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

Moeliono, T.P.

# CHAPTER IV
# IMPLEMENTATION OF THE 1992 SPATIAL PLANNING LAW BEFORE 1999: THE CASE OF WEST JAVA PROVINCE AND BANDUNG MUNICIPALITY

## 4.1. Introduction

The previous chapter discussed the transformation of city master planning into spatial-development planning so as to provide a comprehensive and integrated land use planning system. However, spatial planning remained limited to a 'residual' system: only land not falling under the jurisdiction of sectoral ministries managing natural resource management was to be regulated on the basis of the SPL 1992. Spatial planning was to be the basis for justifying land acquisition projects. This provided the central government with a tool to control land use, through the use of permits regulating access to land. As a result of the dominant development ideology, the central government relied heavily on a hierarchical and top down approach to manage land for development. What has not yet been discussed, however, is how central provincial and district governments implemented the SPL 1992 and how they utilised existing permits controlling land acquisition and land use.

This chapter will discuss how the existing spatial planning regulatory framework was translated into bylaws (provincial and district regulations on spatial planning) providing guidance for future land use by land owners and other occupants, with a focus on the province of West Java and the Bandung municipality. Taking into consideration the authoritarian top-down government system at that time, one would expect that translating the existing spatial planning regulatory framework into land use planning at the provincial and district level would have been an uncomplicated and straightforward matter. However, the establishment of a hierarchal system of spatial planning as envisaged by the Spatial Planning Law (24/1992) failed to materialize. This brings to mind Scott's analysis on the ways in which a central state's capacity for simplification to transform the world (development-spatial plans certainly falling into this category) must be balanced against the society's capacity (in this case including other lower level government institutions) to modify, subvert, block, and even overturn the categories imposed upon it.[274]

[274] James C. Scott, Seeing Like A State: How Certain Schemes to Improve the Human Conditions Have Failed (Yale University, 1998), p. 49.

Other factors contributing to the 'failure' of the SPL 1992 will be identified in discussing the national, provincial and district spatial plans. The changes resulting from the decentralization laws post 1999 will be discussed separately in Chapter V. This chapter is structured as follows: the first part discusses the normative structure of the spatial planning system as envisaged by the SPL 1992 and the extent to which this ideal conformed to the government structure established by (RGL 5/1974). This will serve as a point of reference for evaluating the extent to which the government, from the central to the district level, could formulate planning according to this ideal. The second part focuses on how general planning rules were transformed into detailed regulation by the central government, West Java provincial government and the Bandung municipal government. It evaluates to what extent the government had established a hierarchal and top down development-spatial planning system at all levels. The last part focuses on the legal instruments provided by the central government, to bring these three interlinking aspects of spatial planning to fruition, i.e. the planning process (*proses perencanaan tata ruang*), the use of space (*pemanfaatan ruang*) and the control of use of space (*pengendalian pemanfaatan ruang*). Two central questions emerge here: 1. how were general or detailed spatial plans related to land use permits? 2. to what extent were the permits successful in influencing people to utilize land in a sustainable manner?

One of this chapter's main concerns is the linkage between spatial-development planning and restrictions in exercising property rights on the basis of private law. As laid down in Art. 24 of the SPL, during all three phases of spatial planning existing rights on land in the possession of individuals or communities must be respected (*dengan tetap menghormati hak yang dimiliki orang*). This raises the question how this rule has been interpreted and how it has influenced individual/communal tenure security. This subject tends to be ignored in the literature on land law and spatial planning, with many authors restricting their view to one of the two topics and thus missing essential features of the overall picture.

Contemporary Indonesian authors writing on land law, specifically the process of land acquisition, tend to focus on how to best interpret the state's right of avail (*Hak Menguasai Negara*) in relation to land acquisition in the public/private interest.[275] In contrast, the literature on spatial planning tends to focus solely on planning issues and, with few

[275] See, inter alia, Maria SW Sumardjono, Tanah dalam Persektif Hak Ekonomi, Sosial dan Budaya, (Jakarta: Kompas, 2008); BF. Sihombing, Evolusi Kebijakan Pertanahan dalam Hukum Tanah Indonesia (Jakarta: Gunung Agung, 2005); Boedi Harsono, Menuju Penyempurnaan Hukum Tanah Nasional: dalam hubungannya dengan TAP MPR RI IX/MPR/2001 (Jakarta: Univ. Trisaksi, 2003).

exceptions, ignores the role and function of regulations restraining individual freedom to enjoy possession of land.[276] The World Bank also seems to miss the point by insisting that tenurial security rests primarily on the formalisation of land titles[277]. These approaches ignore the linkage between land use planning, land acquisition in the public or commercial interest, and land use restrictions. In addition, none of the relevant literature on Indonesia discusses how enjoyment of land ownership should be restrained or limited by land use policies made in the public interest and the limits to the state's authority in doing so. This chapter attempts to fill this gap.

Before I will address the ways in which different government levels implemented the SPL 1992, the law's basic contours will be outlined.

## 4.2. Spatial Management According to the SPL 1992

Unlike the SVO of 1948 and ministerial regulations about town planning issued after 1980, the SPL 1992 covered land (*bumi*), water (air) and air space (*ruang udara*). This suggests that the SPL should be perceived as an elaboration of Art. 33(3) of the 1945 Constitution (and Arts. 1-2 of the BAL) which provide the basis for the state's right to avail. The SPL attributed planning competences to the central government, provinces and districts (Art. 7 par.(2)). The integration (*keterpaduan*) of planning activities among the three government levels was to be assured by the establishment of a hierarchy of spatial plans (Art. 8). As pointed out by Niessen, the spatial planning system was built upon the understanding that the lowest spatial plan, as formulated by the districts government, should be an elaboration (*penjabaran*) of spatial plans prepared by the provincial and central governments.[278]

The National Spatial Plan (*Rencana Tata Ruang Wilayah Nasional*) was determined by Government Regulation (*Peraturan Pemerintah*) and corresponded with the Long-Term

[276] Nicole Niessen, Municipal Government in Indonesia: Policy, Law, and Practice of Decentralization and Urban Spatial Planning (unpublished dissertation, University of Leiden, 1999). See specifically page(s) 259-271. A more elaborate discussion on permits as a government tool to control land use can be found in H. Juniarso Ridwan & Achmad Sodik, Hukum Tata Ruang dalam konsep kebijakan otonomi daerah (Bandung: Nuansa, 2008).

[277] World Bank, Policy Review Report: Land Policies for Growth and Poverty Reduction (Washington DC: World Bank, 2003). See especially Chapter II (Property Right to Land).

[278] Niessen op cit, p. 238. See Art. 21: the provincial spatial planning is a derivation of the national strategy and directives on land use policy (*rencana tata ruang wilayah propinsi daerah tingkat I merupakan penjabaran strategi dan arahan kebijaksanaan pemanfaatan ruang wilayah nasional*).

National Development Plan (*Pola Pembangunan Jangka Panjang*) (Art. 20). Therefore, it should be valid for 25 year (Art. 20 par.(4)). The Spatial Plan of the Province (*Rencana Tata Ruang Wilayah Propinsi Daerah Tingkat I*) was determined by a regional bylaw (*peraturan daerah*) (Art. 21) and should be valid for 15 years (Art. 21 par.(4)). Provincial Spatial Plans must be elaborated further in the Spatial Plans of a Municipality/District (*Rencana Tata Ruang Wilayah Kabupaten/Kotamadya Daerah Tingkat II*) within their jurisdiction (Art. 22). They too must be cast into a regional by-law (Art. 22 par.(6)) and were to be valid for 10 years (Art. 22 par(5)). This plan provided the basis for the formulation of a detailed spatial plans (*rencana rinci tata ruang*) (Art. 22 par(3d)). At all levels, such spatial plans should be integrated and match the corresponding development planning fashioned in a similarly hierarchical manner. An elucidation as to how the system was structured is provided in the table below:

**Table 3-3: The hierarchal structure of development-spatial planning**

| **Government Structure (RGL 5/1974)** | **Development Planning** | **Spatial planning** | **Term** |
|---|---|---|---|
| Central Government | Long Term Development Planning *(Pola Pembangunan Jangka Panjang (PJP) 1969-1994 I and PJP II (1995-20* | *RTRW National*<br>(Government Regulation) | 25-30 years |
| Province | Middle range Development Planning | RTRW Propinsi<br>(Provincial Regulation) | 15 years |
| District/Municipality | Short term (*rencana pembangunan lima tahun/repelita)* | *RTRW Kota/Kabupaten*<br>(District Regulation) | 10 years<br>(two consecutive 5 year development plans) |
| | | RDTRK | |

Due to time frame differences regulating the validity of the various levels of spatial plans, the lowest level of government had to renew its plans more frequently than the provincial and

central governments. As noted by Niessen, this could potentially result in bottom-up inspiration instead of the top down derivation intended by the law.[279] However, this was not the case because other factors influenced when and how different levels of government formulated their respective spatial plans. This issue will be discussed below, when the question how different government levels implemented the SPL 1992 is examined.

With regard to the establishment of a hierarchical spatial planning system, other provisions were relevant as well. It was stipulated that the district spatial plan should encompass both rural (*rencana tata ruang kawasan perdesaan*) and urban spatial planning (*rencana tata ruang perkotaan*). Unfortunately, the procedure for formulating such spatial plans and which government level was authorized to do this was not addressed by the SPL 1992. Instead, the law determined that an implementing regulation should be promulgated to address this (Art 23 pars.(1) & (3)), and no such government regulation materialized before 2006 when the SPL of 1992 was amended. As will be discussed below, this legal lacuna resulted in the municipality of Bandung applying the SVO 1948 (as elucidated by ministerial regulations and directives) rather than using their authority under the SPL when drafting their spatial plans.

In addition, the SPL also provided the President with an option to assign specific areas (*kawasan tertentu*) within provinces or districts. Assignment of such specific areas should be effected by a Presidential Decree, but the spatial planning of such specific areas should be integrated into their respective provincial or district spatial plans (Art. 23). The wording of this article suggests that the president's authority was limited to assigning and declaring an area as being accorded the status of special area, with the competence to regulate land use within such areas remaining in the hands of provincial or district governments.

The SPL 1992 envisaged a central role for district spatial plans. These should provide guidance in determining which areas were to be reserved for investment purposes at the district level (*penetapan lokasi investasi*) and how land should be allocated for development projects (*pelaksanaan pembangunan dalam memanfaatkan ruang bagi kegiatan pembangunan*). Furthermore, they should serve as the basis for processing applications of development location permits (*perizinan lokasi pembangunan* (Art. 22 par.(3c) and par(4)) and as the legal basis upon which land acquisition and its subsequent use by individuals or corporations should be controlled and monitored. Simply put, the district spatial planning regulated who could get land and on what terms. Oversight power was granted to the district head. Art. 26 of SPL 1992 stipulated that land use permits (*izin pemanfaatan ruang*) granted

[279] Ibid. p.238.

in violation of existing district spatial planning should be declared null and void (*batal*) by the district head.

