

## Policy Review On Returning Protected Area East Coast Of Surabaya

**Betty Herdinawati**  
Universitas Airlangga  
publicnew.research@gmail.com

DOI: 10.23917/laj.v5i2.8000

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### Submission

#### Track:

Received:  
14 April 2019

Final Revision:  
17 October 2020

Available online:  
30 October 2020

Corresponding  
Author:

**Betty Herdinawati**  
publicnew.research@gmail.com

### **ABSTRACT**

*This study aims to identify steps to restore the function of the protected area of East Coast of Surabaya (Pamurbaya) by the government, to analyze the impact on the fulfillment of the rights of the people residing at Wisma Tirta Agung Phase IV, and to analyze the impact caused by evictions. This study used a qualitative analysis method with sociolegal research type, as well as an empirical juridical approach. The data used are primary data sourced from interviewees and other secondary data. This research was conducted on the basis of a violation of the sale and purchase of land plots which continued with the construction of residents' houses in the protected area of East Coast Surabaya (Pamurbaya), namely in Gunung Anyar District, Rungkut District, Sukolilo District and Mulyorejo District. The results of this study indicate that the Surabaya Municipal Government has not provided a clear solution to the cases that occurred so that the residents of Wisma Tirta Agung stage IV continue to live in their respective homes. The plan to return the function of the protected area by means of eviction is still in the assessment stage because the Surabaya City Government cannot decide to evict without paying attention to the rights of the community to have a proper place to live. In carrying out evictions, of course there are impacts that arise from psychological, economic, and social aspects.*

**Keywords:** Protected Area, Right to House, Eviction

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## INTRODUCTION

The right to housing is included in the fulfillment of obligations for the state, namely the obligation to respect, the obligation to protect, and the obligation to fulfill. This obligation is regulated in Article 28I paragraph (4) of the 1945 Constitution so that it requires the government to take steps to fulfill the right to a house as the fulfillment of human rights which are the responsibility of the state. It is further regulated in Article 27 of Law Number 4 of 1992, that the Government provides guidance, assistance and convenience to the community in both the planning and implementation stages, as well as supervising and controlling.

Eviction cases in Indonesia have become a national phenomenon. In general, eviction cases are accompanied by tensions, strong protests from poor families who are displaced (Junia, 2016). Forced demolition of settlements categorized as illegal (Setiawan, 2010) as well as cases of forced demolition of business premises as a spatial policy implication have also occurred in Indonesia (Fathani, 2012)

The evictions were carried out by the Government with the intention of restoring the actual function of the land, or even being replaced by several developments such as roads, apartments, and others. They erected residential buildings on land that did not belong to them but was state land. When the government needs the land, eviction will be carried out. However, housing is part of Human Rights, and evictions are a form of violation of human rights. Legal aspects usually have an opposite side to human aspects. In this case, a balanced review is needed in looking at the problems of eviction and relocation in Indonesia from a legal and humanitarian perspective.

Eviction cases do not only occur in illegal areas established by the poor, but also occur in non-poor settlements. As is the case in Surabaya, so far the increased activity of Surabaya has triggered the development of the city that leads to the suburban area (Aminah, 2015). The limitation of urban land compared to land in suburban areas, which is relatively large at a low price, encourages more intensive development in these areas. This is also an effort to create an equitable development that is not only focused on the city center but also in suburban areas through new growth centers. (Priyarsono, 2017).

