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**MIMBAR HUKUM**

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DOI : <http://doi.org/10.22146/jmh.29070>  
Publisher : Faculty of Law Universitas Gadjah Mada  
URL : [jurnal.ugm.ac.id/jmh](http://jurnal.ugm.ac.id/jmh)  
E Issn : 2443-0994  
P Issn : 0852-100x

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# REVIEWING THE DEVELOPMENT PLAN OF TEMON AIRPORT, KULONPROGO DISTRICT IN THE PERSPECTIVE OF INTEGRATIVE SPATIAL PLANNING SYSTEM\*

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## Abstract

*This research is based on the case of airport development in Kulonprogo Regency. The findings in this study are: First, contradictions RTRW Kulonprogo District with RTRWN, RTRW DIY Province, and RZWP3K DIY Province not in accordance with Article 7 paragraph (1) and (2) of Law No. 12 of 2011 on the Establishment of Laws and Regulations. Second, contradictions RTRW Kulonprogo District with RTRWN, RTRW DIY Province, and RZWP3K DIY Province is not in accordance with Article 14 paragraph (2) of Law No. 26 of 2007 on Spatial Planning. Here are some mitigating actions over the contradiction between Article 18 of Regional Regulation of Kulonprogo Regency RTRW: through examination in the Constitutional Court; with the cancellation of Regional Act by the Governor; and, with the amendment the norms of Article 91 Paragraph (2) of the Regional Government Law.*

**Keywords:** airport, development, integrative, spatial planning, .

## Intisari

Penelitian ini dilaksanakan terhadap kasus pembangunan bandar udara di Kabupaten Kulonprogo. Temuan dalam penelitian ini diantaranya: Pertama, RTRW Kabupaten Kulonprogo bertentangan dengan RTRWN, RTRW Provinsi DIY, RZWP3K Provinsi DIY, dan Pasal 7 ayat (1) dan (2) UU No. 12 Tahun 2011. Kedua, RTRW Kabupaten Kulonprogo bertentangan dengan Pasal 14 ayat (2) UU No. 26 Tahun 2007. Untuk memitigasi ketentuan dalam Pasal 18 RTRW Kabupaten Kulonprogo, yang harus dilakukan adalah: Pertama, melalui uji material di MA. Kedua, dengan pembatalan Peraturan Daerah oleh Gubernur. Ketiga, dengan perubahan Pasal 91 ayat (2) UU No. 23 Tahun 2014.

**Kata Kunci:** bandara, pembangunan, integratif, penataan ruang.

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\* This research funded by Research and Publication Unit Faculty of Law Universitas Gadjah Mada 2017.

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## A. Research Background

Indonesia is a welfare state, as stated under the Preamble of the 1945 Constitution expressed that, “[...] Subsequent thereto, to form a government of the State of Indonesia which [...] and in order to improve the social welfare [...]”.<sup>1</sup> This is also expressed under Article 33 point (3) of the 1945 Constitution asserted that, “the land, the water and the natural riches contained therein shall be controlled by the State and to be exploited to the greatest benefit of the people”.<sup>2</sup> The concept of welfare state under the 1945 Constitution constitutes a dedication of the founding fathers when they made the draft of the 1945 Constitution, in which there was a meeting on 11 July 1945 that Yamin asserted his idea regarding this welfare state. He affirmed that: “[...] we should ensure improvements in our constitution for all the people. Therefore, under such fundamental rules are expressed in an article that is related to welfare, mental welfare and financial welfare [...]”.<sup>3</sup>

In the sense of manifesting such welfare, it is organized a spatial planning, as enshrined under the preamble point (a) under Act Number 26 of 2007 regarding Spatial Planning. Such preambles, stated that, “the space territory of the Republic of Indonesia constitutes an archipelagic state that is an archipelago, either as a unity consists of land space, water space and air space including space inside the earth or its resources, need to be enhanced its management wisely, efficient and beneficial which

based on the principles of spatial planning, so that the quality of national space territory can be sustainable for achieving social welfare and social justice in compliance with the 1945 Constitution.”<sup>4</sup> Therefore, the spatial planning constitutes as one of government’s efforts for actualizing social welfare as mandated under state’s goal.

Under Indonesian positive law, the implementation of spatial planning is governed and based on Act Number 26 of 2007 regarding Spatial Planning. Spatial Planning is a system of spatial planning process, usage of space and usage of space control.<sup>5</sup> Spatial planning, based on the Act, is a manifestation of its structure and space pattern.<sup>6</sup> Space structure is an arrangement of residential centers and the network system of means and facilities that have functions as the support of social economic activities of society that has functional relation hierarchically.<sup>7</sup> Spatial pattern is a distribution in order to make a space for protecting and having function for cultivation.<sup>8</sup>

Under article 33 point (1) and (3) of Act Number 26 of 2007 regarding Spatial Planning, the usage of space as one of the parts of the spatial planning process, has been determined under the spatial planning by way of developing the land planning, which the land planning covers the development of means and facilities for general interest.<sup>9</sup> Under the elucidation of Article 33 point (3) Act Number 26 of 2007 regarding Spatial Planning

<sup>1</sup> Preamble of the 1945 Constitution of the Republic of Indonesia.

<sup>2</sup> Article 33 point (3) of the 1945 Constitution of the Republic of Indonesia.

