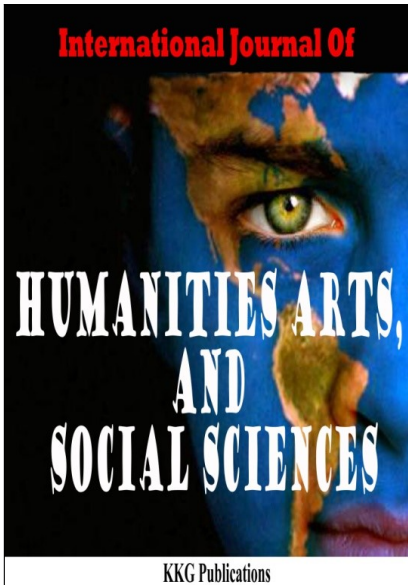


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LOCAL ACT DRAFT MODEL ON DEVELOPMENT, CONTROL, AND TELECOMMUNICATION TOWER SUPERVISION

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Abstract. Support from sophisticated telecommunication and society's need for information were the reasons of company's presence to provide telecommunication service not only in urban areas, but has been extended to local areas as well. In order to meet society's need, they had established Base Transceiver Stations (BTSs) as part of the telecommunication tower. Rampant of the tower constructions was not always heeded; "did the company get approval or not?". While, tower construction approval was very important as one of the administrative and technical specifications. In fact, unorganized tower construction would have a serious impact on space and land usage, such as reducing of open green area and spatial aesthetic value brought to a new problem, a conflict between communities and the tower's owner (none of the telecommunication providers), etc. In this way, the existence of local act draft on development, control, and telecommunication tower supervision was needed in order to provide legal certainty in tower construction. This research was a normative research (dogmatic legal research) with data inventory method, formulating problem, and preparation of Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision. Method could be specified through collecting and compiling materials and informations, assessment, and analysis through undertaking an intensive discussion among team members by Focus Group Discussion (FGD) to find the feasibility material and information in order to create a legislation framework; then the final Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision coupled with inputs from various experts in the field of development, control, and telecommunications tower supervision. The purpose of this study was a consideration material which was used in Local Government initiative to establish Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision.

INTRODUCTION

National development is a series of development efforts including all aspects of society, nation, and state. It is carried out in order to implement national goal set in the fourth Preamble of the Constitution of Republic of Indonesia 1945, which held a continuous process of change involving Central Government, Local Government, and the whole of societies. Government Affairs Division between Central Government and District/City Local Government specified in Act 23 of 2014 on Local Government and Government Regulation 38 of 2007 on Government Affairs Division between Government, Provincial, and District/City Local Government. Government affairs are shared between central government and provincial or district/city government affairs called concurrent affairs divided into mandatory government affairs related to basic service, government affairs unrelated to basic service, and government alternative affairs. One of the mandatory government affairs unrelated to basic service is communication and informatics.

Rapid communication development growth in Indonesia is sup-

ported by sophisticated and an increasing number of telecommunication and society's needs. It became the reason of the telecommunication service company's presence increasing to facilitate telecommunication, such as cellular telephone service, internet service, electronic financial service, and fixed line service. It led to a rivalry due to company's telecommunication service being increasingly stringent. Indonesia with a large population and highly consumptive society became a potential market for company's telecommunication service. It is perceived through the spread of many telecommunication service products, at least more than ten such as Halo, Simpati, As, Mentari, IM3, Matrix, Tri, XL, Axis, Telkom, Esia, Smartfren, and other cards. Telecommunication company's securities trading has become one of the lucrative businesses caused by information development profusely so telecommunication service is needed to be accommodated. Many companies are operating as telecommunication service providers not only in towns but also in local areas because mobile phone is not reachable by

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urban communities only, but it is already through to rural areas. Everybody these days has a mobile phone. In fact, it can be said that mobile phone indirectly has become one of the staples. In addition, many telecommunication towers and their parts likely BTSs, either already licensed or unlicensed (illegal), are scattered in various areas.

Tower construction has an impact on the use of space and land. This will certainly give a serious impact, where the tower construction is not organized. It will reduce open green area and spatial aesthetic value. If tower construction is no longer arranged on the downstream, it will bring a new problem, namely the contradiction between the community and the tower owners (telecommunication provider or not telecommunication provider). In addition, environmental destruction has become one of the serious threats if telecommunication tower operation is not directed to a development that is accompanied by control and supervision.

