

# STRUCTURING THE CONTROL AND USE OF LAND FOR THE DEVELOPMENT OF THE BANDA ACEH MUNICIPAL AFTER THE TSUNAMI DISASTER

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## ABSTRACT

*The purpose of this research is to investigate the challenges of local governments face in implementing the regulations National Land Agency No. 4 of 1991 of the Republic of Indonesia's. Due to the 2004 Earthquake and Tsunami disaster, the regulations are concerned with Land Consolidation into regional regulations and policies to structure, tenure, and use of Banda Aceh municipal land. The qualitative research methods were used in this study. Data on legal provisions, policies, and perspectives, as well as the findings of previous studies on the study topic, were gathered. In addition, in-depth interview and observation techniques were used to collect field data from resource bodies. The findings of this study revealed that there is authority dualism. Furthermore, coordination between central and local governments to implement the National Land Agency Regulation No. 4 of 1991 at the legislative level proved to be ineffective. This research could be served as a model for other municipality and countries.*

**Keywords:** Control and Use of Land, Development, Structuring of Regulations and Policy on Land Consolidation.

## INTRODUCTION

To meet the demands of the society and the state, development is an unavoidable necessity. The government requires land to carry out development. In most cases, current land is owned by a single individual or legal entity, it is difficult for the government to acquire land for development. The community frequently expresses opposition to the implementation of development that necessitates the acquisition of land. The mindset of society will reject all external changes; on the other hand, an open society's attitude will encourage innovative thinking and supporting the government through its development efforts. Because it involves cultural, social, economic, political, and security issues, as well as the lives of many people locally, regionally, and worldwide, the problem of land in development can be a problem of the past, present, and even future (Ramli et al., 2016).

The Indonesian government cannot simply take over land that has been claimed as a matter of law; it must rely on formal laws or regulations to carry out its duties and commitments. As a result, legal laws are required to regulate it because the land can benefit and be relevant for the welfare of the people and development can be achieved (Akbar et al., 2021).

Additionally, land law in Indonesia governs the control, ownership, and use of land. In Indonesia, the control and use of land is governed by Article 33 paragraph (3) of the 1945 Constitution. The state controls all existing land and uses it to improve people's prosperity. The right of the state to control land is referred to as the State's Right to Control Land. The authority conferred to the state under the State's Right to Govern does not include the authority to physically control and utilize the land as a right to land ownerships because it is purely a public authority (Indrastuti & Prasetyo, 2020). The translation of the State's Right to Control over Land is governed by Basic Agrarian Law No. 5 of 1960. The state can control land tenure and utilization based on its jurisdiction over land (Wily, 2018).

Based on public authority, the Head of the National Land Agency established a policy addressing land consolidation in the form of the Regulation of the Head of the National Land Agency No. 4 of 1991. The policy is being implemented in the framework of executing Article 14 of the Basic Agrarian Law, which calls for the organization of land control and arrangement in the execution of development (Handayani et al., 2019).

The control arrangement and land use arrangement are two distinct legal actions, land tenure management is concerned with the state of ownership of land rights in the order of land administration, whereas land use management is concerned with land utilization and land management as part of spatial planning (Hersperger et al., 2018). The development of the two legal acts on the land must be carried out in an integrated approach to accomplish the development objective of creating a prosperous society and an ordered existence equipped with public and social amenities and infrastructure of community life (Mustafa et al., 2018).

The principle of Basic Agrarian Law is centralized. In fact, the execution of the land sector is based on laws issued by the central government and executed by vertical organizations using the delegation of power and (medebewind) principles (supporting responsibilities in the land sector) (Susilaningsih, 2018). Regulation No. 4 of 1991 of the Head of the National Land Agency for Land Consolidation, derived instinctively from Central Government Policy. Following the adoption of regional autonomy, most recently by Regional Government Law No. 23 of 2014, the province and district / city governments governed land based on regional laws and autonomous regional government policies based on the idea of decentralization (Hadita, 2020).

