

Application of Zoning Regulation in the Municipal Spatial Planning System Under the New Spatial Planning Law 26/2007

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1. Introduction

Indonesian Spatial Planning Law 24/1992 (Law 24/1992) failed to apply municipal detail spatial plan as the control tools of urban development. This law has no certain standards or indicators. Then, the control process was conducted as the arbitrary process in urban development.

To overcome the problem, the new law (Law 26/2007) applies municipal zoning regulation (ZR) instead of the detail plan's function in Law 24/1992. Expectedly, by applying ZR, development control will be improved. In response to this amendment, all municipal spatial plans must be revised until 2010.

Hierarchically, ZR is derived from the detail municipal spatial plan (*Rencana Detail Tata Ruang Kota*-RDTRK) of law 26/2007. RDTRK is derived from the municipal general spatial plan (*Rencana Tata Ruang Wilayah Kota*-RDTWK). On this hierarchical situation, this article argues that the future ZR administration faces similar problem as Law 24/1992. Since the RTRWK and RDTRK have uncertain definition of urban land use and the development, the proper administration of ZR can not be assured.

This article firstly, overviews the fact of RDTRK application in controlling the development under Law 24/1992. Secondly, the aim of the improvement (Law 26/2007) is also overviewed. Thirdly, based upon the similar circumstance of ZR and RDTRK of Law 24/1992, the future administration of ZR is discussed. Finally, some concluding remarks are pointed out.

2. Fact of RDTRK Administration under Law 24/1992

Law 24/1992 regulated that RTRWK and RDTRK bind the actual use and development of urban land. RTRWK regulates land use of the whole urban area. Then, RDTRK regulates the detail criteria of the development in each block of urban area. RDTRK became the basic regulation in assessing urban development in the process of development permission. Figure 1 shows the hierarchical system of Indonesian municipal spatial plan.

In reality, the development criteria of RDTRK has no certain indicator and legal basis for the application¹⁾. It was worsened by the serious incapability of municipal governments in administering their plan^{2),3)}. For the development permission, the proposed development was assessed based upon the municipal government's arbitrary interpretation over the plan's criteria²⁾.

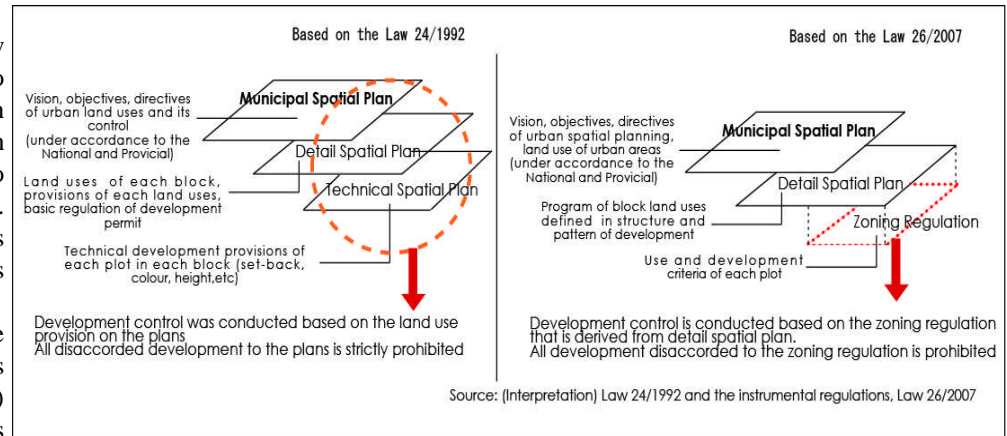


Figure 1. Hierarchical system of municipal spatial plan.

Moreover, the authority of municipal government in plan administration and public involvement gives opportunity in legitimating the disaccorded development. Andy Oetomo revealed that many municipalities performed the development permission as a tool in escalating their local income. For the escalation, municipal government often revised their plans with lack of spatial considerations and intransparent process⁴⁾.

3. Improvement of Indonesian Spatial Planning System and development control

A. Promoted ZR

According to Law 26/2007, ZR is derived from the RDTRK. RDTRK is 5 years plan that defines zoning of each block of urban area. RDTRK may not be developed by municipal government when RTRWK is sufficient in defining the block. RTRWK is the 10 years plan that defines the general land use of the whole urban areas. RTRWK and RDTRK may be built and revised by municipal government every 5 years or anytime when necessary.

For practical development activities, ZR binds the government and the property owners. Beside the detail development criteria such as setback, building envelopes, density, etc, ZR also defines the permitted and prohibited development, development assessment, monitoring, punishment, and the authorized organization.

B. Administration of Municipal Spatial Plan

Law 26/2007 regulates that the administration of municipal spatial plan and ZR is under the authority of the municipal mayor. This authority covers planning, plan application in development assessment, and plan revision. It covers also public involvement in process of administration.

The plan is reviewed under some conditions: 1. the practical disaccorded of development has been more than 50% of the planned development, 2. public proposal, 3. recent economy-social circumstance, 4. any alteration of government policies. To review the plans, municipal

government performs public announcement and public consultation.

4. Discussion

A. Comparison between RDTRK (Law 24/1992) and ZR (Law 26/2007)

Table 1 depicts the circumstances of RDTRK of Law 24/1992 and ZR of Law 26/2007 in their legal position, function, contents and legal status.

Based upon the table, RDTRK of Law 24/1992 and ZR of Law 26/2007 have similarities in their hierarchical position, function, content and legal status. However, they also have principal difference in level of contents. ZR regulates each plot of urban area with detailed use and rules. Here, RDTRK has no detail definition for each plot. Moreover, ZR has more powerful legal status in binding urban development with certain punishment for disaccorded action of urban development.

