Spatial management in Indonesia : from planning to implementation : cases from West Java and Bandung : a socio-legal study

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CHAPTER III
THE TRANSFORMATION OF CITY MASTER PLANS INTO SPATIAL MANAGEMENT

3.1. Introduction

This chapter looks at the extent to which regional governments in Indonesia during the Old and New Order enjoyed genuine autonomy in making and implementing spatial management policy and what factors influenced these processes. My contention is that the Town Planning Law of 1948 (Stadsvormingsordonnantie or SVO 1948) and its successor, the Spatial Planning Law 24/1992 (SPL 1992) became part of the top down development planning system introduced in the early 1960s. This system was adopted by the New Order and preserved in part after *Reformasi*. As a result, district and municipal governments have never been allowed to formulate land use planning autonomously, or supervise its implementation without interference from the central government. Consequently, district spatial plans have become far removed from the concerns of individual and communal land owners and have ultimately failed to function as a government tool to control land use.

Unfortunately, there is not much literature on Indonesian spatial management which discussed the issue raised above. With one exception,[189] a good overview and critical analysis of the legal and historical aspects of spatial planning that also addresses the practice of planning is lacking. Conspicuously absent are also writings about spatial management dealing with the relationship between land use planning and natural resource management in Indonesia.

Yet, there are good reasons to take a closer look at the latter subject in particular. The SPL 1992 was officially meant to play a similar harmonizing role for land use planning as the Environmental Management Act of 1982 for environmental management. The SPL 1992 attempted to put into place a comprehensive approach to natural resource management, and

[189] Niessen, Nicole. "Municipal Government in Indonesia: Policy, Law, and Practice of Decentralization and Urban Spatial Planning", (Research School CNWS, 1999) & Nicole Niessen, Municipal Government in Indonesia: Policy, Law and Practice of Decentralization and Urban Spatial Planning, dissertation, Leiden University, 1999.

as such constituted what in Indonesia is usually referred to as an 'umbrella act'. [190] Even its predecessor, the SVO 1948 contained a number of principles that were to be implemented by all government levels (central, provincial and districts). This should have created a hierarchical system of spatial-development planning, but with clear realms of authority at lower levels.

However, this attempt at harmonization of law and policy-making regarding spatial planning created tension between the top-down but fragmented approach to natural resource management (in oil & gas, mining and forestry) and the supposedly integrated and comprehensive approach to land use adopted by the SPL 1992.[191] This conflict of principles and interest determining land use between natural resource management and spatial planning has been long disregarded by Indonesian authors and even NGOs in their critiques of Indonesian land administration policies and expropriation practices. Fortunately more recently this insight has gained more currency, even if it has not yet led to better harmonized natural resource management. But at least spatial and land use planning are now considered and discussed as inseparable from land management, including land administration.[192] And yet, increasing appreciation does not lead to better implementation. To understand why this I will look at the development of the idea of city planning which emerged in Indonesia in the late 1940 and how the same concept changes over time during the Old and New Order.

This chapter is divided into four sections. The first one presents a historical overview of the evolution and transformation of town planning, paying special attention to the similarities and differences between colonial city planning and urban planning after Indonesia became independent. The second section discusses development planning under the Old and New

[190] Bedner, A.W. 'Amalgamating Environmental Law in Indonesia ', book chapter in Otto, J.M., Arnscheidt, J. Stoter, S. en B. van Rooij (eds) *Lawmaking in Developing Countries*, (Amsterdam: Amsterdam University Press, 2008.

[191] For a discussion of the terms co-ordination, harmonization and integration, see Otto. See: Jan Michiel Otto, "Incoherence in Environmental Law and the Solution of Co-ordination, Harmonisation and Integration", in Adriaan Bedner & Nicole Niessen (eds.), Towards Integrated Environmental Law in Indonesia? (Leiden: Research School CNSW, 2003), pp. 15-16. Otto suggests that coordination should be used to refer to the act of adjusting separate parts aiming at bringing the parts into a proper relationship, while harmonization should refer to the attempt at bringing separate parts into conformity leading to a coherence that produces agreeable effects, and lastly that integration be understood as the merger or fusion of separate parts.

[192] UN Habitat, Handbook on Best Practices Security of Tenure and Access to Land, (Nairobi: UN Habitat, 2003); Cf. FAO, Good Governance in Land Tenure and Administration, (Rome, 2007). The same attitude has also been reflected in the PCA 9/2001 on agrarian reform and natural resource management issued after the fall of the New Order government.

Order governments and how this provided the basis for the sectoral approach to natural resource management. To counter the negative effects of such 'sectoralism', the New Order introduced a special spatial management scheme, including town planning, which will be discussed in the third section. The final part will look at the SPL 1992 and its relation to other land use planning legislation, notably as developed by the Ministry of Forestry. The central theme linking all of this is the relation between urban development, including sectoral development planning, spatial management, land acquisition and the dispossession of land owners. The Chapter demonstrates the importance of spatial management for land owners' access to land and their tenure security. It further provides the basis for discussing the changes during Reformasi in Chapters 5 and 6.

3.2. The Dutch Colonial Town Planning Regulatory Framework

As noted by Van Roosmalen, Indonesian city planning originated at the beginning of the twentieth century with changes in the structure of the Dutch colonial government. [193] City planning was introduced in order to accommodate the needs of a growing urban population in Dutch colonial towns.[194] Briefly stated, the need for a city planning regulatory framework law arose with the creation of autonomous *gemeentes* in the Netherlands Indies in the 1904s, which were to accommodate the demands for influence on the government among the

[193] *Wet Houdende Decentralisatie van het Bestuur in Nederlands-Indie* (Law on the decentralization of the government of Netherlands-Indies, dated 23 July 1903), consisted of three articles, which were inserted into the Dutch Indies constitution (*Regerings Reglement of 1854: reglement op het beleid der regering van Ned-Indie*, Art. 68a, 68b and 68c). On the basis of the 1903 decentralization law, several *gemeente's* were established with powers to: establish taxes /local revenue to engender their own financial means and manage government affairs delegated by the governor general or heads of the *gewesten* (provinces) to the regions. Ph. Kleintjes, Het Staatsrecht van Nederlandsch-Indië: Eeerste Deel, (Amsterdam: J.H.de Bussy, 1911), pp. 268-270. For a concise history of the decentralization laws and movement during the colonial period see Soetandyo Wignyosoebroto, Desentralisasi dalam Tata Pemerintahan Kolonial Hindia-Belanda: Kebijakan dan Upaya Sepanjang Babak Akhir Kekuasaan Kolonial di Indonesia (1900-1940), first edition, (Banyumedia Publishing: Malang, 2004). Cf. Soegijanto Padmo, "Desentralisasi Pemerintahan Daerah di Indonesia", http://sejarah.fib.ugm.ac.id/artdetail.php. (last accessed June 30, 2006)

[194]Pauline K.M van Roosmalen, "Expanding Grounds:The Roots of Spatial Planning in Indonesia", in Freek Colombijn, Martine Barwegen, Purnawan Basundoro and Johny Alfian Khusyairi (eds.) Kota Lama Kota Baru, Sejarah Kota-Kota di Indonesia, (Yogyakarta: Penerbit Ombak, 2005), pp. 75-117. See also: "Blaricum sous les tropiques. Les principes de l'urbanisme moderne néerlandais en Indonésie' in: Marc Pabois, Bernard Toulier, *Architecture coloniale et patrimoine. Expériences européennes*, (Editions Somogy, Paris 2006), 58-75.

growing European population.[195] It was based on the system found in the Netherlands at the time.[196]

None the less, only in 1938 did the Dutch colonial government submit a draft of a city planning ordinance (*Stadsvormings-ordonnantie* or SVO) to the *Volksraad.* Its explanatory memorandum described the purpose of town planning as follows:[197]

> "(…) to organise construction and building, by local governments as well as by others, in order to guarantee the development of towns in accordance with their social and geographical characteristics and their expected growth. Town planning needed to strive for a proportional division of the needs of all population groups corresponding to their disposition, and to create a harmonious functioning of the town as a whole. All this must take into consideration the environment and the position of a town in a wider context."

The promulgation of the SVO was delayed for some ten years due to the outbreak of World War II, the Japanese occupation of Indonesia (1942-45) and the war between the newly declared Indonesian state and the Netherlands (1945-1949). By then, the SVO was to answer completely different needs: the reconstruction of badly damaged cities under Dutch occupation forces[198] and, in particular, the urgent need to provide housing for the urban population.[199]

In 1949, the Netherlands Indies' government enacted an implementing regulation of the SVO (the *Stadsvormingsverordening 40/1949 or SVV)*, which further specified the municipal government's obligation to provide general and detailed city planning maps. These were to indicate building zones for general and particular purposes, as well as the network of roads connecting the various parts of the city zones. The SVV also stipulated that detailed land use

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[195] Soetandyo Wignyosoebroto, op.cit, pp.22-26.

[196] Peter J.M Nas, "The Origin and Development of Urban Municipality in Indonesia"(Sojourn, vol. 5, no.1, 1990), pp. 86-112.

[197] As quoted from Van Rosmalen, 2005, op.cit, p. 2.

[198] Johan Silas, "Perjalanan Panjang Perumahan di Indonesia dalam dan sekitar Abad XX", (dissertasi ITB, 1989).

[199]Ibid. See also: Martine Barwegen and Freek Colombijn, "Renting Houses in Indonesian Cities, 1930-1960", paper presented before the First International Conference on the History of Indonesian Cities, Surabaya 23-25 August 2004. The Bill was promulgated by "Besluit van de Luitenant-Gouverneur-Generaal van 23 July 1948 no. 13".

planning was to guide the formulation of detailed technical rules pertaining to road and building construction.

