

Return of East Beach Protection Function in Surabaya: A Study on Kavling Control Phase 4 Wisma Tirto Agung

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Abstract

This research was conducted on the basis of a violation of the sale and purchase of plots of land which continued the construction of residents' houses in the East Coast Surabaya (Pamurbaya) protected area. Protected areas are areas that are defined by the main function of protecting environmental sustainability which includes natural resources and artificial resources. Included in the Pamurbaya area are Gunung Anyar District, Rungkut District, Sukolilo District and Mulyorejo District. This research also explains the implementation of the Government in fulfilling the right to adequate shelter to the community but on the other hand protected areas are very important for cities. Eviction or control is considered a good solution, but needs to be studied in advance regarding the impact caused by the control. In this study, we will discuss the steps to restore the function of the East Coast Surabaya (Pamurbaya) protected area, the impact on the fulfillment of the rights of the people who are at Wisma Tirto Agung Phase IV, and the impact caused by eviction. This study uses qualitative analysis methods, types of sociolegal research, as well as an empirical juridical approach, researchers collect all the data needed both primary data sourced from interviews or other secondary data. The results of this study indicate that the Surabaya City Government has not provided a clear solution to the cases that occur, residents of Wisma Tirto Agung stage IV remain in their homes. The plan to restore the function of protected areas by conducting evictions is still in the assessment stage because the Surabaya City Government cannot decide on evictions without regard to the rights of the community to have a decent place to live. In carrying out evictions, of course there are impacts caused. Can be seen from the psychological, economic, and social aspects.

Keywords: Protected Areas, Right to Houses, Eviction.

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INTRODUCTION

The right to housing is included in fulfilling obligations for the state, namely the obligation to respect, the obligation to protect, and the obligation to fulfill. This obligation requires the government to take steps to fulfill the right to housing, the fulfillment of human rights is the responsibility of the state, especially the government, according to Article 28I Paragraph (4) of the 1945 Constitution. The government provides guidance, assistance, and facilities to the community both in the planning and implementation stages, as well as supervising and controlling this in accordance with Law Number 4 of 1992 Article 27 concerning Housing and Settlements.

The case of eviction in Indonesia has become a national phenomenon. In general, eviction cases were accompanied by tensions, violent protests from displaced poor families [1]. Forcibly dismantling settlements categorized as wild [2], cases of forced

dismantling of business premises as Policy Implications of Space also occurred in Indonesia [3].

The eviction was carried out by the Government with the intention of returning the actual function of the land, or even replaced by several developments such as roads, apartments, and others. They built residential buildings on land that was not theirs but state land. When the Government needs the land, evictions will be carried out. However, housing is part of human rights (HAM), and eviction is a form of violation of human rights. Legal aspects usually have sides that are contrary to humanitarian aspects [4]. In this case a balanced review is needed to see the problems of eviction and relocation in Indonesia in terms of law and humanity [5].

The eviction cases do not only occur in wild areas that were established by the poor, but also occur in non-poor residential areas. As is the case in the city of Surabaya, so far the increase in the activity of the city of Surabaya has triggered the development of the

city leading to suburban areas [6]. The limitations of urban land compared to land in relatively large suburban areas with low prices encourage more intensive development in the region. This is also an effort to create an even distribution of development which is not only focused in the city center but also in the suburban areas through new growth centers [7]. One of the developments that are intensively carried out in the suburbs is the construction of houses for residents of the plots of land in Gunung Anyar Tambak Village. However, this development is a violation because it stands on Pamurbaya protected area.

Various previous studies on the development of protected areas included Rahman & Hasanah's research [8], which questioned the status of customary rights from protected areas, Ichsan's research [9], highlighting in terms of the performance of the development of protected area management units. While the current research highlights the return of the function of the east coast protected area of Surabaya with the Study on Plot Control of Wisma Tirto Agung Phase IV Surabaya. Therefore, the purpose of this study is to identify the steps to restore the function of the East Coast Surabaya (Pamurbaya) protected area, to analyze the impact on the fulfillment of community rights at Wisma Tirto Agung Phase IV, and to analyze the analysis of the impacts caused by eviction.

METHODOLOGY

This research method uses qualitative research analysis techniques with an orientation to existing theories. In qualitative research, theory is limited to the notion that a systematic statement related to a set of propositions originating from data and retested empirically. One of the basic theories of qualitative research is field research. Qualitative methodology is a research procedure that produces descriptive data in the form of written or oral words from people and observed behavior. This type of research is empirical social research or socio-legal research. The author uses sociolegal research because researchers want to use a mixture of social and empirical. This study also uses an empirical juridical approach.

