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

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CHAPTER V
REGIONAL AUTONOMY AND SPATIAL PLANNING IN INDONESIA: IMPLEMENTATION IN WEST JAVA AND BANDUNG DURING "REFORMASI" (1999-2004)

5.1. Introduction:

The previous chapter discussed the extent to which the Spatial Planning Law of 1992 (SPL 1992) was transformed into land use planning at the district level. During the New Order period, the two most striking features of provincial and district[360] spatial planning were their subservience to development planning and their being used by the central government as a legal instrument to control and direct land use for economic development in the regions.

This planning system was completely overhauled by the decentralization process which started in 1999. The New Order's top down, hierarchical government structure was replaced by a completely new one which stressed district autonomy and accountability at the local level. Potentially this meant that district governments could now start to enact locally attuned spatial and development plans, while being held accountable for their implementation. Whether this was the case in practice will be explored in this chapter. The main question addressed is how powers were divided between different levels of government regarding development and land use planning during the 1999-2004 period and what its effects were on spatial planning in West Java and Bandung. Lessons learned from this analysis may be applicable to similar situations occurring in other parts of Indonesia.

This chapter is structured as follows: the first section describes the attempt to decentralize and the effect it had on regional autonomy, and more specifically on the distribution of powers between the central and district government. How Regional Government Law 22/1999 (RGL 1999) and its implementing regulation (GR 25/2000) allowed for a re-interpretation of the SPL 1992 is discussed in the second section. The last section describes how the West Java provincial government and Bandung municipality selectively read and interpreted certain legislative provisions to advance their interests. To highlight this issue, the difficulties and compromises made to jointly manage the North Bandung Area will be

[360] Unless otherwise indicated the term districts as used here shall cover *kabupaten,* commonly referred as districts too and *kota* (municipalities). The use of the term district thus may refer to districts in the broad sense as covering both districts in the strict sense (*kabupaten*) and municipalities (*kota*).

discussed. This will expose the ways spatial plans served/obstructed the goals of the decentralization effort. To begin, I will make a general outline of relevant changes in state and government structure which influenced the district's autonomy in spatial planning.

5.2. Decentralization in Indonesia after 1998

Following the downfall of the New Order regime, the People's Consultative Assembly issued a decree (15/MPR/1998) addressing the issue of how to preserve the central government's legitimacy without relinquishing the ideal of Indonesia as a unitary state.[361] In this decree, the Assembly instructed the government to establish a form of regional autonomy that is wide-reaching and responsible, as well as a more just system of natural resource management. These two issues were perceived as inseparable. Subsequently, the People's Consultative Assembly issued another decree in 2001 (9/2001)[362] focusing on agrarian reform and natural resource management.[363]

As a follow up to the above 1998 People Consultative Assembly Decree, the Habibie administration promulgated the RGL 1999 (Law 22/1999) and Law 25/1999 (on fiscal balance: *perimbangan keuangan antara pemerintah pusat dan pemerintahan daerah)*. As argued by Aspinall, the 1999 regional government laws advancing decentralization were promulgated on the basis of two basic arguments:[364]

> "(…) that shifting authority to the sub-provincial level would promote democratization, because communities had a far greater awareness of and sense of engagement with local policies than they did with either provincial or national affairs. District-based autonomy would thus bring decision-making to a level where

[361] The decree is officially titled "*tentang penyelenggaraan Otonomi Daerah; Pengaturan, Pembagian, dan Pemanfaatan Sumberdaya Nasional yang Berkeadilan; serta Perimbangan Keuangan Pusat dan Daerah dalam Kerangka Negara Kesatuan Republik Indonesia*".

[362] *Pembaruan Agraria dan Pengelolaan Sumber Daya Alam* (agrarian reform and natural resource management). For a brief comment on how this decree is expected to bring change to the existing land law, see Boedi Harsono, Menuju Penyempurnaan Hukum Tanah Nasional dalam hubungannya dengna TAP MPR RI IX/MPR/2001 (Jakarta: Univ. Trisakti, 2003).

[363] Regrettably, agrarian reform has been treated as a distinct issue from regional autonomy and spatial management issues. It has been transformed into a land distribution and titling program as evidenced by the agrarian reform program launched in 2007 by the incumbent president "Agrarian Reform: is it really pro-poor?" (Down to Earth no. 72/March 2007).

[364] Edward Aspinall & Greg Fealy, in their introduction (Decentralization and the Rise of the Local) to Edward Aspinall & Greg Fealy (eds), Local Power and Politics in Indonesia: Decentralization & Democratization (Singapore: Institute of Southeast Asian Studies, 2003), p. 4.

communities were more inclined to participate and where they could hold politicians accountable for their actions. Second, district level autonomy was seen as the best way to ensure that decentralization did not encourage separatism and the break up of the country".

