

# Effectiveness of Local Regulation of North Toraja Number 1 of 2013 Concerning Building

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**Abstract:** *This study aims to determine the implementation of the requirements of building construction and know and explain the supervision of building construction. This research uses qualitative approach. The data analysis techniques used in this study are in-depth interviews and descriptive documentation studies. Based on the results of the study indicate that the requirements of buildings in the Local Regulation Number 1 of 2013 on Buildings in North Toraja District is the elaboration of Law Number 28 of 2002 on Buildings. Implementation of the requirements of the building contains the administrative requirements and technical requirements of the building. Implementation of the requirements of building construction in North Toraja District has not been effective because it is closely related to the level of public awareness that is still low in terms of development and public awareness will be obliged to report very less. Supervision over the implementation of the Local Regulation of Building Buildings based on the rules in the Local Regulation that the parties involved in the implementation of the building is the relevant institutions of the Office of housing and other technical agencies. Supervision over the implementation of the building has not been effective due to lack of resources, especially human resources (field inspection officer) the number of violations that occurred. This resulted in the ineffectiveness of the implementation of housing and building controls as indicated by the large number of violations identified.*

**Keywords:** Building, Effectiveness, Local Regulation, North Toraja District.

## 1. Introduction

Local Regulation is a legal product established by the Local Government for the Provincial Government shall be established by the Governor together with the Provincial House of Representatives and for the Local Government of the Regency/City established by the Regent/Mayor together with the Provincial House of Representatives of the Regency/City. Local legislation as a Local legal product is a written legal form that contains general binding behavior rules. The substance of the Local regulation should be the elaboration of the higher level of legislation with respect to the specificity of each region and not contrary to the higher legislation and the public interest.

Based on the principle of Local autonomy adopted by the State of Indonesia, where this principle gives authority to each region to regulate and manage their own household including in making the Local Regulation. In a concept that seeks to balance and synergize management and creativity between central and local governments, each region is expected to be able to develop its own building governance in accordance with the potential and distinctiveness of each region. Therefore, there are various legal products in each region that try to accommodate the need for rules on the structure of the building.

Speaking on the concept of drafting local regulations, it is clearly stated in Law Number 12 Year 2011 on the Establishment of Laws and Regulations Number 23 of 2014 on Local Government, and then completed with a Decree of the Minister of Home Affairs regulating the product of local law. The process of planning the formulation of local regulations that start with the planning of the local legislation program is expected to be able to produce local law products

that are planned, integrated and systematic. In the framework of the development of national law, especially in the formation of legislation, an approach that reflects a proactive mindset based on critical and objective [Maria S.WSumardjono, Kebijakan Pertanahan, (Yogyakarta: Kompas, 2001), hal 1]

One of the government's efforts to achieve the ideals of promoting the general welfare, especially in providing prosperity to the people of Indonesia is the availability of facilities that can be enjoyed by all levels of society, in this case one of them is the construction of the building.

The rapid development in our country that has many standing buildings that also provide an impact, in addition to bringing a positive impact of the increase of people's welfare also bring negative impacts that cause various violations, including in the field of environment [I WayanSuandra, Hukum Pertanahan Indonesia, (Jakarta: 1994), hal. 7].

Building as a place of human activity, has a very strategic role in the formation of character, manifestation of productivity, and human identity. Therefore, the organization of buildings need to be arranged and nurtured for the sake of continuity and improvement of life and livelihood of the community, as well as to realize the building of a functional building, reliable, self, and balanced, harmonious, and in harmony with the environment [Indonesia, Undang-Undang Tentang Bangunan Umum, UU Nomor 28 Tahun 2002, Penjelasan Umum].

North Toraja regency is one of the regencies in South Sulawesi and is one of the most popular tourist destinations in the holidays, both local and foreign tourists. As a city of tourism, the elements of North Toraja District Government have the right, authority and obligation of autonomous

regions to regulate and manage their own governmental affairs and interests of local communities in accordance with the laws and regulations.

The Government of North Toraja has issued Local Regulation Number 2013 on Building. Building Construction Permit is a permit granted by North Toraja District Government to the owners to build new, modify, expand, reduce and/or maintain buildings in accordance with administrative requirements and technical requirements. The purpose of the law is as a reference to regulate and control the implementation of the building since the planning, licensing, construction implementation, utilization, building feasibility in accordance with the legislation.