Given the central position of the government in land management, two questions emerge. The first regards how the planning system established under the SPL restricted private rights of individuals and communities on land they owned or occupied. The second is to what extent such rights restricted the state's authority in spatial management.[280] Keeping these questions in mind, we will now discuss how the SPL 1992 was transformed by various levels of governments into working spatial plans and analyse the extent to which those plans conformed to the ideal envisaged by the SPL.

### 4.3. Spatial Planning at the National Level

The first national spatial plan (*RTRW nasional*) promulgated on the basis of Law 24/1992 (SPL 1992) was Government Regulation (GR) 47/1997. As Table 1 above indicated, this national planning should be considered an elaboration of development programs enumerated in the long term national development plan. Accordingly, one would expect it to contain directives on how available land (and other natural resources) should be allocated to support these programs.

However, rather unexpectedly the GR was not a real plan, but rather an implementing regulation (*peraturan pelaksana*) for the SPL. This means that it contained general directives addressed to provincial and district/municipal governments on how to determine and assign areas falling under their respective administrative jurisdictions as areas for cultivation (*kawasan budidaya*), for conservation (*kawasan lindung*) (Art. 9) and specific areas (*kawasan tertentu*) (Arts.8 & 20(3)).[281] The GR further enumerated which particular areas fell under these two categories of cultivation and conservation areas (Art. 10). For an overview, see table 2 below.

---

[280] See: Muhammad Bakri, Hak Menguasai Tanah oleh Negara (Paradigma Baru untuk Reformasi Agraria (Yogyakarta: Citra Media, 2007). Quoting another author (Maria Rita Ruwiastuti), he raises the question on the extent of state power to limit the bundle of "private law" rights that individuals or communities may enjoy on their land.

[281] The lists of which areas fall under this specific criterion are provided for in the attachment (23 areas which includes Jakarta-Bogor-Bekasi; Gresik-Bankalan-Kertosono-Surabaya-Sidoarjo-Lamongan and Medan-Binjai-Deliserdang). These areas are accorded special status due to their importance in inducing national economic growth.

Table 3-4. Classification of Area according to GR 47/1997

| No | Category | Division |
|---|---|---|
| 1. | Cultivation Area | a. forest production area (*kawasan hutan produksi*)<br>b. communal forest (*hutan rakyat*)<br>c. agricultural land<br>d. mining areas<br>e. industrial zones<br>f. tourist area<br>g. residential areas (urban-rural) |
| 2. | Protected Area | a. areas serving to protect adjacent areas (*kawasan yang memberikan perlindungan kawasan bawahannya*) (i.e. protected forest, wetlands, water catchment areas);<br>b. areas conserved to protect important natural features (*kawasan perlindungan setempat*) (i.e. springs, river basins, watersheds, beaches, urban forests; nature sanctuaries (*kawasan suaka alam*);<br>c. conservation areas (*kawasan pelestarian alam*); cultural heritage areas (*kawasan cagar budaya*);<br>d. areas prone to natural disasters (*kawasan rawan bencana*) and<br>e. Other conservation areas (*kawasan lindung lainnya*), covering areas declared as hunting parks, biosphere sanctuaries, areas reserved for animal migration, and mangrove forests |

The above elaboration suggests that provincial and district governments held the necessary authority to classify land, and plan and control the use of such areas. A contentious issue is whether provincial and district governments could enforce their authority in the planning and management of protected areas, in particular conservation areas,[282] as these fell under the exclusive authority of the Ministry of Forestry.[283] In order to clarify this issue, the President

[282] The Minister of Forestry regularly used the term "*kawasan lindung*" in the context of nature conservation, which includes the protection of habitat, eco-systems and endangered species. To avoid confusion stemming from the use of similar terms with different meanings, this paper will distinguish between conservation areas (*kawasan konservasi*: whose assignment falls exclusively under the Ministry of Forestry's authority) and protected areas (*kawasan lindung*; declared as such by virtue of the authority granted to provincial and district governments under the SPL).

[283] Gamma Galudra, Chip Fay and Martua Sirait, "As Clear as Mud: Understanding the Root of Conflicts and Problems in Indonesia's Land Tenure Policy" (unpublished paper, 2004). They argued that the Ministry of Forestry has designated 120 million ha of forest as state forest (*kawasan hutan*) corresponding to 60% of the total land surface in Indonesia.

issued Decree 32/1990 on the management of conservation areas. This decree was an elaboration of both the FL 1967 and GR 28/1985 on forest protection (*perlindungan hutan*) and created different categories, suggesting that a different regime was indeed applicable to land controlled by the Ministry of Forestry. See table 3 below:

Table 3-5: Classification of conservation areas according to Presidential Decree 32/1997

| | | |
|---|---|---|
| Conservation Area | 1. areas serving to protect adjacent areas (*kawasan yang memberikan perlindungan di bawahnya*) | a. Protected forests (*kawasan hutan lindung*)<br>b. Wetlands (*kawasan bergambut*)<br>c. Catchments areas (*kawasan resapan air*) |
| | 2. areas conserved to protect important natural features (*kawasan perlindungan setempat*) | a. Coastal areas (*Sempadan pantai*)<br>b. River basins (*sempadan sungai*)<br>c. Areas surrounding natural and artifical lakes (*Sempadan sekitar danau/waduk*<br>d. Areas surrounding springs (*Kawasan sekitar mata air)* |
| | 3. Nature and Culture conservation areas (*kawasan suaka alam dan cagar budaya*) | a. Nature reserves (*Kawasan suaka alam*)<br>b. Maritime and other fresh water nature reserves (*Kawasan suaka alam laut dan perairan lainnya*)<br>c. Mangrove coastal areas (*kawasan pantai berhutan bakau)*<br>d. National parks, forest parks and tourist nature parks (*Taman nasional, taman hutan raya dan taman wisata alam*)<br>e. Cultural and scientific reserves (*Kawasan cagar budaya dan ilmu pengetahuan*) |
| | 4. areas prone to natural disasters (*kawasan rawan bencana alam*) | |

This suggests that the Ministry of Forestry held exclusive authority to assign and manage land use for different kind of conservation areas, whether forested or not. Therefore,

determination of conservation areas and planning of those areas fell outside the scope of competence of provincial and district governments.[284] Briefly stated, the government's competence in spatial planning did not apply to areas categorized as state forests or forest land which covered 143.8 million ha of Indonesia's land surface (approximately 75% of the nation's land area).[285] Such dualism as indicated earlier in the previous chapter prompted the necessity for synchronization (*padu serasi*) where appropriate for forest spatial planning and provincial spatial planning.[286]While synchronization would surely involve a comparison and exchange of data regarding which areas had been classified as conservation areas under the Forestry Law or protected areas by provincial spatial plans, it did not necessarily mean a sharing of responsibilities in managing conservation areas.[287] What it does signify is that the provincial government and the Ministry of Forestry maintained a division of responsibilities by agreeing on the boundaries of state forest land and non-state forest land which continued well after 1999.[288]

Such a dualism in spatial management did not exist regarding another important feature of GR 47/1997: its indicating which areas should be developed into centers of economic growth (growth poles) at the national, provincial and district levels and the way it linked these to future infrastructure projects, such as the construction of airports, harbors and roads, and electrical and water provision networks (art. 13-31) .[289] The elucidation of Art. 7(4) refers to

---

[284] As further elaborated into Ministry of Forestry Decree 46/Kpts-II/1987 on Consensus Forest Land Use Plan (*tata guna hutan kesepakatan)* and Ministry of Forestry 399/Kpts-II/1990 (jo. 634/Kpts-II/1996) on forest determination directive (*pedoman pengukuhan hutan)*. See: "Tata Ruang dan Proses Penataan Ruang", Warta Kebijakan CIFOR 5 August 2002. Regarding confusion over overlapping and competing concepts of conservation areas, see: Wiryono, Klasifikasi Kawasan Konservasi Indonesia", Warta Kebijakan CIFOR 11 May 2003).

[285] John Mc Carthy, "Village and State Regimes on Sumatra's Forest Frontier. A Case from the Leuseur Ecosystem, South Aceh", paper presented in the Resource Management in Asia Pasific Project Seminar Series, November 1999, pp.3-4.

[286] Since the 1980s, the Ministry of Forestry had demonstrated forest areas *(pengukuhan huta*n) by performing the forest area border delineation (*penataan batas kawasan hutan*) by means of the TGHK. Over 80% of forest area had its borders determined by this process. However the promulgation of the SPL 1982 forced (*memaksa)* the Ministry of Forestry to adjust the TGHK with provincial spatial planning. See. Karsudi, "Permasalahan Kepastian Kawasan Hutan, Identifikasi dan Saran Pemecahannya" (paper dated 7 August 2008 written in the website of the forestry service of the Papua province, at http://kehutanan-papua.com/berita.php?ids=73&kel=2, last accessed 30 July 2009.

[287] Firsty Husbaini & Sulaiman Sembiring, Kajian Hukum dan Kebijakan Pengelolaan Kawasan Konservasi Indonesia (Jakarta: Lembaga Pengembangan Hukum Lingkungan, 1999).

[288] See Putri Guillaume, Navitri. "State Building, Property Rights and the Problems of Deforestation in Indonesia", paper presented at the annual meeting of the International Studies Association, Town & Country Report Convention, San Diego, California, USA, March 22, 2006, available at http://www.allacademic.com/meta/p100774.index.html, accessed at 15/10/2009.

[289] As affirmed by Ir. Djoko Kirmanto Dipl. H.E, Ministry of Public Work in his opening speech before a national seminar titled "RUU Penataan Ruang" organized by REI, HKTI and Dewan Maritim Indonesia, Jakarta, 2006.

the term '*kawasan andalan*', meaning urban areas which serve as primary centers for economic growth and are expected to bolster their region's development[290]. This provided the basis for the development of a comprehensive national urban development strategy (NUDS) which was to be included in provincial and district spatial planning.

