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## Validity Publishing the Conformity of Space Use Activities (Kkpr) That Are Not in Accordance With the Spatial Plan

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**Abstract:** This research aims to determine the validity of issuing conformity in space utilization activities (KKPR) that are not in accordance with the spatial plan. The research method used is normative legal research. The approach used to examine various laws and regulations related to the regulation of obligations for the issuance of KKPR in accordance with the Regional Spatial Plan. The results of the analysis show that the policy regarding the obligation to issue KKPR in accordance with the Regional Spatial Plan has been regulated and stipulated in the Legislative Regulations. This is a basic requirement for submitting a KKPR. Apart from that, this validity is based on several aspects including authority, suitability of procedures and substance. In the event that the KKPR has been issued in accordance with its authority and has gone through appropriate procedures, but there are deficiencies in substance, then it can be concluded that the published KKPR is invalid.

**Keyword:** Concept of Authority, Licensing Review, KKPR.

### INTRODUCTION

Spatial planning, both in the macro and micro scope, is currently receiving increasingly serious attention. Seeing the fact that the population and needs are increasing, both qualitatively and quantitatively. Likewise, increasingly advanced technology is directed as an effort to provide facilities to meet increasing human needs, but on the other hand, whether we realize it or not, basically the available space or land remains as before.

In an era of rapid urbanization, space utilization has become a crucial aspect in sustainable city development. Space utilization is not only related to physical infrastructure, but also has a significant impact on social, economic and environmental life. Therefore, spatial planning and related regulations are the main basis for ensuring that space utilization is carried out efficiently, sustainably and in accordance with applicable legal provisions.

In this context, legal suitability is a very important thing to consider in every space utilization activity. Legal compliance covers various aspects, such as licensing, zoning, environmental protection, and property rights. Even though there are various regulations governing space utilization, discrepancies often occur between field practices and applicable legal provisions.

Permits are related to authority and power, so that the licensing system chosen is determined by the licensing paradigm developed in Indonesia. Permits are the government's responsibility related to the delegation of authority by the state through statutory regulations to control the behavior of its people in utilizing state assets through state administrative legal instruments as public law through licensing mechanisms. H. Wallerdan and J.H. Waller Hunter in his article "Millieuwetgevingen Planning in Indonesia" *Millieu en Recht*, mentions Indonesia as a licensing country (een vergunningenland).

In 2007, the government enacted Law Number 26 of 2007 concerning Spatial Planning (UUPR), in this law it explicitly states that space is a container that includes land space, sea space and air space, including space inside the earth as one territorial unity, where humans and other creatures live, carry out activities, and maintain their survival. It was further emphasized that the implementation of spatial planning aims to create a national regional space that is safe, comfortable, productive and sustainable based on the Archipelagic Insight and National Resilience with First, the realization of harmony between the natural environment and the artificial environment, Second, the realization of integration in the use of natural resources and artificial resources with attention to human resources; and Third, the realization of protecting the function of space and preventing negative impacts on the environment due to the use of space.

With this statement, normatively the spatial planning law places its position as a forum for protecting environmental functions while encouraging integration between sectors which in the end is expected to prevent negative impacts on the environment due to the use of space. In contrast to previous spatial planning laws, this 2007 law strengthens the position of RTR products, as legal products that are binding and provide more certainty for all space utilization activities.

In its regulation, UUPR produces a plan product called a Spatial Planning Plan (RTR) which is determined in stages by statutory regulations. Spatial planning plans are the basis for all space utilization activities, which materially contain, First, regional spatial structure plans, Second, regional spatial pattern plans, Third, determination of strategic areas, Fourth, directions for space utilization, Fifth, provisions for controlling space utilization. The important thing about the material for regulating spatial planning is that there are attached maps of spatial structure, spatial patterns and determination of strategic areas which technically will be used as a basis for government decision making in accordance with its authority in granting spatial use permits, whether an activity is permitted to be carried out.

Currently, with the enactment of Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (UU Job Creation), it brings many changes related to spatial planning which, if observed, are basically form of simplification of regulations and permits. Just like other changes accommodated by the Job Creation Law, the main aim is to encourage the acceleration and expansion of investment and economic growth.

The first crucial change is related to spatial planning in the Job Creation Law, namely the elimination of space utilization permits. This permit was not immediately removed, but instead replaced with a model of "suitability of space utilization activities."

The reason is simple, the space utilization permit that has been used so far is considered to have increased the permits needed to start business activities. Meanwhile, with the suitability model for space utilization activities, business actors can use simpler mechanisms.

