

80^J Limitation of Indonesian Municipal Authority in Planning and Assessment - Based on a Case of the Malang Town Square Shopping Mall -

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The purpose of this paper is to identify the problems of the Indonesian city planning system, particularly the assessment of urban development and land uses. This paper firstly provides an overview of the planning system. Then, a case study is introduced, which involves the controversial land use conversion for a shopping mall development in Malang City. This paper investigates, 1) the insufficiencies of laws and the instrumental regulations to define land uses and provincial assessment and 2) the municipal council's assessment of the mayor's actions and granting of development permission. Based upon the case study, practical and factual problems are discussed: 1) The municipal development permission process was constrained by uncertain land use definition in spatial planning regulations, while the province could not assess the municipal process because of uncertain authority for municipal land uses. 2) The municipal council's assessment through the consultation session was not assured, because it depended upon the mayor's decision for the proposed development. The council's interpellation session was merely an arbitrary right. Consequently, this paper proposes: 1) exact criteria of activity corresponding to land use definition in spatial planning regulations and clear provincial authority to assess the municipal implementation of land use definition and 2) mandatory council assessment for all developments with certain impact and the availability of a neutral, accountable, and independent advisory board to assure the proper development of the permission process.

Keywords: Indonesia, spatial planning, development permission, council assessment

1. Introduction

Most developing countries have difficulties in adjusting their planning and land use system to achieve desirable development.¹⁾ Courtney²⁾ argued that, in developing countries, planning is restricted by a lack of feasible means to ensure implementation and anticipate market reactions, as well as by means to consider the cost for various government agencies and the economic impact. Indonesia also faces similar difficulties in municipal spatial planning and its implementation. The problems of Spatial Planning Law 24/1992 (S.P.L. 24/1992) have been much argued. T. Firman³⁾ contended that the development criteria of spatial plan cannot be applied for the actual demands of developments. The amendatory law (S.P.L. 26/2007) promotes zoning regulation to improve this situation. However, since the plan still has difficulty to define its objectives, basic regulations, and the authorities, zoning regulation may have the same problems as before. Farvaque C. and Patrick M.⁴⁾ identified out-of-date and inappropriate laws and incompetent and unfair law administration regarding urban land policies in developing countries. Firman T.³⁾ observed chaotic regulatory system and land administration and uncertain national-local decentralization during the national reformation (1998-2004). Kidokoro T.⁵⁾ found that Indonesian

detailed land uses in municipal spatial plans made the controlling system un-executable, combined with the incapability and the unaccountability of the municipal government, based upon the comparison work of Asian countries. Oetomo A.⁶⁾ determined that development permission is considered a “tool” of municipal government to earn local income.

These papers consider the municipal council and mayor as one municipal organization.³⁾ The council has the authority to supervise, evaluate, and monitor the performance of the mayor. It also has the authority to assess the extent to which the mayor’s development permission is disaccorded to the plan. Thus, it is important to analyze the relationship between the mayor and the council in the institutional/practical permission process, as well as the hierarchy of nation-province-municipality and the provincial actual roles in municipal spatial planning. Therefore, this paper first tries to describe the formal institutional relations in urban land use management and then analyzes the practical relation in the case of a shopping mall development in Malang City (Malang Town Square shopping mall-MTS) from 2005 to 2007. This case, which was controversial because of the un-functioned council assessment, will provide the important information to identify the problems of the planning system. This case gives a typical situation of urban land use management of Indonesian cities during the chaotic period of spatial planning administration. In Indonesia, there are quite many controversial issues for urban land because municipal governments have difficulties in planning process and the plan operation^{5), 6)}. Additionally, it is also worsened by the un-transparent process of urban land use assessment⁶⁾. In this sense, similar cases to MTS are likely to occur in other municipalities. Moreover, this case is valuable to identify the problem of planning system because MTS case was occurred in the failure relation among spatial planning agents of municipal governments, especially in assessing urban land uses. Although the case occurred under S.P.L. 24/1992, this paper’s discussion is still valid, because the new law has the same authority system for spatial planning and land use.

