create the greatest happiness for the people. The basis of the theory of Bentham’s utilitarianism ideology that idealized that man will act to obtain happiness as much as possible to reduce the suffering. The size of the merits of a human action depends on whether the act was to bring happiness or not (Bentham, 1996; Mill and Bentham, 1987; Crimmins, 1996).

During this state undervaluation of community participation that tends to produce more development oriented to the interests of the political elite rather than the aspirations of the people. As a result, people tend to be indifferent in controlling the development process so it is not surprising then that there was abuse of power leads to corruption, collusion and nepotism (Widodo, 2005). This happens also in the world of law where people are not involved in the planning process of drafting and implementing the law. Society tends to serve as the object or the target application of the law so it is not surprising that the substance of the law made by agencies appointed by the state do not necessarily correspond with the social context in which the law is enforced. In fact, as known that the first and foremost step in the process of law-making is necessary to get the initiation phase of the community.

Recognizing the importance of community participation, Seidman (1972) puts public participation as one of the main components in the process of working of the law (the process of making and implementation). Community participation is crucial that referred to as stakeholders (role occupant). Apart from being the target of legal arrangements (including targeted sanctions), the

community also participated in providing feedback to the law-making process as well as to bureaucratic enforcement. By Seidman (1972) thought as a gesture that a law-making and enforcement plan that aims to benefit the people but does not involve the public, it will be very difficult to ascertain that the formulation will side with the people.

The impacts of law formulation: Kelsen by Seidman (1972) states that regulations promulgated by competent authorities in a modern country have two targets including the law practitioners as the primary for of law and the society as the secondary form of law. The effective law enforcement is likely to cause certain changes in society. This phenomenon is called social change. The change refers to collective deviation from the steady patterns (Taneko, 1993). Soekanto *et al.* (1993) states that any process of change is caused by several factors including contacts with other societies, advanced education system, tolerance of positive deviance, exposed stratification system, heterogeneous citizen, society dissatisfaction and future orientation (Watson, 1978; Wahlbeck, 1997).

Howlett and Ramesh (1995) state that the policy change or shift (including policy in law) follows a normal pattern or paradigmatic pattern. Normal pattern refers a change pattern occurring continuously. Paradigmatic pattern occurs fundamentally in this case, the actors and the purpose of the policy change fundamentally (Howlett and Ramesh, 1995). To conclude, normal change pattern follows the pattern of incremental changes while paradigmatic change is radical and fundamental change.

Changes and shifts in legal policy are categorized into three main components of a legal system including changes in substantive level, changes in structure level and changes in culture level (Friedman, 1969, 1975). The changes of the components of the law may occur partially, completely and systemically.

Importantly, the change or shift in legal substances (including spatial planning law) is also determined by other aspects. Manan (2005) comprehensively observes a change in law substances from several perspectives including globalization, socio-cultural, politics, economic, science and technology and so forth. In line with that, Seidman (1972) argues that each established law is likely to change, either through a formal change or through the ways adopted by the bureaucracy. The change is caused by social, cultural, economic and political changes around it, especially by the influence of stakeholders on the legislators and the enforcement bureaucracy and vice versa.

The input-output relationship in laws as proposed by Bredemeier (1962) is actually based on systemic theory called cybernetics theory by Parsons (Luhmann *et al.*, 2004). One of the basic assumptions of cybernetics theory is that law is a part or sub-systems of a larger social system including cultural sub-systems, social sub-systems, political sub-system and economic sub-system. Subsequently in a system there are configured sub-systems in a certain way. Each sub-system has a certain responsibility especially political sub-system.

Parson's view implies that every social system either within the scope of a larger society or limited social scope such as legislature, executives and so forth is always controlled by a number of sub-systems. These sub-systems ave hierarchical power and weakness in the form of social system. As they have weaknesses, ideally they have to work together to sustain the social system.

Theoretically, the changes or shifts of law bring serious implications. According to Rengka (2007), the implication of the changes or shifts of law is that the society has a difficulty in complying with the regulations. The changes or shifts of policy formulated in law frequently happening briefly is caused by the incapability of legislators to foresee and to calculate the aspects that is forward looking of a legal order.

