The Formulation Of Green Open Space in The Regional Regulation Of Spatial Planning Of Maluku Province

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Abstract: The study entitled "The Formulation of Green Open Space in the Regional Regulation of Spatial Planning of Maluku Province", with the aim of reconstructing the formulation of open space arrangements in the Provincial RTRW of Maluku Province, which is regulated in Law No. 26 Year 2007 on Spatial Planning. Observing the Provincial RTRW Law No. Maluku, 16 of 2013, there is no Green Open Space (RTH) arrangement, as datur in Article 28-31 and Article 55-58 UUPR, whereas in Article 20 paragraph (2g) which states: The National Spatial Plan contains the Spatial Planning Area Province and Regency / City. This research is a juridical-normative research, ie research conducted on the principles of law, the legal principles in the sense of the value (norm) of concrete law and legal system. In this study using some approaches. The approach used in the research is statutory approach and conceptual approach. In conducting Reconstruction Formulation of Green Open Space Arrangement in Local Regulation No. 16 of 2013 on RTRW Province Maluku, the authors refer to the Constitution of the Republic of Indonesia, especially Article 28H paragraph (1) and Article 33 paragraph (4) UUDNRI 1945. In addition, the authors refer to Law No. 26 of 2007 on Spatial Planning, especially Articles 28-31 and 55-58, and refers to the principles and legal theories relevant to spatial planning. Reconstruction of Green Open Space Formulation In Local Regulation No. 16 Year 2013 as follows: Article 1 Analysis utilization of green open space, Article 2 Analysis public and private green open space balances, Article 3 regulates the distribution of green open spaces public, and Article 4 regulates the arrangement of green open spaces arranged.

Key words: Formulation, Green Open Space, Regional Regulation, Spatial Planning

1. INTRODUCTION

Article 3 of Law No. (State Gazette of the Republic of Indonesia Year 2007 No. 68, Supplement to State Gazette of the Republic of Indonesia Year No. 4739), hereinafter referred to as UUPR stating:

"The implementation of spatial planning aims to create a safe, comfortable, productive and sustainable national territory space based on Nusantara Insight and National Resilience by: 1

a. The realization of harmony between the natural environment and the artificial environment;

b. Realization of integration in the use of natural resources and artificial resources with respect to human resources; and

c. The realization of the protection of space function and the prevention of negative impact on the environment due to space utilization ".

UUPR is a guideline for the formation of regional regulations in the field of spatial arrangement, it is regulated in Article 20 paragraph (2g) which states: The National Spatial Plan contains the Spatial Planning of Provinces and District / City. Whereas the green open space arrangement in the UUPR is regulated in Articles 28-31 and Articles 55-58. As the implementation of UUPR, the Regional Government of Maluku Province with the approval of the Regional House of Representatives of Maluku Province enacted the Local Regulation no. 16 of 2013 on the Provinical Spatial Plan of 2013-2033, (Gazette of Rovinsi Maluku Year 2013 No. 16). Observing the Provincial RTRW Law No. Maluku. 16 of 2013, there is no Green Open Space (RTH) arrangement, as datur in Article 28-31 and Article 55-58 UUPR, (La Ode Angga, 2017: 1) whereas in Article 20 paragraph (2g) which states: The National Spatial Plan contains the Spatial Planning Area Province and Regency / City. This green open space arrangement in the UUPR is set out in Articles 28-31 and 55-58 which are guidelines for Provinces, Districts and Cities, (La Ode Angga, 2015: 7).

From the background above the Legal Issues in writing this article is a gap between Article 20 paragraph (2g) and Regulation no. 16 Year 20013 on the RTRW of Province Maluku. In Article 20 paragraph (2g) states: The National Spatial Plan contains the Spatial Planning of Provinces and Regencies / Municipalities. It is also contradictory to Articles 28-31 and Section 55-58 of the UUPR. (La Ode Angga, 2017: 1) So the legal issue in writing this article is Perda no. 16 of 2013 on the RTRW of Maluku Province is not synchronized with Article 20 paragraph (2g), Articles 28-31 and 55-58 UUPR. From the Issue of Law (Legal Issue) is then the formulation of the issues to be studied in this article can be formulated as follows: 1. How the effect of the Law of the absence of regulation of Green Open Space in the Local Regulation No. 16 of 2013 on the RTRW of Maluku Province? 2. How to reconstruct the Green Open Formulation in Local Regulation Spatial Plans No. 16 of 2013 on the RTRW of Maluku Province?

