

Implementation of Building Construction Prohibition In Watershed (Case Study on Brantas Watershed in Soekarno-Hatta Area, Malang)

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ABSTRACT

The objective of research was aims to find, analyze and understand the policy implementation of the ban on construction of building in watershed (DAS Brantas Case Study on Region Soekarno-Hatta Malang). The legal analysis is focused in finding the limiting factors in the enforcement of the ban on construction of the building in the watershed, the legal consequences of the construction of the building in the watershed area and the efforts to enforce the provisions on the prohibition of building in the watershed. The journal is prepared by the method of empirical juridical approach sociological jurisdiction. Based on the survey results revealed that basically factors which hinder the enforcement of the ban on construction of the building in the watershed occurs because Due to the lack of public awareness regarding the building was required to have a permit, factors of weak local economy, the law enforcement officers who are not firmly against the demolition in the area of watershed Brantas also because of the buildings that have stood prior to Regulation No. 1 Year 2012 Malang. The legal consequences of the construction of the building in the watershed area, namely a written warning and a call to the offenders concerned. While efforts to enforce the provisions of the ban on building in the watershed of them with socialization related rules and if there is a violation, the violator will be called to give advance warning letter, if it is still in violation will be given sanction by misdemeanor.

Keywords: *Implementation, Enforcement, Watershed*

1. INTRODUCTION

Riverbank or watersheds settlements is an urgent problem to be addressed more thoroughly as they become a dilemma for the lives of the people in the region and the Regional Government as the manager. On one hand, the existence of these settlements is rooted in economic motives, thus encouraging the population on the banks of the river to make the most of the potential of the water and the potential of the river, but on the other hand the riverbank area is an area that needs protection from various factors that can damage the ecosystem (Yustianti and Roesli 2018). If the watershed is not protected properly, the impact of the damage will be a disaster for the community around the river flow and the river ecosystem such as the level of reservoir sedimentation, the quality of the river water that falls due to pollution, and flood.

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Weak institutional strengthening has been proven to be followed by policy failure to achieve its objectives². Excessive regional selfishness has caused each city/district government to feel responsible only in its own administrative territory. Meanwhile, environmental management always demands beyond the administrative boundary because of its ecological characteristics. Environment should be managed with the principle of bioregionalism. Regional egoism has caused irresponsibility at cases of environmental damage³. Protection and management of environment needs to be carried out based on the principle of integration⁴.

The problem of illegal settlements in watershed area is one of the impacts of residential needs in city which is followed by an increase in land requirements. As the population of urban land increases, the price of land becomes increasingly expensive. For those who depend on urban life and cannot afford land or housing, they are forced to build illegal buildings, one of which is in watershed area. Asdak defines watershed management as a formulation process and implementation of activities or programs of manipulation of natural and human resources contained in the watershed to obtain production and service benefits without causing damage to water and land resources⁵.

The existence of residential land in the watershed area will cause various problems ranging from flooding, reduced water availability due to the narrower width of the river to the occurrence of water pollution which results in a decrease in river water quality, where most of the river water is used to sustain the lives of the communities around the watershed. Decreasing water quality will reduce efficiency, usability, productivity, carrying capacity and capacity of water resources which will ultimately reduce the wealth of water resources. To maintain the quality of water to remain in its natural condition, it is necessary to manage and control water pollution wisely.

As an archipelagic country, Indonesia has wide ranges of watersheds and are located in several regencies and provincial administrative regions. The Minister of Forestry Decree No.511 / Menhut-V / 2011 on Determination of a Watershed Map states that the number of watersheds in Indonesia covers 17,088 watersheds with a very wide size ranging from less than 100 hectares to more than four million hectares.

Malang is one of the cities in East Java divided into five sub-districts of Kedung kandang, Sukun, Klojen, Blimbing and Lowokwaru Districts. According to the results of the Population

² Hariadi Kartodiharjo, *Kebijakan Pengelolaan Hutan: Perumusan Kebijakan dan Implementasinya, Bahan Pelatihan Pengelolaan Lingkungan Hidup*. (KLH: Desentralisasi Pengelolaan Sumberdaya Hutan, Kementerian Lingkungan Hidup, Juli 2006), p. 45.

