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Controlling The Use of Space Through Licensing Instruments: Indonesian Law No. 26 of 2007 Base

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Abstract

This research aims to determine the legal concept of controlling the use of space through licensing instruments and to know the concept of licensing as a form of space utilization control instrument. Research results show that the government and regional governments regulate provisions regarding licensing instruments according to their respective authorities in accordance with statutory provisions. Spatial Planning Law Number 26 of 2007 regulates as follows: (a) Spatial use permits that are not in accordance with regional spatial planning plans are canceled by the government and regional governments according to their respective authorities in accordance with the provisions of laws and regulations; (b) Space utilization permits issued and or obtained without going through the correct procedures are null and void by law; (c) Spatial utilization permits obtained through the correct procedures but later proven to be inconsistent with the regional spatial layout plan, are canceled by the government and regional governments in accordance with their authority; (d) For losses incurred as a result of the cancellation of the license as referred to in paragraph (e), an appropriate compensation may be requested from the agency issuing the permit; f) Space utilization permits that are no longer suitable as a result of changes to the regional spatial layout plan can be canceled by

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	the government and regional governments by providing proper compensation; (g) Every government official authorized to issue spatial utilization permits is prohibited from issuing permits that are not in accordance with the spatial layout plan.

1. Introduction

Spatial use control is an integral part of the spatial planning process (Eisen, L., & Lozano, 2009). Indonesian law number 26 of 2007 concerning Spatial Planning, as well as Government Regulation No. 15 of 2010, stipulates that controlling the use of space is an effort to realize orderly spatial planning, which is one of the main aspects of spatial planning (Amiludin, A., & Asmawi, 2020). Licensing for the use of space is a form of control over the use of space that aims to make the use of space work following the spatial functions stipulated in the spatial plan that the government and the community have agreed upon in the form of an operational policy on spatial use relating to the determination of location, quality of space and layout. Buildings following applicable laws and regulations, customary laws and customs.

The spatial use permit instrument is a permit related to a spatial use permit that, according to the provisions of laws and regulations, must be owned before the implementation of spatial use (not only civil but also not criminal) related to the public interest, unilateral and binding, so that if a legal dispute arises from licensing, the settlement is carried out in the State Administrative Court (Kenchington & Day, 2011).

Types of permits are in the form of licenses: permits for certain activities (SIUP, Principle Permit, IUT, Route Permit, SIM, etc.) Permits related to location, as well as utilization and quality of space. Based on the authority, permits issued by the central and regional governments are in the form of licenses and permits (Finder, J., & Reiness, 1996). Space utilization permits consist of 3 (three) types of permits which have a hierarchical structure, as follows:

1. Permits for allotment and acquisition of land related to determining investment locations and acquiring land in the form of Location Permits (IL).
2. Land use permits are related to spatial quality development plans in the form of a Site Plan Agreement (PSP).
3. Building permits are related to the development of spatial planning and building layout in the form of a Building Permit (IMB).

Spatial utilization in its implementation is not always in line with the established spatial plan. This condition implies that in order to realize the creation of orderly spatial development, measures to control spatial use are needed. The tendency for deviations can occur because spatial planning products pay little attention to aspects of implementation or vice versa, that space utilization pays little attention to spatial planning. Spatial utilization control is carried out so that spatial utilization can proceed following the spatial plan (Berkley, 1996). Several factors, including market development pressure on space, unclear control mechanisms, and weak law enforcement cause this discrepancy or violation. So far, there have been many CityorRegency Spatial Plans to other detailed plan documents that have been prepared and control instruments that already have a legal basis but have not been implemented properly due to technical problems related to these control instruments. Based on some of the abovementioned problems, this writing will examine the legal concept of controlling space use through licensing instruments based on Law Number 26 of 2007 concerning Spatial Planning.

