



The Settlement of Land Consolidation Dispute in Padang Bypass Road Construction through Court (A Study on Case No. 146/PDT.G/2015/PN PDG)

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Abstract

The implementation of consolidation in constructing Padang by pass road was basically a rearrangement of land by rearranging irregular plots into regular and orderly shaped based on the spatial planning for public interest in order to enhance the quality of environment and nature resources maintenance by involving people's active participation. The dispute occurred during the Padang bypass road construction was caused by the lack of land number in land returning of consolidation participants, the tardiness of road construction process, and the incompleteness of previous leadership's work. As a result, the construction gives a long-lasting impact causing the community's rights could not be fulfilled. Regarding this issue, the government should take precedence on consolidation participants' rights as agreed upon the deliberation conducted before the consolidation. Then, to settle the dispute in implementing land consolidation in constructing Padang by pass road, the government gave an option for the members whether the land replacement was in a form of land replacement located in the similar area or in another different area. In this case, the decision was determined by the consolidation participants. If an accord could not be reached, the government was going to help overcome the case until it finishes.

Keywords: Land Consolidation; Public Road; Public Interest

Introduction

Land consolidation is carried out to increase the quality of environment and to provide land for infrastructure and public facilities construction based on the regulation of authorization on land stewardship. It involves the rearrangement of land plots, including the right on land to construct infrastructure in a form of public road. Therefore, to implement the land consolidation, land consolidation participants have to relinquish their landownership, and then they have to get land replacement based on the agreement set together by consolidation participants.

The enhancement of people interest has made people interest on land increases. Then, in order to make the development keeps running, the government carried out the land stewardship. The land stewardship is a series of activities of arrangement, provision, allotment, and land use based on the plan to achieve greatest prosperity of people. Therefore, the country gives strong basis concerning the resources utilization.

Regarding the authority owned by the government in regulating the field of land cited in Article 33 Paragraph 3 of Constitution of 1945, it is stated that: "Earth, water and nature resources contained are

controlled by the state and used for the greatest prosperity of citizens". Then, the government also releases the Law of No. 5 of 1960 concerning the Basic Regulation on Agrarian Principles (UUPA). The provision in Basic Regulation on Agrarian Principles has provided strong legal foundation for the government to take land owned by citizens as regulated in Article 18 stating: "for the public interest, including the interest of country and state as well as the common interest of people, the rights on land can be revoked by giving appropriate compensation as regulated in the law."

The development by the government, especially for the physical development, absolutely requires land. The land needed can be in the form of land directly controlled by the state or land owned by a legal subject. Because the land needed for the development is in the form of state land, the land procurement is easy. The government can directly apply for the land rights which are then used for the development. However, due to limited land owned by the government, the land needed should be from the people to facilitate the development for the public interest. The need on land that will be used by the government for the development purposes should not disservice the rights of landowners. Therefore, to regulate this, a legal regulation that can provide legal protection to the rights of landowners is needed. For those whose land will be used for development, the land right discharge to the government has consequences, both economically and socially, especially if the land is the only land used as a place to live and to get sources of livelihood. Therefore, the takeover land for development purposes for the public interest should be carried out based on the principles of humanity, justice, expediency, certainty, openness, agreement, participation, prosperity, sustainability, and harmony.¹

Land owned by someone does not only have a function for those who have the rights, but also for the entire of Indonesian. As the consequence in using land, the interest of the right holders should not only become the guideline, but the public interest should also be considered. In this case, balance between individual and public interest should be considered. Thus, the plan on land allotment and utilization as intended in Article 14 of Basic Regulation on Agrarian Principles is necessarily needed. By using land based on the plan set by the government, the social function can be fulfilled. The social functions on land oblige those who have the rights to use the land based on the condition of the land including the condition, the characteristics, and the purpose of granting right of the land. Therefore, it can be beneficial for the prosperity and happiness for the landowners, public, and state.