Under this scheme, cities were ranked within a network hierarchy to serve as national or provincial centers for promoting the economic growth of adjacent regions. This approach adhered to the theory that widespread economic growth is facilitated by the emergence of an articulated and integrated settlement system of towns and cities of different sizes and functions. These centers must be sufficiently large and diversified in order to serve not only their residents, but also those in surrounding rural areas, as nodes of trade and commerce.[291] Positive as this may seem, such a NUDS policy influences actual land use and poses a threat to the tenurial security of land owners in subsidiary cities and the hinterlands (peri-urban and rural areas adjacent to primary cities). As will be elaborated upon below, the same policy brought about a multitude of other problems, including uncontrolled urban expansion and the loss and degradation of agricultural land and valuable ecological sites.[292]

Furthermore, in conformity with the SPL 1992, the GR granted the central government the authority to assign specific areas. Art. 8 of GR 47/1997 determined that the designation of an area as a special zone must serve the purpose of increasing society's welfare, boost economic growth, bring development to underdeveloped areas, warrant the need to protect and defend state security, strengthen national integration, reinforce environmental preservation and increase the environment's carrying capacity. In other words, the stated objective was to further a particular version of the public interest.

This seems to suggest that, prior to the inception of SPL 1992 and GR 1997, the president did not have this particular power. However, this was not the case. Even before 1992, the President had apportioned certain areas out of the control of provincial or district governments to protect national interest or promote national economic growth. The Puncak

---

[290] The definition of *kawasan andalan* is not found in the main text. Instead, one must read the elucidation of Art. 7(par.4). Here, *kawasan andalan* are defined as: "centers of "regional" economic growth and, as such, expected to determine the most efficient land use of an area. Such areas shall be assigned on the basis of the region's potency, the existence of agglomerations of urban residential areas, their importance as centers of trade and business, and a consideration of the region's development".

[291] Dennis A. Rondinelli, "Towns and Small Cities in Developing Countries", Geographical Review Vol. 73 no. 4 (Oct. 1983), pp. 379-395.

[292] Cf. Adriana Allen with Nilvo L.A. de Silva and Enrico Carubolo, "Environmental Problems and Opportunities of the Peri-Urban Interface and Their Impact for the Poor", (Peri-Urban Research Project Team, Development Planning Unit, University College London, 1999).

area is an illustration of the former.[293] As for the latter, the President declared Batam, an island directly off coast to Singapore, as an industrial and bonded zone in 1978 (it was changed into a free trade zone in 2007). [294] Development and spatial planning for this area has been managed by a special board (*Badan Otorita*) directly responsible to the president.[295]

It is important to understand that the direct intervention of the President in designing specific areas had serious consequences for the provinces and districts. Not only were considerable plots of land removed from the latter's regulatory jurisdiction as a result, but the mechanism was in practice misused in order to evade related regulatory and controlling powers. For example, PD 1/1997 appointed Jonggol as a specific area in order to 'facilitate a particular national interest' – in this case creating a new settlement area to reduce the pressure on Jakarta. To this end all powers relating to planning, implementation and supervision were transferred from the province and the district to two specially established agencies managed directly under the president.[296] This facilitated land acquisition by a consortium under Soeharto's son Bambang Trihatmodjo. The Decree sidelined the provincial and district governments and removed all legal guarantees to protect the public interest. Ironically, Bambang Trihatmodjo argued that this measure was necessary to provide legal certainty against any interference from the Governor of West Java, and that the provincial

[293] The spatial management of Puncak area was regulated by Presidential Regulation 13/1963 (*tentang ketertiban pembangunan baru disepanjang jalan antar Jakarta-Bogor-Puncak-Cianjur*) as amended by Presidential Decree 48/1983 (*tentang Penanganan Khusus Penataan Ruang dan Penertiban serta Pengendalian Pembangunan pada Kawasan Pariwisata Puncak dan Wilayah Jalur Jalan Jakarta-Bogor-Puncak-Cianjur*), Presidential Decree 79/1985 tentang *Penetapan Rencana Umum Tata Ruang Kawasan Puncak* and further elaborated by Ministry of Home Affair decree 22/1989 (*Tata Laksana Penertiban dan pengendalian pembangunan di Kawasan Puncak*).

[294] Batam's (and environs) designation as an industrial zone was effected by virtue of Presidential Decree 41/1978 as renewed by Presidential Decree 94/1998. Only in 1983 did the government establish Kota Administratif Batam (Government Regulation 34/1983) to jointly manage the area.

[295] See further Presidential Decree 65/1970 on Batam's spatial and development planning.

[296] See Article 3 and Article 7.

government could draw benefits from the project 'by watching and learning' from it.[297] A former Bupati referred to this practice as 'being Presidential Decreed' ('*di-keppres-kan*').[298]

By contrast, the President's direct intervention in regulating the Puncak area did not go against the regional governments' interests.[299] Initially, the central government's concern was limited to controlling construction in the area, as can be seen from GR 13/1963 (development of new buildings along the road between Jakarta – Bogor – Puncak – Cianjur). In 1985, GR of 13/1963 was complemented by Presidential Decree 79/1985 which provided for spatial planning in the Puncak Area. However, in contrast with Jonggol, jurisdiction over the area remained with the provincial and district governments. The provincial government established a special team to supervise the enforcement of the Puncak spatial plan and produced more detailed plans, while Bogor (5/1993) and Cianjur (3/1998) made plans to further fill in the details. In summary, this form of intervention can be seen as a way of guiding, rather than substituting, the jurisdiction of the province and district.

Thus, GR 47/1997 regulated how protected, cultivation, prioritized (*kawasan andalan*) and specific areas were to be classified and as such served as a directive for provincial and district governments which they must follow when drafting spatial plans. The GR contained no provision for regulating what should happen in the event of non-compliance, but compliance was effectively secured by the requirement that any draft of a (provincial-district) regulation must be validated or endorsed by the Ministry of Home Affairs before being promulgated.

The extent to which the SPL and GR 47/1997 were translated into a provincial spatial plan by the West Java provincial government and a district spatial plan by the municipality of Bandung will be discussed below.

---

[297] See "Bambang Trihatmodjo: Soal Keppres Jonggol Asri", (Jawa Pos, 21 December 1996). After 1999, President Habibie rescinded PD 3/1997, together with three others concerning controversial planning: PD 48/1983 (special arrangement for the spatial planning of and the control and ordering of the development of the tourism area of Puncak and the road connecting Jakarta – Bogor – Puncak – Cianjur outside the administrative territory of Jakarta, Bogor, Depok, Cianjur and Cibinong) and PD 79/1985 (General Spatial Planning of the Puncak Area), and PD 114 /1999 (Spatial Planning of Bogor-Puncak-Cianjur (Bopunjur) area). See:"75 dari 528 Keppres, Ternyata Menyimpang: Habibie Diminta Tanggapi Hasil Kajian MTI" (Yogyakarta, Bernas, 19 October 1998); "Dicabut Tiga Keppres Terkait Keluarga Cendana" (Jakarta Bernas, 19 October 1999).

[298] Personal communication: lieutenant colonel (ret.) of the armed forces, Djamhari, Head of Bekasi District (1995-1999). 10 August 2005.

[299] For a brief overview of the spatial planning of Puncak, see M. Daud Silalahi, "Kasus Puncak: Pelanggaran Hukum Tata Ruang dan Lingkungan Siapa yang Bertanggungjawab? (Kompas 20 February 2002).

## 4.4. Spatial Planning at the Provincial Level: West Java Province

As stated earlier, the SPL 1992 explicitly demanded that provincial and district governments formulated their own spatial plans as an elaboration of the directives made by the central government (Art. 22 and 27). GR 47/1997 provided the rules for such planning. First, the provinces should make a Provincial Spatial Plan (*Perda Rencana Tata Ruang Wilayah Propinsi*). This would be the basis upon which districts were to formulate their general and more detailed spatial plans. The overall scheme was clearly top down-oriented: spatial plans at the district level were to elaborate decisions made at the top. However, this is not quite what happened in practice.

In fact, a complete disregard for this top down scheme became generally accepted. Quite a number of provinces did not have a spatial plan and did not bother to prepare as much as a draft well into 1999. By contrast, others promulgated their spatial plan before GR 47/1997.[300] Even after its promulgation GR 47/1997 was largely ignored. Thus Jakarta enacted its first provincial spatial plan in 1999 (6/1999) without even referring to it, and this became accepted practice.

West Java promulgated its first provincial spatial plan in 1994 (Provincial Regulation (PR) 3/1994). The consideration of PR 3/1994 stated that it was to support the provincial development planning policy, and consequently should be considered an inseparable part of the regions long-middle and short tem development plan (art. 5). It went on to elaborate which areas were to be assigned as protected and which as cultivation areas.

The North Bandung Area (*Kawasan Bandung Utara*) was specified for protection by Art.15-19. In this way, the PR provided a retroactive legal basis for the decision by West Java's Governor of 1982 that the Northern Part of the Core Area of Greater Bandung (*Wilayah Inti Bandung Raya Bagian Utara*, an area straddling Bandung district and Bandung municipality) was to be a protected area.[301] This practice seemed to have been modelled after the

[300] See the list prepared by the Ministry of Public Works containing information regarding existing provincial and district spatial plans alongside their dates of promulgation. This list was prepared by the Ministry of Public Works (then called the Ministry for Settlement and Regional Infrastructure) –and later updated 24 September 2003- in light of the need to evaluate existing spatial planning for the western, central and eastern parts of Indonesia against the KepMenKimpraswil 327/Kpts/M/2002. Surprisingly, the Ministry did not bother to evaluate or comment upon the disorderly time frame.

[301] The borders of which were determined by virtue of Governor of West Java Decree 161.1/SK.1624-Bapp/1982 (*peruntukan lahan di wilayah inti bandung raya bagian ut*ara). Badan Perencaaan Pembangunan Daerah Tingkat I Propinsi Jawa Barat, Laporan Rancangan Rencana: Rencana Umum Tata Ruang Kawasan Bandung Utara, Februari 1998.

President's direct involvement in removing specified areas from under provincial or district jurisdiction as in the Puncak or Jonggol area mentioned earlier. Still, the Governor's decree was to be elaborated further into both Bandung district and Bandung municipality's spatial plan.

However, the above regulation was confined to this single protected area only. The province apparently assumed that the authority to determine other local conservation areas fell under the exclusive jurisdiction of the district governments, with the provincial governments and ministries only providing general directives[302].

Furthermore, PR 3/1994 provided a list of urban areas proper (*kawasan perkotaan*), residential areas (*kawasan pemukiman*), industrial estates (*kawasan industri*), and tourism areas (*kawasan pariwisata*) that should be developed as centres of regional economic growth (or growth poles) (Arts. 20 and 21). Similarly, Article 31 indicated future sites for infrastructure development projects, such as the construction of a new international airport at Majalengka and several hydro-electrical power centres, including Jatigede.