<sup>3</sup> Muhammad Yamin, 1960, Preparation Draft of the 1945 Constitution Chapter 3, Setmeg, Jakarta, pp. 239-240, See also Mochamad Adib Zain and Ananda Prima Yurista, 2014, *Konsistensi Pengaturan Jaminan Sosial terhadap Konsep Negara Kesejahteraan Indonesia*, Research Report, Research and Development Unit, Faculty of Law Universitas Gadjah Mada, Yogyakarta, p. 19. See also in Ananda Prima Yurista, 2015, *Implikasi Penafsiran Kembali Hak Menguasai Negara dalam Putusan Mahkamah Konstitusi Nomor 001-021-022/PUU-I/2003 terhadap Politik Hukum Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil*, Thesis, Faculty of Law UGM, Yogyakarta, p. 52.

<sup>4</sup> Preamble point (a) of Act Number 23 of 2014 regarding Local Government (State Gazettes of the Republic of Indonesia of 2014 No 224, Additional State Gazettes of the Republic of Indonesia No 5587).

<sup>5</sup> Article 1 point (5) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4225).

<sup>6</sup> Article 1 point (2) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4225).

<sup>7</sup> Article 1 point (3) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4725).

<sup>8</sup> Article 1 point (4) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4225).

<sup>9</sup> Article 33 point (1) and (3) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4725).

mentioned that the development for general interest conducted by the Government of local government that covers airport.<sup>10</sup>

Article 2 of Act Number 26 of 2007 regarding Spatial Planning, it is expressed that the implementation of spatial planning has to be based on the principle of integrity.<sup>11</sup> The principle of integrity is the spatial planning is implemented with integrating all the interest that is cross-sector, cross-region and cross-stakeholder.<sup>12</sup> The stakeholders are government, local government and society.<sup>13</sup> Such principle then is elaborated under Article 20 point (2) (d), Article 23 point (2) (d), Article 26 point (2) (d) Act Number 26 of 2007 regarding Spatial Planning, which basically governing spatial planning either national, province, district should be cross-region and cross-sector.

In fact, in D.I. Yogyakarta, such integrity principle needs to be reviewed with regards to its implementation, in particular towards the development of airport in Temon Sub-district, Kulonprogo District. Based on mass media plan, for instance, the development of this airport becomes relatable to the issue of integrity on spatial planning system in the national level, province and city (particularly with regards to Spatial Planning District that has been reviewed about the material of a regulation to Supreme Court since it contradicts with national RTRW, RTRW of D.I. Yogyakarta and other regulations).<sup>14</sup>

The development of such airport began with the condition where Adi Sucipto Airport is over capacity.<sup>15</sup> The development site of Temon airport is laid down under Article 18 of Local Government

Regulation of Kulonprogo District Number 1 of 2012 regarding Spatial Planning of Kulonprogo District Region in 2012-2032.<sup>16</sup> However, in its implementation, there is a problem in which the site of Temon Airport location is a productive farmland –there is a refusal from the local citizens who are farmers. There are 134 farmers sending lawsuit regarding the Regulation of Local Government of Kulonprogo District No. 1 of 2012 regarding Spatial Planning of Kulonprogo Region in 2012-2032, that is represented by 18 farmers (the lawsuit is directly sent by *Wahana Tri Tunggal (WTT)* and assisted by Legal Assistance Institution (*Lembaga Bantuan Hukum (LBH)*) of Jogja on 19 August 2015).<sup>17</sup> This lawsuit was sent since such Local Government Regulation is indicated in contradiction with the Local Government Regulation of D.I. Yogyakarta Number 2 of 2010 regarding Spatial Planning Region of D.I Yogyakarta in 2009-2029. Such lawsuit with regards to the development of Temon airport in farmland, would not be happened if the spatial planning system is implemented by way of integrative approach. By implementing the spatial planning system by way of integrative approach, so that the determination spatial planning in district will not contravene with the provision of spatial planning either in province or national level. Hence, this research is important for providing path in order to the integrative spatial planning system can be manifested. Based on the background above, there are research questions: First, how the development plan of Temon airport in Kulonprogo District in the perspective of integrative spatial planning system? Second, how to repair (in normative sense) the

<sup>10</sup> Article 33 point (3) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4725).

<sup>11</sup> Article 2 of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4725).

<sup>12</sup> Elucidation of Article 2 of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4725).

<sup>13</sup> Elucidation of Article 2 of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4225).

<sup>14</sup> Pito Agustin Rudiana and Muh Syaifullah, "MA Kabulkan Kasasi, DIY Lanjutkan Pembangunan Bandara Baru", <https://m.tempo.co/read/news/2015/09/30/078705146/ma-kabulkan-kasasi-diy-lanjutkan-pembangunan-bandara-baru>, accessed on 8 May 2017.

<sup>15</sup> Article 18 of Local Government of Kulonprogo District Number 1 of 2012 regarding Spatial Planning of Kulonprogo District in 2012-2032.

<sup>16</sup> Review Editor of Bisnis News, "Bandara Adi Sucipto Memang Harus Pindah? Berikut Penjelasannya", <http://www.bisnisnews.id/id-1272-post-bandara-adi-sucipto-memang-harus-pindah-berikut-penjasannya.html>, accessed on 7 April 2017.

<sup>17</sup> Ujang Hasanudin, "Petani Gugat Perda Tata Ruang Kulonprogo Terkait Rencana Pembangunan Bandara", <http://harianjogja.bisnis.com/read/20150823/1/3343/petani-gugat-perda-tata-ruang-kulonprogo-terkait-rencana-pembangunan-bandara>, accessed on 7 April 2017.

system of integrative spatial planning in national level, province and district?