³ Hadi Yunus, *Struktur Tata Ruang Kota*, (Yogyakarta: Pustaka Pelajar, 2005), p. 89.

⁴ Article 2 letter d, Law of the Republic of Indonesia Number 32 Tahun 2009 concerning Environmental Protection and Management

⁵ Asdak, Chay. *Hidrologi dan Pengelolaan Daerah Aliran Air Sungai*. Yogyakarta: Gadjah Mada University Press. 2010 p.231

Census on May 12, 2015, Malang population covered 870,844 people with a population growth rate of 0.86% and a population density of 7,453 / km². The most populated sub-district is Klojen by 12,006 people per kilo of square meters⁶. A high population increase raises various problems, especially environmental problems, one of which is the emergence of slums in Brantas River Basin. The settlement arises due to an increase in population both from population growth and due to urbanization. Thus, the need for land for housing is increasing, while land is becoming more limited.

These settlements are in flood-prone areas and tend to become slums. This is due to the inability of low-income class residents to buy houses. As an alternative to get a shelter close to the workplace, settlements are built in marginal areas such as riverbanks⁷. Slum areas are an indication of the government's failure to provide adequate housing for all population groups. The emergence of slums on the banks of Brantas River in the city of Malang cannot be separated from the decline in river water quality due to the activities of the surrounding population. Residents around the Brantas River tend to use the river to meet their daily needs such as bathing, washing and latrines without going through regular household waste sanitation⁸.

The East Java Environmental Forum (Walhi)⁹ assessed that the construction of the Soekarno-Hatta tower and residential apartments in Malang City had violated the provisions of Local Regulation No. 1 of 2012. This was because the residential location of the apartment was in the same area as Brantas River and violated Article 27 of the Malang City Regional Regulation Number 1 of 2012 concerning Building Buildings which states that "the construction of settlements in the watershed area is at least 25 meters outside along the legs outside the embankment and 50 meters if not embankment."

In the framework of structuring development to be in accordance with the Regional Spatial Plan, Detailed Spatial Planning and in order to achieve a beautiful urban arrangement and ensure health, safety and security and public order, guidelines are needed to regulate the order of building in Malang which must also be adjusted. with what has been stipulated in Law Number 26 of 2007 on Spatial Planning. This is regulated in the Regulation No. 1 of 2012 above.

According to Malang City Regulation Number 1 of 2012 on Buildings construction to be in accordance with Regional Spatial Plan (RTRW), detailed spatial planning, and to achieve a

⁶ <http://dispendukcapil.malangkota.go.id> downloaded on June 10, 2015

⁷ <http://www.pajakonline.com/engine/artikel/art.pdp?artid=7784> downloaded on May 21, 2015

⁸ Ngakan Putu Suec., *Permukiman Kumuh, Masalah Atau Solusi*, (Jurnal Permukiman Natak Vo.2 Universitas Udayana. 2004), p. 7

⁹ Apartment Settlement Development in Malang Assessed to Damage the Environment. Tempo. Accessed May 27 2015

beautiful urban arrangement and ensure public health, it is necessary to set guidelines for organizing buildings in Malang City¹⁰. Building arrangements in Brantas watershed area is arranged in Article 27 paragraph (2) of Malang City Regulation No. 1 of 2012 which states that the location of the demarcation of the outermost building for the area along the river or lake is calculated based on the condition of the river, the location of the river and the function of the river area, and measured from the river bank.

Based on the background that has been explained, an empirical legal problem is interesting to analyze: What are the inhibiting factors in enforcing the prohibition on building construction in the watershed? What are the legal consequences of building construction in the watershed area? How do you enforce the provisions regarding the prohibition of building construction in the watershed?

