

Spatial Planning

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Spatial Planning Dysfunction in East Kalimantan to Support Green Economy

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This study aims to provide a prescription on (1) Local Government Regulation of Spatial Planning for East Kalimantan province to support the green economy; (2) community participation in the spatial planning of East Kalimantan Province. This normative legal research uses a statute and conceptual approach. The literature study and content analysis are the secondary data collection technique. The researcher used deductive syllogism and interpretation to find answers to the legal issue. The conclusions of this study are: first, the Local Government Regulation of the Spatial Planning for East Kalimantan province cannot function to support the green economy. Second, there is no community participation in the spatial planning of the East Kalimantan Province.

Key words: *Dysfunction, Referral of Regional Spatial Plans, Green Economy, Participation.*

Introduction

Country Natural Resources and Environment/CNREA stated that if the use of natural resources continues to be carried out extractive and in old ways that are less environmentally and ecosystems friendly, in the future Indonesia will face three significant crises, namely (i) water crisis, (ii) food crisis, and (iii) energy crisis. These natural resource crises as a result of the use of natural resources that have exceeded the regenerative and reproductive power and carrying



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capacity of the ecosystem (Surachman A, I Gusti Ayu Ketut Rachmi Handayani, Yudho Taruno, 2017).

The United Nations Environment Program (UNEP) estimates that if the pattern of natural resource use for meeting the needs of the human economy continues to follow the pattern as mentioned above, then global energy demand in 2030 will increase by up to 45%. The increase in energy consumption will also be expected to have an impact on the increase in oil prices. As a result of the increased energy consumption, the greenhouse gas emissions are estimated to reach 45%, and the earth's temperature will increase up to 6 degrees Celsius. Another impact of the increase in energy consumption will also lead to an increase in food prices, damage to ecosystems as a result of the loss of biodiversity, which is estimated to be worth EUR 50 billion. The solution that is then offered to reduce greenhouse gas emissions is the creation of a Green Economy (Abdul Kadir Jaelani, I Gusti Ayu Ketut Rachmi Handayani, Isharyanto, 2019).

In the logic of the capitalistic economic order, space planning is an embodiment of economic planning. Spatial planning is a political-economic problem that becoming an arena of the battle over what will be done with natural resources, who controls the natural resources, which seek natural resources, who benefit from natural resources. Based on the doctrine of the right to control the State and the principle of the social function of natural resources, the state is given the mandate to develop spatial plans that can balance the interests of food, energy, and the environment (Abdul Kadir Jaelani, I Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, 2019).

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Based on Law No. 17 of 2007 concerning the Long-Term National Development Plan of 2005-2025 in conjunction with Presidential Regulation Number 32 of 2011 concerning the Master Plan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI) 2011-2025, the country has divided allotment of space in six economic corridors. Kalimantan is a corridor three, and the allotments are for Palm Oil, Coal, Alumina/Bauxite, Oil and Gas, Timber, Iron-Steel. In the Local Government Regulation of East Kalimantan province No. 1 of 2016 concerning the Referral of Regional Spatial Plans (RTRW) of East Kalimantan province in 2016-2036, it was stated that the aim of the spatial planning of the province is to Realise Provincial Spaces that support Green Economy that is Equitable and Sustainable based on Agroindustry and Environmentally Friendly Energy (Yulfitri Nurjanah, Lego Karjoko, 2019).

Methods

This normative legal research uses a statute and conceptual approach. Secondary data collection is done through a literature study and content analysis. To find the answers to legal issues, the researcher used deductive syllogism and interpretation (Handayani I.G.A.K.R, Sulistiyono A, Leonard L, Gunardi A, Najicha F.U., 2018).