## **B. Research Method**

This research can be conducted by way of normative juridical approach,<sup>18</sup> since the materials can be used as a primary source, that is primary legal source consists of fundamental norms or rules, provision or regulation, and acts which governs spatial planning. Besides, this research used empirical juridical approach (sociological juridical approach), in which this approach called as law in action, it is described as empirical social trend.<sup>19</sup> The type of data that is needed for this research is secondary data and primary data. Secondary data consists of: **First**, primary legal sources are: (a). Act Number 23 of 2004 regarding Local Government; (b) Act Number 12 of 2011 regarding Legal Drafting; (c) Act Number 26 of 2007 regarding Spatial Planning; (d) Government Regulation Number 15 of 2010 regarding The Implementation of Spatial Planning; (e) Government Regulation Number 26 of 2008 regarding National Spatial Planning; (f) Local Government Regulation of Kulonprogo District Number 1 of 2012 regarding Spatial Planning of Kulonprogo District in 2012-2032; and (g) Local Government Regulation of D.I. Yogyakarta Number 2 of 2010 regarding Spatial Planning in D.I. Yogyakarta in 2009-2029. **Second**, secondary legal source consists of textbooks, journals, research report, mass media, and etc that are related with integrative spatial planning system. **Third**, tertiary legal source consists of Black Law Dictionary, Bahasa Indonesia Dictionary, and etc. Then, for primary data that has been used in interview report with Office of Agrarian and Spatial Planning of DIY and Office of Agrarian and Spatial Planning of Kulonprogo.

In this research, there are primary data and secondary data. The primary data is conducted by way of field research with interview technique

and guideline for interviewing instrument. Field research will be conducted in Yogyakarta, that is in: (a) Agrarian and Spatial Planning Office in D.I Yogyakarta (Wahyu Budi Nugroho –Head of Implementation and Surveillance of Spatial Planning Department and Meta Grisanda Meiz (Head of Spatial Planning Section); (b) Regional Development Planning Board of D.I Yogyakarta (Aris Praseno—Head department of PTPESDM DPTR of D.I. Yogyakarta) and (c) Office of Agrarian and Spatial Planning of Kulonprogo (Arum—Head of Spatial Planning Formation Department and Detailed Appropriate and Ismarianto—Head of Spatial Planning Guidance). Then, taking secondary data is conducted by document study towards primary legal source, secondary and tertiary legal source. Besides, under the field research, it is possible to obtain secondary data, such as regarding the documents of planning (technical material of Local Government Regulation regarding RTRW of District or Province) from 2 (two) related Offices.

The research is conducted by way of: First, examining the Local Government Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Planning of Kulonprogo in 2012-2032 towards: (a) Act Number 12 of 2011 regarding the Establishment of Regulation; (b) Act Number 26 of 2007 regarding Spatial Planning; (c) Government Regulation Number 15 of 2010 regarding The Implementation of Spatial Planning; (d) Government Regulation Number 26 of 2008 regarding National Spatial Planning; and (e) Government Regulation of D.I. Yogyakarta Number 2 of 2010 regarding Spatial Planning of D.I Yogyakarta in 2009-2029. Second, examining the draft of spatial planning in national, province and district in: (a) Act Number 23 of 2014 regarding Local Government; (b) Act Number 26 of 2007 regarding Spatial Planning; and (c) Government Regulation Number 15 of 2010 regarding Spatial Planning for finding chance to manifesting integrative spatial planning system.

Data analysis is one the important research

<sup>18</sup> Soerjono Soekanto and Sri Mamudji, 1994, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, p. 13.

<sup>19</sup> Soerjono Soekanto and Purnadi Purbacaraka, 1979, *Perihal Penelitian Hukum*, Alumni, Bandung, p. 65.

part since in this part data is processed/analyzed thus data have the means and usage in overcoming research problems.<sup>20</sup> In this process of data analysis, the research report is processed for research report.<sup>21</sup> In this legal research, the data related to this research are analyzed using qualitative analytic technique, that is, collecting data, qualifying data then relating to theory that is relatable with such issues and finally making conclusion to determine the result/ answering the research question, that resulting descriptive data.<sup>22</sup> Descriptive data constitutes what is confirmed by an informant verbally or in writing and also actual actions that is being observed and learnt in a whole.<sup>23</sup>

### C. Research Result and Analysis

#### 1. The Development Plan of Temon Airport, Kulonprogo District in the Perspective of Integrative Spatial Planning System

Before embarking to the main issue, Spatial Planning of Temon Airport in Kulonprogo is really important to be elaborated first, on what does it mean by integrative spatial planning system. Based on literatures, it is described that: “In the theory, spatial planning, represents a transformation from traditional notions of planning driven by land-use allocation and design emphasizing control and restraint, towards more proactive, positive and holistic emphases involving multi-scale and multi-sectors perspectives.<sup>24</sup> Thus planning is transformed into proactive agent of positive social, economic, and environmental change.<sup>25</sup> Based on such elaboration, spatial planning is a transformation from design of land usage that emphasizes on the control and limit to be more proactive, positive, holistic by way of

involving the perspective of multi-scale and multi-sectors. Spatial planning turns out to be proactive towards, social development, economic, and climate change.