This journal is compiled based on empirical juridical research method which is carried out with a sociological juridical approach in Malang City and supported by primary data in the form of data obtained directly from the source either through interviews, observations or reports in the form of unofficial documents which are then processed by researchers and secondary data in the form of related legislation, books, scientific journals both online and non-online and other literature related to the topic of the thesis discussion.

2. DISCUSSION

2.1. Inhibiting Factors in Enforcing the Prohibition of Building Construction in the Rivershed

1. Inhibiting Factors of Building Construction Ban in Malang Watershed Area

Government Regulation Number 26 of 2008 on National Spatial Plan states that the river border is a protected area. In accordance with Minister of Public Works Regulation No. 63/PRT/1996 on the River Border Line, River Benefit Areas, River Control Areas, and Ex-Rivers, stipulates:

Article 6 Paragraph (1):

"The border of river with embankment is set as follows: The border of river embankment in urban area is set at least 3 meters on the outside along the foot of the embankment.

Article 8:

"Determination of the border line of the river without embankment in urban area is based on the criteria: the border line of rivers with depth of not more than 3 meters is set at least 10 meters calculated from the banks of the river at set time: the border line of rivers with depth of not more than 3 meters to 20 meters is set at least 15 meters from the river bank at the time specified. The border line of rivers with maximum depth of more than 20 meters is at least 30 meters calculated from the banks of the river at the set time.

Article 12:

¹⁰ Malang Mayor Regulation Number 1 of 2012 concerning the Standing Orders of the Regional People's Legislative Assembly of Malang City: Malang

"In the border area, it is prohibited to dispose of solid and/or liquid waste and establish permanent buildings for residential and business premises".

Based on Permen PU No. 63 / PRT / 1996, buildings that are erected on the banks of a river are prohibited and will endanger residents and the surrounding environment. However, in reality there are so many buildings stand along the Brantas watershed.

The problem may be overcome by developing the concept of mitigation and adaptation in disaster-prone areas. For example, the formation of new canals. From an economic standpoint, the formation of a new canal must consider cheaper costs and whether canal construction is carried out by dismantling slum areas or dismantling all of them with permanent settlements.

Regarding the number of residential buildings that stand around the Brantas watershed area around the Soekarno Hatta area, the Malang City Environmental Agency provides the following explanation:

"Buildings established in Brantas watershed area do not have a Building Permit, we find difficulty in its supervision¹¹."

The Public Works Agency also stated¹²:

"Usually the violation is in the form of a building erected on land owned by a Government Agency, but sometimes a building in the watershed area can have IMB because it has a recommendation from the irrigation Agency."

This statement was justified by the Integrated Licensing Service Office which handled the IMB, which explained:

" IMB will not be approved if there is a prohibition on building such as in the watershed area which is the authority of the Irrigation Office. But if the party concerned receives a recommendation from the irrigation service that is equipped with its Panning Advice, we cannot refuse to make a permit¹³."

To find out the reason of the people who have buildings along Brantas watershed area, whether they know that there are laws and regulations have prohibited the establishment of buildings in the watershed area, one of the residents with the initials AA stated:

"I have lived here for a long time and there has never been a problem so far and there has never been a reprimand from any party. Indeed, this house does not have an IMB. I don't think my house must have an IMB, the house located on the side of the big road is the ones required to have an IMB."

From the results of the interviews with the three related agencies and one of the community members mentioned above, the authors concluded that the forms of violations that

¹¹ Waskito (Head of Construction Section of Public Works Office, Interview, Public Works Office, Malang, October 27, 2015.

¹² Iwan Rizali (Head of Malang City Public Works Licensing Services), Interview, Public Works Licensing Service Office, Malang, October 28, 2015

¹³ Head of Licensing Service Office, Interview, Integrated Licensing Service Office, Malang, October 28, 2015

occur mostly in the Brantas watershed are the absence of a permit to carry out development in the Brantas watershed area. Although there has been socialization, there are still many buildings because residents still want to build in the area. Most of the existing buildings in Brantas watershed are currently built when rules regarding construction prohibition in the watershed do not exist.