For the Banda Aceh municipality, as one of the cities in Aceh Province, it is based on Law No. 11 of 2006 concerning the Governance of Aceh, which specifically became the basis for the administration of government in Aceh, including the land sector, in addition to dualism in the field of land law that is applied in the region (Fitri et al., 2020). Due to the dualism of the rule of law, the planning of development plans, the organization of tenure, and the arrangement of land use may differ between the central government and regional governments, causing land consolidation difficult to implement (Yoseph-Paulus et al., 2017).

After the 2004 earthquake and tsunami in Aceh, there were slums and settlements in Banda Aceh City encompassing 40 (forty) regions in nine (9) Districts with a total size of 608.25 hectares, according to the decision of the Mayor of Banda Aceh Municipality Number 268 of 2018. Slums may be defined as a disorganized and disorderly region of land tenure and usage. Slums are uninhabitable settlements because they are built on land that is not in accordance with the control and use of land / spatial structure, have a very high density of buildings in a very small area, are prone to social and environmental diseases, have a low general quality of

buildings, are not served by adequate environmental infrastructure, and endanger the survival of life and its inhabitants (Fahrizal & Yuliastuti, 2019).

The Municipal Government of Banda Aceh should regulate the control and usage of Tsunami-affected areas. However, the Banda Aceh Government has failed to incorporate the National Land Agency Regulation No. 4 of 1992 into the Banda Aceh Municipality Qanun and other land use and arrangement regulations. As a result, certain areas of the city of Banda Aceh have slums that are not cleanly organized, poor road infrastructure, and few public and social services (Syamsidik & Fikri, 2017).

The purpose of this study is to explain what circumstances lead to land consolidation regulations. Not to be included into regional rules, and why these are not being implemented in the development of the city of Banda Aceh.

## LITERATURE REVIEW

Regulation of the Head of the National Land Agency No. 4 of 1991 specified legal material for controlling land consolidation (Winayanti & Lang, 2004). The regulation is a policy that is initiated by government authorities (Wijaya & Glasbergen, 2016). within the context of implementing governance in the land sector The land tenure and use policy will focus on efforts to collect information on urban land tenure and use that can be employed to plan urban development and to prevent conflicts over urban land tenure and utilization (Monkkonen, 2013).

From a legal standpoint, the legal material for land consolidation included in Article 1 of the Head of the National Land Agency Regulation No. 4 of 1991 includes: First and foremost, land consolidation is a government policy regulation in the land sector. Land consolidation rules are linked to the central government's authority in the land sector. According to Article 14 of Law No. 5 of 1960, the government is authorized to make a general plan for the supply, designation, and use of land, water, and space, as well as the natural resources contained therein: a) for State needs; b) for worship and other religious activities based on faith in God; and c) for community, social, cultural, and other needs. The articulation of this power resulted in the development of numerous policies and sets of legislative requirements (McCarthy, 2010).

Furthermore, land consolidation refers to government efforts including the reorganization of land tenure and the allocation of land use. "*The goal of land consolidation is the achievement of an ordered system of land tenure and land usage,*" according to Article 2 paragraph (2) No. 4 of 1991. In connection with the restructuring of land tenure and use, the land consolidation activity based on Article 3 paragraph (2) takes the form of restructuring land parcels, including land rights and land use, that are equipped with road infrastructure, irrigation, environmental facilities, and/or other supporting facilities as needed, involving landowners and land tenants (Peluso, 2013).

The restructuring of land tenure is a government action taken to ensure the orderly management of land and to give protection and legal clarity to holders of land rights. One of the goals of the Four Land Regulations established in MPR Decree Number IV/MPR/1978 as a foundation and a goal for restructuring land tenure, use, and ownership, as well as programs in the field of land within the framework of land for the welfare and justice of the Indonesian people, is the orderly administration of the land sector(Deliarnoor, 2019).

