

Administrative Law Enforcement against Urban Spatial Planning Based on the Spatial Planning Law



Rahmawan Dianto¹, Irma Cahyaningtyas²

^{1,2}Master of Legal Science, Faculty of Law Universitas Diponegoro

ABSTRACT: Law enforcement in administrative law which is used to control government policies that seek to realize legal ideals in order to create justice and peace in the life of society, nation and state. This study uses a normative juridical method. The results of the study concluded that administrative law enforcement in the implementation of urban spatial planning for permits issued by the government, includes supervision and enforcement of sanctions. Administrative sanctions generally have an institutional function, namely controlling prohibited acts. In addition, administrative sanctions are primarily aimed at protecting interests that are guarded by violated provisions.

KEYWORDS: Law Enforcement; Administration; and Government Policy.

INTRODUCTION

Basically, the earth, water and natural resources contained therein are intended for the greatest prosperity of the people (Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia). As the territory of Indonesia which consists of land, sea and air space must be utilized for the welfare of the community. Utilization of space as an effort to realize the spatial structure and order according to the spatial plan through the preparation and implementation of programs and funding (Article 13 of the Spatial Planning Law). In the implementation of the space utilization program, it is a development activity carried out by the government and the community to realize a spatial plan which is carried out in stages according to the time period stipulated in the spatial plan.¹

Spatial planning is aimed at realizing a safe, comfortable, productive and sustainable national territory space based on the archipelago's insight and food security by creating harmony between the natural environment and the artificial environment; the realization of integration in the use of natural and man-made resources by paying attention to human resources and the realization of spatial function protection and prevention of negative impacts on the environment due to spatial use.² Spatial planning is classified based on the system, area's main function, administrative area, regional activities and area strategic value. The utilization of spatial planning is divided into three areas, namely: National Territory, Provincial Spatial Planning and Regency / City Spatial Planning which includes land space, sea space and air space, including space within the earth (Article 15 of the Spatial Planning Law).

The process of utilizing space certainly has to be monitored and evaluated by observing and checking the suitability of spatial planning. However, if the process finds irregularities in spatial planning management, the party who commits the deviation will need law enforcement against the perpetrators. State Administrative Law Enforcement According to Soerjono Soekanto, is an activity to harmonize the relationship of values that are described in solid values or values and embody attitudes and actions as a series of defining the final stage of value to create (social engineering), maintain and maintain (social control) peaceful social life.³

Legal problems in Indonesia are inseparable from the problem of law enforcement which is influenced by three main problems: First, the law itself, which must be good in a legal sense (law) fulfills philosophical, sociological, and juridical elements. Adequate legislation. Second, it is law enforcement officers who are in charge of enforcing the law. Law enforcement officers really have to be the best institution in enforcing the law. Third, it is society, and the society that is enforced must accept the law and be well regulated. Fourth, is the supporting facilities and infrastructure.

Identical law enforcement is divided into two steps, namely enforcement of administrative sanctions law and enforcement of criminal law. Administrative sanctions are rules that determine the consequences of non-compliance or associated norm violations "de sanctie wordt gedefinieerd als: regels die voorschrijven welke gevolgen aan de niet naleving of de overtrading van de normen

¹ Ahmad Jazali, "Penegakan Hukum Penataan Ruang Dalam Rangka Mewujudkan Pembangunan Berkelanjutan", *Jurnal RechtsVinding*, Volume 6, Nomor 2, (2017), Hlm. 265.

² Pasal 3 Undang-Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang

³ Soerjono Soekanto, *Penegakan Hukum* (Jakarta: Bina Cipta, 1983).

Administrative Law Enforcement against Urban Spatial Planning Based on the Spatial Planning Law

verbonden worden"⁴. It should be emphasized that administrative sanctions are a negative consequence of violations of administrative and legal obligations and duties. The existence of administrative sanctions to respect and maintain certainty of the legal provisions that have been formulated.