Article 19 Paragraph (1) Regional Regulation Number 1 of 2012 Malang City states:

"Every individual / body that constructs a building is obliged to have an IMB document from the Regional Government, except for a special function building."

It is clear that any construction needs an IMB. IMB is used as a requirement to gain public utility services. For buildings without IMB, based on Article 19 Paragraph (5) of the Regional Regulation, must be dismantled or made adjustments so as to meet the provisions in the IMB.

In his opinion through the Non-Governmental Organization that he led, retired Dwikora said that there were many violations of development in the area of Das Brantas which increased every year. The violation is not only carried out by the poor, but also by entrepreneurs who set up their businesses around Das Brantas. Not only violations in the watershed area, Malang City also experienced many violations in terms of spatial planning but almost always won the adipura trophy¹⁴.

Based on the interview above, the constraints in enforcing the ban on development in the Brantas watershed are:

- a. Low awareness of the community or citizens regarding forest and water conservation, especially in Brantas watershed of the Soekarno Hatta region;
- b. Environmental care has not been an ongoing agenda (sporadic ceremonial);
- c. Domination of economic orientation overcomes ecology;
- d. Unclear knowledge about the need for IMB in building buildings in any area, especially if the area is in the watershed area;
- e. The existence of buildings that have been built before the issuance of Regional Regulation No. 1 of 2012, where based on the principle of law does not apply retroactively, the buildings cannot be ordered;
- f. Land and forest management systems that are not pro-conservation (non-environmentalist regulations);
- g. Related agencies are still not firm in taking action against violations on the basis of humanity against the poor in the Brantas watershed;

¹⁴ Purnawan Dwikora, East Java Environmental Forum Regional Board, WALHI JATIM, Malang January 5, 2016

- h. The people who own the building are arrogant, so to avoid things that are not desired, the relevant officials in this case the PP PP and the Licensing Service cannot firmly curb violations in the form of demolition of buildings.

River border rules have been clearly regulated in the Regulation No. 1 of 2012. In addition to omission, the rules are not enforced. Illegal development on the riverbank should be prevented from an early without waiting for a permanent home to take action. Enforcement will certainly cost and energy is greater and will harm those who have built buildings wildly on the banks of the river.

The Spatial Plan (RTRW) of Malang City must be used as an umbrella carefully. In several major cities in the world, large rivers that flow in the city are made multi-function. The policies implemented by the government do not currently have a legal umbrella that is definitely related to space or territory. The contributing factor, according to the authors, is the omission of settlements along the watershed. The government must be firm to maintain long-term sustainability. There must be a real and decisive action according to its designation. The solution to this is to rehabilitate the upstream areas of the river. The concepts of upstream river rehabilitation have not been successful. This is proven by the increase in illegal buildings along the Brantas watershed. The regulation on the RTRW in Malang City must be immediately enforced by stopping the granting of building permits in the Brantas watershed and rehabilitation of the upstream areas must be carried out as soon as possible. But all of that must be supported by the community. In the future, disaster and environmental damage can be minimized.

2.2. Legal Consequences for Notaries Who Sign the Deed Outside of their Place of Conduct in Order

1. Laws and Regulations Regarding Watershed Management

Assessing the Watershed is not possible based solely on one or several similar laws or a plot. Watersheds must be viewed as a whole-whole area consisting of water catchment areas, water sources, rivers, lakes and reservoirs, which cannot be separated from each other.

In stages, the laws and regulations governing Watershed Management are arranged in the following order:

1. Constitution:
 - a. 4th paragraph of the Preamble to the 1945 Constitution¹⁵.

¹⁵ The relationship between Article 33 Paragraph (3) of the 1945 Constitution and the prohibition on development in the watershed area is because the state in managing the earth, water and natural wealth contained therein is used for the greatest prosperity of the people in the right way. Which does not damage the natural ecosystem, because later those who use the earth, water and natural wealth contained therein are not only used by us at this time, but are inherited for our children and grandchildren. So that for the sake of environmental sustainability in order to realize the prosperity of the people, then in managing the watershed area layout must be adjusted to its usefulness for its prosperity and sustainability for the future as well.

b. Article 33 paragraph (3) of the 1945 Constitution.