The issuance of Minister Regulation of Communication and Information Technology 02/PER/M.KOMINFO/3/2008 on Development and Use of Joint Telecommunication Tower and through the passing of the Joint Decree between three Ministers and one Head of the Agency, namely Minister of Home Affairs, Minister Public Work, Minister of Communication and Information and Head of the Investment Coordinating Board 18 of 2009, No.07/PRT/M/2009, No.19/PER/M.KOMINFO/3/2009 and No.3/P/2009 on Guidelines for the Development and Use of Shared Telecommunication Tower into a legal instrument for central and local government to create comprehensive telecommunication tower arrangement, both from the aspect of aesthetics, urban planning, safety, environment, and protection of strategic areas.

In connection with the foregoing, the importance of local act draft regarding the operation of telecommunication tower is expected to provide legal certainty in telecommunication tower implementation. Therefore, the Local Act Draft Model on Development, Control, and telecommunication Tower Supervision is a legal assessment as a problem solution in order to address the needs of law, especially regulate about construction, control, and telecommunication tower supervision.

LITERATURE REVIEW

Government Regulation 52 of 2000 on Telecommunication and Ministerial Regulation 02/PER/M.KOMINFO/3/2008 on Development Guidelines and Use of Joint Telecommunication Tower stated that telecommunication is every transmission, delivery, and/or reception of any information in the form of sign, signal, writing, image, sound by wire, optical, radio, or other electro magnetic system. Telecommunications can be held if

all the equipment and supplies needed can be met, including supporting infrastructure. In line with this, article 1 paragraph 2 and 3 of Government Regulation 52 of 2000 on Telecommunication mentioned that telecommunication equipment is any fitting that is used in telecommunication, while telecommunication device is a telecommunication device group that enables telecommunications. In addition, the need for tower can not be ruled out to support telecommunication tower implementation. Although tower is one of the supporting facilities, but it cannot be denied that tower is very important to put telecommunication equipment as Article 1 paragraph 3 Ministerial Regulation 02/PER/M.KOMINFO/3/2008 on Development Guidelines and Use of Joint Telecommunication Tower stated that tower is a particular building which serves supporting facility to put communication equipment, design or construction forms tailored to telecommunications operation need. Therefore, telecommunication tower is one of the main supporting facilities in the implementation of vital telecommunication and requires land, buildings, and air space availability.

The telecommunication tower can be used together for space using efficiency and effectiveness. Tower construction can be implemented by the telecommunication operator, telecommunication provider, and/or contractor tower. Tower construction must have permission to set up tower from a competent authority and shall take into account the spatial planning provision in accordance with the legislation in force. Consequently, telecommunication operator, tower provider, and/or tower contractor in proposing tower permission shall submit information of use of joint telecommunication tower based on written agreement between telecommunication operators.

Article 4 Minister Regulation of Communication and Information Technology 02/PER/M.KOMINFO/3/2008 on Development and Use of Joint Telecommunication Tower explicitly determines that Local Government should establish an adjustment related to the placement location, technical aspect, and principles needed to be considered. The content consists of:

1. Local Government should establish tower location placement arrangement in accordance with the law prevailed.
2. In setting tower location regulation, Local Government must pay attention to the technical aspects of telecommunication operation and use of joint tower principles as point (1).
3. Tower location placement arrangement must pay attention to the good governance principles, perform with transparent mechanism, and involve communities' role to determine efficient and effective spatial planning policy for public interest.

METHODOLOGY

The study conducted normative research/dogmatic legal research to describe the object of research through interpretation, analysis, and law construction. Data were collected through library research method related to Development, Control, and Telecommunication Tower Supervision (Irianto & Shidarta, 2013; Suratman & Dillah, 2013). Research method could be specified through collecting and compiling materials and information, assessment, and analysis through undertaking an intensive discussion of all team members in a FGD to find the feasibility of materials and information in order to create a legislation framework. Then the final Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision coupled with input from various experts in the field of development, control, and telecommunication tower supervision. The purpose of this study was a consideration material, which is used in Local Government initiative to establish a Local Act Draft on Development, Control, and Telecommunication Tower Supervision.