If referring to the spatial planning law, administrative law enforcement is the first step to provide a warning if an action has occurred that is contrary to the applicable Program Operating Standards. The application of administrative sanctions cannot be separated from the general policy which aims to discipline, provide legal certainty and guarantee protection of the rights of everyone from disturbance, as is the case with urban spatial planning, that an enforcement of administrative sanctions is needed to provide certainty and respect for formulated regulations. and must be executed. So with law enforcement, it is hoped that Urban Spatial Planning, administrative sanctions in the form of government coercion (*bertuursdwang*) can be seen as an effective tool to use. Therefore, the writer tries to study and analyze about. How is State Administration Law Enforcement in the National Law System and How is Administrative Law Enforcement Regarding City Spatial Planning Based on Law Number 26 of 2007 concerning Spatial Planning, therefore the author takes the title "Administrative Law Enforcement Against Urban Spatial Planning Based on the Arrangement Law Space "as a step to provide an understanding of administrative law enforcement in the urban spatial planning sector

RESEARCH METHODS

Legal problems must be resolved scientifically in order to find higher quality results. In this study, the author uses normative juridical research which is often identified with regulatory or statutory norms.⁵ This research approach and discussion examines written law from various aspects including theory, history, philosophy, structure and composition.⁶ The research specification used is analytical descriptive as an effort to study legal issues discussed and supplemented with secondary data consisting of primary and secondary legal materials. This research is also based on a qualitative analysis that reveals material and immaterial truths related to Administrative Law Enforcement of Urban Spatial Planning Based on the Spatial Planning Law.

RESULTS AND DISCUSSION

State Administrative Law Enforcement in the National Law System

In general, State Administrative Law is the law and regulations relating to the government in the sense or state administration which is formed by the legislative institution. Administrative law relates to a general government administration, related to government actions, as well as the relations between the government and its citizens. According to M. Hadjon, State Administrative Law has three functions, namely the Normative Function regarding normalizing government power, Instrumental Function which determines the instruments used by the government in exercising governing power, and the guarantee function used in running the government must guarantee legal protection for the people.⁷

In the concept of state administrative law, the government is given the authority to make laws and regulations as a form of delegation of authority from the central government to regional governments in regulating and managing their regions. The granting of legislative authority to the government not only gives the authority to formulate and implement legal norms that apply to both the administration and citizens, but also the authority to enforce the law on these laws and regulations when there is a violation of these norms.

In Max Weber's book explains "*in legal authority, legitimacy, is based on a belief in reason, and laws are obeyed because they have been enacted by proper procedures*".⁸ The essence of the quote explains that legal authority, authority over legal legitimacy is based on trust and legal reasons that they have established together by the applicable procedures. Conceptually, the essence and meaning of law enforcement lies in harmonizing the relationship of values that are manifested in good principles that are manifested in a series of values to create, maintain, and maintain social peace. After that, the success of law enforcement is influenced by several factors that have neutral meanings, so that the negative or positive impact lies in the content of these factors.

According to Jimly Asshiddiqie, basically law enforcement is an effort that is deliberately made to realize the ideals of law in order to create justice and peace in the life of society, nation and state.⁹ Meanwhile, Satjipto Rahardjo argued that law enforcement is essentially the enforcement of abstract ideas or concepts.¹⁰ It is followed by examining Soerjono Soekanto's opinion which states that law enforcement is an activity to harmonize the relationship of values that are outlined in the values or views that are solid and

⁴ Sri Nur Hari Susanto, "Karakter Yurids Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi", *Administrative Law & Governance Journal*, Volume 2, Issue I, 2019, Hlm. 130.

⁵ Paulus Hadisuprpto, *Ilmu Hukum dan Pendekatannya* (Semarang: Makalah Dies Natalis Fakultas Hukum Universitas Diponegoro, 2006), Hlm. 17.

⁶ Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004), hlm. 155.

⁷ Philipus M. Hadjon et all, *Pengantar Hukum Administrasi Negara Indonesia* (Surabaya: Yuridika, 2002).

⁸ Max Weber, *Materine Public Administration* (Washington: CQ Press, 2008).

⁹ Jimly Asshiddiqie, *Agenda Pembangunan Hukum Nasional Di Abad Globalisasi* (Jakarta: Balai Pustaka, 1998).

¹⁰ Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis* (Bandung: Sinar Baru, 1987).