The shift of legal policy might be justified, provided that there is a partisanship and a respond to the concern of the society and justice to be realized. In addition, Fuller (1977) states that morality being developed should concern not only internal morality of law but also, the external one (Summers, 1966).

ANALYSIS OF IDEAL SPATIAL POLICY SHIFT AND RECONSTRUCTION

The components of spatial policy shift observed include: the spatial policy shift in the level of philosophy (value), the spatial policy shift in the level of norm (legislation substance), the spatial policy shift in the level of actual implementation. Such analysis is an entrance to do a deeper observation on the basic reflection of the spatial policy shift and the impact of the spatial policy shift. A strategy was then formulated to conduct a reconstruction of ideal spatial policy in Semarang.

The observation of the mapping and the conversion of the city main function are categorized into three; the shift of city space from the aspect of space main function (protected area and cultivation area); the shift of city space from the aspect of administration (national territory, province, district, sub-district and village); the shift of city

space from the aspect of space and activities (urban area, rural area and specific area) (Smorgunova *et al.*, 2017).

INTERNAL SHIFT ANALYSIS OF SEMARANG SPATIAL PLANNING

The Semarang spatial planning before the establishment of Stad Vormings Ordonantie (SVO) 168/1948, Stad Vormings Verordering (SVV) 40/1949 was not managed under national jurisdiction. The space of Semarang was mainly used for military as stated in the agreement made by the Netherlands and the regent of Semarang. In that period, Semarang experienced spatial shift from natural ethnicity to military centered. In addition, Karsten in 1931-1933 contributed to the spatial shift of Semarang making the city as a trade center. This situation caused the increase of citizen in Semarang. It was shown that political and economic aspects were capable to control the spatial planning of Semarang at that time.

At that time, Semarang had four main districts including-central business district industrial district, education and health district and residential district. In 1976, Semarang was expanded to Genuk as a suburban (primary extension) industry, education, health and residency area. The space use in this area was contradictory as the residents felt the disturbance caused by industrial activities. Meanwhile, Mijen and Gunungpati are focused for farming, husbandry, forestry and fishery. The plan was making these areas as suburban area.

EXTERNAL SHIFT ANALYSIS OF SEMARANG SPATIAL PLANNING

The analysis of Semarang spatial planning by the criteria and characteristics of area showed that there had been a shift in the regional policy. For example, Gunungpati and Mijen were used as residential areas. This spatial use was inappropriate because the areas had high potential landslide. These areas were supposed to be used for water absorption to prevent flood. In addition, the hilly area of Tembalang that had been functioned as an education area was inappropriate. Sultan Agung University situated in Genuk was also, improper since Genuk was initially designed as an industrial area.

The spatial policy shift in the implementation level: The implementation of national spatial planning policy has significantly shifted as shown in the inappropriate use of several areas in Semarang. Areas that should be conserved to maintain the protection function of the region in fact utilized for the development of residential

areas, education and industry. The actions taken by policy makers were considered to have internal intention. According to Weber, the actions were the result of particular influences providing certain advantages. In making policy, the policy makers performed an interaction in which the priority was land user interests (e.g., developers, businessmen). This means that the society interests are disregarded. According to the head BAPPEDA Semarang, the spatial planning of Semarang at that time was not supported sufficient geological data causing an environmental devastation. Moreover, the regional government of Semarang encounters difficulties in changing the function of exploited areas.

The basic consideration of spatial policy shifts in Semarang includes responding to the needs of the society (sociology) increasing economic development, concerning the attractiveness of the city (aesthetic) and orienting the society interest (philosophy).

The impact of spatial policy shift: Spatial policy shifts have several impacts in terms of aesthetic, environmental devastation and land conflict. Spatial planning in Semarang always perceives aesthetic aspect. For example, to avoid flood, the focus of development shifted to hilly areas such as Banyumanik, Gunungpati and Mijen, despite the fact that those areas were geologically suitable for conservation area. Even though the policy shifts from the national jurisdiction in terms of aesthetic, this policy is promising. In addition, the structuring of Gombel Hill, Simpang Lima and Tugu Muda as green open areas show another proof that Semarang considers the aesthetic aspect in spatial planning policy.