RESULTS AND DISCUSSION

Philosophical, Sociological, and Juridical Foundation of Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision

Philosophical

There are two views of a legislation principle's philosophical foundations. First, the philosophical foundation is a foundation associated with the state ideology (base), i.e., value (ideal law) contained in Pancasila. Second, the philosophical foundation is the view or the main idea that underlies the entire legislation. According to the Preamble of Constitution of Republic of Indonesia 1945 4th paragraph, the purpose of the Republic of Indonesia is to create Indonesian people's prosperity. Welfare measures can be seen through the adequacy of human needs including food, clothing, board, and communication. Communication needs to be supported by good and complete facility and infrastructure to support society's needs in doing their communication activities.

Local Government can take a policy in order to meet the communication needs through a legal policy and material policy. Material policy can be reached through physical development realized by building a telecommunications tower and equipment as a means of communication network frequency and so on. Meanwhile, legal policy can be done by setting the rules and decisions which support the arrangement and telecommunication towers construction.

Sociological

Sociological view regarding the enforceability of any legislation tends to prefer the empirical approach by prioritizing some selection criteria (Asshiddiqie, 2011), namely:

1. Recognition theory concerning the extent to which legal subjects are regulated does acknowledge the existence, tied power, and obligation to subject themselves in the law concerned. If the subjects of law are not bound, it can be said that relevant legal norm is not applied to them sociologically.
2. Reception theory which principally regards public awareness to receive the power-set, power-belt, and power-legal norms forced on them.
3. Facticity law criteria emphasize the fact of law extent that is truly effective in society's real life. Although a legal norm is nominally indeed recognized and received by the public as something existing and valid, but in reality, the practice is not effective at all. It means that the law is not applied. Therefore, a new legal norm may apply according to any one of these criteria.

First, recognition theory related to Local Act Draft on Development, Control, and Telecommunication Tower Supervision is concerned about the extent to which the subject of law, namely telecommunication provider, telecommunication administration, local government (including related local government office or appointed official) as well as the people governed indeed acknowledge the existence and tied power and obligation in binding themselves to the norm of law set forth in the local act draft. With a sense of being bound by the telecommunication provider, telecommunication administration, local government (including related local government office or appointed official) as well as the community sociologically, local act draft on development, control, and telecommunication tower supervision can be said to be applied to those parties. Vice versa, if the parties do not feel bound by the provisions contained in it, it means that local act draft on development, control, and supervision of the telecommunications tower can be said to be valid sociologically. Second, reception theory related to the parties' awareness of telecommunication provider, telecommunications administrations, and communities to accept the power-set, power-hold, and power-sociological force in Local Act Draft on Development, Control, and Telecommunication Tower Supervision carries out the development, control, and telecommunication tower supervision in the community. Power-set means the ability of the arrangement provision for regulating, controlling,

and supervising telecommunications by telecommunication

provider, telecommunication administration, local government (including the related local government office or appointed official) as well as the community. Power-hold means that the provisions contained in the Local Act Draft on Development, Control, and Telecommunication Tower Supervision are capable of binding to telecommunication provider, telecommunication administration, local government (including the related local government office or appointed official), and the community. Power-sociological force by telecommunication provider, telecommunication administration, local government (including the related local government office or appointed official), and people is forced to maximize the possible obligation extent and adhere to those provisions to be contained in the Local Act Draft on Development, Control, and Telecommunication Tower Supervision.

Third, the law facticity criteria in terms of Local Act Draft on Development, Control, and Telecommunications Tower Supervision emphasize the extent to which the legal norm or article, which was published in it, is truly effective in real life community and the regional administration. Although a formal judicial legal norm is valid, recognized, and accepted by the telecommunication provider, telecommunication administration, and community as something that exists and is valid, but in reality, the practice is not effective at all; the rule of law does not apply in fact. Therefore, a new legal norm may apply according to any one of these criteria.

Legal norm set forth in the legislation form must reflect the demand of society. The law must be formed in accordance with the living law in the community. A legislation is said to have a sociological foundation if its provision is in accordance with the public law belief, good governance, and living legal values in the community. Therefore, Local Act Draft on Development, Control, and Telecommunication Tower Supervision is grounded on the priority and strategic issues as outlined in policy direction. The needs of the community are expected to rule the area to be formed, which is then received as the "social legitimacy" of society.