These arguments are widely supported by Indonesian scholars. According to Amri the reason for the promulgation of RGL 1999 was a fear that Indonesia would disintegrate if the regions' demands for a greater voice in managing their own affairs and a greater/more balanced distribution of natural resource exploitation benefits were not appropriately addressed.[365] She further points out that 90% of revenues went to the central government in the 1995/1996 fiscal year, leaving only 10% for the regions. Ryaas Rashid gives a more legally reasoned motive on why the Indonesian government decided to promulgate RGL 22/1999: the Habibie government would have been of the opinion that the New Order regime had misinterpreted the 1945 Constitution and that upon a normative reading the elucidation of the 1945 Constitution requires that regions be granted autonomy[366]

As a follow up to the transformation in government structure brought by RGL 1999 and its central implementing regulation GR 25/2000, the People's Consultative Assembly decided to amend article 18 of the 1945 Constitution. In contrast with the old version, the new Article 8 explicitly stipulates that provincial, municipal and district governments should enjoy autonomy to the widest extent possible (*otonomi seluas-luasnya*), only excepting duties reserved for the central government (par. 5); that the people shall elect governors, heads of the district/municipal governments and parliament members on a periodical basis (par. 3-4); and that regional governments (provincial and district) possess the authority to enact regional regulations (*peraturan daerah*) in realization of their autonomy and with regard to de-concentrated tasks (par.6). With district parliaments' increased importance in lawmaking, district regulations became much more important as a source of law at the district level.

The wish to create more accountable regional governments, which were better attuned to local people's needs and demands at the same time, required the overhaul of the central

[365] Puspa Delima Amri, "Dampak Ekonomi dan Politik UU no. 22 dan 25 tahun 1999 tentang Otonomi Daerah CSIS Economic Working Paper Series, June 2000) available at http://www.csis.or.id/papers/wpe054.
[366] Ryaas Rasyid, "Otonomi Daerah: latar belakang dan masalahnya" in Syamsudin Haris (ed). Desentralisasi & Otonomi Daerah: Desentralisasi, Demokratisasi dan Akuntabilitas Pemerintah Daerah (Jakarta: Lipi Press, 2004): pp. 3-25.

government which had mainly exercised its powers through deconcentrated offices.[367] Indeed, the central government decided to abolish ministerial representative offices at both the provincial (*kantor wilayah*) and district levels (*kantor departemen*).[368] Influential central government boards, such as the National Development Planning Board *(Bappenas*), also lost control over their representative offices, which were incorporated into the district/provincial organizational structure. Other central government instruments such as the Environmental Impact Board (*Bapedal*), established by the Ministry of the Environment, lost its official connection with similar boards in the regions. This policy move marked a lessening of the central government's grip on the regions/provinces and the opening of room for provincial and district governments to take over the tasks delegated to them by the RGL 1999. Each district was to establish at least 11 services or boards and would have the freedom to establish more in light of local needs and demands.[369]

Thus, a main result of decentralization was bureaucratic expansion at the district level. In order to contain this development the central government enacted GR 84/2000 (later amended by GR 8/2003).[370] Apparently, district and provincial governments were not really trusted to be able to design individual organizational systems in tune with local needs and were not given much freedom to experiment with local government structure and systems.[371]

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[367] See e.g. Rainer Rohdewohld, "Decentralization and the Indonesian Bureaucracy: Major Changes, Minor Impact?" in E Aspinal & G. Feals (eds), Local Power and Politics in Indonesia, Decentralization and Democratisation, (Singapore: Institute of Southeast Asian Studies, 2003), pp259-274.

[368] Syaikhu Usman, "Regional Autonomy in Indonesia: Field Experiences and Emerging Challenges" paper prepared for the 7th PRSCO Summer Institute/the 4th IRSA International Conference: "Decentralization, Natural Resources, and Regional Development in the Pacific Rim (Bali 20-21 June 2002). Quoting GTZ, Syaiku Usman revealed that as of 2001, in total 239 provincial-level offices of the central government (*Kanwil),* 3.933 district-level offices of the central government (*kandep*), and 16.180 technical units (UPT) of the central government have been handed over to provinces, district and municipalities (p.6).

[369] Rakaka Mahi, "Proses Desentralisasi di Indonesia" in Hadi Soesastro et al (eds), Pemikiran dan Permasalahan Ekonomi di Indonesia (Jakarta: Kanisius, 2005), pp. 582-586.

