

CHAPTER I

INTRODUCTION

1.1 Background

Land is an important element for everyone's life this statement arises because land has many functions and benefits for human ranging from providing jobs till being used to build dwellings. Basically, all land contained within the territory of Indonesia constitutes were controlled by the state and this decree is stated in Article 1 (2) of the agrarian law. Seeing the above provisions then the state is considered as the subject, land as an object, while the legal relationship between the subject and object is conceived as the right to control by the state.¹

In general basis, land in Indonesia territory is fully controlled by the state, but that does not mean that the ownership of the land is 100% owned by the state. According to agrarian law expert, Maria S.W. Sumardjono, stated that "based on the conception of relations between state and land, 3 types of land entities are produced, namely: (1) state land; (2) communal land; and (3) private land."² Based on those three types of land entities, each type of land ownership has its own regulation which is adjusted to its legal basis.

¹ Julius Sembiring, *Tanah Negara*, (Jakarta: Kencana, 2016), p. 1.

² Maria S Sumardjono, *Tanah Untuk Kesejahteraan Rakyat*, (Yogyakarta: Bagian Hukum Agraria, Fakultas Hukum Universitas Gadjah Mada), 2010, p. 22.

Land ownership in Indonesia is regulated specifically by the government through the implementation of Agrarian Law, however the basic function of the land itself has been regulated in the 1945 Constitution Article 33 paragraph 3 which contain the following:

According to Article 33 (3) of the 1945 Constitution:

The waters and the natural resources within shall be under the powers of the State and shall be used to ensure the greatest benefit of the Indonesian people.

Based on the above article, it can be said if each Indonesian citizens has the same right to enjoy every natural wealth that available in Indonesian territory, including the use of land for living needs. Although every individual has the freedom to use the available land, this does not mean that land exploitation is permitted. In the process of utilizing land for the fulfillment of community prosperity, it is necessary to implement an arrangement of land tenure and stewardship so that it can be aligned with individual interests.

Different usage of land by each individual require proper supervision by the government, therefore a land certification system is established for individual landowners. In order of create clear agrarian legal system, government start to made Indonesian Agrarian Law which has been implemented since 1960, but the used of this law does not solved land issue immediately. The issuance of Agrarian Law was originally a legal unification with the aim of reconstructing land arrangements

previously regulated by western civil law or Burgelijke van Wetboek however since the beginning of the issuance of Agrarian Law many pros and cons have emerged in the community, this is inseparable from the law itself which was made as a nationalization of the western country rules which is the Netherlands.³

After the implementation of Indonesian Agrarian Law, Indonesia started using land certification system. This method was applied for the first time in Indonesia with aim to changing the initial thinking and patterns in the land rules that were identical to the exploitative-feudalism and discriminatory character. Since long ago, the certificate of ownership or known as Eigendom in the past was the highest right that might be owned by a citizen because it doesn't has time limit regarding the land usage and this right also considered very exclusive because it could only be owned by Indonesian citizens.⁴

The use of a certification system in a land ownership does not guarantee equal distribution of land functions in Indonesia. There is still a lot of land that is not functioning properly so that it does not provide maximum benefit for the community. Related to the problem of land ownership distribution, the government has implemented several programs to resolve existing problems, one of which is the land consolidation program.

³ Hasibuan, Agung Ibrahim, "Sejarah Dan Terbitnya Hak Milik Atas Tanah" <<http://bumn.go.id/ptpn1/berita/0-Sejarah-dan-Terbitnya-Hak-Milik-Atas-Tanah>>, accessed April 24, 2019.

⁴ *Ibid.*

Land consolidation can be regarded as a government program that is not widely known by the general public. The word consolidation is commonly used in terms of a company / business term with a purpose to strengthening or combining 2 or more companies under a single leadership. Similar to the above understanding, land consolidation briefly has function to produce equitable distribution of land between communities.

