



Journal of  
Legal, Ethical and  
Regulatory Issues

Print ISSN : 1544-0034  
Online ISSN : 1544-0044

# THE NUISANCE ORDINANCE IN THE ESTABLISHMENT OF COMMERCIAL BUILDINGS AND LEGAL ENFORCEMENT OF SPATIAL PLANNING AT THE REGIONAL GOVERNMENT LEVEL

**Rofi Wahanisa, Universitas Diponegoro**

**Arief Hidayat, Universitas Diponegoro**

**Bayu Dwi Anggono, Universitas Jember**

## ABSTRACT

*This study seeks to explore the efforts in managing business buildings which in Indonesia is required to have a disturbance permit, by taking a case study in the city of Semarang, regulated in the Semarang City Regional Regulation No. 20 of 2011 concerning the Nuisance Ordinance. This study uses a descriptive-qualitative method with a sociological juridical approach. The results of the study show that the implementation of the Nuisance Ordinance, especially in the establishment of business buildings in Semarang City needs a more stringent supervision and control by the government regarding the establishment of business buildings. This highlights the importance of data collection and supervision that should be carried out by local governments in spatial planning at the local level.*

**Keywords:** Regional Regulations, Spatial Planning, The Nuisance Ordinance, Licensing, Legal Supervision, Commercial Buildings.

## INTRODUCTION

Regional economic development is directed at spurring equitable development and its results are in order to improve people's welfare, and active participation of the community and to improve the utilization of optimal and integrated regional potentials in fulfilling real, dynamic, harmonious and responsible regional autonomy and strengthening unity (Firman, 2009). Economic development also affects economic growth as a process in increasing production from economic life and causing an increase in national income (Jayadinata, 1996). The development carried out by the state needs support from the spatial planning aspect (Hudalah & Woltjer, 2007), because spatial planning is needed to create a safe, comfortable, productive, and sustainable national territory space (Firman, 2004). Efforts made by the government to curb spatial planning in Indonesia, among others, through efforts to control space use systematically through zoning regulations, licensing, providing incentives and disincentives, and sanctions. Sanctions in the Law No. 24 of 1992 concerning Spatial Planning consist of administrative sanctions and criminal sanctions. The imposition of sanctions in the law is not only given to space users who are not in accordance with the provisions of spatial use, but also imposed on authorized government officials who issue permits for spatial use that are not in accordance with the spatial plan.

The concept of spatial planning is the mandate of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which was further elaborated in Law Number 26 of 2007 concerning Spatial Planning which became the main focus of the spatial implementation originally planning changed to controlling space utilization. Regarding the implementation of regional government based on Law Number 23 Year 2014 concerning Regional Government, the Provincial and Regency/City Regional Governments have the authority to regulate and manage their government affairs. One of the efforts made by the city/regency government is in order to control spatial planning by publishing the Nuisance Ordinance. The object of the Nuisance Ordinance regulated in the Semarang City Regional Regulation Number 20 of 2011 concerning the Nuisance Ordinance Environment. Licensing is a policy instrument of the regional government to exercise control over negative externalization that may be caused by social or economic activities. Permits are also instruments for legal protection for ownership or operation of activities. For this reason, enforcement of licensing laws by the government is very important in realizing an order and comfort in society. So that the existence of the Nuisance Ordinance is very necessary for every business. Based on the background above, the formulation of the problem in this study is to analyze the implementation of Semarang City Regulation No. 20 of 2011 concerning the Nuisance Ordinance and the supervision and control of the Semarang city government regarding the establishment of buildings that do not have the Nuisance Ordinance licensing.

## RESEARCH METHODS

This study uses descriptive-qualitative research methods with a sociological juridical approach. In descriptive research, the data collected is in the form of words, images, and not numbers. In addition, everything collected is likely to be the key to what has been studied. Qualitative research is research that is intended to understand the phenomenon of what is experienced by the subject of research, for example, behavior, perceptions, motivations, actions, etc. Holistically, and by way of description in the form of words and language, in a special natural context and by utilizing various natural methods (Moleong, 2007). In this study the approach method used is Juridical-Sociological. This is adjusted to the formulation of the problem. The location of research will be carried out in business buildings spread across Semarang City. Secondary data based on library search include the Regional Regulation of Semarang City Number 20 of 2011 concerning the Nuisance Ordinance (Hinder Ordonantie/HO) S. 1926-226. Minister of Home Affairs Regulation Number 27 of 2009 concerning Guidelines for Determination of the Nuisance Ordinance in Regions. Semarang City Regional Regulation Number 4 of 2012 Regarding Retribution for Certain Licenses in Semarang City. Mayor of Semarang Regulation Number 33 of 2008 concerning Translation of Tasks and Functions of the City Planning and Housing Office of Semarang City.