2. METHODS

This study is a jurisdiction-normative research, namely research conducted on the principles of law, legal principles in the sense of the value (norm) of concrete law and legal system, (Sudikno Mertokusumo, 2009: 29). In this study using several approaches. The approaches used in the research are the approach of statute approach, (Theory Hutchinson, 2002: 55), and the conceptual approach, (Peter Mahmud Marzuki, 2008: 93).

3. RESULTS AND DISCUSSION

3.1. Theoretical Framework

In doing the analysis, the author uses three theories are: a. Theory Green Political and Green Constitution, b. Science of Legislation, c. Theory Urban Sustainable Development.
3.1.1. The Theory of The Green Political dan Green Constitution

The use of this theory is in line with the core issues to be studied in this paper. The Theory Political of Hihau and the Green Constitution, are used in this paper with the argument and understanding that, currently the Republic of Indonesia has adopted the Green Politics and Green Constitution, this can be seen in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution, (La Ode Angga, I Nyoman Nurjaya, Racmat Safa’at and Istislam, 2015: 14).

3.1.1.1. The Theory Green Political

Theory Green Politics examines the moral responses that the present world must give to ecological crisis if what is desired is a real change of society and the global economy in favor of ecological integrity. Grounded from the foundation of the idea of self, through the principles of political justice to global institutional justice, according to Nicholas Low "examines the multilayered structures of justice as applied to environmental and ecological issues", (Low, Nicholas Low & Gleeson, 9009: viii). Justice is not solely due to abstraction. Finding and doing justice is a man’s eternal duty. It is an activity that provides a goal for politics and law in any society. These activities have both material dimensions as well as discretion. It deals with who we are, what we do and what we say. WHO we are and what we do is materially material. How we relate to others is manifest in a matter of discernment, a communicative explanation through words. The struggle for justice has to do with our efforts in explaining the foundations of good and right relationships between ourselves and others. In placing this relationship, we define who and what we are and who and what others are, (Low, Nicholas Low & Gleeson, 9009: viii). The Green Political Theory is specifically derived from the fact that humans are part of nature that has implications for political theory. Thus human beings are not only seen as rational individuals (as in the view of liberalism) or as social beings (such as the view of sosisism) but as natural beings, and further as political animals. While it is necessary to distinguish between green politics and environmentalism. The environmentalist accepts the existing framework within the political, social, economic and normative structures of the political world and tries to correct the environmental problem with that existing structure. While the Green Politics considers that the structure as the main basis for the emergence of environmental crisis. Therefore, they argue that such structures need more major change and attention, (Valiuddin Rizal, 2012: 7). Green politics has the basic assumption of rejection of anthropocentrism. Anthropocentrism itself has the meaning of “the doctrine that states that the center of the universe is human”. This ecocentrism-based Green Political Thought attempts to associate the existence of individuals with ecology and seeks to provide a firm map between human and non-human interests. The presence of Green Politics as a theory of criticism in International Relations has a firm view of three prominent scholars in International Law. First, Green Politics criticizes the realists who have the basic state-centric assumptions. (La Ode Angga, 2018: 34). Green political movement in Indonesia begins with the awareness and spurred national condition of Indonesia where there is a variety of environmental damage due to development that is too growth-oriented and exploitative development strategies that threaten environmental sustainability. According to Emil Salim the essence of development is to seek sustainability (sustainability) of life. For the sustainability of sustainable development life has several prerequisites. (Emil Salim, 11April 2003). First, reaching a long-term perspective over a generation or two so that development activities need to consider the long-term impact. Second, to realize the enactment of interdependency relationship between natural, social, and man-made actors. The natural actors are present in the ecosystem, the social actors are present in the social system, and the man-made actors in the economic system. Third, meeting the needs of people and society today without reducing the ability of future generations to meet their needs. Fourth, development is carried out using the lowest possible resources, the lowest possible pollution, space as narrowly as possible, renewed energy as much as possible, non-renewable energy as clean as possible, and with environmental, social, environmental benefits, Culture-politics and economy as optimal as possible. Fifth, development is directed towards eradicating poverty, equitable social equity balance and high quality of social, environmental and economic life.