RESULTS AND DISCUSSION

The events of the construction of residents' houses in the East Coast Surabaya conservation area originated from PT. Tirto Agung as a developer sells lots of land at a price range of 90-300 million and there are even residents who claim to buy land at a price of 50 million. The price of land at that time was considered cheap so it attracted the interest of the people to buy and without investigating the status of the land first. The ignorance of the residents about the status of the land to be purchased has a negative impact on them. They buy land at cheap prices and build houses on conservation land which has a negative impact on the environment and spatial layout of the city

of Surabaya. Spatial planning is a form of spatial structure and spatial pattern. Spatial structure is the arrangement of residential centers and network infrastructure systems and facilities that function as supporters of socio-economic activities of the community that have a functional relationship hierarchically in accordance with Republic of Indonesia Law Number 26 of 2007 concerning Spatial Planning. Space is a physical form of territory and is a place for humans to carry out their life activities that are closely related to culture [10]. There were a number of violations committed including the developer did not apply any other permits to the Cipta Karya office. The developer claims to have a plain site and sells at a low price. Prospective buyers are required to dredge their own land. The Cipta Karya Office has escaped the actions taken by the developer because they did not receive and issue site plan permits. Therefore residents of Wisma Tirto Agung stage IV who manage IMB are always rejected by Cipta Karya because their homes are in protected areas.

The developer does not notify residents about the status of the land. According to Mr. Andryan as the coordinator of Wisma Tirto Agung stage IV, at the time of buying the residents were not notified of the status of the land to be purchased. They also did not know whether the developer had known the allotment status of the land or did not even know. With no notice to the residents that the land is a conservation land, the residents who have quietly built a house.

Some residents have had sporadic letters. Sporadic land registration is the activity of registering land for the first time concerning one or several objects of land registration in an area or part of a village or urban village individually or in bulk. Sporadic land registration is carried out at the request of interested parties, namely the party entitled to the object of registration of the land concerned or its proxy. But the issuance of these sporadic letters needs to be investigated because the land they occupy is in a protected area.

Furthermore, there is an expansion of the new phase up to stage VII, according to Mr Andrey as the stage IV coordinator there is an expansion of stages up to stage VII, landfilling activities have begun. This proves the lack of supervision from the Surabaya City Government to prevent the expansion of new residential areas. The distance between the last house and the sea is estimated to be 3 kilometers. If there is new groundwater until stage VII, the distance will be closer to the sea and the reduced conservation area in the city of Surabaya.

Based on the results of this study it was found that the developer with the permission of the local village head to buy and sell land which was then worse. Residents who have bought do not know the legality of

their land that has problems. In accordance with the regulations, the Surabaya City Government has the right to take back the land rights that have been owned by the residents for the return of the function of the Pamurbaya protected area.

Actions and steps to restore the function of the East Coast Surabaya (Pamurbaya) protected area

Instruments concerning licensing are regulated by the government and regional governments according to their respective authorities in accordance with the provisions of legislation, namely Law Number 26 of 2007 Article 37, licensing provisions as referred to in Article 35 are regulated by the Government and regional governments according to their respective authorities in accordance with the provisions of the legislation. Space utilization permits that are not in accordance with the regional spatial plan are canceled by the Government and regional governments according to their respective authorities in accordance with the provisions of the legislation. Permit for space utilization issued and / or obtained not through the correct procedure, null and void by law and permit for space utilization obtained through correct procedures but later proved to be incompatible with the regional spatial plan, canceled by the Government and regional government in accordance with their authority.