For accommodating the transformation from land usage design that is more proactive positive and holistic by way of involving the perspective of multi-scale and multi-sector, spatial planning has to be conducted in integrative way. Specific elaboration regarding integrative spatial planning is called as integrated spatial plan. In Swedish literature, released by Swedish International Development Cooperation Agency (Sida), stated that, “An integrated spatial plan on provincial and district level is based on a common overarching vision and development strategy for the area that the plan covers in our case a province or a district. The vision and development strategy is formed through a process of analyzing the potentials, needs, and problems in each area and for every sector and interest”.<sup>26</sup> Based on such issue, integrated spatial plan is organized based on the general vision in a whole and development strategy for district area and province. Such vision is resulted from analysis on potency, needs, and the problems of each and every area and for every sector and interest.

Furthermore, it is described that, “It is a participatory process that unifies national and provincial priorities with potentials, needs and problems on the ground at provincial/district level. An ISP contains a Provincial/District Spatial Development Strategy with implementing measures, which can be in the form of regulations, zoning, incentives, constructions and projects designed specifically to promote the desired development and/or to avoid and move away from

<sup>20</sup> Anonim, “Metode Penelitian”, <https://core.ac.uk/download/pdf/33486141.pdf>, accessed on 8 May 2017.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Elsevier, “Disintegrated development at the rural–urban fringe: Re-connecting spatial planning theory and practice”, <http://www.sciencedirect.com/science/article/pii/S0305900613000214>, accessed on 8 May 2017. See also M. Tewdwr-Jones, J. Morphet, P. Allmendinger, “The Contested Strategies of Local Governance: Community Strategies, Development Plans, and Local Government Modernization”, *Environment and Planning A.*, Vol. 38, 2006, pp. 533-551.

<sup>25</sup> L. Albrechts, “Strategic (Spatial) Planning Reexamined”, *Environment and Planning B: Planning and Design*, Vol. 31, 2004, p. 743-758.

<sup>26</sup> Swedish International Development Cooperation Agency (Sida), “Guideline in Integrated Spatial Planning for Sustainable Development in Lao PDR”, <http://www.gms-eoc.org/uploads/resources/459/attachment/Guideline%20Integrated%20Spatial%20Planning%202013-04-2010.pdf>, accessed on 8 May 2017.

undesired development”<sup>27</sup>. Such explanation stated that, the process of participation that unites potency, needs, and problems in province and district area. Integrated spatial plan covers regulation, zones, incentive, construction, and project plan for showing the development desired or avoided for stepping aside from illegal development.

Spatial plan is a system of space planning, space usage and controlling the usage of space.<sup>28</sup> Within the process of such plan there are 2 (two) types documents of plan, **First**, spatial plan in general (has a nature of hierarchy) consists of: (1) National Spatial Plan covers Government Regulation, (2) Province Spatial Plan covers Province Government Regulation, and (3) District Spatial Plan covers Local Government Regulation those three are applicable for 20 (twenty) years and reviewed every 5 (five) years; **Second**, Spatial Plan in detail, covers: (1) spatial plan of island/archipelago and spatial plan of national strategic area covers President Regulation; (2) spatial plan of provincial strategic area covers Province Government Regulation; and (3) spatial plan in detail for District and spatial plan of strategic district area covers Local Government Regulation.

In this context, development plan of Temon Airport includes in Local Government Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Plan of Kulonprogo in 2012-2032 (herein after Local Government Regulation of Spatial Planning Kulonprogo), with referring to general spatial plan that has nature of hierarchy, so that Local Government Regulation of Spatial Planning Kulonprogo has to analyzed towards the general spatial plan in national level and province that is governed under Government Regulation Number 26 of 2008 regarding National Spatial Planning (herein after called Government Regulation of National Spatial Planning) and Local Government Regulation of D.I. Yogyakarta Number 2 of 2010

regarding Province Spatial Plan which covers Local Government Regulation of D.I. Yogyakarta Province of 2009-2029 (herein after called Local Government Regulation of Spatial Planning of DIY Province). However, before analyzing Government Regulation of Spatial Planning of Kulonprogo and Local Government Regulation of Spatial Planning of DIY Province, it is important to examine norms under Local Government Regulation of Spatial Planning of Kulonprogo that is elaborated as follows.

**First**, Article 18 of Local Government Regulation of Spatial Planning of Kulonprogo that regulates, “Air transportation network [...] consists of airport with spatial plan on new airport in Temon, Wates, Panjatan and Galur Sub-Districts”—covers 587,2 (five hundreds eighty seven point two) acres.<sup>29</sup> **Second**, Article 43 point (3) Local Government Regulation of Spatial Planning of Kulonprogo stated that, “The area for farmland [...] which covers 10.622 (ten thousands and six hundreds twenty two) acres, consists of: (a) Temon Sub-District; (b) Wates Sub-District; (c) Panjatan Sub-District; (d) Galur Sub-District; (e) Lendah Sub-District; (f) Sentolo Sub-District; (g) Pengasih Sub-District; (h) Girimulyo Sub-District; (i) Nanggulan Sub-District; (j) Kalibawang Sub-District; (k) Samigaluh Sub-District.” **Third**, Article 45 point (1) of Local Government Regulation of Spatial Planning of Kulonprogo, stated that “The Development of agrarian area covers: (a) the development of agrarian area in Kalibawang; and (b) The development of agrarian area in Temon”. **Fourth**, Article 36 point (2) of Local Government Regulation of Spatial Planning of Kulonprogo, stated that, “The area of coast boundary [...] located along the coast of Hindia Ocean with the width at least 100 (hundreds) meters from tidal point to the land, covers: (a) Temon Sub-District; (b) Wates Sub-District; (c) Panjatan Sub-District; (d) Galur

<sup>27</sup> *Ibid.*

<sup>28</sup> Article 1 point (3) of Act Number 26 of 2007 regarding Spatial Planning (State Gazettes of the Republic of Indonesia of 2007 Number 68, Additional State Gazettes of the Republic of Indonesia Number 4725)

<sup>29</sup> Harian Jogja, “Bandara Kulonprogo, Pengukuran Selesai, Ini Luas Lokasi yang Terdampak”, <http://www.harianjogja.com/baca/2016/03/11/bandara-kulonprogo-pengukuran-selesai-ini-luas-lokasi-yang-terdampak-699619>, accessed on 18 September 2017.