Thus, the establishment/implementation of the Local Act Draft on Development, Control, and Telecommunication Tower Supervision would be the legal basis for achieving participatory development and based on the rules that apply through the development, control, and telecommunication tower supervision for telecommunication provider, telecommunication administration, Local Government (including the related local government office or appointed official), and the community.

Juridical

One of the main pillars in the governance of a country is the

establishment of good legislation, along with a harmonious and easy implementation in the community. As a discourse to implement the establishment of legislation, an existing rule can be used as a guide and reference for all the parties in the formation of legislation (Indrati, 2007; Mahdieh, 2015). Judicial enforceability is the enforce ability of any legal norm's binding power to the public as a dogma that is considerate of a technical nature as juridical as follows (Asshiddiqie, 2011):

1. Defined as a legal norm based on superior higher legal norm,
2. Defined valid because it shows the relationship between a state requirement and that effect,
3. Defined as a legal norm according to the applicable legal establishment procedures,
4. Defined as a legal norm by the authorized institution.

If the forth criteria have been met appropriately, the relevant legal norm can be said to be valid legally in terms of formal authority to certain agencies in making certain rules and in terms of material authority as the legal basis to regulate certain matter. Thus, in order to ensure legal certainty, legal protection, a justice sense, and avoid disharmony and overlapping regulation, Local Act Draft on Development, Control, and Telecommunication Tower Supervision uses the following juridical bases:

1. Constitution of the Republic of Indonesia 1945;
2. Act 36 of 1999 on Telecommunication (State Gazette of the Republic of Indonesia 154 of 1999, Supplement of the Gazette of the Republic of Indonesia 3881);
3. Act 28 of 2002 on Building (State Gazette of the Republic of Indonesia 134 of 2002, Supplement of the Gazette of the Republic of Indonesia 4274);
4. Act 17 of 2003 on State Finance (State Gazette of the Republic of Indonesia 47 of 2003, Supplement of the Gazette of the Republic of Indonesia 4286);
5. Act 1 of 2004 on State Treasurment (State Gazette of the Republic of Indonesia 5 of 2004, Supplement of the Gazette of the Republic of Indonesia);
6. Act 26 of 2007 on Spatial Plan (State Gazette of the Republic of Indonesia 68 of 2007, Supplement of the Gazette of the Republic of Indonesia 4275);
7. Act 11 of 2008 on Information and Electronic Transaction (State Gazette of the Republic of Indonesia 58 of 2008, Supplement of the Gazette of the Republic of Indonesia 4843);
8. Act 1 of 2009 on Aviation (State Gazette of the Republic of Indonesia 1 of 2009, Supplement of the Gazette of the Republic of Indonesia 4956);
9. Act 32 of 2009 on Protection and Environment Management (State Gazette of the Republic of Indonesia 140 of 2009, Supplement of the Gazette of the Republic of Indonesia 5059);

10. Act 12 of 2011 on Law Establishment (State Gazette of the Republic of Indonesia 82 of 2011, Supplement of the Gazette of the Republic of Indonesia 5234);
11. Act 23 of 2014 on Local Governance (State Gazette of the Republic of Indonesia 244 of 2014, Supplement of the Gazette of the Republic of Indonesia 5587);
12. Act 2 of 2015 on Government Regulation Determination Act 2 of 2014 on Amendment of Act 23 of 2013 on Local Government become Law (State Gazette of the Republic of Indonesia 24 of 2015, Supplement of the Gazette of the Republic of Indonesia 5657);
13. Government Regulation 52 of 2000 on Telecommunication (State Gazette of the Republic of Indonesia 107 of 2000, Supplement of the Gazette of the Republic of Indonesia 3980);
14. Government Regulation 53 of 2000 on Radio Frequency Spectrum and Orbit Satellite (State Gazette of the Republic of Indonesia 108 of 2000, Supplement of the Gazette of the Republic of Indonesia 3981);
15. Government Regulation 70 of 2001 on Airport (State Gazette of the Republic of Indonesia 128 of 2001, Supplement of the Gazette of the Republic of Indonesia 4146);
16. Government Regulation 58 of 2005 on Local Financial Management (State Gazette of the Republic of Indonesia 140 of 2005, Supplement of the Gazette of the Republic of Indonesia 4578);
17. Government Regulation 38 of 2007 on Distribution of Governance Affair between Government, Province Local Government and District/City Government (State Gazette of the Republic of Indonesia 82 of 2007, Supplement of the Gazette of the Republic of Indonesia 4737);
18. Government Regulation 27 of 2012 on Environmental License (State Gazette of the Republic of Indonesia 48 of 2012, Supplement of the Gazette of the Republic of Indonesia 5285);
19. Minister Communication and Information Regulation 02/PER/M.KOMINFO/3/2008 on Development and Using Shared Telecommunication Tower;
20. Ministers Joint Regulation of Minister of Home Affairs, the Minister Public Work, Minister of Communication and Information and the Head of the Investment Coordinating Board 18 of 2009, No.07/PRT/M/2009, No. 19/PER/M.KOMINFO/3/2009 and No. 3/P/2009 on Guidelines for the Development and Use of Shared Telecommunication Tower;
21. Minister of Environment Regulation 13 of 2010 on Environmental Management Effort and Letter of Statement Capability in Managing and Environmental Monitoring Statement (State Announcement of Republic of 231 of 2010);