Now, Sulistyono J. already discussed the legal process of land-ownership transfer of MTS¹²⁾. Although he did not discuss the process of land use assessment in spatial planning, his work gives much information about the dialog between Malang municipal government and the inhabitants, in the land use assessment process. Therefore, the information of his work would be useful for this paper’s discussion.

Thus, this paper investigates 1) the insufficient urban land use definition in Indonesian spatial planning laws and unavailable provincial assessment for municipal plan; and 2) insufficient council authority to assess the mayor’s action, especially in the development permission process. Firstly, this paper gives an overview of the Indonesian spatial planning and land use system. Second, the MTS case is chronologically described. Third, some important actions and arguments for the permission are identified. Fourth, the mayor’s arguments about the unperformed council assessment are discussed to evaluate the council authority. Then, the problems of urban land use definitions in spatial planning laws and the council authority are discussed.

2. Indonesian Municipal Spatial Planning

2-1 Municipal Administration

The municipality has administrative autonomy by Local Administration Law (L.A.L.) 22/1999. The system was amended by L.A.L. 32/2004. The mayor holds the authority of administration and is directly elected by citizens for a five year term. The mayor has to submit an administration report to the council annually, and the council may then assess it (Figure-1).

The council members are directly elected by the citizens for a five year term. The council

has budget, monitoring, and legislative functions. The council may propose municipal policies and assess the mayor's proposals. The council must assess the mayor's planning decisions. Here, the council members may utilize the rights of interpellation, questions, and questionnaire.

2-2 Plan Hierarchy and Legal Instruments

The spatial plan deals with comprehensive natural resource utilization, and gives the legal basis of practical development. It is composed of three levels: nation, province, and municipality (Figure-2). This hierarchy presupposes that the lower-level plans must not contradict higher level plans (Chapter 19 of S.P.L. 24/1992).⁸⁾ The national plan gives the framework of conservation/cultivation areas. Provincial governments provide provincial spatial plans. Municipal governments should consider the direction of provincial plan in municipal plan. Under S.P.L 24/1992, many ministerial regulations

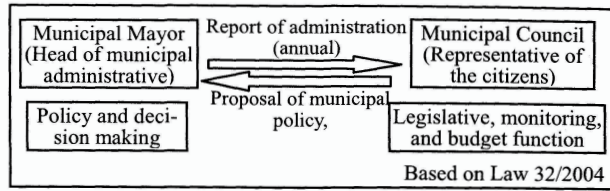


Figure-1 Institutional relation of municipal mayor and council⁷⁾

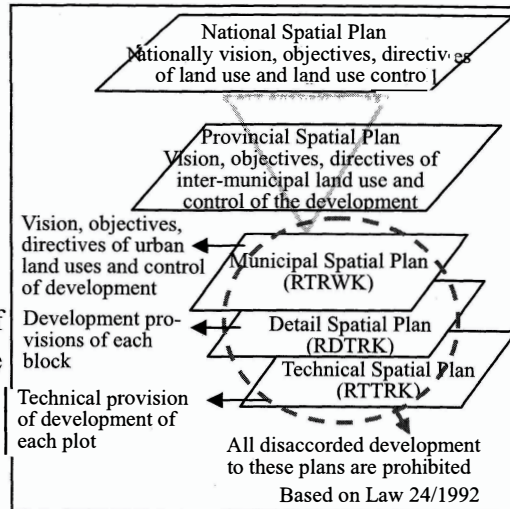


Figure-2 Hierarchy of Indonesian spatial planning⁸⁾

apply to municipal land use. However, these regulations are fragmented in objectives and institutions, and are inefficient, inconsistent, and conflict with each other.³⁾