2. Act

a. Law No. 5 of 1990 on Conservation of Biological Natural Resources and their Ecosystems (Article 9 concerning certain regional conservation obligations and Article 29 Paragraph (2) regulation of the procedures for conservation of natural resources by the region);

b. Law Number 26 of 2007 on Amendment to Law Number 24 of 1992 concerning Spatial Planning (Article 11 of regional spatial authority, Article 60-66 of the rights and obligations of the community in spatial planning);

c. Law Number 23 of 1997 on Environmental Management which was amended by Act Number 32 of 2009 concerning Environmental Protection and Management (Article 7 concerning areas that must be protected);

d. Determination of Government Regulation in Lieu of Law Number 2 of 2014 on Amendments to Law Number 23 of 2014 concerning Regional Government Becomes Law (Article 154 concerning regional rights and authority);

e. Law Number 19 of 2004 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2004 on Amendment to Law Number 41 of 1999 concerning Forestry Becoming Law (Articles 48 and 49 concerning the management and conservation of forest areas).

1. Government Regulation

a. Government Regulation No. 77 of 2001 on Irrigation.

b. Government Regulation No. 82 of 2001 on Management of Water Quality and Water Pollution Control.

c. Government Regulation No. 35 of 1991 on the River.

d. Government Regulation No. 69 of 1996 on the Implementation of Rights and Obligations, as well as the Forms and Procedures for Community Participation in Spatial Planning.

e. Government Regulation No. 27 of 1999 on Environmental Impact Analysis.

f. Government Regulation No. 25 of 2000 on the Authority of the Government and the Authority of Provinces as Autonomous Regions.

2. Malang City Regional Regulation

Malang City Regional Regulation Number 4 of 2011 on the Malang City Spatial Plan 2010-2030.

2.3. Analysis of Legal Impacts on Development in the Brantas Watershed Area

If there is a violation, for example there is no HO permit then only a minor crime is given so they take care of the HO permit. Before they are charged with minor criminal offenses, they call, given a multilevel warning letter. Then if the call is not in the governor, he is given a minor offense.

"It has been carried out but it is only a small act such as a fine and a minor criminal act, but for large actions such as dismantling we have not been brave. Obviously they don't have an IMB and land certificate. Usually those who commit violations do the construction first and then take care of the building permit. Power and water lines have no connection with IMB¹⁶".

Regarding the proportion of authority of the relevant agencies in the establishment of buildings in the Brantas watershed, the technical field is to take care of environmental documents for issuance of permits, IMB is processed to BP2T then to BLH for recommendations. The building plan from the PU then sent to BLH for environmental review and then to BP2T for the issuance of IMB. As for the legal consequences based on the results of interviews regarding who is responsible for enforcing the prohibition on building construction in the Brantas watershed in the Soekarno-Hatta Area of Malang, the related parties said they did not know who was responsible¹⁷. Legal consequences if someone violates the ban, according to relevant officials, do not know yet. According to the relevant official, Perda Number 1 of 2012 does not mention Brantas watershed, only a structural problem.

Even based on the results of the interview, it was said that most buildings do not have an IMB and a land certificate but they have electricity and water because the IMB was not cared for. The legal consequences based on the results of the interviews that the author did, the responsible party for the enforcement of the prohibition of building construction in the Brantas Watershed in the Soekarno-Hatta Area of Malang are Satpol PP and Building Supervisors.

"The city government is having difficulties because it is not its territory. Maybe later the infrastructure rearrangement will be carried out with the provincial government cooperation, including sanitation, as said by Mr. Iwan Rizali¹⁸".

Still according to his opinion, the existing law has been enforced and has been cooperating with the provinces related to building permits on the Brantas river.