The naming of future development sites is significant in that it suggests that such projects were being reserved in the public interest. This made it difficult for land owners to contest the rationality of future land acquisition projects referring to the provincial spatial plan.[303] One should wonder whether naming future development sites or protected areas in the PR should or should not be considered in violation of the requirement to involve and inform the public (especially land owners and other land occupants) in making decisions that have far reaching consequences for their freedom to use and enjoy land under their possession. In fact, public participation in spatial planning had been guaranteed by legislation.[304] However,

---

[302] See Ministerial Regulation 63/PRT/1993 on the management of river basins (*sempadan sungai, daerah manfaat sungai, daerah penguasaan sungai dan bekas sungai*) and West Java Provincial Regulation 14/1989 on the management of roads and irrigation works (*garis sempadan jalan dan pengairan*); 20/1995 on the management of springs (*garis sempadan sumber air*) and 12/1997 on the construction of building on riversides and around springs (*pembangunan di pinggir sungai dan sumber air*)

[303] In addition to demanding compensation in the event of dispossession, Article 4 of the SPL 1992 guaranteed that everyone would have the right to demand compensation in the event development projects in accordance with existing spatial planning resulted in damage or injury. A similar provision (art. 9) is found in GR 16/2004 on land use management (*penatagunaan tanah*).

[304] See Art. 12 of SPL 1992 (spatial planning is conducted by the government with the involvement of the public (*penataan ruang dilakukan oleh Pemerintah dengan peran serta masyarakat*). This public participation mechanism was further elaborated in GR 69/1996 on the implementation of the public's right and obligation, form and mechanism to participate in spatial planning(*pelaksanaan hak dan kewajiban, serta bentuk dan tata cara peran serta masyarakat dalam penataan ruang*) and again in Ministry of Home Affairs Decree 9/1998.

as evidenced by cases such as Kedung Ombo[305], public participation was to be understood in a very limited sense – involving only the requirement to announce ("*sosialisasi*") in the Indonesian government lexicon) development plans and future land acquisition projects to individuals and communities living on the land.

West Java did prioritize growth poles, as can be seen from the amount of land in rural areas reserved for development. As will be explained below, reservation of rural land meant a policy of allowing conversion of rural and agricultural land for industrial or residential use. According to Articles 22 (c) and 28, growth poles covered 51 percent of West Java's entire land surface, and included many fertile agricultural areas. This reservation was made in support of the national development policy to transform Indonesia from an agriculturally based economy into an industrial one. Agricultural land, irrigated rice fields in particular, adjacent to rapidly growing urban areas and future development sites became destined to accommodate the growth of industry and urban areas. The PR provided a legal basis for an anti-agricultural land policy.

In fact, this policy went against the national government's own rules. Presidential Decrees 54/1980 and 33/1990 clearly prohibited the conversion of fertile agricultural or irrigated land (rice fields) for other uses and were followed up with a letter from the National Development Planning Agency (*Bappenas)* to its regional counterparts to put a halt to – or at least control- this trend.[306] Similarly, the National Land Agency sent a letter to regional land offices - during the period when this office was still authorized to receive and process site permit (*izin lokasi*) applications[307] - with a request to pay attention to the widespread conversion of irrigated rice fields for other purposes[308]. Their concern was that the massive conversion of fertile agricultural land would threaten the nation's food security.[309]

---

However, the SPL also stipulates of the government's obligation to "publish and distribute spatial planning made" and "inform and educate the public of its rights and obligation pertaining to spatial planning" (Art. 25).

[305] See "Batalnya Kasasi Kasus Kedung Ombo: Apalagi yang Harus Diperbuat Warga Kedungpring?"(Republika, 9 November 1994); "Kalangan DPR: MA Bingungkan Rakyat" (Republika, 9 November 1994) and Stanley, Seputar Kedung Ombo, (Elsam: Jakarta, 1994)

[306] Letter 5334/MU/9/1994 dated 19 September 1994.

[307] See 4.5.1 below for a brief discussion on such permits. A more elaborate exposition on the permit-in-principle and site permit scheme will be provided in Chapter 7.

[308] Letter 460-3346, dated 31 October 1994).

[309] Massive conversion of fertile agriculture land caught the attention of the greater public in the late 1990s. See: "Perjuangan Merebut Tanah" (down to earth no. 40, February 1999 in http://dte.gn.apc.org) and has since been discussed extensively. See: "Revitalisasi Pertanian Baru Daftar Keinginan", (Kompas online, 2 February 2005); Pantjar Simatupang & Bambang Irawan, "Pengendalian Konversi Lahan Pertanian: Tinjauan Ulang Kebijakan Lahan Pertanian Abadi" in Undang Kurnia F, Agus D. Setyorini & A. Setyanto (eds), Prosiding Seminar

At this point, we may draw three conclusions. The first is that, in deviation of the SPL 1992, the core of the Indonesian spatial planning system was at the provincial level, not at the national. While provincial spatial planning must be elaborated upon by the districts, the provincial government had a legal basis for the removal of considerable plots of land from the district's regulatory jurisdiction. The second point is that the PR 3/1994's concern for the protection of certain areas notwithstanding, provincial spatial planning was primarily geared towards supporting the establishment of a network of growth poles (consisting of primary and secondary cities) and the construction of the necessary infra-structure. The third is that the provincial spatial plan suffered from an anti-agriculture bias. It was predominantly directed to allow the urbanization of the countryside.

## 4.5. Planning at the District Level: Bandung Municipality

West Java's provincial spatial planning showed a profound urban bias. Considering how districts were bound to elaborate provincial spatial plans, the pertinent question is whether the same bias also affected district spatial plans. Would the districts be able or willing to maintain a proportional balance of forest and agriculture areas alongside cultivated areas? In the same context a number of other pertinent questions arose: Would district spatial planning be any different? Would a closer proximity between spatial planners and users make any difference? Would urban populations play a larger part in spatial planning at the local level? An analysis of the Bandung municipal spatial plan promulgated during this period provides a number of answers.

### 4.5.1. The District Spatial Plan and land use permits

To reiterate, in accordance with the SPL 1992, district governments had to formulate spatial plans on the basis of existing provincial spatial plans. District spatial plans determined the future usage of all areas: residential, forestry, agriculture, mining, industry, tourism and

---

Nasional: Multifungsi dan Konversi Lahan Pertanian Andi Irawan, Jakarta 2007); "Lahan Pertanian: Antara Negara dan Pasar" (Media Indonesia, 26 August 2008. However, only in 2004 did the government start perceiving land conversion as a threat to food security. It was mentioned in Law 25/2004 on the national development planning system (*sistem perencanaan pembangunan nasional*). Presidential Regulation 7/2005 on middle term development plan 2004-2009 (*rencana pembangunan jangka menengah 2004-2009*). Chapters 19 and 25 in particular mention the need to put a stop to continuing land use conversion in light of national food security.

others (Art. 22 para. 2(b) of Law 24/1992). They also indicated which areas were open for investment and other development projects (Art. 22 para.3(c)) and as such constituted the legal basis for evaluating all applications for development location permits (*perizinan lokasi pembangunan*) (Art. 22 para.4). Along with land use permits (*izin pemanfaatan ruang*), development loaction permits allowed government agencies and private investors to acquire land reserved by the government through spatial plans and utilize land acquired for "development" (Art. 26).

Were the government authorities in charge of providing these permits publicly accountable for this task? Both the development location and the land use permits were only to be provided in the public interest and were formulated for the benefit or at least protection of local people's interests (especially for those living on and/or claiming ownership on land). However, it should be noted that although spatial plans provide general indications regarding which areas are available for development, they do not automatically grant the right to acquire the land and use it for any purpose whatsoever. There are different mechanisms for controlling the land acquisition process (development permits) and the control and monitoring of land use (land use permits). In both processes, individual permit applications shall be considered against existing spatial plans.

In order to facilitate accountability of this sort, all spatial plans, from the provincial to the district, should be sufficiently detailed to indicate what development plans can be realised in a particular place. In addition, the plan should be made known to a wide public.

### 4.5.2. Bandung Town Planning

It is important to keep in mind that there was already a town planning system before the SPL's introduction of a hierarchical system of spatial development planning. Moreover, the SPL did not immediately abolish this system. As a result, the Ministry of Public Works and Ministry of Home Affairs remained involved in town planning. As will be seen in the case of Bandung, it is of the utmost important to understand the relationship between older and newer planning regulations in certain cases and how they were implemented.

As discussed in the previous chapter, the Bandung municipal government promulgated an urban master plan in 1971[310] to replace the one made by Thomas Karstens in 1930.[311].

[310] Bandung Municipal Parliament Decree (Surat Keputusan DPRD) 8939 of 1971. A report made by the Bandung Development Planning Board notes the existence of this Parliamentary Decree only in passing. See

Following this master plan, Bandung was to be developed into 'a multi-function city serving the development of industry and trade-commerce'. This resulted in a policy which allowed industries and trade to flourish along major roads, connecting urban areas and opening up the city for rural-urban migration. In the legal parlance of the time, it is stated that the 1971 Bandung Master Plan:

> "should be understood as an important tool to direct how urban land shall be allocated to secure the attainment of development goals as elaborated in the State Guidelines on National Development Policy, West Java's Development Policy (*Pola Dasar Pembangunan Propinsi Daerah Tingkat I Jawa Barat*), Regional Development Plan for Greater Bandung (*Perencanaan Pengembangan Wilayah Bandung Raya*) and Bandung Development Policy (*Pola Dasar Pembangunan Daerah Kotamadya Daerah Tingkat II Bandung*)".

Could the Master Plan of 1971 made in line with the basic ideas and purpose of SVO /SVV be adjusted to accomodate development goals articulated during the New Order government? There clearly was a mismatch between the goals intended by the SVO/ SVV and those envisioned by the central government in its top-down and hierarchical development plans. Urban planning, as envisaged by the SVO/ SVV, was to be formulated by local authorities and other stakeholders:

> "to arrange the layout and buildings (…), so as to ensure town development is in line with the town's social and geographical characteristics and possible growth, and

---

Bappeda Kota Bandung, Rencana Tata Ruang Wilayah Kota Bandung 2013: Buku Rencana, (Bandung: Bappeda, 2004), p. 2-4. For a brief analysis on master or town plans for Bandung from 1965 to 1990, see Sandi Aminuddin Siregar, Bandung-the Architecture of a City in Development: urban analysis of a regional capital as a contribution to the present debate on Indonesian urbanity and architectural identity (volume I & II) (doctoral thesis, Katholieke Universiteit te Leuven, June 1990), pp.118-129.