One of the developments that are being intensively carried out in the suburbs is the construction of residents' houses on lots of land in Gunung Anyar Tambak Village. However, this development is a violation because it stands on the protected Pamurbaya area. This is

based on Regional Regulation Number 12 of 2014 concerning the 2014-2034 Regional Spatial Plan for Surabaya, Pamurbaya area is declared as conservation land. Residents of Wisma Tirta Agung Asri admitted that they were restless. In 2017, the land where their house stood were declared a conservation area. The residents admitted that they did not know that their house was included in an area where buildings were not allowed to be built where the residents' houses were close to the mangrove forest

Various previous studies on the development of protected areas include research by Rahman & Hasanah, which questioned the status of customary rights of protected areas. (Rahman & Hasanah, 2017). Then Ichsan's research (Ichsan, 2018) focuses on the performance of the development of protected area management units. Meanwhile, the current research focuses on returning the function of the protected area of the east coast of Surabaya with a Study on Control of the Phase IV of Wisma Tirta Agung Lot in Surabaya. Therefore the purpose of this study is to identify steps to return the function of the protected area of the East Coast of Surabaya (Pamurbaya), to analyze the impact on the fulfillment of the rights of the community residing in Wisma Tirta Agung Phase IV, and to analyze the impact analysis caused by evictions.

## **RESEARCH METHOD**

This research is an empirical juridical study using a qualitative research analysis perspective with an orientation to existing theories. In qualitative research, theory is limited to the notion where a systematic statement relating to a set of propositions derived from data and empirically tested. One of the basic theories of qualitative research is field research. Qualitative methodology is a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior. This type of research is social empirical research or socio legal research. The researcher uses socio-legal research

## **RESEARCH RESULTS AND DISCUSSION**

The incident of building residents' houses in the East Coast Surabaya conservation area began with PT. Tirta Agung, as the developer, sold lots of land at a price of around 90-300 million. There were even residents who claimed to have bought land at a price of 50 million.

The land price at that time was considered cheap so that it attracted the public's interest to buy and without investigating the status of the land first. The residents' ignorance of the status of the plots to be purchased has a bad impact on them. They buy land at low prices and build houses on conservation land which is bad for the environment and spatial planning of Surabaya.

Law Number 26 of 2007 concerning Spatial Planning defines Spatial planning, namely the form of spatial structures and spatial patterns. Spatial structure is the arrangement of settlement centers and a network system of infrastructure and facilities that functions as a support for community socio-economic activities that hierarchically have functional relations. Space is the physical form of an area and is a place for humans to carry out their life activities that are closely related to culture.

There were a number of violations committed including the developer not making a site plan permit at the Cipta Karya office. The developer claims to have a plain site and sells it at a low price. Prospective buyers are required to dredge their own land. The Cipta Karya Office felt that they had missed the actions taken by the developer because they did not receive and issue site plan permits. Therefore, the residents of Wisma Tirto Agung phase IV who take care of the Building Construction Permit (IMB) are always rejected by Cipta Karya because their houses are in a protected area.

The developer did not inform the residents about the status of the land. According to Mr. Andryan as the coordinator of Wisma Tirto Agung phase IV, when buying, the residents were not informed about the status of the land allocation to be purchased. They also do not know whether the developer already knows the land allotment status or does not even know. With no notification to the residents that the land was conservation land, the residents who had bought it calmly built houses.

Some residents have had sporadic letters. Sporadic land registration is the activity of registering land for the first time regarding one or several objects of land registration within the territory or part of the territory of a village or sub-district individually or in bulk. Sporadic land registration is carried out at the request of an interested party, namely the party entitled to the object of land registration in question or its proxies. However, the issuance of this sporadic letter needs to be investigated because the land they occupy is in a protected area.

Furthermore, there is an expansion of a new phase to phase VII, according to Mr. Andrey as the coordinator of phase IV, there is an extension of the stage to phase VII,

landfilling activities have started. This proves the lack of supervision from the Surabaya Municipal Government to prevent the expansion of new residential areas. The distance between the last house and the sea is estimated to be 3 kilometers. If there is new landfill up to phase VII, the distance will be closer to the sea and there will be less conservation land in Surabaya.

Based on the results of this study, it was found that the developer with the permission of the local village head was buying and selling land which was then landfilled. The residents who have bought do not know the legality of their problematic land. In accordance with the existing regulations, the Surabaya Municipal Government has the right to take back the land rights that have been owned by residents for the implementation of restoring the function of the Pamurbaya protected area.