When referring to the above law, the Surabaya City Government has the authority to take firm action to the residents of Wisma Tirto Agung. The following actions have been taken, among others: sealing residents' houses, and terminating power lines. The Cipta Karya and the Surabaya City Satpol PP have conducted sealing in every house of the residents at Wisma Tirto Agung stage IV. This was done as a firm action from the Surabaya City Government to be known by all residents who occupied it. Then the next action is (1) Surabaya City Government through PLN has cut off electricity for residents who occupy houses in conservation areas. (2) Hearing between the DPRD, Surabaya City Government, Developers, and residents of Wisma Tirto Agung. The Surabaya City Government conducted a hearing aimed at accommodating complaints both from the housing developer and residents of Wisma Tirto Agung. (3) Meetings from Cipta Karya, Cipta Karya has held a meeting to discuss this issue, according to the data obtained, namely 99 houses and 1 mosque located at Wisma Tirto Agung stage IV. But at the meeting only a few people were resigned from Wisma Tirto Agung. (4) Meetings from the Gunung Anyar Tambak Village, as well as the Cipta Karya Office, the Gunung Anyar Tambak Urban Village also held a meeting to discuss the same issues. This is done to accommodate the wishes of citizens and provide direction to citizens about how the steps should be carried out according to existing regulations. (5) Public Consultation, while the term public consultation along with the term public hearing are two terms that are popular with the development of participatory

processes in determining policies and formulating / drafting legislation which will certainly impact on citizens. Public consultation is a term often associated with the process carried out by the executive, while public hearings are more often related to the processes carried out in the council building by the legislature [11].

According to Law Number 20 of 1961, Article 1 is "For the public interest, including the interests of the nation and the state and the common interests of the people, so is the development interest, the president is in a compelling condition after hearing the Minister of Agrarian Affairs, Minister of Justice and the Minister concerned can revoke rights to land and objects that are on it. "From article 1 of Law No. 20 of 1961, it can be seen that the main conditions permitted to revoke land rights are for the public interest. As for the nature of the public interest can be found in article 1 of Presidential Instruction No. 9 of 1973: "An activity in the framework of implementing Development has the character of public interest, if the activity concerns (a) the interests of the nation and country, and / or, (b) the interests of the wider community, and / or, (c) the interests of many people / together, and / or, (c) the interests of development ".

Impact on Fulfillment of Community Rights at Wisma Tirto Agung Stage IV

In the CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) has explained that human rights are rights inherent in humans. One of them is the right to obtain a decent house is part of human rights. Every individual has the right to obtain protection from the outside environment with the existence of a house that is suitable to be inhabited. The author cites those related to this in General Comment No. 4 points 6 and 7, namely: The Sixth Session of the Committee on Economic, Social and Cultural Rights (1991), namely (6) The right to decent housing applies to all people regardless of age, economic status , group or other affiliation, and other factors. (7) The right to settlements must be guaranteed for everyone regardless of income. Proper shelter means adequate privacy, adequate space, security, sufficient light and airways (ventilation), basic infrastructure and locations that consider workplaces and other facilities at reasonable costs.

To implement a rule is not enough just to have good regulations (pro-society) and be carried out by a good government apparatus, but must be complemented by a legal culture of the community that complies with these rules. The legal culture of a society is determined in certain values that live in society and is used as a reference in making a rule. That is, when a law is made it must first look at the legal culture of the community that will be regulated. A rule that is not in accordance with the legal culture of the community will be in vain. For this reason, in making a rule, it must examine and

know in advance the legal culture of the community to be regulated [12]. In an effort to know the legal culture, one way is to conduct a scientific study of a regulation that will be made, usually known as the Academic Script (NA), a draft law. In an NA there is a scientific study of the sociological state of society towards a rule that will be made. Therefore, the existence of the NA must be in every draft of the legislation. In an NA there are 7 (seven) indicators and / or factors that must exist, known as ROCCIPI (Rules, Opportunity, Capacity, Communication, Interest, Proses and Ideology) [13].

RO 1 = There are still many people who choose to remain in their homes even though they are in the Pamurbaya protected area and do not have a Building Permit (IMB). Rule: Rules of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning, Republic of Indonesia Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands, Republic of Indonesia Law Number 39 of 1999 concerning Human Rights, and Regulations Regional City of Surabaya Number 12 of 2014 concerning the Surabaya City Spatial Planning for 2014-2034.

The solution provided is a notification to residents regarding the sanctions written in the Surabaya City Regional Regulation Number 12 of 2014 concerning the Surabaya City Spatial Planning for 2014-2034. In order for citizens to know what sanctions they received due to the development they did. Make efforts to supervise and cooperate with the community to preserve protected areas. In order not to find efforts to re-function and enforce the law in accordance with the sanctions written in the regulations.