In relation to the applicable law rules and the above empirical facts and to gain a deeper understanding of the implementation and supervision of the Local Regulation, see the effectiveness or absence of Local Regulation Number 1 Year 2013 on Building, the authors are interested to formulate the following issues. The Problem Definition is How is the implementation of the requirements for the implementation of the building and How is the supervision of building implementation.

## 2. Method of the Research

Research sites: To obtain data and information in complete and concrete, the authors conduct research in the Office of Local Government of North Toraja District.

Types and Data Sources: Sources of data on research can be grouped into two types: primary data and secondary data.

Data collection techniques that have been used in this research are:

- a. Primary Data is data obtained or collected by researchers from various sources that already exist. Secondary data can be obtained from various sources such as legislation, books, articles and journals.
- b. Secondary data is data obtained or collected by researchers directly from the source data. Primary data is also referred to as original data or new data that has up to date properties. To obtain the primary data, the researcher must collect it directly. Techniques that can be used by researchers to collect primary data among other observations and interviews with sources/informants.

Data collection techniques that have been used in this research are:

1. legal materials obtained from the results of the research and then analyzed by using the theoretical basis.
2. Secondary materials which include secondary legal materials are conducted in comprehensive and in-depth review with several theories presented to analyze the applied regulations.

Data analysis technique, The overall data obtained from this study, both primary and secondary data are processed and analyzed qualitatively for further described to provide an understanding by describing and explaining the results of this study. The method of thinking used in analyzing the collected data is by using the deductive method, the way of thinking

that starts from the things that are common and then drawn conclusions that are special.

## 3. Results and Discussion

### 3.1 Implementation of Requirements to the Implementation of Building

To ensure legal certainty of the operation of buildings according to the function and location designation in the spatial plan of the territory and to implement Article 6 paragraph (1), paragraph (2) and paragraph (3), and Article 7 paragraph (5) of Law Number 28 Year 2002 concerning the Building, then the administrative requirements and technical requirements of the building need to be regulated by a Local Regulation. This is a consideration to establish the Local Regulations of the North Toraja District on Buildings.

In a research interview on November 16, 2017 with Mr. WempiBako, ST of North Toraja City Government said that:

“The basis for the establishment of Local Regulation Number 01 Year 2013 regarding Building is Article 6 paragraph (1), paragraph (2) and paragraph (3) and Article 7 paragraph (5) of Law Number 28 Year 2002 concerning Building which contains about administrative requirements and requirements technical building needs to be regulated by Local Regulation.”

In addition, regarding the juridical requirements for the establishment of Local Regulation Number 1 of 2013 in a research interview with Mr. Wempi Bako, ST said that:

“Local Regulation is a product of legislation of local government, namely Head of Region and Local Representatives Council. Article 40 Paragraph 1 of Law Number 32 Year 2004 regarding Local Government states that the draft of Local Regulation may come from Local House of Representatives, Governor, Regent or Mayor. Furthermore, the draft Local Regulation shall be approved by the Local House of Representatives and the Governor or Regent/Mayor for further discussion. Without mutual consent, the draft Local Regulations will not be discussed further.”

Regarding the technical guidance of the implementation of the Local regulation shall be further regulated by regent regulation concerning the implementation of the building. Building as a place of human activity, has a very strategic role in the formation of character, manifestation of productivity, and human identity. Therefore, the organization of the building needs to be regulated and nurtured for the sake of continuity and improvement of life and livelihood of the community, as well as to realize the building of a reliable, sustainable, and balanced, harmonious, and in harmony with the environment. Therefore, the fixed building arrangement refers to the spatial arrangement in accordance with the legislation. To ensure legal certainty and order in the organization of the building, each building must meet the administrative requirements and technical requirements of the building.

Based on the legal system theory proposed by Lawrence M. Friedman who looked at three elements of law to measure the success of a legal product that is on the substance of the law, the legal structure and legal culture. In the study of Local Regulation Building of North Toraja Regency by analyzing using legal system theory that is in substance of law is Law Number 28 Year 2002 about Building, Government Regulation Number 36 Year 2005 about Rule Implementation of Law Number 28 Year 2002 about Building, Guideline Implementation of Duties of Local Head/Deputy Local Head in the Maintenance of Religious Harmony, Empowerment of Religious Harmony Forum, and Establishment of House of Worship, Regulation of the Minister of Home Affairs Number 32 Year 2010 concerning Guidelines for the Granting of Building Permit and for subsequent regulations shall be regulated in Local Regulations for each region, specifically for the regency of North Toraja shall be stipulated in Local Regulation Number 1 of 2013 on Building which is subsequently regulated in the Regent's Regulation.