2. Materials and Methods

This paper uses the scientific method to obtain and process the data that has been obtained. To obtain these data, the author uses library research methods. Furthermore, the data that has been collected is processed using data processing methods consisting of induction method, deduction method, and comparison method. These methods are used in accordance with the needs of their use to obtain results that can be accounted for, both scientifically and scientifically.

3. Results and Discussions

The Legal Concept of Controlling Space Utilization through Licensing Instruments

Licensing Law Concept

Licensing instruments are a control mechanism and mean for development regulation. The permit is to control every activity or behavior of a person or entity that is preventive (Spiller, 1995). Permits are one of the instruments most widely used in administrative law. Spatial use permits are given to prospective space users who will carry out space utilization activities in an area or zone based on a spatial plan, intended to : (a) Guarantee the use of space following the spatial plan, zoning regulations, and minimum service standards in the field of spatial planning; (b) Prevent the negative impact of space utilization; (c) Protect the public interest of the wider community.

According to the dictionary of legal terms, permission (verguning) states that Oversheidstoestemming dood wet of wet of verordening vereist gesteld voor tal van handling waarop in het algemeen belang speciaal toezicht vereist is, maar die, in het algemeen, niet als on wenselijk worden beschowd (perkenaanor permission) from the government based on laws or government regulations required for actions that generally require special supervision but which are generally not considered things that are completely undesirable). It can be said that in the licensing system, the government has a stake in all forms of the course of activities carried out by certain communities so that there is an oversight that benefits all parties. Philipus M. Hadjon's understanding of permission can be divided into two, namely (Hadjon, 2008):

a. permission in a broad sense

Permits are one of the most widely used instruments in administrative law. The government uses permits as a juridical means to control the behavior of citizens. Permits, in a broad sense, are an agreement from the authorities based on laws or government regulations to deviate from the provisions of the prohibition of law; by giving permission, the authorities allow people who request it to carry out certain actions which are prohibited. It concerns the application of an action that, in the public interest, removes special supervision over it.

b. permission in the narrow sense

Permits, in the narrow sense, are binding on a regulation. Permits are generally based on the desire of legislators to achieve a certain order or to prevent bad conditions. The goal is to regulate actions that the legislator does not entirely consider reprehensible but which he wishes to be able to exercise moderate control over.

In essence, permission in the narrow sense is that an action is prohibited unless permitted, with the aim that certain limits can be carefully given for each case in the provisions pertaining to permission. So the problem is not just to give permission in very special circumstances but to have the actions that are allowed to be carried out in a certain way (stated in the provisions).

In general, licensing is a law regulating public relations with the state if a community requests a permit. Through permits, the community has businesses or relationships with the local government. Minister of Home Affairs Regulation Number 24 of 2006 concerning Guidelines for One-Stop Integrated Services as described in Article 1 paragraph (8) that a permit is a document issued by a regional government based on a regional regulation or other regulation which constitutes proof of legality, declaring the legitimacy or permissibility of a person or entity to carry out a particular business or activity. Then paragraph (9) states that Licensing is the granting of legality to a person or business act or certain activity, either in the form of a permit or business register.

In general, it can be stated that the purposes of a permit are:

1) The desire to direct (striven: to control) certain activities, for example, Building Permits
2) Permits to prevent harm to the environment, for example, Factory Building permits.
3)The desire to protect certain objects, such as permission to fly and dismantle monuments.
4) Permits want to share objects that are few, for example, occupant permits in densely populated areas.

According to Akhrorov (2022), the licensing mechanism and issued permits are intended for administrative control and supervision. They can be used to evaluate the conditions and stages of development to be achieved, as well as to control the direction of change and evaluate conditions, potentials, and obstacles touched to change. , then the purpose of licensing in the State Administration is;

a) There is a legal certainty
b) Protection of public interest
c) Prevention of environmental damage or pollution
d) Equitable distribution of certain goods.