In addition, the SVV (the third chapter) provided for the municipal government's authority to acquire land for urban development in realizing urban development blueprints. The bases and procedures for expropriation were provided by the Expropriation Ordinance (*Onteigeningsordonnantie* S.1864-6 as amended by S.1920-574). The city plan would provide clarity to the government and urban citizens alike on the future of the land. Urban planning thus influenced the extent to which inhabitants of a city enjoyed tenure security and would have equal access to the end result of city planning: a well managed city with a sufficient amount of open spaces, providing basic necessities to all.

3.3. Adaptation and Transformation of the SVO/SVV into Indonesian Law

The SVO and the SVV were declared applicable between 1948 and 1949 in the following Dutch controlled municipalities: Batavia (and certain suburbs), Surabaya, Semarang, Malang, Cilacap, Pekalongan, Padang, and Palembang.[200] However, implementation in these and other municipalities did not follow after the transfer of sovereignty by the end of December 1949, even if the newly independent Indonesian state incorporated the SVO and SVV into national law.[201] Factors inhibiting implementation were, among others, the perception that the SVO was part of the Dutch colonial agrarian law, more suitable for Dutch-colonial *gemeentes*, and likely resulting in the maintenance of western enclaves and the colonial spatial segregation of different races.[202] Another plausible explanation would be that lack of financial and managerial capabilities of town administrators prevented successive municipal governments in the 15 cities mentioned to prepare city planning in line with the SVO/SVV. The only exception was the plan to build a new town in Kebayoran Jakarta, which was launched in 1948 and implemented after independence.[203]

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[200] Nicole Niessen, 1999, op.cit, pp. 223-228. Cf. Lambert J. Giebels, Jabotabek: An Indonesian-Dutch Concept on Metropolitan Planning of the Jakarta Region, especially his chapter on development of physical planning in Indonesia in Peter J.M. Nas (ed), The Indonesian City: Studies in Urban Development and Planning, (Foris Publications: Dordrecht-Holland/Cinnaminson-USA, 1986), p. 100-101.

[201] Asep Warlan Yusuf, Aspek-Aspek Hukum dalam Perencanaan Kota di Daerah Tingkat II Kotamadya Bandung, (unpublished, master thesis, faculty of post-graduate studies, University of Padjadjaran, 1990)

[202] J.M Otto & Ateng Syafrudin, "Hukum Tata Ruang di Indonesia dan Belanda" (Pro Justitia 2/VIII, April 1990): 5-35.

[203] Van Roosmalen, 2005, op.cit. p. 12.

Only in 1973 were the SVO and SVV 'revitalized', following the start of an 'open door' policy by the New Order government in 1966-1967. It was argued that the attempt at re-incorporating Indonesia into the global commercial network must be supported by a policy of turning urban areas into engines of economic growth[204]. Reinvigorating city planning and declaring it applicable to other cities aside from the 15 municipalities mentioned earlier thus became a tool for economic development. In 1973, the Ministry of Home Affairs declared the applicability of SVO for cities other than those 15 already appointed by the colonial government, by Circular Letter (Pemda 18/3/6) dated 15-5-1973 on the Formulation of City Planning).[205] The letter, addressed to the heads of provincial regions (governors), stipulated that 'awaiting the issuance of more specific regulations, the SVO, as adjusted to changes made in the state and government structure[206] should serve as the legal basis for drawing up urban development plans'. The letter further declared that an urban development plan should consist of physical, social and economic planning and be drawn up in support of (economic) development (article 2), regulate and coordinate different kinds of land use planning (zoning) (article 3) and be made for a period of 20 year with the possibility to be evaluated every five years (article 4).

However, real efforts to implement the SVO only started in 1976, when a new system of regional government was established on the basis of RGL 5/1974. In 1976, the President

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[204] Deputi Bidang Pengembangan Regional dan Otonomi Daerah-Bappenas, Koordinasi Pembangunan Perkotaan dalam USDRP, launching proyek urban sector development reform project, Jakarta 24 July 2006. For a historical perspective on urban development strategy commencing from the 1960s, see: Ruchyat Deni & Maman Djumantri, "Pergeseran Pendekatan dalam Perencanaan Pengembangan Wilayah Indonesia", in Haryo Winarso, Denny Zulkaidi, Miming Miharja (ed), Pemikiran dan Praktek Perencanaan dalam Era Transformasi di Indonesia (Bandung: Departemen Teknik Planologi ITB, 2002), pp. 9-26. Cf. Howard Dick, Surabaya, A City of Work: A socio-economic history 1900-2000, (Athens-Ohio: Ohio University Press, 2002). Cf from the same author, "Urban Development and Land Rights: A Comparison of New Order and Colonial Surabaya, in Peter J.M. Nas (ed), The Indonesian Town Revisited, (Singapore: Institute of Southeast Asian Studies, 2002), pp. 113-126. Dick argues that that the decline of town planning between the 1930s and 1970s may be partly explained by the declining importance of cities as economic centres in the international economic network.

[205] Nicole Niessen, op.cit, pp.230-231; Cf. Budhy Tjahjati, Pembangunan Perkotaan dengan Pendekatan Penataan Ruang: Implikasi dan Prospeknya, sumbangan tulisan untuk sejarah tata ruang Indonesia 1950-2000, Jakarta, Agustus 2003. Cf. Ir. H. Sjarifuddin Akil (direktur jenderal penataan ruang, depkimpraswil), Pengembangan Wialyah dan Penataan Ruang di Indonesia: Tinjauan Teoretis dan Praktis (makalah dalam kuliah terbuka proram magister KAPET, Unhas, Makassar, 2007).

[206] As the consequence of the reintroduction of the 1945 Constitution and the enactment of Law 18/1965 jo. RGL 6/1969.

issued Instruction 1/1976,[207] point 25 of which stipulated the obligation of every city government (municipality) to draw up city plans. These would be declared valid after approval by the Minister of Public Works and ratification by the Ministry of Home Affairs. This was apparently how the President interpreted the SVO's Article 10, which stipulated that autonomous municipalities must negotiate with departments holding legal authority to determine land use.

Thus, under the New Order city planning came firmly under the authority of the central government. A top down and centralized approach to spatial planning was established which seriously curtailed the right of inhabitants to participate in the planning process. This was a radical change from what had been envisaged by the SVO and SVV, both of which stressed the autonomy of *stadsgemeenten* in this matter. This was partly a logical consequence of the hierarchical government structure established by RGL 5/1974 which defined "provinces and districts" at least partly as autonomous regions (*Daerah Tingkat I* and *Daerah Tingkat II*) with viz. governors and mayors/regents as their heads, and elected councils to hold them accountable to their constituencies. However, in fact regional governments were run from the top down by developmental interventions initiated by the central government, and accompanied by strict surveillance.[208] Land use planning and access to natural resources thus became dependent on centrally determined development planning.

The removal of (urban) spatial planning from the sphere of local autonomy is evident from a study conducted by a consultancy firm in 1986.[209] During the plan preparation stage, the regional government was required to consult with the provincial *Badan Pembangunan Daerah* (Regional Development Planning Board or *Bappeda*) and the *Badan Pengembangan Kota* (Urban Development Board or *Bangkota*), in order to assure conformity in planning at the local, provincial and national level. After consultation with the Directorate of Regional Legislature Development (*Direktorat Pengembangan DPRD*) of the Directorate General of Public Administration and Regional Autonomy of the Ministry of Home Affairs the master plan was adopted by regional regulation and then submitted to the provincial government before being sent to the Minister (of Home Affairs) for ratification. District or municipal

[207] Presidential Instruction 1/1976 concerning the synchronization of task and responsibilities between agrarian issues, forestry, mining, transmigration and public works (*pedoman sinkronisasi pelaksanaan tugas keagrariaan dengan bidang tugas kehutanan, pertambangan, transmigrasi dan pekerjaan umum*).

[208]Henk Schulte Nordholt and Gerry van Klinken, in their introductory chapter in Renegotiating Boundaries: Local Politics in post-Soeharto Indonesia (KITLV Press: Leiden, 2007), p.21.

[209] DHV Consulting Engineers, Legal and Institutional Framework of Urban Development, Physical Planning & Land Management in Indonesia, (January 1986).

parliaments played no role at all. After ratification, the local regulation containing the master plan would become legally binding and serve as the basis for the approval of regional budgets and the allocation of development grants.[210]

In practice both the Ministers of Home Affairs and Public Works claimed a monopoly over the formulation of urban master plans. Both were adamant in defending their scope of authority. In the end, in a joint decree, they agreed to share competence.[211] Henceforth, the Minister of Home Affairs would only deal with administrative matters and the Minister of Public Works with all technical issues.[212]

Pursuant to this Joint Decree the Minister of Home Affairs amended its City Planning Regulation 4/1980 by Ministerial Regulation 2/1987 instead of drawing up a new one. This was rather peculiar from a legal point of view, because Article 23 of the Joint Decree declared Regulation 4/1980 and all its implementation directives (*petunjuk pelaksanaan*) invalid. However, no one questioned this matter and in practice the new Ministerial Regulation was considered valid. Its Article 15 reaffirmed that city planning had to follow the five-yearly General Guidelines of State Policy issued by the People's Consultative Assembly, as well as the general development planning made by the provinces and municipal/district governments. Conversely, development projects, either initiated by the government or even individual entrepreneurs, could only be realized if proposed land use was declared in conformity with existing town planning.

The same approach of linking spatial planning to centrally made development plans underlied the 'technical' side of urban spatial planning as regulated by the Ministry of Public Works in Decree 640/KPTS/1986 on town planning (*tentang perencanaan kota*). This decree regulated all technical aspects of urban planning in detail, including criteria to be met by those formulating urban spatial planning (*rencana tata ruang kota*), i.e. an urban area master plan (*rencana umum tata ruang perkotaan*), detailed urban spatial planning (*rencana detail*

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[210] Cf. Nicole Niessen, op.cit.