While the legal structure that is looking at the legal institutions that implement the law. In the study of Local Regulation Building in North Toraja regency the legal institutions are North Toraja District Government, Office of Settlement and Housing of North Toraja District, and related parties.

The building is a physical form of construction work that is united with its place of residence, partly or wholly located above and/or in the soil and/or water, which functions as a place for human activities, whether for shelter, religious activities, business activities, social activities, culture, and special activities. The construction of buildings is a development activity which includes the process of technical planning and construction implementation as well as activities of utilization, preservation and dismantling. Building organizers are owners, construction service providers, and building users.

In the Local Regulation of Buildings shall be governed concerning the purpose of the Regulation of the area The purpose of the Local Regulation is as a reference to regulate and control the implementation of the building since the planning, licensing, construction implementation, utilization, building feasibility in accordance with legislation. While the goal is:

- a) Realizing a functional building and in accordance with a harmonious and sustainable building arrangement with its environment
- b) To realize the orderly implementation of buildings that ensure the technical reliability of the building in terms of safety, health, comfort, and convenience; and
- c) Achieve legal certainty in the organization of the building.
- d) As for the function of the building that includes:
- e) Building function of the dwelling, with the main function as a place where people live
- f) The building of religious function with the main function as a place of worship;
- g) Building business function with the main function as a place where people conduct business activities;

h) Building social and cultural functions with the main function as a place of human doing social and cultural activities

i) Special functional building with main function as a place for human to conduct activity having high degree of confidentiality and/or high risk level;

Building more than one function. Classification of buildings according to the classification of building functions is based on the fulfillment of administrative requirements and building technical requirements.

Each building is required to meet administrative requirements and technical requirements in accordance with building function. Building administrative requirements include Status of land rights and/or utilization permit from the holder of land rights. The status of building ownership is evidenced by the proof of building ownership issued by the Bupati. Determination of the status of building ownership as referred to in paragraph (1) shall be made during the process of Building Permit and/or at the time of building data collection as an orderly means of development, orderly. Every person or entity is obliged to apply for Building Construction Permit to the Bupati. The Local Government is obliged to give free letter of city plan as referred to in paragraph (1) to each prospective applicant of Building Permit as the basis for preparing the building technical plan. Application for Building Permit with administrative requirements and technical requirements. The administrative requirements as referred to in paragraph (3) shall consist of:

- a) Evidence on the status of land rights;
- b) Letter of evidence on the status of the building; and
- c) Other related documents / letters.

Buildings are organized in accordance with the designation of the location specified in the provisions on the Local Spatial Plan and the provisions of the Building and Environment Plan of the location concerned. The Local Government shall provide information on the Spatial Plan and the Building and Landscape Plan as referred to in paragraph (1) to the community free of charge. The operation of the building consists of development, utilization, conservation, and demolition activities. Development activities as referred to in paragraph (1) shall be carried out through the process of technical planning and construction implementation process. Development activities as referred to in Article 69 paragraph (2) may be carried out independently or using service providers in the areas of planning, implementation and/or supervision.

### 3.2 Supervision of Building Administration

In the same Article 38 definitively explains that the Supervision is the monitoring of the implementation of the application of the laws and regulations of the field of building and law enforcement efforts. Based on the normative references described above, it can be concluded that supervision is a part of coaching. Supervision includes the process of monitoring, evaluation, and correction and enforcement efforts in case of violation of existing regulations. Based on the description the author has conveyed, the supervision in the context of Law Number 2 Year 2008 regarding Building and its implementing

regulations and Law Number 1 Year 2011 on Housing and Settlement Area can be defined as the government's guidance to the construction of buildings and housing/settlements with the purpose of the creation of the order of construction and reliability in accordance with its function as well as law enforcement efforts. Monitoring is conducted by monitoring, evaluation, and correction and litigation efforts related to the violation.

