

SADD AD-DZARIAH PRESPECTIVE OF EFFECTIVENESS TUBAN LOCAL GOVERNMENT REGULATION NO. 09 OF 2012 ON REGIONAL SPATIAL PLANING OF SETTLEMEN IN COASTAL BORDER

Rodhotun Nimah

State Islamic University Maulana Malik Ibrahim Malang
Rodhotunnikmah17@gmail.com.

Abstract:

This Research focuses on the sad ad-dzariah Prespective of coastal settlements and the effectiveness of the Tuban Local Government Regulation Number 09 of 2012 concerning spatial planing on settlements on the coastal border of Glondonggede village, Tambakboyo District, Tuban Regency. The research method used is a type of empirical legal research using a sociological juridical approach. Meanwhile, the data sources used are primary, secondary and tertiary data sources. Methods of data collection using interviews, documentation and direct observation. Analysis of the data used in this research using qualitative descriptive analysis, by reducing the data, presenting the data and then drawing a conclusion. In this research, two conclusions were obtained, *First*, The fact is that the local government regulation is not effective due to the lack of firm action by the authorities and the lack of public awareness of the law. *Second*, if viewed from the viewpoint of Sad Ad-Dzari'ah, the construction of settlements on the coastal border is not in accordance with the objectives of the Shari'a, because the construction of settlements along the coast is a cause of greater danger.

Keywords: Effectiveness; Settlement; Beach Border; Sadd Adz-Dzariah.

Introduction

Based on Law Number 23 of 2014 concerning Regional Government, each region has full authority over its own region, where each regional head has the right to carry out spatial planning. In spatial planning, it is not only limited to the existing spatial structure in the mainland area, but also covers all regencies / cities including the coastal areas of the area. The coastal area has a strategic meaning because it is an intermediate area between land and marine ecosystems¹. The coastal area is an area that

¹ Nanin Trianawati Sugito, Dede Sugandi, "URGENSI PENENTUAN DAN PENEGAKAN HUKUM KAWASAN SEMPADAN PANTAI", *Jurnal Geografi Gea*, Vol.2 (2016): 54
<http://garuda.ristekbrin.go.id/author/view/388509>.

is susceptible to changes, whether changes caused by nature or other factors. Tuban Regency is an area that has many beaches so that monitoring of the coastline is needed as a conservation zone.

As population growth in Indonesia increases, more and more people are establishing settlements in coastal areas. This causes the coastal ecosystem to change and the coastal environment to become damaged. The fact that most of the Indonesian coasts also occurred in Tuban Regency, to be precise, the Glondonggede coast, Tambakboyo District. Tuban Local Government Regulation No. 09 concerning RTRW (Regional Spatial Planning) 2012-2032 states that the coastal border area is a local protection area, with a minimum distance of 100m from the highest tide point. so that all activities on the coastal border must be at least 100m from the highest tide point and must pay attention to the coastal ecosystem so as not to eliminate the function of the beach as an abrasion retaining zone.

Based on the fact that the residential area on Glondonggede beach is only a few meters from the shoreline, this will eliminate the function of the coastline as a local protection area. With the activities on the coastal border that do not pay attention to the coastal ecosystem, it has an impact on the dysfunction of the beach as an abrasion-retaining zone in addition to the pollution of the beach by garbage as a result of economic activity. As the government regulator plays a role in planning and controlling development on the coast, especially local protected areas, it can be seen in the Tuban Local Government regulation No. 09 of 2012 about RTRW, which explains the directions for controlling activities in and around coastal borders and preventing activities along the coast. can interfere with the main function of the beach.

This is in tune or suitable with Regulation No. 01 of 2014 concerning Amendments to Regulation No. 27 of 2007 concerning Management of Coastal Areas and Small Islands, in article 20 paragraph 1 it has indicated the role of local governments as facilitators in granting coastal management permits in accordance with formation. However, the fact is that the Glondonggede Village government and the Tuban Regency government seem to let the settlement construction activities carried out by residents in the coastal border area. Likewise, these problems need to be studied using the perspective of Islamic law, where the purpose of sharia is for the general benefit. Therefore, it is necessary to get a comprehensive understanding apart from understanding the positive law of Indonesia. Because all aspects of life are regulated in Islamic law, including in environmental matters, whether it is permissible or not to build settlements on the coast. One of the methods of *istimbat* of Islamic law is *Sadd Ad-Dzari'ah*.

As for avoiding any repetition of research that had been done before, the authors conducted a search on several previous studies, namely first, by Ahmad Idrus Showabi (Sharia UIN Maulana Malik Ibrahim Malang), entitled; Construction of Hotels and Cafes on the Border of Tegal Sambi Beach, Jepara Regency (Regulation No. 1 of 2014 on Management of Coastal Areas and Small Islands & *Maqasid Al-Syari'ah* Imam As-sathiby². The difference with the author's research is that the analysis is only limited to the research of Regulation No.1 of 2014 concerning Management of Coastal Areas and

² Ahmad Idrus Showabi, "Pembangunan Hotel dan Kaffe di Sempadan Pantai Tegal Sambi Kabupaten Jepara (Prespektif Undang- Undang Nomor 1 Tahun 2014 Tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil & *Maqasid Al-Syari'ah* Imam As-sathiby (Ungraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2017), <http://etheses.uin-malang.ac.id/11325/1/13220219.pdf>.

Small Islands, while the objects of regulation to be studied in this research are the Tuban Local Government Regulation Number 09 of 2012 concerning spatial planning of 2012-2032; Different in taking the point of view of Islamic law, in this research using the perspective of Maqashid Al-Syari'ah Imam Al-Syathibiy only focuses on hotel and kaffe buildings. While in the research that will be studied by the author uses the Sadd-Adzariah perspective.

