

LAW DESIGN OF INSTITUTIONS COORDINATION AS AN EFFORTS TO HARMONIZE POLICY HOUSING DEVELOPMENT AROUND THE AIRPORT IN INDONESIA

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ABSTRACT

The process of infrastructure development and expansion of the airport was a trend in almost every area of the province in Indonesia. The policy was not followed by institutional coordination with local government authorities that issuing location permits and construction permits, so that these conditions cause the loss of health for people that living around the airport area. Using the model of doctrinal research that examines only primarily legislation, the study aims to provide a solution of law design to resolve the issue. The results showed that: First, the local government authority in issuing the location permit and building permits around airport is the authority that its direct attribution as outlined in the legislation. Second, the design of institutional coordination laws for prevention policy disharmony housing development around airports should be made in the legal form of joint regulation between Minister of Home Affairs and the Minister of Transportation on Housing Development Around the airport. The Joint Ministerial Regulations are intended to cover the issue of residential development around airports that characteristic across sectors.

Keywords: coordination, development, government, airports.

A. Introduction

Amartya Sen in his book *Development as Freedom* states that "development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states",¹ This argument illustrates the philosophical aspect of development that requires a condition liberating for everyone, so that resources can hinder freedom must be abolished. The state assumed responsibility for creating the conditions that frees.

As the embodiment of the obligation, the state doing development in various areas of life that are basically done for the sake of the nation with the greatest benefit to the welfare of the people. One form of development is development to meet the public interest (public interest), in the context of the construction is done by building a particular infrastructure.² Development of infrastructure for the public interest requires the land as a place to be used for construction. The process to gain ground in the development of infrastructure called land acquisition.

One form of land acquisition is often done is the construction of airports as one of the facilities crucial for the existence of a regional progress. Construction and expansion of airports in practice often led to problems for the people in the surrounding areas, especially with regard to health issues.

Based on several studies that have been carried out, the noise level of airport activity has caused a variety of problems, ranging from decreased hearing levels to rise in blood pressure of residents in the area around the airport. Some research has been done and prove these problems are:

1. Research in the area of the Village Neglasari and Village Selapang Jaya Tangerang City, Banten around Soekarno Hatta Airport. Total respondents 150 people, from the survey results revealed only 12 (8%) of respondents were not impaired communication, the remaining 138 people (92%) of respondents experienced a breakdown in communication.³
2. Research conducted around the Ahmad Yani Airport in Semarang with the number of respondents of the 50 people. The results showed residential areas around the airport such as housing Horizon II (56.58 dBA), Puspogiwang (56.77 dBA), Graha Padma I (65.87 dBA) and Graha Padma II (64.36 dBA) noise levels above threshold quality standards (55 dBA / KepmenLH No. 48 of 1996 on Baku Noise Level). Respondents Residents around the airport influence of noise

¹ Amartya Sen, *Development As Freedom*, Alfred A. Knopf, Inc., New York, 2000. P. 3.

² Kepentingan umum adalah kepentingan bangsa, Negara dan masyarakat yang harus diwujudkan oleh pemerintah dan digunakan sebesar-besarnya untuk kemakmuran rakyat. Pasal 1 angka 6 UU No. 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum.

³ Arif Maskur, *Persepsi Masyarakat Mengenai Gangguan Non Auditory Terhadap Tingkat Kebisingan Di Kawasan Pemukiman Sekitar Bandara Internasional Soekarno-Hatta Pada Tahun 2012*, Skripsi, Fakultas Kesehatan Masyarakat, Universitas Indonesia, 2012. hlm. 94.

- on the health of the body is generally difficult to sleep percentage (60%), followed could not sleep the percentage (18%), hearing loss percentage is only (14%) do not use any tools percentage (100%), causing impaired forget.⁴
3. Implementation of research in the area around Ahmad Yani Airport in Semarang, which is located in the Horizon Housing (\pm 1000m) and Semarang Indah Housing (\pm 5000m). A total of 60 respondents in the sample taken at random. Noise measurements indicate that the housing horizon has exposure to noise above the noise level quality standard (NAV) of 69 dBA (NAB 55dBA), while Semarang Indah Housing has exposure to noise at 51 dBA under the NAB. These results indicate that the effect of noise exposure on blood pressure ($p = 0.00$). The increase in blood pressure in the housing horizon respondents had a higher percentage is 83.3% for the rise in systolic blood pressure and 59.9% to the increase in diastolic blood pressure compared with the Housing Semarang Indah with 69.9% for the percentage increase in systolic blood pressure and 49, 9% for diastolic blood pressure rise. Chronic noise exposure due to low activity significantly affect blood pressure.⁵

The reality of the problems that appear at the top is because of the lack of coordination in planning the development and expansion of airports which incidentally is under the Ministry of Transportation and the Government of Regency/City which issued permits residential housing construction site them. Supposedly the area around the airport is not appropriate to be used as residential areas because of the activities that can cause health problems for the community.