[370] GR 84/2000 on the directives on the establishment of regional government services and offices (*pedoman organisasi perangkat daerah*). This GR allows the district governments to establish at least 16 services (*dinas)* to take care of government duties transferred. It also opens the possibility that these regions established additional services to take care of optional duties transferred on request in accordance with their needs and capabilities. It was amended in 2003 by GR 8/2003. See Miftah Thoha, "Tinjauan dan Implementasi Birokrasi di Indonesia" (Journal Wacana Kinerja, Vol. 10 no. 3-2007), pp. 75-85. Cf. See Roy V. Salomo, Pokok-Pokok Pikiran Penyempurnaan UU no. 32/2004 tentang Pemerintahan Daerah: Perangkat Daerah (Departemen Dalam Negeri-GTZ).

[371] Taufik Effendi, (incumbent Minister of Pendayagunaan Aparatur Negara), "Arah dan StrategiPendayagunaan Aparatur Negara dalam Rangka Efektivitas Pembangunan dan Terwujudnya Good Governance", (Journal Wacana Kinerja, Vol. 10 no. 2-2007), pp. 1-5. He mentions legislative engineering attempts addressing bureaucratic reform. Veilhzal Rifai, "Reformasi Birokrasi Pemerintahan: Perwujudan Good Governance dan Pemerintahan yang Efisien, Efektif dan Produktif'(Wacana Kinerja, Vol. 10, no.4-2007), pp. 27-34.

Decentralization also impacted upon the hierarchy of legislation. As this issue was already discussed in Chapter 2, I will limit myself to pointing out only the most important changes relevant to spatial management post 1999. First that district governments now possess power to promulgate district regulations (*peraturan daerah*) on certain issues expressly attributed to it by the central government. Secondly, these local regulations should be approved by a democratically elected district parliament. Accordingly, the districts are bound to implement and enforce such local regulations exclusively binding within the district administrative borders. Provincial and districts governments possess the power to promulgate spatial plans which are approved and legitimised by the provincial viz. district parliament. All of this raises a question posed by Asshiddiqqie, the former Chief Justice of the Indonesian Constitutional Court: how far should the Indonesian legal system be decentralized?[372] The amended Article 18 of the 1945 Constitution expressly acknowledges legal pluralism within the unitary state of Indonesia. This would mean that regional regulations can sometimes override rules made by the central government. The main question for this book is the following: to what extent can provinces and districts develop individual spatial plans uninhibited by central state legislation?

5.3. The RGL 1999 and Spatial Management

A particular challenge for the newly autonomous districts was how to deal with the SPL 1992. How should the hierarchal spatial planning system be reinterpreted? The SPL 1992, as discussed in previous chapters, was made in conformity with the centralized and top down government structure as embodied by Law 5/1974 and was an integrated part of the New Order's centralized development planning system. There seemed to be an unavoidable mismatch between a more decentralized government structure and the top-down spatial management system of the SPL 1992. We will explore this issue in the next sections.

5.3.1. Centralized development planning

In the light of the radical changes in the state/government structure, one would expect the whole – development – spatial planning system to have changed completely after the enactment of the RGL 1999. However, this did not apply to development planning. The RGL 1999 stipulated that the national government retained the authority to make policies on national development planning and exercise general oversight (Art. 7(2)). GR 25/2000

[372] Jimly Asshiddiqqie, "Hukum Islam dan Reformasi Hukum Nasional" paper presented before a seminar "Eksistensi Hukum Islam dalam Reformasi Sistem Hukum Nasional" organized by the BPHN Dept. Kehakiman & Ham, Jakarta, 27 september 2000.

further entrusted these duties to the central and provincial governments (Art. 2- 3). This allowed them to produce directives, and establish criteria and standards, also for district development planning. The New Order's centralised, top-down development planning system thus remained more or less in place.

One difference resulted from a reduction in the People's Consultative Assembly's power to formulate binding Broad Guidelines of State Policies (*garis-garis besar haluan pembangunan*). The last People Consultative Assembly's Decree on national development policy was promulgated in 1999.[373] It provided the legal basis for the promulgation of Law 25/2000 on the national development program (*program pembangunan nasional/propenas*) 2000-2004. Henceforth, the government held the power to establish these programs.

This included annual development program, including the annual budget plan. A similar system was to be developed at the provincial and district levels, where regional development programs (*program pembanguan daerah/propeda*) would be used to formulate regional annual development programs.[374] The established view is that the *propenas* was to be translated and elaborated upon in the *propeda* at the provincial and district levels. In this way the arrangement remained similar to the previous one under the New Order regime. The question is to what extent this top down system was compatible with a new government structure that emphasized district autonomy and accountability. As we will now see, a top-down, centralized approach to development planning certainly did not make a good fit with the district based approach to spatial planning developed by the districts in the 1999-2004 period.

