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Spatial Law and Production of Space in the Context of Cemetery in Surabaya

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Abstract— This article criticizes spatial law about the availability of cemeteries in Surabaya, Indonesia. The analysis in this article uses the concept of social space production by Henri Lefebvre. This article reviews how the paradigm of spatial law in Indonesia impacts on spatial regulation and the availability of cemetery in Surabaya and criticizes it from the perspective of the social space production. The development of regulations in Indonesia shows the slow response of the government in anticipating limited space for the availability of cemeteries. Spatial law reduces the meaning of cemeteries as lived spaces in the Indonesian context by categorizing them as green open spaces. The cemetery as a green open space, if it refers to Indonesian spatial regulation, wants to be developed not in a spiritual and economic sense but ecologically. Though the cemetery in the Indonesian context and the perspective of social space production is a lived space that cannot be reduced as green open space by technocracy. Life experiences that produce space also need to be examined when interpreting cemeteries and placing them in space planning.

Keywords- cemetery; social space production; perceived space; conceived space; lived space

I. INTRODUCTION

This article will analyses spatial regulation in Indonesia in the context of the availability of cemeteries in Surabaya, the capital of East Java Province. The analysis uses the concept of social space production proposed by Henri Lefebvre. The Lefebvre approach in this article is used to criticize the paradigm of Indonesian spatial law in the context of providing cemeteries. The Lefebvre social space production approach has been used in the analysis of spatial planning and sociology for the context of housing and public space in several regions in Indonesia.[1] This means that the approach is used for the benefit of human life. However, this approach has never been used to analyses spatial laws related to access to cemeteries.

This study is motivated by two sides of the need for space for cemeteries. First, the need for cemeteries arises from an increase in the number of deaths that cannot be avoided as the number of births increases. The projected number of mortalities in Indonesia reaches 1.6 million in 2019, and the trend is expected to continue to rise to 3.2 million in 2045.[2] While the Surabaya Municipal Government data in 2015 shows that the average increase

in mortality every year in Surabaya from 2009 to 2014 was 34.98%. [3] Whereas land in Surabaya is also increasingly limited because of the need for residential areas. Second, the provision of cemetery for the Indonesian context is difficult to ignore space. The cemetery in Indonesia has a collective and spiritual dimension because it is a monument to remember and reflect on one's life journey.[4] Therefore, cemeteries still need space that is difficult to be replaced by other options, for example, by cremation.

The projected trends in increasing mortality and the meaning of cemeteries in the collective and spiritual dimensions indicate that the need for space for cemeteries by the year is inevitable and needs to be anticipated. This phenomenon raises the question of how the role of the state should be in guaranteeing the availability of cemeteries with universal access. One of the roles that can be carried out by the state is to provide a public cemetery that is open to all people, and Indonesia has Government Regulation No. 9 of 1987 concerning Provision of Land Use for Cemetery (GR No. 9/1987). GR No. 9/1987 authorized the regent/mayor to determine the location of a public cemetery for all religious adherents. However, this authority can be influenced by specific issues in each region, such as increasing needs of new residential areas which ultimately reduces land availability. As these issues continue to revolve and hamper the provision of universal cemeteries, the need for public cemeteries that can be accessed by every citizen is also increasing.

Therefore, regulation of cemeteries within the spatial, legal framework is an issue that should be criticized. The urgency of this study is related to previous research in spatial law that has not touched the issue of meeting the availability of cemeteries. Previous research on cemeteries in Indonesia, especially Surabaya, has not been discussed from the aspect of spatial law in Indonesia.

II. PROBLEMS

The focus of this research is: (1) how does the spatial law paradigm in Indonesia affect the availability of

cemeteries in Surabaya? (2) how is this paradigm criticized by Lefebvre's concept of social space production?

III. RESEARCH METHOD

This research will analyses two problem formulations from the critical legal geography approach to criticize the framework of spatial policy, especially in the regulation of cemetery. The critical legal geography approach in this article will use the concept of social space production proposed by Henri Lefebvre. The concept of social space production will be used to evaluate spatial policies in providing cemeteries that are universally accessible.