Misscoordination occurs because sectoral ego factor is more prominent than the element of public interest. The local government who feel authorized to issue location permits and construction permits based on Law Number 23 Year 2014 on Regional Government, denying the health facts such as shelter under the credo increase local investment and this will result in harming the people living in the area of the airport.

From the legal aspect, such a condition that occurs in the absence of legal protection require coordination in the development and expansion of the airport area between the Ministry of Transport and the Government of Regency/City, which is also regulates about the limitations of the area around the airport that can be issued the location permit and building permit building by the local government district/city.

Based on the facts and arguments that have been described, the need for further study on the legal design ideal institutional coordination to prevent disharmony development policies in areas near the airports, so that people will no longer be the injured party.

B. Research Method

This research is a doctrinal research, model of legal research is a comprehensive and analytical study that only used secondary data. The secondary data splitting to the primary legal materials (rules), secondary legal materials (books, journal, reports, results of previous research) and tertier legal materials (magazines, newspaper and dictionary). Approach the problem using the statutory approach and the conceptual approach.⁶ Data were analyzed qualitatively by describing the data generated in the form of an explanation of the study systematically so as to obtain a clear picture of the problem under study. Analysis of the legal materials will done in two phases. First, by mapping the content analysis about the structure of rules, systematization of law indication to the problem that mapped and analyzed, interpreting and assessment of the occur rules.⁷ The second phase, on the legal materials will analyze using the *Regulatory Impact Assessment* (RIA) method.⁸ The results of the data analysis inferred deductively.

C. Result and Discussion

Governance in Indonesia is divided into several levels of government, the central government and local authorities covering the provincial government and local government district/city. At the central level, governance is done by a president assisted by a vice president and by ministers of state, at the level of the regional administration of the local government and the legislature (DPRD).⁹

In accordance with the mandate UUDNRI In 1945, the local government authority to control and manage their own affairs in accordance with the principle of autonomy and duty of assistance. Granting autonomy to regions followed by an obligation to improve the quality of life and developing the productive resources in the area. Granting broad autonomy to the region geared to

⁴ Mochamad Chaeran, *Kajian Kebisingan Akibat Aktifitas Di Bandara (Studi Kasus Bandara Ahmad Yani Semarang)*, Tesis, Magister Ilmu Lingkungan Universitas Diponegoro, 2008. hlm. 69.

⁵ Hani Afita, Poerwito dan Muhtarom, *Pengaruh Paparan Bising Menahun dari Aktivitas Penerbangan terhadap Tekanan Darah (Studi Kasus: Kawasan Sekitar Bandar Udara Internasional Ahmad Yani Semarang)*, Jurnal Sains Medika, Vol. 5, No. 2, Juli-Desember 2013. hlm. 94.

⁶ Peter Mahmud, *Penelitian Hukum*, Kencana Prenada, Jakarta, 2005, hlm xx.

⁷ D.H.M. Meuwissen, *Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum* (translator B. Arief Sidharta), Bandung, Refika Aditama. 2007.

⁸ Kolin Kirkpatrick and David Parker, *Regulatory Impact Assessment*, Edward Elgar Publishing, 2007.

⁹ *Ibid.* Pasal 18 ayat (2) dan ayat (5) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 menyatakan bahwa Pemerintahan Daerah berwenang untuk mengatur dan mengurus sendiri Urusan Pemerintahan menurut Asas Otonomi dan Tugas Pembantuan dan diberikan otonomi yang seluas-luasnya.

accelerate the realization of people's welfare through service improvement, empowerment and community participation through governance. In addition, the broad autonomy granted to administer and manage the interests and welfare of local communities.¹⁰

Regional autonomy raises a huge impact for the regional administration. This is due to the enactment of legislation, the regional government has the full authority of local government in the conduct of development in their respective regions.¹¹ As noted Hoessein,¹² regional autonomy is a government authority to regulate matters that are locality own initiative based on the aspirations of the people.