However, the suitability of space utilization activities is a much weaker form of supervision than its predecessor. The supervision provided is only an initial indication that an activity is in accordance with the space designation. Without being supported by field observations, this kind of monitoring mechanism has the potential to cause social conflict.

One of them is that business licensing for Micro and Small Enterprises (UMK) is no longer required, just registration is enough. Previously, the process that MSEs had to go through

was equated with large businesses, which ultimately made it difficult for those who wanted to start their business to process permits. In Article 115 of Government Regulation Number 21 of 2021, it is stated that space utilization activities carried out by Business Actors included in the MSE group do not go through the process of issuing suitability for space utilization activities, MSE actors make an independent statement that their business activities are in accordance with the RTR. This independent statement by MSE actors is a statement made by MSE actors independently stating that their business activities are in accordance with the RTR.

However, in practice the truth of this independent statement is very weak after a field review is carried out. There are several discrepancies in reality in the field, this is because the independent statement only contains a statement, namely the first, which states that business activities and activity locations are in accordance with the spatial plan. Second, stating that the business scale is in accordance with the total amount of business capital which is not more than five billion rupiah.

In the case of the first statement stating that business activities and activity locations are in accordance with the spatial plan, only looking at the suitability of the designation. In fact, the RTR which is the basis/reference for granting KKPR, contains zoning regulations which regulate what activities are permitted, permitted limitedly, permitted conditionally and not permitted. It is the limitations and conditions contained in the zoning regulations that cannot be implemented systematically in issuing KKPR. Thus, the suitability of the existing spatial layout is considered inappropriate and has weaknesses.

In this context, the importance of implementing the compatibility of space utilization activities with legal provisions becomes increasingly urgent. Legal suitability in space use does not only include licensing aspects, but also involves zoning, environmental protection, property rights, and principles of social justice. Therefore, there is a need for an in-depth legal review to understand the challenges and obstacles faced in ensuring legal suitability in space use.

A legal review of the implementation of suitability for space utilization activities will enable the identification and analysis of weaknesses and gaps in the existing regulatory system. With a better understanding of the legal aspects involved, it is hoped that appropriate solutions can be found to increase the effectiveness and efficiency of space use regulations.

In addition, through this legal review, best practices that have been applied in various contexts, both at the local, national and international levels, will also be explored. The experience of these best practices can be an inspiration in improving the existing space use regulatory system, so that conditions can be created that are more conducive to sustainable and inclusive city development.

Thus, this research has a very relevant aim and high urgency in overcoming the problem of legal suitability in the use of space. It is hoped that the results of this research can make a positive contribution in efforts to ensure that space use is carried out legally, sustainably and fairly for all parties involved.

Based on the background of the problem above, the author prepared legal research with the title "The Validity of Issuing Conformity to Space Utilization Activities (KKPR) That Are Not in Accordance with the Spatial Planning Plan".

The problem formulation contains article questions that must be explained in the discussion and answered in the conclusion.

## **METHOD**

The type of research used in this research is normative legal research. This type of research is a scientific research procedure to find the truth based on the logic of legal science from its normative side. Logic in normative legal research is built based on scientific discipline and the workings of normative legal science, namely legal science whose object is law itself, especially legal regulations as a structured whole of system. This type of legal research is prescriptive in nature by examining legal issues from the perspective of state positive law in the

system of statutory regulations as well as in court decisions that have permanent legal force, legal expert doctrines, and other literature material related to the research object.

The approach used to examine various laws and regulations related to the regulation of obligations for the issuance of KKPR in accordance with the Regional Spatial Planning Plan. Researchers will review existing rules and other relevant regulations. This approach is used to analyze relevant cases or published KKPR, providing precedents or legal considerations regarding the suitability of utilization activities (KKPR) that are not in accordance with spatial planning plans. Case analysis can help researchers understand the regulatory obligations for the issuance of KKPR in accordance with the Regional Spatial Plan.

## **RESULTS AND DISCUSSION**

### **Setting Of Obligations For Publishing The Conformity Of Space Use Activities (Kkpr) In Accordance With The Regional Spatial Plan**

KKPR is one of the permits related to all space utilization activities. KKPR consists of KKPR for business activities, KKPR for non-business activities and KKPR for activities of a national strategic nature. KKPR is published by the Online Single Submission (OSS) institution which is submitted to the Regional Government. The issuance of KKPR can also be used as a basis for land acquisition based on the assessment of activity applications regarding space utilization.