#### **A. Actions and steps to return the function of protected areas in East Coast Surabaya (Pamurbaya)**

Instruments regarding licensing are regulated by the government and regional governments according to their respective authorities in accordance with the provisions of laws and regulations, namely Law Number 26 of 2007 Article 37, licensing provisions as referred to in Article 35 are regulated by the government and regional governments according to their respective authorities in accordance with the provisions of the legislation. The spatial use permit that is inconsistent with the regional spatial plan is canceled by the government and regional governments according to their respective authorities in accordance with the provisions of laws and regulations. Space utilization permits that are issued and / or obtained without proper procedures, are null and void and space utilization permits obtained through correct procedures but are later proven to be inconsistent with the regional spatial plan, are canceled by the government and regional governments in accordance with their respective authorities.

When referring to the law above, the Surabaya Municipal Government has the authority to take firm action against residents of Wisma Tirto Agung. Following are the actions that have been taken, including: sealing residents' houses and cutting off power lines. Cipta Karya and civil service police unit of Surabaya have sealed the houses of residents at Phase IV of Wisma Tirto Agung. This was done as a firm action from the Surabaya Municipal Government so that all residents who occupy it know.

Then the next action, namely (1) Surabaya Municipal Government through PLN has cut off electricity for residents who live in the conservation area. (2) Hearing between DPRD, Surabaya Municipal Government, Developers, and residents of Wisma Tirto Agung. The Surabaya Municipal Government held a hearing aimed at accommodating complaints from both the housing developer and the residents of Wisma Tirto Agung. (3) Meeting from Cipta Karya, the Cipta Karya party has held a meeting to discuss this issue, according to the data obtained, namely there are 99 houses and 1 mosque located at Wisma Tirto Agung stage IV. However, at the meeting, only a few of the residents of Wisma Tirto Agung attended. (4) The meeting of the Gunung Anyar Tambak Village, as well as the Cipta Karya Office, the Gunung Anyar Tambak Village also held a meeting to discuss the same problem. This is done to accommodate the wishes of residents and provide direction to residents on how to take phases according to the existing regulations. (5) Public Consultation, while the term public consultation together with the term public hearing are two terms that have become popular with the development of participatory processes in determining policies and formulating / drafting laws and regulations which of course will impact on citizens. Public consultation is a term that is often related to the process carried out by the executive, while public hearings are more often related to the process carried out in the council building by the legislature.

Article 1 of Law Number 20 of 1961, states that for the public interest, including the interests of the nation and the state as well as the common interests of the community, as well as the interests of development, the president is in a compelling state after hearing the Minister of Agrarian Affairs, the Minister of Justice and the Minister concerned can revoke rights. -Right to land and objects on it. From Article 1 of Law No.20 of 1961, it can be seen that the main condition for permitting the revocation of land rights is for the public interest. Regarding the nature of the public interest, it can be found in article 1 of Presidential Instruction No.9 of 1973: “An activity in the framework of implementing Development has the nature of the public interest, if the activity concerns (a) the interests of the nation and state, and / or, (b) the interests of the wider community, and / or, (c) the interests of the people at large / together, and / or, (c) the interests of development ”.

## **B. Impact on the Fulfillment of Community Rights in Wisma Tirto Agung Phase IV**

In the CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) has explained that Human Rights are rights that have been inherent in humans. One of them is that the right to get a decent house is part of human rights. Every

individual has the right to receive protection from the outside environment with a house that is suitable for habitation.

In General Comment No. 4 points 6 and 7, namely: (6) The right to adequate housing applies to all people regardless of age, economic status, other groups or affiliations, and other factors. (7) The right to housing must be guaranteed for everyone regardless of income. Adequate shelter means the availability of adequate privacy, adequate space, security, adequate light and airways, basic infrastructure and a location that considers the workplace and other facilities at a reasonable cost. (Sixth Session of the Committee on Economic, Social and Cultural Rights, 1991)

To implement a rule, it is not enough only with good regulations (pro society) and implemented by good government officials, but it must be equipped with a legal culture of the community that adheres to these rules. The legal culture of a society is determined in terms of certain values that live in the community and is used as a reference in making a rule. That is, when a law is made, it must first look at the legal culture of the community that will be regulated.