3.1.1.2. The Theory Green Constitution

The terms of the green constitution in the dynamics of Indonesian state administration both in the practical and academic level, can not be denied is a new phenomenon for those who do not yet know it. Even the graduates of constitutional law themselves have never heard of the term “green constitution”. Historically, the term “green constitution” first appeared in Indonesia led by members of the Constitutional Court (MK) in 2008 when visiting the Regional Representative Council (DPD) in around August 2008. The discourse on “green constitution” was first conceived By Achmad Sodiki, in response to the idea of the possibility of the fifth amendment of the 1945, (Jimly Asshididjie, 2009: 1). Constitution, expressed the importance of reviewing it first, including the possibility of adopting the idea of “green constitution” in the 1945 Constitution amendment. Furthermore, the green constitution was introduced by the former Chief Justice of the Constitutional Court, Jimly Asshididjie in May Year 2009 in his book entitled “Green Constitution, Green Nuance Basic Law of the Republic of Indonesia Year 1945”. However, Jimly also acknowledged that the idea of green constitution is not entirely new, as it is often used in various scientific titles, (Emil Salim, 11April 2003). Further explored, this idea has emerged after the UN Conference on Environment in Stockholm, Sweden, in 1972. This can be seen by the increasing number of countries that include environmental policies in their constitutions, (Emil Salim, 11April 2003). The idea that substantially leads to the content of the green constitution, among others, is proposed by Heinlard Stieger. In his writings, the idea of the need to guarantee the protection of environmental rights into the constitution, in particular the individual's environment. Stieger states:

“...the fundamental rights are divided into two groups according to their legal rights: the fundamental rights at the constitutional level and the ordinary legislation. Fundamental rights are of essential importance for the constitutional and legal order. Ordinary subjective rights below the constitutional level enjoy less legal protection than constitutional subjettive rights."

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Actually, environmental rights that can become a content of the constitution are not limited to subjective rights, but also other rights such as procedural rights and environmental rights based on the intrinsic value of nature itself. This idea can be seen in W. Pedersen who states: (Heinhard Steiger (et. al.) 1980: 3.)

"Traditionally the nation of rights in environmental contexts has been addressed on three different levels. These three sometimes overlapping levels are: (1) a substantive right to the environment; (2) Procedural rights allowing for participation and access to information and remedial procedures; And (3) rights for the environment based on the nation of the intrinsic value of nature, not simply its utility to humans ".

The term "green constitution" in the development of state administration, especially the countries of the world actually is not something new. It can not be denied that in the context of Indonisa discourse of "green constitution" as a term has not been too long introduced. However, for those who are active and interacting with various developments related to the dynamics of legal thinking and state practices in the contemporary world, whether through scientific journals or the number of new books, and through the internet certainly will not feel alien to the term " Green constitution ". In the context of Indonesia, the provisions on green constitution can be found in Article 28H Paragraph (1) and Article 33 Paragraph (4) of the 1945 Constitution, therefore the 1945 Constitution is clearly very pro-environment, so it can be referred to as the green constitution. (La Ode Angga, I Nyoman Nurjaya, Racmat Safa’at and Istislam, 2014: 31) The constitutionalization of the environment in the Indonesian constitution itself has been done in the 1945 amendment of the 1945 Constitution, but not many people take this matter seriously. Article 28H Paragraph (1) and Article 33 Paragraph (4) of the 1945 Constitution are evidence that the Constitution of Indonesia is a Green Constitution. In the provisions of Article 28H paragraph (1) of the 1945 Constitution states: "Every person shall have the right to live a prosperous and spiritual life, to live, and to have a good and healthy environment and to be entitled to health care" (La Ode Angga, 2017: 1). Based on the provision it can be concluded that the right to obtain a good and healthy environment and good health service, is a human right. Therefore, the 1945 Constitution is clearly very pro-environment. While Article 33 Paragraph (4) of the 1945 Constitution states:

"The national economy is organized based on economic democracy with the principles of togetherness, efficiency, fairness, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity".