2-3 Municipal Spatial Plan

Municipal spatial plans are comprised of general, detailed, and technical plans (Figure-2).⁸⁾ The general plan (RTRWK) is the main plan with a ten year term. The types of urban land use are regulated by Supplement V of the Ministerial Decree of the Minister of Housing and Regional Infrastructure (Keputusan Menteri- Kepmen. 327/ 2002).⁹⁾ Land use is categorized as cultivation/conservation. In the RTRWK, each type of land use is regulated for zoning. The detailed plan (RDTRK) is derived from the RTRWK. It may be evaluated every five years. It regulates the exact activities in relatively small blocks. These two plans are the basis of the permission. Additionally, municipal government may define a technical plan (RTRRK) to regulate building position, envelope, elevation, and materials in certain plot.

Spatial planning policies and development control are proposed by the mayor, then, the council evaluates them. The council may change the proposals and their implementation.

2-4 Development permission in municipal areas and the control of its application

Development permission is the mayor's authority. It covers the location permit, site permit,

Developer	National Board of Land Affairs	Team of Dev. Permit	Municipal Mayor	Head of District	Municipal Council	Provincial Mayor
1. Proposal of Location Permit	Preparation of land administrative matters	3. Public dialog preparation	2. Order of evaluation	4. Public dialog	Consultation	Development assessment
8. Proposal of advice planning/sit plan evaluation		6. Recommendation	7. Final decision			
14. Proposal of Building Permit	5. Evaluation and Consideration	11. Evaluation and Consideration	9. Order of evaluation	10. Public dialog	Interpellation	5 years evaluation of municipal administration
19. Proposal of additional permit		12. Recommendation	13. Final Decision			
Public opinion and objection (anytime)	7. Recommendation	16. Evaluation and Consideration	15. Order of evaluation	Municipal's consideration		
		17. Recommendation	18. Final Decision			

Based on the Law 24/1992, Ministerial Regulation of Agrarian 2/1999, Ministerial Regulation of Home Affairs 4/1996

Figure-3 Municipal development permission process and assessment¹⁰⁾

building permit, and other permits based upon municipal policy. These permits are issued based upon the RTRWK and RDTRK.^{8), 9)} The location and site permits are issued by the mayor only to the developer whose development/subdivision plan is in accordance with the land use in the RTRWK and the activities in the RDTRK and who has legal land-ownership.

The permission process is shown in Figure-3. As for location permission, the mayor delegates a team together with the National Board of Land Affairs (BPN) to evaluate the development proposal considering administration matters, RTRWK, and public opinion. The team, composed of the officials, further evaluates the proposal for site permission. Regarding development with land use conversion, the proposal must be reviewed by the council before the location/site permit is processed. The council may conduct an interpellation session. After the site permission, any development requires a building permit based on the RDTRK.

Needless to say, the team must analyze public opinions. The council may ask the mayor to stop the development and investigate the process. In case of an improper process, the administrative court may impose sanctions. Then, the provincial mayor may evaluate the process. Procedurally, the provincial government may assess the process on the request by the public or the municipal government. The provincial mayor may evaluate the municipal mayor's report.

3. A case study of Malang City 3-1 Profile of Malang and the case project

Malang City is located in East Java Province. Its population is 2,393,958.¹¹⁾ The city covers an area of 110,06 km²,¹¹⁾ and consists of five districts (Kecamatan) (Figure-4). The city center is in the Klojen district. A development disparity between western-eastern areas was the main issue.¹⁰⁾ However, some controversial developments exist, such as the shopping mall in the Malang Town Square (MTS) and the Malang Olympic Garden (MOG).¹²⁾ Since the MOG is on the city government's land, the MTS can draw the problems of the permission.