### Overview of Regional Spatial Planning

Spatial planning as a system of spatial use, and control is an integral part of planning development that must be carried out in accordance with the rules of spatial planning (Albrechts, 2004; Yiftachel, 1998). The concept of regional spatial structure is a direction/approach to the development of the entire system of activities in the spatial region of the province, as well as the regulation of the interrelationship between these elements, as the basis for the preparation of

regional spatial plans (Hall & Tewdwr-Jones, 2010). The preparation of the spatial concept itself is based on considerations on the physical condition of the area, problems, potential, and opportunities for regional development that can encourage the realization of the achievement of the objectives of spatial development (Véron, 2001; Healey, 2004).

Space is the distribution of allotment of space in an area which includes the allotment of space for the function of protection and allotment of space for allocation functions (Gehl, 2011). Spatial means a regular arrangement of spaces, including harmonious and simple understanding so that it is easy to understand and implement. Space is a resource that is quantitatively limited in number and has characteristics that are not uniform so that not all types of functions can be developed in the available space. The space limitation is the basis for the need for spatial planning consisting of spatial planning that produces spatial planning documents, spatial use that refers to the applicable spatial documents, and control of spatial utilization that is carried out to ensure that functions are developed according to the designation specified in the document. spatial plans, among others, by using development permit instruments.

Spatial planning functions as a space allocation for various socio-economic activities and environmental conservation activities in the city area, regulates the balance and harmony of spatial allocation (Graham & Healey, 1999; Oliveira et al., 2013). In Indonesia, it is used as a basis for formulating indications for five-year mid-term programs for 20 years, and as a basis for permitting spatial utilization in the region city. Spatial documents as a product of space planning activities, in addition to functioning to make effective use of space and prevent inter-function conflicts in the process of spatial use, are also intended to protect the community as users of space from environmental hazards that may arise due to the development of space functions on location which is not according to designation.

In other words, the spatial plan is carried out so that human relations with the environment can run harmoniously, harmoniously, and balanced to achieve further prosperity. Control which means supervision of the implementation of the regional development process so that the implementation of development remains within the corridor of establishing the objectives of the Regional Spatial Plan. Spatial planning is a form of collective decision that results from the political process of allocation choices and or ways of allocating space offered through substantive technical processes. Spatial planning in accordance with Law No. 26 of 2007 concerning Spatial Planning includes spatial planning, spatial use and control of spatial use (Wardana, 2015; Sahide & Giessen, 2015). Spatial utilization and control is an inseparable unity that must be carried out in accordance with the rules of spatial planning so that it is expected to realize effective and efficient spatial use and be able to support sustainable environmental management, there is no waste of utilization space and does not cause a decrease in the quality of space (Eggenberger & Partidário, 2000). Spatial planning is an important instrument for the government, the designation of the plan must get agreement and determination by the legislature as people's representatives and community support. Spatial planning legally has a binding power to be obeyed both by the community and the government itself, so it is expected that the process of spatial utilization can be carried out consistently.

In the national context, the main regulation in building construction is Law Number 28 of 2002 concerning Building. This regulation regulates the functions of buildings, building requirements, building management including the rights and obligations of building owners and users at each stage of building construction, provisions regarding public housing and government guidance, and sanctions. In addition, it regulates matters that are basic and normative, while the

implementation provisions will be further regulated by government regulations and/or other statutory regulations, including regional regulations, while still considering other relevant laws in the implementation. Derivation regulations are Government Regulation No. 36 of 2005 concerning Implementation Regulations of Law Number 28 of 2002 concerning Building Buildings, which technically regulates the fulfillment of requirements needed in building construction, as well as in the fulfillment of orderly implementation of functional, reliable building buildings that guarantee safety, health, comfort and ease of use, and in harmony with the environment. In addition, there is also the Minister of Public Works Regulation Number 29/PRT/M/2006 concerning Guidelines for Building Technical Technical Requirements. This regulation concerns all parties so that every person or legal entity including government agencies in the implementation of building establishment must fulfill the technical requirements stipulated in this Ministerial Regulation.

In the local context, as a case study in this study, there is the Semarang City Regional Regulation Number 5 of 2009 concerning Building Construction. Semarang City Regional Regulation Number 5 of 2009 was born with the consideration that development activities in Semarang City can be held in an orderly, directed, and harmonious manner with urban spatial planning, so that the administrative and technical requirements of building and fulfilling their functions must be fulfilled. to ensure the safety of residents and their environment. Semarang City Regional Regulation Number 5 of 2009 is intended as a further arrangement in connection with the issuance of Law Number 28 of 2002 concerning Building Construction and Government Regulation No. 36 of 2005 concerning Implementation Regulations of Law Number 28 of 2002 concerning Building Construction.