Lexically,¹³ said the authority derived from the basic treatment is defined as the authority, right and power that belongs to do something.¹⁴ The authority is the right to use the authority held an official or institution under applicable regulations, thus also concerning the competence of the authority to do a legal act according kaedah kaedah-formal, so the authority is a formal power owned by an official or agency.¹⁵ This understanding is in line with the opinion of HD Stout¹⁶ stating that "*Bevoegheid is een begrip uit het bestuurlijke organisatierecht, wat right worden omschreven als het geheel van regels dat betrekking heeft op de Verk rijging en vitoefening van bestuurrechtelijke bevoeg dheden door publiekrechtelijke rechts subjecten in het bestuurs rechtelijke rechtsverkeer*".¹⁷

According to S. Prajudi Atmosudirjo, the authority is the so-called "formal power", the power that comes from the legislative power (given by legislation) or on the administrative executive power. The authority which usually consists of some authority is the authority over a particular class of persons or government authority over a field (or fields of affairs) that particular round.¹⁸ Based on the source, the authority obtained in three ways, namely: attribution, delegation, and mandates.

Attribution is the authority specified by the legislation. Delegation is the transfer of power held by the government organ to another organ of government. Delegation containing a surrender, which is what originally authority A, henceforth under the authority B. The authority that has been given by the grantor delegates subsequently become the responsibility of the receiving authority. As for the mandate, does not happen a new empowerment and delegation of authority from the agency or official administrative court one to the other. The responsibility of the authority on the basis of the mandate remains on giving the mandate, the mandate does not switch to the recipient.

According to Hart, the authority still rules can be subdivided. Can be distinguished public authority rules and rules of civil authority. Rule of public authority can be subdivided into the authority of establishment legislation- legislation, judicial authority and the authority of government. Also in civil law there are rules of the authority, which in turn can be subdivided into rules-qualification, for example, rules of authority in the narrow sense, and rules-procedure. The division of authority under Hart at the top is a form of authority that are relevant to the type of government actions, including in the land sector.

The reality of the development of legislation to date show that the regional administration has been governed by the new legislation, namely Law No. 23 Year 2014 on Regional Government. Applicability of the new legislation is at once repeal laws that the old regional government (Law No. 32 of 2004).

Existing local government authority under Law No. 23 2014 very spacious, one of them in the issuance of location permits and building permits. Wet Sjahran asserted, permission is a legal act of the state administration sided rules apply in the case konkreto based on the requirements and procedures as stipulated by the provisions of the legislation.¹⁹ Furthermore, Bagir Manan said that the permit in its broadest sense means an approval from the authorities is based on legislation to allow the act or acts that are generally violated. Understanding licenses as mentioned by Ateng Syafrudin that permits removal of barriers aims and means, forbidden things be allowed.²⁰ In the context of this paper, the problems that arise are related to the licensing of the areas surrounding the airport were based on the results of research have resulted in a loss to the community.

¹⁰ Pemberian kewenangan yang lebih luas kepada daerah sebagai bentuk otonomi sebagaimana telah diuraikan sebelumnya merupakan konsekuensi dari penyelenggaraan pemerintahan yang dibagi kedalam tingkatan pemerintahan, selain akan berdampak positif terhadap kemandirian daerah dalam mengurus teritorinya.

¹¹ Rozali Abdullah, *Pelaksanaan Otonomi Luas dengan Pemilihan Kepala Daerah secara Langsung*, (Jakarta: PT Raja Grafindo Persada, 2005), hlm. 12.

¹² Hoessein, B., *Prospek Resolusi Kebijakan dan Implementasi Otonomi Daerah dari Sudut Pandang Hukum Tata Negara*, disampaikan pada Seminar dan Lokakarya Nasional *Strategi Resolusi Kebijakan dan Implementasi Otonomi Daerah Dalam Kerangka Good Governance*, Lembaga Administrasi Negara, Jakarta, 2001.

¹³ Makna dari kata leksikal: 1 berkaitan dengan kata; 2 berkaitan dengan leksem; 3 berkaitan dengan kosakata. *Kamus Besar Bahasa Indonesia*, *op. cit.*

¹⁴ Departemen P dan K, *Kamus Besar Bahasa Indonesia Edisi kedua*, 1996, hlm. 1128.

¹⁵ Tubagus Ronny Rahman Niti Baskara, *Paradoksal Konflik dan Otonomi Daerah, Sketsa Bayang-Bayang Konflik Dalam Prospek Masa Depan Otonomi daerah*. 2002. hlm 102.

¹⁶ Stout HD, *De betekenissen van de wet*. W.E.J Tjeenk Willnk. Zwolle. 1994. dalam *op. cit.*, Ridwan HR, hlm 102.