Suitability of Space Utilization Activities (KKPR), namely the suitability between the space utilization activity plan and the spatial planning plan. The form of the document can be Confirmation of the Suitability of Space Utilization Activities (KKKPR), Approval of the Suitability of Space Utilization Activities (PKKPR), or Recommendation for the Suitability of Space Utilization Activities (RKKPR).

\*KKPR confirmation is given if the Regional Government has prepared and provided a Detailed Spatial Planning Plan (RDTR) in digital form and according to standards.

\* KKPR approval is issued by the Central Government, given if the Regional Government has not prepared and provided a Detailed Spatial Planning Plan (RDTR).

\*Business actors submit applications for approval of the suitability of space utilization activities for their business activities to the Central Government through the electronic Business Licensing system in accordance with the provisions of statutory regulations.

\* KKPR recommendations are provided for activities of a national strategic nature.

Regulation of obligations for the issuance of Conformity of Space Utilization Activities (KKPR) in accordance with the Regional Spatial Planning Plan is regulated in several statutory regulations, including:

- a. Law Number 26 of 2007 concerning Spatial Planning (State Gazette of the Republic of Indonesia of 2007 Number 68, Supplement to State Gazette of the Republic of Indonesia Number 4725); as amended by Law Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming Law (State Gazette of the Republic of Indonesia of 2023 Number 41);
- b. Government Regulation Number 21 of 2021 concerning Implementation of Spatial Planning (State Gazette of the Republic of Indonesia of 2021 Number 31, Supplement to State Gazette of the Republic of Indonesia Number 6633); And
- c. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2021 concerning the Compatibility Implementation of Space Utilization Activities and Synchronization of Space Utilization Programs (State Gazette of the Republic of Indonesia of 2021 Number 330).

## **Regulation of Obligations for Issuance of KKPR Based on Law Number 26 of 2007 concerning Spatial Planning**

Land control is a policy to direct the control and ownership of land as well as the use and utilization of land so that it is in accordance with its intended purpose, improves the welfare of society as a whole and is sustainable. The target for land control is all land outside forest areas, both registered and unregistered. Meanwhile, the land owner subjects who are the targets of land control are individuals, legal entities and government agencies.

KKPR can function as land control on the grounds that it can direct use and utilization in accordance with spatial plans so as to prevent waste of natural resources and environmental destruction. Apart from that, the KKPR is the basis for land acquisition and is then a consideration in granting land rights. The relationship between the KKPR and the application for land rights is an instrument of land control, namely by providing an overview of the original land control and ownership before the land acquisition process.

Regional Spatial Planning (RTRW) is a planning document prepared by the government to regulate the use of space in an area. RTRW to create an orderly, harmonious and balanced spatial layout between environmental, economic, social and cultural aspects. This document functions as a guide for the government and community in managing and utilizing regional space for a certain period of time.

In practice, RTRW is intended to optimize space utilization, ensuring that space use is in accordance with regional potential and conditions in order to avoid land use conflicts and support sustainable development, namely ensuring a balance between economic development, social welfare and environmental preservation.

Apart from that, RTRW also aims to improve the quality of the environment by preventing and controlling the negative impacts of development activities on the environment and realizing regional resilience and security by anticipating and reducing the risk of natural disasters and maintaining regional security. RTRW is regulated in several legal regulations, namely:

- a. Law Number 26 of 2007 concerning Spatial Planning. Article 1 defines spatial planning as a process system for spatial planning, space utilization and control of space utilization. Then Article 5 states that spatial planning is carried out with the aim of creating a space that is safe, comfortable, productive and sustainable.
- b. Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Articles 14 to 26 regulate changes and simplification of business permits in the field of spatial planning. Then Article 185 states that RTRW must be integrated with business licensing through a risk-based licensing system.
- c. Government Regulation Number 21 of 2021 concerning Implementation of Spatial Planning. Article 1 explains regional space as part of a region which has the main function as living space for humans and other living creatures. Then Article 9 regulates the procedures for preparing, determining and implementing RTRW at the national, provincial and district/city levels.
- d. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2021 concerning Guidelines for Preparing Spatial Planning. Article 2 states that the preparation of RTRW must pay attention to environmental, social, economic and cultural aspects. Then Article 5 regulates the stages of preparing the RTRW, starting from preparation, formulation, study and planning.