### **Implementation of Regional Regulations Regarding Spatial Planning**

Regional Regulation (hereinafter referred to as Perda) is a decision intended to be valid for a long time and is a norm (norm) for all matters that can be included in the norm and stipulated by the Regional People's Representative Council and applies (binding) to the public (algemeen binderegels) whether or not containing criminal threats. Regional regulations are divided into two. First, the second level regional regulation, namely a regulation established by the Regent or Madya Mayor or the head of the second level together with the Second Regional People's Representative Council in implementing regional autonomy given to the government of the second level region, namely the Regent or Mayor or the head and second level Regional People's Representative Council. Second, first-level regional regulations, namely the rules established by the Governor or the head of the regional level one together with the Regional Representative Council, in the framework of implementing regional autonomy given to the first level local government. Implementation refers to the implementation and implementation of actions to be carried out fully in accordance with what has been designed or designed. In the field of law Implementation can also be called law enforcement, law enforcement itself is an activity to harmonize the relationship of values described in rules, views that are solid and embody it from attitude, act as a series of translation of the final stages to create life social peace (Widagdo, 2012). The implementation of Semarang City Regulation No. 20 of 2011 concerning the Nuisance Ordinance covers the implementation and supervision of objects of regional regulations. In Semarang City Regional Regulation No. 20 of 2011 there are several objects of the Nuisance Ordinance contained in it.

There are two types of objects from the Nuisance Ordinance contained in Semarang City Regional Regulation No. 20 of 2011, namely activities in the industrial and non-industrial fields. Article 7 Semarang City Regulation Number 20 of 2011 describes activities that are included in industrial activities or non-industrial activities which are objects of the Nuisance Ordinance in the city of Semarang. Whereas the subject of the Nuisance Ordinance is contained in article 8 which contains every person or entity conducting business activities as referred to in Article 7 must have the Nuisance Ordinance. The Nuisance Ordinance actually wants to protect the surrounding population from the impacts that can be caused by the business activities of the Business Actors which can cause a great loss for them. the Nuisance Ordinance will not be issued by the Government if the disturbance criteria as mentioned above have a huge impact so that the disruption to the Environment, Social Community and the Economy is unavoidable of course with the correct study by the Government. Government agencies in charge and responsible for realizing Semarang City Regional Regulation No. 20 of 2011 concerning the Nuisance Ordinance are Semarang City Planning and Housing Services. The tasks of the City Planning and Housing Agency in the technical recommendations section and supervision of objects from the Nuisance Ordinance. The task was carried out in the field of building utilization.

Based on the results of the research, the authorities to realize or implement the Semarang City Regional Regulation No 20 of 2011 concerning the Nuisance Ordinance are Semarang City Planning and Housing Services. As contained in articles 18 and 19 letters (f, j, n, m and o) Mayor of Semarang Regulation Number 33 of 2008 concerning Translation of Tasks and Functions of the City Planning and Housing Office of Semarang City. The implementation of Semarang City Regulation No. 20 of 2011 concerning the Nuisance Ordinance covers the implementation and supervision of objects of regional regulations. In Semarang City Regional Regulation No. 20 of 2011 there are several objects of the Nuisance Ordinance contained in it. The implementation of the Semarang City Regulation No. 20 of 2011 concerning the Nuisance Ordinance, which is authorized is the Semarang City Planning and Housing Agency. The Semarang City Planning and Housing Agency has implemented and realized regional regulations, both in terms of providing clear information through its official website ([www.dtkp.semarangkota.go.id](http://www.dtkp.semarangkota.go.id)). The website is intended to make it easier for the public to find information about the Nuisance Ordinance both from the application conditions, and the submission procedure.

### **Implementation of Supervision and Control about the Nuisance Ordinance**

Supervision and control related to the Nuisance Ordinance (HO) of the City Spatial Planning and Housing Office of Semarang City are the authorities. The legal basis of the authority is contained in the Mayor of Semarang Regulation Number 33 of 2008 concerning the Translation of Tasks and Functions of the City Planning and Housing Office of Semarang City. The supervision and control activities referred to are contained in article 22 of Semarang City Regional Regulation No. 20 of 2011 concerning the Nuisance Ordinance, namely in Article 22. Supervision and control is carried out through data collection activities, monitoring, reporting; and evaluation. Supervision and control as referred to in paragraph (1) shall be carried out by the Office which has the authority, duties and functions in the field of building utilization. (2) The Head of Service appoints supervisory officers to carry out supervision and control activities as referred to in paragraph (1). (3) The supervisory officer as referred to in paragraph (3) has the

authority to carry out inspections and/or monitoring; conduct training; and provide warnings and/or warnings.