Second, research from Shofie Rudhy Aghozsi (University of Jember) with the title Cultivation of Land in Coastal and Coastal Areas³. The difference with the author's research is that this research focuses on the arrangement of the coastal boundary area and the coastal area as well as the ways to protect and manage the coastal border areas and coastal areas. While the research that the author studies is concerned with the effectiveness of the Perda. The type of research used is juridical normative, whereas the research that the author studies is a type of empirical legal research. Third, research from Muhammad Ridho Sungsan Rais (Sebelas Maret University, Surakarta) entitled The Legality of Tourism Accommodation Development in the Perimeter of Glagah Beach.⁴ The difference with the author's research is that this research focuses on the administration of tourism accommodation buildings only and does not review from the perspective of Islamic law.

The formulation of the problem of this research is based on the Tuban Local Government Regulation Number 09 of 2012 concerning the 2012-2032 Regional Spatial Plan, the coastal border area is a local protected area so that all activities in it must comply with existing regulations including the prohibition of building buildings that are less than 100 m, but in fact many permanent buildings were erected on the coast. The purpose of this research was to determine the effectiveness of the Tuban Local Government Regulation Number 09 of 2012 concerning the 2012-2032 Regional Spatial Plan for settlements on the Glondonggede coastal border, as well as Sadd Ad-Dzari'ah's review of residential development on the coast.

Research of Research

The writing method used in the writing of the article on the results of this research is to use the empirical legal research method, namely research on the effectiveness of the Tuban district regulation on regional spatial planning.⁵ Research on the actual situation that occurs in society with the aim of knowing and finding field facts and data needed in a research. After the required data is collected, it continues at the next stage, namely identifying the problem to get a solution to the problems found in the field⁶.

The object of the location in this research is Glondonggede Village, Tambakboyo District, Tuban Regency, where this location is a local protected area, because seeing the facts in the field because until now many people still use coastal land without paying attention to the coastal ecosystem, causing damage to the coastal environment and increasing risks. the occurrence of a disaster. This journal writing uses

³ Shofie Rudhy Aghozsi, "Pengusaan Tanah di Sempadan Pantai dan Wilayah Pesisir (Ungreduate Thesis, Universitas Jember , 2018), <http://repository.unej.ac.id/handle/123456789/88402>.

⁴ Muhammad Ridho Sungsan Rais, "Legalitas Pembangunan Akomodasi Pariwisata di Sempadan Pantai Glagah" (Undraduate Thesis Universitas Sebelas Maret Surakarta, 2018), <https://digilib.uns.ac.id/dokumen/jenis/261/Skripsi/48>.

⁵ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2018), 30.

⁶ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika 2002), 15.

a sociological juridical approach and a legal approach. Where the sociological juridical approach is used to identify and conceptualize law as a real social institution in the community⁷. Identify how the Tuban Local Government regulation is implemented in community life related to settlements on the coastal border. In addition, it also uses a statutory approach by examining all regulations or statutory regulations related to the legal issues to be examined.⁸.

This research uses legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used were the results of direct field interviews with the village head of Glondonggede; Glondonggede villagers; Related agencies. Secondary legal materials are literature reviews in the form of scientific books, the results of research reports relating to the effectiveness of land laws and policies in coastal areas; Laws, Government Regulations and so on related to this research.

Various legal data above were collected through direct interviews with Mr. Daimun, the Head of Glondonggede Village, Tambakboyo District, Tuban Regency; Mr. Kurdiyono, Head of Environmental Impact Section of the Environmental Service of Tuban Regency; Residents of Glondonggede Village, Tambakboyo District, Tuban Regency. In addition, researchers also make direct observations to find out the actual situation in the field and seek direct data from the field. Direct observation in this research was carried out for approximately two to three months.

The data collection techniques above are supported by images or written data sources. Written or image sources in the form of official documents, books, magazines, archives, personal documents, and photos related to research problems. The legal data is then analyzed using qualitative data analysis, namely by reducing the data by stages⁹: Researchers classify and sort the data obtained according to research needs. The next stage is editing or correcting the clarity of the meaning of the answers from the informants and the relevance of the answers.

After the data is reduced, the next stage is data presentation or data display, namely presenting organized data that allows researchers and their audience to draw some conclusions from the data to proceed to the next stage of research.¹⁰. The final stage of data analysis in this research is drawing conclusions. The author answers the problem formulation by summarizing the results of the discussion that has been presented in a brief and clear description. The author performs induction in order to produce static inferences. The author makes another induction then concludes using a normative point of view so that the researcher understands more clearly and in detail¹¹.

Results and Discussion

The effectiveness of Tuban Local Government Regulation number 09 of 2012 on settlements in the coastal border in Glondonggede Village.

⁷ Bahder Johan Nasution, *Metode Penelitian Hukum* (Bandung: Mandar Maju, 2008), 126.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2019), 137.

⁹ Haddy Suprpto, *Metode Penelitian Untuk Karya Ilmiah* (Yogyakarta: Gosyen Publishing, 2017), 146.

¹⁰ Monette Duane R. et, al, *Applied Social Research: A tool for The Human Service* (United States of America: Cengage Learning 2011), 443.

¹¹ Siyoto, Sandu and Ali Sodik, *Dasar Metode Penelitian* (Yogyakarta: Media Publishing Literacy 2015), 124.