[211] Joint Decree (*surat keputusan bersama*) Ministry of Home Affairs and Ministry of Public Works (650-1595; 503/KPTS/1985) on the tasks and responsibilities with regard to town planning (*tugas-tugas dan tanggungjawab perencanaan kota)*.

[212] See Article 2, 3 and 4 of this joint decree which established the division of tasks and responsibilities for both ministries. Article 3 stipulated the scope of responsibilities for the Ministry of Home Affairs which included laying down the rules and procedures for the formulation of municipal regulations on town planning and the ratification of town planning regulations drafts after completion with technical recommendations issued by the Ministry of Public Works. Article 4 defined the Ministry of Public Works' authority in drawing up or assisting municipalities in drawing up city master plans (*rancangan rencana umum tata ruang perkotaan*); providing technical standards for master plans and monitoring implementation by town planners.

tata ruang kota) and a technical urban spatial plan (*rencana teknik ruang kota)*.[213] These planning documents were to guarantee consistency with the national urban development strategy issued in 1985 and made in support of existing sectoral development programs.[214] The Ministry of Public Works Decree also provided that the formulation of these documents could be delegated to a third party, i.e. a consultancy firm.[215] Apparently, this option was to take care of the lack of technical planning expertise of local government agencies.

The authority of the Ministers of Home Affairs and Public Works in urban spatial planning was also confirmed at a higher level. In 1987, the central government issued GR 14/1987 which defined the authorities (in public works) that were to be delegated to municipal/district governments.[216] The point of departure of the regulation made it quite clear that the authority to formulate district spatial planning was in the hands of the Minister of Public Works. Moreover, the Minister of Public Works had the discretion to decide when and how certain tasks (related to urban spatial planning) were to be delegated to district/municipal governments, taking into consideration the Minister of Home Affairs' evaluation on the technical and financial capability of the region concerned (Art. 5). Delegation was to be effected through a ministerial decree and direct supervision remained in the hands of both the Minister of Home Affairs and the Minister of Public Works (Art. 8 and 9).

While these ministerial regulations were officially based on the SVO and the SVV, their scope and content had little to do with these statutes. The SVO 1948 and SVV 1949 were meant to establish municipalities with the autonomy to formulate urban and land use planning. However, nothing of the sort eventuated. Niessen argues that it was primarily due

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[213] For the distribution of authority in drawing up those levels of city or town planning see Article 14 of the joint decree. The Ministry of Public Works' Directorate of City and Regional Planning (*Tata Kota dan Tata Daerah*) was responsible for formulating the *rencana umum tata ruang perkotaan*, while municipal governments elaborated this basic plan into a town master plan (RUTRK, RDTRK and RTRK). See also Article 3(1) of Ministry of Public Works decree 640/KPTS/1986 providing for the hierarchy and level of town planning.

[214] See Peter Gardner, "The Indonesian National Urban Development Strategy and its Relation to Policy and Planning" in Gavin W. Jones and Pravin Visaria (eds.), Urbanization in Large Developing Countries: China, Indonesia, Brazil, and India (Clarendon Press Oxford, 1997), pp. 160-180.

[215] Article 4 of Ministry of Public Works Decree 640/KPTS/1986. Consultancy firms must meet certain technical qualifications in urban planning to be regulated in another decree. Thus the Ministry of Public Works possesses the power to decide not only when planning documents are declared acceptable but also which consultancy firms may assist in the formulation of such documents.

[216]GR 14/1987 on the delegation of parts of central government authority in public works to the regions (*tentang penyerahan sebagian urusan pemerintahan di bidang pekerjaan umum kepada daerah).*

to the on-going inter-ministerial rivalry,[217] but even where no such rivalry existed, it was highly unlikely that municipalities were allowed to draw up their own spatial plans. It seems more likely that these ministerial regulations departed from an altogether different premise than the one underlying the SVO and SVV: that urban land use planning is an aspect of top down development planning and can never be left to provinces or districts/municipalities. Moreover, under RGL 5/1974 there was no possibility for municipalities to draw up their own spatial plans to express their autonomy. Municipal governments, declared autonomous as *daerah tingkat II,* in fact had no autonomy at all in terms of legislative power.

While municipalities were at least supposed to have a master plan, this was considered unnecessary for the districts and rural areas within the districts. However, in 1983 the People Consultative Assembly decreed that urban development should be managed with due regard to the relationship between cities, the environment and surrounding villages.[218] The focus was on urban development rather than empowering district or rural governments to draw up their own spatial plans. Rural areas situated within districts were considered important only in relation to urban (municipal) development. This may have been prompted by the rapid urbanization rate of the big cities and the impact it had on surrounding rural land on Java, particularly in Jakarta, during the 1970s and early 1980s.

Thus, district governments were not allowed to formulate land use plans. Instead, the president took this matter into his own hands – and in fact he also usurped part of the municipal planning. Presidential Decree 13/1976 declared spatial planning in Greater Jakarta of strategic importance.[219] Later the area was extended to encompass 'Jabotabek' (Jakarta-Bogor-Tanggerang-Bekasi) region (48/1993). Similar decrees were issued for the Puncak area (79/1985); and Batam Island (41/1973). The direct involvement of the president in determining spatial management for these areas reinforces the conclusion that spatial planning had been separated from local concerns and did not relate to local government autonomy.

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[217] Nicole Niessen, op.cit, p.228.

[218] PCA Decree 2/1983 (*bab IV Pola Umum Pelita Ke-empat, butir 12): pembangunan daerah (g) pembangunan perkotaan perlu dilalukan secara berencana dengan lebih memperhatikan keserasian hubungan antar kota dan dengan lingkungan dan antara kota dengan daerah pedesaan sekitarnya serta keserasian pertumbuhan kota itu sendiri*.

[219] In addition, the President held the authority to determine land use policy in regard to rice fields (54/1980), industrial estates (53/1989), tourism (15/1983) and housing (8/1985). Those areas in effect were declared to be outside the jurisdiction of provinces and districts.

To conclude, the SVO/SVV was incompatible with the government's structure as established by RGL 5/1974. The promulgation of RGL 5/1974 and the way in which it was implemented eliminated any illusion of autonomy for the regions, especially with regard to managing and implementing city planning and building regulations.[220] The tendency of the New Order regime to centralize political power in the hands of the military and one political party (Golkar) had far-reaching consequences for regional autonomy.[221] Malaranggeng has related this tendency to the idea of the Indonesian unitary state as established by the 1945 Constitution.[222] Other authors, such as Antlov, have focused on the way a centralized patronage system was developed down to the village level.[223] In this situation, no initiative from below could survive. This extended to how the central government perceived "development" in relation to state and nation-building and how it perceived its role in development and spatial planning. To this issue we will now turn.

3.4. The Emergence of Development and Spatial Management

What we have seen so far is that the SVO and SVV were difficult to implement because under Soeharto the autonomous *stadsgemeente* ceased to exist. The municipality that came to replace the *stadsgemeente* did not have the legal authority to enact a city plan on its own. What remained was the idea that planning should only apply to urban areas. The relevant decrees from the Ministry of Home Affairs and the Public Work subscribed to this idea and remained in place even after the promulgation of the Spatial Planning Law (the SPL) 24/1992 whose scope was much wider.

This section discusses the next stage of the evolution of city planning, or rather its reduction to a corollary of the state driven development programmes aimed mainly at the exploitation of natural resources. This development provided the basis for replacing city planning with spatial management. Two schemes were of particular influence in this process. The first was

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[220] The village government law 5/1979 came much later. However, the express intention was similar to RGL 5/1974; to create a uniform government structure down to the village level. The diverse forms of traditional communal government systems at the village level were thus effectively abolished.

[221] Syarif Hidayat, "Desentralisasi dan Otonomi Daerah Masa Orde Baru (1966-1998) in Soetandyo Wigjosoebroto et all, Pasang Surut Otonomi Daerah, Sketsa 100 Tahun, (Institute for Local Development and Yayasan TYFA, 2005), pp. 113.

[222] Andi A. Malarenggeng and M. Ryaas Rasyid, "Otonomi dan Federalisme" in Adnan Buyung Nasution dkk, Federalisme untuk Indonesia, (Jakarta: Kompas, 1999), pp. 7.

[223] Hans Antlov, Negara dalam Desa: Patronase Kepemimpinan Lokal (Puska Utama: Yogyakarta, 2002), translated from his dissertation, Exemplary Centre and Periphery.

the national planning development scheme as it evolved under the Old and New Order government and the second the sectoral development strategy to natural resource management. These schemes led to turf fights between sectors of government, which sparked new interest in spatial management as a tool to reduce negative effects of sectoralism in natural resource management. Urban planning at this stage was reduced to a less important element of the spatial management scheme.

3.4.1. A comprehensive "state driven development planning scheme"?

Urban or city planning clearly concerns areas within the administrative jurisdiction of municipal governments. Thus, the SVO and SVV were only concerned with urban master plans concerning the development of city infrastructure. The effort to build the Indonesian nation and state required more than this and therefore under Soekarno Indonesia started developing a comprehensive national development planning scheme. This approach was carried further under Soeharto and has remained influential to this day. The term development (*pembangunan*), which is very much connected to the notion of modernization, became central.