5.3.2 Decentralized Spatial Planning: Re-interpretation of the SPL 24/1992

In contrast to development planning, spatial planning did become decentralized after 1999. GR 25/2000 stipulated that the national spatial plan should be made on the basis of (*berdasarkan*) district and provincial spatial plans (Art. 2(3) point 13)). The Article's wording referred to a bottom-up approach: the national spatial plan would be a compilation of all

[373] PCA Decree 4/1999 (Broad Guidelines of State Policies 1999-2004).

[374] At a later stage, the temporary arrangement provided by Law 25/2000 was replaced completely by a more permanent development planning system. In 2004, Law 25/2004 concerning the national development planning system (*sistem perencanan pembangunan nasional*) was promulgated. How this system has worked to re-centralize power and limit self autonomy for the districts enjoyed for a brief period (1999-2004) shall be discussed in more detail in Chapter VI.

provincial and district spatial plans (*perda rencana tata ruang*). This suggests that the national spatial plan could only be formulated after the central government had collected all provincial and district spatial plans, which were no longer to be formulated on the basis of Ministerial regulations providing guidance and directives. The binding nature of such central government guidance and directives had moreover become questionable considering particularly the autonomy of districts in lawmaking, -implementation and enforcement.

The relation between provincial and district spatial plans also changed. Art. 3(5) point 12 of the GR 25/2000 stipulated that provincial spatial plans had to be developed on the basis of agreements with district governments. The elucidation to this article provided no clarification as to how the provincial spatial plan had to be formulated or how such agreements should be put into law. The reliance on agreement put provincial governments in an ambiguous situation, as they could not force autonomous districts to enter into negotiations. Under the RGL 1999, the provincial government lost its hierarchical position vis-à-vis the districts. Provincial regulations and other decrees/written instructions issued by the governor largely lost their binding force on the districts,[375] which were quick to conclude that they held the power to determine land use within their borders. We shall return to this issue in our discussion of the spatial management of the North Bandung Area in Chapter 8.

The RGL 1999 and GR 25/2000 thus promoted a radically different approach from the one contained in the SPL 1992. In a sense, they completely replaced it.[376] The spatial management powers attributed to the districts made it possible for them to re-interpret the hierarchal spatial management system. For a short period GR 25/2000 enabled districts to make spatial plans free from central government interference. District spatial planning increased in significance as a tool for inducing development and controlling land use within

[375] Such as the decrees the West Java Provincial governor issued in regard to the North Bandung Area. The involvement of the governor of West Java on the issue of protecting the area dates from the early 1970s and continued well after reformation in 1997. In 1982 the Governor of West Java issued a decree (no 181.1 / SK.1624-Bapp / 1982 date 5 November 1982 regulating land use of KBU, designating Punclut as a protected area closed for development); and the last being a circular letter of the governor of 2004 addressed to head of districts sharing responsibility for the management of the North Bandung Area to put development on hold. See further: Erwin Kustiman, "Quo Vadis" Pengendalian KBU" (Pikiran Rakyat, 25 January 2007).

[376] The question to be asked is whether an implementing regulation may do so legally speaking. It should be evaluated against the existing hierarchy of law and the theory underlying this hierarchical system. Then such implementing regulations (produced by the executive) should be declared null and void as they cannot change what has been stipulated by law and duly approved and ratified by the parliament. To the best of my knowledge, no substantial criticism has been raised or directed against this *extra* or even *contra legem* legislation.

urban areas. [377] This provided an incentive for district governments to formulate good and workable spatial plans. Besides it might at the same time promote more or less healthy competition between districts in developing better land use planning, with the possibility that cities in resource-rich regions could develop at a faster pace.[378]

The RGL 1999 and GR 25/2000 also made clear that henceforth not only municipalities but also 'normal' districts ought to have spatial plans. Indeed, after 1999, most districts which did not previously have spatial plans began producing them. Formulating spatial plans became part of a legal strategy to mark regions' relative autonomy in self–regulation, in particular in land management. But spatial plans also became what they were intended for: the district governments' tool to regulate and control land use within their respective jurisdiction. Unfortunately, as will later be discussed, this did not automatically mean that district governments had an increased ability to manage land in the service of the local population.

The increasing number of spatial plans was also the result of a proliferation of new provinces and districts after 1999.[379] One unexpected by-product of the RGL 1999 was an accelerated splitting or fragmentation of regions.[380] This establishment of new regions was often prompted by long simmering disputes regarding the distribution of the spoils of natural resources or other political-economic considerations. The establishment of new autonomous regions moreover creates new government posts and jobs for civil servants, while districts also obtain the benefit of receiving block grants from the central government.[381] The

[377] See Tommy Firman, "Indonesian Cities in the Early Reform Era", in Peter J.M. Nas (ed), The Indonesian Town Revisited (Singapore: Institute of Southeast Asian Studies, 2002), pp.100-112.