Results and Discussion

The Regional Regulation Dysfunction on Spatial Planning for East Kalimantan Province to Support Green Economy

Based on the principle of the social function of natural resources, spatial planning should be able to balance the interests of food, energy, and the environment. In other words, the principle of the social function of natural resources is the basis of the rationality of the synthesis of economic growth and environmental preservation or green economy. In the East Kalimantan Regional Regulation on Spatial Data, the pattern of space is uncertain or unclear. In Article 2 it is stated that the land area of East Kalimantan Province is 12,734,691 Ha, but if however, in terms of the pattern of land use utilisation the extent of the land is 13,195,327 Ha, consists of: (Algonin A.A, Shleag A.M, I Gusti Ayu Ketut Rachmi Handayani, Setyono P, 2014)

- a. Protected Area, the extent of 2,743,996 Ha or 20.8%
 - 1) Protected forest: 1.844.969 Ha
 - 2) Nature reserve, nature preservation, cultural preservation and science area of approximately 591,690 Ha
 - 3) The protected geological area covering 307,337 hectares is scattered in the Protected Forest and cultivation area.
- b. Cultivation Area covering an area of 10,451,331 Ha or 79.2%, including:
 - 1) designation area of production forest 6,055,793 Ha;
 - 2) agricultural allotment area of approximately 3,681,657 Ha;
 - 3) fishery allotment area is approximately 187,304 Ha;
 - 4) industrial allotment area of approximately 57,176 Ha;
 - 5) the allotment of tourism area is approximately 97,442 hectares;
 - 6) settlement designation area is approximately 396,266 Ha;
 - 7) mining allotment area of approximately 5,227,136 Ha; and
 - 8) other designation areas.

Article 3 of the Regional Regulation of the Province of East Kalimantan No. 1 of 2016 concerning the Spatial Planning of East Kalimantan in 2016 - 2036 (Regional Regulation of East Kalimantan RTRW) stated that the aim of the spatial planning of the province is Realising the Provincial Space that supports the Green Growth that is Fair and Sustainable based on the Agro-Industry and Environmentally Friendly Energy. To realise the goals of spatial planning for the East Kalimantan province, a policy for spatial planning for the provincial was made, covering (Article 4 of the Regional Regulation on East Kalimantan RTRW): (Rahman M.D, Sadath M.N, Giessen L, 2016). This includes:

- a. The development of the productive sector of oil and gas and coal with high added value and environmentally sound to be the leading sector of the province to spur economic growth and its utilisation for the whole community;



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- b. Development of leading sectors to anticipate the reduction of oil and gas and non-renewable coal resources through the development of the agriculture, tourism and renewable energy sectors, as part of efforts to improve regional and national food and energy security;
- c. The realisation of space that synergises with green economic growth;
- d. The realisation of equitable distribution of development outcomes and services for all communities by providing opportunities for all parts of the region to develop according to potential; and
- e. The realisation of sustainable development by maintaining harmonisation of economic, investment, social activities by taking into account the environmental support and sustainability as well as supporting the political, defence, and security aspects.

East Kalimantan Spatial Plan (RTRW) Regional Regulation cannot function to support green growth. This is based on the following analysis. Although the purpose of the provincial spatial plan is to Realise Provincial Spaces that support Green Growth that is Fair and Sustainable based on Agroindustry and Environmentally Friendly Energy, the substantive articles in the RTRW Regional Regulation are more facilitating the interests of investment compared to the interests of the people, namely more facilitating the sector mining, large scale plantations. *The spatial planning policy of the Province of East Kalimantan "The realisation of space that synergises with the growth of green economy" cannot be realised.* (Jimly Asshiddiqie, 2009: 50)

Green economy and agro-industry development will not be realised when the leading sector is mining, which has a massive impact on the environment. Instead, the function of forest land and agriculture for mining and large-scale agroindustry increases carbon, increasing carbon conflicts with the principles of a green economy. According to UNEP, a green economy is a low carbon economy (does not produce emissions and environmental pollution), saves natural resources, and is socially equitable. If it is stated that the direction of a green economy is low carbon industrial growth (does not produce emissions and environmental pollution) then this East Kalimantan RTRW policy contradictions, namely the development of the productive sector of oil and gas and coal with high added value and environmentally sound to be a leading sector to spur economic growth and its utilisation for the whole community (Fauzi A, 2004, 60).