Based on Article 1 of the Regulation of the Head of the Land Agency No. 4 of 1991, land consolidation is a land policy concerning the rearrangement of land ownership, the land utilization, and the effort to procure land which aims are for the development purposes and the enhancement of the quality of environment and the maintenance of natural resources by involving active participation from the community.

"According to Ali Achmad Chomzah, this provision is an order to arrange agrarian planning involving land stewardship as the development policy intended to provide guidance and direction in improving the efficiency of land use which is provided for various development activities."²

According to Article 2 of Regulation of the Head of the National Land Agency No. 4 of 1991, land consolidation is aimed at rearranging land ownership and land use as well as the land procurement efforts for development purposes, enhancement of the quality of environment, and maintenance of natural resources so that land use through the increase of efficiency and productivity of land use can be achieved. It means that the development carried out by the government is for the public interest in order to achieve regular and order land ownership and use.

The aforementioned statement is then confirmed by Oloan Sitorus revealing that the concept of urban land consolidation as a land policy in urban and suburban areas concerning the rearrangement of

¹ Sulasi Rongiyati, Existence of Land Appraisal Institutions in Land Procurement for Public Interest, Law State Journal Vol 3 No.1, 2012, page 8

² H. Ali Achmad Chomzah, Agrarian Law (Indonesian Land) First Print, Prestasi Pustaka Publisher, Jakarta, 2001, page 71

land tenure and use based on spatial planning and land procurement is for development purposes in order to improve the quality of environment with the participation of community.³

Furthermore, land consolidation is a land development model regulating all irregular land forms in terms of shape, extent, or location by shifting location, merging, splitting, exchanging, laying out, deleting or changing and refining land in forms of public facilities construction, such as roads, canals, green lanes, etc. As a result, a pattern of land tenure and plan for a better use or implementation of land use by involving active community participation can be achieved. In short, there are two kinds of activity in land consolidation: the arrangement of land tenure and the land procurement for the development.⁴

Particularly, for the development of urban infrastructure, such as road construction, it requires land which land is owned by local people in which land procurement process is needed to relinquish their ownership.⁵ Then, to build the public interest facilities, there are two ways that the government can do: releasing the land rights through the land procurement for the public interests and the revocation of land rights. Those ways have etiquettes and procedures which are quite similar, but both are carried out under different conditions. However, both similarly break the legal relationship between the right holder and the land. Therefore, any legal acts carried out by the government for the public interests, the government has to respect individual rights.

“According to Hermayulis, the consequence of the land use for public interests’ development is that it is not only based on the interests of right holders, but public interests should also be reminded and considered. In short, land has double functions, i.e. as social assets and capital assets. For social asset, land is a media to bind the social unity among Indonesians to live and for life. On the other hand, for capital asset, land is a factor of modal in the development.”⁶

In line with the increase of population, the needs for infrastructure, especially public roads, are also increasing. Thus, Padang Government constructed bypass road requiring a lot of land which relinquishment was through consolidation because the government was financially limited to replace it. It was stated in Information Letter of Level II Mayor of Padang No. 188.45.1.46/SK-Sek/1989 concerning the Establishment of Technical of Settlement Team/ Releasing People Land and Buildings Affected by Padang Bypass Road Construction Project, which was issued on March 21, 1989.

In the Information Letter of Mayor, it is stated that the land owners affected by the consolidation is willing to give 30% of their land to the Regional Government for the purpose of providing public facilities, while the rest of the land is returned to them through the consolidation system.

Because they had limited financial, the plan for widening the bypass road was delayed until 2012. Unfortunately, it was also not carried out because of the land problems along the bypass line. Then, in 2014, the National Road Implementing Center II of the Ministry of Public Works provided a budget for the increase of the Capacity of the Road Bypass Agency into two lines by the funding from South Korea with the period of work completion was from August 8, 2014 to August 7, 2016. However, facing similar problem, Padang Government was hampered by lands which were not given by the local people. The obstacles occurred in constructing the bypass road were various, such as the process of refusal to join the consolidation system and execution of land rejection. As a result, the construction of the two bypass lines has been hampered.