22. Minister Regulation of Home Affairs 21 of 2011 regarding the Second Amendment of Minister Regulation of Home Affairs 13 of 2006 on Local Finance Management Guideline;

Scope, Setting Direction, and Substance of Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision.

Scope and Setting Direction

The scope of Local Act on Development, Control, and Telecommunication Tower Supervision will be the guideline/norm of behavior that is binding for tower provider (operator and a non-telecommunication), tower manager, the community, local government, especially on official appointed and Local Civil Servant Investigator (Local PPNS). It contains all about permissibility, command, or prohibition.

Setting direction of Local Act Draft on Development, Control, and Telecommunication Tower Supervision includes some matters: a. purpose and objective; b. construction of the joint tower (zoning tower construction, development, and operation of joint tower, construction and operation of specialized towers, the provision of the tower construction in certain area, the construction and operation of additional tower and camouflage tower, and demolition guarantee); c. joint tower using; d. joint tower using principle; e. licensing; f. liability, rights, and restriction; g. coaching, supervision, and control; h. investigation condition; i. administrative sanction; j. criminal sanction; k. transitional provision; l. closing.

Substance

Local Act Draft on Development, Control, and Telecommunication Tower substances are as follows:

1. Purpose and Objective

The purpose of this Local Act on Development, Control, and Telecommunication Tower is to regulate and control every activity of development and control in using joint tower. Whereas, the objective of Local Act on Development, Control, and Telecommunication Tower is:

- a. Giving the legal certainty to community and Local Act in planning, implementing, controlling, and supervising development and tower using; and
- b. Fulfilling the society's need in telecommunication service through spatial principle, aesthetic, security, and public interest.

2. Joint Tower Construction

a. Joint Tower Zone Determination

Tower location is duty to follow:

- i. District spatial plan;
- ii. District detail spatial plan; and
- iii. Building structure and environment plan.

Telecommunication tower zone determination based on spatial planning rules, security and environment order, aesthetics, and business activity needs, where its zone is based on telecommunication tower construction master plan, is locally applied.

b. Construction and Joint Tower Management

In realizing space using efficiency and effectiveness, telecommunication tower must be used jointly in the form of "Joint Tower" by paying attention to the telecommunication tower growth sustainability and most towers used by no more than three telecommunication operators. Tower construction must be referred to Indonesia National Standard (SNI) and specific standard based on law prevailed. Specific standard is referred to ensure environmental safety through the following power and stability tower construction set specifications:

- i. Antenna and telecommunication device placement space for sharing used;
- ii. Tower height;
- iii. Tower structure order;
- iv. Tower foundation; and
- v. Wind strength.

Joint tower construction must be completed by the following support tools and clear legal identity:

1. Support tools consist of:

- a. Grounding;
- b. Lighting rod;
- c. Power supply;
- d. Aviation obstruction light;
- e. Aviation obstruction marking;
- f. Safety fence.