There are at least two fundamental reasons why it is considered contradictory. First, the productive economic sector of oil and gas and coal is an economic sector that contributes to high carbon and emissions. Secondly, the economic sector does not represent the concept of "social justice" as a definition of UNEP's green economy. Social justice should talk about the distribution and access to natural resources, as well as being able to answer the availability of



food for the community. The economic strategy that still relies on the oil and gas and coal mining sector is not consistent with the goals of the green economy. The allocation of food land is much smaller when compared to the size of the mining area. Review of Overlapping Map of East Kalimantan Forestry, Plantation, Mining and Oil, and Gas Business Permit: (Budi Harsono, 2003, 55)

a. Size of mining concessions	: 5.317.902 hectares
b. Oil and gas concession area	: 13,916,951 hectares
c. Area of East Kalimantan Plantation	: 3,719,368 hectares
d. East Kalimantan concession area	: 4,336,555 hectares
e. Area of Industrial forest	: 4,527,550 hectares
f. Total	: 31,828,326.41 hectare
g. East Kalimantan land and sea area 12 miles	: 16,732,065 hectares

The permit area data above illustrates the chaotic licensing in East Kalimantan, the total area of licensing is twice the size of the East Kalimantan province, with all kinds of overlapping forms. There should be improved governance in the area of East Kalimantan that can minimise overlapping areas that can trigger conflicts and even disasters that can harm the community. The need to revoke mining permits in important ecological areas, in peat areas, and protected forests. Space policy for the development of productive sectors of oil and gas and coal with high added value and environmentally sound are the leading sectors of the province to spur economic growth and its utilisation for all people, in violation of Chapter II of the 2015-2019 Medium-Term National Development Plan (RPJMN), it is stated that the development goal of the island of Kalimantan is to maintain the forests of Kalimantan as a lung of the world is clearly the first dictum, as well as the East Kalimantan Green Slogan and contradictory to the RAD GRK (Regional Action Plan - Greenhouse Gas) which has been ratified based on the East Kalimantan Governor's Own Letter No. 050/K-247/2012 (Iskandar, 2015: 77).

Study Map of Protected Areas and Nature Reserve Area (Nature Protection Areas (KSA/KPA). East Kalimantan's protected area and KSA/KPA are 2.2 million hectares, while the total area of mining in East Kalimantan reaches 5.3 million hectares. While the total area of plantations reaches 3.2 million hectares when combined between plantation and mining areas reaching 8.5 million hectares, which means that the area covers 64% of the total land area of East Kalimantan, which covers 12.7 million hectares. This shows that the Green slogan of the East Kalimantan, which is predicted is nothing but nonsense, given the extent of extractive industries and large-scale plantations covering more than half of the area of East Kalimantan with all kinds of polemic environmental problems that result (Koeswahyono, 2012: 40).

There are approximately 12 mining companies with exploratory status, some of which overlap with protected areas and KSA/KPA with an area of 327,134,075 hectares and this will disrupt the function of the protected areas. There are also overlapping Timber Utilisation Licenses -



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Timber Estates (IUPHHK-HA) areas with protected areas, namely the Sumalindo IV area located in Berau with an area of 143,996 hectares. The area of restoration of Indonesian forest people is also included in the IUPHHK-HA area with a reserve status of 94,683 hectares. By Article 4 of Law No. 26 of 2007, regarding spatial planning, protected areas and KSA/KPA should not be contested because of the role and function of the area. Corporate concessions that overlap with protected areas must be excluded from regional spatial planning so that protected areas and KSA/KPA can function as they should.

Karst ecosystem consists of karst, limestone, fairies, or karst buffer zones, and forests and caves containing springs in it are essential areas as a means of sustaining living creatures and also as part of the world cultural heritage which holds some symbols of human civilisation. The survival of the karst ecosystem is currently threatened, with the licensing of forestry, plantation, and mining businesses that are in the vicinity even within the area. If it is added with the issuance of 13 new mining permits in the region will make the existence of karst ecosystems diminishing their function and carrying the capacity to the environment.