Before knowing about land consolidation in more detail, there are several definitions or meanings of the land consolidation itself. In general, Land Consolidation is a land policy regarding the restructuring of land tenure and use as well as land acquisition efforts for development purposes, to improve environmental quality and preservation of natural resources by involving the active participation of the community. Meanwhile according to Indonesia Dictionary (KBBI), the word consolidation itself can be interpreted as an act (things and so on) reinforcing or strengthening (transportation, unity, etc.) or the merging of two or more companies into one company.⁵

If the two definitions above are considered as broad definition, then the definition of land consolidation is more explicitly regulated in to Article 1 (1) of the Regulation of the Head of BPN RI No. 4/1991 which stipulated:

land consolidation is a land policy regarding the restructuring of land tenure and use as well as land acquisition efforts for development purposes, to

⁵ Setiawan, Ebta, "Arti Kata Konsolidasi" <<https://kbbi.web.id/konsolidasi>>, accessed April 24, 2019.

improve the quality of the environment and preservation of natural resources by involving the active participation of the community.

The history of land consolidation in Indonesia itself has been going on for a long time ago, both the government and the community realize the need for equitable distribution between land and public facilities making this policy very necessary to be applied in society. In fact, this program is more often implemented in urban areas than in rural areas. This is inseparable from the need for public facilities that can support their daily needs.

Considering the land problem is a complex matter and involves various aspects, this also arises in many urban areas which are mostly caused by increasing demand and limited land supply, some examples of problems that occur due to the emergence of slum areas as well as residents and land users illegally. The land problem is a complex thing considering the effects caused are not only physical problems, but also involve other sectors, such as: socio-economic, political problems, etc.

According to Hasni in her book, there are some backgrounds occurred because of the lack of support for the public facilities development and the large number of slums in Indonesia is caused by the growth of irregular settlements with

low quality that lead many requests for the implementation of land consolidation in urban areas, here are some types of background problems:⁶

1. The slow development of public infrastructure by the government causes the residents take the initiative to regulate themselves in carrying out public infrastructure, without regard to the interests of the region / environment at large.
2. Irregular land ownership and control, but there is a need to build settlements so that natural settlement areas grow with irregular, dirty, and unsafe conditions. Not all city master plans / city spatial plans and city detailed plans can be implemented properly and meet formal requirements due to lack of support available for the construction of public infrastructure.
3. The construction of conventional residential areas is considered unfair because the government provides and manages energy for the construction of a residential area, but more benefits are enjoyed by landowners who have no contribution in the development / maturation of the area.
4. The form and condition of agricultural land ownership greatly influences productivity.

⁶ Hasni, *Hukum Penataan Ruang dan Penatagunaan Tanah*, (Jakarta: Rajawali Pers, 2013), p. 316-317.

In addition to the background that encourages the implementation of land consolidation, there are several important aspects that have an important role in the implementation of the program, including:⁷

1. The aspect of regulating control over land, not only arranges and publishes the physical form of parcels of land, but also the legal relationship between the owner and his land;
2. Aspects of adjusting land use with land use plans / spatial planning;
3. Aspects of providing land for the purposes of building roads and other public facilities needed;
4. Aspects of improving the quality of the environment or conservation of natural resources.

Land consolidation is different from other land programs commonly implemented by the government. Unlike land reformation or land acquisition which is compulsory, land consolidation is generally done voluntarily considering that land or building owners are asking the state to consolidate their land. Land consolidation is usually requested by the private sector and individuals to the government with the aim of opening land for the construction of public facilities needed, such as: roads, hospitals, etc.

Referring to the term "voluntary" above, each parties involved in a land consolidation program is aware of the activities to be carried out, including every

⁷ *Ibid.*, p. 318.

individuals who ask the government to carry out the program. The word voluntary is very important to be observed because in carrying out the consolidation of land not only vacant land owned by residents can be changed its use, but people's houses can also be affected.