Pembangunan indicates the effort to boost and maintain a steady rate of national economic growth,[224] but is also seen more broadly as the effort to realize the state's constitutional objectives. Soeharto is generally considered as the 'champion' of this form of 'development' and was even officially granted the title "father of development" (*bapak pembangunan*) by the People's Consultative Assembly.[225] None the less, in the early 1960s, the Soekarno

[224] See Muhamad Ali, "Islam and Economic Development in New Order Indonesia (1967-1998), unpublished East-West Center Working Paper, no year). The author suggests that this particular definition of "development" is different from how the term is used and understood by for instance UNESCO and other authors (M. Esman, Jan Michiel Otto, for instance).

[225] PCA 5/1983. The reasoning was as follows: "The Indonesian people have accepted with full gratitude the wise leadership and statehood of General Soeharto in the struggle for saving and implementing the *Pancasila* and the 1945 Constitution purely and consistently both in the life of the state and that of society since the establishment of the New Order. In the framework of the continuity of the national struggle in meeting the goals of independence, General Soeharto has become a pioneer and a leader in solving critical times in the life of the nation by remaining obedient to the will of the people and the Constitution, in rebuilding social and political lives which are based on the Pancasila and the 1945 Constitution, in maintaining national stability which is strong and dynamic as well as national unity, and in managing Five Years Development successfully, all of these leading towards an advanced, prosperous, and just society." This Decree was eventually revoked in 2003 by PCA Decree 1/2003.

government already developed a top down (national) development planning system that intended to promote natural (including agrarian) resource exploitation.

This began with a speech by President Soekarno dated 28 August 1959 in which he instructed the *Dewan Perancang Nasional* (the precursor of the National Development Planning Board/Bappenas) to formulate policy guidance for "*Pembangunan Semesta Berencana*" (Planned Development), which was to put to use Indonesia's rich natural resources in order to 'develop' the nation. The Temporary People's Consultative Assembly then adopted the country's first general development plan: the *Garis-garis besar Pola Pembangunan Nasional Semesta Berencana Tahapan Pertama, 1961-69* (PCA Decree 2/1960). It must be read in conjunction with two other decrees: 1/1960 on the political manifesto as part of the Broad Guidelines of State Policies (*tentang manifesto politik republic Indonesia sebagai Garis-garis Besar Haluan Negara*), and 4/1963, which contained guidelines for implementation (*Pedoman-pedoman pelaksanaan Garis-garis Besar Haluan Negara dan Haluan Pembangunan*). These three decrees formed the basis for the national development planning system under the Old Order regime. In addition, the Temporary People's Consultative Assembly instructed the government not to accept foreign (western) aid (5/1965 and 6/1965).[226]

These decrees, issued by the highest state organ, provided the legal basis for state development policy. They constituted an instruction addressed to the President (as the sole executive mandate holder of the Temporary People's Consultative Assembly) to industrialize and modernize Indonesia, and achieve political and economic self-reliance. It also served as a post-hoc justification for the nationalization of Dutch mining and plantation companies in Indonesia through Law 86/1958 (on the nationalization of foreign companies).[227]

The Old Order's development planning scheme made it possible to appoint different Ministers to manage different natural resources and secure their utilization in support of the

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[226] Temporary PCA Decree 5/1965 (*Amanat Politik Presiden/Pemimpin Besar Revolusi/Mandataris MPRS yang Berjudul "Berdikari" sebagai Penegasan Revolusi Indonesia dalam Bidang Politik, Pedoman Pelaksanaan Manipol dan Landasan Program Perjuangan Rakyat Indonesia*), and Temporary PCA Decree 6/1965 (*Banting Stir untuk Berdiri di Atas Kaki Sendiri di Bidang Ekonomi dan Pembangunan*). On the other hand, it would be wrong to assume that Soekarno was fully against foreign investment. His administration also promulgated Law 37/Prp/1960 on Mining and Law 44/Prp/1960 on natural oil and gas, the latter allowing for profit-sharing agreement (PSA) with foreign parties, combined with a divestment scheme. Profit sharing was 60:40 and control over exploitation areas was to be gradually returned to the Indonesian government in stages (25% within 5 years; and another 25% after 10 years).

[227] For a historical review of this nationalization policy see: Bondan Kanumoyoso, Nasionalisasi Perusahaan Belanda di Indonesia: Menguatnya Peran Ekonomi Negara (Jakarta: Pustaka Sinar Harapan, 2001). One of the justifications used to legitimise this unilateral action was the need to assert political (and economic) sovereignty.

overarching development goals. This meant the start of autonomous policies and regulations in the mining, oil and gas, and forestry sectors.

Soekarno also promulgated the Basic Agrarian Law (4/1960), which is still in place and of fundamental importance for the topic of this book. Article 14 of the BAL stipulates that the central government, based on the BAL concept of the state right to avail (or state right to control),[228] must regulate the reservation, allocation and utilization of land for various development purposes in a comprehensive manner. [229] This includes the authority to make a detailed land and natural resource plan, an attributed power of the central government which can be delegated to lower level government bodies or autonomous regions. The distribution of tasks is as follows: the central government on the basis of the state rights, shall provide a comprehensive "regional development" policy, which is to function as an instrument of co-ordination, harmonization and integration of separate development policies, while the autonomous regions (meaning provinces and districts/municipalities) shall establish their own land use plans. Whether the autonomous regions actually have sufficient authority to do so depends on what kind of development and natural resource management system applies apart from the BAL. Much also depends on how planning authorities are distributed by the central government, a point discussed earlier.

The legal importance of such land use plans can hardly be exaggerated. The Dutch colonial *Onteigeningsordonnantie* stipulated that expropriation could only occur on the basis of a pre-existing master (town) plan. The BAL (Art. 14) provides that every region (provinces and districts) must endorse their own land use plan (*Rencana Tata Guna Tanah*), which should provide the regions with justification to expropriate land using the procedures established by Law 20/1961 on the revocation of land rights and property claims on land (*pencabutan hak-hak atas tanah dan benda-benda yang ada di atasnya*)[230] which replaced the

[228] *Hak Menguasai Negara* as enshrined in the 1945 Constitution and elaborated further by the BAL. See for a discussion on this right: Boedi Harsono, 2003. Menuju Penyempurnaan Hukum Tanah Nasional dalam hubungannya dengan TAP MPR RI IX/MPR/2001, (Jakarta: Universitas Trisakti). See especially chapter VI (hak menguasai Negara), pp. 47-55. *Tanah Negara* (*tanah yang dikuasai langsung oleh Negar*a on which no other rights or claims exist), on the other hand, is distinguished from the state right to avail (*hak menguasai Negara*)

[229] This state's right to control has often been defined in relation to the welfare state (or development state) idea within which the state is positioned as the most important institution managing natural resource for the purpose of securing the attainment of the people's prosperity. Tri Hayati, dkk, 2005. Konsep Penguasaan Negara di Sektor Sumber Daya Alam berdasarkan Pasal 33 UUD 1945, (Jakarta : Sekretariat Jenderal MKRI dan CLGS FHUI), p. 17.

[230] Art. 2 of Law 20/1961 on the revocation of property rights on land and other objects on land (expropriation law) determined that applicant requesting the revocation of land rights should support his/her request with justification, which may refer to pre-existing land use plans.

Dutch colonial regulation above on land expropriation.. However unlike the previous regulation it replaced, the Law 20/1961 carries a very broad conception of justification allowing dispossession of land owners: [231]

> "public interest, including the state and nation's interest and the common interest of the people, as well as the interest of development".

Moreover, Law 20/1961 made it possible for non-public entities to use an expropriation procedure[232], i.e. to dispossess land owners on the basis of the argument that their land is needed for development, which can be defined as the need to exploit natural resources, including land, in support of development projects initiated by the public or private sector.

However, the Old Order's development planning scheme and natural resource management policy did not correspond well with the intentions of the BAL. The BAL as earlier mentioned is supposed to provide the central government with uncontested power, derived from the state rights to avail, to establish a comprehensive land use and natural resource management plan. In reality, as will be explained later, instead of such a comprehensive plan the government adopted several competing sectoral land use plans. This internal inconsistency was later adopted and carried out further by the New Order government.

Unfortunately, for political and economic reasons the Soekarno government ultimately failed to start the development programs espoused under the first People's Consultative Assembly Decree on national development planning.[233] Following the 1965 aborted coup and the subsequent pogroms against communists initiated by the army, Soeharto replaced Soekarno as President in 1966. We will now examine what this transition meant for development and land use planning.

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[231] Art. 1: *untuk kepentingan umum, termasuk kepentingan Bangsa dan Negara serta kepentingan bersama dari rakyat, sedemikian pula kepentingan pembangunan, maka Presiden dalam keadaan yang memaksa setelah mendengar Menteri Agraria, Menteri Kehakiman dan Menteri yang bersangkutan dapat mencabut hak-hak atas tanah dan benda-benda yang ada di atasnya*.

[232] See the General Elucidation of Law 20/1961 point 4 (b).

[233] The official explanation advanced by the New Order government was that political instability during Soekarno's administration was the primary reason developmental concerns had become marginalized and that the national economy was in disarray. See: Muridan S. Widjojo, "Pembakuan Petanda: Politik Semiotik Orde Baru" in Muridan S. Wijdoyo & Mashudi Noorsalim, Bahasa Negara versus Bahasa Gerakan Mahasiswa: kajian semiotic atas teks-teks pidato presiden Soeharto dan selebaran gerakan mahasiswa (Jakarta: Lipi Press, 2003). He argues that the New Order attempted to distance itself by juxtaposing its position against the Old Order

3.4.2. New Order Development Planning: Perfecting the fragmented approach to natural resource management

Following the transition from Soekarno's Guided Democracy to Soeharto's New Order, the Temporary People's Consultative Assembly issued Decree 23/1966 on the Renewal of the Ecocnomic, Financial and Developmental Basis (*tentang Pembaharuan Landasan Ekonomi, Keuangan dan Pembangunan*). On this foundation,[234] the government implemented a comprehensive economic policy package, abolishing Soekarno's self reliance policy and opening the doors to foreign investors and development aid from international donors. Central pieces of legislation were Law 1/1967 (on foreign investment as amended by Law 11/1970), Law 6/1968 (on domestic investment as amended by Law 12/1970), Law 5/1967 on forestry and Law 11/1967 on mining (amending Law 37/Prp/1960).