In accordance with Article 90 paragraph 2 of North Toraja District Regulation on Building related to supervision on the feasibility of building function in Toraja District, and in accordance with the system of legislation supporting the implementation of supervision on development in North Toraja District, namely Article 10 Law Number 1 Year 2011 concerning Housing and Settlement Area stipulates that supervision includes monitoring, evaluation and correction actions. While Article 6 determines that supervision is a part of coaching.

Based on the normative references described above, it can be concluded that supervision is a part of coaching. Supervision includes the process of monitoring, evaluation, and correction and enforcement efforts in case of violation of existing regulations.

Based on the description the researchers have submitted, the supervision in the context of Law Number 28 Year 2002 regarding Building and its implementing regulations and Law Number 1 Year 2011 on Housing and Settlement Area can be defined as the government's guidance to the construction of buildings and housing/settlements with the purpose of the creation of the order of construction and reliability in accordance with its function as well as law enforcement efforts. Monitoring is conducted by monitoring, evaluation, and correction and litigation efforts related to the violation.

The points that need to be considered in the supervision of the implementation of the Regulation of the building area :

**a. Monitoring:**

Monitoring aims to observe, follow and document changes in the status/condition of a space utilization activity of a particular area/object within a certain period of time. The monitoring function is that the implementation of space utilization can be in accordance with the Spatial Plan and is one of the efforts to prevent the violation of the utilization of space that can harm the community.

**b. Evaluation**

Monitoring produces important input data for the next monitoring process evaluation. Evaluation is thus a follow-up of monitoring activities. Evaluation is a part of supervisory action that results in conclusions and recommendations for spatial use for follow-up.

**c. Orderly**

orderly is the effort of law enforcement action in accordance with prevailing laws and regulations. Control is carried out if the evaluation results in feedback on any breach, non-conformity or deviation from the applicable Spatial Plan. The subject of control consists of institutions / agencies authorized in the field of regulation and utilization of space, such as the City Planning Office, City Development Supervisory Service, the Department of

Order, and so forth.

The local government shall supervise the implementation of the building through the mechanism of issuance of building Permit, Letter of Approval and Stipulation of Building Dismantling. In supervising the implementation of legislation in the field of building implementation, local government can involve the role of the community:

- a) At each stage of the building;
  - b) By developing a reward system in the form of services and/or incentives to enhance the role of the community.
- The role of the community in the organization of the building is the embodiment of the will and the desire of the community to monitor and maintain the order, give inputs, convey opinions and considerations, and conduct a representative lawsuit relating to the implementation of the building.

Implementation of building supervision duties is an activity with a high complexity and covers a wide work area and not apart from obstacles in its implementation, according to Head of Field Rolling and Border Field Supervision Mr. WempiBako obstacles such as:

- 1) This problem is often encountered in the implementation of government tasks, namely the lack of resources, especially Human Resources (field inspection officers) resulting in the number of violations that occurred. This resulted in the ineffectiveness of the implementation of housing and building controls indicated that there were still many violations identified.
- 2) The second problem is closely related to the level of public awareness that is still low in terms of development. Public awareness will be obliged to report very less and also for low community role to participate in supervision trigger deviation in terms of building utilization.

North Toraja District Government, especially in the Office of Housing, emphasizes more effective prevention efforts by increasing the intensity of monitoring and evaluation as a first step while continuing to seek additional building supervisors. This problem according to resource persons is closely related to the process of guidance as described earlier, On the other hand the problem solving efforts that are not less important is through a comprehensive coaching and extension approach for residents to constantly raise awareness to the community understand about the applicable Local Regulations and in 2013 will be held mandatory discourse "building permit". It is hoped that the public will have an awareness of non-infringement and to increase participation to report if there is a violation around their neighborhood.

Coordination function plays an important role in the implementation of spatial planning for the implementation of the principles of spatial planning such as alignment, harmony, balance and partnership. Implementation of supervision of the development of land supply in the city center is increasingly limited and expensive resulting in uncontrolled urban developments to the periphery of urban areas. These developments are generally patterned following existing Local road networks, sporadic and unorganized, making it difficult to provide efficient infrastructure and

facilities, resulting in traffic congestion due to the periodic flow of movement between the periphery to the city center.