In line with the voluntary principles adopted by this program, the success rate in implementing land consolidation is also very high. In Indonesia, Bali was known as an icon of the successful implementation of land consolidation and has made this program internationally recognized. The implementation of land consolidation in Bali itself began in 1982/83 and from then until 2003 many locations in urban Bali have experienced the success of this program. In 2019 the land consolidation monitoring and evaluation team revisited the location of land consolidation objects in the Bali that had previously been carried out and continued environmental improvements.⁸

Not only in Bali, the implementation of land consolidation has also been carried out in many other areas in Indonesia. Late in 2019, Buol District, Central Sulawesi Province (SulTeng) felt the success of the implementation of this program. The team of the Directorate General of Agrarian Arrangement and the Regional Office of the SulTeng BPN stated that if there were at least 4 locations in the Buol

⁸ "Kementerian ATR/BPN Revitalisasi dan Aktivasi Pelaksanaan Konsolidasi Tanah di Bali" <<https://www.atrbpn.go.id/Berita/Siaran-Pers/kementerian-atrbpn-revitalisasi-dan-aktivasi-pelaksanaan-konsolidasi-tanah-di-bali-90225>>, accessed January 27, 2020.

district that were underway to carry out the land consolidation program and were in the evaluation stage, including:⁹

1. Leok II Urban Village managed to arrange around 45.4 ha of land.
2. Mangubi Village, Sub-district. Momunu, managed to arrange 14,857 ha of land.
3. Tongon Village, covering an area of 12.21 ha.
4. Sub-district Gadung area of 7.39 ha.

The successful implementation of this program is inseparable from the community request to the government to conduct the program in their area, moreover the strong principles of democracy and equality in this program are supported by the active role of the community in the implementation process helping the government in the successful implementation of land consolidation.

Based on the explanation above, it was cleared if every program certainly has an important elements and principles in its implementation so that it can support the success of the available plan, this condition also applies to land consolidation. Following are some of the substantial elements contained in land consolidation:¹⁰

1. Land consolidation is a land policy;

⁹ "Sinergisitas Bersama Stakeholder, Kunci Keberhasilan Konsolidasi Tanah di Kabupaten Buol" <<https://www.atrbpn.go.id/Berita/Siaran-Pers/sinergisitas-bersama-stakeholder-kunci-keberhasilan-konsolidasi-tanah-di-kabupaten-buol-98652>>, accessed January 27, 2020.

¹⁰ Idham, *Konsolidasi Tanah Perkotaan Dalam Perspektif Otonomi Daerah*, (Bandung: Alumni, 2005), p. 25.

2. Land consolidation consists of restructuring land tenure, usage and procurement;
3. Land consolidation aims at development interests, improving the quality of the environment, conserving natural resources;
4. Land consolidation must be done by involving active community participation.

Similar with element, principle is a very important thing and usually used as a basic guideline in implementing a regulation. Principles itself can be included as one of the element that has function as a support so it will help a plan can be run smoothly. Here are some of the principles contained in the land consolidation program:¹¹

1. The land consolidation activity finances itself.
2. The existence of "land polling" which is also a characteristic of land consolidation.
3. Land rights before and after consolidation do not change to be higher or lower.
4. Land consolidation involves the active participation of landowners.
5. Land given back to the owner has a higher value than before consolidation.

¹¹ Hasni, *Op.Cit.*, p. 310.

Considering that land consolidation is carried out as one of the spatial planning programs, in its implementation the relationship between consolidation objects and subjects cannot be ruled out. The object of land consolidation itself has been specifically regulated in Article 1 (3) Regulation of the Head of BPN RI No. 4/1991, which reads:

Land consolidated land is non-agricultural state land and / or land rights, in urban or rural areas confirmed by the Head of the National Land Agency to be consolidated.

Meanwhile, according to some experts subject of land consolidation are some requirements that cannot be separated from the land consolidation object, such as the location of land consolidation. In accordance with the Circular of the Minister of Agrarian Affairs / Head of the National Land Agency Number 410-2084 dated June 30, 1998, the area of consolidation Urban land has a maximum land area of up to 10 Ha while a consolidated area of agricultural / rural land has a maximum land area of up to 200 Ha. Confirmation of the decision can be made by the Head of the Regional Office of the Provincial National Land Agency, while for the consolidated land area that exceeds the conditions specified above, approval must be obtained from the Head of the National Land Agency.¹²

¹² Sindung Sitorus, Antonius Sriono, Oloan Sitorus, *Buku Materi MKK 73529/3 SKS/Modul I-IX Konsolidasi Tanah*, (Yogyakarta: STPN Press, 2007), p. 134.