IV. THEORETICAL FRAMEWORK

If referring to the weighing part and body of GR No. 9/1987, cemetery in Indonesia are placed within a spatial planning framework. On the other hand, spatial policy in Indonesia according to M. Daud Silalahi cannot be separated from the foundation of the concept of the 'state control' in Law Number 5 of 1960 concerning Agrarian Principles (Basic Agrarian Law) which covers:[5]

- a. The regulation and implementation of the appropriation, the utilization, the reservation, and the cultivation of earth, water and airspace.
- b. Determination and regulation of legal relations between people and earth, water, and airspace.
- c. Determination and regulation of legal relations between people and legal acts concerning the earth, water and airspace.

Constitutional Court in Decision No. 36 / PUU-X / 2012 has provided an interpretation of the state control by linking it to 5 (five) state functions: making policies; administering; regulating; managing; and supervising. The five functions become a unity by prioritizing the management function in order to ensure the utilization of natural resources is intended for the prosperity of the people.[6] The Constitutional Court's decision did not explicitly interpret the prosperity of the people, as the goal of the state control, from a narrow economic perspective. However, the discourse on Article 33 of the 1945 Constitution, which is the basis of this interpretation, has so far been dominated by economic perspectives by placing it as a resultant mix of the discourses of socialism, economic nationalism, and anti-colonialism.[7]

The dominance of the economic perspective in discourse of state control can also be seen in various studies on the concept of the state control which are generally

associated with the problem of resource use, particularly in the land sector, which involves state institutions and civil society. Koeswahyono emphasized the reconceptualization of the state control in the framework of agrarian reform so that the state would avoid the potential to violate *hak ulayat* (customary rights) and individual rights to land.[8] The study by Redi also places the meaning of people's prosperity in relations with economy, including oil and gas, mineral and coal mining, geothermal and forestry. Economic liberalism is then placed as a threat that erodes the meaning of state control.[9] The same perspective was also found by Erwiningsih who recommended synchronizing the state control in various sectoral laws that were more economical.[10]

Various studies show the dominance of economic perspectives in the interpretation of the state control. If the spatial policy is then based on the concept of state control, then the spatial policy may be dominated by economic interests. Space is seen as a resource that needs to be managed in economic framework. Lisdiyono's research on spatial regulation in Semarang, for example, shows that spatial law policy is more responsive to the interests of market forces or capital owners and meets the demands of the development of the built area.[11]

The spatial planning literature also shows economic factors as influential variables in spatial planning. Spatial planning is positioned as a mechanism to prevent the failure of market mechanisms in creating spatial structures as public goods. Spatial planning then roles as a public intervention mechanism to optimize resource use and sustainable development to achieve efficiency and productivity.[12]

If spatial planning, which formalized in spatial regulation, places space in terms of efficiency and productivity, the availability of cemeteries in spatial planning can be a secondary issue in spatial priorities. In this context, social space production can be used to criticize the framework of spatial policy, especially in the regulation of cemetery. Although Lefebvre's analysis departs from the context of post-war in France, it can be contextual for Indonesia's spatial issues because its analysis of the compromise of neoliberalism and managerialism[13] that influences spatial issues is a relevant universal problem.

Lefebvre begins the analysis of society from humans as social creatures that produce their own lives, consciousness, and world.[14] In production, humans will mobilize spatial elements, including resources and tools rationally and arrange a sequence of actions oriented to a specific goal, namely the object to be produced.[14] The main idea of Lefebvre is that humans produce not only

social relations and use-values, but also produce social space. According to Lefebvre, every living thing produces itself in space and also produces that space. Humans produce social space in society, and there are dialectics of social relations and space.[14]

Nevertheless, space discourse is precisely positioned as a study of technocrats. At the same time, space, in reality, is also the result of community interaction and meaning in social contexts. That is, spatial planning then becomes a slice of people's imagination of the area, their practice in using space, and also the model/design of the analysis results of the planners. Simply put, space must be defined as a shared part in social practices that reflect equality.[15]

Lefebvre proposed a triadic concept within the framework of the production of social spaces. The first concept is spatial practice, which refers to interactions and communications that emerge and then form spaces. The second concept is the representation of space that refers to discourse that describes the space that has been formed and can be found in the form of maps, drawings, notations, and others. The third concept is representation space which refers to the symbolic dimension of space which can then become ideological.[14] The triadic of the concept of spatial production will later manifest in three experiences:[15]

- a. experiences captured by the five senses (perceived space);
- b. understanding of the space formed by human reason (conceived space);
- c. life experience in space through the practice of everyday life (lived space).