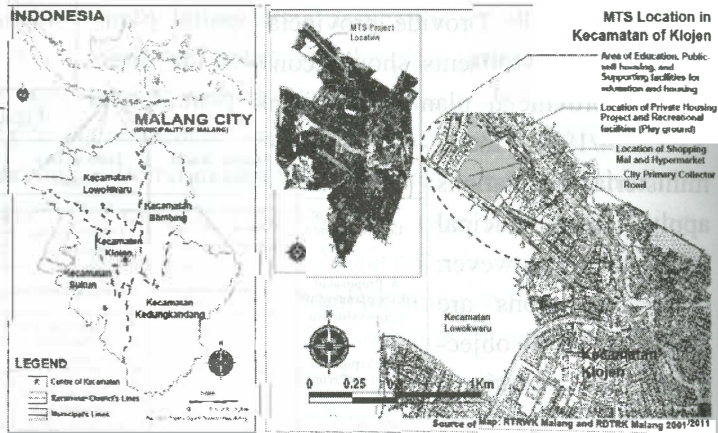


Figure-4 Malang City and the location of MTS^{10), 12)}

Practical land use of Malang City during the period of 2001-2011 is directed based upon Spatial Plan 2001/2011. This plan was issued as the Malang Municipal Regulation 2001/2010. Malang municipal government, unlike Jakarta, had no other local ordinances for plan implementation, especially for the development assessment. Actually, after the decentralization, the government of Special Local Autonomy of Jakarta (*Daerah khusus Ibukota Jakarta-DKI Jakarta*) applied Municipal Regulation 7/1991 in dealing development assessment until the new spatial plan was issued.¹³⁾ The differences between the cities was caused by their autonomy.

The MTS is a private development in the Klojen district. The project area is 86,230m².¹⁴⁾ According to the proposal of January 30, 2004, the development consists of private housing, house-shops, commercial facilities, such as a hotel, a mixed-use building, and recreational facilities. However, the RTRWK 2001-2011 had originally designated this area as housing with supporting activities for education.¹⁰⁾ Furthermore, the RDTRK (2002) designated the land to be prioritized for open-green areas, such as playgrounds and parks.¹⁴⁾

The problem is that the city council did not assess the mayor's permission process despite

public objection. Thus, this case can show what may happen under the present planning system.

The MTS process was appealed and is still before the provincial court. The development also has caused serious problems. It decreases green and water catchment areas and recently has caused frequent floods over the surrounding settlements.¹⁵⁾

Table-1 Chronology of MTS development

Stg.	Time (d/m/y)	Events	Actors
1	1995-2003	Land transfer agreement ¹²⁾	BPN, Developer, NDA
	04/10/02	Development agreement ¹²⁾	FPP, Developer
	27/01/03	Location permit ¹²⁾¹⁵⁾	City mayor
	07/08/03	Proposal of Advice Planning ¹²⁾¹⁶⁾	Developer
	30/01/04	Advice planning certification ¹²⁾¹⁶⁾	City mayor
	30/03/04	Buildmg permit ¹²⁾¹⁵⁾	City mayor
2	30/04/04	NGO appealed to the municipal court ¹²⁾	NGO, inhabitant
	30/08/04	Court order for revision of dev permit ¹²⁾¹⁵⁾	Municipal court
		City gov. appealed to the prov. court ¹²⁾¹⁵⁾	City mayor
	05/08/04	Public dialog (close session) ¹⁵⁾	City Mayor, FR
	06/08/04	Objection of DPRD roles ¹⁵⁾	FR
DPRD Interpellation session (failed) ¹²⁾¹⁶⁾		Head of DPRD	
3	10/08/04	Project inauguration ¹²⁾¹⁵⁾¹⁶⁾	City mayor, developer
	13/05/05	Agreement of employment ¹²⁾¹⁵⁾	Developer, FPP
	17/08/05	Clarification of the disaccorded project ¹²⁾¹⁵⁾	Municipal General Work
	20/08/05	Clarification of process ¹⁵⁾	Head of BPN
	23/08/05	Developer clarification ¹⁵⁾	Developer
	03/10/05	Litigation postponement ¹⁶⁾	Provincial court
	09/10/06	Expertise argumentation ¹⁵⁾	Expert of Law and justice
	15/12/07	Revision of detail spatial plan ¹⁵⁾¹⁶⁾	City mayor, DPRD
		Ascending sorted as the date of each event	
Resource : interview, newspaper and other formal documents			