[378] See Tommy Firman, "Indonesian Cities in the Early Reform Era", in Peter J.M. Nas (ed), The Indonesian Town Revisited (Singapore: Institute of Southeast Asian Studies, 2002), pp.100-112.

[379] A list of spatial plans at the provincial and district level (West, Central and East part of Indonesia) is provided by the Ministry of Public Works (the Ministry for Settlement and Regional Infrastructure; updated 24 September 2003). The list was made in light of the need to evaluate existing regulations against the KepMenKimpraswil 327/Kpts/M/2002.

[380] See also Chapter II on the administrative fragmentation or involution of Indonesia after 1999. The legal basis of and procedure for the splitting of regions is provided by GR 129/2000 on the establishment, division, dissolution and joining of autonomous regions (*pembentukan, pemekaran, penghapusan dan penggabungan daerah*). For a brief critical remark regarding the process and procedure for regional splitting see: "Banyak Pintu Menuju Pemekaran"; "Usulan Pemekaran-Pemekaran Bermasalah, Mengapa? (suaradaerah online, 14 June 2007) and "Lobi-lobi Politik Warnai Penilaian Daerah Otonom: Sebanyak 76 dari 98 Daerah Otonom Gagal" (Kompas, 27 October 2007). "Stop Pemekaran Daerah Baru: Kepentingan Politik Lebih Mengemuka" (Kompas 6 February 2009: 1). Data compiled by Kompas reveals that 95% of these new autonomous regions were established in the outer regions (Sumatera: 77; Kalimantan: 25; Sulawesi: 35; Papua: 31; Nusa Tenggara: 11 and Maluku: 13). 10 new autonomous regions were established in Java. This trend seems to have continued unabated, excepting a short period between 2005 and 2006.

[381] See: Eko Prasojo, "Evaluasi 2007 dan Perspektif 2008 "(Indopos, 27 December 2007).

splitting of regions also led to an increase in local corruption through an expansion of the number of independent veto points and government agencies across the country.[382] However, what is more relevant here is the fact that regional fragmentation also put pressure on all government level to formulate or adjust existing spatial plans.[383]

In short, the spatial planning system established under RGL 1999 and GR 25/2000 granted a wide level of discretion to districts and little controlling power to the central and provincial government(s). The response of provincial and district governments to the opportunities thus provided eventually led to the central government's decision to revise Law 22/1999 and GR 25/2000. The following section demonstrates how this process of making spatial plans evolved in West Java province and Bandung municipality.

5.4. Spatial Management Post 1999 in West Java, Central Java and Bandung

5.4.1. Fragmentation of West Java province and Jakarta's ambitions

The background to West Java's spatial planning during the 1999-2004 period was formed by the administrative fragmentation referred to earlier. For West Java by far the most important event was the secession of Banten province. The RGL 1999 brought about an opportunity for Banten's local elite to assert cultural and historic differences from Sundanese West Java[384] and Banten was established as a new province in 2003. It includes such former West Java districts (*kabupaten*) as Serang, Pandeglang, Lebak and Tanggerang in addition to the municipalities *(kota*) of Tangerang and Cilegon The result was a considerable reduction in West Java's geographical coverage. Previously, West Java province covered an area of 44.354,61 Km². After 2003, this was reduced to 35.746,26 Km² and comprised of (2005) 16