A rule that is not in accordance with the legal culture of society will be useless. For this reason, in making a rule one must first study and know the legal culture of the community that will be regulated (Cotterrell, 2017). In an effort to find out about the legal culture, one way is to conduct a scientific study of a regulation that will be made, which is usually known as the Academic Manuscript, a draft of legislation. In an Academic Manuscript, there is a scientific study of the sociological state of society against a rule to be made. Therefore, the existence of Academic Manuscript A must be in every draft of the legislation. In the Academic Manuscript, there are 7 (seven) indicators and / or factors that must exist, which are known as ROCCIPI (*Rules, Opportunity, Capacity, Communication, Interest, Procces dan Ideology*) (Mahfud Md, 2010).

There are still many residents who choose to stay in their homes even though they are in the Pamurbaya protected area and do not have an IMB. Rules: Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning, Law of the Republic of Indonesia Number 1 of 2014 concerning Management of Coastal Areas and Small Islands, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, and Regional Regulations Surabaya Number 12 of 2014 concerning the 2014-2034 Regional Spatial Plan for Surabaya.

The solution given is notification to residents regarding the sanctions that have been written in the Surabaya Regional Regulation Number 12 of 2014 concerning the 2014-2034 City Spatial Plan for Surabaya. So that residents know what sanctions they receive due to the construction they have done. Make efforts to monitor and cooperate with the community to preserve protected areas. In order not to find any attempts to change functions again and carry out law enforcement in accordance with the sanctions written in the regulations.

In the aspect of Opportunity, it can be observed that the Surabaya Municipal Government is careless in using gaps to build houses. The Surabaya Municipal Government has the authority to restore the function of Pamurbaya protected area. The Surabaya Municipal Government also has the authority to impose sanctions. The solution is to strengthen and monitor regularly at Wisma Tirto Agung Phase IV to minimize land expansion and prevent new residents from building new houses. Providing compensation to residents of Wisma Tirto Agung Phase IV, their new residence must be properly considered.

In the aspect of Capacity (Ability), namely the lack of purchasing power of residents to buy land / houses at the minimum price of Surabaya, so they are tempted by the low prices provided by the developer. The Surabaya Municipal Government was unsuccessful in preventing the construction of houses in the Pamurbaya protected area. The solution is to ask for a reduction in the cost of renting or buying land or houses specifically for residents who accept to leave Wisma Tirto Agung Phase IV and prioritizing the interests of restoring the function of protected areas and planning and drafting the concept of procurement of replacement land for residents who occupy the Pamurbaya protected area.

In the aspect of Communication, it is known that there is a lack of socialization from the Surabaya Municipal Government regarding the boundaries of residential areas with green open spaces (conservation) and a lack of knowledge of the boundaries of protected areas in their respective areas and a lack of communication with government officials at the bottom (District and Village). The solution is that there is a need for socialization to employees in related offices and sub-districts to better understand the boundaries of green open space areas, socialization to parties closest to residents such as local RT and RW regarding several areas that are included in green open space, and finally, socialization to the people of Surabaya so that the same problems do not occur and improve good communication between related agencies from the highest (Mayor, Official, District, Village) to the smallest (RT and RW).



In the Interest aspect, it is known that the actors: Surabaya Municipal Government, PT. Tirta Agung Asri, and Citizens of Wisma Tirta Agung Phase IV. With the cheap land price, there is no other choice for them as an opportunity to have housing in Surabaya, so that the need for housing is met. The Surabaya Municipal Government prioritizes restoring the function of protected areas for the benefit of the people of Surabaya.

