

# Juridical Analysis of Green Open Space Arrangements in Malang City

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## Abstract

*The high rate of development causes the demand for land in urban areas to increase. This can lead to reduced green open space (RTH) in urban areas. To anticipate the reduction of green open space, especially in the city of Malang, it is necessary to have a system of spatial planning, space utilization, and control of space utilization that is good and in accordance with its function. To achieve this, Malang City has regulations to ensure the availability of Green Open Space through Malang City Regional Regulation Number 4 of 2011 concerning the Malang City Spatial Planning 2010 – 2030. Regional Regulation Number 4 of 2011 explains that the availability of Green Open Space (RTH) in Malang City is at least 30%, but in practice the availability of green open space in Malang City is still not in accordance with the expected target. Based on this, it is very necessary to study the regulations regarding the regulation of green open spaces in the city of Malang. This study uses normative legal research, which examines the central theme of the study, namely the regulation of green open spaces in the city of Malang. The results and discussion show that the use of green open space in Malang City has not been optimal and has not reached the proper target of 30% and Regional Regulation Number 4 of 2011 has regulated the availability of Green Open Space in Malang City, it's just that there is uncertainty regarding sanctions related to violations of space utilization. In Regional Regulation Number 4 of 2011 the sanctions regulated are only administrative and criminal sanctions, but do not specifically mention the types of violations and the implementation of the sanctions.*

**Keywords:** Green open space, Setting

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## 1. Introduction

Nowadays, infrastructure development in big cities, especially in Malang City, shows a very rapid and significant development. From 2006 to 2020 the development of infrastructure in the city of Malang experienced a positive increase, both in terms of quantity and quality (Hanifah, 2020). This can be seen from the emergence of a row of roads with the status of a city to the presence of tourist attractions. The development of infrastructure that continues to increase can also affect the increase in population housing growth. This can be seen from the high number of housing developments in the city of Malang. The high rate of development causes the need for land in the city of Malang to increase. This of course can lead to a reduction in green open space (RTH) in urban areas.

Green Open Space (RTH), is an elongated area or pathway and/or group, whose use is more open, where plants grow, both those that grow plants naturally or those that are intentionally planted. RTH can be divided into 2 (two), namely Private RTH and Public RTH. Private green open space is green open space owned by certain institutions or individuals whose use is for limited groups, including gardens, yards, and public or private buildings that are planted with plants. Public green open space, is green open space owned and managed by the city or district government that is used for the benefit of the community in general. The ideal green open space is 30% of the total area consisting of 20% public green open space and 10% private green open space.

Green open space has a function as an environmental facility and can function to protect certain habitats or agricultural cultivation and also to improve the quality of the atmosphere and support the preservation of water and soil (Admindpu, 2022). The purpose of holding green space is to maintain and maintain ecological functions, social functions, and architectural functions. Ecological function is a function that maintains life support systems and maintains biodiversity, for example, it can improve groundwater quality, prevent flooding, reduce air pollution and regulate microclimate. The Socio-Economic function is intended as a space for social interaction, recreational facilities and as a city landmark. The function of architecture means that green open space is a supporter and adds value to the quality of the city's environment and culture so that it can be located and shaped according to the needs and interests of the city's architecture.

The provision of green open space has been regulated in the Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning which has been amended by Law Number 11 of 2020 concerning Job Creation. Law Number 26 of 2007 states that green open space as one of the public spaces must have an ideal minimum area for urban green open space, which is 30% of the total area of a city area.

In order to ensure the availability of Green Open Spaces in Malang City based on Law Number 26 of 2007 and the Job Creation Act, the Malang City Government issued Malang City Regional Regulation Number 4 of 2011 concerning Malang City Spatial Planning 2010-2030. Regional Regulation Number 4 of 2011 explains that the availability of Green Open Space (RTH) in Malang City is at least 30%. This is in line with Law Number 26 of 2007 which mandates that the minimum area of green open space in urban areas is at least 30%.