2. Legal identities consist of:

- a. Owner's name/tower superintendent;
- b. The nearest owner's address/tower superintendent;
- c. Location and tower coordinate;
- d. The name of the telecommunication operator tower;
- e. The address of telecommunication operator;
- f. Tower model;
- g. Tower height;
- h. Nuisance Permit Number and Tower Building Permit (IMB);
- i. Tower manufacture/installation year;
- j. Construction service provider; and
- k. The maximum load tower.

Tower is provided by tower provider due to telecommunication operator and non-telecommunication operator. Tower construction preparation by telecommunication operator is done by construction service provider, whereas non-telecommunication operator is done by tower superintendent or national company construction service provider to build the tower. Joint tower construction realization can be done by cooperation with Local

Government in accordance with law. Tower construction has a duty to have IMB from Regent or specific license service official based on local spatial, air flight operation safety, and technical result analysis for structuring design, construction, and joint tower operation by tower provider or tower superintendent. They are responsible for reasonable function tower construction by routine building check-up and/or losses arises from at all and/or a part of the fell-in tower.

They have a duty to give the guarantee for later tower risks to be near to tower community. Routine tower check-up has to be reported every year to Regent or appointed official. Damages due to tower building or devices, tower provider or tower superintendent must fix it no more than six days since reported.

c. Construction and Special Operation Tower

Joint tower building provision is excepted for construction need and special tower operation, which need special criteria, such as meteorology and geophysical need, siaran radio, navigation, air flight, search and accident rescue, amateur radio, wireless, television, radio, communication between community and telecommunication provider, especially certain public official/private and backbone transmission need.

d. Tower Construction Provision in Certain Areas

Tower construction in certain areas due to in-zone or out-zone has to fulfill local living law. Its usage has following certain characteristics: airport/port area, military supervision area, local culture area, tourism area, protect forest area, and the others. Tower construction and operation in certain areas have to get approval from Bupati.

e. Construction and Operation of Connector Addition Tower and camouflage tower

Connector additional tower construction and operation would be allowed if its function is to improve the coverage and telecommunication frequency traffic only. It has to be in the form of single tower and/or camouflage tower as part of joint tower. If it's possible based on Local Government technical analysis result, joint tower construction in certain areas can be built likely camouflage tower selar as with environment aesthetics and/or local area with also part of the joint tower. Joint tower establishment in certain zone areas has to get approval from Regent.

f. Demolition Guarantee

Demolition guarantee is given in the form of Letter of Ability to demolish tower for telecommunication provider's cost. For tower which is demolished by telecommunication administration, its demolition stuff will be their own. Whereas for tower which is demolished by Local Government, its demolition stuff will be their own, too.

3. Joint Tower Using

Tower provider or tower superintendent has a duty to give an

equal opportunity without discrimination to use joint tower based on tower's technical ability. Filing of Letter of Application in joint tower using by tower candidate of user has to attach the following points:

- a. Telecommunication provider's name and the name of person in charge;
- b. Telecommunication permit;
- c. Aim and purpose of asking for tower using and technical specifications of used devices; and
- d. Needs of height, direction, quantity or tower load.

Joint tower using provision is excepted for:

- a. Tower which is used for main network need;
- b. Tower which is built in areas with no telecommunication service yet or areas unreasonable economically.

Tower construction has to be based on technical analysis and special approval from Regent.

4. Joint Tower Using Principles

Tower provider or tower superintendent must pay attention to law provision-related monopolistic practice prohibition and unfair business competition. Tower provider and tower superintendent have to inform the availability of tower capacity to tower user candidate and Head of Department transparently. Tower provider or tower superintendent has to use queuing system by giving priority to first user candidate request of a tower with regard to feasibility and capability. If it is technically possible, existing tower has to use jointly more than two telecommunication organizers. Joint tower using by telecommunication organizer is prohibited to cause harmful interference. In case, telecommunication organizer should coordinate. In term it did not get an agreement, mediation can be done by General Post and Telecommunication Director. Joint tower using between telecommunication organizers, tower provider, and telecommunication organizer must be proven in written agreement and reported to local region based on telecommunication organizer, tower provider, and tower superintendent application.

5. Licensing

Every telecommunication organizer or tower provider or construction service provider, who will build joint tower in local area, has a duty to have license by fulfilling attached requirements, both administration and technical further provided with Regent Regulation. License should be inalienable to other party. Tower building permit should be valid indefinitely as long as no structure or tower construction changes. Local Government is entitled to conduct a review every year based on tower condition report by provider and superintendent tower.