³ Oloan Sitorus, *Legal Limitations on Urban Land Consolidation as a Participatory Land Policy Instrument in Indonesian Spatial Planning*, Indonesian Land Policy Partners, Yogyakarta, 2006 page 1

⁴ Bambang Ardiantoro and Edi Priatmono, *Implementation of Land Consolidation, Land Management Arrangement Materials*, Education and Training Center of the National Land Agency, 2001, page 10.

⁵ George J. Aditjondro, *Forced Settlement of Populations in World Bank-Funded Projects*, translation of Michael M. Cernea, *Involuntary Resettlement in Development Projects*, First Print, World Bank, Technical Paper Number 80, Washington D.C., 1990, page 5

⁶ Hermayulis, *Legal Aspects of the Right to Use on State Land as a Guarantee Object*. Business Law Journal, Business Law Development Foundation. Jakarta. Volume 10, 2000 page 49

John Salindeho stated that the aforementioned things affect society,⁷ both economically and socially as a result of the compensation process in the form of land or money replacement that should have been provided according to the agreement without any detriments from any parties.⁸ In fact, the amount of compensation was different from the result of the agreement. Then, disputes between the community and the government are about the form and amount of compensation, manipulation of officials, and intermediaries doing price manipulations, and deliberation processes that turned into intimidation of both psychologically and physically of the land owners.⁹ Therefore, the parties agreed to resolve the case through the court, such as the settlement of consolidation dispute over the construction of Padang bypass road. The needs of land used by the government for development purposes for the public interest in the form of roads should not disservice the rights of landowners. However, this provision in reality, it causes landowners' disservice.

Research Method

The research method used in this study is juridical empirical approach. Juridical empirical approach is a study of law concerning the application or implementation of normative decree directly on every particular law case occurred in the society. Besides, it is also a field study investigating law regulations which are then correlated with data and social behavior. The approaches used in this study are constitution and case approach. This study is also an analytical descriptive which is conducted through revealing regulations relating to any relevant law theories and its implementations which are then correlated with the law issue studied.¹⁰

Findings and Deliberation

The rapid development of city demands an effort to increase the development in means and public facilities, especially roads, in order to increase the continuity of traffics. Through the Local Regulation No. 14 of 1985 concerning the First Amendment of Municipality Local Regulation on Level II Padang No. 07/PD/1978 about the Fatwa of Advice Planning in Padang Municipality Level II. To carry out the construction of bypass road, Padang government formed a team to do the land consolidation in which before the consolidation, explanation was delivered by the team to the community having land, building, and plants affected by the construction of bypass road consolidation.

The realization of bypass road construction is influenced by the continuity of the government and the land owners in carrying out the land relinquishment. The land relinquishment relates to the plan for road requiring 80 meters. Thus, 200 meters of land with 22 km long are needed. Then, the land relinquishment needed for the location of office, housing, and trading is 440 Ha.

Table 1. The Pattern of Bypass Road Utilization

A1	A2	B	A1	A2
60 m	20 m	40 m	20 m	60 m

Note:

A1= Road

A2= Road Rolley

B = Plot Area

⁷ John Salindeho, *Problems in Land Development*, Sinar Grafika, Jakarta, 1988, page 199-200

⁸ See Phillip Oldenburg, *Land Consolidation as Land Reform in India World Development Vol.18 No. 2*, 1990, page 183-195.

⁹ Mudakir Iskandar Syah, *Land Acquisition for Public Interest Development*, Op. Cit., page 47

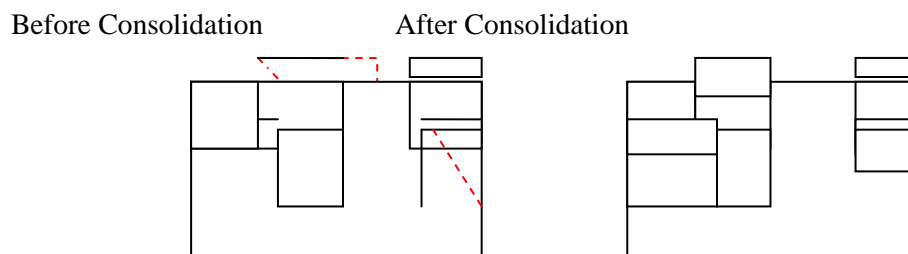
¹⁰ Zainudin Ali, *Legal Research Methods*, Second Print, Sinar Grafika, Jakarta, 2011, page 105-106.