In the Decree of the Mayor of Malang Number 188.45/184/35.73.112/2016 concerning Designation of City Parks, City Forests and Green Lanes, for 2016 the total area of public open space in Malang City is still 1,362.32 Ha or equal to 12.38% of the area the total area of Malang City is 11,006 Ha which should reserve 2,201.2 Ha for 20% public green space (Diiinillah & Sulistyarso, 2017). Based on this, it can be seen that the portion of green open space in Malang City has not been fulfilled. One of the reasons why the proportion of 20% for Public Green Open Space has not been fulfilled is because the City Government of Malang has constraints on limited APBD funds to develop public green open space (Diiinillah & Sulistyarso, 2017).

Article 16 paragraph (2) letter d Regional Regulation of Malang City Number 4 of 2011 mandates to provide city green open spaces of at least 30% of the total area of the city, but data shows that the available green open space in Malang City has not reached the target of 30%. The availability of green open space in Malang City in 2020 has only reached 19% of the total 30% (Khairina, 2020). It can be said that Article 16 paragraph (2) Malang City Regional Regulation Number 4 of 2011 has not been running effectively.

The ineffectiveness of Article 16 paragraph (2) of the Malang City Regional Regulation Number 4 of 2011, which causes a lack of availability of green open space in Malang City, can be caused by several factors. The first factor regarding the Legal Principles of policy in spatial planning in Malang City until 2014 was considered to have paid little attention to adequate green open space aspects and in accordance with Law Number 26 of 2007 concerning Spatial Planning. Without planning spatial or land arrangements following the principles of regional spatial planning as a system, development efforts will be inefficient. The second factor concerns law enforcers, the rule of law accompanied by unbalanced law enforcers will make the law ineffective. The third factor is about the community, here the community as a factor plays quite an important role because law enforcement rules are made by law enforcers to be obeyed and carried out by the community, the people here tend to do a lot of development which makes Green Open Space land less and less in Malang City (Khairina, 2020).

Perda No. 4 of 2011 has regulated the availability of green open spaces in the city of Malang, however, there is ambiguity regarding sanctions related to violations of spatial use. In Perda Number 4 of 2011 the sanctions regulated are only limited to Administrative and Criminal sanctions, but do not specifically mention the types of violations and the implementation of sanctions. This is what makes the writer interested in writing and exploring and analyzing the Regulation of Green Open Spaces in the City of Malang, especially in the section on setting sanctions.

## **2. Literature Review and Hypotheses**

### **Law and regulation**

If law is defined there is one thing that must be understood first. This is the law covers a field that is so broad and has no boundaries. To illustrate the broad scope of law, Satjipto Raharjo said that knowledge of law itself covers a very wide and endless area. Law explores the areas of culture, economics, history, politics, philosophy, management, sociology, and many more (Budiono, 2005).

Legal norms are addressed to human birth attitudes. Legal norms aim to create order and peace in interpersonal life. In relation to the hierarchy of legal norms, Hans Kelsen argues that legal norms are tiered and layered in a hierarchy (organization). This means that a lower norm applies, originates from and is based on an even higher norm, and so on up to a norm that cannot be traced further, is hypothetical, and fictitious, namely the Basic Norm (Groundnorm).

The group of legal norms that are under the basic rules of the State/the basic rules of the State are referred to as Laws. The norms contained in a law are concrete and detailed norms. Norms in the law can be enforced in society. The legal norms in this law are not only single legal norms, but legal norms can be in pairs, so that there are secondary legal norms besides the primary norms. Based on this, then in an Act norms can be included in the form of sanctions, both criminal sanctions and coercive sanctions.

Legislation in Indonesia also recognizes hierarchies. The provisions of Article 7 paragraph (1) of Law 12/2011 explain that the types and hierarchies of laws and regulations in Indonesia consist of: (1) The 1945 Constitution of the Republic of Indonesia; (2) Decree of the People's Consultative Assembly; (3) Laws/Government Regulations in Lieu of Laws; (4) Government Regulations; (5) Presidential Regulation; (6) Provincial Regulations; and (7) Regency/City Regional Regulations.

Based on these provisions, it can be seen that the highest hierarchy of laws and regulations in Indonesia is the 1945 Constitution. Then, it is important to note that the legal force of the laws and regulations mentioned applies according to the hierarchy and lower laws and regulations may not contradict with higher laws and regulations.