Administrative Law Enforcement against Urban Spatial Planning Based on the Spatial Planning Law

embodied and act as a series of defining the final stage of value to create (social engineering) maintain and maintain (social control) peace in social life.¹¹

Soerjono Soekanto explained that in the framework of law enforcement there are 5 (five) factors that most influence law enforcement, namely:¹²

1. The legal factors themselves, which in this paper will be limited to law only.
2. Law enforcement factors, namely the parties who form or implement the law.
3. Factor of means or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

The five factors are closely related, because they are a measure of the effectiveness of law enforcement. The legal factor itself means that in a material sense, it is a written regulation that is generally accepted and made by the central authority for a legitimate area. Meanwhile, law enforcers themselves are defined as legal actors who carry out protection, supervision and enforcement of the implementation of the law that is applied in society. In carrying out their functions, law enforcers need tools that are used to support their implementation, called means or facilities. As well as the community itself is an environment where these rules are applied and have an impact on the environment. The latter is that culture is all arts that exist in people's lives and have a major influence on the daily activities of the community.

In the context of law enforcement in administrative law which is used to control government policy, according to H.W.R. Wade mentioned "*the legal system of administrative justice has receive valuable supplementation from the Parliamentary comissioner for Administration, otherwise know as the ombudsman, who since 1967 has been able to criticise, and often to remedy, injustice caused by maladministration lying beyond the reach of the law*".¹³ The quote explains that the implementation of the legal system related to administrative justice has provided valuable things by the Parliamentary Commissioner for Administration, who since 1967 has criticized, and corrected injustices caused by administrative errors that ignore the reach of the applicable law.

Supervision is one of the preventive steps in enforcing administrative law to carry out compliance with the provisions of legal norms, while the application of sanctions as an effort to enforce state administrative law is a repressive law enforcement step to enforce compliance with the provisions of the prevailing laws and regulations. In more detail, administrative law enforcement is related to issues of legitimacy or issues of authority in carrying out its enforcement instruments which include 1) Supervision (Monitoring) 2) Using the authority to impose sanctions, which includes:

- a. Government coercion or coercive action (Bestuur Dwang);
- b. Forced money (Pulekrechtelijke Dwangsom);
- c. Closing of business premises (Sluiting Van Een Inrichting);
- d. Termination of the company's machinery (Buitengebruikstelling Van Een Toestel) and;
- e. Revocation of license through a process of reprimand, government coercion, closure and forced money.

In a rule of law state, supervision of government actions is intended so that the government in carrying out its activities in accordance with legal norms, as a preventive measure, and also intended to return to the situation before the violation of legal norms occurred, as a repressive effort. In terms of its objectives, in Administrative Law there are two types of sanctions, namely reparatoire sanctions which are defined as sanctions that are applied as a reaction to violations of norms, which are shown to return to their original conditions or place them in a situation that is in accordance with the law (legale situatie). . In other words, it returns to its original state before it happened. The next type of sanction is punitive sanctions, which are sanctions that are solely shown to provide punishment (straffen) to someone.

According to Paulus E. Lotulung, supervision / control in state administrative law is divided into several types / models, namely:¹⁴

- 1) In terms of the position of the body / organ exercising the control over the body / organ under control; Internal control, means that the supervision is carried out by a body that is organizational / structurally still included in the government itself. External control, means that the supervision is carried out by organs or institutions that are organizational / structurally outside the government.
- 2) Judging from the time it was implemented; A-priori control, is when the supervision is carried out before the issuance of a government decision. A-posteriori control, is when the supervision is carried out only after the issuance of a government decision.

¹¹ Soerjono Soekanto, *Penegakan Hukum* (Jakarta: Bina Cipta, 1983).

¹² Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 2004).

¹³ H.W.R. Wade, *Administrative Law* (Oxford: Clarendon Press, 1969).

¹⁴ Paulus Effendie Lotulung, *Beberapa Sistem Tentang Kontrol Segi Hukum Terhadap Pemerintah* (Bandung : Citra Aditya Bakti, 1993).

Administrative Law Enforcement against Urban Spatial Planning Based on the Spatial Planning Law

- 3) In terms of the object being monitored; Control from a legal point of view (*rechmatigheid*) is a control that is intended to only assess aspects or considerations that are of a legal nature. Control of its usefulness (*doelmatigheid*), namely control intended to determine whether government regulations are true or not in terms of their usefulness.