3-2 Permission Process of MTS

Table-1 shows the chronology of the MTS. The first stage involves the development permit. In 1995, based upon the land-ownership transfer from the National Department of Agriculture (NDA) to a private developer, the BPN issued the land-ownership certificate.¹²⁾ In October, 2002, the local youth forum (FPP) agreed with the developer that the FPP was to support MTS provided that the developer employed FPP members in the project.¹²⁾ The youths were the surrounding inhabitants and regarded as the representatives by the developer and the government, although the members were not appointed by the inhabitants.

Based upon the transfer and the agreement, the location permit was issued by the 14th mayor (January 27, 2003).^{12), 15)} Here, the criteria of commercial activities in the RTRWK and the analysis paper of the RTRWK were used as the legal basis for the permit.¹²⁾ For the mayor, the criteria for commercial activities allowed large commercial development. And, the analysis paper required public facilities with regional/national supply capacity for national education.

The site permit was issued by the next (15th) mayor in January, 2004. This permit declared the shopping mall. However, the building permit (March 30, 2004) caused objections from the educational institutions, NGOs, and citizens.^{12), 15)} In April, 2004, a NGO for law and justice appealed to the city administrative court against the permission process. On August 3, 2004, the court ruled that the city government must revise the permission to keep the RTRWK purpose. The government brought the issue to the provincial court. This case is still before the court.

During the second stage, the MTS became a serious issue. The Forum of The Head of Universities (FR) had a discussion with the 15th mayor (August 5, 2004). The FR insisted: 1) the categorization as a public-oriented development is improper, because MTS was not managed by the city government. 2) The MTS is not a public development but a private one. 3) The MTS area was not defined as a large commercial development. Based upon these, the FR petitioned the mayor to reconsider the development permit.¹⁵⁾ The mayor responded that 1) the authority to cancel the permit belonged to the council; 2) the investigation of location permission was impossible, because the criterion for commercial facilities in RTRWK allowed MTS as regional activity; and 3) there was no legal basis to cancel the permission, because all required conditions for permission were fulfilled by the developer.¹⁵⁾

Finally, the mayor and the FR issued a statement¹⁵⁾, the main points of which were that the

FR rejected the development and required the investigation for the permission process and that the mayor was to cooperate with the municipal council for the investigation. Thereafter, the interpellation session was called (August 6, 2004).^{12), 16)} However, the session lacked a quorum. The chairman stated that the members could not judge the process to be “improper,” because no laws specifically applied to the process judgement.¹⁵⁾ Afterward, the FR further insisted that the analysis paper was improper, because it had never been opened to the public nor legalized.^{12), 16)} On August 11, 2004, the academics for law and justice, traffic management, and urban planning, the deputy of city building control department, and the student alliance of Brawijaya University held a discussion.¹⁵⁾ They concluded that the process was improper, because consideration was insufficient without council consultation and environmental evaluation. The deputy of city building control stated that the problem was principally caused by the uncertain provision of the permission procedure. The coalescence of the heads of schools and the FR also showed that the MTS project had not been publicly announced to their institutions.¹⁵⁾

The third stage includes the agreement (May 13, 2005) between the developer and the inhabitant to employ the surrounding inhabitants, and the MTS opening in July, 2005.¹⁵⁾ Although the public opposition was decreased, the process was still contested by the academics and NGOs. In the council session (August 17, 2005), the head of the Malang Department of General Work revealed that the RTRWK definitions were unclear for prohibited/allowable commercial development, the situation was worsened by the lack of guidelines which must be provided in the RTRWK, which created the troubles in the permission process.^{12), 15)}

On August 20, 2005, the BPN stated that the location permission process was legally performed, because the required conditions were fulfilled by the developer.¹⁵⁾ However, the provincial court postponed the litigation process (October 3, 2005), because the required procedural conditions for appealing were unfulfilled.^{15), 16)} This case is still pending. By the end of 2007, the government had started to revise the RDTRK and adjust the plan to match the MTS.¹⁷⁾