### **Green Open Space (RTH)**

Space can be interpreted as a three-dimensional place without a clear connotation of boundaries and locations that can accommodate or is intended to accommodate any object (Taringan, 2009). Public space is a place where residents make social contact, in a traditional community environment it is always available at various levels, starting from communal yards, village fields, fields in neighborhoods, to city-scale squares (Budiharjo, 1996).

Open space, are spaces within a city or wider area, both in the form of areas/areas and in the form of elongated areas/lanes which are more open in use, basically without buildings. Open space consists of green open space and non-green open space. Green Open Space (RTH), is an area elongated/lane and or grouped, the use of which is more open, a place for plants to grow, both those that grow naturally or those that are intentionally planted. Non-green open space, is an open space in urban areas that is not included in the green open space category, in the form of paved land or in the form of water bodies.

The benefits of green open space based on their functions can be divided into 2 (two), namely direct benefits and indirect benefits. Direct benefits (in the sense of fast and tangible), namely forming beauty and comfort (shade, fresh, cool) and produce for sale (wood, leaves, flowers, fruit); Indirect benefits (long-term and intangible), namely air purification, maintenance of groundwater continuity, preservation of environmental functions and existing flora and fauna (biological conservation or biodiversity).

Malang City is a city with the second most populous population after Surabaya. To ensure the availability of Green Open Spaces in Malang City Based on Law Number 26 of 2007 concerning Spatial Planning, which has been amended by the Job Creation Law, the Malang City Government issued Malang City Regional Regulation Number 4 of 2011 concerning Malang City Regional Spatial Plans Year 2010-2030. Article 16 paragraph (2) letter d of Regional Regulation Number 4 of 2011 explains that the availability of Green Open Space (RTH) in Malang City is at least 30% of the total area of the city, with the following efforts: (1) To procure land to be used as city green open space; (2) Not converting the existing green space; (3) Revitalizing and strengthening the quality of existing green open space; (4) Directing developers to turn over their green open space facilities to become city public green open space; (5) Organize and provide green open space according to its functions: ecological, socio-economic, and architectural; (6) Planting trees with types that are adapted to the characteristics of green open space; (7) Placing green open space as a supporter of regional identity; (8) Grouping green open space according to function, hierarchy, and scale of the environmental space; (9) Building urban forests, open sports fields, nurseries, city parks, and environmental parks; (10) Build green open space on the city's main roads; (11) Build green open space at the location of city public facilities; (12) Build green open space on river banks, railroad tracks, borders on High Voltage Air Lines (SUTT) networks; and (13) Greening yards/lots of houses, offices and commerce.

Based on the contents of Article 16 paragraph 2 letter (d) above, it can be seen that the availability of green open space in the city of Malang is at least 30 percent and its implementation must really be pursued in order to achieve the desired target. This is in line with Law Number 26 of 2007 which stipulates that the minimum area of green open space in urban areas is at least 30%.

Perda No. 4 of 2011 has regulated the availability of green open spaces in the city of Malang, however, there is ambiguity regarding sanctions related to violations of spatial use. In Perda Number 4 of 2011 the sanctions regulated are only limited to Administrative and Criminal sanctions, but do not specifically mention the types of violations and the implementation of sanctions.

### **3. Methods**

#### **Types of research and research approaches**

The type of research used in this study is Normative Juridical, with the consideration that the objective of this study is to analyze regulations which are the central theme of the research, namely regulations that are related to Green Open Spaces in Malang City. The regulations or regulations governing Green Open Spaces in Malang City are regulated in Malang City Regional Regulation Number 4 of 2011 concerning Spatial Plans for Malang City 2010-2030. Apart from that, the author will also relate it to several laws and regulations, namely Law Number 26 of 2007 concerning Spatial Planning, which has been amended by the Job Creation Law.