Administrative sanctions can be formulated cumulatively, both internal and external. In the internal cumulation, two or more administrative sanctions as mentioned above are applied together in one law. Meanwhile, external cumulation means that administrative sanctions are applied together with other sanctions, such as criminal sanctions and civil sanctions. The organic criteria for the character of administrative sanctions include the following:¹⁵

- 1) Administrative sanctions consider that an act which causes disturbance to the administrative law norms order, as a violation;
- 2) The disturbance caused by the violation of the administrative law norms order can be taken immediately by the administrative body;
- 3) Actions taken by the administrative body in order to end disturbances to the administrative law norm order in the form of remedial actions (*reparatoir-herstel*) and / or acts of punishment (*condemnatoir-straft*).

In the enforcement of administrative sanctions that have been described above, they only function as a repressive effort to provide suffering in return for deviant behavior, the preventive function aims to prevent violations of law and the function of restitution as an aim to repair damage and restore to its original state. Administrative law enforcement has several strategic benefits when compared to civil and criminal law enforcement. There are three benefits, namely:

- 1) Administrative law enforcement in the field of city planning can be optimized.
- 2) Administrative law enforcement can be more efficient from a financial point of view than criminal and civil law enforcement.
- 3) Administrative law enforcement has more ability to invite public participation starting from the licensing process, monitoring the arrangement / supervision, and participation in filing objections and asking state administrative officials to impose administrative sanctions.

Administrative law enforcement tools in a legal and governmental system as an initial prerequisite for its enforcement effectiveness, include: Permit, which is used as a supervisory and control device; Requirements in the permit by referring to Amdal, environmental quality standards, laws and regulations; Structuring oversight mechanism and administrative sanctions.

Administrative Law Enforcement Regarding Urban Spatial Planning Based on Law Number 26 of 2007 concerning Spatial Planning

Spatial planning, spatial use and control of spatial use. Spatial planning is carried out to create a national territory space that is safe, comfortable, productive, and sustainable by realizing harmony between the natural environment and the artificial environment; the realization of integration in the use of natural and man-made resources by paying attention to human resources and the realization of spatial functions and prevention of negative impacts on the environment due to spatial use.¹⁶ Spatial planning based on regional strategic value consists of spatial planning for national strategic areas, spatial planning for provincial strategic areas, and spatial planning for district / city strategic areas.

City Spatial Planning is an organized planning pattern for a city in building, for example roads, parks, business premises, and residences so that the city looks neat, comfortable, beautiful, has a healthy environment, and is directed towards future expansion. The city spatial plan contains:

- 1) Objectives, policies and strategies for urban spatial planning;
- 2) Urban spatial structure plan covering urban system in its area related to rural areas and urban area infrastructure network system;
- 3) The plan for urban spatial pattern covering urban protected areas and urban cultivation areas;
- 4) Determination of strategic city areas;
- 5) Directions for the use of urban space, which contain an indication of the main program for the medium term of five years; and
- 6) Provisions for controlling the use of urban space, which contain general provisions on zoning regulations, licensing provisions, incentives and disincentives provisions, and direction for sanctions.

Urban area planning applies *mutatis mutandis* to which a plan for the provision and utilization of green open space is added, a plan for the provision and utilization of non-green open space; and plans for the provision and utilization of infrastructure and facilities for pedestrian networks, public transportation, informal sector activities and disaster evacuation spaces, which are needed to operate urban spatial areas as centers of socio-economic services and centers of regional growth.¹⁷

¹⁵ Sri Nur Hari Susanto, Op.Cit. Hlm. 136.