In the aspect of Opportunity that can be observed, namely the negligence of the Surabaya City Government, a gap is used to build a house. The Surabaya City Government has the authority to restore the function of the Pamurbaya protected area. The Surabaya City Government also has the authority to impose sanctions. The solution is routine strengthening and supervision at Wisma Tirto Agung Phase IV to minimize land expansion and prevent new residents from building new homes. Providing compensation to residents of Wisma Tirto Agung Stage IV stage IV of the new residence must be properly considered.

In the aspect of Capacity, that is the lack of purchasing power of the people to buy land / houses at the minimum price of the city of Surabaya, so that they are tempted by the low prices provided by the developer. The Surabaya City Government was unsuccessful in preventing the construction of houses in the Pamurbaya protected area. The solution is asking for the relief of the cost of renting or buying land or houses specifically for residents who accept to leave Wisma Tirto Agung Phase IV and prioritize the importance of returning protected area functions and plan and conceptualize the provision of replacement

land for residents who occupy the Pamurbaya protected area.

In the aspect of Communication (communication), it is known the lack of socialization from the Surabaya City Government to the boundaries of residential areas with green open spaces (conservation) and lack of knowledge of protected area boundaries in their respective regions and lack of communication with the government below (Districts and Sub-Districts) The solution is that there is a need to conduct socialization to employees in related agencies and urban villages to better understand the boundaries of green open space, socialization to the parties closest to residents such as local RTs and RWs regarding several areas included in green open spaces, and the last was socialization to the people of Surabaya to avoid the same problems and improve good communication between the relevant agencies from the highest (Mayor, Service, District, Village) to the smallest (RT and RW).

In the aspect of Interest it is known that the actors: Surabaya City Government, PT. Tirta Agung Asri, and Citizen of Wisma Tirto Agung Stage IV. With the existence of cheap land prices, there is no other choice for them is an opportunity to have a residence in Surabaya, thus the need for housing is fulfilled. The Surabaya City Government prioritizes returning the function of protected areas in the interests of the people of Surabaya City.

The solution is that the Surabaya City government conducts socialization to the public so that before buying land in the Surabaya area it is obligatory to see the location is prohibited or not through the Cipta Karya Office. There needs to be direct direction from the Mayor of Surabaya to residents of Wisma Tirto Agung Stage IV stage IV that in each city there needs to be a protected area for urban balance. Putting aside the personal interests of citizens, the Surabaya City Government will strive to prioritize human rights of residents of Wisma Tirto Agung Stage IV by providing compensation for proper housing, and trying to avoid losses for residents of Wisma Tirto Agung Phase IV by paying attention to several aspects such as distance between children and home , distance between puskesmas or hospital and home.

Next is the Process (Procedure) aspect, namely the existence of sporadic letters that make the residents survive even though the process of making the IMB is rejected by the Cipta Karya Office. Issuance of sporadic letters by the Lurah that are not in accordance with the conditions specified by the Government. The solution is that the Surabaya City government conducts a performance evaluation to find out how citizens can get sporadic letters considering the house they live in is in the protected area of Pamurbaya. The Surabaya City Government gives sanctions to employees who are negligent to prioritize applicable regulations for

personal interests. Conduct an in-depth evaluation of how sporadic letters can be published, and the Government has the right to revoke the letter if found to be an error that is not in accordance with applicable regulations.

Ideology aspect (certain value) there is a habit of giving money from the developer to employees so that the licensing process at the beginning runs smoothly even though in the end it causes big problems. The solution needs to be given strict sanctions to residents and every employee who receives money. Examples of sanctions for citizens are that they cannot take care of IMBs in a certain period of time, resulting in deterrent effects. And sanctions for employees are demoted.

By using ROCCIPI analysis, we can find out the problems or culture that commonly occur in the community according to their categories, so that several alternative solutions can be taken to make a new regulation or revise an existing regulation.

Analysis of Impacts Caused by Eviction

The standard of living regarding decent housing has been recognized and explained in the Universal Declaration of Human Rights in 1948 and the International Economic, Social and Cultural Covenant of 1966. International treaties on other human rights have been recognized and refer to the right to adequate housing or some elements, such as the protection of a place to live and one's privacy. The right to a decent place of residence is relevant to all countries, they ratify at least one international agreement and are committed to protecting the right to adequate housing through an international declaration, the results of which are planned actions or results of the conference. Some regulations protecting the right to a decent place of residence or outline are the responsibility of the state to ensure adequate housing and living conditions for all countries. Referring to the State of Indonesia which has ratified in the form of a Law, the Surabaya City Government has the duty to provide and fulfill the rights of the community to a decent place of residence.