The implementation of urban land consolidation is aimed at arranging the environment and resident which regulation in the construction works including the construction of various equipment of residential environment is sated. The land consolidation in Padang bypass road construction was carried out based on the Decree of West Sumatera Governor No. 181.1-83-1990 concerning the Settlement of Land Relinquishment for Padang Bypass Road Construction through Urban Land Consolidation System. This provision explains that the government only provides compensation for buildings and plants grown. On the other hand, for land relinquishment was going to be carried out by land consolidation system. The compensation had been paid to the owners through Bank Rakyat Indonesia (BRI).¹¹ The consolidation participants had agreed to donate 30% of the land for the public interest and the rest was going to be returned by the government either gradually or simultaneously.

When the construction of Padang bypass road were about to start in 1989, all lands owned by people had been relinquished by Padang Government, the number of land owners in the line of 200 meter was 1,534 people, the number of buildings was 1,046 units, the consolidated land in the line of 40 meter was 402.34 hectares, the total area of land affected by the line of 40 meter was 80.46 hectares, the number of buildings on the line of 40 meter was 262 units, and 11,381 plants with 373 people as the owner. "The government replaces them for IDR 76,880,500. Not only replacing plants, the government also compensates IDR 1,203,152,282. After the relinquishment, in 1991, the first phase of bypass road construction began. The construction of this road was then completed with the length of 20,177 kilometers. At that time, the bypass construction spent IDR 33,187,000,000".

The law in the field of land procurement for the public interests has not guaranteed the land procurement that prioritizes humanitarian, democratic and justice principles in the implementation of Law No. 12 of 2012 concerning the Procurement of Land for Public Interest which is stated in this law that land procurement is an activity of land provision by giving proper and fair compensation to particular party. To settle the land relinquishment, Padang Government, through a team which had been formed, did the land consolidation on buildings and plants on the land based on Circular Letter of the Head of National Land Agency No. 410-4245 on December 7, 1991, concerning the Instructions of the Implementation of Land Consolidation.

The process of land consolidation can be seen in the following figure.



Based on the above figure, the arrangement of land plots before the consolidation is not well organized. Then, after the consolidation is carried out, the land plots are neatly arranged and well organized based on the planning of land use.

In this case, the purpose of land consolidation is to restructure the irregular land plots of the community into regular and orderly land plots based on urban spatial planning which requires direct active participation from the community as the land owners to succeed the land consolidation process of the area. However, in carrying out the consolidation, an obstacle may occur, such as the existence of parties who disagree when the replacement will be carried out. The obstacle is then like a domino effect. As a result, the consolidation process in bypass city road construction takes a long time. Another obstacle

¹¹ The result of interview with Mr. Yoyok, Staff of the Division of Land Problem Settlement, Public Housing Agency, Settlement and Land Area on March 25, 2019

can be like the inappropriateness of compensation process which is in the form of land or money replacement with the agreement which should not cause any disadvantages for any parties.¹² However, in fact, the amount of the compensation was different from the agreement. Thus, the dispute occurred between community and government was about the form and the amount of compensation, manipulation done by the officials, price manipulation done by intermediaries, and the process of deliberation which became intimidating psychologically and physically of the land owners.¹³ In this case, the needs of land that will be used by the government for public interests should not cause any right disadvantages for the land owners. However, in the reality, the consolidation process caused many disadvantages for the land owners.