According to licensing, the average violator does not have an IMB, but it is unknown how many or how many violations are because this is the authority of the Satpol PP. This relates to the proportion of authority of the relevant agencies in the establishment of buildings in the Brantas watershed, because the licensing office only provides building permits, only

¹⁶ *ibid*

¹⁷ Waskito Widyarmono, Acting Section of the Construction Section of the Public Works Department, Interview, Public Works Office, Malang, October 28, 2015.

¹⁸ Iwan Rizali, (Acting Section Head for Licensing Services, Interview, Licensing Service Office, Malang, October 28, 2015.

signs the permits¹⁹. Based on the results of the above interviews regarding the legal consequences of violations committed by the community, it is clear that the violations have strict sanctions. However, the legal consequences will appear unfair if the government itself does not guarantee a decent livelihood in exchange for enforcement of the regulation. Because it can be seen again that the community violates due to the weak economy. So, to enforce the existing regulations, solutions must also exist to make the community no longer commit the same violations so that the relevant government does not need to curb or overcome the same problem.

Through interviews conducted with several residents who inhabit the Brantas watershed regarding concrete actions taken by the government regarding notification of development restrictions in the Brantas watershed area, the following information is obtained:

"I've heard that they did counseling about it, but we didn't follow it because we thought that there would be no follow-up. It's just ordinary counseling, we want to obey the rules but we also want a decent livelihood²⁰."

According to local regulations, every building that does not have the administrative completeness of its building must be dismantled. For this reason, the author asks people's opinions:

"This is not fair. We also pay electricity, pay for water. We are not free here, even though we are poor but we still pay to be able to live in this area²¹."

In addition to this the author also asked about the efforts of the community so as not to damage the environment of the Brantas watershed:

"We only build comfortable buildings, enough to be occupied by our families, for a place to rest. But we are also most afraid of news of floods or landslides. We actually do not want to live here, but what can we do? We don't have a decent place²²."

From the results of the interview above it is clear that the government, especially the City of Malang, is still less firm in following up on the violations that occur in the Brantas watershed while there are already provisions in Law No. 28 of 2002 concerning Building ("UUBG"), single dwelling houses, row houses, flats, and temporary dwellings for occupancy

¹⁹ Iwan Rizali (Acting Head of Licensing Services, Interview, Licensing Service Office, Malang, October 28, 2015.

²⁰ Community in the area of Brantas Watershed in Malang City, Malang October 28, 2015

²¹ ibid

²² ibid

are included in the category of buildings. The rule is still used as a basis for building construction in Indonesia as well as PP No. 36 of 2005 as the implementing regulation.

Every building must meet administrative requirements and technical requirements in accordance with the function of the building (Article 7 paragraph [1] UUBG). Administrative requirements for buildings include the requirements for the status of land rights, ownership status of buildings, and building permits (Article 7 paragraph [2] UUBG).

Construction of a building (house) can be carried out after the building's technical plan is approved by the Regional Government in the form of building permits (Article 35 paragraph [4] UUBG). Having an IMB is an obligation of the owner of the building (Article 40 paragraph [2] letter b UUBG).

Regulations concerning IMB are further regulated in PP No. 36 of 2005 concerning the Regulation of the Implementation of Law No. 28 of 2002 concerning Building ("PP 36/2005"). Every person who wants to build a building must have a Building Permit granted by the local government (Pemda) through the permit application process (Article 14 paragraph [1] and [2] PP 36/2005). The IMB application must be completed with (Article 15 paragraph [1] PP 36/2005):

- a. proof of ownership status of land rights or proof of land use agreement;
- b. data of building owners;
- c. technical building plans; and
- d. the results of an analysis of environmental impacts for buildings that have important impacts on the environment.

Article 19 Paragraph (5) of Regional Regulation Number 1 of 2012 Malang City also clearly states that those who do development in any form that does not have an IMB, whether it is newly built or renovated, must be dismantled or disciplined. But unfortunately, as has been written before, the lack of assertiveness on the part of the government and the arrogance of the community has made it difficult to enforce the rules.