## **Regulation of Obligations for Issuance of KKPR Based on Government Regulation Number 21 of 2021 concerning Implementation of Spatial Planning**

In Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning, its implementation consists of:

- a. Suitability of Space Utilization Activities for business activities;



- b. Suitability of Space Utilization Activities for non-business activities; And
- c. Suitability of Space Utilization Activities for activities of a national strategic nature.

The following is a study regarding the regulation of obligations for the issuance of KKPR as stated in Government Regulation Number 21 of 2021:

**Table 1 Regulation of Obligations for Issuance of KKPR in Government Regulation Number 21 of 2021**

Types of KKPR	Types of KKPR Contents as stated in PP No.21 of 2021	Formulation
KKPR for business activities	Obtained via OSS: <ul style="list-style-type: none"> <li>- Business activities for Non-MSEs:</li> <li>- Confirmation of the suitability of space utilization activities: based on the suitability of the location plan for space utilization activities with the RDTR</li> <li>- Approval of Space Utilization Activities: RDTR not yet available (assessment of documents for proposed space utilization activities for RTR, RZ KSNT and RZ KAW)Business activities for MSEs:                             <ul style="list-style-type: none"> <li>- Not going through the KKPR issuance process</li> <li>- Make an independent statement that their business activities are in accordance with the RTR</li> <li>- If the statement is not true, the space utilization activities will be guided by the Ministry/Institution and/or regional apparatus.</li> <li>- Business actors can apply for Business Licensing in accordance with statutory provisions.</li> <li>- Business actors can carry out space utilization activities after obtaining a business permit.</li> </ul> </li> </ul>	KKPR confirmation is given based on the suitability of the location plan for space utilization activities with the RDTR. <ul style="list-style-type: none"> <li>-RDTR is a Detailed Spatial Planning Plan which is a derivative of the Regional Spatial Planning Plan (RTRW).</li> </ul> So, it is very clear that the issuance of the KKPR must be in accordance with the RTRW. <ul style="list-style-type: none"> <li>- KKPR approval for business activities is given after a study is carried out using tiered and complementary principles:                             <ul style="list-style-type: none"> <li>a.Regency/City RTRW;</li> <li>b.Provincial RTRW;</li> <li>c.RTR KSN;</li> <li>d.RZ KSNT;</li> <li>e.RZ KAW;</li> </ul> </li> <li>-island/archipelago RTR; and/orNational Regional Spatial Plan.</li> <li>-For MSEs, they must make an independent statement that their business activities are in accordance with the RTR.</li> </ul>
KKPR for Non-Business activities	<ul style="list-style-type: none"> <li>a. Confirm the suitability of space utilization activities: Conformity of location of space utilization activities with RDTR</li> <li>b. Approval of suitability of space utilization activities: RDTR not yet available, assessment of documents for proposed space utilization activities for RTR</li> </ul>	
KKPR for National Strategic activities	<ul style="list-style-type: none"> <li>* Provided for space utilization activity plans contained in the RTR:- Confirm KKPR</li> <li>- KKKPR approval</li> <li>* which have not been included in the RTR: KKPR recommendations</li> </ul>	KKPR recommendations are given: <ul style="list-style-type: none"> <li>Considering the objectives of organizing spatial planning to create a safe, comfortable, productive and sustainable space.</li> </ul>

Source: analysis results, 2024

**Regulation of Obligations for Issuance of KKPR Based on Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of**

**2021 concerning Implementation of Suitability of Space Utilization Activities and Synchronization of Space Utilization Programs**

Provisions for implementing the Conformity of Space Utilization Activities in ATR/BPN Ministerial Regulation Number 13 of 2021 have the following contents:

**Tabel 2 Regulation of Obligations for Issuance of KKPR in ATR/BPN Ministerial Regulation Number 13 of 2021**

Contents of ATR/BPN Ministerial Regulation No.13 of 2021	Formulation
Implementation of Suitability of Space Utilization Activities	KKPR consists of: a. KKPR for business activities; b. KKPR for non-business activities; And c. KKPR for activities of a national strategic nature.
KKPR for business activities	1) Implementation of KKPR for business activities: KKKPR: suitability of the location plan for space utilization activities with the RDTR which has been integrated with the OSS System space utilization activities with RDTR which has been integrated with the OSS System 2) PKKPR: RDTR is not yet available or the available RDTR is not yet integrated with the OSS System. Assessment of documents for proposed space utilization activities for RTR, RZ KSNT, and RZ KAW 3) Assessment of documents for proposed Space Utilization activities is carried out through studies using tiered and complementary principles based on: a. Regency/City RTRW; b. RTRWP; c. RTR KSN; d. RZ KSNT; e. RZ KAW; f. Island/Archipelago RTR; and/or g. RTRWN.  Assessment of documents for proposed Space Utilization activities is carried out through studies that are in line with the objectives of Spatial Planning Implementation to create safe, comfortable, productive and sustainable spaces. 1) Assessment of documents for proposed Space Utilization activities through studies carried out by the Spatial Planning Forum. 2) The Spatial Planning Forum conveys the results of the KKPR