Sub-District.”

**Fifth**, Article 37 point (2) (a) of Local Government Regulation of Spatial Planning of Kulonprogo stated that, “The area of natural sanctuary [...] covers: a. turtle conservation with approximately 2 (two) acres, covers: (1) Bugel Village in Panjatan Sub-district; and (2) Trisik Village and Banaran Village in Galur Sub-District [...]”. **Sixth**, Article 3 point (a) of Local Government Regulation of Spatial Planning of Kulonprogo stated that, “the policy of spatial plan in district area covers: (a) control and development of farmland usage; [...]” **Seventh**, Article 4 point (1) (a) (b) (c) (d) (e) of Local Government Regulation of Spatial Planning of Kulonprogo, confirmed that “controlling and developing of farmland as stated under article 3 point (a) with strategy that covers: (a) developing the potency of flagship farm commodity; (b) optimizing the function of agrarian area; (c) enhancing the means and facilities for agrarian activities; (d) developing the agrarian productivity; (e) controlling transfer function of farmland; and [...]” With regards to point 6 and 7, based on interview result in Land and Spatial Plan Office of Kulonprogo, in developing the new airport, there is a transfer of function in agrarian

area wet and dry, however, in its future plan, such agrarian area will get its replacement.<sup>30</sup>

Besides, Local Government Regulation of Spatial Planning of Kulonprogo is in contradiction with Government Regulation of DIY Number 16 of 2011 regarding Zoning Plan of Coastal Area and Small Islands of DIY Province of 2011-2030 (herein after called Local Government Regulation of RZWP3K DIY), that is: **First**, Article 56 point (1) (a) stated that, “The referral on the development of cultivation fishery zone can be conducted by: (a) developing water cultivation fishery in Temon and Galur, Kulonprog, Kretek Sub-District; and [...]”. **Second**, Article 65 point (1) stated that, “Referral on the development mining zone can be performed in Wates, Panjatan and Galur Sub-district, Kulonprogo.” **Third**, Article 78 point (a) which stated that, “referral on the management of coastal conservation zone is conducted in: [...] Trisik Beacg, Galur in Kulonprogo as coastal conservation for turtles; and [...]” **Fourth**, Article 91 point (1) (a) affirmed that “natural disaster zone as enshrined under Article 88 covers: a. all coastal area in Kulonprogo (Temon, Wates, Panjatan and Galur Sub-district) [...]”

**Tabel 1.**

**The Determination of 4 (four) Sub-Districts in RTRW Kabupaten Kulonprogo and RZWP3K DIY Province**

No.	Airport Location (Sub-Districts)	Area Determination in RTRW Kulonprogo District	Area Determination in RZWP3K DIY Province
1	Temon Sub-District	a. Wet agrarian area	a. Brackish cultivation zone
		b. Agrarian area	b. Vulnarable to natural disaster area
		c. Coastal boundary area	
2	Wates Sub-District	a. Wet agrarian area	a. Mining zone
		b. Coastal boundary area	b. Having potential to natural disaster

<sup>30</sup> Interview Result with Arum (Head of Spatial Planning and Spatial Plan in detail Department) and Ismanatan (Head of Guidance of Spatial Plan) Land and Spatial Plan of Kulonprogo on 14 September 2017.



<b>3</b>	<b>Panjatan Sub-District</b>	a. Wet agrarian area	a. Mining zone
		b. Coastal boundary area	b. Having potential to natural disaster
		c. Nature conservation	
<b>4</b>	<b>Galur Sub-District</b>	a. Wet agrarian area	a. Brackish cultivation zone
		b. coastal boundary area	b. Mining zone
		c. Natural sanctuary area	c. Turtle conservation zone
			d. Having potential to natural disaster

Source: Prepared by the Author, 2017.

The development of this airport is located in 4 (four) sub-districts that is in Temon, Wates, Galur and Panjatan sub-districts. Besides, these locations has been set for the location for the development of ariports, it is also set for areas as written down on the table above. Therefore, the existence such

airport will relate to the surroundings area that is: (a) wet farmland area; (b) agrarian area; (c) coastal boundary area; (d) Natural sanctuary area; (e) brackish fishery cultivation area; and (h) turtle conservation area. Airport site is showed in the map down below.

Image 1.

**Airport Development Site in Kulonprogo in the Map of Transportation System of RTRW Kulonprogo of 2012-2032**



Source: Attachment I of Local Government Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Planning of Kulonprogo of 2012-2032.

For seeing the location of development of airport in Kulonprogo and its surroundings and

what sites that are attached to the airport, kindly check the picture below.