In connection with the type of research used is normative juridical, the research approach used is statutory approach (Statue Approach). The Statue Approach is an approach that uses statutory regulations, because what will be examined are various legal rules which are the focus as well as the central theme of the research (Ibrahim, 2005). The statutory approach is used by researchers with the intention of being the initial basis for conducting analysis. This must be done by researchers because laws and regulations are the main focus point of analysis in this research. The statutory approach is carried out by examining all laws and regulations that are related to the legal issues to be studied. This approach is useful for finding the legal basis and philosophical content of a law and for studying whether or not there are provisions in a law or between laws and other laws (Marzuki, 2011).

### **4. Results**

Space can include land space, air space, including space inside the earth. Space is a place where humans and other creatures live and carry out their daily activities. In order to create a safe, comfortable and productive space, it is necessary to carry out good spatial planning that can protect the function of space and prevent negative impacts on the environment due to space utilization. this can be realized in every regional spatial planning process.

Regional spatial planning as a system of spatial planning, spatial utilization, and control of spatial use is an inseparable unit between one and the other. This must be done in accordance with spatial planning rules so that it is expected that: (1) Be able to realize effective and efficient use of space and be able to support sustainable environmental management; (2) There is no wastage of space utilization; and (3) Does not cause a decrease in the quality of space.

Spatial planning based on the characteristics, carrying capacity and capacity of the environment, and supported by appropriate technology can improve harmony, harmony and balance of the subsystems. In order to realize this, related to the use of space must be carried out based on the actual function which must not conflict with the spatial plan, especially regarding the procurement of Green Open Spaces in the City of Malang.

Law Number 26 of 2007 concerning Spatial Planning which has been amended by Law Number 11 of 2020 concerning Job Creation is a reference for the Malang City government in building and holding Green Open Spaces. Regulations regarding Green Open Space in Malang City are contained in Malang City Regional Regulation Number 4 of 2011 concerning Spatial Plans for Malang City in 2010-2030.

Article 16 Paragraph (2) letter d of the RTRW Regional Regulation states that the size of the Green Open Space is 30% of the city area. This can be achieved through the efforts contained in Article 16 Paragraph (2) letter d numbers 1 to 13, which states: (1) Procure land to be used as city green open space; (2) Do not change the existing RTH functionality; (3) Revitalize and strengthen the quality of existing green open space; (4) Directing developers to turn over their RTH facilities to become city public green open space; (5) Arrange and provide green open space according to its functions: ecological, socio-economic, and architectural; (6) Planting trees with types adapted to the characteristics of green open space; (7) Placing green open space as a supporter of regional identity; (8) Grouping green open space according to function, hierarchy, and scale of the environmental space; (9) Build urban forests, open sports fields, nurseries, city parks, and environmental parks; (10) Build green open spaces on the city's main roads; (11) Build green open space at the location of city public facilities; (12) Build green open space on river banks, railroad tracks, borders on High Voltage Air Lines (SUTT) networks; (13) Greening yards/lots of houses, offices and commerce.

Based on this, it can be seen that, at a minimum, the City Government of Malang must provide green open space of 30%. The green open space can be divided into 2 (two), namely public green open space and private green open space. This is in accordance with the provisions of Article 45 of the Malang City RTRW Regional Regulation.

If you look at the availability of green open space for Malang City in 2020, it is known that Malang City has an area of 145,330 m<sup>2</sup>, but the land used for green open space is only around 30,519.3 m<sup>2</sup>. This shows the availability of green open space in Malang City is still not optimal. When presented, the availability of green open space is still 19%. The availability of green open space still does not meet the proper target, which is 30% (Khairina, 2020).

The procedure for procuring Green Open Spaces in Malang City, if it is linked to the theory of legal effectiveness, it can be seen that in its implementation it prioritizes legal factors. The implementation of the procurement of Green Open Spaces is said to prioritize legal factors because it makes law an element of certainty and benefit, even though in practice conflicts often occur between certainty and justice, but related to legal certainty itself, it is concrete in nature. It can be seen that in the embodiment of the development of Green Open Spaces it is always associated with the benchmark requirements for fulfilling the minimum Green Open Spaces themselves and so that they are always in sync with the governing regulations.

The density of the population in the city of Malang will greatly affect the houses or residences of the residents. In addition, the rampant construction of shopping centers, shophouses, apartments, and so on, if it is not managed properly, will cause the green open space in Malang City to decrease. This can be caused by the conversion of the function of green open space or development that is not in accordance with the regional plot. For example, the construction of shophouses still violates the provisions on green open space.