Lefebvre argues that capitalism is based on antagonism between conceived space arranged as abstract space and living space. The result of this conflict is the experience of life that is destroyed by capitalism. The contradiction then makes social space simultaneously the basis for the reproduction of property ownership relationships through law and planning that organize space hierarchically.[14]

According to Butler, space triadic proposed by Lefebvre operate simultaneously and provide the basis for Lefebvre's description of the multi-dimensional social space. Lefebvre expressed his rejection of the absolute conception of space, which places space as a mere object or container. Lefebvre describes space as a social matrix that operates as a product of social relations from capitalism.[16]

Lefebvre's view in this article is used in highlighting policies towards cemeteries in Surabaya as a result of spatial planning policies at the national level that affects

the national and local legal framework. Spatial planning policies in the national legal framework have an impact on regulations in Surabaya in providing cemeteries because of Indonesia's hierarchical legal system from the center to the regions. Analysis of the development of the regulation will be followed by criticism using the triadic spatial concept from Lefebvre to see changes in the meaning of burial sites and their impact on the availability of cemeteries.

V. DYNAMIC REGULATION OF SPACE AND CEMETERIES

The Dutch East Indies colonial government took a long time to realize that the cemeteries in its colony needed to be arranged. The colonial government first arranged cemetery in *Begraafplaatsen Ordonnantie Staatsblad* 1864 Number 196 and *Staatsblad* 1904 Number 496. The colonial government and the Dutch technocrats had seen the number of small cemeteries in various villages. They realized that the various small cemeteries must be maintained, at least temporarily because there is no public cemetery.

Begraafplaatsen Ordonnantie divides burial sites in the Dutch East Indies into three types, namely public cemeteries, individual cemeteries and private cemeteries. Along with decentralization in the Dutch East Indies, the colonial government gave authority to the city government to manage the cemetery. After Indonesian independence, *Begraafplaatsen Ordonnantie* then continued to apply because Article II of the 1945 Constitution stated that the regulations in the colonial era remained in force as long as there were no substitute regulations. The Indonesian government then made several regulations and policies related to the management authority of the cemetery. For example, Government Regulation Number 8 of 1953 which handed over cemetery affairs to the regional government and the Minister of Agrarian Circular Letter dated August 28, 1957, and March 3, 1959, which directed the need for Private Cemeteries were adjusted to the Regional Development Plan.

The Basic Agrarian Law should then be the starting point for replacing the colonial regulations. Article 14 paragraph (2) of the Basic Agrarian Law has delegated authority to the government to make general plans regarding the supply, allocation and use of space as part of natural resources by explicitly, in the explanation section, giving the mandate to the government to prioritize planning for agricultural purposes, industry, and mining. However, the delegation of authority by the Basic Agrarian Law was not immediately followed up with the regulation of the

cemetery as a form of spatial use. The Indonesian government up to 1992 still enforced the *Stadsvormingsordonnantie* of 1948, which was made by the Dutch and initially applied to cities that were under the control of the Dutch government.

The validity of the *Stadsvormingsordonnantie* in 1948 for decades shows a complete regulatory vacuum in spatial planning and is a significant problem in urban management in Indonesia. Whereas *Stadsvormingsordonnantie* of 1948 no longer matches the complexity of urban growth. For decades there have been attempts to formulate new and comprehensive laws but were unsuccessful due to conflicts of interest between various groups involved in urban affairs.[17] To fill the regulatory vacuum, the Minister of Public Works then promulgated Decree of the Minister of Public Works Number 640 / KPTS / 86 regarding Urban Spatial Planning.