Indonesia is a constitutional state where all aspects of state life are regulated by law, as well as the phenomenon of settlement on coastal borders. Based on Regulation No. 23 of 2014 concerning Regional Government Article 12 paragraph (1), which reads: "Autonomous Regions, hereinafter referred to as Regions, are legal community units that have territorial boundaries which are authorized to regulate and administer Government Affairs and the interests of the local community according to own initiative based on people's aspirations in the system of the Unitary State of the Republic of Indonesia ". This means that the Regional Government has the authority to regulate matters concerning spatial planning.

Considering that in order to direct development in Tuban Regency by utilizing regional space in an efficient and effective, harmonious, balanced and sustainable manner in order to improve public welfare and defense and security, it is necessary to prepare a Regional Spatial Plan; as well as in the context of realizing integrated environmental development between sectors, regions and communities, the Regional Spatial Plan is the direction for the location of development investments carried out by the government, the community and / or the business world; and with the enactment of Regulation No. 26 of 2007 concerning Spatial Planning and Government Regulation Number 26 of 2008 concerning National Spatial Planning,

According to the Tuban Local Government Regulation on Regional Spatial Planning (RTRW) it explains that the coastal border area is a protected area. As stated in paragraph 3 of article 31 point (a) states: "The local protected area as referred to in article 28 paragraph 2 letter c consists of (a). coastal area at least 100m from the highest tide point ". So based on these regulations it is clear that the prohibition of all activities on the coastal border with a distance of less than 100 m from the highest tide point, because the existence of economic activities that do not pay attention to environmental sustainability can have a negative impact on the coastal ecosystem including the establishment of settlements on the coastal border. These negative impacts are in the form of accumulation of garbage in the ocean, loss of coastal ecosystems,



Picture 1. A pile of garbage

In general, land policy in development in coastal areas focuses on the use of coastal land, especially on the issue of land needs in the context of urban development and expansion. The main factor in implementing this land policy is due to the lack of land availability in cities or efforts to expand the city. This situation causes the coastal and marine areas to be utilized and converted into land areas. Based on research on Glondonggede beach, many people have built permanent buildings and many other economic activities. If referring to the prevailing regulations, the border area can only be used or utilized within 100m of the highest tide point for environmental preservation and maintaining coastal ecosystems.



Picture 2. Settlements along the coast

In this regard, the development and development of coastal areas must be carried out responsibly, meaning that it must pay attention to the greatest possible prosperity and public interest, meaning that the development and development of coastal areas must be profitable from an economic point of view, be beneficial to the surrounding community and not cause environmental damage. The concept of development must be directed at the concept of sustainable development, meaning development that takes into account the harmony of humans and nature and the interests of future generations. Meanwhile, legal protection is meant by controlling the pattern of assumptions and production to run fairly so that humans can enjoy adequate benefits from the use of natural resources.

Therefore the use of natural resources must be regulated in such a way as to provide benefits for each generation, this is important to pay attention to in the implementation of coastal reclamation.¹² In the development of facilities and infrastructure and coastal space with regard to land aspects, it is necessary to pay attention to the provisions in regulation number 17 of 2007 concerning the national long-term development plan 2005-2025. Point 11 establishes a land management system that is efficient and effective and enforces law enforcement of land rights by applying the principles of fairness, transparency and democracy. In addition, it is necessary to improve the tenure of land use ownership through the formulation of land reform implementation rules as well as the creation of intensive or intensive taxation in accordance with the area of land use so that economically weak communities can easily obtain land rights.

The politics of land law outlined in point 11 are: 1). Implementing an efficient, effective land management system and enforcing law enforcement of land rights by applying the principles of fairness, transparency and democracy; 2). It is necessary to improve control over ownership of land use through the formulation of various rules for implementing land reform as well as the creation of intensive or disintensive taxation in accordance with the area of location and land use so that economically weak communities can more easily obtain land rights; 3). Improve the legal system and land law products, take inventory and improve land laws and regulations by taking into account the rules of customary communities; 4). Increasing efforts to settle land disputes through the authority of judicial administration and alternative dispute resolutions; 5). There will be improvements to land institutions in accordance with the spirit of regional autonomy and within the framework of the unitary state of the Republic of Indonesia, especially those related to increasing the capacity of human resources in the land sector in the regions.

¹² Flora Pricilla Kalalo, *Hukum Lingkungan dan Kebijakan pertanahan di wilayah pesisir* (Jakarta: Rajawali Pers, 2016), 41.

In construction activities that include technical planning processes and construction implementation as well as activities for the use of preservation and building demolition, building construction requires a building construction permit, in which case the permit is carried out by applying for a building construction permit. Building Construction Permit in this case is a permit granted by the Tuban Regency Government to building owners to build new, change, expand, reduce, and / or maintain buildings in accordance with applicable administrative and technical requirements.

Building arrangement aims to realize a building that is functional and in accordance with the building structure in harmony and in harmony with its environment; realizing an orderly building operation that guarantees the technical reliability of the building in terms of safety, health, comfort and convenience; and realizing legal certainty in building management¹³. Having an IMB is very important if you do not have an IMB, then the building to be erected is considered "illegal" and illegal. Therefore the local government has the right to stop the construction process and if the building has been erected, but does not have an IMB, then the local government has the right to demolish the building.¹⁴

In Tuban Local Government Regulation Number 5 of 2015 concerning Buildings, Article 13 confirms that every person or entity carrying out activities for building buildings and / or building infrastructure is required to have an IMB document by submitting an IMB application to the regent. This building construction permit must be in accordance with the location designation stipulated in the RTRW, RDTR and / or RTBL. Buildings These buildings include buildings built on public infrastructure and facilities; under public infrastructure and facilities; under or above water; in areas of high-voltage power transmission networks; in areas with the potential for natural disasters; in urban areas and in rural areas.