Viewed from the development side of government and community development, the licensing function can affect the implementation of the development program;

1) From the government side, licensing provides:
   a) Helping the government to implement regulations or provisions contained in practice to regulate order following the permit requested;
   b) As a source of regional income, namely with a request for a permit, the government's revenue will directly increase because each permit issued by the applicant must pay a levy in advance. The more income in the fees field, the final goal is to finance development.
2) From the community's point of view, the purpose of granting a permit is:
   a) To obtain legal certainty;
   b) To obtain certainty of rights;
   c) To make it easier to get facilities

The authority of the state administration in running the government is obtained through attribution, mandate, and delegation. In practice, these three things are combined because they relate to decentralization, deconcentration, and co-administration principles. Law Number 23 of 2014 concerning Regional Government stipulates that with these conditions, the regional government enforces a provision regarding licensing that can increase regional income and carry out an orderly administration. Permits that local governments can apply are:

a. Location permission.
b. Land Use Permit (IPPT).

c. Building Permit (IMB).
d. Nuisance Permit (HO).
e. Tourism Business Permit (SUIK).
f. Advertising Permit.
g. Permit for Use of Land and Buildings Owned or controlled by the government.
h. Route Permit.
i. Sidewalk Usage Permit.
j. Permit for Making Jalam Entrance Yard.
k. Damija Excavation Permit (Road Owned Area).
l. Land Development Permit.
m. Permit for Building Roads in Residential Complexes, Shops, and the like.
n. Permit for Utilization of Billboard Piling Points, People's Crossing Bridges, and the like.
o. Company Registration Certificate (TDP).
p. Trade Business License.
q. Industrial Business PermitorIndustrial Registration Certificate.
r. Building Register Sign.
s. Surface Water Extraction Permit.
t. Permit for Disposal of Wastewater to Water Sources.
u. Permit to change the canal or river bottom's flow, shape, dimensions, and slope.
v. Permit for changing or constructing buildings and irrigation networks and strengthening the community's embankments.
w. Track construction permits that are below or above it.
x. Permit for the use of irrigation structures and land in the border area channel or river.
y. Permit for the use of springs and irrigation areas

Permits are when the making of regulations generally does not prohibit an act but still allows it as long as it is carried out in a manner determined for each concrete matter, then the decision of the state administration which permits said action is permissive. Prajudi argued that permission (verging) is a stipulation that is a dispensation rather than a prohibition by law. In general, the article of the relevant law reads: prohibited without permission (to do) and so on. Furthermore, the prohibition is followed by details of the terms, criteria, and so on that need to be met by the applicant to obtain a dispensation from the prohibition, accompanied by stipulations of procedures and implementation instructions for the relevant State Administration officials.

Provisions issued by the government have their respective functions, as well as provisions regarding licensing have functions, namely:
1) As an orderly function, it is intended that permits or any places of business, buildings, and other forms of community activity do not conflict with each other so that order can be realized in every aspect of community life;
2) As a regulatory function, it is intended that existing permits can be implemented under their designation so that there is supervision over the misuse of the permits that have been granted; in other words, this regulatory function can also be referred to as a function owned by the government.

Elements of Licensing

Permits are government actions in terms of or based on statutory regulations to be applied to concrete events according to certain procedures and requirements. From this understanding, there are several elements in licensing, including:

a. Authority

According to Sennett (1993), authority is the power to carry out an action or issue letters of permission from an official on behalf of the minister while the authority is still in the hands of the minister (delegation of authority). One of the principles in the rule of law is wetmatighaid van bestuur or government based on statutory regulations. In other words, every legal action by the government, both in carrying out regulatory and service functions, must be based on the authority granted by the applicable laws and regulations.

b. Permit as a Form of Decree

In a modern rule of law, the duties and authorities of the government are not only to maintain order and security but also to strive for the general welfare. The duty and authority of the government to maintain order and security is a classic task still maintained today. In order to carry out this task, the government is given authority in the regulation field, from which the function of this regulation emerges several juridical instruments to deal with individual and concrete events, namely in the form of decrees.