Further Jimly Ashiddiqie, said that: (Jimly Ashiddiqie, 2009 :122).

"There are at least two main reasons how the concept of green constitution and ecocracy becomes very important to be understood by all components of the nation of Indonesia; First, to the condition of the preservation of the environment that is now very apprehensive, then we should put and reinforce the conceptual basis of environmental issues and sustainable development with environmental insight. Secondly, the 1945 Constitution as the supreme law of the land basically has a basic idea of the sovereignty of the environment and the eco-nomic equality of values with the concept of democracy and nomocracy ".

1.2. The Theory of Sustainable Urban Development

The third theory in this paper is the theory of sustainable urban development, based on the city or urban understanding that is agreed to date. The various urban or urban definitions developed are essentially contextual in terms of the functions and approaches used. The geographic-demographic approach sees the city as the concentration site of the people living together within a certain region of space with a pattern of rational relationships and tends to be individualistic with demographic characteristics having relatively higher educational, economic and social status than non-urban areas. The economic approach sees the city as a center for increasing productivity and production of goods and services, trade and industry traffic meetings, and rapidly moving and high volume velocities. The physical approach sees the city as the center and system of various infrastructures and means to facilitate the life and creativity of its citizens. The sociological- anthropological approach views the city as a concentration of people with a heterogeneous background, the symbol of civilization of human life, the center of culture, the source of innovation and creation, and the vehicle for the improvement of the quality of life. UU No. 26 of 2007 on Spatial Planning defines urban areas as having primary non-agricultural activities with the arrangement of regional functions as urban settlements, concentration and distribution of government services, social services, and economic activities. Some experts provide urban or urban understanding as an established area adjacent to each other, extending from its center to the periphery and comprising residential, commercial, industrial, governmental, transportation infrastructure, and others, (Fitri Wardhono, April 14, 2012). The definition of sustainable urban development is in line with the notion of sustainable development, where the space perspective is focused on urban space. As stated by Urban 21 Conference (Berlin, July 2000), sustainable urban development is defined as an effort to improve the quality of life of the city and its citizens without causing a burden for future generations due to reduced natural resources and environmental degradation.

3.1.3. The Emergence of Green Open Space (RTH)

The idea of green space is born because of the conditions that threaten the environmental damage in some areas of the city in the world due to the result of urban spatial planning and management of urban development that less attention to the impact on the environment. This was expressed by all international forums calling themselves the Asian Business Congress for Human Development (ABCHD) when meeting in Jakarta on August 15, 1992. The International Meeting which presented 9 Asian and Australian Countries took the theme of "Responsibility of the World Business on Sustainable Development" With a very interesting topic of "Is Business Destroying the City": Hirayama, a representative of the United National Environment Programs (UNEP), said in the meeting that the city would be destroyed in the event of air pollution and pollute the environment. According to UNEP data, many cities in the world have already reached the threshold limit set by UNEP, and those cities are heading for destruction, (Edy Lisdiono, 2008: 186). Emil Salim, the protector of ABCHD at
the meeting, firmly said that businesses are "killing" these cities for polluting the air and destroying the environment. Air pollution and pollution beyond the ability of the environment to bear will make the city sick, and if not immediately attempted to overcome it, over time the city will be killed by a long-term illness”; (Emil Salim dalam Edy Lisdiyono, 2008: 186).