**Image 2.**

**The Map of Conservation Area**



**Source:** Attachment IV of Local Government Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Planning of Kulonprogo of 2012-2032

According to the map above, the location of the development of airport in Kulonprogo collides with coastal boundary area and fountain area. Then, for seeing the site of airport development in

**Image 3.**

**Conservation Area**



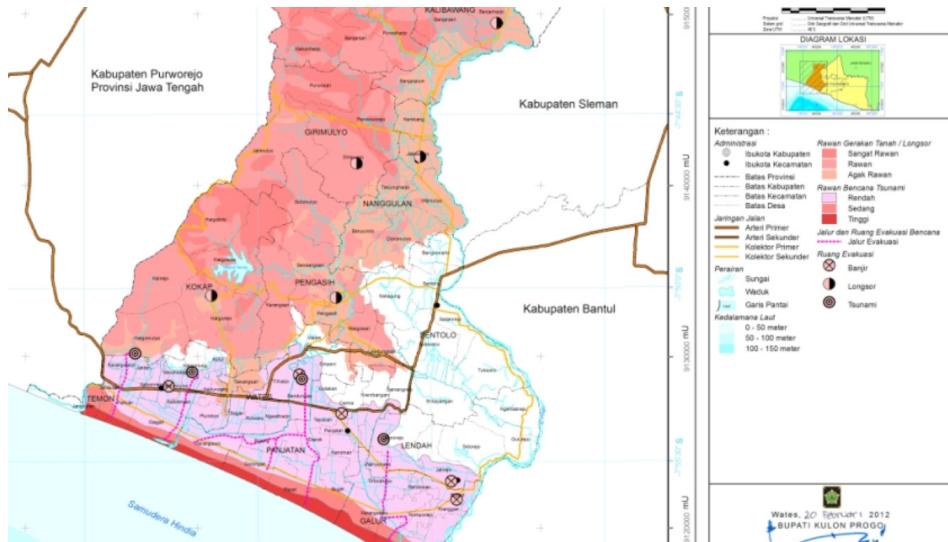
**Source:** Attachment IV of Local Governmetn Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Plan in Kulonprogo of 2012-2032.

In accordance with the map above, the development site of airport in Kulonprogo is a dry

farmland area as well as it collides with residential villages and wet farmland area. Then, for seeing the site of the development of airport in Kulonprogo, what areas that are surrounded by in the area which has a potential to geological disaster, kindly check the image 4 below.

Image 4.

The Map of Potential Areas of Geological Natural Disaster



Source: Attachment IV of Local Government Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Plan of Kulonprogo District of 2012-2032

Based on the map above, the development site of airport in Kulonprogo constitutes a potential area of tsunami with medium and high intensity. Then, what surrounding areas of such airport in strategic area, kindly check the map below.

Image 5.

The Map of Strategic Area



Source: Attachment IV of Local Government Regulation of Kulonprogo Number 1 of 2012 regarding Spatial Planning Area in Kulonprogo of 2012-2032

From the map above, it concludes that the airport site is an agrarian area and it is surrounded by residential villages and wet farmland area.

Moreover, when the researcher analyzed Local Government Regulation of RTRW Kulonprogo towards National Spatial Planning and Spatial Planning of DIY Province, the results can be elaborated as follow. **First**, Local Government Regulation of Spatial Planning of Kulonprogo towards National Spatial Planning is in contradiction with Article 30 point (2) and attachment V point II “Secondary Spread Center of Government Regulation of National Spatial Planning, governed that “Adisutjipto (DIY Province)—in the same system with Adi Sumarmo (Central Java)”. **Second**, Local Government Regulation of Spatial Planning of Kulonprogo towards National Spatial Planning is contrary with Article 21 point (2) *jo*. Article 22 point (b) of Local Government of Spatial Planning of DIY Province which stated that, “The strategy of development of means air transportation network as stated under Article 11 point (2) is regulated as follows: [...]; and (b) providing space for the development of Adisutjipto Airport.” Based on primary data, that:<sup>31</sup> the development of airport in Kulonprogo constitutes the form of “carrying out Adisucipto airport” since Adisucipto Airport cannot be developed anymore due to limited space. Further, feasibility study is undertaken for determining which area that is suitable for being an airport, and then Kulonprogo has been chosen in Temon Sub-district. However, when it comes to determining such site as new airport, the government was still in doubt, yet, the development of new airport precisely has been governed explicitly under Local Government Regulation of Kulonprogo. In accordance with primary data in Local Development Plan Body of DI Yogyakarta, there are differences in understanding the meaning of “constructing” and “development”, in which development is to construct but it does not mean to construct that is literally build from the

beginning, meanwhile “constuctin” is developing new/ from the beginning/ others.<sup>32</sup>

The contradiction of Spatial Planning of Kulonprogo can be concluded into 3 (three) points, that is: **First**, articles under Spatial Planning of Kulomprogo contradicts each other. In accordance with discussion above, the development site of airport is determined as: Agrarian area, dry farm land, and it has potential to natural disaster which collides to villages, wet farmland, coastal boundary area, and fountain area. Hence, there is inconsistency of regulation/plan and implementation of usage, particularly with regards to agrarian area, dry farmland and potential to natural disaster area with medium and high intency).

