

Municipal Legislature Constraints in Assessing Land Use Conversion in Indonesia (A case of land use conversion for shopping mall development in Malang City)

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1. Introduction

In Indonesia, the difficulties of city government-public dialogue in applying spatial plan are oftenly discussed. Concerning this problem, the controversial assessment of land use conversion of Malang Town Square (MTS) shopping mall indicates the uncertain check and correction function (Indonesian: 'pengawasan') of the municipal legislature (Dewan Perwakilan Rakyat Daerah Kota-DPRD). This assessment is legally included in the location permission process. The crucial problem is, by Local Administration Law (Law 32/2004); the DPRD's actions for assessing MTS case became difficult. To have exact problem, this paper aims to clarify the practical constraints of DPRD checking and correcting land use conversion for MTS case. Firstly, this paper introduces the case's features. Secondly, the DPRD function in land use conversion is overviewed. Thirdly, the important public action and argumentation for DPRD is discussed. Finally, the problem of practical assessment process is identified.

2. A Case of Shopping Mall Development

Malang city is located in East Java Province with total population 2,393,958 people. Administratively, this city is divided into 5 sub-districts (Indonesian: *Kecamatan*). The MTS shopping mall is a private development (invested by Lippo Karawachi Tbk), located in the sub-district of city center area (Kecamatan of Klojen) (Figure 1). The development occupies 18,500 m². In the Malang City Spatial plan 2001-2011, the development area is prohibited for shopping mall. It was appointed as the open-green area to support housing and national education activities. The MTS was permitted by the city mayor in January 2003. Then, the construction work was permitted and started in March 2004 while the opponent public (surrounding inhabitants, academics institutions, and NGO) argued the properness of the permission process.

Beside the prohibition, the city spatial plan also defined the criteria of commercial activity development that can allow MTS. Nevertheless, there is no exact description regarding the relation between the prohibition and the criteria of commercial development. According to the city mayor, MTS could be permitted because the MTS was accorded to the plan.

Responding to the public objection, the discussion between coalescence of the head of Malang academic institutions (Indonesian: *Forum Rektor*) and city mayor in August 2004 resulted important statements. They are: 1) The DPRD should make an investigation of development

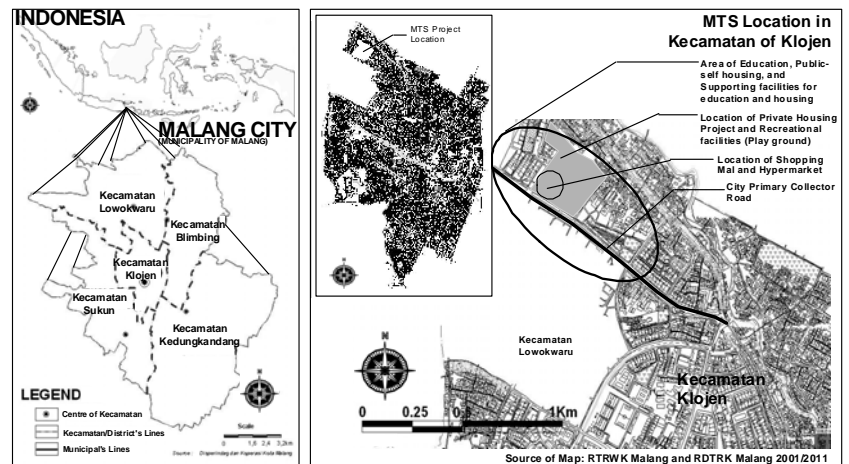


Figure 1. Malang City and MTS Location

permission process and 2) The city mayor will cooperate with the DPRD for the investigation. Nonetheless, this investigation had never been done by the DPRD. In fact, the DPRD interpellation session had been proposed by the chairman, however, the session always failed to satisfy the quorum (August 2004).

Before the discussion of the *Forum Rektor* and the city mayor, the NGO appealed to the municipal court for further investigation (April, 2004). It results the cancellation order from the municipal court to the city government (August, 2004). Then, the city government went to the provincial court for this judgment. However, the litigation process was cancelled by the provincial court (November, 2005).

3. DPRD Functions in the Land Use Conversion

1) Legal Function of DPRD

DPRD is one of municipal governance institutions. Based on the Law of Local Administration 32/2004, it has been established as legislature. However, the principal function of DPRD is check-correction of city mayor in policy making and its implementations. For this function, DPRD has the rights of: interpellation, opinion, and questionnaire for assessing mayor's action/decision. Beside this function, DPRD also holds co-administration function. It means that DPRD may give the suggestions, advises, confirmations, and approval¹⁾. However, DPRD can not correct the mayor actions/decision by this co-administrative function^{1), 2)}.

The check-correction function is performed by the interpellation, opinion, questionnaire rights. They are performed for any objected process of policy-making or/and its implementation. They are formally performed after the policy or its implementation is decided by city mayor.

2) DPRD Functions in the procedure of Land Use Conversion

Institutionally, proposal of development with land use

conversion is evaluated by city mayor in the process of location permission. Under the Law of Spatial Planning 24/1992, it is regulated in Ministerial Regulation of Agrarian 2/1999 and Minister Regulation of Home Affairs 4/1996. **Figure 2** depicts the procedure of location permission. In this procedure, disaccorded development may be allowed by city mayor after the consultation with the DPRD. This consultation session is the first DPRD assessment for the land conversion. Here, public opinion must be considered by mayor and DPRD.