But if the implementation requires the Surabaya City Government to make a decision to do eviction for the sake of environmental sustainability, it can be analyzed as follows: (1) psychological aspects, namely for parents, the psychological impact on parents will create feelings of inability to provide a place to live for their children unable to provide protection to their children. If there is an eviction, it becomes a burden of thought for parents about whether the new residence is feasible or not. For children, the psychological impact of children is that indirectly a child will come to think about the burden of their parents and feel afraid of eviction, this can affect their achievement in school. (2) Economic aspects, for residents who have low incomes will find it difficult to adjust income with all new

expenditure costs such as the cost of renting or buying new homes, transportation costs from home to workplaces and school places of their children. (3) Social Aspects, adjustments are needed for children in the new environment, both in the environment around the house, and in the school environment. Adjustment for small children is not easy, emotionally they are used to playing with old friends, to start playing with new friends will be difficult.

CONCLUSION

Violations committed are not only from the developer, but from all parties, both the community and government officials. Some communities already know that the land to be built is conservation land but still builds houses to increase the number of houses in the area. The government is considered to have committed a violation by issuing a sporadic letter. The Surabaya City Government in this case has the right to take decisive action to restore the function of protected areas. The actions taken are in accordance with existing regulatory mechanisms. The impact caused by curbing will affect the psychological side of parents and their children, affecting the economic side of their income if the new shelter is too far from their place of work and far from other public facilities, and the latter is socially a child will difficult to adapt to the new environment that will be inhabited.

REFERENCES

1. Junia, B. R. (2016). Sengkarut Resistensi Pembangunan Jakarta: Dinamika Sinergisitas Pembangunan antara Kepentingan Pemerintah dengan Masyarakat. *Gema Keadilan*, 3(1).
2. Setiawan, R. P. (2010, October). Penggusuran Permukiman Liar di Stren Kali Jagir: Sebuah Tinjauan dari Sisi Hukum dan Humanisme. In *Seminar Nasional Perumahan Permukiman Dalam Pembangunan Kota*, 1, 1-12.
3. Fathani, S. M. (2012). Penggusuran sebagai Implikasi Kebijakan Ruang Terbuka Hijau dalam Perspektif HAM: Studi Kasus Penggusuran Taman Bersih, Manusiawi dan Berwibawa (Bmw). *Jurnal Kriminologi Indonesia*, 7(2).
4. Rogers, A. P. V. (2003). Humanitarian intervention and international law. *Harv. JL & Pub. Pol'y*, 27, 725.
5. Some, W., Hafidz, W., & Sauter, G. (2009). Renovation not relocation: the work of Paguyuban Warga Strenkali (PWS) in Indonesia. *Environment and urbanization*, 21(2), 463-475.
6. Aminah, S. (2015). Konflik dan Kontestasi Penataan Ruang Kota Surabaya. *MASYARAKAT: Jurnal Sosiologi*, 59-79.
7. Priyarsono, D. S. (2017). Membangun dari Pinggiran: Tinjauan dari Perspektif Ilmu Ekonomi Regional. *Journal of Regional and Rural Development Planning*, 1(1), 42-52.

8. Rahman, F., & Hasanah, U. (2017). Status Hak Ulayat Masyarakat Hukum Adat Yang Termasuk Dalam Kawasan Hutan Lindung (Kasus Desa Balung Kecamatan XIII Koto Kampar Kabupaten Kampar). *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum*, 4(1), 1-15.
9. Ichsan, A. C. (2018). Kinerja Pembangunan Kesatuan Pengelolaan Hutan Lindung Sungai Wain dan DAS Manggar di Provinsi Kalimantan Timur. *Jurnal Belantara*, 1(1).
10. Kartono, J. L. (2004). Ruang Manusia Dan Rumah Tinggal Suatu Tinjauan Perspektip Kebudayaan. Dimensi. *Journal of Architecture and Built Environment*, 27(2).
11. Burov, V., Patarakin, E., & Yarmakhov, B. (2012). A crowdsourcing model for public consultations on draft laws. In *ICEGOV*, 450-451.
12. Cotterrell, R. (2017). *Law, culture and society: Legal ideas in the mirror of social theory*. Routledge.
13. Moh, M. M. (2010). *Konstitusi dan Hukum dalam Kontroversi Isu*. Rajawali Pers. Jakarta.