*"The orderly administration of land is an initiative to accelerate every community transaction that involves land, particularly development, which necessitates sources of information for people who require land as a resource, money, and capital. Creating a service-oriented environment in the land sector that is seamless, orderly, affordable, quick, and straightforward, based on fair and equitable public services. Land registration allows for the orderly administration of property by ensuring that each parcel of land has available data on physical size, control, usage, types of rights, and legal certainty, which are maintained in a comprehensive land information system." (Deliarinoor, 2019).*

Land tenure and use rearrangement can be categorized into two: agricultural land rearrangement in rural and urban regions, and urban land rearrangement (Yubaidi, 2020). The definition of restructuring demonstrates that prior to being structured with consolidation; there was a type of chaotic management of land and irregular usage of land. With the preservation concept, land consolidation will solve the problem of chaotic land control (Pattison & Lane, 2011). It is possible that the status of control over land after consolidation of land will be stronger, for example, previously only the status of physical cultivation became ownership rights to land, or originally the customary land of individuals who have not been certified to rights to land that are certified (Firman, 2004). The jurisdiction to restructure land tenure is conceivable since the state, as the holder of the Right to Manage over Land, does not grant the state the authority to physically control and use the land as if it were a land right because it is simply a public authority (Harahap et al., 2017). In accordance with Article 2 paragraph (2) of the Basic Agrarian Law, the State is authorized to: a) regulate and administer the designation, use, supply, and maintenance of the earth, water, and space; b) determine and regulate legal relations between people and the earth, water, and space; and c) determine and regulate legal relations between people and legal entities. It is the authority provided to the state to control and determine many areas of land tenure that, by definition, have always been considered the responsibility of the central government (Resosudarmo et al., 2019). This jurisdiction encompasses land allotment planning, land tenure, and legal actions involving land and land registration. This authority includes planning for land allotment, land tenure and legal actions regarding land and land registration.

The existence of road facilities, public facilities, social facilities, and arrangement of the form and placement of land consolidation that has been defined by the mayor of each regency or municipality for the organization of land use planning. Land use planning is governed by Government Regulation No. 16 of 2004 concerning Land Management, which implements Articles 14 and 15, which govern the government's duties to create plans for the use, control, and ownership of land. Land use management is carried out in accordance with the Regional Spatial Plan to realize people's prosperity by considering, among other things, people's rights to land, social functions of land rights, and the maximum limit of land ownership, particularly agricultural land, as well as various efforts to prevent land tenure concentration and abandonment of land. To enhance land usage, land consolidation can be used to business, split, or combine land and therefore grow in accordance with topography (Indrajit et al., 2020). To achieve the legal rules are required to avoid land loss and conflicts (Yanto & Nasarudin, 2021).

The land consolidation promotes growth by enhancing environmental quality and protecting natural resources. The notion of land consolidation in terms of enhancing environmental quality and protecting natural resources is included in Environmental Protection and Conservation Law Number 23 of 2009. Environmental protection and management, according to Article 1 paragraph 2, is a systematic and coordinated effort done to conserve

environmental functions and avoid environmental contamination, which involves planning, usage, control, maintenance, supervision, and law enforcement. The preservation of environmental functions is a component of a welfare-based sustainable environmental development (Feder & Feeny, 1991).

Moreover, the land consolidation operations involve the active participation of the community participation which contributes to the process of recognizing issues and potential in the community, selecting and making judgments about possible solutions to problems, executing efforts to overcome difficulties, and including the community in the process of assessing changes (Januar et al., 2021). The community involvement in development is characterized as community participation in development, participation in development activities, and participation in utilizing and enjoying the outcomes. Participation is based more on tools; thus, it is viewed as individuals participating willingly, without coercion, and outside of the commands of external interests, the substance of participation in the Head of BPN Regulation No. 4 of 1991, aimed at land owners or tenants of land included in the area of land consolidation determination, includes: a) Article 4 paragraph (2) Land Consolidation can be carried out if at least 85 percent of the land owners whose land area covers at least 85 percent of the total land area to be consolidated, declare their agreement (1), In the context of implementing the arrangement of the control and use of the land of the Consolidated Land object, the participants surrendered a portion of their land as a contribution to the Land for Development which will be used for the construction of road infrastructure and other public facilities and financing for the implementation of Land Consolidation; c) Article 6 paragraph (3) Participants whose parcels of land are too small so that it is not possible to surrender a portion of their land as donations for development can replace these contributions with money or other forms mutually agreed upon by the participants of the Land Consolidation (Sipayung & Karjoko, 2018).