[311] Ibid. The Karstens plan, the Bandung town planning document, was made by the famous Dutch architect-town planner Ir. Thomas Kartens. It contained a plan to extend town borders to accommodate urbanization for the next 25 years. For a brief elucidation on Thomas Karstens' influence and work in colonial urban planning see Erica Bogaers and Peter de Ruijter, "Ir. Thomas Karstens and Indonesian Town Planning, 1915-1940", in Peter J.M. Nas (ed), The Indonesian City: Studies in Urban Development and Planning, (Dordrecht-Holland/Cinnaminson-USA, 1986), pp.70-87. Cf. Pauline KM 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.

complies to the needs of the various races, and strives for a harmonious functioning of the town as a whole and in sympathy with its surroundings and general functions."

As already mentioned, between 1970 and 1980, town planning became an element of national-regional *development* planning.[312] Hence, the Ministry of Home Affairs promulgated Ministerial Regulation 9/1982 on the guidelines for development planning and management in the regions (*pedoman penyusunan perencanaan dan pengendalian pembangunan di daerah* or P5D). These guidelines intended to combine top-down with bottom-up planning by formulating master development plans in a hierarchically structured manner while channelling citizens' aspirations from villages to the central government through a bureaucratic network of development planning meetings.[313]

This linking of spatial and development policies was furthered by the inception of the permit-in-principle (*izin prinsip*) and the site permit (*izin lokasi*) scheme in the 1980s. The permit-in-principle, issued by the Investment Coordinating Board (BKPM), ensured that an investor may start acquiring land for investment, while the site permit, issued by the National Land Agency (BPN), allows him to acquire land from individual land owners with government support. Both instruments ensured that foreign and domestic investors would have access to abundant 'under or un-developed' land in the regions. They also ensured that development planning would be prioritized over spatial planning.[314]

In the end, the 1971 Bandung Master Plan established to realize the objectives of the SVO/SVV was eclipsed by development planning. Central government policies regarding the issuance of permits-in-principle and site permits enabled investors and individual citizens alike to disregard the 1971 Bandung Master Plan. As a result, exclusively residential areas were turned into areas for mixed uses. A complete lack of interest in preserving the historical

[312] 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 februari 2004).

[313] For a more detailed explanation on the development and spatial planning process before and after the enactment of the Law on Spatial Planning (24/1992) 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, Oktober 1994). Cf. Ito Takeshi, "The Dynamics of Local Governance Reform in Decentralizing Indonesia: Participatory Planning and Village Empowerment in Bandung, West Java", (Asian-African Area Studies, 5(2): 137-183, 2006. Ito, taking the district of Bandung as a case, compares development planning before and after 1999.

[314] A brief discussion on how both permits relate to land use planning shall be discussed below in section 4.6

value of Dutch colonial buildings and open green areas (e.g. public parks, artificial lakes) moreover led to their destruction on a large scale during this period.[315]

In 1986, the Bandung municipality decided to amend the 1971 Bandung Master Plan.[316] The new Master Plan was made on the basis of new planning legislation by the Ministers of Home Affairs and Public Works[317] and had to be approved by both Ministers to become legally binding. This legal leverage effectively provided the Minister of Public Works with the power to control and determine the contents of city master plans, especially those regarding future infrastructure development projects.[318] As a result, it was no longer the autonomous municipality which controlled town land use planning.

In 1992, the Bandung Master Plan of 1986 was once more amended on the basis of the same procedure (Municipal Regulation 2/1992) and declared valid for the 1991-2001 period.[319] In this spatial plan, the linkage between 'spatial utilization' (land use) and development was made even more explicit. Not only did the consideration of the regulation explicitly refer to development planning in West Java and the municipality,[320] it also supported the practice of issuing location development permits justifying land acquisition projects.

The above Master Plan was then further elaborated into a detailed plan (Municipal Regulation 2/1996). By this time, the SPL of 1992 had been in force for more than three

---

315 Dibyo Hartono, "Arsitektur Bersejarah Kota Bandung dan Citra Kota Bandung" (Kompas, 16 April 2006), Dadan Nugraha, "Bangunan Kolonial di Kota Bandung (Pikiran Rakyat, 20 September 2005); "Mengembalikan Kejayaan Jalan Braga (Kompas, 6 Mei 2004); "Bandung Kembangkan Wisata Sejarah"(Bisnis Indonesia, 26 Maret 2004), "Bangunan Tua, Saksi Sejarah Kota Bandung (Kompas, 24 Maret 2002).

316 Regional regulation issued by Kotamadya Daerah tingkat II Bandung 3/1986 on the Master Plan of Bandung 1985-2005, as authorized and certified by the Ministry of Home Affairs by virtue of a letter 650-1056 dated 11 July 1986.

317 See Ministry of Home Affair Regulation (*Permendagri*) 4/1980 on directives for urban planning (*Pedoman Penyusunan Rencana Induk Kota*) and Ministry of Home Affair Instruction (Instruksi *Menteri Dalam Negeri*) 650-1223/1982 on the procedure for the formulation of urban planning (*Tata Kerja Penyusunan Rencana Kota*).

318 As regulated in Law 13/1980 (public roads), Law 11/1974 and Government Regulation 23/1982 (on irrigation). By virtue of these laws and by laws, the Ministry of Public Works held attributed powers to formulate a comprehensive (land use) plan in regard to the need to establish new public road networks. See: Dinas Tata Kota Bandung, Selayang Pandang Penataan Ruang Kota Bandung: Informasi Perizinan dan Tata Ruang, (Bandung: Dinas Tata Kota Bandung, 2006):2-3.

319 Kotamadya Daerah Tingkat II Bandung Regulation 2/1992 on the Master Plan of Bandung (*RUTRK Kotamadya Daerah Tingkat II Bandung 1991-2001)* as endorsed and legalized by the Ministry of Home Affairs by Decree 76/1994.

320 West Java Provincial Regulation 8/1988 on development planning of West Java Province: *pola dasar pembangunan daerah propinsi daerah tingkat I jawa barat*) and the Kotamadya Daerah Tingkat II Bandung Regulation 1/1989 (on development planning of Bandung municipality: *pola dasar pembangunan daerah tingkat II Kotamadya Bandung*).

years. However, the detailed plan did not refer to the SPL in its consideration, but to the Ministers of Home Affairs and Public Works' regulations, meaning that the plan was made in implementation of those regulations. As these were closely related to the SVO/SVV, they ought to have been revoked after the SPL replaced the SVO, but theyremained in place.[321] This led to the awkward legal situation that the Master Plan of Bandung was made on the basis of a ministerial regulation that was no longer valid.

This deserves some explanation. The SVO, promulgated in 1948, was declared applicable after official Dutch recognition of Indonesian independence in 1949. The Ministry of Home Affairs reasserted the applicability of the SVO/SVV by issuing a circular letter (Pemda 18/3/6) dated 15-5-1973 on the formulation of city planning).[322] The letter which was addressed to heads of provincial regions stipulated, inter alia, that:

> "(A)waiting the issuance of more specific regulations, the SVO should serve as the legal basis for drawing up urban development planning (regulations)".

This long awaited regulation on spatial planning was the SPL 1992. With its passage, all other ministerial regulations made by both the Ministry of Public Works and Home Affairs on urban planning were to be considered legally invalid as well.

Its lack of validity notwithstanding, the detailed town plan of 1996 effectively functioned as the basis for spatial planning in Bandung until it was replaced in 2004. It divided the municipality into six planning regions (*wilayah perencanaan,* Art. 4), each of which encompassed several sub-districts (*kecamatan*). Each planning region was sub-divided into zones, with each zone serving a specific function: residential, educational, commercial, industrial, military and conservation. These zones were further broken down into blocks for which the municipal government must establish more detailed rules regarding their use. Such rules should determine the minimum amount of green-open areas within a block, the minimum percentage of building coverage within each individually owned parcel (*koefisien dasar bangunan*), the minimum percentage of floor coverage for buildings (*koefisien lantai*

[321] Art. 31 of the SPL: On the date of the promulgation of the SPL, the SVO 168/1948, Lieutenant Governor General of the Dutch-Indies, shall be declared inapplicable.

[322] 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 Wilayah dan Penataan Ruang di Indonesia: Tinjauan Teoretis dan Praktis (makalah dalam kuliah terbuka proram magister KAPET, Unhas, Makassar, 2007).

*bangunan*) and the technical and safety regulations pertaining to the construction of roads (Art. 5).

The detailed town plan also needed to be further elaborated by the municipality in building plans. This part of land use planning – known as the Building and Environment Plan (*Rencana Tata Bangunan dan Lingkungan/RTBL*) – would then provide a binding reference for the municipal government to restrict land owners' freedom to make use of their land in the public interest. The *RTBL* were supposed to provide practical guidance for government agencies and individual land owners about how a piece of land could be used in the best interest of society as a whole. In this manner, it fleshed out Article 6 of the BAL, which states that: 'every right on land (should be limited) by its social function'.[323]

Unfortunately, all of this remained up in the air, as the Bandung municipality never enacted any *RBTL*. That the municipality was not alone in this matter is indicated by a survey on regulations of other municipal governments, none of which possessed *RBTL* either.[324] This raises the question how municipal governments regulated land use in the public interest in the absence of *RBTL*. To answer this question, the discussion will turn to how permits were either linked up to spatial plans in regard to land acquisition or in relation to land use.

### 4.5.3. Land Development and Land Use Restrictions Permits[325]

As indicated earlier, permits are the most important legal instrument by which in the end the government allocates land to be appropriated for development and/or restricts individual landowner freedom in land use. Accordingly, spatial management rests upon how these permits are used in practice. The scope of these permits and how permit holder actions are monitored determine spatial management success.

---

[323] The General Elucidation Number II (4) of the BAL stipulates that no rights on land justify their use, or non-use, merely in the interest of the owner, in particular if this results in others suffering damage. Land must always be used in consideration to the extent of the right and with the purpose of increasing the welfare of both the rightful owner, society and state.

[324] Only after 2000 did several district/municipalities and the Province of Central Java attempt to formulate RTBL for areas under their control. Semarang promulgated one in 2003 (MR 16/2003). See: "Butuh 20 tahun untuk menyulap Semarang (Suara Merdeka, 19 January 2005); "Realisasi Revitalisasi Kota Lama Dipertanyakan", (Suara Merdeka, 09 Mei 2004), "Kota Lama Bukan "Little Netherlands" (Kompas 01 December 2003). In 2004, Bandung formulated *RBTL*, but only for the newly developed areas of Arca Manik, Ujung Berung and Gede Bage (personal communication: Mrs. Sumi from sub section of planning, city planning service (August 2005)

[325] A more detailed elucidation on spatial management and permits will be given in Chapter VII.