The spatial policy shift made quite an impact on environmental devastation. An apparent example of environmental issue was the reclamation of Marina Beach. The direct impact was the alarming increase of flood and rob in the north area of Semarang and Tanah Mas. This made the citizen of Tanah Mas being the direct victims of the policy making of Marina Beach reclamation. Another case was the spatial policy shift of industrial area Candi and Tugu. The citizens around those areas were disturbed by the factory wastes harming the health. Several citizens confirm that there had been a protest against a soy milk factory dumping waste in rivers. The factory responded by carefully dumping the waste. The shift also caused a serious environmental damage in the form of the settlement policy in the conserved area such as Ngaliyan which was used as residential area. The land characteristic Ngaliyan had high potential landslide causing it risky for residential land use. The similar condition occurred in Bukit Semarang Baru in Mijen. The area was actually more suited to be water catchment area but the residential development activity occurred.

Other impacts of the spatial policy shift concern the land conflict. The conflict was mainly caused by the land expropriation to be used for industry, residency, tourism and so forth. From the analysis, it was found that the initial conflict occurred in several area including Candi and Tugu. The citizen residing there protested against the policy shift to use the areas as industrial areas.

CONCLUDING REMARKS; RECONSTRUCTION OF IDEAL SPATIAL POLICY

The analysis showed that here had been a shift in spatial policy in Semarang. The shift apparently made impact on several aspects. Finally, this study provides further analysis on the ideal model of spatial planning policy with relational and collectivity, participatory and morality principles as the key components. First, the principle of relational and collectivity refers to the relation among individuals or parties involved in policy-making. This relation will create a compromise between parties. This principle emphasizes the inter-subject relation, creating a collectivity reality. To realize the collectivity aspect in the legislative process, the compromise should fulfill several prerequisites as proposed by John Rawls including the dignity similarity and the social and economic dissimilarity. The spatial policy formulation in Semarang is unbalanced in terms of the proportion of parties in regional government. This causes the policy-making tends to favor the majority parties. In reality, several irresponsible parties try to impose self-interest by benefitting the imbalance of policy makers. This situation made negative impacts of ecological condition. Thus, the principle of relational and collectivity aims to accommodate the interest of all parties in spatial policy-making. Therefore, the shift of spatial policy in Semarang still respects the logical and humanity consideration.

The process of spatial policy-making is supposed to develop participatory-responsive principle especially the participation of society in legislative process. Participatory aspect refers to a process of society involvement in the development process realizing the importance of the involvement. Responsive feature refers to a principle allowing a law to survive and capable to collect the demands and wishes of the society. This principle emphasizes the combination openness and integrity to improve the spatial policy-making.

The last principle is morality principle focusing on the moral consideration in policy-making. This moral judgment is very important in any decision-making, because any made policy has been closely related to the human or society. Such a view suggests that the

legislative or law-making process is intended to create justice and truth, happiness, welfare and happiness of humanity (Baffi, 2016). These basic principles are regarded as the guidelines in the policy-making process of spatial structure in the level of national, regional and district. At the national level, the principle of relational-collectivity and participatory-responsive are expected to be the basis for the central government in formulating national spatial planning policies. Furthermore, those principles are the guidelines for provincial government in formulating regional spatial planning policies and for district government in formulating district spatial planning policies. Those principles guide the policy makers to consider various interests of society.

By applying those principles, ideal spatial policies are likely to be created. Thus, the space is allowed to be organized, managed and utilized effectively. There are several main components in reconstructing ideal spatial policies including procedural, substantial and cultural components. The procedural component of spatial policy-making includes the implementation of the principle of relational-collectivity and participatory-responsive at national and regional levels (provincial and district/city). The substantial component includes the issues concerning the interests or needs of society, the sustainability and comfort of ecological environment and aesthetics aspect. The component of values (culture) includes the moral values of spatial planning policies and cultural values embraced by the society.

CONCLUSION

Hence, this study aims to analyze and describe the phenomenon of spatial policy shift in regional regulation of Semarang and the impacts of the shift concerning the social and economic values of spatial use. Specifically, this study analyzes the reason behind the shift in the implementation of spatial planning policies in the local government from the formulation of spatial planning in national legislation. Further, this study analyzes the impacts of the spatial policy shift in regarding the social values of spatial use.

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