These laws established regimes of foreign exploitation and were based on quite similar profit sharing idea as developed earlier for natural oil and gas, i.e. that the government as the holder of the state's right to control needed investors to exploit Indonesia's natural resources and split the profit gained. The main difference was that to represent its interests in the natural oil and gas sector, the government established a special state owned company (*Perusahaan Negara Pertambangan Minyak Negara/Pertamina*)[235] which represented the state in the production sharing agreement[236], where the Ministers of Mining and Energy viz. Forestry[237] themselves represented the state in signing work contracts for profit sharing

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[234] Other relevant Decrees are 4/1965 (*banting stir untuk berdiri di atas kaki sendiri di bidang ekonomi dan pembangunan*); 21/1966 (*pemberian otonomi seluas-luasnya kepada daerah*); and 23/1966 and 33/1967 (*pencabutan mandataris MPRS dari Presiden Soekarno*).

[235] In October 1957, the Chief Army, Gen. A.H. Nasoetion instructed Colonel Dr. Ibnu Sutowo to establish a limited liability company (*PT. Permina/Pertambangan Minyak Nasional Indonesia*) entrusted to manage oil and gas extraction and production. By virtue of Law 19/1960 and GR 27/1968, PT. Permina was taken over by the state. In 1968, by virtue of GR 27/1968 this state owned company was fused with another state company in the same field (PT. Pertamin).

[236] For a brief overview of the production-sharing agreements in the oil-gas industry see Kirsten Bindemann, "Production-Sharing Agreements: An Economic Analysis" (Oxford Institute for Energy Studies, WPM 25, October 1999).

[237] In the forestry sector the government (ministry of forestry) established a state owned company (*badan usaha milik negara)*: Perum Perhutani (GR 15/1972 as amended by GR 2/1978, GR 36/1986 and GR 30/2003) and PT. Inhutani (I-IV, established by virtue of GR 21/1972). Perum Perhutani's attributed task is planning, managing, exploitation and protection of forest within its working area (all state forest on Java, except conservation forest). In March 2001, Perhutani became fully privatized. PT. Inhutani has as it core business wood manufacturing, natural and production forest management and manage forest, mostly outside Java (Kalimantan, Sulawesi, Maluku and Sumatera). For more detailed information on PT. Inhutani see http://www.inhutani1/co.id. These state (owned) companies in contrast to Pertamina does not have the power to sign comparable profit sharing contracts with investors or possess the authority to grant licenses to exploit to third parties. The licensing power remains with the Ministry of Forestry. For a general overview on the forestry licensing system see: "Forest, people and Rights, A Down to Earth Special Report, June 2002"in http://dte.gn.apc.org (last accessed 21 March 2011).

and/or granting concessions.[238] A different legal scheme, albeit under the same basic idea of profit sharing was developed to exploit state forest and forest products. In the forestry industry, the Ministry of Forestry utilized licenses to enable and control private parties wishing to exploit the forest.[239] The government thus determined who had access to natural resources and how the benefits were to be distributed. By claiming exclusive authority to obtain natural resources on the basis of the state right to avail, the government also claimed the power to dispossess land owners found on land to be exploited. In the course of time, the same power came to be claimed by private investors holding exploitation licenses and contracts.[240] In short, each sector (mining, oil and gas, forestry) developed quasi-autonomous "development planning and land use" schemes.

Other sectors, such as trade and industry (including tourism), agriculture, etc. also started making their own development plans. Since the Soeharto government paid special attention to developing the industrial sector, providing land to support industrial investment became a pressing concern. In order to overcome the limitations imposed by Law 20/1961 on expropriation Soeharto issued an instruction in 1973 which once more stressed the importance of "development plans" (*rencana pembangunan*) and "master development plans for the regions" (*rencana induk pembangunan daerah*) and thus provided a justification for land dispossession.[241] It was followed by a ministerial regulation in 1974 which focused on support for land acquisition for foreign and domestic investment initiatives.[242] A year later, the Ministry of Home Affairs issued another regulation on the procedure for 'land release'.[243]

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[238] While the terms and conditions of the work contract system differ from the Production Sharing Contract they are based on the same idea: allowing investors to explore Indonesia's natural resource and obtain the profit resulting from the exploitation. Article 10 of the 1967 Mining Law enables the Ministry of Mining and Energy to appoint another party as contractor to perform certain work the government or state-owned company has not yet mastered. The private party granted a *kuasa pertambangan s*hould enter into a work contract with the minister (Art. 10 par. 2 & 3).

[239] See: Law 5/1967 and GR 21/1970 on logging concession and forest collecting rights in production forest (*tentang pengusahaan hutan dan pemungutan hasil hutan pada hutan produksi*). Articles 1-7 of this GR authorized the Ministry of Forestry to grant licenses to private enterprises wishing to exploit forest products. Foreign or domestic investment companies could thus acquire logging concessions (*hak pengusahaan hutan*) or forest product collecting rights (*hak pengusahaan hasil hutan*) on the condition that they submit a forest management plan (*rencana karya pengusahaan hutan*) to be approved by the Ministry of Forestry.

[240] See "Forests, people and Rights, A Down to Earth Special Report" (June 2002).

[241] Presidential instruction (Instruksi Presiden RI) 9/1973 on the implementation (and procedure) to dispossess land owners (*pelaksanaan pencabutan hak-hak atas tanah dan benda-benda yang ada di atasnya*).

[242] Ministry of Home Affair Regulation (MHAR) 5/1974 regulating land reservation/allocation for private companies (*ketentuan-ketentuan mengenai penyediaan dan pemberian tanah untuk keperluan perusahaan*). Much later, in 1984, the Ministry of Home Affairs issued another regulation about the procedure and granting of rights to foreign and domestic investment companies (*tata cara penyediaan tanah dan pemberian hak atas tanah, pemberian izin bangunan serta izin undang-undang gangguan bagi perusahaan yang mengadakan penanaman modal menurut undang-undang 1/1967 dan undang-undang 6/1968*).

[243] It is difficult to properly translate the term '*pembebasan*' that is used in this context. It suggests that what is at stake is 'releasing' the land from ownership rights in a voluntary manner, but in practice amounted to

In 1976 this procedure was extended beyond government agencies to private companies (foreign/domestic investment).[244]

As these regulations contained no direct reference to town planning,[245] the result was further marginalization of municipal planning as an instrument to control land use. More generally, it created a number of difficulties in harmonizing land use policy in Indonesia, as the various Ministries involved were not much inclined to take into account what their colleagues were doing. Not surprisingly, at some point certain officials within the central government became concerned about the implications of this situation and started to think about ways to integrate these different interests in land use. This led, in 1976, to a Presidential Instruction calling for a more synchronized effort at land use planning between sectors.[246]

However, it still took a few years before concrete legislative steps toward this objective were taken. The first one was the promulgation of the Environmental Management Act in 1982 (EMA 1982), followed ten years later by the Spatial Planning Law (SPL 1992). The next section discusses how these attempts failed in the face of an embedded sectoral approach to natural resource management.

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expropriation. The term 'release' used here thus refers to 'legal release', not 'factual removing of all objects on or attached to land'. MHAR 15/1975 on the procedure of land acquisition (*ketentuan-ketentuan mengenai tata cara pembebasan tanah*).

[244] MHAR 2/1976 on the utilization of the land acquisition procedure for the government by private companies (*penggunaan acara pembebasan tanah untuk kepentingan pemerintah bagi pembebasan tanah oleh pihak swasta*).

[245] MHAR 5/1974 refer to the importance of implementing development plan in general and the Pelita (five year development plan) II in particular. The regulation also mentioned that the head of the region (province or districts) in determining access to land to investors must take account the region's plan (*dengan memperhatikan planologis daerah*). There is no further clarification what is meant by the term "*planologis daerah*". MHAR 15/1975, in contrast, did not made any reference to pre-existing (regional) or town land use planning. To justify land "release", applicant (state or government institution needing the land) should enclose statements referring to the land status (ownership, amount, location), site plan, purpose of land release and its future use, willingness to compensate or provide other facilities to the (to be) dispossessed land owners (Art. 4 par(3)). Likewise MHAR 2/1976 allowing private parties to utilize the land "release" procedure did not refer to pre-existing town or regional land use plans, but instead to the need for the government to support investors working in the name of development to access land.

[246] Presidential Instruction 1/1976 on how to synchronize agrarian management tasks with tasks delegated to the forestry, mining, transmigration and public works. (*pedoman tentang sinkronisasi tugas keagrariaan dengan bidang tugas kehutanan, pertambangan, transmigrasi dan pekerjaan umum*).

3.4.3. Umbrella Acts: EMA 1982 and SPL 1992

The EMA 1982 was an attempt at imposing order on the fragmented approach to spatial management in an indirect way, by establishing an institutional framework to take care of environmental matters. It tried to do this through harmonization of substantive law and not through integration of licensing procedures.[247] To this end the EMA 1982 was established as a so-called umbrella act, containing a number of principles that subsequently had to be implemented in sectoral pieces of legislation. This should then lead to uniform standards in all sectors.