Based on the types of stipulations, permits include constitutive stipulations, i.e., stipulations that give rise to new rights that were not previously owned by a person whose name is stated in the stipulation, or bachikkingen welke its toestaan wat tevoren niet geoorloofd was (a decree that allows something that was not previously permitted). Thus, a permit is a juridical instrument in the form of a constitutive stipulation used by the government to deal with or determine concrete events. As a stipulation, the permit is made with the terms and conditions that apply to the general stipulations, as mentioned above.

Licensing as a Form of Space Utilization Control Instrument

According to Article 37 of Law Number 26 of 2007 concerning Spatial Planning stipulates that:
a. The government and regional governments regulate licensing according to their respective authorities in accordance with statutory provisions.
b. Spatial use permits that are not in accordance with the regional spatial layout plan are canceled by the government and regional governments according to their respective authorities in accordance with the provisions of laws and regulations.
c. Space utilization permits issued and or obtained without going through the correct procedures are null and void by law.
d. Spatial use permits obtained through the correct procedures but later proven not following the regional spatial layout plan are canceled by the government and regional governments following their authority.
e. For losses incurred due to the license cancellation, as referred to in paragraph (4), appropriate compensation can be requested from the permit agency.
f. Spatial use permits that are no longer suitable due to changes to the spatial layout plan can be canceled by the government and regional governments by providing appropriate compensation.
g. Every government official authorized to issue spatial use permits is prohibited from issuing permits that are not in accordance with the spatial plan.

Furthermore, Article 163 PP No. 15 of 2010 concerning the Implementation of Spatial Planning states that utilization permits can be in the form of principle permits, location permits, land use utilization permits, building construction permits, and other permits based on statutory provisions.

Principle and location permits are granted based on the district or city spatial layout plan. Permits for the use of land use are granted based on location permits. While building permits are granted based on detailed spatial plans and zoning regulations.

As for the imposition of sanctions, as an instrument to control the use of administrative sanctions, the forms of administrative sanctions imposed can be in the form of written warnings, temporary suspension of activities, temporary suspension of public services, closure of locations, revocation of permits, cancellation of permits, demolition of buildings, restoration of spatial functions, indoor administrative fines (Hadjon, 2008). Among the spatial use control instruments, the one that has the most significant role is licensing because permits have a preventive function or prevent the occurrence of spatial or environmental problems. This permit is the most powerful instrument to direct spatial planning that is sustainable and environmentally sound.

Article 1 paragraph (32) of Law Number 26 of 2007 concerning Spatial Planning states that permits are required for space utilization activities following statutory provisions. Spatial use permits obtained through the correct procedures but later proven not by the regional spatial layout plan can be canceled by the government and regional governments following their authority.

There are several forms that contain the meaning of permits, such as dispensations, permits, and concessions. Dispensation is a decision by the state administration that permits actions that are generally prohibited but are permissible and concrete. Concessions are important for the public, but private parties can participate if the government intervenes. The government and regional governments regulate licensing provisions according to their respective authorities following statutory provisions. The government and regional governments cancel spatial use permits not per the regional spatial layout plan according to their respective authorities following the provisions of laws and regulations. Spatial use permits issued indoors and obtained without going through the correct procedures are null and void. Spatial use permits obtained through the correct procedures but later proven not per the regional spatial layout plan are canceled by the government and regional governments following their authority.

For losses incurred due to the license cancellation, appropriate compensation can be requested from the licensing agency. Spatial use permits that are no longer suitable as a result of changes to the spatial layout plan can be canceled by the government and regional governments by providing proper compensation. For losses incurred due to the cancellation of the license as above, appropriate compensation can be requested from the licensing agency. Spatial use permits that are no longer suitable due to changes in spatial planning can be canceled by the government and regional governments by providing proper compensation. For losses incurred due to the cancellation of the license as above, appropriate compensation can be requested from the licensing agency. Spatial use permits that are no longer suitable as a result of changes to the spatial layout plan can be canceled by the government and regional governments by providing appropriate compensation.