Additionally, for land consolidation it is improving without elimination, but it still requires the support of stronger legal availability, so that it may be strategies that are designed as a legal foundation for the implementation (Peluso, 2018). The most important core for the achievement of development, environmental betterment, and environmental preservation is the structuring of land tenure and usage. Whereas involvement of landowners or holders of land rights in land consolidation determination is an obligatory condition that must be satisfied for the land consolidation to be carried out (Pribadi et al., 2021).

## METHODOLOGY

This study is focused on empirical law with a qualitative approach, the discussion in this research primarily focuses on the examination of the reasons of land consolidation rules that have not been integrated into the Regulations and Policies of the Banda Aceh municipality Government of Aceh Province of Indonesia from 2004 to 2019 (Heriyanto, 2018). In-depth interviews, focus group discussions, and questionnaires are used to collect primary data from relevant stakeholders for this study, specifically, the Head of the Banda Aceh Land and Regional Arrangement Subdivision, the Head of the Banda Aceh municipality Government Office, and the Head of the Banda Aceh City Disaster Management Agency. Secondary data was acquired through a review and analysis of literature in the form of legislative provisions Specifically, National Land Agency Regulation No. 4 of 1991 concerning Land Consolidation, policies, and

perspectives, as well as the findings of previous studies pertaining to land tenure and land use management (Amri & Giyarsih, 2021).

## RESULT AND DISCUSSION

The importance of the government issuing a policy emerges from the welfare state government's obligations in carrying out state administration tasks. The function of the government or state administration, which is to provide public welfare, differs from the function of the judiciary, which is to settle disputes between residents. Government decisions put a priority on achieving goals or objectives (doelmatigheid) in accordance with applicable law (Zamroni & Zamroni, 2019).

The law serves as the legal foundation for the implementation of all government policies (Waagstein, 2010). In the theory of the rule of law, according to Freedrich One of the requirements is that the government carry out its duties and obligations in accordance with laws or regulations (Klabbers, 2014). The type or hierarchy of statutory regulations is defined in Article 7 paragraph (1) of Law Number 12 of 2011 as follows: 1) The 1945 Constitution of the Republic of Indonesia; 2) Decree of the People's Consultative Assembly; 3) Government Act; 4) Government Regulations; 5) Presidential Regulation; 5) Provincial Regulations; and 6) Regency/City Regional Regulations. There is no indication of the sort of ministerial regulation in the statutory hierarchy in the preceding hierarchy (Aji, 2020).

However, this type of regulation defined in Article 8 paragraph (1) that: "*Types of statutory regulations other than those referred to in Article 7 paragraph 1 include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, bodies, institutions, or commissions of the equal level formed by Law or Government by order of the Law, Provincial Regional Representatives Council, Governor, Regency/City Regional Representative Council, Regents/Mayors, Village Heads or equivalent*" (Aji et al., 2020).

The Minister of Agrarian Affairs and Spatial Planning is the Head of the National Land Agency, according to Article 5 of Presidential Regulation Number 20 of 2015. As a result, the Regulation of the Head of the National Land Agency No. 4 of 1991 concerning Land Consolidation has the same authority as a Ministerial Regulation or can also be a regulation issued by the Agency, as referred to in Article 8 paragraph 1. Article 8 paragraph 2 goes on to explain that "*legislation as mentioned to in paragraph (1) is acknowledged and has binding legal effect largely as it is directed by higher Regulations or is established on authority.*" The formation of Regulation of the Head of the National Land Agency No.4 of 1991, the legal foundation for its establishment, aimed to carry out the government's authority to arrange the management and use of land for the benefit of the public (Huda et al., 2020).

The position of the Head of National Land Agency Regulation, on the other hand, is lower than the Regional Regulation. As a result, local governments can bypass these regulations in implementing regional development. Municipality of Banda Aceh From 2003 to 2019, the government has not developed a strategy for land consolidation in both rural and urban regions. Land consolidation regulations have not been included into the substantive arrangements of the various Banda Aceh City Regulations related to land tenure and usage. Even the Banda Aceh

City Government, in the framework of supplying 30% green open space, continues to employ the pattern of budgeting for development funds, with no community engagement in the provision of green open space. There has been a shift in the role of agricultural land in rural regions, despite the lack of a regulating policy.