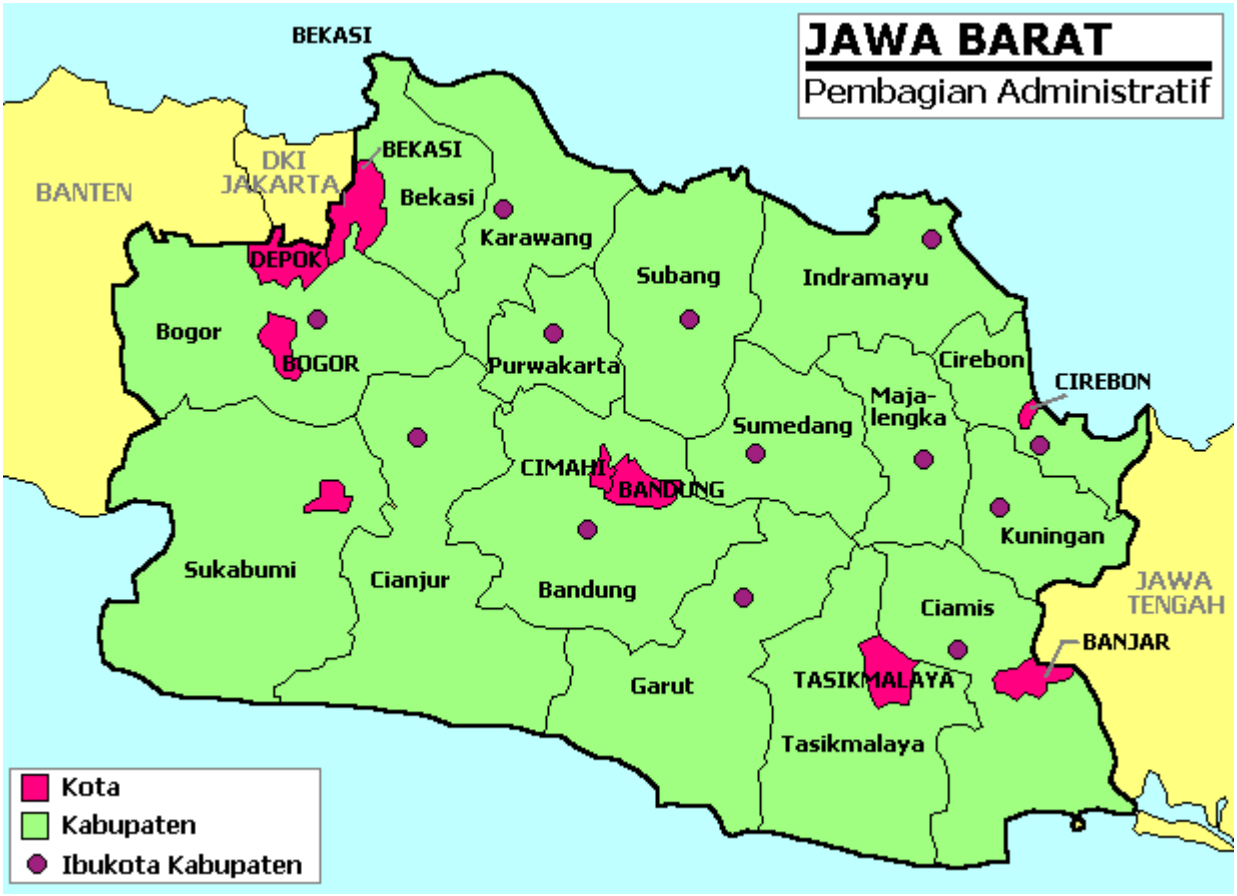
[382] Rachmat Herutomo, "Fiscal Decentralization: An elusive goal? (Globe Asia, Vol. 2, no. 2 February 2008): 22-24.

[383] To highlight the problem I provide the following examples: the establishment of Cimahi as an autonomous city and the splitting up of the District Bandung into two separate districts: District of Bandung and District of West Bandung forced the amendment of the District of Bandung Regulation 1/2001 (RTRW Kabupaten Bandung). In reaction to the separation of Cimahi, the District of Bandung Regulation 1/2001 was amended by DR 12/2001 (district spatial planning regulation). Cimahi promulgated its own spatial planning regulation (Cimahi DR 23/2003). The District of Bandung spatial planning regulation of 2001 should be adjusted in light of the establishment of *Kabupaten Bandung Barat* by virtue of Law 12/2007. In 2008, the district government of Bandung promulgated a new spatial planning regulation (DR 3/2008).

[384] See also, "Banten Jadi Propinsi, Tinggal Rakyat Menagih Janji" (Kompas, 7 October 2000). Ethnic sentiments and pride of their distinctive history from the rest of West Java may equally influence the separation. See: "Kesultanan Banten, Wallahuallam …" (Kompas, 26 April 2003), Irman N/Fajar Banten, "Perlukah Rekonstruksi Kesultanan Banten? (Pikiran Rakyat, 8 February 2003).

districts, 9 municipalities, divided into 584 quarters (*kecamatan*), 5.201 villages (*Desa*) and 609 sub-quarters (*Kelurahan*).[385] See figure-1 below.

Figure-5-3: West Java Provice: administrative division 2005



The above picture indicates the coverage of all West Java provincial regulations issued after 2003. It also provides insight into the number of spatial plans to be made or adjusted.