¹⁷ Free translation: the authority is derived from the notion that government organization law, which can be explained as a whole the rules relating to the acquisition and use of government authority by the subject of public law in public law.

¹⁸ Prajudi Atmosudirjo, *Hukum Administrasi Negara*, 1994, hlm. 78.

¹⁹ Sjahran Basah dalam Juniarso Ridwan dan Ahmad Sodik Sudrajat, *Hukum Administrasi Negara dan Kebijakan Pelayanan Publik*, (Bandung NUANSA, 2010). hlm.92

²⁰ Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik*. Jakarta. Sinar Grafika., 2010. hlm 152

When viewed from the aspect of land acquisition in the construction and expansion of airports using a scheme of land acquisition for public purposes as stipulated in Law No. 2 In 2012 on Land Procurement for Development for Public Interest.²¹ The use of the way the release of land rights in the procurement of land for public purposes as stipulated in Law No. 2 of 2012 tend to be more respect for community rights over land compared to the way land revocation stipulated in Law No. 20 Year 1961 concerning Revocation of Rights to Land and Property Objects Available In Thereon, so problems arise not from the aspect of procurement of land, but from the aspect miskoordinasinya in the issuance of permits.²²

The issue of development in the airport area have become crucial, because although the authority given to regions under the rules and regulations perundang it must be translated one of them in the form of increasing local investment and to physical construction in the area, but it also pays to do with kindness to the community. The point is not to get people who are disadvantaged in relation every policy pursued by the government include issuing location and building permits in areas surrounding airports.

Government authorities and local governments in issuing permits is part of a sub-location affairs authority in the land sector, while the authority to grant construction permits is part of the authority of public works and spatial arrangement of sub-section of the building.

When viewed from the theoretical aspect, the authority to issue licenses and permits location of the building is the authority that its direct attribution as outlined in the legislation. The consequences of this type of authority is an authority that is strong because it was given directly by law and is not a result of devolution whether it be a delegate or mandate.

The authority gives the location permit and the building permit is basically not restricted except from regional terms. A district government certainly should not give permission locations in the district and vice versa. This also applies to the provincial government. Therefore, the limiting factor dwell only a matter of administrative areas, so it is possible there will be disharmony policy, especially regarding the development around strategic places in the public interest one airport.

As explained in the background, the expansion of the airport is often the case that are not taken into account by the government due to lack of coordination between the government and the aspects of the ministry of transportation and / or PT Angkasapura as the management of the airport. Location permits and construction permits are often granted for the area around the airport that even without any expansion may even have negative impacts for society, particularly from the public health sector.

The issue of the location and the issuance of the building permit should be viewed as a substantive account the various issues that will arise. Do not because he prefers sector revenues, but then ignore the health and safety aspects of society that will or have inhabited the area around the airport.

Moving on from the exposure and the above analysis, the need for the legal basis of a clear institutional coordination urged to be formed, so that people are not harmed from disharmony airport development policies and granting housing or shelter around airports issued by local governments. This is important because President Jokowi in a superior program is in the field of infrastructure development.

Picture 1. Plan for Infrastructure Development in Indonesia
Period of 2015-2019

²¹ Ketika masih menjadi RUU, UU ini ditentang oleh Komisi Pembaharuan Agraria. Mereka mengeluarkan kertas posisi untuk menentang UU ini. Salah satu point dalam penolakan UU ini adalah: "RUU ini didorong kuat oleh kelompok pengusaha, khususnya para pengusaha infrastruktur. Salah satu alasan yang sering dikemukakan di berbagai forum bahwa dukungan kebijakan pemerintah atas pengadaan tanah tidak memadai dan tidak efektif. Pengadaan tanah masih menjadi penghambat proyek pembangunan karena mekanismenya tidak efektif". Anonim (tim penyusun) Kertas Posisi Komisi Pembaruan Agraria: *Pembangunan Bisa Berbuah Sengketaka Jika RUU Pengadaan Tanah Disahkan*, hlm 1.

²²Ade Arif Firmansyah, *Legal Protection Pattern of Indonesia's Land Acquisition Regulation: Towards The Thickest Version Rule Of Law*, *International Journal of Business, Economics and Law*, Volume V Issue 4 December 2014, ISSN 2289-1552, P. 148. Lihat juga Ade Arif Firmansyah, *Land Acquisition In Accelerating And Expansion Of Indonesia's Economic Development Program: A Review Of Law, Moral And Politic Relations*, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 7, Issue 4 August 2015, ISSN 2289-1560, P.20.