4. Discussion

4-1 Problem of the MTS development

The important matters discussed in chapter 3 are: 1) The contradicted criteria for prohibited/allowable development in the educational use area. 2) The definition of public facilities. 3) Unperformed environmental evaluation. 4) Ambiguous legitimacy of the FPP. 5) The legitimacy of RTRWK analysis paper. 6) The dysfunctional council. Among them, 1) and 6) are important. 1) provides a basic constraint for the city government in interpreting the criteria of development. It caused uncertainty in the permission process with 2), 3), 4), and 5). 6) is also critical for other matters. Under the situations, only the council can assess the mayor’s decision. The problem is how the council can function in the permission process.

4-2 Contradicted criteria of the prohibited and allowed development

In Chapter IV-3-7, the RTRWK stated that “development of big commercial activities in the city has to be limited. In the center of urban activities or the area along arterial/collector roads, the development of a shopping mall/ department store is allowed.” The analysis paper of the RTRWK stated that, “considering the nationally educational activities and the collector road of the ‘Veteran’ area (MTS area), this area may be classified as the area with intercity supply capacity. This area should be prioritized for the development with intercity supply capacity, such as the shopping mall.” However, Chapter IV-9 of the RTRWK stated that “development activities in the housing of the educational area in the Veteran area have to be controlled because of

its over-density. Further permitted development is only neighbourhood service activities (including the small-middle commercial activities), and land use conversion is permitted in less than 20% of the total area.” This contradiction stems from two problems. One is the uncertainty of the ministerial regulations for land use under S.P.L. 24/1992. The other is the uncertainty of the provincial authority in assessing land use under L.A.L. 32/2004.

Chapter 26, S.P.L. 24/1992 stated that “any permission of space utilization that contravenes a municipal spatial plan shall be declared null and void by the municipal mayor.” Under this Law, the municipal government has to provide a land use plan and the development criteria in the RTRWK and the RDTRK. On the other hand, regarding housing land use, the ministerial regulations under this Law had insufficient stipulations. Kepmen 327/2002 states that the development criteria of each land use are further regulated by the city government.⁹⁾ However, the government has no standards to define it in the RTRWK and the RDTRK.³⁾

Practical implementation of these law-regulations is shown in Figure-5. Based upon the Kepmen 327/2002, housing land use in the education area was defined in the RTRWK, which prohibited shopping mall (Chapter IV-9). Meanwhile, based upon the Ministerial Decree of Industry and Trading (Keputusan Menteri-Kepmen 420/1997)¹⁸⁾, the government also provided development criteria of commercial activities in Chapter IV-3-7 that allowed shopping mall with intercity supply capacity. Problems occurred, because the development criteria of housing land use were not regulated in Kepmen 327/2002, especially for the area with intercity supply capacity.

Legal basis and its important matters for land uses	Ministerial Decree of Housing and Regional Infrastructure 327/KPTS/M/2002 of city spatial plan	Ministerial Decree of Industry and Trading 420/MPP/Kep/10/1997
	Unavailable development criteria of housing land uses ⁹⁾	Development criteria of shopping mall ¹⁷⁾
RTRWK (development criteria)	Prohibition for shopping mall development	Development criteria of shopping mall (chapter IV-3-7)
	Land use of housing in education area (chapter IV-9)	Shopping mall is permitted only on the area with intercity supply capacity
Actual situation	1. MTS shopping mall is developed on the housing in education area 2. MTS area is appointed by the plan as the area with intercity supply	
Result	MTS Shopping mall development is permitted	

Figure-5 Implementation of the instrumental regulations for MTS

The new spatial planning

law (S.P.L. 26/2007) still cannot solve this problem. This law tries to introduce zoning regulation in municipal spatial planning. The Article 36 provides that municipal zoning regulation appoints land use, prohibited/permitted development, based upon RDTRK.¹⁹⁾ Its administration is regulated by the Regulation of the Minister of Interior (Peraturan Menteri-Permen 1/2008). However, it still has no clear definition for land use corresponding to the zoning regulation. Therefore, the clear definition of land use by laws and regulations is necessary, such as the definition of housing land use that reflects the certain characteristic of the development (land capacity, density, etc.) and prohibited/allowed development.