Another important circumstance was Jakarta province's wish to incorporate adjoining regions into its spatial planning scheme and establish an all encompassing and integrated spatial plan for neighbouring regions, formally falling under the administration of West Java province. The intention was to provide an integrated and comprehensive spatial plan to

[385] See Profil Daerah Jawa Barat available at http://www.indonesia.go.id/id/index.php?option, last visited 15 August 2009.

support the development of a megapolitan area covering the district and municipality of Bogor, Depok municipality, the district of Tangerang, the district of Bekasi, the municipality of Bekasi and the district of Cianjur (combined, known-as *Jabodetabekjur*). As asserted by the previous Governor of Jakarta, Sutiyoso, "the megapolitan concept would make Jakarta the centre of economic growth and adjacent districts such as Bogor, Depok, Tanggerang, Bekasi and Cianjur would benefit from this close connection to Jakarta."[386] This was argued to promote maintaining green zones in the greater Jakarta area and effective management of water and flood control[387]. Similarly, but less threatening for the province's authority, were other urban centres' plans. Bandung for instance advanced the idea of establishing Bandung Metropolitan Area which would cover the Bandung municipality, the Bandung district, Cimahi and Sumedang. However, it was clear that West Java had to act in order to guard its jurisdiction in spatial management.

5.4.2. West Java Spatial Planning after 1999

In 2003, West Java enacted a new Spatial Plan by Provincial Regulation (Perda) 2/2003 (*RTRW Propinsi Jawa Barat*), replacing Perda 3/1994. The consideration of the Perda explicitly linked the amendment to the promulgation of RGL 1999. The new plan did take into account that the position of provincial government vis-à-vis the districts had changed, but also still referred to the SPL 1992. We will now see how the province tried to reconcile these diametrically opposed approaches to spatial planning.

As already mentioned, GR 25/2000 stipulated that the national spatial plan should be made on the basis of (*berdasarkan*) district and provincial spatial plans (Art. 2(3) point 13). Regarding provincial spatial planning, the GR stipulated that the provincial government should develop spatial planning on the basis of agreements with district governments (Art.3(5) point 12). This led the provincial government of West Java to regard Perda 2/2003 as a bridge connecting national and district spatial planning (Art.4(1) of Perda 2/2003). The problem was that initially only a few districts possessed spatial plans or were interested in

[386]In 2008 the President signed Presidential Regulation 54/2008 on the spatial management of the region covering Jakarta, Bogor, Depok, Tanggerang, Bekasi, Puncak, and Cianjur. See further: "Sutiyoso senang Presiden respons Megapolitan"(Tempo Interaktif, 8 september 2008); "Megapolitan Perlu Kementrian Khusus Tata Ruang" (Tempo Interaktif, 9 September 2008); "Jawa Barat Minta Pusat Awasi Megapolitan"(Tempo Interaktif, 25 September 2008).

[387] Tifa Asrianti, "Megapolitan decree allows integrated flood management" (the Jakarta Post, 9 september 2008).

making them. This changed after 2000, when both old and new districts began to formulate new spatial plans, but West Java province could not wait for all of them because Banten seceded in 2003.

The second paragraph of Art. 4 Perda 2/2003 stipulated that the provincial spatial plan was to become the basis for the formulation of the National Spatial Plan (RTRW *Nasional*). This was still fully in line with GR 25/2000. However, the same paragraph also stipulated that the Provincial Spatial Plan was to become the main point of reference for formulating district spatial plans; and the main directive for planning, utilization and supervision of land use in the districts. The districts would need to adjust (*perlu menyesuaikan*) their respective spatial plans with the provincial level on the basis of agreement (*kesepakatan*), in order to secure integration and harmony (*untuk menjamin keterpaduan dan keserasian*) (Art.10). The article's use of two conflicting terms, *the need to adjust*, indicating a one-sided obligation to secure consistency and *on the basis of agreement* is rather confusing. Apparently, the West Java provincial government still believed itself empowered to force district governments into following directives and reach a consensus on what spatial plans should be formulated and adopted as law. This is clearly the result of a selective reading and interpretation of GR 25/2000 on behalf of the provincial government. Not surprisingly, as we will see later, district governments preferred a quite different interpretation.

The belief in the provincial capability to control spatial planning was also reflected in its view on issuing land use permits. Perda 2/2003 provided that the districts when issuing permits (part of the oversight mechanism) should take into account (*agar memperhatikan dan mempertimbangkan*) the province's spatial planning (Article 19). This provision should be understood in the context of the provincial government's authority to issue directives regarding land use for cultivation and protected areas (as based on the same *Perda*). Thus, with regard to cultivation areas, the provincial regulation stipulated the need to preserve rice fields (art. 19 & 73) and referred to a number of future and on-going development projects in the districts: (1) the development of cities as growth poles (Arts.47-51); (2) infrastructure development projects (Arts. 52-60) and (3) development prioritized growth poles (*kawasan andalan*; Arts. 62-65). A list of such development projects, subject to a negotiated agreement, should be incorporated by targeted districts (where the projects are to be situated) into their respective spatial plans. A provincial spatial planning coordination team (*tim koordinasi penataan ruang daerah propinsi*) would supervise and monitor land use and the issuance of

spatial utilization permits (*izin pemanfaatan ruang*) in realizing these development projects.[388]