Every government official authorized to issue spatial use permits is prohibited from issuing permits that are not in accordance with the spatial plan. Further provisions regarding procedures for obtaining permits and procedures for a proper replacement, as referred to above, are regulated by government regulations. The spatial planning process is a process for determining the spatial structure and spatial pattern, which includes the preparation and determination of spatial plans. Meanwhile, spatial use is defined as an effort to realize the spatial structure and pattern according to the spatial plan through the preparation and implementation of programs and their financing. The implementation of spatial use is intended to ensure the continuity of community life in a quality manner and to realize sustainable development and be carried out in an integrated manner.

Government Regulation Number. 15 of 2010 is guided by the spatial plan that every pace of regional development is always followed, supervised, and properly controlled in order to achieve the objectives of the regional spatial layout plan, namely the optimal utilization of space, harmony, and

justice. For this reason, control and prevention facilities are needed, which are manifested in the form of permits.

Control over the use of space by the government will not be successful without the support of the community and all parties involved in development. Control instruments are only tools that function as they should if all parties wish to use them properly. The government, with full awareness, oversees every activity so that it is in accordance with the existing plan. The community can also assist the government in controlling the use of space by reporting to the government any space utilization activities that are not in accordance with the spatial plan. The government must also take strict action against any activities that violate it.

Licensing instruments are regulated by the government and regional governments according to their respective authorities in accordance with the provisions of Law Number 26 of 2007 concerning Spatial Planning stipulates (a) Spatial use permits that are not in accordance with the regional spatial layout plan are canceled by the government and regional governments according to their respective authorities -each in accordance with the provisions of the legislation; (b) Space utilization permits issued and or obtained without going through the correct procedures are null and void by law; (c) Spatial utilization permits obtained through the correct procedures but later proven to be inconsistent with the regional spatial layout plan, are canceled by the government and regional governments in accordance with their authority; (d) For losses incurred as a result of the cancellation of the license as referred to in paragraph (e), can be asked for proper compensation from the licensing agency; f) Space utilization permits that are no longer suitable as a result of changes to the spatial layout plan can be canceled by the government and regional governments by providing proper compensation; (g) Every government official authorized to issue spatial utilization permits is prohibited from issuing permits that are not in accordance with the spatial layout plan; and (h) Further provisions regarding procedures for obtaining permits and procedures for proper replacement as referred to are regulated by government regulations. Everyone who violates the provisions as stated above is subject to administrative sanctions in the form of a written warning; Temporary suspension of activities; Temporary suspension of public services; location closure; license revocation; license cancellation; Demolition of buildings; Room function restoration; indoor administrative fines.

4. Conclusion

The government and regional governments regulate provisions regarding licensing instruments according to their respective authorities in accordance with statutory provisions. Spatial Planning Law Number 26 of 2007 regulates as follows: (a) Spatial use permits that are not in accordance with regional spatial planning plans are canceled by the government and regional governments according to their respective authorities in accordance with the provisions of laws and regulations; (b) Space utilization permits issued and or obtained without going through the correct procedures are null and void by law; (c) Spatial utilization permits obtained through the correct procedures but later proven to be inconsistent with the regional spatial layout plan, are canceled by the government and regional governments in accordance with their authority; (d) For losses incurred as a result of the cancellation of the license as referred to in paragraph (e), an appropriate compensation may be requested from the agency issuing the permit; f) Space utilization permits that are no longer suitable as a result of changes to the regional spatial layout plan can be canceled by the government and regional governments by providing proper compensation; (g) Every government

official authorized to issue spatial utilization permits is prohibited from issuing permits that are not in accordance with the spatial layout plan.

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