Source: <https://finance.detik.com/ekonomi-bisnis/2752274/ini-dia-detil-pembangunan-infrastruktur-jokowi-sampai-2019>

From some analysis and discussion above, the need for a legal basis that underlies the process of institutional coordination in the development policies of housing around the aerodrome relation to the existence and expansion of that airport, need to be planned and directed in order not to cause a negative impact on society. Discussion with the scheme that has been done before, there are at least two things that need to be harmonized in this matter, namely:

1. Factors relating to the development planning mockups airport development and construction of housing in the area around the airport.
2. Factors relating to the institutional cooperation of local government authority in issuing location permits and construction permits in the vicinity of the airport need to be harmonized with the airport development planning factor in order to avoid a loss to the community.

Departing from the explanation, the next step is to determine what legal design can then wrap and resolve this matter. Will be formulated appropriate legal form to accommodate this issue so there is no conflict of interest or disharmony in the implementation of development/expansion of airports and housing.

Due to this problem is cross-sectoral, is between local governments institutionally the coordinating contained in the Interior Ministry and the airport management that coordination is at the Ministry of Transportation, then the matter must be resolved with the good cooperation that is based on legislation. As a form of appropriate legal and solutif to resolve this problem is to form a Joint Regulation of the Minister of Home Affairs and Minister of Transportation in substance regulates the technical cooperation and institutional coordination related to residential development around the airport as it will with regard to the development and expansion of the airport, so as not to harm community.

Therefore, regulations that will be made in the form of joint regulation of the Minister, the formation technically and substantively the substance should be based on Law No. 12 Year 2011 on the Establishment Regulation Legislation. Legal aspects need to be formulated principles, philosophical, sociological and juridical factually create the rules necessary in order to resolve the legal issues in the community.

The formulation of the principle aspects of the legal, philosophical grounding, grounding sociological and juridical basis are described below: Basic philosophical of the need for joint regulation of the Minister is to harmonize the development policies of housing around the airport so as not to negatively affect the community. Sociological grounding, Joint Ministerial Regulation will harmonize the policy of housing development around the airport was moved from the health needs of people living around the airport. No society that they should never be harmed its rights of policy impact of housing construction which do not take into account aspects of health and spatial planning. The juridical basis of the need for joint regulation of the Minister are outlined regarding the authority of the legal regime of the local government and sectoral legal regime. On the one hand, government is authorized to issue the location permit and building permit, and the Ministry of Transportation in the management of the airport is also seeking eligibility to be the development and expansion to be calculated carefully so as not to negatively affect the community.

From the description of the discussion and analysis has been done, there are some important things that must be included in the design of institutional coordination ideal laws for prevention policy disharmony residential development around airports. These things are as follows:

1. The legal form of such design is the Joint Regulation of Minister of Home Affairs and Minister of Transportation on Housing Development Around the airport;
2. The Joint Regulation least be composed of several chapters, including: general provisions, forms of institutional coordination, issuance of permits and permit locations around the airport, the construction and expansion of airports, supervision, and transitional provisions of the Act. Substantively these chapters should be directed to achieve the desired law.

D. Conclusions and Suggestions

Based on the discussion that has been done, some conclusions can be drawn as follows:

First, the local government authority in issuing the location permit and building permits around the airport is part of a sub affairs authority in the land sector, while the authority to grant construction permits is part of the authority of public works and spatial arrangement of sub-section of the building. The authority is the authority that its direct attribution as outlined in the legislation. The consequences of this type of authority is an authority that is strong because it was given directly by law and is not a result of devolution whether it be a delegate or mandate.

Second, the design of institutional coordination ideal laws for prevention policy disharmony residential development around airports should be made in the legal form of joint regulation Ministry of Home Affairs and the Minister of Transportation on Housing Development Around the airport. The Joint Regulation least be composed of several chapters, including: general provisions, forms of institutional coordination, issuance of permits and permit locations around the airport, the construction and expansion of airports, supervision, and transitional provisions of the Act. The Joint Ministerial Regulations are intended to cover the issue of residential development around airports that characteristic across sectors.

Suggestions are given related to the discussion in this paper is: Government and local governments need to respond immediately the problem of disharmony policy issues to avoid any prolonged problems, they are must quickly issued a joint regulation between the Minister of Home Affairs and the Minister of Transportation on Housing Development Around the airport. Government and local governments need to strengthen oversight of issuing permits for development around the airport that do not harm the people who will live in the area.

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