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The price of uncertainty: kampung land politics in post-Suharto Bandung

Most Indonesian urban poor live in ramshackle settlements called *kampungs* and occupy land according to tenure arrangements unrecognised by the formal land law regime. Reform since the 1998 fall of Suharto has led to some recognition of these 'semi-formal' arrangements. This complicates the ambitious development agenda of a city like Bandung, pitting two sides with seemingly conflicting interests against each other: the urban poor and the municipal government. Both are dissatisfied with Bandung's land reforms.

Gustaaf Reerink

In less than a century, Bandung developed from a drowsy town of some 10,000 inhabitants into a metropolitan city of over 2.5 million. Located in the mountainous West-Javanese Preanger region, it first served as a pleasant retreat for well-to-do Europeans. After independence, between 1945 and 1965, it was Indonesia's fastest-growing city, as refugees fled West-Javanese countryside that had become a battleground between the Republican Army and the Darul Islam movement for the establishment of an Islamic state. Most people moved to relatively safe cities and hundreds of thousands found refuge in Bandung. In later years more migrants came to take advantage of the increased demand for labour. To this day the city attracts newcomers from all over Indonesia.

These vast migration flows, paired with government inaction, spawned many urban *kampungs*. In the colonial period, the city literally engulfed nearby rural villages. The colonial municipality kept these villages autonomous as legal enclaves that applied their own *adat* law instead of the system of land rights created by the Dutch Civil Code. After independence many rural migrants moved into these villages, which soon lost their rural character and developed into urban *kampungs*. Other migrants formed new *kampungs* by squatting land, mostly along riversides, railway tracks and on graveyards. Because Indonesia did not formalise a housing policy until the 1970s, and because that policy has largely failed to meet the needs of the urban poor, migrants still have no choice but to settle in these *kampungs*.

Treating the poor like the poor

To this day, urban *kampung* dwellers do not expect much from the government. During the first decades after independence, they remained more or less autonomous. From the 1970s, when the New Order's economic policy began to yield a profit, the government started programs to improve *kampung* living conditions, but land tenure and land use were not addressed. So despite physical, social and economic improvements, most *kampungs* are not in accordance with the formal land law regime. The 1960 Basic Agrarian Law (BAL) was an attempt to abolish the colonial dualist system of land rights. Unregistered (former) *adat* land was to be integrated into the system of statutory land rights created by the BAL. In order to accelerate this process, the Indonesian government initiated land registration projects beginning in the 1980s, providing land titles to the poor at low cost, but the projects themselves were costly and had limited reach. Most important, the government pursued an ambiguous policy toward providing the poor with documentation reflecting legal entitlement to their land. With the New Order developmentalist approach gaining prominence, the government wanted free reign to develop any land however it wished. By not acknowledging land tenure arrangements existing outside systems of statutory land rights and traditional *adat* law, it could do so.

The municipality has seldom been strict in enforcing regulations on land tenure and land use, not even after the Indonesian parliament passed a spatial planning law in 1992. This was not only the result of a lack of administrative capacity; the political and socio-economic costs may also have been too high for strict enforcement. But if the government or an investor needed the land, they could indeed arbitrarily evict *kampung* dwellers without proper compensation, especially during the New Order (1966-1998). In Bandung, evicted settlers sometimes received some form of compensation, even if they possessed no evidence of rights to the land.

The lack of land registration contributed to the emergence of legal pluralism in Indonesia's land sector. Many forms of land tenure found in *kampungs* still cannot be classified under the legally acknowledged system of statutory land rights, but neither under traditional *adat* law. Generally, *kampung* dwellers apply 'semi-formal' tenure arrangements, which are non-traditional and use notions of the formal system of land law and other formal legislation that do not even recognise them.

However, the local (urban sub-district and district) administration does recognise and accept these arrangements (see also: Fitzpatrick 1997, 1999), not on any legal basis, but on the basis of daily practice, including the daily practice of corruption. Thus 'semi-formal' tenure arrangements may provide tenure security for the urban poor, but this is not to say their land tenure is legally certain. Their security is based on their own perceptions of the municipality's attitude toward these arrangements, itself determined by the level of support the urban poor receive from the local administration and local politicians. This attitude may easily change. Legal certainty requires legal recognition.