The authorized agency has conducted socialization at the sub-district level, where each village or village in the sub-district is present as a representative. However, the follow-up of socialization was not effective, including a lack of human resources or supervisory staff possessed by the City Planning and Housing Agency. This is due to one of them due to the lack of human resources in the supervisory department owned by the Semarang City Planning and Housing Agency which made a lack of maximum performance by the Government to realize Semarang City Regulation No. 20 of 2011 concerning the Nuisance Ordinance. Another obstacle, the owner of the business building did not know the information about the obligation to administer the Nuisance Ordinance. The permit owned by the owners of business buildings is only in the form of an building permit seen from the permit notice board installed on the walls of the building of a business building. Although the legal system in Indonesia applies the principle of "*legal fictie*", which means that everyone is considered to have known the existence of a law that has been passed. However, socialization also needs to be carried out and carried out to maximize a statutory regulation. Along with the increasing number of business activities such as business buildings. Supervision and control of the implementation of business activities to run orderly, directed and in accordance with the spatial plan that in the context of the implementation of supervision and control of the operation of business activities is very necessary. Because the permit device is one way to control spatial planning, sanctions for those who violate can be seen as an evidence of the implementation of law enforcement related to spatial planning.

## CONCLUSION

Implementation of Semarang City Regional Regulation No. 20 of 2011 concerning the Nuisance Ordinance in business buildings in Semarang City has not been able to run optimally. This shows that there is still a need for supervision and control by the Semarang city government regarding the establishment of business buildings that do not have disturbance permits. The supervision and control in question includes data collection, monitoring, reporting and evaluation related to business buildings in the city of Semarang. In the implementation and realization and supervision of Semarang City Regional Regulation No. 20 of 2011 concerning the Nuisance Ordinance for business buildings in the city of Semarang so that the City Government can run optimally through the City Planning and Housing Agency to disseminate the regional regulations at the village level periodically. Then an evaluation is carried out before and after the socialization related to the Nuisance Ordinance. This also can provide pro-active assistance to the owners of business buildings that will manage the Nuisance Ordinance. The business owners of business buildings that are available after getting socialization can immediately take active action for the management of the Nuisance Ordinance.

## REFERENCE

- Albrechts, L. (2004). Strategic (spatial) planning reexamined. *Environment and Planning B: Planning and Design*, 31(5), 743-758.
- Eggenberger, M., & Partidário, M.R. (2000). Development of a framework to assist the integration of environmental, social and economic issues in spatial planning. *Impact Assessment and Project Appraisal*, 18(3), 201-207.
- Firman, T. (2004). Major issues in Indonesia's urban land development. *Land Use Policy*, 21(4), 347-355.

- Firman, T. (2009). Decentralization reform and local-government proliferation in Indonesia: Towards a fragmentation of regional development. *Journal of the Applied Regional Science Conference*, 21(2-3), 143-157.
- Gehl, J. (2011). *Life between buildings: Using public space*. Island press.
- Graham, S., & Healey, P. (1999). Relational concepts of space and place: Issues for planning theory and practice. *European planning studies*, 7(5), 623-646.
- Hall, P., & Tewdwr-Jones, M. (2010). *Urban and regional planning*. Routledge.
- Healey, P. (2004). The treatment of space and place in the new strategic spatial planning in Europe. In *Steuerung und Planung im Wandel* (pp. 297-329). VS Verlag für Sozialwissenschaften.
- Hudalah, D., & Woltjer, J. (2007). Spatial planning system in transitional Indonesia. *International Planning Studies*, 12(3), 291-303.
- Jayadinata, J. T. (1996). *Land use in rural, urban and regional planning*. Bandung: Penerbit ITB.
- Moleong, L.J. (2007). *Qualitative research methodology*. Bandung: PT Remaja Rosdakarya.
- Oliveira, J.A.P., Doll, C.N., Balaban, O., Jiang, P., Dreyfus, M., Suwa, A., & Dirgahayani, P. (2013). Green economy and governance in cities: Assessing good governance in key urban economic processes. *Journal of Cleaner Production*, 58(1), 138-152.
- Sahide, M.A.K., & Giessen, L. (2015). The fragmented land use administration in Indonesia—Analysing bureaucratic responsibilities influencing tropical rainforest transformation systems. *Land Use Policy*, 43(1), 96-110.
- Véron, R. (2001). The new Kerala model: Lessons for sustainable development. *World development*, 29(4), 601-617.
- Wardana, A. (2015). Debating spatial governance in the pluralistic institutional and legal setting of Bali. *The Asia Pacific Journal of Anthropology*, 16(2), 106-122.
- Widagdo, S. (2012). *Law dictionary*. Jakarta: PT. Prestasi Pustaka Raya.
- Yiftachel, O. (1998). Planning and social control: Exploring the dark side. *Journal of planning literature*, 12(4), 395-406.