According to Adrian Sutedi, there are several things in building a building that requires a Building Construction Permit (IMB), including¹⁵: *First*, in order not to cause a lawsuit by other parties after the building is built, therefore before constructing the building there must be clarity on the status of the land concerned. This can be seen from the existence of land certificates such as certificates, plot certificates, land edicts, and the land is not occupied by other people. Unclear land ownership will be detrimental to both land owners and / or building owners; *Second*, the city environment needs a good and orderly arrangement, beautiful, safe, orderly and comfortable. In order to achieve this goal, proper building arrangement is expected not to have a negative impact on the environment. The implementation of building construction in urban areas must be adjusted to the City Spatial Plan. Therefore, before obtaining a building construction permit, the community must first obtain a City Plan Information.

Third, the granting of building permits is intended to avoid physical hazards for building users. For this purpose, every building construction requires a development plan that is mature and meets established standards or technical normalization of buildings which include architecture, construction and installation including fire installations (fire prevention and control systems); *Fourth*, monitoring of technical

¹³ Brianto Putra Tama, "Izin Mendirikan Bangunan (IMB)", *Researchgate*, (October 2019): 3. https://www.researchgate.net/publication/336892294_Izin_Mendirikan_Bangunan_IMB

¹⁴ HARDIYANSYAH, "Analisis Kualitas Pelayanan Izin Mendirikan Bangunan pada Dinas Tata Kota di Kota Palembang", *MIMBAR*, Vol. 28, No. 2 (December, 2012): 191-199. <https://ejournal.unisba.ac.id/index.php/mimbar/article/view/355/26>

¹⁵ Adrian Sutedi, *Hukum Perizinan dalam Sektor Pelayanan Publik* (Jakarta: Sinar Grafika, 2011), 230.

standards or normalization of buildings through a Building Use Permit is expected to prevent hazards that may arise, especially during construction, for the environment, workers, surrounding communities, as well as potential building users. Thus, the development carried out can run well according to planning. granting building construction permits is intended to avoid physical harm to building users. For this purpose, every building construction requires a development plan that is mature and meets established standards or technical normalization of buildings which include architecture, construction and installation including fire installations (fire prevention and control systems).

Based on Regulation No. 32 of 2009 Article 23 Paragraph (1) Concerning Environmental Protection and Management states explicitly that the criteria for a business and / or activity having significant impacts that must be completed with an environmental impact analysis consist of: 1). Land conversion and landscape conversion; 2). Exploitation of natural resources, both renewable and non-renewable; 3). Processes and activities that can potentially cause environmental pollution and / or damage as well as waste and deteriorate natural resources in their utilization; 4). Processes and activities whose results can affect the natural environment, the built environment, and the social and cultural environment; 5). Processes and activities whose results will affect the preservation of areas for the conservation of natural resources and / or protection of cultural heritage; 6). Introduction of types of plants, animals and micro-organisms; 7). Manufacture and use of biological and non-biological materials; 8). Activities that have a high risk and / or affect national defense; 9). The application of technology is thought to have great potential to affect the environment.

Environmental damage in coastal areas is a change in environmental conditions in coastal areas which adversely affects the survival of humans and other living creatures. In essence, the damage to the coastal environment is caused by development in coastal areas. This constitutes a violation of the use of area functions, especially in local protected areas (coastal boundaries). Many physical buildings supporting tourism or non-tourism facilities are built along the coast. The existence of a permanent physical building does not heed existing regulations.

Human desire is one of the factors that have an impact on the environment, the patterns of desire are based on the potential and balance of the ecological order. These patterns are as follows¹⁶: *First*, individual patterns. Every human being has the potential to have an impact on the environment that comes from the desire of a person's actions that tend to affect the environment, this can happen either because of the support and control facilities or because he deliberately violates existing rules and does not pay attention to the prescribed norms.

Individual patterns include several factors including: 1). The factor of the absence of means of fostering a person's environment tends to do something that is not good in his environmental system; 2). The egoism factor, a pattern of reduced desires that lacks control, is often driven by factors that are always selfish or egocentric. The interests related to problems with public interest are usually less of a concern for many people in relation to environmental problems; 3). Supervisory and law enforcement factors, supervisory factors and law enforcement or low enforcement.

In the effort to maintain environmental conservation, collisions of impacts and excessive interaction on the environment can be prevented by a system of supervision

¹⁶ NHT Siahaan, *Hukum Lingkungan dan Ekologi Pembangunan* (Jakarta: Erlangga, 2004), 64-67.

and law enforcement, but on the other hand, weak control factors and an indecisive information system can be a great opportunity for the community to use the environment as they wish. *Second*, the political pattern of development, including: 1) Ambition that is never satisfying. The politics of development referred to in this relationship is a system implemented by a country to advance the development of its country in various aspects. The needs discussed here are mainly developing countries, because it is precisely in relation to development politics in developing countries that it is more often seen. several environmental problems including Indonesia; 2) Development politics versus environmental politics. *Third*, the pattern of industrialized countries, among others, is dishonesty from developed countries and developing countries which thirst for development.

Environmental cleanliness is one measure of the quality of life of the community. People who have prioritized environmental cleanliness are seen as people whose quality of life is higher than those who have not prioritized cleanliness. One aspect that can be used as an indicator of the cleanliness of the area's environment is garbage. Clean or dirty an environment is created through human actions in managing and overcoming the waste they produce¹⁷.