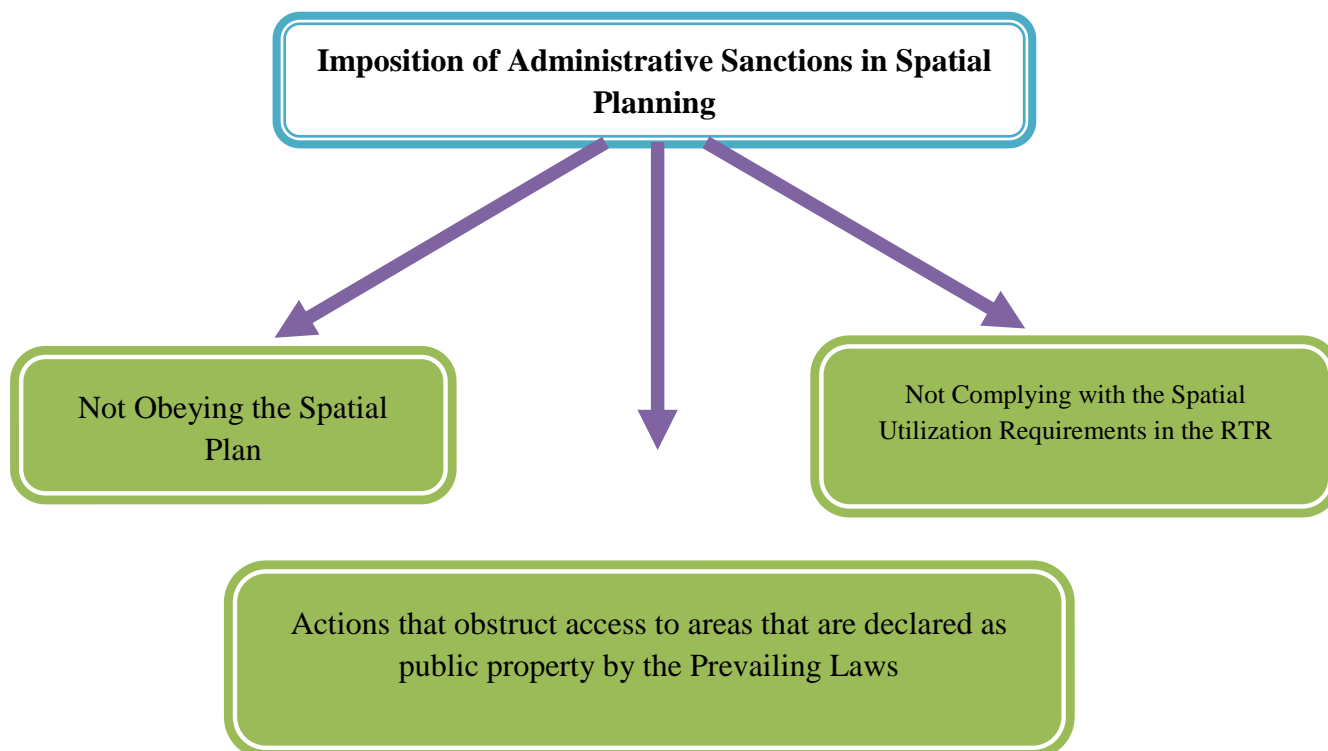
¹⁶ Pasal 5 ayat (5) Undang-Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang

¹⁷ Pasal 28 Undang Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang

Administrative Law Enforcement against Urban Spatial Planning Based on the Spatial Planning Law

In spatial utilization, everyone is required to comply with the stipulated spatial layout, utilize space in accordance with the space utilization permit from the authorized official, comply with the provisions stipulated in the space utilization permit requirements and provide access to areas determined by law as public property.¹⁸ However, if there is a violation, it can be subject to administrative sanctions in the form of a. written warning; b. temporary suspension of activities; temporary suspension of public services; closure of locations; revocation of license; cancellation of permits, demolition of buildings, restoration of spatial functions and / or administrative fines (Article 63 of the Law on Spatial Planning). The imposition of administrative sanctions is a violation of the obligation to organize spatial planning.¹⁹

Administrative sanctions are imposed on people who do not comply with the established Spatial Plan. If it is suspected that there is a violation, a spatial audit will be carried out which will be determined through a ministerial decree, governor's decision or district / city regional decision.²⁰ Apart from not obeying the Spatial Plan and not obeying the use of space, administrative sanctions can be imposed in the event of a process blocking access to areas that are declared public property by law. so that it can be described as follows:



Starting from the chart above, it actually explains that administrative sanctions can be classified against the three major groups that are prohibited. Therefore, there is nothing wrong with that administrative sanctions according to the author is a reward for tightening the meaning of a regulation. If referring to the spatial planning law, administrative sanctions may be imposed if and only originate from:²¹

- a. The results of the assessment of the implementation of the provisions on the suitability of Spatial Administration activities;
- b. Results of spatial planning supervision;
- c. The results of the spatial audit, and / or
- d. Complaints of violations of space utilization.