Considering the fragmentation of the regulations in spatial planning and land use, the problems are “which institution should be authorized to provide definitions” and “how the definition should be written.” Article 33(5), S.P.L. 26/2007 stated that “further provisions regarding water, land, air uses and other natural resources utilization are regulated by other instrumental regulations under this law.”¹⁹⁾ Principally, the authority of the technical definition belongs to the National Department of General Work. Based upon Chapter IV, Kepmen 327/2002, the department defines land use by the dimension, function, character of human/natural activities. However, the criteria of the activities are regulated by the regulations of other departments, such as the Departments of Agriculture and Trading. Nonetheless, integration among these regulations and Kepmen 327/2002 has not been achieved. For instance, municipal government appoints

housing land use based upon Kepmen 327/2002 and prohibits shopping mall. Meanwhile, the Presidential Regulation 112/2007²⁰⁾ allows shopping mall based upon the area's supply capacity on the condition that the shopping mall be located only along the arterial/collector road.

The second problem is uncertain provincial authority. Article 28, S.P.L. 24/1992 stated that, "in the case that there are matters that cannot be solved by municipal spatial planning, recommendations and approval by the provincial mayor are required."⁷⁾ Meanwhile, L.A.L. 32/2004 provides that land use planning and its execution are "under the municipal government's authority"⁷⁾ without further stipulations. Thus, a province performs an assessment only in response to the request of municipal government or citizens. After the case of MTS, S.P.L 26/2007 tried to revitalize provincial authority to assess and coordinate municipal spatial plans. Article 11 states that the provincial mayor may take action against improper municipal spatial plan and its execution.¹⁹⁾ However, it is difficult for deciding which land use must be evaluated and assessed.¹⁹⁾

The provincial authority should be strengthened to evaluate the interpretation of the municipal plan and its execution based upon the provincial spatial plan. Practically, the provincial government should be obligated to assess the development criteria in the RTRWK.

4-3 Dysfunctional Municipal Council in Land Use Conversion

In the MTS case, the mayor thought that the development accorded with the RTRWK, whereas the public thought that it did not. Principally, land use conversion should be assessed by the mayor based upon Chapter V-2, RTRWK, which states that "disaccorded development is tolerated only if it is built without problems and environmental disturbances, and contributes to the city."¹⁰⁾ The inhabitants' objections and the city court judgment (August 3, 2004) that stated that the MTS is disaccorded to the RTRWK 2001-2011 raised the necessity of the assessment for environmental disturbances and contributions. However, the assessment was not performed.

S.P.L 24/1992 did not state anything about the council assessment. Chapter 28(1) states that a municipal mayor carries coordination, planning, implementation and evaluation of municipal spatial planning. Council assessment is regulated in the Ministerial Regulation of the Interior Minister (Peraturan Menteri-Permen 4/1996). Article 7(2) of this regulation says that, "for the conversion of the strategic land with significant impact, the permission is issued after consultation by the municipal mayor with the council."²¹⁾

Table-2 shows two council sessions and the rights to assess land use conversion. The first session is the consultation. It had to be held before the location/site permission. The second is the interpellation. By the former session, the council cannot directly confirm, suggest, or give advice regarding the proposal of the conversion. It may offer its comments, opinions, and advice for the mayor. However, the council cannot cancel the mayor's proposal. As for the second session, L.P.L. 32/2004 (Article 43) says that the "council has the rights for interpellation, questionnaire, and opinion session."⁸⁾ Although the council cannot cancel the development permit, it may investigate the process and ask the mayor to cancel the permission. The council also may ask further investigation to higher-level governments. Here, the "right" does not necessary mean that the council actually will investigate. In the MTS case, the council session lacked a quorum.