The *Stadsvormingsordonnantie* of 1948 was only revoked when the government enacted Law Number 24 of 1992 concerning Spatial Planning (Law No. 24/1992). Arrangement of cemeteries before 1992 then tends to be done without a city spatial perspective and solely as a reaction to the emergence of problems and needs for cemeteries in each city. Therefore, before 1987, the local government then had to make regulations at the local level to answer the need for cemeteries without any regulation at the central level as a reference.

The new regional government has regulations at the national level that can become a reference when the government promulgates the first regulation in Indonesia that regulates explicitly cemeteries, namely GR No. 9/1987. In the Explanation section of GR No. 9/1987, the emergence of awareness to regulate cemeteries in Indonesia took decades after Dutch colonialism. This is also influenced by the emergence of various technical and environmental issues related to the organization of cemeteries. In contrast, local governments have responded in advance by forming local regulations.

On the other hand, the Government Regulation was made within the framework of the concept of state control over land so that the government has the authority to regulate land use, and not because of the state's responsibility for the death of citizens. This framework can be seen in consideration of GR No. 9/1987, which explains that the use of land for cemeteries must consider the principles of land use and utilization that refer to the Basic Agrarian Law. As a result, the availability of land for cemeteries can be placed as a secondary issue in government if land allotment for other needs is considered more valuable. Though the cemetery in the Indonesian

context is not just a personal dimension, also has a collective and spiritual dimension because it becomes a monument to remember and reflect on the life journey of the subject that has not existed.

Also, if the spatial policy is only based on the concept of the right to dominate the state, then a broad economic perspective is likely to dominate so that space is seen as a resource that needs to be managed within a production framework. This can be seen in the section considering the letter a GR No. 9/1987 which formulated its policy as follows: "that in the context of increasing development activities, as a result of population growth and environmental quality improvement, more land provision is needed so that every land use must be made more productively and efficiently."

After promulgating GR No. 9/1987, the government then formed Government Regulation No. 14 of 1987 concerning the Submission of Part of Government Affairs in the Field of Public Works to the Regions (GR No. 14/1987). GR No. 14/1987 delegated authority to build, maintain and manage public cemeteries to the regions. Explanation Section GR No. 14/1987 states that the delegation of authority is the implementation of Law Number 5 of 1974 concerning the Principles of Government in the Regions. It took the central government 13 years to delegate higher authority to the regions for the spatial sector. This cannot be separated from the context of the demand for a faster development process which cannot be fulfilled if the authority in the field of public works is still centralized.[18]

The decentralization policy was also seen with the formation of Law No. 24/1992, the first law in Indonesia governing spatial planning. Law No. 24/1992 began to give a more significant role to local governments by arranging spatial plans at the city level as outlined in spatial plans at the provincial level. Although it has a spirit of decentralization, the central government has never made regulations that govern the more detailed policies of decentralization. The government then enacted Law Number 26 of 2007 concerning Spatial Planning (Law No. 26/2007). Law No. 26/2007 was then followed up by the government by establishing several technical regulations related to the supply of graves, including Minister of Public Works Regulation No. 5/2008 and Minister of Agrarian & Spatial Regulation No. 16/2018.

Minister of Public Works Regulation No. 5/2008 clearly shows the ecological function of burial sites by requiring a minimum percentage of green space in the cemetery. Funeral green space requires a minimum of 70% of the total burial area with a percentage of vegetation,

reaching 80% of the area of green space. This ministerial regulation even guides the selection of vegetation used for green open spaces such as burial sites. Minister of Agrarian & Spatial Regulation No. 16/2018 also has a different perspective. The cemetery is also placed as part of the provision of green open space and shows clearly its ecological perspective for urban areas.

The two regulations were made from different perspectives when compared to GR No. 9/1987. A public cemetery, according to the regulations, is not just a place for a corpse but a part of urban space produced by human reason through a planning mechanism or termed Lefebvre as conceived space. The cemetery is not seen separately with other parts of the city space but becomes unity with specific functions.