Unfortunately, this approach did not work out well. The primary reason seems that the implementation of the EMA 1982 depended on the government's willingness to issue a number of implementing regulations. Without them, the EMA 1982 was reduced to a black letter law or, in the words of Niessen, "a collection of worthy but sterile principles".[248] Concern about the environment was pushed into the background by the dominant discourse on *pembangunan*.[249] Moreover, the tool used to guarantee synchronization, environment impact analysis assessment, was not effective in creating a more sustainable and integrated land use pattern.[250] Only certain activities deemed to have an impact on the environment (establishment of industrial estates for instance) are required obtain an EIA and even then in general they have failed to force industries to comply with environmental standards. But in fact working indirectly through the field of environment could in itself not be effective in harmonizing or integrating land use planning.

In 1988, it was the People's Consultative Assembly to point at the need for more general and comprehensive spatial (or land use) management. [251] The 1988 Broad Guidelines of State Policies (*GBHN*) demanded sound spatial management (*penataan ruang*) to accommodate the increasing pressure on land, water and other natural resources for development purposes.

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[247]Adriaan Bedner, "Introduction: Environment and Law in Indonesia" in Adriaan Bedner & Nicole Niessen (eds.), Towards Integrated Environmental Law in Indonesia? (Leiden: Research School CNSW, 2003), pp. 1-10.

[248] Nicole Niessen, "The Environmental Management Act of 1997: Comprehensive and Integrated? in Adriaan Bedner & Nicole Niessen (eds.), Towards Integrated Environmental Law in Indonesia? (Leiden: Research School CNSW, 2003), pp. 66-79.

[249] J. Arnscheidt, 'Debating' Nature Conservation: Policy, Law and Practice in Indonesia (a discourse analysis of history and present) (Leiden: Leiden University Press, 2009)

[250] See Dadang Purnama, "Reform of the EIA process in Indonesia: improving the role of public involvement" (Environmental Impact Assessment Review 23 (2003): 415-439. An early and timely Environmental Impact Assessment (EA) should be fostered by an open and continuous exchange of information between the EA team, the project management team and the local community. Such continuous and open communication in general is lacking in Indonesia. Another difficult aspect is determining the extent to which a project is environmentally sustainable or how much environmental impact should be tolerated. Every project proposal tends to be evaluated separately and independently from existing land use patterns.

[251] Point F (development policy) number 15.

They stated that the available space (land, water, air and natural resources) must be managed in an integrated manner, through a region based approach taking into account the existing natural and social environment. Land use planning should be developed specifically to prevent the conversion of agricultural land in ways endangering the ecosystem.[252]

The result, four years later, was the SPL 1992. The preamble of this law contained the following laudable consideration:

> "the management of many varieties of natural resources and land, sea and air, must be co-ordinated and integrated, within the framework of sustainable development, with the management of human resources and artificial resources. Such co-ordination and integration must be realized by developing a spatial policy which will take into consideration the need to protect and preserve the natural environment in line with the national development policy based on the national ideology of *Wawasan Nusantara* and *Ketahanan Nasional* (the archipelago principle and national security)"

The drafters clearly intended the SPL to become the basis for a comprehensive policy on natural resource management. Spatial management should provide an integrated and comprehensive framework which the different sectors of natural resource management must defer to. Much later, the People's Consultative Assembly supported this objective in Decree 4/1999, which stipulated:

> "Within the sustainable development (strategy), a spatial planning strategy shall be developed which harmonizes the land-utilization plan, the water utilization plan, and other resource utilization plans. Such spatial planning (management) is to be placed within one harmonious and dynamic environment management plan supported by an underlying population strategy. Spatial utilization must be managed integratively using a spatial use approach taking into consideration specific natural and social environmental features."

The EMA 1997, which replaced EMA 1982, offered another indication of the 'superior' position of the SPL 1992, stipulating in Art. 19 that 'when issuing a business permit and/or

[252] PCA Decree 2/1988; Broad Guidelines of State Policies 1988) (chapter IV the fifth five year planning (*pola umum pembangunan lima tahun kelima*), point F (13h) on natural resource and the environment. Point 18 reaffirms the need for spatial planning in the context of environmentally sustainable development.

any license related to an economic activity, points to be taken into consideration are: (a) (the existing) spatial plan (master plan) (…)"[253]

The next section explores whether the SPL 1992 was suitable to function as an umbrella act in the above sense and what instruments it made available to manage natural resources in a sustainable manner.

3.5. The Spatial Planning Law 24/1992

The SPL 1992 officially replaced the SVO and SVV. The introductory part referred to the 1945 Constitution (arts, 5(1); 20(1) and 33(3)) and to the BAL, and stipulated that the SPL 1992:

> "(…) intended to promote a coherent, integrated and open approach to the different aspects of spatial planning, which include planning, utilization and oversight mechanism."

This was elaborated in Article 3, which worded the main purpose of the law as follows:

> "to achieve the integrated utilization of natural and artificial resources; to increase the utilization of these resources in an efficient, effective and appropriate way to improve the quality of human resources, embody the protective function of space as well as to prevent and overcome negative environmental impacts and maintaining the balance between prosperity and security interests."

The law provided both several organizational facilities and substantive rules to realize these ambitious objectives. The first defined the authority and responsibilities of the various government agencies involved in spatial planning, while the latter provided them with the legal instruments to properly perform their task. Simply stated, the SPL1992 provided the government, from the central to the district level, with legal tools to regulate land use (or manage natural resources) in light of the need to realize development projects.

[253] Asep Warlan Yusuf, "Spatial Planning and Environmental Management" in Adriaan Bedner & Nicole Niessen (eds.), Towards Integrated Environmental Law in Indonesia? (Leiden: Research School CNSW, 2003), pp. 60-65.

Hence, one of the most important features of this top down spatial planning system was its interconnectedness with existing top-down development planning.[254] Spatial plans were intended to both support and control development programs. The major instrument introduced for this purpose was the distinction between cultivation and conservation areas. The government would assign areas to either one of these categories. The main question then became how to ascertain which government agency at what level held the authority to determine the assignment, borders, and use of cultivation and conservation areas.[255]

3.5.1. The attempt at establishing centralized and comprehensive Spatial Management

The spatial-development planning system was developed in adherence to the earlier existing hierarchical government structure detailed by RGL 5/1974 and the hierarchy of legislation.[256] As provided in the SPL 1992, the National Spatial Plan (promulgated in a government regulation) would form an inseparable part of the long term national development plan (25 years). It would provide which areas were designated for conservation and cultivation - arguably encompassing all of the land in Indonesia - provide rules on spatial utilization, and provide general directives on monitoring and oversight. The National Spatial Plan could be revised before the end of the term in the event of national policy change (elucidation of Art. 20(4)). The central government also retained the authority to designate 'special areas'

[254] See articles 8 and 19-23 SPL 1992. This was actually a restatement of an already entrenched trend. For a more detailed explanation of the development and spatial planning process before and after the enactment of the SPL 1992 see Syahroni dan Tim GTZ-SfDM, "Selayang Pandang tentang Perencanaan Pembangunan di Daerah Tingkat II, (Proyek Pendukung Pemantapan Penataan Desentralisasi (P4D), Indonesian-German Governnmental Cooperation, October 1994). Cf see: Djoko Sujarto, Bunga Rampai: Penataan Ruang dan Pengembangan Kota Baru di Indonesia, (Bandung: Departemen Teknik Planologi-ITB, 2004); Pidato Purnabakti, "Bagaimana Penataan Ruang Kota Sekarang', (14 February 2004).

[255] Article 11 of GR 47/1997(on the national spatial planning (*rencana tata ruang wilayah nasional*) stipulated cultivation areas consisted of production forest (*kawasan hutan produksi*) and people's forest (*hutan rakyat*); agricultural land; mining areas; areas reserved for industrial zones, tourism and residential areas. Conservation areas comprised areas providing protection to adjacent areas; locally protected areas; nature reservation (*suaka alam*); nature conservation areas (*pelestarian alam*); cultural heritage protection areas (*kawasan cagar budaya*); and areas prone to natural disasters and others (art. 10). For a more detailed definition of conservation areas, read Presidential Decree 32/1990 on the management of conservation areas.

[256] See Temporary PCA Decree 20/1966, on the hierarchical system of Indonesian legislation: the 1945 Constitution, PCA decree, law/government regulation in lieu of law, Government Regulation, Presidential Decree, other implementing regulations, such as ministerial regulations, instructions and others. See Jimly Asshiddiqie, Tata Urutan Perundang-undangan dan Problema Peraturan Daerah, paper presented in a Lokakarya Anggota DPRD se-Indonesia, organized by LP3HET, Jakarta, 22 Oktober, 2000.

(*kawasan tertentu*) and further regulate these by presidential decree (Art. 23). The spatial plan for such special areas, considered of strategic importance, would be an 'inseparable part' of the provincial or district/municipal spatial plan, but thus fell outside the latter's jurisdiction.

On the basis of Article 27 the provincial government should provide for a Provincial Spatial Plan (*Perda RTRW Propinsi*) valid for 15 years, which was to support the middle term development plan and must be synchronized with both the five and one year development plans (elucidation of art. 21(4)). The provincial spatial plan thus translated existing development planning into directions for future land use patterns. It also was to provide general directives addressed to districts and municipalities on the management of conservation and cultivation areas; rural, urban and specially designated areas; the development of settlements for forestry, agriculture, mining, industry, tourism and other uses; centres of settlement in rural and urban areas; infrastructure: transportation, telecommunication, energy, irrigation, and environmental management; prioritized areas; and policies on land, water, air and other natural resources.

These directives should be elaborated by the district/municipal governments into their own spatial plans (Article 22), which would be valid for 10 years. The elucidation of art 22(5) determined that the district/municipal spatial plan was to be further elaborated into a five year spatial utilization programme on the basis of their five year development plans, and into a one year development programme in line with the budget of that year.