6. Duty, Rights, and Restrictions

The obligation of tower provider or tower that has entered into an agreement/partnership and have permission, namely:

- a. Fullfill the activities in accordance with the permissions granted;

- b. Fullfill the activities based on given permit;
- c. Fullfill technical provision, security, safety, and environmental function sustainability in accordance with the provision;
- d. Responsible for any consequences arisen by the given permit; and
- e. Assist the supervision implementation by appointed official.

Every tower provider, who already met the licence requirement, has a duty to give a bundle of licensing requirement copies to Regent cq. Head of Department. Telecommunication organizer has a duty to install the lighting both in the tower and in the safety fence to maintain the safety of the environment, aviation safety, and fineness. Provider or superintendent tower has a duty to maintain and report tower periodically to Local Government. They have entered into written treaty/agreement for Joint Tower infrastructure with Local Government and have an approval. Every tower provider may cooperate with third parties in terms of management and tower operation. Every tower provider is prohibited to build tower before they fulfill licensing requirements.

7. Development, Supervision, and Control

The implementation of development, supervision, and control for this Local Act implementation was done by team formed by Regent. Provider and/or joint tower organizer in local area shall report annually about the tower existence to Regent or Head of Department, including the number of towers, the number of BTSs in each tower, tower condition, and joint tower superintendent.

8. Investigation Condition

Investigation for violation in this Local Act is implemented by Regional Civil Servant Investigator (Local PPNS). In carrying out the duties of investigation, Local PPNS is competent to:

- a. Receive a report or complaint from someone about a criminal act for Local Act violation;
- b. Take first action and examination at the crime scene;
- c. Order to quit someone and investigate suspect identification;
- d. Execute confiscation of object or letter related to criminal offense;
- e. Call someone for finger printing and photographing;
- f. Call someone for being heard and questioned as a suspect or a witness;
- g. Bring the required expert related to case investigation;
- h. Conduct other action accountable regally.

Local PPNS is not authorized to apprehension or detention.

9. Sanction Condition

- a. Administrative Sanction
 - i. Sanctions for those who already have permission:

Any person or entity, who performs telecommunications operation not in accordance with the provisions stipulated in the permit, is given a warning in the form of written warning. It is given to telecommunication organizer no more than three times between first strike to the one-month longest next strike. If after the third warning telecommunication organizer does not follow up the strikes, license will be revoked and sealed.

ii. Sanctions for those who already have no permission:

Any person or entity, who builds and operates the tower without any permit and it is not in accordance with tower building zone determination, shall be demolished. Demolition is done after being given written warning as much as three times consecutive in one month. Tower and unlicensed supported building are immediately dismantled after getting a written warning as much as three times consecutive in one month period, one strike to next strike and after that, the Warrant of Demolition is issued. The overall implementation of administrative sanctions for unlicensed tower construction and operation activities are set by Regent after receiving the recommendation of the Department. Administrative sanction implementation may be delegated to the relevant official (SKPD)

iii. Tower Demolition:

Tower demolition must be done by telecommunication operator/tower provider who built telecommunication tower if:

- a. Unlicensed,
- b. The tower is not used or functions no more than three months,
- c. The tower is not functioned as a joint tower,
- d. Tower condition is not in accordance with provision and/or poses a threat to safety/environment security, and
- e. The tower is not maintained regularly at least one time in six months.

Telecommunication operator/tower provider, who built the tower, is responsible for the implementation of built tower's demolition. Implementation of tower demolition is based on Regent Warrant cq. Head of Official Department (SKPD), which has the duty and function of public work. The telecommunication tower/tower provider, who have received Demolition Warrant, shall promptly carry out the tower demolition responsibly. After a period of three months since receipt of Demolition Warrant, if the telecommunication operator/tower provider, who built the tower, did not carry out demolition, telecommunications tower demolition is done by Local Government cq. Head of Official Department (SKPD), which has the duty and function of public work. Demolition goods from it become local area property.

b. Criminal Sanction

Every owner's telecommunication tower that is built with untechnical requirements of telecommunication tower that do not meet technical requirements of the building that has been set, results in telecom tower that cannot function and harm

others charge a maximum confinement of 6 (six) months or a maximum fine of Rp50,000,000 (fifty million rupiah). The criminal act is a violation.