Human behavior that is not responsible for waste can cause problems and environmental damage. If human behavior is solely directed towards personal interests, and does not take into account the public interest / common interest, it can be predicted that the carrying capacity of the natural environment will be depleted and as a result environmental loss and damage can no longer be avoided. Therefore, garbage and waste objects that are abundant in our environment need to be taken seriously and we need to find the right way to overcome them.

With regard to the destruction of the coastal environmental ecosystem and the accumulation of garbage in Glondonggede Village, the Tuban Regency Environmental Service (LHK) gave a response, referring to the existing regional regulations, the construction of settlements on the coastal border is not allowed. However, the head of the environmental impact assessment sub-division Kurdiyono (Head of the Environmental Impact Section of the Tuban Regency LHK Service) explained that it is mandatory for a building to be established after the issuance of the Local Government Regulation, it must have a Building Construction Permit (IMB), in order to pay attention to preserving the surrounding environment.

Environmental permits for buildings under 5000m must have an Environmental Management Declaration (SPPL) or often referred to as a small category environmental document. However, the fact is that people who build permanent buildings in coastal areas do not have (SPPL), or do not have a permit from the authorities. With the accumulation of garbage in the ocean, one of which is caused by the presence of densely populated settlements on this coastal border, the Environmental Service Agency (LHK) takes several actions.

According to Kurdiyono, the role of the Environmental Service Agency (LHK) to solve the problem of solid waste and environmental sustainability, they conduct counseling and socialization in collaboration with the village or sub-district to provide direction to the community regarding the environment, in addition to providing assistance to the community to manage waste by 3 R (Reuse-Reduce-Recycle), consists

¹⁷ Istiqomah Wibowo, "Pola Perilaku Kebersihan: Studi Psikologi Lingkungan Tentang Penanggulangan Sampah Perkotaan " *Makara Sosial Humanities*, Vol. 13, No. 1 (July 2009): 37-47
37<http://repository.ui.ac.id/contents/koleksi/2/2803b30b2cbb66037fea8c077a9da4599d4309f6.pdf> .

of reuse, reduce, and recycle¹⁸. *First*, Reuse means reusing waste that can still be used for the same function or for other functions¹⁹. Daily reuse activities are reusing empty containers or packages for the same function or for other functions.

Second, Reduce means reducing everything that causes waste. Reduce daily activities are choosing products with recyclable packaging; Do not use and buy products that produce large amounts of waste. *Third*, Recycle means reprocessing (recycling) waste into new useful goods or products. Such as processing organic waste into compost, and processing non-organic waste into useful goods. This explanation contradicts the fact in the community where garbage, especially plastic waste, still piles up on the beachside of Glondonggede Village, based on the village's information, the village has provided a garbage bank in every house and there is also a Garbage Disposal Site (TPS). However, this did not work optimally due to the lack of public awareness of the environment.



Picture 3. A pile of plastic waste

To determine the effectiveness of the Tuban Local Government Regulation No. 09 of 2012 then used several parameters using the theory of legal effectiveness. The word effectiveness comes from English, namely *effectif*. The meaning of the word is: "having the intended or expected effect; serving the purpose". Thus, legal effectiveness can be defined as the legal ability to create or give birth to a situation or situation as desired or expected by law. The effectiveness of the law can be seen both from the point of view of the social control function and from the point of view of its function as a tool for change²⁰.

According to Soejono Soekanto, there are five parameters that influence law enforcement²¹. *First*, a law, a regulation so that it does not become a dead letter, it is necessary to have openness in the law-making process, it is necessary to grant the right to citizens to submit certain proposals, such as the local authorities inviting the community to attend a discussion regarding the regulations will be made or provide opportunities for members of the community to participate, for example by submitting certain suggestions.

Because the law (statute) also affects the effectiveness of the law, in making law (legislation) it is necessary to pay attention to several existing statutory principles. It is necessary to pay attention to this so that the law that is made can give the desired or

¹⁸ Kurdiyono, (Kepala Bagian Dampak Lingkungan Dinas LHK Kabupaten Tuban), Hasil Wawancara, 17 Oktober 2020.

¹⁹ Fahzy Abdul Rahman, "Reduce, Reuse, Recycle: Alternatives for Waste Management", Guide G-314 New Mexico State University, (2014): 2. https://aces.nmsu.edu/pubs/_g/G314.pdf

²⁰ Winarno Yudho and Heri Tjandrasari, " EFEKTIVITAS HUKUM DALAM MASYARAKAT" *Jurnal Hukum dan Pembangunan*, VOL 17, NO 1 (1987): 59 <http://jhp.ui.ac.id/index.php/home/article/view/1227>

²¹ Seorjono Soekanto, *Faktor-fakor yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Press, 2008), 8.

expected result or effect, so that it is effective. A law is said to be effective in its formation must be based on the principles of forming good laws and regulations according to article 5 of Regulation No. 12 of 2011 concerning the Formation of Laws, these principles include: a). Clarity of purpose; b). Appropriate forming institutions or organs; c). Match between types, hierarchy and content; d). Can be implemented; e). Usability and efficiency; f). Clarity of formulation; g). Openness.

Second, Community Factor. If the community is aware of their rights and obligations, they will also know about activities using legal measures to protect, fulfill and develop their needs with existing regulations. This will not happen if the community does not know and realize, if their rights are violated or disturbed and do not know that there will be legal remedies to protect their interests.²².

Third, culture, culture which basically underlies the applicable law, values which are abstract conceptions of what is considered good (so that it is followed) and what is considered bad (so that it is avoided). Fourth, facilities or facilities, in order for law enforcement and enforcement of sanctions against violations of legal norms to run smoothly, facilities or means are needed to support the implementation of the regulations made. These facilities or facilities include adequate finance, good organization, skilled human resources, and so on.