Post New Order hopes

The fall of Suharto and his New Order government and the ensuing socio-political and legal reforms were generally expected to greatly influence the formation of the rule of law and thus the extent of tenure security and legal certainty of *kampung* dwellers. In particular, the 2001 Laws on Regional Autonomy led to a complete overhaul of the country's constitution: in principle, these laws not only transferred tasks and authorities but also decision-making power and, to a lesser extent, financial means from Jakarta to districts and municipalities. So, according to the laws, the National Land Agency (NLA), one of the country's most corrupt state institutions, would have to transfer its powers to these local governments (on the NLA's reputation, see: Bachriadi, Bachrioktora and Safitri 2005). Spatial planning would no longer be executed according to a top-down approach. Free elections on the district and municipal level would allow people to push for the reform of regional and local regulations necessary to clear the way for innovative approaches to land administration and management. And because the laws also allowed districts and municipalities to generate their own local revenues (*PAD - Pajak Asli Daerah*), they would actually have the means to implement innovations.

A riverside *kampung* in sub-district Taman Sari, north Bandung
courtesy of author



Soon, however, a number of presidential decisions diluted the effect of the new laws on regional autonomy. Land issues over which districts and cities have authority are now limited to seven, such as spatial planning and the resolution of conflicts over the unauthorized occupation of land. But districts and cities already had authority over most of these issues, and others, such as the authority to define *adat* rights, are hardly relevant for a city like Bandung. So from a legal point of view, not much changed in the urban land sector. Nevertheless, the laws do have an impact on the legal position of Bandung *kampung* dwellers, though in a different manner than expected: there is an increased risk of eviction for *kampung* dwellers from

'their land' but an increase in the amount of compensation they receive.

Fiscal decentralisation has resulted in what some Indonesians call 'local revenue obsession' (*obsesi PAD*). Bandung's municipal government goes out of its way to attract new investors. It wants the city to become a centre of the services industry, which in practice means shopping malls and factory outlets. To achieve this, the municipality must redevelop land, especially if well-positioned, to meet economic or strategic goals. *Kampung* land is attractive for this purpose: it can be acquired at low cost and redeveloping it eliminates urban eyesores while upgrading Bandung to a modern metropolitan city.

Kampung power

It is questionable whether the general public supports Bandung's ambitious urban development agenda. Municipal officials and council members have repeatedly demonstrated that they not only represent the people but also business interests. Local NGOs and academia criticised the latest spatial plan for the lack of transparency in the decision-making process and for its content (see for instance: Zulkaidi and Kumala Sari 2004). In that respect, regional autonomy has not met expectations.

But *kampung* dwellers no longer accept land acquisition at any price. Negotiations over compensation last long and are can-tankerous. A recent example was the acquisition of land for the Pasupati flyover, in north-central Bandung, which lasted over six years and led to vigorous protests by settlement dwellers affected by the project. In the end most dwellers welcomed the outcome. Their daring to reject the municipal government's initial offer and organise protests won them relocation to a new settlement in the city's outskirts, or compensation for their buildings and land, even in the case of some squatters.

These are not just power games. Local officials and politicians now acknowledge that *kampung* dwellers have a right to compensation. Still, the outcome of any acquisition of *kampung* land is uncertain, not only for the urban poor, but as a result of the new socio-political balance, for any government institution or investor wishing to acquire urban land. Recent experiences have led the Indonesian government to pass a new regulation that should facilitate efficient land acquisition. However, it applies only to land registered according to the BAL, and otherwise leaves matters of eviction and compensation to the discretion of the municipal government. As long as there is uncertainty about the legal position of *kampung* dwellers, the once useful flexibility in the system of land law will harm any form of urban development. In terms of time and money, and given its development ambitions, the Bandung municipality is paying a high price for this uncertainty. <

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