Table-2 Municipal council's right in land use assessment

Council session of assessment		Utilized rights	Implication
1st	Consultation session	Obligated by UUPR 24/1992 and Permen 4/1996	Confirmation Suggestion Advice
2nd	Interpellation session	Un-obligated based on the Law 32/2004	Interpellation Opinion Questionnaire

Source: Analysis upon laws of spatial planning and local administration

The above uncertainty creates a dysfunctional council. S.P.L. 26/2007 with the Permen 1/2008 (Article 32)²²⁾ recently requires the municipal mayor to build a special team including

council members to analyze the proposal. However, the council's right to correct the mayor's decision is still without enforcement means. Additionally, although the Article 60, Government Regulation (Peraturan Pemerintah-PP 25/2004) requires that every council discussion for spatial planning be publicized,²³⁾ the public has a limitation of right to know because the council can decide what should be discussed.

Based upon these circumstances, "changing the council rights to duties" is one idea. But it does not assure deliberate discussion. The main problems are unaccountability and the lack of transparency. In fact, each municipality has an advisory board, called the "Coordination Board of Spatial Planning" (BKPRD).²¹⁾ The BKPRD works to assure the whole process of spatial plan implementation by advices for the future mayor's spatial policy, while the team stated above works only in the development permission process. According to Ministerial Decree (keputusan Menteri) Kepmen 147/2004, the BKPRD is composed of municipal officials. By Kepmen 147/2004, the head of the BKPRD may invite experts to discuss planning, implementation, and evaluation²⁴⁾. Of course, the independency is limited because it is under mayor's authority²⁵⁾.

Here, the Japanese municipal advisory council of city planning (*Shingi-kai*) provides an idea. The members of the *Shingi-kai* are usually from upper government, academics, the municipal council and residents, and, *Shingi-kai* is under the mayor's authority. Although many problems were discussed from the viewpoints of meeting operation²⁶⁾, disclosure²⁷⁾, member composition²⁸⁾ and actual function for development permission²⁹⁾, *Shingi-kai* is still expected to be the organization to secure the relationships between governments and public²⁷⁾, and to coordinate stakeholders' interests³⁰⁾. Among these discussions, transparency/disclosure, independency and neutrality are common important properties that *Shingi-kai* should satisfy. Of course, it is nonsense to employ the exactly same system, *Shingi-kai* could contribute to improve BKPRD.

5. Conclusion

This paper has revealed problems concerning development assessment in Indonesia, based on a case study of a shopping mall development. The results are summarized as follows:

1. Undefined developed activities criteria for each urban land use in Kepmen 327/2002 caused difficulties with the assessment of the Malang Town Square shopping mall (MTS) development. By the lack of the criteria, the RTRWK 2001-2011 and its RDTRK could not be implemented. Other laws and regulations and Kepmen 327/2002 are also not integrated.
2. Although provincial government has the authority to assess and assist municipal spatial planning, it was not performed, because the authority was uncertain in S.P.L. 24/1992.
3. The council consultation session could not assess the mayor's actions and decisions. Since the mayor decided the accordance of the MTS development, the session was unnecessary for the mayor. Moreover, the council interpellation session could not fulfil the quorum. This in part rendered the spatial planning regulations for land use conversion too uncertain to enable the mayor's action/decision to be judged.
4. Land use as a part of zoning regulation should be exactly defined in Chapters 35, 36, 37 of S.P.L. 26/2007. Then, the technical regulations must regulate certain characteristics of each land use and its assessment. The S.P.L. should authorize a province to build provincial zoning regulations that bind each municipality.
5. At the municipal level, the improvement of mayor-council authority distribution is required. The council assessment should be obligated by S.P.L. 26/2007 for all developments with certain impact. More importantly, the transparency and accountability of the process should be

improved by an approach such as the Japanese *Shingi-kai*.

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