**Second**, the regulation on spatial planning of Kulonprogo is not in compliance with the hierarchical principal of Indonesian’s regulation. Under Article 7 point (1) and point (2) of Act Number 12 of 2011 regarding the Preparation of Regulation governed that, “types and hierarchy of Acts consist of: (a) The 1945 Constitution; (b) The Provision of People’s Consultative Assembly; (c) Government Regulation replacing Acts; (d) Government Regulation; (e) President Regulation; (f) Province Area Regulation ; (f) Province Government Regulation; and (g) Local Government and the force of law of Acts in accordance with hierarchy as stated under point (1). The elucidation of Article 7 point (2) of Act Number 12 of 2011 also elaborated that, “in this provision, hierarchy means level or layer of every type provision which based on the principle that the lower provision cannot contravene with the higher provision.” According to such stipulation, Local Government Regulation of Spatial Planning of Kulonprogo should refer to the higher provision of spatial planning that is, National Spatial Planning, Spatial Planning of DIY and also RZWP3K of DIY Province. However, the result analysis found a contradiction between Spatial Planning of Kulonprogo regulation with the

<sup>31</sup> Interview Result with Wahyu Budi Nugroho (Head of the Implementation and Surveillance of Spatial Plan Department) and Meta Grisananda Meizi (Head of the Implementation of Spatial Plan Department) Land and Spatial Plan Office of DIY Province on 11 September 2017.

<sup>32</sup> Interview Result with Ari Praseno (Head of ub-Field) of Local Development Plan Body.

provision that should become its referral.

**Third**, Article 18 of Local Government of Kulonprogo Number 1 of 2012 contravene with National Spatial Planning (Government Regulation Number 26 of 2008), Spatial Planning of DIY Province (Local Government Regulation of DIY Number 2 of 2010), and RZWP3K of DIY Province (Local Government Regulation of DIY Number 16 of 2011). Such issues are not in compliance with Article 14 point (2) Of Act Number 26 of 2007 regarding Spatial Planning that governs, "the general plan of spatial planning as stated under point (1) (a) by way of hierarchical consists of: (a). National Spatial Plan; (b) Province Spatial Plan; (c) District and City Spatial Planning". Based on such provisions, Local Government Regulation of Spatial Planning of Kulonprogo should refer to the higher provision of spatial planning that is, National Spatial Planning, Spatial Planning of DIY and also RZWP3K of DIY Province. However, the result analysis found a contradiction between RTRW Kulonprogo regulation with the provision that should become its referral.

Under the elucidation of Article 7 point (2) of Act Number 12 of 2011, the word of hierarchy can be found in Article 7 point (1) Act Number 12 of 2011 and Article 14 point (2) of Act Number 26 of 2007, it provides juridical consequences that, Spatial Planning of that is governed under Local Government District Regulation must not contradict with Spatial Planning of Province that is regulated under Province Government Provision and National Spatial Planning stipulated under Government Regulation. Article 18 of Local Government Regulation of Kulonprogo number 1 of 2012 is in contradiction with National Spatial Planning (Government Regulation Number 26 of 2008), Spatial Planning of DI Yogyakarta (Government Regulation of DI Yogyakarta Number 16 of 2011). With regards to the contradiction between the lower provision and higher provision, it is governed under Article 9 point (2) of Act Number 12 of 2011, stated that, "Regarding a provision under Act is allegedly in contrary with other Act, its review will be

undertaken by Supreme Court." Furthermore, under Article 31A point (7) of Act Number 3 of 2009 regarding the Second Amendment of Act Number 14 of 1985 regarding Supreme Court, stated that, "with regards too the request is guaranteed as governed under point (6), the judge deicision clause affirmed the materials of point, article and/or part of Act that is in contradiction with higher provision." Thus, Article 18 of Local Government Regulation of Spatial Planning of Kulonprogo, can reviewed by Supreme Court so that it is possible to have non-binding status.

## **2. Remedial Efforts (in Normative sense) to Manifest the Integrative Spatial Planning System in National, Province and District Level**

The existence of contradiction between Spatial Planning District Regulation and National Spatial Planning and Spatial Planning of DIY Province regulation is intervened by the provision under Act Number 23 of 2014 regarding Local Government (herein after Local Government Act), which is outlined as follows. **First**, Article 91 of point (2) (d) of Local Government Act, which stated that, "In performing guidance and surveillance as stipulated under point (1) Governor as the representative of Central Government has the duties: [...]; (d) conducting an evaluation towards the draft of District Government Regulation regarding *RPJPD*, *RPJMD*, *APBD*, amandment of Regional Revenue and Expenditure (*APBD*), accountability of the implementation of *APBD*, regional spatial plan, regional tax and regional retribution." **Second**, Article 245 point (3) of Local Government Act, stated that, "the draft of Local Government Regulation that is governed *RPJPD*, *RPJMD*, *APBD*, amendment of *APBD*, accountability of the implementation of *APBD*, regional tax, regional retribution, and regional spatial plan must obtaiion the evalution from Governor as a representative of Central Government before enacted by Major."

**Third**, Article 245 point (4) of Local Government Regulation, stated that, "Governor as a representative of central government in evaluation

of Local Government Regulation draft regarding regional tax and regional retribution, consults with Ministry and further the Ministry coordinates with the ministry who undertakes budgetary, and for evaluation of the draft of Local Government Regulation regarding Spatial Plan is consulted with the Ministry and Ministry will further coordinate with the Ministry who implements such spatial plan.” The elaboration of such three articles, have important points that is: (1) Governor evaluates the draft of Local Government Regulation with regards to Spatial Planning of District; (2) the draft of Local Government Regulation such as Local Government Regulation regarding Spatial Planning of District has to obtain evaluation of Governor as a representative of Central Government in undertaking evaluation of the draft of Local Government Regulation with regards to spatial planning, consulting with the Ministry and further the Ministry coordinates with the Ministry who implements spatial plan.