Community Participation in Spatial Planning in East Kalimantan Province

Based on ⁵ the doctrine of the right to control the State and the principle of the social function of natural resources, the state is given the mandate to involve public participation in spatial planning so that regional spatial plans ⁶ can be produced that balance the interests of food, energy, and the environment. Public participation is a categorical term for public/citizen power. ⁶ This is a redistribution of power that allows "publics that do not have", which are currently excluded from the political and economic process, to be intentionally included in the future.

This is a strategy where people who do not have the right join in determining how information is disseminated, objectives and policies are determined, and natural resources are allocated, spatial planning, spatial use, spatial control. In short, this is a way in which they can encourage significant social reforms that enable them to share the benefits of a prosperous society through spatial planning that supports green economic growth. According to Article 65 of Law No. 26 of 2007, ⁴ the implementation of spatial planning is carried out by the government by involving ⁴ the role of the community. The role of the community in spatial planning is carried out through: (Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, Adi Sulistiyono, 2017)

- a. Participation in spatial planning;
- b. Participation in spatial use; and
- c. Participation in controlling spatial use.

The role of the community can be carried out by individuals, groups of people, including customary law communities, corporations, and/or other non-governmental stakeholders in spatial planning. Other non-government stakeholders can represent the interests of individuals,



groups of people, sectors, and/or professions. In spatial planning, form regulation and procedures for the role of the community are needed, among other things, to ensure the implementation of community rights and obligations in the field of spatial planning, realising the implementation of spatial planning that is transparent, effective, accountable, and quality, improve the quality of planning, and help the realisation of the use of space in accordance with established spatial plans. According to Article 6 PP No. 68 of 2010 concerning the Form and Procedures for the Role of the Community in Spatial Planning, the form of the role of the community in spatial planning in the form of:

- a. Input regarding:
 - 1) Preparation of spatial planning;
 - 2) Determining the direction of regional or regional development;
 - 3) Identification of the potential and problems of regional or regional development;
 - 4) Formulation of the concept of the spatial plan; and/or
 - 5) Establishment of spatial plans.
- b. Cooperation with the Government, regional government, and/or fellow community elements in spatial planning.

In Article 16 PP No. 68 of 2010 determined that at the stage of spatial planning, the Government and regional governments are obliged to:

- a. Provide information and provide access to information to the public about the process of formulating and determining spatial plans through communication media that have a range in accordance with the level of the plan;
- b. Outreach about spatial planning;
- c. Organising activities to receive input from the community on spatial planning; and
- d. Provide a response to the public on input regarding spatial planning in accordance with statutory provisions.

Formulation of East Kalimantan Province Regulation No. 1 of 2016 concerning the Spatial Planning of East Kalimantan Province in 2016 - 2036 has requested input from the Civil Society Coalition consisting of the East Kalimantan Mining Advocacy Network, the Anti-Mining Women's Work Team, the KARST Community of East Kalimantan, and the Indigenous Peoples Alliance East Kalimantan. The Civil Society Coalition has reviewed academic texts, the RTRW of East Kalimantan Regional Regulation, and the input to the changes to the East Kalimantan RTRW. The input of the above Civil Society Coalition was not responded by the Provincial Government and the Provincial Parliament of East Kalimantan. So that the public submitted a material test of the Regional Regulation of the Province of East Kalimantan No. 1 of 2016 concerning Spatial Planning for the Province of East Kalimantan in 2016 - 2036. The reasons for the objections are as follows: (Abdullah Jamaludin, Lego Karjoko, 2019)