2.4. Efforts to Enforce Provisions Regarding Prohibition of Establishing Buildings in Watersheds

1. Preventive Efforts

Based on interviews with the Malang City Environmental Service, there were several attempts made by the relevant agencies, all of which were in accordance with the law. However, as seen today, there are still many violations, for which the related parties states:

"The public does not understand 100% of the related rules. Legal steps to take criminal action against these violations are imposed on violators of the law, in accordance with the Law not in the Regional Regulation²³."

Successful methods for dealing with these violations and what methods failed include:

"The successful method is to call for a warning in the form of a multilevel warning letter. A minor criminal act is given, for those who do not comply, a business closure is carried out²⁴."

The facts in the field show that even though the efforts have been made with certainty, the closed business is still running again or reopened by the relevant community. The results of the interviews also show that the relevant Government has conducted socialization of regulations to those who violate building eradication in the form of socialization of local regulation.

In addition to the efforts that have been carried out by the Environmental Service above, the Department of Public Works also participated in the enforcement of the prohibition on building construction in the Brantas Watershed in the Soekarno-Hatta Area of Malang.

"The effort was in the form of socializing the problem of building restrictions, I have never participated in the socialization because of the one who held the kelurahan and kecamatan. I don't think the effort is maximal yet²⁵."

However, when the author asked why there were still many violations found, the Department of Public Works through the relevant officials said that they did not know the cause because it was not the duty of the Public Works Department.

Legal steps to take criminal action against the violation are stated along with the methods used to follow up the violations described below:

"Depending on the type of action, so far it has led to civil sanctions. We at the Public Works Service do not know this. Regulatory socialization is often carried out but not effective²⁶."

2. Upaya Represif

Repressive law enforcement is carried out in the case of acts that violate the rules.

Law enforcement must have a compromise between the three elements of legal objectives

²³ The interview was conducted on 11 November 2015 at the Environmental Service Office with Ibu Yuni Lestari, ST as an official in the Sub-Section of Environmental Documents in the Malang City Environmental Service

²⁴ *ibid*

²⁵ Waskito Widyarmono as the official of the Construction Section of the Public Works Department, Interview, Public Works Office, Malang, October 27, 2015

²⁶ *ibid*

which include legal certainty, usefulness, and justice. The three elements must get a proportionally balanced compromise.

The handling of housing and settlements in the Brantas watershed must prioritize the benefits of the community; here clearly the community benefits if enforcement is avoided from disaster hazards, because the sanctions applied are certain in Law No. 1 of 2011 concerning Housing and Settlements Article 157. But the law must also end fairly in its application, here the enforcement of criminal sanctions must be fair to the community.

Based on the interviews that the author did, there were several efforts made in enforcing the prohibition on the construction of buildings in the Brantas Watershed in the Soekarno-Hatta Area of Malang by related agencies, here are the results of the interview:

"One of the steps is data collection of non-certified buildings, guidance through licensing in the form of business development, human development and environmental development such as home reconstruction activity²⁷."

"The violation is not our part, there needs to be a study of the size of the violation."

Legal steps to take criminal action against the violation and the methods used to follow up the violation are explained as follows:

"Nothing, it's actually a civil domain. None of the methods for terminating construction failed. If someone violates it, they are dealt with. Socialization is carried out, even almost every year in the villages and sub-districts, they are collected in a place and given counseling²⁸".

Efforts that have been made by the government still cannot awaken the local community not to build in the Brantas watershed. This is because the awareness of the people themselves are not aware of environmental sustainability, they do not understand the rule of law and economic factors that cause poor people to build settlements in the watershed Brantas.

Coordination function plays an important role in the implementation of spatial planning in order to implement the principles of spatial planning such as integration, harmony, harmony, balance and partnership. The city of Malang has formed the Spatial Planning Coordinating Board (BKPRD) based on the Mayor of Malang Decree Number 188.45 / 542 / 35.73.112 / 2010, to support the implementation of Law Number 26 of 2007 concerning Spatial Planning and Assist the Implementation of Mayor's Duties.

²⁷ Iwan Rizali, official of the Head of the Division of Licensing Public Works Licensing Services, Interviews, Licensing Service Office, Malang, October 27, 2015.