Fifth, Law enforcer. Law enforcers are role models in society who should have certain abilities in accordance with the aspirations of the community, they must be able to communicate and get understanding from the target group in addition to being able to carry out or play a role that is acceptable to the community. Law enforcers must be able to take advantage of elements of certain traditional patterns and choose the right time and environment in introducing applicable legal norms or rules and provide a good example.²³.

The five factors are interrelated, so that in analyzing the effectiveness of the law, we must pay attention to the relationship of these factors. Particularly in the discussion of the effectiveness of law as a tool to make a change, various conditions put forward by William Evan need attention. These conditions are²⁴: 1). Is the source of the new law truly authoritative and authoritative? (whether the source of the new-law is authoritative and prestigious); 2). Whether the law is properly clarified and justified in legal, as well as socio-historical terms); 3.) Whether the compliance models can be recognized and can be published (whether existing models for compliance can be identified and Publicized Law and Development); 4). Whether proper consideration is given to the amount of time required for the transition); 5). Do law enforcers show their racial attachment to the new norms (whether enforcement agents demonstrate their commitment to the new norms); 6). Can sanctions, both positive and negative, be implemented to support the law (whether positive, as well as negative sanctions, can be employed to support the law); 7). Whether effective protection is provided to those individuals who would suffer from the law's violation.

Based on these parameters an assessment is given if the five factors are met, the use of the level of legal effectiveness is said to be effective. The results showed that only one parameter was fulfilled, namely in the making of the Tuban Local Government Regulation No. 09 of 2012 concerning Spatial and Regional Planning, it had fulfilled the principles of forming good laws and regulations, which aimed to make the law have

²² Seorjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, 56.

²³ Seorjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, 34.

²⁴ Winarno Yudho and Heri Tjandrasari, "EFEKTIFITAS HUKUM DALAM MASYARAKAT", 60.

a positive impact so that it was effective. However, there are four unfulfilled parameters which make Tuban Local Government Regulation No. 09 of 2012 concerning RTRW 2012-2032 is said to be less effective in contributing to law enforcement.

The ineffectiveness of the Tuban Local Government Regulation No. 09/2012 concerning the 2012-2032 RTRW cannot be separated from various reasons. *First*, there is a lack of public understanding of existing regulations or laws so that people do not know their rights and obligations. When the community is already "docrinated" and adheres to its local habits, it will not be easy to shift commitment to the formal rules of the newly recognized law. *Second*, the government seems to allow the construction of settlements on the coast, by not providing solutions or providing land for people who do not have land to live. This is one of the obstacles in the effectiveness of local regulations.

Third, The culture or habits of the people on the coast of Glondonggede do not realize that what they should not do is hereditary until now, namely the use of border lands that do not pay attention to the condition of the coastal ecosystem. This happens because of the loss of discipline and public order with the existing rules. Fourth, a weak control system and an indecisive system of enforcement thus become a great opportunity for the community to use the environment as they wish. Even though the village has taken several actions, the fact is that development activities continue to this day.

Sadd Ad-Dzari'ah's perspective of the Development of Settlements in the Coastal Borders of Glondonggede Village

In order to get a comprehensive understanding between Islamic law and positive law, the development problem on the glondonggede coastal border needs to be viewed from the perspective of Islamic law. In order to find and establish fiqh laws beyond what is described in the texts of the Qur'an and hadith, the experts do everything they can to multiply the law, which is known as *ijtihad*. In exploring the law, the *mujtahids* used methods or formulated methods of seeing to find laws that were not explicitly explained in the texts of the al-qur'an and hadiths. There are several kinds of *ijtihad* methods formulated by the *mujtahids*. One of these methods is *sadd Ad-Dzariah*. *Sadd Adz-zariah* consists of two words, namely *sadd* and *dzariah*, the word *sadd*, meaning²⁵:

السّدّ بمعنى: إِغْلَاقُ الْحَلَلِ وَرَدْمُ الثَّمَمِ ، وبمعنى المنع

Meaning: "*To cover the reproach, and cover the damage, and also means to prevent or prohibit*".

While the word *dzari'ah* literally means:

الْوَصِيلَةُ الَّتِي يَتَوَصَّلُ إِلَى الشَّيْءِ سَوَاءً كَانَ حَسَبًا أَوْ مَعْنَوِيًا

Meaning: "*The path that leads to something, hissi or ma'nawi (good or bad)*".

Based on the meaning of *luqhowi* above, Ibn Qayyim gives an understanding of *adzariah* according to him *Adz-dzariah* contains two definitions, namely *Sadd Ad-dzariah* (something that is prohibited) and *Fath Ad-dzariah* (demands to do something).

²⁵ Hifdhotul Munawaroh, " Sadd Al- Dzari'at dan Aplikasinya Pada Permasalahan Fiqih Kontemporer", *Jurnal Ijtihad* , Vol. 12 No. 1, June (2018):64.

<https://ejournal.unida.gontor.ac.id/index.php/ijtihad/article/download/2584/1735>.

According to Imam Syatibi, the essence of the dzari'ah principle is a matter that leads to goodness to damage. Namely someone who initially does a case that is permissible because it contains goodness in it, but at the end the goals achieved cause harm or damage. Meanwhile, the definition of dzaria'ah according to Badran is:

هِيَ الْمَوْصِلُ إِلَى الشَّيْءِ الْمَمْنُوعِ الْمَشْتَمِلِ عَلَى مُفْسَدَةٍ

Namely the arrival of something forbidden which contains kamafsadatan in it. Whereas Sadd Ad-dzari'ah according to Qarafi (w: 684 H) is defined as an intermediary or means for a case to prevent and avoid a path that seems permissible but leads to a prohibited case.