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1. The Petitioner has objected to the East Kalimantan RTRW Regional Regulation for allocating 5.2 million hectares for mining areas in East Kalimantan. Based on the experience, the determination of mining area size in practice is not followed by good governance. Very often, the mine pit is left alone, causing casualties.
2. The Petitioners objected that East Kalimantan Regional Regulation only allocated 307,337 hectares as a protected area of 1.8 million hectares of the Sangkulirang Mangkalihat karst area. If only a small portion is preserved, the Petitioner is concerned that he will lose the water source contained in the karst rock.
3. Regional Regulation on RTRW of East Kalimantan, which gives legitimacy for the conversion of most karst areas into cultivation areas. The Petitioner objected that the transfer of this function would threaten the sustainability of the karst ecosystem hydrological function which would certainly also affect the sustainability of the aquaculture areas managed by the Petitioner.
4. The Petitioner objected to the Regional Regulation of the East Kalimantan RTRW because the stipulation of the Kariangau-Buluminung industrial area in the area around the Balikpapan Bay had resulted in a reduction in the area of fishing grounds. The Petitioner feels a very significant change before and after the presence of an industrial estate.
5. The Petitioner objected to the Regional Regulation of the East Kalimantan RTRW because it legitimised the transfer of the function of the Mangrove and coastline area into the Kariangau-Buluminung industrial area. The Petitioner believes that the transfer of this function will make it more difficult for the Petitioner to find fish for his daily needs.
6. The Petitioner objected to the Regional Regulation of the East Kalimantan RTRW because it legitimised the transfer of the function of the Mangrove and coastal borders to the Kariangau-Buluminung industrial area. The Petitioner is of the view that the conversion of the function of the mangrove area into an industrial area in the RTRW Regional Regulation will add to the environmental damage in the Balikpapan bay.
7. The Petitioners object to the Regional Regulation of the RTRW of East Kalimantan, which sets 71% of Samarinda City into a mining area, which results in the loss of allotment of space for the public, especially Green Open Space (RTH). This is detrimental to the Petitioner because a good and decent living environment is not created for the local city residents, especially for children whose health is more vulnerable.
8. The Petitioner objected to the Regional Regulation of the RTRW of East Kalimantan, which stipulated that 71% of Samarinda City became a mining area resulting in the loss of allotment of space for the public, especially Green Open Space (RTH). The Petitioner is of the opinion that Samarinda City is currently unfit for habitation because many mining pits have not been reclaimed, let alone expanded up to 71% of the city area.
9. The Petitioner has an interest because up to now Samarinda is full of mining concessions which are increasingly legalised in the East Kalimantan Regional Regulation (RTRW) of up to 71% of the city area.



10. The Petitioner objected to the Regional Regulation of the RTRW of East Kalimantan due to the determination of the railway line that passes through the territory of the custom community in Paser Regency. The Petitioner is of the opinion that the establishment of the railway line will interfere with the activities of the custom community of the Head of Telake Village in carrying out their traditional rituals. In addition, the establishment of railroad lines will damage some of the ritual facilities of indigenous peoples in Telake's Head village.
11. The Petitioner has objected to the Regional Regulation on the RTRW of East Kalimantan due to the establishment of a railway line that passes through the territories of indigenous peoples in several districts. The Petitioner is of the opinion that the determination of the railroad tracks will disrupt the activities of indigenous peoples in carrying out their custom rituals.

Thus, in the preparation of the Regional Regulation of the Province of East Kalimantan No. 1 of 2016 concerning the Spatial Planning for the Province of East Kalimantan in 2016 - 2036, there is no community participation, as mandated by the doctrine of the Right to control the State and the principle of social functions of natural resources. Community participation in the preparation of the new East Kalimantan Province RTRW at the level of informing, consulting, or negotiating and settling (Placation).

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Conclusion

Based on the results of the discussion, the following conclusions are: first, regional Regulation of the Regional Spatial Plan for the Province of East Kalimantan cannot function to support green growth because the SEA implementation process is carried out simultaneously with the RTRW preparation process. Second, Formulation of Regional Regulation of the Province of East Kalimantan No. 1 of 2016 concerning Spatial Planning for the Province of East Kalimantan in 2016 - 2036 does not involve community participation.



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