As a rule, permits are defined as written decisions issued by government agencies which allow legal bodies to carry out particular activities that are prohibited in the absence of a permit.[326] This requires a clear legal basis and the appointment of a specifically named government body. It is also important to mention that, in Indonesian administrative law, the authority of government officials providing permits is not limited to their issuance. They are also responsible for controlling applicants' actions after the permit is issued and may, if the permit holder violates the obligations or abuses the rights granted in the permit, decide to suspend or revoke the permit concerned.

Spatial planning permits fall into two categories. The first relates to land acquisition and the second to land use restrictions. The first is an instrument for allocating areas for investment (*penetapan lokasi investasi*) and land reserved for development projects (*pelaksanaan pembangunan dalam memanfaatkan ruang bagi kegiatan pembangunan*). The SPL 1992 specifically mentioned the development location permits (*perizinan lokasi pembangunan*; Art. 22 par.(3c) and par(4)) in this context. Spatial plans should be formulated to facilitate the realization of development projects initiated by the government as well as private commercial parties. The district spatial plan should become the basis for evaluating any application for development location permits, submitted either by government agencies or private parties. The second category relates to permits on land use. Permits to determine the use of land (*izin peruntukan penggunaan tanah/IPPT*) and permits to build or construct buildings (*izin mendirikan bangunan/IMB*) are the most important. When processing both permit applications, the Building and Environment Plan should be the main reference.

The district government should be able to determine at all times how a piece of land can be used in society's best interests when using these two categories of permits. At the same time, spatial plans should be able to inform government agencies, private corporations and individual land owners about the limitations on land acquisition and, more importantly, their use in promoting society's best interest.[327] In other words, the district government should be able to assess the best use of land that will best meet the future needs of the people while safeguarding resources for the future.[328]

---

[326] Cf. mr. N.M Spelt & J.B.J.M ten Berge, Pengantar Hukum Perizinan, as reworked by Philipus Hadjon (Surabaya, 1992). The authors of this book define permits or licenses as instruments used by the government to influence or induce citizens to behave in a certain way with the purpose of achieving a concrete goal (p.5).

[327] Prajudi Atmosudirdjo, Hukum Administrasi Negara, Jakarta: Ghalia Indonesia, 1981), pp. 96-97.

[328] Cf. FAO, Guidelines for land-use planning. (FAO Development Series no. 1, Rome 1993 reprinted 1996). The FAO defines land use planning as: "the systematic assessment of land and water potential, alternatives for land use and economic and social conditions in order to select and adopt the best land-use options. Its purpose is to

Looking at the processing of these permits provides good insight into how the government selected what kind of land use would be promoted and what discouraged. The following section will briefly discuss these two categories of permits.

### 4.5.4. Spatial Utilization Permits and Development Location Permits

As mentioned above the SPL 1982 provided two categories of permits, development location permits (*perizinan lokasi pembangunan*) and spatial utilization permits (*izin pemanfaatan ruang*). However it is unclear whether these permits were meant to be individual permits or a number of permits regulating access to land falling under that category. In practice, we can identify two of the best known permits regulating people's access to land, permits-in-principle (*persetujuan/izin prinsip*) and site/location permit (*izin lokasi*).

However one should be aware that both permits, however important, cannot be perceived to stand alone. They were, and even after 1999 are, related in a complex network to other kinds of permits as well. Quite a number of other permits to control access to land or regulate its use were related to both permits (permits-in-principle or site permit), either as a prerequisite to obtain them or as sequels. Adding to the complexity of the network of permits was binding 'recommendations' issued by various government agencies at the provincial or district level. Illustrations of such recommendations include: (1) approval issued by provincial/district development planning boards, evaluating conformity of a project proposal with existing spatial plans or (2) those granted by the Regional Environmental Impact Board on environmental impact assessment studies made by applicants. How this network of permits and recommendations in land use planning and controlling investment initiatives has functioned will be discussed in detail in chapter VII.

#### (a) Regulating access to land: the Permit-in-Principle and the Site-Permit

The permit-in-principle was not initially related to land acquisition or government approval on future use of land for investment. It was created during the early New Order to simultaneously stimulate and control foreign and domestic investment. The legal basis for the permit-in principle during the period discussed here was Presidential Decree 33/1992

---

select and put in practice those land uses that will best meet the needs of the people while safeguarding resources for the future. The driving force in planning is the need for change, the need for improved management or the need for a quite different pattern of land use dictated by changing circumstances".

(revoking 54/1977) on investment (*tata cara penanaman modal*). Article 1-2 determined that any investor wishing to invest in Indonesia must first take into consideration the existing negative list.[329] If the business proposal fell outside the negative list, the investor could proceed to request a confirmation letter from the governor on the future site of the project (*izin pencadangan tanah*). After having received such confirmation on the availability of land from the governor, the investor could then submit a request for a permit-in-principle from the president (foreign investment) or the Investment Coordinating Board (BPKM/*Badan Koordinasi Penanaman Modal*) (domestic investment). Upon approval of the request, the governor should issue the site permit enabling the applicant to start the land acquisition process on the site allocated.

Considering the above, we may conclude that hence much depended on the governor's approval. This was indicated clearly in a Presidential Instruction issued in 1976,[330] which stated that investors could acquire land by using the land acquisition procedure reserved for government projects performed in the public interest,[331] but only after having obtained approval from the governor. When the NLA issued Regulation 3/1992, such permits to reserve land or permit-in-principle in the context of investment (*izin pencadangan tanah/ izin prinsip dalam rangka penanaman modal)* were required before a site permit could be granted.[332] In this respect, the land reservation permit for investment was comparable to the approval to reserve land for development (*surat*) *persetujuan penggunaan tanah untuk*

[329] Law 1/1967 on foreign investment (as amended by Law 11/1970) and Law 6/1968 (as amended by Law 12/1970) on domestic investment. These laws should be read in conjunction with the introduction of the first Five Year Development Plan (or *repelita*) in 1969. This introduction places great emphasis upon rice and industrial production. Equally important are the enactments of the Basic Forestry Law (5/1967) and the Basic Mining Law (11/1967) through which the government enabled foreign investors to exploit Indonesian natural resources and finance the development process from the revenues thereof.

[330] Presidential Instruction 1/1976 re. guidance to synchronize government tasks in managing land with those which falls under the scope of task of the forestry, mining, transmigration and public works (*pedoman tentang sinkronisasi pelaksanaan tugas keagrariaan dengan bidang tugas kehutanan, pertambangan, transmigrasi dan pekerjaan umum).*

[331] The legal basis was provided by the Ministry of Home Affairs Regulation 6/1972; 5/1973, 5/1974 (permit for land allocation for development purposes (*izin pencadangan tanah/prinsip dalam rangka penanaman modal*) and 2/1976 (allowing private enterprises to use procedure for land appropriation by the state). For real estate developers the Ministry of Home Affair Regulation 3/1987 re. allocation and granting of land rights for housing construction companies (*penyediaan dan pemberian hak atas tanah untuk keperluan perusahaan perumahan*) was relevant.

[332] NLA Head Regulation 3/1992 (*tentang tata cara bagi perusahaan untuk memperoleh pencadangan tanah, izin lokasi, pemberian, perpanjangan dan pembaharuan hak atas tanah serta penerbitan sertifikatnya*) defines *pencadangan tanah* as permit-in-principle approving land reservation for investment purposes in accordance with provincial spatial planning.

*pembangunan)* issued by the governor in the framework of land acquisition in the name of development or the public interest. The underlying idea was that the governor was in the position to evaluate whether a government project or commercial endeavour was in line with the prevailing land use plans.

We will now turn to discuss the next permit regulating access to land, the site permit and how it related to the permit-in-principle. The site permit was created by Minister of Home Affairs Regulation 5/1974.[333] Only much later in the 1980s, did it become the primary instrument to accommodate land acquisition by private commercial entities. It developed as part of the government policy to support industrial estate companies (*perusahaan kawasan industri*)[334] and other particular business enterprises.[335] In 1990 the NLA issued Regulation 3/1992. This regulation basically determined that the NLA held the power to control access to land through the use of the site permit. However, this development did not result in the abolishment of the permit to reserve land (*izin pencadangan tanah*), which at a latter stage was resurrected in the form of the permit-in-principle. In this regard the permit-in-principle was developed as a temporary permit to initiate business activities (*izin usaha sementara*), which included the initiation of preparatory measures required for the establishment of the business. The power to grant this permit was taken from the governor and transferred to the Investment Coordinating Board in Jakarta.

In any case, applicants for a site permit must first obtain a permit-in-principle. After having acquired a site permit, the investor held a monopoly on buying the land named in the permit. The permit-in-principle granted the permit holder the right to apply for a site permit allowing him/her to acquire land in the region named in the permit application.

As indicated above, the permit-in-principle became inexorably linked to the site permit issued by the NLA. Access to land for investment was thus controlled directly by the central

---

[333] Ministry of Home Affair Regulation 5/1974 on the reservation and granting of land for private companies (*ketentuan-ketentuan mengenai penyediaan dan pemberian tanah untuk keperluan perusahaan*). The central role of the governor as the government representative in controlling development permits was affirmed in Ministry of Home Affair Regulation 6/1972 on the delegation of the authority to grant land rights (*pelimpahan wewenang pemberian hak atas tanah*).

[334] See Presidential Decree 53/1989 (on *kawasan industri*) as amended by 41/1996. For a detailed regulation on how such companies may acquire *persetujuan prinsip and izin lokasi* see Ministry of Industry's Decree 291/M/SK/10/1989 as amended by 230/M/SK/10/1993 (*tata cara perizinan dan standar teknis kawasan industri*).