Besides, Article 270 point (1) of Local Government, state that, “the evaluation towards the draft of Local Government Regulation with regards to RPJPD that is conducted by Governor as a representative of Central Government as stipulated under Article 267 point (2) is implemented for reviewing the appropriateness with RPJPN, RPJPD of Province and spatial plan in District, public interest and/or the provisions of higher Act.” By comparing three articles: article 91 point (2), article 24 point (3) and (4) with article 270 point (1) of Local Government Regulation, it is obvious that the problem on the contradiction between Local Government regarding Spatial Planning of DIY Province with National Spatial Planning, Spatial Planning of DIY Province, RZWP3K DIY Province and provision since article 91 point (2) only governs regarding **“The duty of Governor conducting evaluation towards the Draft of Local Government Regulation pertaining Spatial Plan”** only. Yet, the evaluation towards the draft of Local Government Regulation regarding RTRW of District does not emphasize on “for reviewing the suitability with RPJPN, RPJPD of Province and spatial plan in

province and national level, public interest and/or higher provisions”, as an evaluation towards the Draft of Local Government Regulation regarding RPJPD conducted by Governor (as governed under Article 270 point (1) of Local Government). Thus, it is necessary to amend article 91 point (2) of Local Government Act.

In repressive area, besides by reviewing article 18 of Local Government Regulation of RTRW Kulonprogo to Supreme Court, the contradiction of RTRW of District with RTRWN, RTRW of Province, and RZWP3K of DIY Province should be settled with Governor authority that is stipulated under Article 91 paragraph (2) (e) and (3) (a) of Local Government Regulation, stated that, “In undertaking guidance and surveillance as referred to point (1), the Governor as a representative of Central Government has duty to: [...]; conducting supervision towards Local Government Regulation; [...]” and “in undertaking duties as referred to point (2), Governor as a representative of Central Government has duties: a. to nullify Local Government Regulation and Governor/Major Regulation; [...]”. Hence, the authority to nullify can overcome the contradiction between Spatial Planning of District with National Spatial Planning, Spatial Planning of DIY Province, and RZWP3K of DIY Province.

#### **D. Conclusion**

**First**, article in RTRW of Kulonprogo contradicts each other since under Local Government Regulation of RTRW Kulonprogo, the development site of the airport is: agrarian area, dry farmland, and having a potential to natural disaster that is surrounded by villages, wet farm land, coastal boundary, and fountain area. Thus, there is inconsistency of provision/norms/article in Local Government Regulation of RTRW Kulonprogo and there is inconsistency of regulation/plan in undertaking usage in the field (especially agrarian area, dry farmland, and area that has potential to natural disaster with medium and high intensity).

**Second**, the contradiction of Spatial Planning of Kulonprogo with National Spatial Planning, RTRW DIY Province, and RZWP3K of DIY Province is not in line with Article 7 point (1) and point (2) of Act Number 12 of 2011 regarding the formation of regulation. **Third**, the contradiction of RTRW Kulonprogo with RTRWN, RTRW of DIY Province, and RWZPEK DIY Province is not in line with article 14 point (2) of Act Number 26 of 2007 regarding Spatial Plan. Referring to the hierarchy meaning under the elucidation of Article 7 point (2) of Act Number 12 of 2011, the word “hierarchy” either in Article 7 point (1) of Act Number 12 of 2011 and Article 14 point (2) of Act Number 26 of 2007, providing juridical consequences, RTRW that is governed in Local Government Regulation must not contradict with RTRW of Province that is governed under Province Government Regulation and RTRWN governed by Government Regulation. Thus, in material, Article 18 of Local Government Regulation of Kulonprogo Number 1 of 2012 contradicts with RTRWN (Government

Regulation Number 26 of 2008), RTRW Province of DIY (Local Government Regulation of DIY Number 2 of 2010) and RZWP3K DIY Province (Local Government Regulation Number 16 of 2011).

For conducting mitigation on the contradiction between Article 18 of Local Government Regulation of RTRW Kulonprogo so that the possibility that can be undertaken is: First, an individual, society in adat law, and public/private legal entity can make a claim to Supreme Court;<sup>33</sup> Second, by nullifying Local Government Regulation by Governor.<sup>34</sup> For minimizing the contradiction between Local Government Regulation of RTRW Kulonprogo, it is necessary to amend the norms of Article 91 point (2) of Local Government Act for amending in order to evaluation is emphasized and focus on the suitability the Draft of Local Government Regulation with RPJPN, RPJPD of Province and spatial plan in province and national, public interest, and higher provisions.

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<sup>33</sup> See Article 31A point (1) and (2) of Act Number 3 of 2009 regarding the second amendment of Act Number 41 of 1985 regarding Supreme Court stated that, “the claim on judicial review under the Act towards the Act can be directly submitted by the applicant or his/her legal consultant to the Supreme Court and made in written document in Bahasa Indonesia. The applicant as referred to point (1) can be conducted by party who suffer a loss due to the enforcement of Act under the Act, that is: a. Individual (Indonesians); b. Adat law community that is still alive and in line with the development of society and the Republic of Indonesia’s principles; or c. public or private legal entity.”

<sup>34</sup> Article 251 point (2) of Act Number 23 of 2014 regarding Local Government (State Gazettes of the Republic of Indonesia of 2014 Number 224, Additional State Gazettes of the Republic of Indonesia Number 5587).

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