The process of the dispute settlement which is well-known for a long time is the process of dispute settlement through litigation in court. The process tends to produce unresponsive new problems, tends to take a long time and is open for public. The procedures of dispute settlement through the court (litigation) are generally formal in which all disputing parties face each other to defend their rights before the court. Then, the final result in resolving the dispute through the court is a verdict stating the win-lose solution.¹⁴ On the other hand, the dispute resolution outside the court is closed for public and parties' secrets are guarantee. The process is faster and more efficient. The process also avoids delays caused by procedural and administrative problems as it is in the case in public courts.

A dispute occurs when one of the parties refuses to do the agreement. The dispute resolution can be carried out in through legal channels (court) and deliberation. When a dispute occurs, the judge has to decide based on the applicable law to create legal certainty for the litigants. On the other hand, the dispute settlement through deliberation commonly takes a long time, yet efficient to produces a win-win solution for both parties. In this case, the two parties were the Suwarna people as the plaintiffs and Padang Government as the defendant.

Technically, the number of plaintiffs' land was 9690 m² in the implementation of land consolidation. The participants of the consolidation donated 30% of their land for the public interest while the rest of the land owned by the plaintiffs was 6783 m². During the consolidation process, the government had returned the land in some certificates consisting of 5,965 m². Because of the number of lands returned by the government did not fulfill their expectation, the plaintiffs thought that they were loss. As the defendant, the government gave an option to place the land replacement to an area near with the consolidation, but the plaintiffs refused it. Because of this problem, the land consolidation replacement has to take a long time. Finally, the government sought a solution to solve this problem to find the replacement land in the location that the plaintiffs agreed.¹⁵

The process of the dispute settlement which has been well-known for a long time is the process of dispute settlement through litigation in court. The process tends to produce unresponsive new problems, tends to take a long time and is open for public. The dispute between two or more individuals recently has been a common phenomenon among the society. As the development of era nowadays, the process of dispute settlement can be conducted outside the court which is closed for public and the secret of the parties are guaranteed. Besides, the process is faster and more efficient. The process can avoid the delay caused by procedural and administrative problems as it is occurred in public court. The settlement of dispute outside the court (non-litigation) is an attempt to bargain or compromise to obtain beneficial solution for the parties. The presence of a neutral third party is not to decide the dispute, but the parties themselves should make the final decision. In this case, the settlement of dispute outside the court (non-litigation) has been regulated in Indonesian legal system in the Constitution of Arbitration.

¹² See Phillip Oldenburg, *Land Consolidation as Land Reform in India World Development Vol.18 No. 2*, 1990, page 183-195.

¹³ Mudakir Iskandar Syah, *Land Acquisition for Public Interest Development*, Op. Cit., page 47

¹⁴ The result of interview with Mr. Suprianto, Mapping and Database Division of the Public Works and Public Housing Office on March 26, 2019

¹⁵ The result of interview with Mr. Suprianto, Mapping and Database Division of the Public Works and Public Housing Office on March 26, 2019

In carrying out the land consolidation, there are several obstacles that can hinder the implementation of consolidation, such as the consolidation participant's land having no legal rights, the land is owned by a community, and the consolidation land for replacement provided has been occupied by another person. In this case, those obstacles also became the obstacles in the implementation of land consolidation in Padang bypass road construction.¹⁶

In Law No. 2 of 2012 concerning Land Procurement for Public Interest, it has actually been stated that community involves in the land procurement process, such as the implementation of public consultation to obtain the agreement of the location of construction planning. However, the location of land procurement proposed by the government is hardly to be changed. As a result, the community should agree on the location of land procurement set by the government.

The community participation in land consolidation is only carried out in the initial stage before the construction is carried out. In the conventional implementation of land procurement, the community is the victim of development because after the community receives compensation and moved to a new location, the community will not immediately be able to enjoy the results of development from their land.