Ibn Qayyim divides the intermediaries based on their consequences for damage into 4 parts²⁶: 1). Intermediaries aimed at inflicting damage. 2). An intermediary that is intended for something that is permissible and is not intended to do damage, but sometimes causes damage but its good is superior to its bad. 3). Intermediary for something that is permissible but is intended for evil. 4). An intermediary who is intended to do something that is permissible and is not intended to do evil but will generally cause harm, and the damage outweighs the good.

According to Hasyim Al-Burhani dzari'ah has three pillars that must be fulfilled, namely intermediaries; the result; which is made the goal²⁷. *First*, there are three kinds of intermediaries, namely what is meant is the original destination; the intermediary intended for its essence; as well as intermediaries who are the main foundation for the occurrence of dzariah because there is wasilah. *Second*, is a result or event, that is, something that connects the two aspects of dzari'ah (intermediary and goal), divided into 2, namely: 1). Amr ma'nawi, who is punished for his existence after the result is either deed or predicted. 2). A certain power has arrived at a certain limit which is forced to do a ban.

Third, which is used as a goal which is divided into two, namely: 1). It must be something that is prohibited, if it is something that is allowed then it is not called dzari'ah khos but it is called dzari'ah amm .; 2). In the form of the basis or foundation of the strength or weakness of an effect or event. There are three conditions for a dzari'ah to be prohibited, namely: a). It has been reported in the Koran and Hadiths that Dzari'ah is not allowed. b). It has been agreed that there will be a result which is caused by the Dzari'ah itself either with certainty or in a prayer that is almost certain. c). The existence of a Dzari'ah connection to something that is prohibited and worrying with the aim of being careful as a form of rejecting damage.

The construction of settlements along the coast if viewed from the sad Ad-Dzari'ah point of view, needs to be studied more deeply. We already know that humans need a place to live to survive, this place to live in the form of a house or other shelter. Settlement development is a community need, and it is a benefit for the comfort and welfare of the community. However, if the settlement construction is carried out other than in the right place, it will cause new problems that have major consequences for the environment.

Various problems arising from the construction of settlements along the coast are the large amount of plastic waste piled up due to economic activity on the coastal

²⁶ Muhammad bin Abi Bakar bin Qoyyim Al-Jauziyah, "Ilamul Muwaqiiin an Rabbal 'Alamin", Juz3 (Bairut: Dar Al-Kutub Al-' Imiyah, 1991), 109.

²⁷ Muhammad Hasyim Al-Burhani, "Sadd Adz-Dzarai 'Fi As-Syariah Al-Islamiyah" (Bairut: Dar Al-Fikr, 1985), 103.

border and this is very damaging to the coastal ecosystem, because the beach is a habitat for amphibious animals. Many animals in water depend on beaches, seas and lakes. The beach is a natural habitat for many animals, the beach is also a habitat for various types of flora, such as mangroves and other trees that provide shade from the hot sun.

In addition, the existence of settlements on the coastline results in the loss of the function of the coast as a zone to retain sea water abrasion, as well as making the land lower than the ocean, so the benefits of the coast as a flood prevention can not be effective. If the land surface is lower than the ocean, then when there are high waves it can cause coastal water to rise to the surface of the coast so that it enters residential areas. The low land area is one of the results of the construction of settlements on the coast. Therefore, the preservation of the coast must be properly maintained, so as not to damage the habitat of the diversity of flora and fauna around the coast which provides beauty and coolness around the coast.

It has been explained above that there are three pillars of Dzariah. First; Wasilah is the original destination where the main foundation for the occurrence of dzari'ah, because if there is wasilah there will automatically be dzari'ah. The original purpose in the construction of this settlement is as a place to live or live in order to survive. An intermediary is prohibited if there is a connection between dzari'ah on something that is prohibited and worrying with the aim of being careful as a form of resisting damage, in this case the dzariah is to build a house on a coastal border where the distance is not 100m from the line of the highest tide point . This is prohibited because it poses a danger to both the safety of the population and the preservation of the coastal ecosystem.

Second, something that connects the two aspects of dzari'ah (intermediary and objective) in this case is the harm caused in the form of damage to coastal ecosystems due to settlements on the coast that do not pay attention to the coastal environment. Referring to the second Sad Ad-dzariah pillar, the construction of settlements along the coast is prohibited even though the people around the coastal border do not intend to damage the coastal ecosystem, but indirectly by establishing dense and slum settlements it results in a prohibited impact.

With the emergence of these consequences, the construction of settlements along the coast is obliged to be prohibited, because too many dangers are caused. Third, namely in the form of "*dzariah khos*" here is the construction of settlements on the coastline, and this is the cause of the strong consequences, namely damage to the coastal environment. Based on Sad Ad-dzariah's view, the construction of settlements on the coastal border in Glondonggede is not allowed or prohibited even though the purpose of building these settlements is for the welfare of the community. Although the law of origin to build a house or settlement is permitted, if the construction of the settlement brings greater danger then it is not allowed.

Conclusion

Tuban Local Government Regulation Number 09 of 2002 of 2012 concerning RTRW of Tuban Regency 2012-2032, one of the articles stipulates that the coastal boundary area is a local conservation or protection area so that all activities on the coast must pay attention to the ecosystem of the coastal environment, and this must be obeyed by all levels of society especially the community around the coastal border in Glondonggede Village, Tambakboyo District, Tuban Regency. When viewed from the

process of making these regulations, these regulations are in accordance with the principles of effectiveness of legal norms. However, in practice these regulations are not heeded because many residential buildings are standing on the coastline where the limit is not 100m from the highest tide line.