If it refers to the city spatial planning legislation, the administrative sanctions that can be given are:

- a. Written warning;
- b. Administrative fine;
- c. Temporary suspension of activities
- d. Temporary suspension of public services
- e. Location closure
- f. Revocation of appropriateness of space utilization activities

¹⁸ Pasal 61 Undang-Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang

¹⁹ Waskio, Hadi Arnowo, *Pertanahan, Agraria dan Tata Ruang*, Cet. Ke -1, (Jakarta: Kencana, 2017), Hlm. 61-62

²⁰ Pasal 188 dan Pasal 189 Peraturan Pemerintah Nomor 21 Tahun 2021 Tentang Penyelenggaraan Penataan Ruang

²¹ Pasal 193 Peraturan Pemerintah Nomor 21 Tahun 2021 Tentang Penyelenggaraan Penataan Ruang

Administrative Law Enforcement against Urban Spatial Planning Based on the Spatial Planning Law

- g. Cancellation of conformity to space utilization
- h. Demolition of buildings; and / or restoration of space functions

Observing the administrative sanctions imposed on every person who violates basically there is no significant difference between the administrative sanskrit. it even needs to be aware of the existence of administrative sanctions in order to provide meticulous, careful procedures and choose the risk of violations of spatial planning. In addition, administrative sanctions are a dimension of unilateral administrative decision-making power. In which the government has the power to decide, apply and enforce sanctions against individuals who violate these administrative legal norms.

CONCLUSION

Administrative law enforcement in the implementation of urban spatial planning for permits issued by the government, including supervision and enforcement of sanctions. Administrative sanctions generally have an institutional function, namely controlling prohibited acts. In addition, administrative sanctions are mainly aimed at protecting the interests that are guarded by the violated provisions. In Spatial Planning, Administration of administrative sanctions in the event of a violation of City Spatial Planning, not obeying the provisions of city utilization and committing actions that obstruct access even though in the provisions of the legislation it has been explained that the disputed one is public property.

SUGGESTION

It is hoped that the administration of administrative law which includes supervision and enforcement of sanctions will be more optimally carried out by the Government. The supervision carried out by the Government includes preventive measures, while the application of sanctions is a repressive step. Administrative sanctions that are applied in spatial planning by the Government must really be in accordance with the portion of the offender's errors and it is hoped that the firmness and accuracy in administering administrative sanctions as one of the elements of enforcement of administrative law after supervision carried out by the Government and based on to the prevailing laws and general principles of good governance.

BIBLIOGRAPHY

- 1) Asshiddiqie, Jimly, *Agenda Pembangunan Hukum Nasional Di Abad Globalisasi* (Jakarta: Balai Pustaka, 1998).
- 2) Hadisuprpto, Paulus, *Ilmu Hukum dan Pendekatannya* (Semarang: Makalah Dies Natalis Fakultas Hukum Universitas Diponegoro, 2006)
- 3) Hadjon, Philipus M. et all, *Pengantar Hukum Administrasi Negara Indonesia* (Surabaya: Yuridika, 2002).
- 4) Jazali, Ahmad, "Penegakan Hukum Penataan Ruang Dalam Rangka Mewujudkan Pembangunan Berkelanjutan", *Jurnal RechtsVinding*, Volume 6, Nomor 2, 2017
- 5) Lotulung, Paulus Effendie, *Beberapa Sistem Tentang Kontrol Segi Hukum Terhadap Pemerintah* (Bandung: Citra Aditya Bakti, 1993).
- 6) Muhammad, Abdul Kadir, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004)
- 7) Peraturan Pemerintah Nomor 21 Tahun 2021 Tentang Penyelenggaraan Penataan Ruang
- 8) Rahardjo, Satjipto, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis* (Bandung: Sinar Baru, 1987).
- 9) Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 2004).
- 10) -----, *Penegakan Hukum* (Jakarta: Bina Cipta, 1983).
- 11) Susanto, Sri Nur Hari, "Karakter Yurids Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi", *Administrative Law & governace Journal*, Volume 2, Issue I, 2019
- 12) Undang-Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang
- 13) Wade, H.W.R., *Administrative Law* (Oxford: Clarendon Press, 1969).
- 14) Waskio, Hadi Arnowo, *Pertanahan, Agraria dan Tata Ruang, Cet. Ke -1*, (Jakarta: Kencana, 2017)
- 15) Weber, Max, *Materine Public Administration* (Washington: CQ Press, 2008).