Contents of ATR/BPN Ministerial Regulation No.13 of 2021	Formulation
	discussion to the governor, regent or mayor. 3) Consideration of the results of discussions from the Spatial Planning Forum does not reduce the authority of governors, regents or mayors in issuing PKKPR. 1) 4) If necessary, a field inspection can be carried out to assess the proposed documents for Space Utilization activities
KKPR for non-business activities	* KKKPR: conformity of the location plan for space utilization activities with the RDTR which has been integrated with the OSS System PKKPR: RDTR is not yet available or the available RDTR is not yet integrated with the OSS System. *Assessment of documents for proposed space utilization activities for RTR, RZ KSNT, and RZ KAW

Source: analysis results, 2024

Based on a study of the regulatory obligations for the KKPR which have been outlined in statutory regulations, it can be formulated that conformity with the spatial planning plan is the main requirement for the issuance of the KKPR.

Initially, the development of spatial planning in Indonesia had not been followed by a special legal study, even if there was, it was still fragmentary, partial and not completely comprehensive. The existence of regional autonomy and giving freedom to regions to regulate their own regions in terms of administration, operations and so on is seen as a good policy step. However, when viewed from a spatial planning perspective, this often gives rise to new problems.

**Validity Of Suitability Of Space Use Activities (Kkpr) That Are Not In Accordance With The Regional Spatial Plan**

In carrying out public legal actions (publicrechts bestuurs handelingen), Government Officials must comply with the rules of Constitutional Law and Administrative Law, both statutory regulations and general principles of good governance (algemene beginsselen van behoorlijk bestuur) as a form of implementation of the principles of bestuur van rechtsmatigheid , namely that in administering government, government officials must always be based on the law. Conceptually, government legal actions must fulfill 4 minimum requirements, namely:

- a. bevoegheid (authority), namely carried out based on authority; geen juridische gebreken in de wilsvorming, namely there is no juridical deficiency in the formation of the will;
- b. forms and procedures, namely decisions expressed in a predetermined form and made according to predetermined procedures; the content and objectives of the decision are in accordance with the content and objectives of the basic regulations.

Based on the above, the aspects that constitute the legal requirements for a government legal action are the authority aspect, the aspect of not containing juridical deficiencies, the form and procedure aspect as well as the content and purpose aspect. In a juridical-normative or formal legal manner, the validity of government actions is determined based on aspects of authority, procedure and substance as regulated in Article 52 paragraph (1) of Law Number 30



of 2014 concerning Government Administration, which states that the conditions for the validity of decisions include being determined by officials. authorized person, made according to procedures, and the substance is in accordance with the object of the Decision. The validity of the decision is based on the provisions of laws and regulations and the General Principles of Good Government (AUPB).

## CONCLUSION

Based on the legal study as described in Chapter II, the following conclusions were obtained:

### 1. Setting Obligations For Publishing The Conformity Of Space Use Activities (Kkpr) In Accordance With The Territory Spatial Plan

The policy regarding the obligation to issue KKPR in accordance with the Regional Spatial Planning Plan has been regulated and stipulated in the Legislative Regulations. This is a basic requirement for submitting a KKPR.

### 2. Validity Of Suitability Of Space Use Activities (Kkpr) That Are Not In Accordance With The Regional Spatial Plan

This validity is based on several aspects including authority, suitability of procedures and substance. In the event that the KKPR has been issued in accordance with its authority and has gone through appropriate procedures, but there are deficiencies in substance, then it can be concluded that the published KKPR is invalid.

Based on the description above, in issuing KKPR it is very important to carry out supervision and carry out initial checks in the form of an assessment of conformity with the Spatial Planning Plan, so that space utilization can be realized in accordance with plans that have been planned at the national, provincial and district/city levels.

To minimize discrepancies with spatial plans, it is recommended that each province, district/city provide full access to the community to find out about existing plans in the area and coordinate before applying for permits through OSS.

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