Remarkably, the SPL 1992 held no indications what urban or rural spatial and detailed spatial plans should contain. As regards urban planning, the ministerial regulations provided by both the Ministry of Home Affairs (1987) and Public Works (1986), which was based on the SVO/SVV, could still be used.[257] However, district spatial plans applied to rural areas and for these no rules had ever been promulgated. Probably for this reason most districts did not promulgate any detailed spatial plans before the end of the New Order period.

By contrast, the SPL 1992 did contain a number of rules about future land use within the districts more generally. Arts. 20(3c) and 21(3c) stipulated that the districts were to use the national and the provincial plan as their point of departure, especially when determining which areas were to be reserved for investment initiatives and therefore should indicate in their spatial plan which area within its administrative jurisdiction were to be allocated for

[257] Ministry of Public Works Decree 640/1986 on town planning (*perencanaan tata ruang kota*) dan MHAR 2/1987 on guidance or directive for town planning (*pedoman penyusunan rencana kota*).

investment purposes (art. 22(3c)). In this manner, the national government could indicate which district areas were to become growth poles that should subsequently produce a trickle-down effect and spread the fruits of development to the regions. Consequently, land in the municipalities/districts was to be held in reserve for development purposes determined at the central level.

The SPL 1992 further made it quite clear that the district/municipal spatial plan was to be used as the yardstick for deciding on requests for permits allocating land for development purposes (*perizinan lokasi pembangunan*; art. 22(3) point 4). The elucidation of Art. 22 further introduced a recommendation on spatial utilization (*rekomendasi pengarahan pemanfaatan ruang)* for this purpose. Another new feature was the spatial utilization permit (*izin pemanfaatan ruang*, Art. 26), which was defined rather vaguely. This permit would relate to 'the determination of location, quality of space and architectural order in accordance with the prevailing written law, customary law and custom'. No further explanation was given as to how the recommendation related to the spatial utilization permit.[258]

The hierarchical spatial planning system implied that the central government was to take the first initiative in formulating spatial plans at the national level[259]. Only then could the provincial and subsequently the district/municipal governments formulate their own spatial plans. However, as will be explained in subsequent chapters, the absence of provincial and district spatial plans never became a reason to postpone the realization of the existing parallel development plans or related land acquisition projects. As mentioned earlier, the land acquisition procedure in place justified dispossession on the basis of development plans and did not require a spatial plan.

This changed in 1993, when these regulations were declared inapplicable with the promulgation of PR 55/1993 on land acquisition in the public interest.[260] It provided in Art. 4

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[258] Niessen notes that the kinds of permits which fall into this category are as unclear as is the question regarding which permits fall within the category of "permit for development sites (*perizinan lokasi pembangunan*). Nicole Niessen, Municipal Government in Indonesia: Policy, Law and Practice of Decentralization and Urban Spatial Planning, dissertation, Leiden University, 1999 p. 245.

[259] The first national spatial plan (RTRW Nasional) promulgated on the basis of Law 24/1992 was GR 47/1997. It contained general directives addressing the provincial and district/municipal governments on how to determine and assign areas falling under their respective administrative jurisdiction into the following categories: area for cultivation (*kawasan budidaya*), conservation area (*kawasan lindung*) (art.9) and specifically designated area (*kawasan tertentu*) (arts.8 & 20(3)). This national spatial planning was replaced in 2008 by GR 26/2008 which was promulgated on the basis of the new Spatial Planning Law 26/2007. See Chapter 6.

[260] PD 55/1993 (*tentang pengadaan tanah bagi pelaksanaan pembangunan untuk kepentingan umum*).

that land reservation, allocation and acquisition to implement development projects performed in the public interest were only allowed when carried out in conformity with existing spatial plans. However, there was still a clause of escape: in case the district did not yet have a spatial plan 'any regional plan' should be used in its stead.

To conclude, the whole spatial planning system was concerned with how to establish and integrate top down centralized development planning, however fragmented, with spatial planning. The whole system was understood as an internal government affair and paid little attention to stakeholder participation. This was in line with the New Order's conception of public participation as certainly not an inalienable right or even part of good governance. In 1996, a government regulation on this matter was promulgated, but the process was tightly regulated.[261]

However, participation seemed to be the least of problems for implementing the SPL 1992, given the above analysis. The central question is whether the SPL actually succeeded in realizing its function as an umbrella act, integrating all systems of land use. Did other ministries or government agencies fall under the regulatory scope of the SPL 1992? Would their planning authorities be curbed? The next sections discuss how in practice the Ministry of Forestry and others defied the authority of provincial and district governments to control the management of specific natural resources found within their administrative borders.

3.5.2. Maintenance of a Separate System for Spatial Management and Forest Management

As indicated above, spatial planning was meant to be an umbrella - a primary point of reference - under which all natural resources would be managed. However, it is not the only law claimed to be an 'umbrella'. Many Indonesian scholars and NGOs believe that any discussion on natural resource management, including land use planning, should start with the Basic Agrarian Law (BAL) which in Article 14 reaffirms the Constitution's right of avail

[261] See GR 69/1996 on the form, procedure and implementation of people's right to participate in spatial planning (*pelaksanaan hak dan kewajiban, serta bentuk dan tatacara peranserta masyarakat dalam penataan ruang*) and Ministry of Home Affairs Regulation 9/1998 (*tentang tata cara peran serta masyarakat dalam proses perencanaan tata ruang di daerah*). Both regulations seek to regulate the procedure, form and realization of public participation in spatial planning.

(right to control) and some among them have criticised the Minister of Forestry's monopolistic claim on forested land on this basis.[262]

Prominent scholars as Harsono and Sumardjono have argued that since the BAL provides the basic principles, other laws pertaining to natural resource management must refer to and be consistent with it. They further suggest that each Minister within his respective competence should hold land on the basis of *hak pengelolaan* (state management right), which is directly derived from the state's right to avail (Arts.1 and 2 of the BAL). [263] Others, such as well-known NGO-activists Noer Fauzi and Dianto Bachriadi have criticized the issuance of separate laws for mining, oil and natural gas and forestry on more practical grounds. They argue that the marginalization of the BAL has led to widespread discontent and lies at the basis of land disputes throughout Indonesia. Likewise Tjondronegoro has contended that the BAL has been bypassed altogether by those sectoral laws managing specific natural resources and implicitly recommended that the BAL be revived as umbrella act in order to establish an integrated system of natural resource management.[264]

However, as already mentioned, the fragmented approach to natural resource management was not initiated by the Soeharto New Order Regime; as already under the Soekarno administration which promulgated the BAL, seeds of sectoralism already existed. This

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[262] Arnoldo Contreras-Hermosilla and Chip Fay, Memperkokoh Pengelolaan Hutan Indonesia Melalui Pembaruan Penguasaan Tanah: Permasalahan dan Kerangka Tindakan (Bogor: World Agroforestry Center, 2006); see also See also Chip Fay and Martua Sirait, "Kerangka Hukum Negara dalam Mengatur Agraria dan Kehutanan Indonesia: Mempertanyakan Sistem Ganda Kewenangan atas Penguasaan Tanah" (ICRAF Southeast-Asia Working Paper no. 2005-3) presented before the International Conference on Land Tenure, Jakarta 11-13 October 2004. Cf. Dianto Bachriadi, Yudi Bachrioktora and Hilma Safitri, "Ketika Penyelenggaraan Pemerintahan Menyimpang: Mal-administrasi di bidang pertanahan" (laporan penelitian, kerjsama Komisi Ombudsman Nasional dan Konsorsium Pembaharuan Agraria, 2002), especially chapter III (karakteristik system hukum, kebijakan dan administrasi pertanahan), pp. 32-102

[263] Boedi Harsono, Hakikat Hak Pengelolaan (unpublished paper, Pusat Studi Hukum Agraria, Fakultas Hukum Trisakti Jakarta, June 2001), "Menyempurnakan Hak-hak atas Tanah dalam Hukum Tanah Nasional Memasuki Era Reformasi dan Globalisasi"(paper presented at a national seminar "menyempurnakan hak-hak atas tanah dalam hukum tanah nasional memasuki era reformasi dan globalisasi), diselenggarakan oleh Bagian Hukum Administrasi Negara bekerjasama dengan Pusat Studi Hukum Agraria FH Trisaksi Jakarta, 10 july 2001). Boedi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya, Jilid I, cetakan ke-8 (Jakarta: Djambatan, 1977). Maria SW Sumardjono, Kebijakan Pertanahan antara Regulasi dan Implementasi, (Jakarta: Kompas, 2001). See especially Chapter II (state land and hak ulayat). She asserts that management of state land, legally speaking, should be administered by the NLA, while physical management may be entrusted to other ministries or governmental institutions.

[264] Sediono M.P. Tjondronegoro, "Pengelolaan Sumber Daya Agraria: Kelembagaan dan Reforma Agraria" in Jurnal Analisis Sosial (Vol. 6 no. 2, Juli 2001): 1-11.

sectoral approach was further perfected during the Soeharto administration during which it was decided that the SPL 1992, and not the BAL, should be an umbrella act. [265]

However, just as the BAL the SPL 1992 was not taken seriously as an umbrella act. Powerful Ministers, notably Forestry, Mining, and the Head of Pertamina refused to interpret the SPL 1992 in this way. This was partly caused by the wording of the law. The stated purpose of the SPL 1992 was to provide a basis for evaluating (*menilai*) and harmonizing (*menyesuaikan*) existing regulations on spatial use – not to function as the ultimate point of reference for other natural resource management systems.

Still, this was not how the People's Consultative Assembly interpreted the SPL 1992. In its Decree 2/1993 the Assembly underscored the importance of this framework law in controlling the development process (i.e. exploitation of natural resources), stating that:[266]

> "the utilization of agrarian resources (water-land and natural resources found on the surface or in the land) having economical value and social function should be regulated and developed within a spatial planning framework with the purpose of coordinating its various use (settlement, agriculture, forestry, industry, mining and energy, and other infra-structure development). Water use, land use and forestry planning should be performed in a comprehensive manner so as to ensure its sustainability".