The provision of green space contains three main functions, namely:

a. Physical-ecological (including species enrichment and germplasm);
b. Economic (productive value / financial) and balancer for environmental health;
c. Social culture (including education, cultural and psychological values).

In addition to the basic functions, RTH has multi-function, among others: as producer of oxygen, food raw materials, clothing, boards, and industrial raw materials, or referred to as ecological functions, through the selection of types and management systems (plans, Settings) are right and good. It also serves as a regulator of microclimate, absorber and absorber pollution of air, water, soil, animal movement path, blood mascot, voice controller, sight and others, (Samsudi, 2010: 12). The relationship between the writing of this article and the context of tropical forest management is that the complexity of urban problems is mainly the problem of land, causing the harmony of human relations with nature, consequently urban only progress economically but ecologically backward. The presence of Green Open Space will be the right solution, (Mukrimin, Bachtiar, Budirman, Sukri, dan Muhammad, 2013: 1). This of course requires a good management of the existing Green Open Space, especially in the city of Ambon. Green Open Space can be arranged well, so that the beauty of the city forest looks like beautiful tropical forest spread wide. Thus, Akam will create aesthetics and art in the arrangement of Green Open Space, which contains various trees, (Nadia dan Parfi Khadiyanta, 2015: 102-103).

3.1.4. Analysis Legal Impact of the absence of Green Open Space arrangement in Local Regulation no. 16 of 2013 on RTRW of Maluku Province

3.1.4.1. Analysis of the Theory of The Green Political dan Green Constitution

The Green Political Theory and Green Constitution, The Green Political Theory is derived from the fact that humans are part of nature that has implications for green politics, (La Ode Angga dkk, 2014 :6). Thus human beings are not only seen as rational individuals as in the view of liberalism or as social beings such as the view of socialism but as natural beings, and further as political animals., (Barry, J. 2014 : 153-178).

While it is necessary to distinguish between green politics and environmentalism. Environmentalism accepts the existing framework within the political, social, economic and normative structure of the political world and tries to correct environmental problems with the existing structure. While the Green Politics, (Low, Nicholas & Gleeson, 2009: ) consider that the structure as the main basis for the emergence of environmental crisis. Therefore, they argue that such structures need more major change and attention. In connection with this writing kaitanya with green politics must have the willingness of the government to produce a pro legislation product on environmental sustainability by giving birth to the regulation on Green Open Space in every urban. Meanwhile, in the context of Indonesia, the provisions on green constitution can be found in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution, therefore the 1945 Constitution is clearly very pro-environment, so it can be termed as green constitution. In the constitution of discourse around the concept of green constitution, it can be said reflected in the idea of power and human rights and the concept of economic democracy in the 1945 Constitution, (Asshidigie Jimmy, 2009: 7). It means that the Republic of Indonesia also adopts the concept of green constitution with the assumption that the highest authority or sovereignty in The people's hand which is reflected in the concept of human rights on the good and healthy environment as regulated in Article 28H Paragraph (1) of the 1945 Constitution, and also reflected in the concept of democracy related to the principle of sustainable development and environmental insight, as affirmed in Article 33 Paragraph (4) of the 1945 Constitution, is proof that the concept has been accommodated in the provisions of the Indonesian Constitution, (La Ode Angga, 2017: 10). When viewed from the Green Political Theory and Green Constitution, there is no regulation of Green Open Space in Local Regulation No. 16 of 2013 is a blasphemy of the great will of the world community and the people of Indonesia in realizing the common aspiration to do Advocating for the current environmental crisis. When viewed from the theory of the constitution hijauh then there is no regulation of Green Open Space in Local Regulation No. 16 of 2013 is an act against the constitution. In the Constitution of Article 28H paragraph (1) and Article 33 Paragraph (4) there is clearly a willingness or willingness of the State of Indonesia to create a good and healthy environment which is a basic right for every citizen whose reflection in the implementation of green open space, (La Ode Angga, 2017: 10).