[335] For example, hotels-tourist resorts, real-estate or housing construction companies. For companies specializing in the construction of residential areas pertinent is the GR 30/1999 on *Kawasan Siap Bangun* (area prepared for construction) and *Lingkungan Siap Bangun* (environment prepared for construction).

government through the Investment Coordinating Board and the NLA. In this way the role of the governor was curtailed.[336] His power to control access to land suffered a second blow as after 1992, his power was reduced to giving recommendations indicating whether the site chosen for future investment projects accorded with existing spatial plans. While such recommendations, in practice submitted through the Provincial Development Planning Board (*Bappeda Propinsi*), were required to acquire site permit from the NLA, their binding power was considered dubious and negligible.[337]

From a legal viewpoint the above scheme raises a number of questions. Was the president or the Investment Coordinating Board under a legal obligation to look at the relevant district spatial plans before issuing a permit-in-principle? The same question can also be posed with regard to the NLA and the site permit. To what extent was the central government bound by district regulations? In practice, however, disregard of district spatial plans was commonplace and districts responded to deviations simply by adapting existing spatial plans (if they had one) to accommodate changes in land use patterns. Moreover, apparently the Investment Coordinating Board's perceived its task more in terms of having to induce rapid growth in investment rather than control land use. Permits-in-principle were granted without the board having to consult with districts. This may well have been influenced by the subordinated role spatial plans played with regard to development planning, whose primary goal was to boost economic growth by creating an investment friendly legal system. Another factor was that not all provinces or districts possessed such spatial plans or felt the need to formulate one before 1999. The absence did not necessarily hamper the Investment Coordination Board and/or the NLA in processing applications for investment. In the process, spatial plans became market or investment driven. From such a perspective, district regulations controlling access to land were easily perceived as an impediment to investment; something to be overruled. In the final analysis, the existing permit schemes, resulted in an uncoordinated and non-integrated effort at spatial management.[338]

---

[336] For a discussion on the use of the site/location permit *(izin lokasi*) see Chapter VII of this book.

[337] As argued by Ani Widyani from the West Java Provincial Development Planning Board, personal communication, November 2, 2004. This imbalanced power distribution between the governor (provincial Bappeda) and the NLA (and the Investment Coordinating Board) resulted in the Bappeda approving the proposed investment plan, even in the case that it violated existing spatial plans. They seemed to share the belief that in any case they were powerless to stop investment projects already enjoying support from the central government.

[338] As earlier mentioned in Chapter II, Otto, (Note 42) mentions the lack of co-ordination, harmonisation and integration which threatens the internal unity and coherence of a legal system which is vital for achieving at least a degree of legal certainty and effective governance.

Another important issue was whether other government agencies at the same level (the NLA) or lower (provincial government or district services) would be willing to jeopardize any opportunity to promote regional or district economic growth if a permit-in-principle had already been granted? Once a permit-in-principle had been granted by the president himself (in the case of foreign investment), other government agencies would feel the obligation to further support the investment initiative by issuing all required documents. In this case, with both permits granted in violation of existing district spatial planning, would the district head – who was accountable to the Ministry of Home Affairs during the New Order government– be willing to revoke a Presidential or BKPM Decree and a NLA decree pursuant to the powers granted to him by virtue of Art. 26 of the SPL? There was little chance that district heads would risk doing so.

In sum, the freedom of district heads was severely limited by the existence of the centralized and top down development planning policy and the policy package (comprising of the creation of the permit-in-principle and site permit scheme discussed above) developed in the 1980s, to support industrialization and decrease the nation's dependency on income from natural oil and gas export. The idea of turning Indonesia into a modern industrialized nation went hand in hand with President Soeharto's strategy to consolidate political power and secure access to exploit natural resources (including land) for "development purposes".[339] These two permits played a significant role in enabling large scale land acquisition and subsequent control of land by Sino-Indonesian business groups.[340] It should be mentioned that it was also during this period that development became synonymous with huge infra-structure construction projects in support of industrialization and urban expansion. This also meant that existing spatial plans could be bypassed or adjusted to accommodate investment

[339] For a discussion on forest exploitation and the growth of Indonesian economic empires, see "Kalimantan: the Rape of the Forests", a selection of articles from Down to Earth Newsletters (96-97), available at http://forest.org/archive/indomalay/inrainsi.htm. Cf. David W Brown, "Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia; Implications for Forest Sustainability and Government Policy (September 7 1999, available at http://www.geocities.com/davidbrown_id/. See also Richard Robison, Indonesia: The Rise of Capital (Sydney: Allen & Unwin, 1986) who provides a detailed analysis of the movement of military and political leaders into business.

[340] Likewise, the same permits and the way they had been wielded to support industrialization and the urbanization of the countryside was a contributing factor in the widespread occurrence of land conflicts and legal disputes, marginalizing rural agricultural communities. See Noer Fauz (ed.), Tanah dan Pembangunan: Risalah dari Konferensi INFID (Jakarta: Pustaka Sinar Harapan, 1997) Cf. Restu Mahyuni & A Patra M. Zen, "Pemberdayaan Hukum Bagi Masyarakat Miskin: Andai Para Pembuat Kebijakan Mau Melakukan" (Hasil-hasil konsultasi Nasional Komisi Pemberdayaan Hukum Bagi Masyarakat Miskin (Jakarta: YLBHI, CLEP, UNDP, 2007). See especially chapter IV.

needs. To illustrate this point, Tommy Firman[341] suggested a direct causal relationship between the numbers of site permit granted and the increased rate of agricultural land conversion for other uses. Quoting the National Agency for Statistics (*Badan Pusat Statistik*), in the period of 1991-1993, agricultural land conversion reached 106,424.3 hectares or 53,000 hectares per year: 54% for residential areas, 16% for industry, 4.9% for offices and the rest for other non-agricultural uses. 51% of land use change occurred in Java. Firman also noted that most land conversion occurred in regions which were declared protected by existing spatial plans, such as the Puncak region or the North Bandung region where construction of buildings was completely prohibited or at the very least strictly controlled. Moreover, as revealed by Mahyuni[342], as of 1998, the NLA issued a site permit covering 74.735 hectares for housing construction companies in the Jakarta-Bogor-Tanggerang-Bekasi region and 17.470 hectares for major industrial estates. In the same regions, as of 1995, there were 32 golf courses covering an area of 11.200 hectare were established. Within the same period (1981-1999), the conversion of agricultural land was recorded to be 88.500 hectares per year.

Next we will see how both permits also influenced the extent to which the second category of permits became dysfunctional. We now first turn to discussing the second category of permits, those that relate to land use control.

### (b) District Spatial Planning and Land Use Restrictions

The Bandung town plan contained only very general restrictions on land use. The municipality had to elaborate these into more specific and technical rules regarding the way land could be used, which should have guided the issuance of the two main tools of the government to control and monitor urban land use: the permit to plan or determine the use of land (*izin perencanaan-peruntukan penggunaan tanah/IPPT*) and the permit to build or construct buildings (*izin mendirikan bangunan/IMB*).[343]

The rules on the land use planning permit were laid down in DR Bandung 10/PD/1977, and have been amended three times since.[344] The first revision was made by DR 4/1996 in light of

[341] Tommy Firman, "Pola Spasial dan Restrukturisasi Perkotaan di Jawa (Kompas, 31 Mei 1996).

[342] Mahyuni et all. op. cit, pp. 95-98.

[343] The latter is also meant to guarantee that buildings are constructed in fulfilment of sanitary and safety regulations.

[344] Bandung District Regulation 4/1996 on land use planning permit (*izin perencanaan penggunaan lahan*). It was revised in 1998 by virtue of DR 25/1998 on land use determination permit (*izin peruntukan penggunaan*

the revision to the Bandung Master Plan of 1971 and was applicable until the end of the New Government period in 1998. This regulation did not provide a clear definition of the land use planning permit (*IPPT*), but a circular definition which did not explain what the permit is and how it should function. Art. 1(f)) DR 4/1996 stipulates that:

> "The land use planning permit is a planning permit for land use based on RUTRK/RDTRK as a binding plan in light of public service (*Ijin perencanaan penggunaan lahan adalah ijin perencanaan bagi penggunaan lahan yang didasarkan pada RUTRK/RDTRK sebagai rencana yang mengikat dalam pelayanan umum*)".

Further reading reveals that the IPPT was needed before the submission of an application for a building permit (Art. 6) and that it was a government instrument to control land use by individuals or corporations so that such plans would fall in line with existing development and land use plans, especially the Master Plan and/or the Detailed Spatial Plan (*RUTRK/RDTRK*; Art. 16). The mayor also held the authority to reject permit applications which did not conform to the Master Plan or Detailed Spatial Planning, and to rescind permits found to be in violation of those plans.

As its predecessor, DR 25/1998 did not provide a definition of this permit, but stipulates that:

> "Each person planning to construct buildings on land for industry, housing-real estate, trade/industry or for other purposes must first (*wajib terlebih dahulu*) obtain a land use determination permit (Art. 1 par.(1))".

Paragraph 2 of the same article further declared that holding a land use determination permit was mandatory if one wished to apply for a building permit, while Article 5 stated that the permit could be refused if the land use proposed was not in conformity with the Master Plan and/or the Detailed Spatial Plan. The permit could also be rescinded if actual land use did not conform to these Plans.

We may draw two conclusions from the above. First, the land use determination permit is a legal instrument available to the municipality to evaluate land use plans against district plans and detailed spatial plans. The use of the word "or" signifies that in the absence of the RTBL,

---

*tanah*) and lastly in 2004 by DR 4/2002. The term for a pertinent permit was also changed from a "land use planning permit" into a "land use determination permit".

the RUTRK would be applicable. This further indicates that an RTBL was not actually necessary. Second is that the land use determination is mandatory before a building permit could be applied for. We will now take a look at the latter.

The building regulation applicable under the New Order was the "*Bouwverordening van Bandoeng*" (building regulation of Bandung). It was promulgated by the autonomous "*stadsgemeente*"of Bandung on 2 October 1929.[345] After 1945, this building regulation was adopted by the successor to the *Bandung gemeente*. However, a changing structure and system of government after 1945 necessitated a number of amendments to the building regulation.[346] In 1953, the regulation was translated into Indonesian but only the Dutch original version was declared binding.[347] As with a number of other transplanted Dutch colonial regulations, the unofficial translation, not the Dutch version, was used in daily practice by officials processing individual building permit applications.[348] It was replaced completely in 1998 by DR 14/1998.[349]

The building regulation of 1929 covered not only technical aspects of all buildings with regard to safety measures, sanitary and health concerns[350]), but also included rules restraining the use of land by different 'races'. Art. 24 stipulated that areas for western modelled buildings, eastern modelled buildings and housing for the indigenous population (*perumahan kampong perdusunan*) would be determined in the urban development plan (*uitbreidingsplan*). Different rules in regard to building and floor-land use coverage ratio and other technical rules regarding the use of land and building materials would be applied within these areas. Nevertheless, the regulation is very clear regarding the demand that

[345] As promulgated in the Provinciaal Blad van West Java (provincial gazette) on 29 February 1932 no. 2.

[346] Taking into consideration the government structure established by RGL 5/1974. The adoption of this law resulted in the amendment of the regulation by virtue of District Regulation 11/PD/1974 dated 7 October 1974 as endorsed by the Governor by Decree 290/AV/18/Perund/SK/1975. However, amendments were made also in light of this to regulate some important issues differently. For instance, DR 18/PD/1977 (the eleventh amendment to the Bouwverordening van Bandoeng) was made simply in order to change the wording of one particular article.