Changes in perspective have an impact on spatial regulation in the area, which then began to include cemeteries as part of urban green open space planning. Changes in perspective also had an impact on the regulation of cemeteries in Surabaya and the implications for the availability of public cemeteries. The next part of this article will show that the fulfilment of the cemetery limited to the availability of the quantity of green open space for urban areas, especially in Surabaya.

VI. CEMETERY AND AMENDMENT TO SPATIAL PRACTICES

In the early decades of post-independence Surabaya, due to the absence of clear national regulations, there had been problems with space for cemeteries. In 1955, Surabaya had three local regulations to regulate Islamic, Christian, and cemeteries besides Muslims and Christians. On the other hand, population growth due to urbanization has resulted in the emergence of illegal settlements which occupy cemeteries belonging to ethnic Chinese, especially after 1955. Some Chinese cemeteries were unilaterally dismantled by those who wanted to establish illegal settlements, including in the Kembang Jepun area, Karangayam, Jalan Lotus, Embong Malang, Pandegiling, Banyuwirip, and Jalan Cokroaminoto.[19]

In order for the conflict between the illegal settlers and the Chinese groups to be avoided and also to implement Local Regulation No. 47 of 1955, the city government finally decided that the cemeteries in the city centre must be closed. The Transitional Regional Government Council in March 1958 announced the closure of seven ethnic Chinese cemeteries in the city centre.[20] The Chinese group in Surabaya then asked the municipal government to provide a new cemetery as a substitute.

The situation in Surabaya in the 1950s illustrates the absence of protection provided by law for space for cemeteries. The conflict which is motivated by the uncontrolled population growth and urbanization is a sign that cemeteries in the area, due to unclear regulations, can have an impact on conflicts over space for the economic and cultural interests of various groups living in urban areas.

The situation of uncertainty began to change after the central government promulgated GR No. 9/1987. Regulation on burial sites at the national level began to be seen which was then followed up by the Surabaya Municipal Government in the 1990s through the policy of intervening in the housing development business that was growing in that era. The intervention of the municipal government on settlement space by imposing these obligations cannot be separated from the development of urban areas in Indonesia's increasingly decentralized settlements, including in Surabaya, in the 1990s. Law No. 4 of 1992 concerning Housing and Settlements (Law No. 4/1992) opened the most noticeable structural change from regulation, namely the full surrender of some of the responsibilities of developing urban areas to the municipal government.[21] The authority of the municipal government opens the opportunity to make policies that can provide certain obligations to housing developers concerning the provision of cemeteries.

Surabaya began to regulate cemeteries not only in its administrative mechanism, but also placed it within the framework of urban spatial planning. The Surabaya Municipal Government, in 1996, issued Mayor Decree No. 70/1996. The Municipal Government considered the rate of natality and mortality that is not balanced with the availability of cemeteries. The decree required each housing developer to submit funds worth 2% of the area of housing land as compensation for the provision of public cemeteries. A year later the Mayor issued Mayor Decree No. 65/1997 by providing liability options for housing developers. Housing developers can submit land and money worth the price of land, covering 2% of the land area. The obligation stipulated in the decree refers to the East Java Governor's Letter no. 496/9615/011/1996 dated July 22, 1996, which requires the participation of the housing developer to procure cemetery with compensation, for example, 2% -5% of the total area to be built (excluding public facilities that have been set at 40%).

The problem of space for cemeteries then found its momentum as a local issue when some media exposed the issue of the increasingly limited cemetery area in Surabaya. Kompas Daily on November 9, 2000, gave rise to the fact

that 9 out of 10 cemeteries covering 180 hectares managed by the municipal government were full with occupancy levels already reaching above 92%. The community then responded to the situation of increasingly limited space for cemeteries in the vicinity through an attitude of resistance to residents from outside the area who wanted to bury their families in the tomb. Also, the practice of piling up corpses in a cemetery has emerged because of the increasingly limited land.[22]

If Mayor Decree No. 65/1997 is implemented, then the problem should not arise. Obligations for housing developers to provide free cemeteries were indeed not effective. The disobedience of housing developers arose when residents of a housing estate in West Surabaya on December 10, 2000, enclosed a 4,000 m² land owned by a housing developer. Residents carry out these actions because housing developers do not provide cemeteries area. As a result, residents find it challenging to find burial grounds. At the same time, residents in the nearest village refuse the funeral of residents from the housing because the land where the cemetery belongs to the village is also increasingly limited.[22]