Implementation of monitoring activities is implemented through a series of monitoring, evaluation and correction actions, and control. Based on the timing of the implementation, supervision activities are carried out during the development and post-development process. Supervision during the construction process (construction), aims to prevent the occurrence of slowness or idle (non-performing) that have a negative impact. Post-development supervision, aims to prevent the occurrence of irregularities undertaken on licensing activities that have been issued.

Based on the provisions of Law Number 28 Year 2002 on Buildings, single houses, residential houses, apartment houses, and temporary shelter for occupancy are included in the category of buildings. Each building must meet administrative requirements and technical requirements in accordance with the function of building Article 7 paragraph (1). The building administrative requirements (house) may be executed after the technical plan of the building is approved by the Local Government in the form of building permit Article 35 paragraph (1) 40). Owning a Building Permit is an obligation of the owner of the building Article 40 paragraph (2) letter b.

If the building owner doesn't fulfill the requirement of development requirement, it may be subject to administrative sanction, subject to sanction of suspension until the acquisition of building permit (based on Article 115 paragraph [1] of Government Regulation Number 36 of 2005). Owners of buildings without building permits are subject to sanction of demolition orders (Article 115 paragraph (2) of Government Regulation Number 36 of 2005). In addition to administrative sanctions, the owner of the building may also be subject to sanctions in the form of a fine of at most 10% of the value of the building being or has been built (Article 45 paragraph (2) Act on Building). However, in the research data there is no controlling of buildings that do not have building permit.

#### 4. Conclusions

- 1)The building requirement in Local Regulation Number 1 Year 2013 regarding Building in North Toraja Regency is an elaboration of Law Number 28 of 2002 on Building. Implementation of building requirements contains administrative requirements and building technical requirements. Implementation of building implementation requirements in North Toraja District has not been effective because it is closely related to the level of public awareness that is still low in terms of development and public awareness will be obliged to report very less.
- 2)Supervision over the implementation of the Building Regulation based on the rules in the Local Regulation that the parties involved in the implementation of the building are the relevant agencies namely the Office of Settlement and Housing and other technical agencies. The Office of Settlements and Housing in this case technically supervise the building based on the existing technical rules in the

Local Regulation Building Permit Number 19 of 2011. Supervision of the implementation of the building has not been effective because of lack resources, especially human resources (field inspector) resulting in the number of violations that occurred. This resulted in the ineffectiveness of the implementation of housing and building controls as indicated by the large number of identified violations.

#### References

- [1] Achmad Ali, 2009 Menguak Teori Hukum dan Teori Peradilan, Kencana, Jakarta
- [2] Achmad Ruslan. 2011. *Teori dan Panduan Praktik Pembentukan Peraturan Perundang-Undangan Di Indonesia*. Yogyakarta: Rangkang Education
- [3] Ady Kusnardy. 2001. *Penelitian Tentang Aspek Hukum Pengawasan Dalam Pelaksanaan Keuangan Pusat dan Daerah*. Jakarta.
- [4] Adrian Sutedi. 2011. *Hukum Perizinan Dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika
- [5] Aminuddin Ilmar, 2014, *Hukum Tata Pemerintahan*, Jakarta, Prenadamedia Group.
- [6] Amrah Muslimin. 1986. *Aspek-aspek Hukum Otonomi Daerah*. Bandung: Alumni.
- [7] Bagir Manan, 1995. *Ketentuan-Ketentuan Mengenai Pengaturan Penyelenggaraan Hak Kemerdekaan Berkumpul Ditinjau Dari Perspektif UUD 1945*, Makalah Tidak Dipublikasikan. Jakarta.
- [8] Dahlan Thaib. 2009. *Ketatanegaraan Indonesia Perspektif Konstitusional*. Yogyakarta: Total Media.
- [9] Huda, Ni'matul. 2005. *Hukum Tata Negara Indonesia*. Jakarta: PT. Raja Grafindo Persada.
- [10] H.M. Laica MarzuKi. 2009. *Prinsip-prinsip pembentukan Peraturan Daerah*. jurnal konstitusi MK volume 6 nomor 4. Jakarta.
- [11] Joeniarto. 1992. *Perkembangan Pemerintahan Lokal*. Jakarta: Bina Aksara.
- [12] Maria S.W Sumardjono, 2001 *Kebijakan Pertanahan*, Yogyakarta: Kompas.

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