The solution is that the Surabaya Municipal Government conducts outreach to the public so that before buying land in Surabaya area they are required to see the location as prohibited or not through Cipta Karya. There needs to be direct directions from the Mayor of Surabaya to the residents of Wisma Tirta Agung stage IV that every city requires a protected area for urban balance. Putting aside the personal interests of the residents, the Surabaya Municipal Government will try to prioritize the human rights of the residents of Wisma Tirta Agung Phase IV by providing compensation for proper housing, and trying to avoid losses for residents of Wisma Tirta Agung Phase IV by paying attention to several aspects such as the distance between children's schools and houses. , the distance between the health center or hospital and the house.

Furthermore, the process aspect (procedure) is the existence of a sporadic letter that keeps the residents afloat even though the IMB making process is rejected by Cipta Karya. Issuance of sporadic letters by the village headman which do not comply with the conditions determined by the government. The solution is Surabaya Municipal Government conducts a performance evaluation to find out how residents can get sporadic letters considering the house they live in is in the Pamurbaya protected area. The Surabaya Municipal Government imposes sanctions on employees who neglect to prioritize applicable regulations for personal gain. Conduct an in-depth evaluation of how a sporadic letter can be issued, and the government has the right to revoke the letter if an error is found that is not in accordance with the applicable regulations.

Aspect of ideology (certain value) there is a habit of giving money from developers to employees so that the licensing process at the beginning runs smoothly even though in the end it creates big problems. The solution needs to be given strict sanctions to residents and every employee who receives money. An example of a sanction for residents is that they are unable to apply for an IMB within a certain period of time, which creates a deterrent effect. And sanctions for employees are demoted.

By using the ROCCIPI analysis, it can be seen that problems or cultures that commonly occur in society according to their categories, so that several alternative solutions can be taken to make a new regulation or revise an existing regulation.

### **C. Impact Analysis of the Evictions**

The standard of living regarding adequate housing has been recognized and described in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. International treaties on other human rights are recognized and refer to the right to adequate housing or some of its elements, such as protection of a person's residence and privacy. The right to adequate housing is relevant for all countries; they have ratified at least one international treaty and are committed to protecting the right to adequate housing through an international declaration, the result being a plan of action or the outcome of a conference. Several regulations protecting the right to adequate housing or outline are the responsibility of the state to ensure adequate housing and living conditions for all countries. Referring to the State of Indonesia which has ratified it in the form of a Law, the Surabaya Municipal Government is tasked with providing and fulfilling the rights of the community to an adequate place to live.

However, if the implementation requires the Surabaya Municipal Government to take a decision to carry out evictions for the sake of environmental sustainability, some of the impacts can be analyzed as follows: (1) Psychological aspects, namely for parents, the psychological impact on parents will cause feelings of inability to provide shelter to their children, unable to provide protection to their children. If an eviction occurs, it will become a burden for parents to think about whether the new place to live is appropriate or not. For children, the psychological impact on children is that a child will indirectly think about the burden on his parents and feel afraid of eviction, this can affect their performance at school. (2) Economic aspects, for people who have low incomes will find it difficult to match their income with all new expenses such as renting or buying a new house, transportation costs from home to work and their children's school. (3) In social aspects, adjustments are needed for children in a new environment, both around the home and in the school environment. Adjustment for young children is not easy, emotionally they are used to playing with old friends, to start playing with new friends will be difficult.

## CONCLUSION

Violations were committed not only from the developer, but from all parties, both the public and government officials. Some people have known that the land to be built is conservation land but they are still building houses until the number of houses in the area increases. Government officials are deemed to have committed violations by issuing sporadic letters. The Surabaya Municipal Government in this case has the right to take firm action to restore the function of protected areas. Actions taken are in accordance with existing regulatory mechanisms. The impact of policing will affect from the psychological side of parents and their children, affect the economic side, namely their income if the new residence is too far from their place of work and far from other public facilities, and the last is that socially a child will difficult to adapt to the new environment to be inhabited.

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