Furthermore, the Head of National Land Agency Regulation has a low-level position in laws and regulations; a higher legal framework is required at the level of legislation in the land consolidation position, which only exists in government policy at the National Land Agency level. In connection to the implementation of regional autonomy, the embodiment of land policy must be executed by the regional administration (Zhu & Simarmata, 2015). The Regional Government must prove its capacity to conduct local government activities in accordance with the expectations and requirements of the local communities (Kurnia et al., 2021). It is anticipated that if there is no legal umbrella at the legislative level, policies pertaining to the execution of land consolidation would emerge that diverge from the aim of land consolidation. Additionally, it is anticipated that if there is no legal umbrella at the legislative level, policies linked to land consolidation implementation may emerge that diverge from the goal of land consolidation. This will have an influence on the growth and development of slums and uninhabitable homes in Banda Aceh City (Noris et al., 2017).

Whereas no technical guidelines on land consolidation implementation have been created at the Aceh Provincial Region or Banda Aceh government levels. The existence of the Regulation of the Head of the National Land Agency No. 4 of 1991 has not been included into Aceh's development implementation. This has an impact on the erratic governance of land tenure and use in the municipal government of Banda Aceh. Many people relocated because of the 2004 Aceh Tsunami to other areas that were not affected by the Tsunami. Lamlagang, Cot Mesjid, and Laksana are among these locations. In certain locations, the circumstances of the communal settlements have grown unsanitary and irregular. According to the Aceh Tsunami inquiry team's assessment, one of the reasons of the numerous casualties during the Tsunami in Aceh was the difficulty of people fleeing and evacuating owing to the lack of suitable causeways and narrow roadways (Head of the Banda Aceh City Disaster Management Agency).

Some technical rules issued by the central government in the execution of Land Consolidation Regulation No. 4 of 1991 are more geared toward national goals without considering the interests of regions with diverse geographical circumstances and social structures (Kaharudin et al., 2021).

## **Legal Dualism in the Implementation of Land Consolidation at the Regional Level**

A legal product's can be observed in the practical level of its implementation, whether it can be carried out in accordance with its purposes or led to rejection, the utilitarian approach about the flow of a legal provision must then evaluate the beneficial influence that will establish. The dualism of rules employed in the execution of land consolidation in the regions was sparked by the legal material for land consolidation in the Regulation of the Head of the National Land Agency No. 4 of 1991. The government can resolve the regulatory duality, and parties who are disadvantaged by district/city rules can immediately submit a test to the Supreme Court. Second, if the central government determines that the rule violates higher laws or regulations or the

public interest, the government essentially needs to stipulate it and then submit it to the Supreme Court for fiat or material examination (Masitah & Santiago, 2021).

The National Land Agency oversees Land Consolidation. As a vertical agency, the National Land Agency is governed in carrying out its responsibilities by the central government's regulations and policies as an authority derived from the Basic Agrarian Law, namely the State's Right to Control the Land. In regions, vertical institutions in the area employ co-administration (medebewind). Land management is the power of the central government regarding land consolidation, and it involves the issuing of Land Use Permits, land segregation, land merger, release of rights, and land certification. The National Land Agency highly depends on proposals from the City District Land Office to carry out these operations. The district/municipality administration is responsible for the arrangement of use, starting with the identification of the location of land consolidation, constructing agreements with land consolidation participants, and carrying out the construction of road infrastructure, public and social accommodations. Policies issued by the central government in terms of land tenure will not be consistent with policies issued by the Regent/Mayor in terms of land consolidation implementation. The Central Government, in this case the National Land Agency, will adapt its policies to the central development planning program, while the Regency/municipality Government will simultaneously adapt to the central development planning program, and conditional on how the submission development program is planned (Fisher et al., 2018).

The absence of coordination between the national and regional government's cause's anomalies, failure to consolidate land happened during the implementation of land consolidation in Lambung Village, Banda Aceh City, owing to discrepancies between National Land Agency regulations and Banda Aceh City Government policies. As a result, the process of selecting the site and reaching consensus with the land consolidation participants is not followed by the management of issuing Property Use Permits, clearing land, merging land, waiving rights, and land certificate.