On the other hand, Surabaya experienced an increase in green open space up to 116% in the period of 13 years, from 2000 to 2013.[23] The Municipal Government since 2002 carried out a program to increase green open space on an enormous scale. One of the efforts is to rebuild the green open space owned by the municipal government which had previously been converted into a gas station. The municipal government also created city parks with specific themes, mangrove conservation areas, and green open spaces in settlements.[24]

However, the increase in the area of green open space is not free from criticism because it is done on a much larger scale for the addition of an urban park area.[25] The way the municipal government increased the area of green open space by increasing the number of parks had an impact on the portion of public cemeteries in the entire green open space in Surabaya. The municipal government realizes this situation because the Medium-Term Development Plan (RPJMD) for 2016-2021 has identified one of the spatial problems in Surabaya is the limited land that can be utilized for green open space, including land for burial sites.[26] In the end, the solution that can be taken by the municipal government is to buy new land to be built as a public cemetery. Because available land and proximity to settlements are also increasingly limited, the municipal government must look for large amounts of land that may only be available in the suburbs.[27]

Surabaya's experience shows that the classification of cemeteries as green open spaces can change spatial practices because the meaning of cemeteries in the Indonesian context, including Surabaya, is not just for ecological functions. The cemetery has a collective and spiritual dimension because it is a monument to remember and reflect on the life journey of the subject. In the context of the majority of Indonesian people, including in Surabaya, the pilgrimage to the tombs of figures or ancestors is a tradition that is closely related to religious or religious elements, so that cemeteries have a spiritual dimension to the community.[28]

The cemetery as a green open space, if it refers to Indonesian spatial regulation, wants to be developed not in a spiritual and economic sense but ecologically. The ecological function of the cemetery can then influence the community's perception of the cemetery as a social space. The categorization of cemetery as green open space through the regulation then places the cemetery as conceived space. In comparison, the meaning of a cemetery as space through spatial practice cannot be changed immediately with spatial regulation. This spatial regulation can reduce the meaning of burial places as social spaces.

Criticism of the meaning of the cemetery as green open space is relevant if it is associated with Quinton & Duinker's research. According to Quinton & Duinker, community perceptions of cemeteries cannot be compared to parks that are not always perceived to have historical and cultural values. Parks in general also do not have extensive restrictions on activities within them. The conditions are different when compared to cemeteries that have historical and cultural values that also influence the restrictions on certain activities.[29] Skår, North & Swensen also criticized the interpretation of the cemetery as green open space. The spiritual dimension in the cemetery can disappear if it is more accessible for more other functions, such as recreation or relaxation. Though the cemetery in the spiritual dimension is interpreted as a social space that is calm, meditative, and represents the collective spiritual experience of humans.[30]

VII. CONCLUSION

The development of Surabaya shows space as a contested entity for the economic and cultural interests of various groups. The cemetery in Surabaya was once the object of the struggle for space. On the other hand, the slow development of Indonesia's spatial policy then places cemeteries as part of a green open space with an ecological

dimension. This can have implications for space as a mere object and ignore the space formed by spatial practice.

The development of the city shows that the available cemeteries in Surabaya are increasingly limited as the mortality rate, and the municipal government tends to give a more substantial portion of the city park. In comparison, the cemetery in the Indonesian context is a living space that cannot be reduced by technocracy to green open space. The antagonism between the concept of the cemetery as a planned green open space and the cemetery as a lived space then reduces the meaning of the cemetery, which is formed from spatial practices of cultural dimension.

For the context of Indonesia, especially Surabaya, the ecological function at the cemetery can reduce the meaning of the cemetery that has an impact on spatial practice. This issue shows that cemeteries cannot be seen merely as a planned space through spatial regulation by giving certain functions to cemeteries based on a technocratic perspective. The life experience that forms a space also needs to be examined when interpreting cemeteries and placing them in space planning.

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