B. Possible constraint of ZR Administration

In the hierarchy of municipal spatial plan of Law 26/2007, ZR is placed as the derivative of RDTRK. It means that ZR should be in the accordance to RDTRK. Here, ZR replaces the position and function of RDTRK to regulate the actual developments.

Problem may appear because of Indonesian legislation problem related to urban development. In fact, disintegration of the sectoral authorities in urban development is still a serious problem in defining urban land uses. For instance, Department of General Work publishes the technical rules for urban development. However, other development rules for urban facilities, such as commercial, are authorized by other departments. Additionally, the land administration is separately authorized by National Board of Land Affairs.

Therefore, municipal government often find difficulties in defining land use and zoning of RTRWK and RDTRK. Then, these RTRWK and RDTRK bring uncertain interpretation of ZR. This situation is similar to the administration of RDTRK of Law 24/1992^{1),5)}.

Other serious problem is the different nature between the plans and ZR. RTRWK and RDTRK are essentially strategic documents to direct the urban development. These documents have to be adaptable and flexible to any changes⁶⁾. They are applied only for a specific period of development. In a different way, ZR contains the detail criteria to bind the actual activity of urban development. As a binding regulation, ZR should be static and rigid in its nature. However, as a derivative of the plans, ZR is also needed to be adaptable and flexible. Once the plan is revised, ZR must be also revised in order to be accorded.

Similar to the previous administration of RDTRK of Law 24/1992, the un-rigid ZR may be utilized to permit the disaccorded development. Here, the opportunity of plan revision may be utilized in promoting the disaccorded development. Then, it will be legitimate based on the revised ZR.

So far, there is no definition of the proper ZR position and function. However, the circumstance of ZR in many countries may provide a hint. In USA, ZR is independent from the plans. It is not a part or derivative of the plan⁷⁾. ZR is administered as the basic rule of development activities, includes the planning⁶⁾. ZR is also legalized as the national

Table 1. Comparison RDTRK of Law 24/1992 and ZR of Law 26/2007

	RDTRK (Law 24/1992)	ZR (Law 26/2007)
Position	Derived from RTRWK.	Derived from RDTRK
Function	Legal framework of development permission	Legal framework of development permission
Content		(zoning is existed in RDTRK of Law 26/2007)
	Detailed use of urban block (defined in prohibited- allowed activities)	Detailed use of each plot of urban area (defined in prohibited- allowed activities)
	Detailed rules of urban block	Detailed rules of each plot of urban area
	Guidelines of development permission	Guidelines of development permission
Legal Status	Municipal Mayor Regulation (issued by Municipal Mayor)	Municipal Regulation (issued by the Municipal Mayor with the approval of the municipal council)
	Binding the land owner and the government (undefined in punishment system)	Binding the land owner and the government (defined in punishment system)

regulations in USA, UK, Japan, or other countries⁸⁾. Although ZR accommodates the municipal situations, ZR is under the authority of the national government.

For the future constraint of ZR of Law 26/2007, separation between ZR and plans may provide a solution. By the separation, the regulatory nature of ZR can be assured. ZR will be the basic consideration in defining land use and zoning in RTRWK and RDTRK. Then, the actual process of plan application can be secured. Actually, it is in conformity to the aimed functions of ZR by law 26/2007. This Law defines that one of ZR function is a guideline of the land uses and the development⁸⁾.

5. Conclusion

The future administration of ZR faces the same uncertainty as the previous RDTRK application under the Law 24/1992. As the derivative of the plan, ZR is applied based on the interpretation of land use and zoning definitions of the plans. Since the definition of land use and zoning is uncertain, ZR may be also uncertainly interpreted. Wide interpretation of the plans may cause improper application of ZR in controlling the development. In this situation, the separation of ZR from the plan (ZR is not built as the derivative of the plan) is the solution in securing the urban development control.

6. References

- 1) Firman T.: *Major Issues in Indonesian Urban Land Development*, Land Use Policy Vol. 21, p. 327-355, 2004
- 2) Kidokoro T.: *Improving Spatial Planning System and Development Control Mechanisms toward Sustainable Urban Development in Asia Cities*, 4th Symposium, World Bank, 2007
- 3) Nurzaman S.S.: *Capability of Municipal Government as the One of Indicator of Local Autonomy*, Book of Selected Working Paper of Thought and Practice of Planning, ITB, Indonesia, 2002
- 4) Oetomo A.: *Transition of Indonesian Local Autonomy: Dilemmas of Sustainable Spatial management*, Book of Selected Working Paper of Thought and Practice of Planning, ITB, Indonesia, 2002
- 5) Ngoedijo W, 2002: *An Approach of Evaluation of Development of Local Capability in Local Development Planning*, Book of Selected Working Paper of Thought and Practice of Planning, ITB, Indonesia
- 6) Zubir I: *Zoning Regulation as the instrument of spatial planning*, posted on 31/12/2007, retrieved from <http://imazu.wordpress.com/2007/12/31/zoning-regulation-sebagai-instrumen-dalam-penataan-ruang> on 1/12/2009
- 7) Bardley C. Karkkainen: *Zoning a Reply to The Critics*, posted on 1994 retrieved from <http://www.law.fsu.edu/journals/landuse/vol101/karkein.html>, on 2/1/2010
- 8) Pramono A: *Urgency of Regulating Zona In Controlling Local Space Uses*, Municipal Government of Sleman District, Sleman, Indonesia, 2009