Green open space is an area whose provision cannot be contested. In other words, the green open space area cannot be replaced or its designation taken for any kind of development. Likewise with the construction of shop houses which should occupy other areas in accordance with their designations that have been regulated in the RTRW of Malang City outside the area that should be an RTH area (Suyeno, 2018).

In order to prevent the conversion of green open space, it is necessary to have clear arrangements regarding the sanctions that will be given. This has been regulated in Article 45 paragraph (6) letter z, which states that: "increasing the taking of action and the imposition of legal sanctions against deviations and/or violations of the implementation of development plans that are not in accordance with the aims and objectives set out in the development of green open space".

Based on these rights, it can be seen that all types of irregularities and/or violations related to the development of green open space will be given sanctions. The sanction directives in Article 82 of the Malang City RTRW Regional Regulation include the imposition of sanctions on: (1) Utilization of space that is not in accordance with the regional spatial layout plan and general provisions of zoning regulations; (2) Utilization of space that is not in accordance with the provisions in the spatial utilization permit.

Based on the contents of Articles 82 and 83 of the Malang City RTRW Regional Regulation, it can be seen that the imposition of sanctions has been regulated if there is space utilization that is not in accordance with the RTRW plan. In addition, the article also states that there are sanctions if the utilization of the RTRW is not in accordance with the permit granted. Regarding the type of sanction, it has been mentioned in Article 83 of the Malang City RTRW Regional Regulation. In article 83 of the Regional Regulation on RTRW it has been determined that there are administrative and criminal sanctions if there is a violation of the use of space, one of which is a violation of the use of green open space.

If we take a closer look at the sanctions imposed by Article 83 of the Perda RTRW, the provisions for the sanctions are still not clear. This shows that the arrangements regarding administrative and criminal sanctions are still very weak (Anoraga, 2018). There are no strict and specific arrangements regarding claims for civil compensation and compensation for victims of the conversion of green open space land use in the Malang City RTRW Regional Regulation. This is certainly not in line with Law Number 26 of 2007 (regarding Spatial Planning), which is stated explicitly. Perda provisions are only administrative and criminal sanctions, as stated: Article 83.

Regarding administrative sanctions, the Malang City RTRW Regional Regulation does not explicitly state the types of sanctions that have been mentioned in Law 32 of 2009 concerning Environmental Management as amended by Law Number 11 of 2020 concerning Job Creation. The PLH Law expressly states that administrative sanctions are in the form of written warnings, government coercion, freezing, revocation of permits. Government coercion sanctions in the form of: (1) Temporary suspension of production activities; (2) Transfer of production facilities; (3) Closure of sewers or emissions; (4) Demolition; (5) Confiscation of goods or tools that have the potential to cause violations; (6) Temporary

suspension of all activities; or (7) Other actions aimed at stopping violations and actions restore environmental functions.

Seeing the unclear sanctions contained in the Malang City RTRW Regional Regulation, it can also be said that the Malang City RTRW Regional Regulation has also not provided legal certainty. The theory of certainty is a theory of how the law is carried out in accordance with the substance of the law that has been agreed upon by the community where the law applies and has a close relationship with law enforcement (Dwithia, 2014). Law enforcement is a process to make legal wishes come true. The legal wishes referred to in this case are the thoughts of the legislature which are formulated in the legal regulations.

In order to increase the existence of public space, especially green open space in urban areas, it is necessary to do a number of things, especially those related to providing legal instruments and encouraging the role of the community and the business world. First, the government is consistently trying to encourage the development of green open spaces, especially in urban areas, one of which is through the publication of books and guidelines for the development of green open space in urban areas. Second, in terms of regulations and legislation being developed, the government is also pushing for the portion of green open space in urban areas to continue to be increased in stages until it reaches a minimum of 30 percent of the existing area according to the agreement to be reached. Third, apart from that, in the draft legislation that is being prepared, incentives and disincentive mechanisms will also be regulated that can further enhance the role of the private sector and the community through mutually beneficial forms of cooperation for the development of green open space, such as giving higher building permits that are still in process. limit requirements if they can provide wider green open space or are willing to free up land to be used as green open space. Fourth, in terms of efforts to control the use of space, especially those related to the use of public spaces, the necessary law enforcement instruments will be developed, such as the existence of clear and administrative and criminal sanctions (Department of Public Works, 2006). With the existence of these control instruments, it is hoped that law enforcement in the implementation of city green space, especially Malang City, can be carried out more effectively.