## Dysfunctional Coordination between Related Institutions

The implementation of land consolidation is closely related to the application method, according to Regulation of the Head of the National Land Agency No. 4 of 1991, there are two (2) ways, namely voluntary methods and required methods. The voluntary approach is based on the landowner's permission, but the mandatory method is executed if the initiative originates from the government and is based on the applicable legislation (Sasongko et al., 2019).

The voluntary method is regulated in Article 4 paragraph (2) of the Regulation of the Head of the National Land Agency Number 4 of 1991 concerning Land Consolidation, which states that land consolidation can be carried out if at least 85% of the landowners declare their agreement, where the land area covers at least 85% of the total area of land to be consolidated. While the compulsory method is basically funded by the landowner through a predetermined contribution, the drawback of the obligatory approach is that it reduces community direct engagement, whereas the optional way enhances community effective role (Mariyono, 2019).

The two methods must be combined in their implementation; this is integrally linked to the principle of participation, because even if the government takes the initiative to carry out land

consolidation, it must be agreed upon by the landowner in the area designated as the location of land consolidation.

The presence of Regency/municipality Governments is only mentioned in the Regulation of the Head of the National Land Agency No. 4 of 1991 as a complement to the committee structure, although the National Land Agency is operationally responsible for executing land consolidation. When it comes to land consolidation, the National Land Agency exclusively works with district and municipal governments. This clause is difficult to execute in an era of regional autonomy when autonomous province and district/municipal administrations follow the idea of decentralization in the land sector, under the coordination of the Governor, land consolidation is carried out by incorporating other relevant agencies. The district/municipality government supervises the implementation of regional autonomy province, in this perspective, the province serves as a supervisor of government administration at the district/municipality level, While the National Land Agency / Minister of Agrarian Affairs retains land administration authority (Ginting, 2018). As a result, in the present context of regional autonomy, the centralized method adopted in the Land Consolidation Regulation is not responsive to the decentralized system, making cooperation between agencies difficult.

## CONCLUSION

Legally and formally, the legal material for land consolidation is contained in the Regulation of the Head of the National Land Agency No. 4 of 1991 concerning Land Consolidation, which includes government policy on land-related regulations, government undertakings relating to the arrangement of control and arrangement of land use, the concerns of development and improving the quality of the environment. The concept of land consolidation principally needs to achieve the development of land that is used to provide protection and legal certainty from the state, as well as the use of land belonging, the use and efficacy, by engaging community participation that must be carried out in an inclusive approach between the process of structuring control and structuring of land usages.

The obstacle that occurred in the Banda Aceh municipality, namely: the position of the regulation is a policy that was born from the implementation of government authority, in this case National Land Agency, was not included in the legal hierarchy as referred to in Article 7 paragraph (1) of Law Number 12 Year 2011. In the implementation of land consolidation, there is legal dualism. Land Consolidation is functionally structured by the National Land Agency, which is directed by laws and policies of the national level government as an authority derived from the Basic Agrarian Law in carrying out its responsibilities. The arrangement of use begins with the determination of the location of the land consolidation, followed by the formation of an agreement with the land consolidation participants, and subsequently the construction of road facilities, public and social facilities under the authority of the district/municipal government level. On the other hand, dysfunctional implies that it is difficult to coordinate functions among the parties engaged in the execution of land consolidation, which relates to a centralized system that is no longer acceptable in the time of regional autonomy based on the decentralization concept.

Finally, it is recommended that the legal status of the National Land Agency Regulation No. 4 of 1991 be improved to become a regulation at the level of law by adapting the authority of

land consolidation so that it is held by the local government in the implementation of land tenure and land use management in accordance with Aceh province's special autonomy. The Banda Aceh municipal government must include land tenure and land use management patterns into rules and policies with the development plan.

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**Received:** 03-Aug-2021, Manuscript No. JLERI-21-6549; **Editor assigned:** 05-Aug-2021, PreQC No. JLERI-21-6549(PQ); **Reviewed:** 19-Aug-2021, QC No. JLERI-21-6549; **Revised:** 04-Feb-2022, Manuscript No. JLERI-21-6549(R); **Published:** 11-Feb-2022