Culture and society are the main factors in the ineffectiveness of this regulation. These factors are motivated by human resources in Glondonggede Village, community non-compliance with existing regulations, lack of legal understanding in the community, weak control factors and insecure system enforcement by law enforcers and the absence of facilities or facilities (public housing) provided by the local government. so that people do not build settlements on the coast.

Sad Ad-Dzari'ah emphasizes a case where the original law is allowed but if it becomes an intermediary that creates a danger then according to Sharia law it is prohibited. This is in line with the phenomenon that is the object of research, where the original law of establishing a settlement is allowed, but if it leads to a greater harm (danger) then the law is not allowed. The danger is in the form of damage to the coastal environmental ecosystem which has long-term consequences. In addition, the existence of settlements on the coast that do not pay attention to environmental harmony causes coastal abrasion which at times threatens the lives of the surrounding community.

Bibliography

Books

- Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2018.
- Duane R. et, al, Monette. *Applied Social Research: A tool for The Human Service*. United States of Amreica: Cengage Learning, 2011.
- Hasyim Al-Burhani, Muhammad. *Sadd Adz-Dzarai' Fi As-Syariah Al-Islamiyah*. Bairut: Dar Al-Fikr, 1985.
- Kalalo, Flora Pricilla. *Hukum Lingkungan dan Kebijakan pertanahan di wilayah pesisir*. Jakarta: Rajawali Pers, 2016.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2019.
- Muhammad bin Abi Bakar bin Qoyyim Al-Jauziyah. *I'lamul Muwaqiin an Rabbal 'Alamin*, Juz 3. Bairut: Dar Al-Kutub Al- 'Imiyah, 1991.
- Nasution. Bahder Johan. *Metode Penelitian Hukum*. Bandung: Mandar Maju, 2008.
- Siahaan, N.H.T.. *Hukum Lingkungan dan Ekologi Pembangunan*. Jakarta: Erlangga, 2004.
- Siyoto, Sandu dan Ali Sodik. *Dasar Metodologi Penelitian*. Yogyakarta: Literasi Media Publishing, 2015.
- Soekanto, Seorjono. *Faktor-Faktor yang mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Press, 2008.
- Suprpto, Haddy. *Metodologi Penelitian Untuk Karya Ilmiah*. Yogyakarta: Gosyen Publishing , 2017.
- Sutedi, Adrian. *Hukum Perizinan dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika, 2011.
- Waluyo, Bambang. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika 2002.

Journal Articles

- Aghozsi, Shofie Rudhy, "Pengusaan Tanah di Sempadan Pantai dan Wilayah Pesisir",
Ungraduate Thesis, Universitas Jember, 2018.
<http://repository.unej.ac.id/handle/123456789/88402>

- Brianto Putra Tama, "Izin Mendirikan Bangunan (IMB)", *Researchgate*, (October 2019):3. 3.
https://www.researchgate.net/publication/336892294_Izin_Mendirikan_Bangunan_IMB
- Fahzy Abdul Rahman, "Reduce, Reuse, Recycle: Alternatives for Waste Management", *Guide G-314 New Mexico State University*, (2014):2.
https://aces.nmsu.edu/pubs/_g/G314.pdf.
- HARDIYANSYAH, "Analisis Kualitas Pelayanan Izin Mendirikan Bangunan pada Dinas Tata Kota di Kota Palembang", *MIMBAR*, Vol. 28, No. 2 (Desember, 2012):191-199. <https://ejournal.unisba.ac.id/index.php/mimbar/article/view/355/26>.
- Istiqomah Wibowo, "Pola Perilaku Kebersihan: Studi Psikologi Lingkungan Tentang Penanggulangan Sampah Perkotaan" *Makara Sosial Humaniora*, Vol. 13, No. 1 (Juli2009):37-4737
<http://repository.ui.ac.id/contents/koleksi/2/2803b30b2cbb66037fea8c077a9da4599d4309f6.pdf>.
- Munawaroh, Hifdhotul. "Sadd Al- Dzari'at dan Aplikasinya Pada Permasalahan Fiqih Kontemporer", *Jurnal Ijtihad*, Vol.12 No.1. (2018):63-84
<https://ejournal.unida.gontor.ac.id/index.php/ijtihad/article/download/2584/1735>.
- Rais, Muhammad Ridho Sungsang, "Legalitas Pembangunan Akomodasi Pariwisata di Sempadan Pantai Glagah", Undgraduate Thesis Universitas Sebelas Maret Surakarta, 2018. <https://digilib.uns.ac.id/dokumen/jenis/261/Skripsi/48>
- Showabi, Ahmad Idrus. "Pembangunan Hotel dan Kaffe di Sempadan Pantai Tegal Sambi Kabupaten Jepara. "Prespektif Undang- Undang Nomor 1 Tahun 2014 Tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil & Maqasid Al-Syari'ah Imam As-sathiby", Ungraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2017.
<http://etheses.uin-malang.ac.id/11325/1/13220219.pdf>.
- Trianawati Sugito, Nanin dan Dede Sugandi, "Urgensi Penentuan Penegakan Hukum Kawasan Sempadan Pantai", *Jurnal Geografi Gea*, Vol.2 (2008):50-59
<http://garuda.ristekbrin.go.id/author/view/388509>.
- Winarno Yudho dan Heri Tjandrasari, "EFEKTIVITAS HUKUM DALAM MASYARAKAT" *Jurnal Hukum dan Pembangunan*, VOL 17, NO 1 (1987)
<http://jhp.ui.ac.id/index.php/home/article/view/1227>