## **5. Discussion**

Article 16 paragraph 1 of the Malang City RTRW Regional Regulation, describes the development of protected areas. This protected area has a function to preserve the environment that supports the development of sustainable cities and green cities. Article 16 paragraph 2 of the Malang City RTRW Regional Regulation explains the strategy that will be carried out to support the development of protected areas. The development of protected forests can be achieved in various ways, including: (1) Maintain and restore the function of existing protected areas; (2) Restrict the activities carried out by the community within the protected area; (3) Utilization of areas that are used as green lanes or what we usually call RTH (Green Open Spaces); (4) Regulation of at least 30% percent of green open space in the city area, which consists of 20% public green open space and 10% private green open space) so that the total green open space target can be fulfilled, which is 30%.

Efforts that can be made in order to achieve the target of 30% of urban areas are as follows: (1) Procure land to be used as city green open space; (2) Do not change the existing RTH functionality; (3) Revitalize and strengthen the quality of existing green open space; (4) Directing developers to turn over their RTH facilities to become city public green open space; (5) Arrange and provide green open space according to its functions: ecological, socio-economic, and architectural; (6) Planting trees with types adapted to the characteristics of green open space; (7) Placing green open space as a supporter of regional identity; (8) Grouping green open space according to function, hierarchy, and scale of the environmental space; (9) Build urban forests, open sports fields, nurseries, city parks, and environmental parks; (10) Build green open spaces on the city's main roads; (11) Build green open space at the location of city public facilities; (12) Build green open space on river banks, railroad tracks, borders on High Voltage Air Lines (SUTT) networks; (13) Greening yards/lots of houses, offices and commerce.

Related to these efforts, the development of the area can be achieved if the RTH is not converted. This right is in line with the contents of Article 17 paragraph 2 letter a Regional Regulation on RTRW Malang City. The transfer of the function of green space is something that is prohibited by the Malang City RTRW Regulation. Enforcement of sanctions is necessary so that there is no conversion of green open space in the city of Malang. This is in accordance with the provisions on controlling the use of territorial space, which includes rules regarding witnesses. Article 82 Perda RTRW Malang City regulates the direction of sanctions and the direction of this witness is a reference in imposing sanctions on: a. Utilization of space that is not in accordance with the regional spatial layout plan and general provisions of zoning regulations; and b. spatial utilization that is not in accordance with the provisions in the spatial

utilization permit. Article 83 further regulates administrative and criminal sanctions for violations of the use of green space. However, if it is reviewed further, it can be seen that there is ambiguity regarding sanctions related to violations of spatial use, especially Green Open Spaces. In Perda Number 4 of 2011 the sanctions regulated are only limited to Administrative and Criminal sanctions, but do not specifically mention the types of violations and the implementation of sanctions. Weaknesses of the Malang City RTRW Regional Regulation also exist from the point of setting civil sanctions, namely the regional regulation does not include types of civil sanctions including detailed administrative sanctions if there is a violation of the utilization of Green Open Space (RTH). The existence of ambiguity regarding the sanctions contained in the Malang City RTRW Regional Regulation can lead to legal uncertainty, especially in terms of sanctions for the transfer of green open space function in Malang City.

## 6. Conclusion

Perda No. 4 of 2011 has regulated the availability of green open spaces in the city of Malang, however, there is ambiguity regarding sanctions related to violations of spatial use. In Perda Number 4 of 2011 the sanctions regulated are only limited to Administrative and Criminal sanctions, but do not specifically mention the types of violations and the implementation of sanctions.

The formation of regulations regarding Regional Regulations RTRW Malang City should carry out synchronization and harmonization of laws related to sanctions for those who commit violations and change the function of Green Open Spaces.

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