[347] In the letter preceding, dated 28 July 1953, concerning the legality of the translated version of the "Bouwverordening," it was declared that the Dutch version should be held to be legally binding.

[348] A similar situation existed in regard to the application of the *Burgerlijke Wetboek* (civil code), *Wetboek van Strafrecht* (criminal code) and the *Herziene Inlandsche Regeling* (civil and criminal procedural law). In 1981, by virtue of Law 8/1981 (Code of Criminal Procedural Law), the HIR was rescinded, but only in regard to criminal procedural law. Until now, no official translation of these laws exists.

[349] Bandung DR 14/1998 on the construction of buildings in Bandung (*Bangunan di Wilayah Kotamadya Bandung*).

[350] See especially Chapter V (on different classes of buildings, urban development plans and parcels of land) and Chapter VI (on the construction of buildings).

everyone, regardless of distinctions based on race[351], would be under the obligation to acquire a building permit before starting construction work (Art. 7). Accordingly, this rule would even apply to 'indigenous people' living in kampongs wishing to construct and live in 'traditional bamboo houses' in the municipality,[352] unless they would be considered non-permanent houses which according to Art. 22 classified as class (c), less strict requirements prevail (Art. 11 par.(10)).

In this respect, the 1929 building regulation seemed to apply the principle of equality before the law, but with the option of treating various races differently. This conforms to the goal of urban planning according to the SVO. The building regulation of 1929 should be considered inseparable from the 1930 Bandung Master Plan. It can be argued that changes made to the existing master plan would not directly result in a mismatch with other land use regulations in principle. However, as indicated earlier, urban planning developed during the 1970s-1980s and later under the SPL 1992 was based on ideas very different from those of the colonial period. Moreover, after the promulgation of the RGL 1974, the whole municipal government structure was radically altered. Translating the Dutch terms for municipal organs into correct Indonesian did not solve the problem. Similar terms were often used to denote different concepts[353]. Additionally, the institutions of municipal government upon which the implementation of the regulation depended were assigned different task and functions under the New Order government.[354]

In addition, Bandung *gemeente's* successors were unwilling or unable to implement the 1929 building regulation consistently from the beginning. A number of external factors prevented them from doing so. There were revolutionary wars (1945-1949), the political upheavals and

---

[351] Article 131 jo. 163 *Indische Staatsregeling* divides the population living in the Netherlands Indies on the basis of race: Europeans or those declared equal to Europeans, Eastern (Chinese, Arabs) and indigenous peoples.

[352] This obligation would certainly be applied to kampongs found wholly or partly within the borders of Bandung. As noted by Otto, in 1920 there were 14 autonomous villages situated within the administrative borders of Bandung, and 7 villages in part. Due to sanitary and health concerns, a proposal was submitted to abolish the autonomy of such villages and include them within the jurisdiction of the municipality. However, having the possibility to do so, the *gemeente* of Bandung, fearing budgetary consequences, decided not to issue an *opheffingsordonnantie* (regulation to abolish desa autonomy). See JM Otto, "Een Minahasser in Bandoeng: Indonesische oppositie in de koloniale gemeente" in Harry A. Poeze and Pim Schoorl (eds), Excursies in Celebes (Leiden: KITLV Uitgeverij, 1991), pp. 185-215.

[353] An issue discussed extensively by Marjanne Termorshuizen-Arts in her dissertation, Juridische Semantiek: een bijdrage tot de methodologie van de rechtsvergelijking, de rechtsvinding en het juridisch vertalen (Nijmegen: Willem-Jan van der Wolf, 2003).

[354] It consisted of only two organs: the mayor and the local parliament (DPRD). Both were to work together in the formulation and enactment of local regulations (peraturan daerah). The Indonesian version of a local parliament was not authorized to issue parliament decisions in contrast with the authorities it had previously.

rebellions against the central government of the Soekarno Old Order period, including in West Java initiated by the DI/TII in 1958-1960, and other factors. Government officials working in the municipal building service believed that indigenous populations living in kampongs were exempted from the obligation to obtain building permits, a sentiment shared by the kampong people.[355] These officials wrongly assumed that the building regulation of 1929 did not apply to urban kampongs. The discretion to exempt kampong people from the obligation to apply for building permits may also have been the result of an unwillingness of the indigenized municipal government to apply the 1929 regulation to kampong dwellers which flocked to the city and occupied available land, legally or illegally.

In order to answer the question to what extent these municipal agencies were able to control land use (by using the land use permit and building permit discussed above) according to plans available during the 1980s and 1990s, one may simply check maps of the area.[356] One must look at the growth and spread of formal and informal settlements within municipal borders and at the urban fringe – the latter having caused the conurbation of Bandung city with adjacent satellite cities (Cimahi-Padalarang in the west; Cibiru-Sumedang in the east-north east, Lembang in the north and Soreang-Ciwidey in the south) – and look at it in light of the Town Plan and the Detailed Plans. This shows how the city expanded at a tremendous pace, mainly through illegal development (or informal settlements) in new city quarters in ways quite different from those indicated in the plans mentioned above.[357] In short, the land use permit/licensing scheme, putatively a government instrument to control land use, failed to control land use in accordance with town planning.

Several authors have pointed out that this was the inevitable outcome of the NUDS policy which promoted cities as the primary engines of economic growth. Not only did this policy generate an urban bias in terms of land use, but it also resulted in a flood of migrants from

[355] Personal communication with Mrs. Sumi from the sub-division of planning, city planning service and Mr. Rosiman K (from the sub-division permits from the building service) of the Bandung municipality (august 2005)
[356] The urbanization process, the result of this industrialization, has been described by Tommy Firman, "Urban Development in Indonesia, 1990-2001: from the boom to the early reform era through the crisis" (Habitat International 26 (2002) 229-249.
[357] McGee introduced the term 'desa-kota' to describe this pattern of development. See T.G.McGee, "Labour force change and mobility in the extended metropolitan regions of Asia" in Roland J. Fuchs et al (eds), Mega-city growth and the future (Tokyo: United Nations University Press, 1994): 62-102. He defines regions labelled as desakota as regions of an intense mixture of agricultural and non-agricultural activities that often stretch along linear corridors between the cores of large cities (p. 74). See also T.G.McGee, "The emergence of Desakota regions in Asia: expanding a hypothesis", in N. Ginsburg, B. Koppell, T.G.McGee (eds) The Extended Metropolis: Settlement Transition in Asia (Honololu: University of Hawaii Press, 1991), pp. 3-25.

rural areas to the cities, leading to an inevitable disregard for zoning regulations.[358] Likewise, the so called 'floating policy' – introduced in the early 1980s – which presented economic dynamics as a justification for land use led to a complete disregard for existing town planning. Worse than the NUDS policy, the 'floating policy' had no legal basis and justified extra-legal measures with a claim to local economic/social interest.[359]

## 4.6. Conclusion

This chapter has demonstrated that the main objective of the SPL 1992 during the New Order, the establishment of a comprehensive and integrated system of natural resource management, was not realised. The SPL miscalculated the extent to which the embedded fragmented approach to natural resource management could be corrected and underestimated the difficulty of transforming town planning into spatial-development planning. Especially problematic for the establishment of an integrated and comprehensive spatial planning regulatory system was the unwillingness of the Ministry of Forestry to relinquish its monopolistic power to regulate and manage land use for the extended areas under its jurisdiction. Moreover, the architects of the SPL 1992 also miscalculated the extent to which both the ministries in charge of urban planning (the Ministry of Home Affairs and the Ministry of Public Work) would be willing to force municipalities to adjust their spatial plans or even make one.

Another problem was the fact that district spatial plans were put at the centre of land use planning, while the SPL 1992 authorized central and provincial governments to carve out considerable areas from the territorial jurisdiction of district governments. By design, the SPL 1992 engendered the formulation of overlapping and sometimes conflicting spatial plans by allowing the central and provincial government to determine and provide spatial

[358] Cf. Arief Daryanto, "Disparitas Pembangunan Perkotaan-Perdesaan di Indonesia" (Agrimedia Volume 8 no. 2). See also H.M. Nad Darga Talkurputra, Penataan Ruang Perkotaan, (www.bktrn.org). Cf. Budhy Tjahjati Sugijanto Soegijoko, Gita Chandrika Napitupulu, Wahyu Mulyana (eds.) Bunga Rampai Pembangunan Kota Indonesia dalam Abad 21: pengalaman pembangunan perkotaan di Indonesia (buku 2), (Jakarta: Lembaga Penerbit Fakultas Ekonomi-UI, 2005).

[359] The mayor of Bandung in the early and late 1980s during which this floating policy was initiated pointed out that the transfer of use of land (*alih fungsi pemanfaatan lahan*) in violation of existing zoning regulations should be tolerated and even encouraged as business enterprises sprouting in predominantly previous residential areas proved to be beneficial to reduce unemployment and beneficial for the economy in general. Personal communication (Asep Warlan Yusuf, expert of spatial planning and environmental law; October 2005). He was the first with whom I spoke to mention the existence and its influence of floating policy on the implementation of town spatial planning and land use policy in general.

planning for specific areas or protected areas. These areas, while located within the administrative borders of the districts, were placed beyond their responsibility. Land use in these areas was controlled directly by the central/provincial government. As a result, the SPL 1992 contained the seeds for preserving a fragmented approach to spatial planning. It is likely that the main reason for this was the unwillingness of the central government to let development matters be regulated and controlled at the district level.

As the Bandung municipality town plans suggest, the town planning concept, first introduced and developed during the colonial period, survived the promulgation of the SPL in 1992. This resulted in two different concepts of spatial planning influencing land use policy made at the district level. The colonial concept presupposed the existence of an autonomous town government, while the SPL concept, heavily influenced by land use planning for development thinking, relied on the hierarchical top-down government structure of the time. More important is the extent to which this blending of two different approaches resulted in the inception of two different permits system. One set of permits was purposively geared towards enabling government agencies and commercial corporations to acquire land and use it in the name of national development. Here, spatial planning is made in support of development planning primarily geared toward economic growth and urban infrastructure development. The downside was the equation of public interest with economic growth and infrastructure development. The other permit system was inherited from the Dutch and built on the view that land use in the urban context should be controlled and restrained in a public interest that was more than economic growth only.

The fall of the New Order government in 1997/1998 made possible a total makeover of state and government systems. The spatial planning system was made dependent on the existing state and government structure. What changed, and how these changes influenced and moulded a different approach to spatial planning will be discussed in the next chapter.