²⁸ *ibid*

The purpose of land use regulation through agrarian law and other regulations is to reduce risks to life, property and development in disaster-prone areas. In the case of flooding, an area is considered vulnerable if the area is usually and is expected to be hit by a flood of water with its negative impacts, this assessment is based on the history of floods and regional conditions. Riverbanks and beaches should not be used as physical construction sites and should not be inhabited.

Legislation needs to be in place for the legal basis for the implementation of sustainable and sustainable watershed management. Law enforcement can be interpreted as an act of applying a legal instrument that is intended to impose legal sanctions to ensure compliance with the stipulated provisions. The ultimate goal of law enforcement is compliance with applicable environmental laws. Obedience is the condition for achieving and maintaining legal provisions both in general and individually. Law enforcement includes structuring, is administrative action and judicial actions both civil and criminal.

Violation of the provisions in the permit can be known from monitoring and if there is a violation, it can be known also the weight of the violations that occur so that what legal action can be applied to the violation can be determined. The results of these legal actions are archives or inputs for the improvement and development of subsequent legislation. Watershed management requires a high willingness and motivation for the government and society in general to be able to manage it well and a strong determination to reject bribery efforts carried out by irresponsible parties.

The Ministry of Forestry has been and is compiling:

- 1) 1) Several laws and regulations related to the handling of floods and landslides include the creation of Soil Conservation Laws, as well as other laws and regulations such as Government Regulations on Integrated Watershed Management and regulations on Standard Operating Systems for Flood and Landslide Control Procedures
- 2) 2) Strengthening Legislation Regulations in the area of watershed management, namely:
 - a. Land Conservation Bill
 - b. Presidential Regulation concerning Mangrove Ecosystem Management Strategy,
 - c. Minister of Forestry Decree on Priority Determination of Priority Watershed Criteria
 - d. Preparation of Guidelines for Water Management Monitoring with a Hydrological Model Approach
 - e. Integrated River Basin Management Management Guidelines

Based on the description above, the authors analyze these efforts using the effectiveness theory that is used to see the extent to which the achievement of the intended matter is the

achievement of the objectives of the actions to achieve this. Effectiveness is defined as the process of realizing the goals that have been set beforehand.

Factors that influence legal effectiveness according to Prof. Dr. Soerjono Soekanto, SH., MA includes:

- a. Legal factor
- b. Factor of law enforcement
- c. Factors of facilities or facilities that support law enforcement
- d. Community Factors
- e. Cultural factors

In addition to the above, the author also asked about the efforts of the population so as not to damage the environment of the Brantas watershed.

"We only build good buildings, enough to be occupied by our families, for a place to rest. But we are also most afraid of news of floods or landslides. We actually do not want to live here, but what can we do? We don't have a decent place²⁹."

Based on the theory of effectiveness analysis above the authors conclude that controlling illegal buildings in the Brantas watershed area violates the existing provisions of both the Law and Regional Regulation of Malang City regarding this matter. However, the weak economic factors that result in the level of public awareness are the main indicators of these rules cannot be enforced which is also supported by the indecisive attitude of the relevant law enforcers. In the Brantas watershed there are still many buildings both residential and shop. So that based on the analysis using the effectiveness theory above, the authors draw the conclusion that enforcement and control of buildings around the Brantas watershed have not been effective because of the lack of firmness of law enforcement and the lack of public awareness due to economic influence.

3. CONCLUSION

Factors inhibiting the construction of buildings in the Brantas watershed include lack of public awareness about building such as IMB, weak economic condition, weak law enforcement of apparatus and buildings that were established before the Regional Regulation No. 1 of 2012 in Malang City.

Legal consequences for the construction of buildings in the watershed area in the form of written warnings and summons of the relevant violators.

²⁹ *ibid*

Efforts to enforce the provisions concerning the prohibition of building construction in the Brantas watershed include the socialization of relevant rules and if there is a violation, the offender will be summoned by giving a warning letter in advance, if violation continues then then sanctions is given based on minor crimes.

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