3.1.4.2. Analysis From Science and legislation

In RTRW Regulation no. 16 of 2013 there is no Green Open Space arrangement. According to the authors of the absence of the arrangement of Open Space in the Regional Regulation no. 16 of 2013 on RTRW of Maluku Province, the Regional Regulation of RTRW No. 16 of 2013 is out of sync with Law no. 26 Year 2007 on Spatial Planning. When viewed from the principles of formulation of Legislation and Regulation no. 16 Year 2013-2033 on RTRW of Maluku Province which does not regulate Green Open Space which has been regulated in Articles 28-31 and 55-58 UUPR is in conflict with one of the principles of Laws and Regulations:

"Higher Legislation Eliminates Lower Legislation Regulations In the event of a conflict between higher-level Legislation and lower Legislation, higher Regulations and Regulations are enforced, and Regulations Lower legislation is disregarded ". By that it should Perda no. 16 of 2013 which does not regulate green open space, shall be reviewed in its implementation.

3.1.4.3. Analysis of the Theory of Sustainable Urban Development

When viewed from the theory of Understanding of sustainable urban, the absence of regulation of Green Open Space in Local Regulation No. 16 of 2013 is a suauta denial of Law no. 26 of 2007 on Spatial Planning that has set the green open space. According to the theory of Urban Sustainable Development, it defines urban areas as having non-agricultural main activity with the arrangement of regional functions as urban settlements, concentration and distribution
of government services, social services, and economic activities. Some experts provide urban or urban understanding as an established area adjacent to each other, extending from its center to the periphery and comprising residential, commercial, industrial, governmental, transportation infrastructure, and others. As an implementation of urban sustainable theory, it is natural to have the existing urban areas in the region of Maluku Province must have green open space arrangement. Whether it is a green open space public or private green open space, so the atmosphere of such a hot city can be avoided with the green open space.

3.1.5. Reconstruction of the author’s formulation of Green Open Space Direction (RTH) in Regional Regulation No. RTRW. 16 of 2013

Invite from the regulation of Green Open Space arrangement in Articles 55-58 UUPR, the authors do the reconstruction of the formulation of Green Open Space arrangement which is not regulated in the Regional Regulation No. 16 Year 2013. Reconstruction of Green Open Space Formulation Formulation in Local Regulation No. 16 Year 2013 as follows:

a. Article 1 Analysis utilization of green open space:

- The provision of spatial planning of the district area shall apply mutatis mutandis to the spatial planning of the city territory, with provisions other than the details:
  1. plan for the provision and utilization of green open space (RTH)
  2. plans for the provision and utilization of non-green open spaces; and
  3. plans for the provision and utilization of pedestrian infrastructure and facilities, public transport, informal sector activities and disaster evacuation rooms, which are required to carry out the function of urban areas as centers for socio-economic services and regional growth centers;
  4. establishing Green Open Space (RTH) along the coastal border.

b. Article 2 Analysis public and private green open space balances:

- The green open space (RTH) referred to in Article 1 letter a shall consist of open green public space and green open space.
- The proportion of green open space (RTH) in the city area shall be at least 30 (thirty) percent of the total area of the city.
- The proportion of green open space (RTH) in the urban area shall be at least 20 (twenty) percent of the total area of the city.

c. Article 3 regulates the distribution of green open spaces public:

- The distribution of public green open space (TRH) as referred to in Article 1 paragraph (1) and paragraph (3) shall be adjusted to the distribution of population and service hierarchy with due regard to spatial structure and spatial plan.

d. Article 4 regulates the arrangement of green open spaces arranged by Pergub:

Further provisions concerning the provision and utilization of green open spaces (RTH) and non-green open spaces as referred to in Article 1 paragraph (1) and (2) shall be governed by Governor Regulation.

4. CONCLUSION

Reconstruction of Green Open Space Formulation Formulation In Local Regulation No. 16 of 2013 Concerning Spatial Planning of Maluku Province 2013-2033 is a must. Reconstruction of the RTH Formulation in the law should refer to Law No. 26 of 2007 in particular Articles 28-31 and 55-58. In addition must also pay attention to the principles of international environmental law in accordance with the common will of the nations of the world.

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