Land consolidation in constructing bypass road has been settled for twenty-seven years. However, the implementation of bypass road construction was carried out for up to three periods from 1989 to June 2016. The duration of completing of this activity was due to the lack coordination among the relevant agencies. Land consolidation in Padang bypass road construction has given a lesson in planning the implementation of land consolidation in other locations. Careful planning and coordination among relevant agencies are absolutely needed for successful implementation of land consolidation. Even though the implementation of land consolidation in Padang had lasted up to 27 years, because of good coordination between related agencies and the community, it was successfully settled. As a result, the area of Padang, especially the area of bypass, becomes an organized area. All land plots face the road and are connected to other cities. The location is also equipped with other public and social facilities. The widening of the bypass road plan which connects bypass area with Padang can be realized and does not require compensation due to the land arrangement through land consolidation which is able to provide land for widening the road.

The consolidation then can be an example that land procurement for public interest does not always have to be carried out through eviction or compensation. Instead, it can be implemented through the concept of constructing without the displacement applied in the implementation of land consolidation. As a result, all interests of both government and community can be well accommodated. By carrying out land consolidation development making the community as agents of the development process that prioritizes shared interests, equality in planning, and development based on strength of community. Thus, it is seen as the fulfillment of sense of justice and humanity for the community. The community gets benefits because they can obtain land rights certainty which is carried out with the principle of openness. It means that the community provides their obligations in the form of land donation in accordance with the results of deliberation between the government and the community.

In carrying out the consolidation, an obstacle may occur, such as the existence of parties who disagree when the replacement will be carried out. The obstacle is then like a domino effect. As a result, the consolidation process in bypass city road construction takes a long time. Another obstacle can be like the inappropriateness of compensation process which is in the form of land or money replacement with the agreement which should not cause any disadvantages for any parties.¹⁷ However, in reality, the amount of the compensation was different from the agreement. Thus, the dispute occurred between community and government was about the form and the amount of compensation, manipulation done by the officials, price manipulation done by intermediaries, and the process of deliberation which turned into intimidating the land owners psychologically and physically.¹⁸ The needs of land that will be used by the

¹⁶ Zainudin Ali, *Legal Research Methods*, Second Print, Sinar Grafika, Jakarta, 2011 26 March 2019

¹⁷ See Phillip Oldenburg, *Land Consolidation as Land Reform in India World Development Vol.18 No. 2*, 1990, page 183-195.

¹⁸ Mudakir Iskandar Syah, *Land Acquisition for Public Interest Development*, Op. Cit., page 47

government for public interests should not cause any right disadvantages for the land owners. However, in the reality, the consolidation process caused many disadvantages for the land owners.

Conclusion

Regarding the findings and deliberation of this study, it can be concluded that the implementation of consolidation in Padang bypass road construction is basically a land rearrangement arranging irregular plots into regular and order plot based on the spatial planning for public interests so that it can enhance the environment quality and nature resources maintenance involving people's active participation.

The dispute occurred in constructing Padang bypass road was caused by the lack of land number in returning the land of consolidation participants, the tardiness process of constructing the road, and the incompleteness of previous leadership's work. As a result, it causes long-lasting impact.

Then, to overcome the dispute in the implementation of land consolidation in Padang by pass road construction, the government gave an option for the consolidation participant in a form of land replacement located in similar location before the consolidation occurred or in another area. The option was determined by the consolidation participants. If an agreement could not be reached, the government was going to help overcome the case until it finished. Therefore, it depended on the agreement between the government and the consolidation participants.

Suggestion

The suggestions proposed by the researcher relating to the implementation of land consolidation in Padang bypass road construction. The consolidation participants should actively participate in giving the rights of the land so that it helps the government return the land. Besides, to avoid the dispute of land consolidation in the implementation of land consolidation, the land consolidation participants should be able to cooperate with the government so that the implementation of land consolidation can run smoothly. In the settlement of land consolidation dispute, both parties should agree on the settlement occurred without causing loss to one of the parties.

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Interview

Mr. Yoyok, Staff of the Division of Land Problem Settlement, Public Housing Agency, Settlement and Land Area on March 25, 2019, in Padang.

Mr. Suprianto, Mapping and Database Division of the Public Works and Public Housing Office on March 26, 2019, in Padang.

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