In more specific scope, land consolidation cannot be done in a brief and simple way considering so many conditions and elements that need to be done. Several matters need to be considered in the implementation of land consolidation, bearing in mind that the land used as the object of consolidation are community lands that already has a certificate, so changes to the contents of the certificate cannot be ignored because it will affect the validity of land rights owned by individuals. With the aim of knowing more deeply about the implementation of land consolidation, several regulations need to be used to obtain program information, including: Regulation of the Head of BPN RI No. 4/1991, Circular Letter of the Head of the National Land Agency No.410-4245, and Circular Letter of the Head of the National Land Agency No.410-1978. All of the regulation has its own effect and completing each other in implementing land consolidation.

Based on the topics to be discussed in this paper, the authors decided to use the title: "**The Implementation of Urban Land Consolidation Procedures and Follow-Up Action Need to be Taken Related to The Object Certificate**".

1.2 Formulation of Issues

In regards to the topic of this paper, the author will discuss the following formulation of issue:

1. How are the nature and binding power comparison of the land consolidation compared to other agrarian programs, as well as the

procedures for implementing the urban land consolidation program based on the Indonesian legal system?

2. How does the Indonesian legal system regulate the process of releasing land titles until the handover back of land certificates that have been adjusted to landowners whose land was used as the object of the land consolidation program?

1.3 Research Purpose

Based on the formulation of the issues that has been formulated above, then these are some purposes of the research:

1. To find out what nature of law that land consolidation possess and how the Indonesian legal system regulates the implementation of the land consolidation procedure in order to support the welfare of the general public.
2. To find out how the content changes might arise toward the private property certificates after their properties are declared as the object of land consolidation program.

1.4 Research Benefit

Based on the background and facts available above, here are some of the research benefits that can be obtained:

1.4.1 Theoretical Benefit

1. The author hopes that the research carried out can provide information to readers regarding how land consolidation procedures are carried out in Indonesia from the initial stage to completion and how it affects the welfare of the community.
2. The author hopes that the research carried out can find out exactly what happened to the property certificate declared as the object of land consolidation and whether the impact bring up some losses or not for the property owners that affected by the consolidation.

1.4.2 Practical Benefit

Practically, the authors hope this thesis can be useful for community who plan to carry out a land consolidation program and may be able to understand what procedures and requirements must be met in order for the program to be implemented. It is also hoped that this thesis can help land consolidation participants to be better in understand the process of carrying out land consolidation from the beginning to the final evaluation stage.

1.5 Framework of Writing

This thesis consists of 5 chapters that will help the reader to answer the existing formulation of issues. These are following framework used by the author:

CHAPTER I: INTRODUCTION

The author explains land consolidation in a broad scope and what are the basic laws that support the implementation of the program. This chapter contains background of the issue, the formulation of issues, purpose of the research, as well as the research benefits. Furthermore, the author will not only discuss land consolidation in general but will focus more on the changes of certificate status in the implementation of the policy.

CHAPTER II: LITERATURE REVIEW

The making of this chapter is intended to facilitate the reader in identifying the terms and laws that will be used by the author. Specifically the author will explain the legal location of land consolidation in the Indonesian agrarian system. This chapter is also equipped with conceptual and theoretical understanding of land consolidation that provided by Indonesian experts.

CHAPTER III: RESEARCH METHODS

This chapter contains the methods used by the author in solving problems that will be discussed. The method used by the author serves to process the existing legal sources to produce a solution.

CHAPTER IV: ANALYSIS AND DISCUSSION

This chapter is the core of the thesis made by the author with the aim of analyzing each legal decision that taken by government in determining property certificate status changes. In detail and specifically, this chapter will explain how land certificate is executed regarding land consolidation program according to regulations and laws that available in Indonesia, as well as any problems that may arise in implementing land consolidation program.

CHAPTER V: CONCLUSION AND RECOMMENDATION

In the last chapter the author will summarize and conclude the topics discussed. In addition, the author will also provide several recommendations regarding existing issues.