In addition the decree expressed the view that:

> "urban development must be done in a planned and integrated fashion taking into consideration existing general spatial plans (*rencana umum tata ruang*) and taking account of population increase and rising demand for residential, commercial, work and other social-economic areas, that is to create an efficient urban management and the maintenance of an orderly, healthy, secure and comfortable environment (*tercipta lingkungan yang sehat, rapih, aman dan nyaman*)"[267].

[265] Noer Fauzi dan Dianto Bachriadi, "Hak Menguasai dari Negara (HMN): Persoalan Sejarah yang Harus Diselesaikan" (Kertas Posisi KPA/position paper no. 004/2001). Cf. Aedar Laudjeng & Arimbi HP, "Bayang-Bayang Cultur-Stelsel & Domein Verklaring dalam Praktik Politik Agraria" (Jakarta: Walhi-Friends of the Earth, 1997).

[266] F. Kebijakan Pembangunan Lima Tahun Keenam (Pelita VI) (Umum).

[267] F. Kebijakan Pembangunan Lima Tahun Keenam: Bidang ekonomi; sector 12 pembangunan daerah; butir (e).

However, not even the People's Consultative Assembly could convince the Ministers concerned. They continued to claim special authority in managing certain natural resources, pointing out that none of the laws on forestry, mining or oil and gas referred to either the BAL or the SPL 1992. Their own, sectoral laws, would directly authorize them to implement the state's right of avail. Considering the hierarchy of laws as established by the PCA Decree 20/1966, these laws were of the same standing as the BAL and the SPL 1992. In this they seem to disregard the well established principle that a new law should supersede older ones, which at least applied to the SPL.

Moreover, the Soeharto administration had a great stake in preserving the existing sectoral approach to natural resource exploitation which provided for the major part of the government budget between1970-1990. Besides, implementing the SPL 1992 would in the end force the government to renegotiate the terms and conditions of existing production contract sharing agreements, work contracts or annul existing forest concessions which will would undermine the existing public-private business network, the backbone of the Soeharto regime.[268] Thus while the rhetoric seemed to provide justification for the implementation of the SPL 1992, the standing policy was to preserve the sectoral approach to natural resource management and thus support Ministerial claims on their monopolies.

In particular the claim of the Minister of Forestry had far-reaching consequences. The Minister held that forest land was not liable to comprehensive government spatial planning.[269] He even claimed the authority to determine which areas fell under his exclusive

[268] For an in-depth analysis of the development of the formal and informal arrangement of private-public business networks involving the political elite of the Soeharto regime see Richard Robison, Indonesia: The Rise of Capital (London: Allen & Unwin, 1986). Cf. George Junus Aditjondro exposure of Soeharto's family expansive business network in his article "Yayasan-Yayasan Soeharto" (Tempointeraktif, 14 Mei 2004).

[269] In support of the above argument, one should note that the Directorate General of Land Issues (*Direktoral Jenderal Agraria*) under the Ministry of Home Affair's in 1960 did not get the task to realize the intention of Art. 14 of the BAL, i.e. providing a comprehensive natural resource and land use management plan. Its power had been limited to manage land issues related to providing certainty with regard to ownership of land for individuals and for legal persons (public-private). In the words of Harsono, the task of the Directorate General of Agraria (as later replaced by the NLA established by PD 26/1988) is limited to land administration. On the same basis, he differentiates *hukum tanah,* regulating what rights individuals or other legal entities may enjoy on land, from other sectoral laws such as forestry, mining, or fisheries. See further: Boedi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya, jilid 1 (Jakarta: Djambatan, 2005):5-6. Here he seems to contradict his earlier remarks (in note 29 that the BAL should function as umbrella act and that all ministries managing natural resources may do so on the basis of a right to manage granted under the BAL.

jurisdiction and enclose areas as forest land (*kegiatan pengukuhan (kawasan) hutan*).[270] Within the area thus assigned as forest, the Ministry of Forestry possesses exclusive authority in determining forest use and therefore determines what individual or communal rights may be tolerated or recognized on forest land.[271] The Minister also developed a distinct terminology, different from that used in the spatial planning law, when referring to conservation areas.[272]

In sum, the much criticized legal dualism of land administration spilled over into spatial management. The SPL 1992 was not applied to land declared forest by the Minister of Forestry. Likewise, in the oil-gas and mining sector, areas in which exploitation was assigned to a private company under a production sharing contract or contractual agreement fell outside its scope.

In order to prevent a total lack of co-ordination, the government then introduced the so-called "*padu serasi*" concept. It concerned a process to synchronize the consensus forest land use plan (*TGHK*) with existing provincial spatial plans. In provinces which already had a spatial plan (*RTRWPropinsi*), areas falling under the Minister of Forestry's jurisdiction were established by a decree (*SK Penunjukan Kawasan Hutan*) based on the result of the synchronization of the TGHK with said RTRWP.[273] In areas where the provincial government had not yet promulgated a spatial plan, the TGHK were deemed valid without

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[270] Decree of the Directorate General of Forestry 85/Kpts/DJ/I/1974; 102/Kpts/DJ/1983 as amended by Ministry of Forestry Decree 399/Kpts-II/1990. This decree was again amended by Decree 634/Kpts-II/1996. They provide for the procedure to determine borders and appoint areas as forest land (*pedoman pengukuhan hutan*). In 1985, several sectoral government agencies with responsibilities in administering land and natural resource management (the Ministry of Forestry, NLA, Ministry of Home Affairs, Ministry of Agriculture and the Provincial governments) agreed upon a system to be used to determine borders for forest land. The agreement provides the legal basis for the concept of consensus forest land use plan (*Tata Guna Hutan Kesepakatan*/TGHK). The legal basis of this THGK is provided by Ministry of Foresty Regulation 137/1986 and Decree 173/Kpts-II/1996. See, CIFOR, "Tata Ruang dan Proses Penataan Ruang" in Warta Kebijakan no. 5 August 2005. Cf. Ulrich Löffler, "Land Tenure Development in Indonesia", (Guiding Principles: Land Tenure in Development Cooperation GTZ Abt. 45/Div. 45; 1996). For a more detailed analysis on forest policy see Ani Adiwinata Naur, Murniati & Lukas Rumboko (eds), Forest Rehabilitation in Indonesia: Where to after more than three decades? (Bogor: CIFOR: Bogor, 2007). After 1999, the legal basis for forest planning has become GR 34/2002 on forest planning, exploitation and use (*tata hutan dan penyusunan rencana pengelolaan hutan, pemanfaatan hutan dan penggunaan kawasan hutan*).

[271] See GR 33/1970 (forest planning). With the amendment to the Forestry Law by Law 41/1999, the government issued a new regulation on forest planning: GR 6/1997 as amended by GR 3/2008 (*tata hutan dan penyusunan rencana pengelolaan hutan serta pemanfaatan hutan*)

[272] Wiryono, "Klasifikasi Kawasan Konservasi Indonesia" in Warta Kebijakan (Bogor: Cifor, 11 May 2003).

[273]See Chip Fay and Martua Sirait, op.cit.

further discussion. This practice demonstrated the single concession of the Minister of Forestry.

3.6. Conclusion

The system of urban development planning envisaged by the Dutch colonial government's SVO and SVV survived the revolution. After lying dormant for almost 30 years it was reintroduced under the New Order. However, due to radical changes in the government's structure in 1974 which stripped municipal governments of much of their autonomy, urban planning in reality became almost useless. This was exacerbated by the rules and regulations regarding land acquisition that departed from the overriding interest of "development" planning, as will later be discussed in more detail. Land use planning instead became secondary to the interests of various ministries (forestry, mining, the natural oil and gas sector, and much later industry).

Efforts at synchronizing the fragmented and sectoral land use policies culminated in the promulgation of the SPL 1992, which replaced the SVO/SVV. This law promised a comprehensive spatial management policy comprising of planning, implementation and oversight, to be developed by the central government. It also provided that spatial plans should be made in support of the realization of top-down development plans. While this would integrate spatial and general development plan, it did not leave much room for public participation, transparency and public accountability of spatial plans. The importance of this is demonstrated by the fact that spatial plans should provide the justification for public institutions as well as private parties in expropriating land in the public interest.

However, one should not be misled into thinking that spatial plans would be able to control land use planning by other ministries. Just as the BAL, the SPL failed to deliver what it promised to do. It was quite clear that spatial plans were made subservient to existing development planning, both from the regulation on land acquisition promulgated in 1993 and from the failure of the SPL 1992 to unequivocally embed the centralized and fragmented development approaches to natural resource management. While the SPL 1992 looked like a comprehensive and integrated legal framework on land use planning, it could not deliver on this promise. Aside from the lack of political will in implementing a comprehensive and integrated natural resource management system and challenge the embedded political and economical interests of the New Order regime which thrived under the existing fragmented and sectoral natural resource management system, other legal factors played a role as well.

There was no clarity on the meaning and scope of SPL as an umbrella act. It provided only a very weak invitation to integrate the existing fragmented natural resources regime. Efforts at land-use planning coordination were made as a concession rather than a fulfilment of a legal obligation under the SPL.

The next chapter will deal with the issue of how the SPL 1992 was further translated and transformed into spatial plans at the national, provincial and district levels. An examination of Bandung and West Java spatial planning will highlight how this happened and how spatial plans were related to permits regarding land acquisition and to land use. The litmus test will be to what extent spatial plans relate to good governance of land and other natural resources and to the effects they have had on the tenurial security of land occupants.