10. Transitional Provision

A transitional provision stipulates that "This Local Act came into force in stages and will be effective no later than twelve months from the date of promulgation. Thus, the established telecommunication tower is licensed but its use for one operator only shall adjust to this Local Act". Then, the final section of Chapter IX contains provision regarding closing provision to regulate the things that have not been sufficiently regulated under this Local Act and further will be regulated by Regent Regulation. This regulation is valid from the date of enactment, so that everyone can know it is ordered that the Regulation to specify it is in the Regional Gazette.

Implication of Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision

Kelsen opined (Kelsen, 1961): "The legal norms do not, like the moral norm, refer to the behavior of one individual only, but to the behavior of two individuals at least; the individual who commits or may commit the delict, the delinquent, and the individual who ought to execute the sanction."

Law, as a social engineering, means that the law is used as a tool by the agents of change to influence the public with regular and planned systems (Ambika & Ishan, 2016; Boniface, 2016; Soekanto, 2014). As a social engineering means, law is a tool aimed at changing people's behavior in accordance with the objectives previously set. The application of Local Act in the form of Local Act Draft on Development, Control, and Telecommunication Tower Supervision will have some implications on telecommunication provider, telecommunication superintendent, Local Government (include SKPD or appointed official), and community in the aspect of regional governance, people's lives as well as the local financial burden because:

1. Addressing social problems, such as a range limited to policy, is still less relatively through Local Act Draft on Development, Control, and Telecommunication Tower Supervision, all the problems related to telecommunication provider, telecommunication superintendent, and community can be solved through the implementation of development, control, and telecommunication tower supervision by Local Government (include SKPD or appointed official).
2. Eliminate/Pressing Behavior Problem, such as Local Act Draft on Development, Control, and Telecommunication Tower Supervision will improve the insensitivity of telecommunication provider, telecommunication superintendent,

tendent, Local Government (include SKPD or appointed official), and community because Local Act Draft on Development, Control, and Telecommunication Tower Supervision regulates various activities related to the implementation of the development, control, and telecommunications tower supervision.

3. Determine the new behavior that is expected to eliminate problem. Local Government must be more responsive to the telecommunication tower provider who will take care of various requirements, both administrative and technical requirement in the development, control, and telecommunications tower supervision. Correspondingly, Local Government is also required to firmly and consistently enforce local regulation that will be made to ensure legal certainty, legal protection, and justice in the implementation of development, control, and telecommunication tower supervision. While the participation of telecommunication tower provider and telecommunication tower superintendent also supports the effective implementation of development, control, and telecommunications tower supervision as a subject and object of the establishment of the Local Act Draft on Development, Control, and Telecommunications Tower Supervision.

In addition, through the following several things, Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision is expected to be effective and efficient, including:

1. Clarity of norms due to command, prohibition, necessity and *perkenaan* against telecommunication provider, telecommunication superintendent, Local Government (including local government official related (SKPD) or appointed official), and local community.
2. Clarity of subject means telecommunication provider,

telecommunication superintendent, Local Government (including local government official related (SKPD) or appointed official), and local community.

3. Clarity of *perbuatan yang dilarang* atau *diperintahkan*, either rights or obligation and prohibition against telecommunication provider, telecommunication superintendent, Local Government (including local government official related (SKPD) or appointed official), and local community in implementing construction, control, and telecommunication tower supervision.
4. Clarity sanctions to be imposed will influence the action or deed controlled by telecommunication provider, telecommunication superintendent, Local Government (including local government official related (SKPD) or appointed official), and local community.

CONCLUSION AND FUTURE STUDY

Local Act Draft Model on Development, Control, and Telecommunication Tower Supervision is an attempt to:

1. Provide legal certainty to the community and local government bodies in planning, executing, controlling, and monitoring the development and the use of the tower activities; and
2. Realize efforts to fulfill the social demand for telecommunication service by observing the principles of spatial planning, aesthetics, safety, and the public interest.

Furthermore, Local Government should apply this Local Act Draft Model to Development, Control, and Telecommunication Tower Supervision to assess and prepare local act by enriching the localized substance which represents the society's feeling. Local act product will be appropriate to laws established between the laws in the book with the communities' legal need later.

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– This article does not have any appendix. –