Law of Local Administration 32/2004 regulates that DPRD may hold interpellation session to hear city mayor explanation and to evaluate mayor's decision. Then, DPRD may judge the improper process that is followed by postponement or cancellation of the permission. This session may be the second DPRD assessment for the conversion after the location permit.

4. Constraint of DPRD under the Local Administration System

Considering the legal procedure in **Figure 2**, in MTS case, there was no certain notification before DPRD's consultation. MTS land use conversion and public objection should be assessed by DPRD, although it was not performed. Here, the uncertain institutional position and the unutilized institutional right in assessing the conversion process are considered as the practical constraint of DPRD. To discuss this constraint, the practical DPRD assessment for MTS is divided into two stages (as shown in **Figure 3**), the first is before the location permit and the second is after the location permit.

(1) Uncertain institutional position of DPRD in assessing proposal of land use conversion

Concerning the required consultation session in the first stage in **Figure 3**, DPRD could not perform its check-correction function. By the confirmation rights, DPRD could not cancel/allow the city mayor proposal. Therefore, there was no DPRD judgement for the properness of MTS land use conversion.

After the MTS project, the Law 24/1992 was changed the 'consultation session' to the 'approval session' for land use conversion (Law 26/2007). Considering the right of DPRD in the Law of Local Administration 32/2004, this approval session means the power of DPRD in performing check and correction function is lesser. Therefore, it can be said that the 'approval session' is also performed as the co-administration functions. Then, the decision of land use conversion more depends on the city mayor's opinion.

(2) Uncertain utilization of DPRD institutional right

In the second stage in **Figure 3**, considering the term of 'right', the crucial problem was that DPRD may decide what to do and not to do. Here, the never-satisfied quorum indicated that the members eluded to utilize their rights for MTS process. To make even worse, there are no other municipal institutions that observe DPRD.

According to the Law of Local Administration 32/2004 and the Ethical Code of DPRD 25/2004, DPRD is obligated to publicise every sessions of spatial planning and land use conversion. Then, public may invoke to the higher

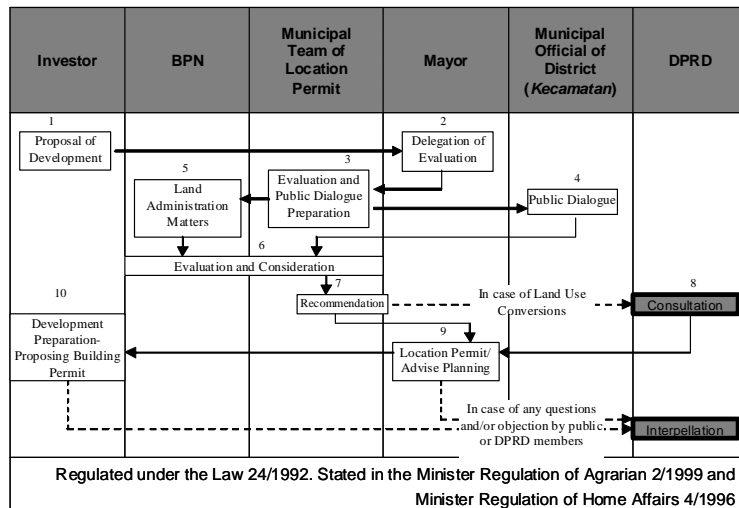


Figure 2. Legal Procedure of Location Permit

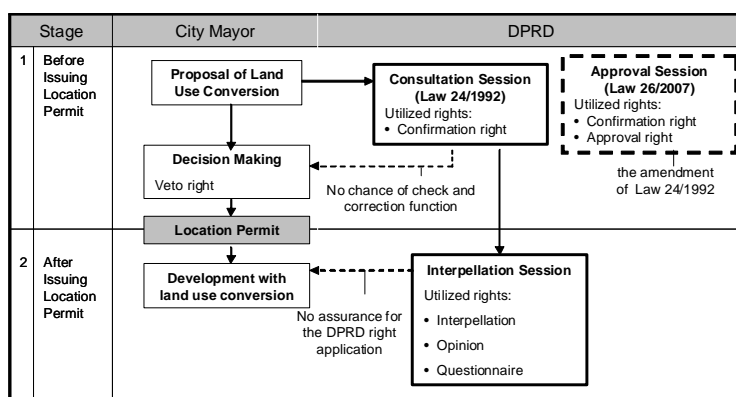


Figure 3. Stages of DPRD Assessment for MTS Land Conversion

government for the investigation of the questioned action/decision. However, since the DPRD members hold the right to decide what should be opened to be discussed; there would be limitation for public's observation.

In assuring the properness of DPRD rights, changing the 'right' into the 'duties' will not be sufficient. Besides, improving the information transfer system between DPRD and public is necessary.

5. Conclusion

Concerning to the process of MTS land use conversion, the uncertain position of DPRD in assessing the mayor's proposal and the unavailable system to assure the DPRD function were the problems. Under the Law of Local Administration 32/2004, the assessment is arbitrary between city mayor and DPRD. Assuring the relation between public and city government is more important for the improvement. That is, the proper information transfer between DPRD and public is required.

6. References

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