Regarding designated protected areas, an ambitious target was incorporated in Art. 31. It is stipulated that at least 45% of West Java's surface encompassing forested and non-forested areas shall be maintained as protected areas.[389] This was to counter the rapidly increasing rate of deforestation post-1999 caused by illegal logging and land clearing by local farmers.[390] Regarding non-forested areas, the Perda went on to specify the districts where protected areas would be situated in (Arts. 32-41). South and North Bandung were mentioned specifically as areas providing protection to adjoining areas (Art. 34). However, as will be discussed later, the districts were not at all willing to give up their jurisdiction on spatial planning in these areas, producing a serious dispute with the central and provincial government.

Finally, the West Java provincial government attempted to force an adjustment of various spatial plans made by the district government, especially those within the Bandung Metropolitan Area. To this end it prepared a memorandum of understanding between four districts and the provincial government in 2004[391]. As a corollary, the four districts concerned signed a joint decree determining responsibility in managing the metropolitan

[388] This is of importance for the later discussion of land acquisition in the public interest and the role of permits in legitimizing acquisition and subsequent utilization.

[389] For a definition of cultivation and protected area see Chapter IV.

[390] During the 2000-2008 period, protected forest (*hutan lindung*) coverage decreased to 106.851 hectare (24%) and production forest (*hutan produksi*) decreased to 130.589 hectare (31%). In addition, primary forest coverage decreased by 24% and secondary forest coverage by 17%. In total, forested areas previously covering a land mass of 791.519,33 hectares saw a drastic reduction. BPLHD, Kajian Kriteria Kerusakan lahan di Jawa Barat, Laporan Akhir Proyek Pengendalian kerusakan dan Pengelolaan Keanekaragaman hayati dan habitatnya di Jawa Barat secara Terpadu dan Berkelanjutan. Kerjasama antara Badan Pengendalian Lingkungan Hidup Daerah Propinsi Jawa Barat dengan Pusat Studi Kewilayahan dan Lingkungan – Bogor, Jawa Barat, 2002. "90% Hutan di Jawa Barat Rusak" (Galamedia. 4 Agustus 2009); Cf. "590.000 ha hutan di Jawa Rusak" (Bisnis.com. 23 January 2003); "Kerusakan Hutan Jabar Mencapai 30 Ribu Hektar (Gatra.com, 1 Maret 2002).

[391] "Disetujui, MoU Pengelolaan Bandung Metropolita: RTRW Kota/Kab. Di Cekungan Bandung Harus Mengacu ke Provinsi" (Pikiran Rakyat 14 September 2005); "Bandung Metropolitan Harus Segera Diwujudkan (Pikiran Rakyat 2 February 2006); RTRW Kawasan Metropolitan Bandung Harus Akomodatif (Kompas, 27 September 2004). The Memorandum of Understanding was signed on 26 July 2004 by the Governor and the Mayor and District Head of respectively the municipalities of Bandung and Cimahi and the districts Bandung and Sumedang.

area.[392] This legal document would form the basis of a joint effort to produce a more environmentally focused spatial planning policy.[393]

In summary, the provincial government envisioned itself to function as bridge and in-between connecting the National Spatial Plan with those made by the districts. Whether they could do so successfully is questionable. Not only did it seem likely that the national government would object to a national spatial plan formulated as a compilation of provincial spatial plans, but also were the districts probably inclined to challenge provincial attempts to curb their authority regarding spatial planning. Before looking into this matter, we will first consider how a comparable provincial government responded to similar situations. For this purpose I have selected Central Java.

5.4.3. A Comparison: Central Java's New Spatial Plan

Central Java amended its Provincial Spatial Plan (Perda 8/1992) with Perda 21/2003, which was declared valid for 15 years. Just as the new West Java Plan, this one referred to both the RGL 1999 and the SPL 1992 (and their impementing regulations). However, it also referred to the newly-minted development planning program (Law 25/2000; *Propenas 2000-2004*), which was overlooked by West Java's provincial spatial plan.

Article 6 of the new Plan followed the view of its West Java equivalent: it explicitly stipulated that the provincial spatial plan should be considered as a directive (*pedoman)* and reference (*acuan)* for district spatial plans and their implementation. No reference was made to the rule in GR 25/2000 which made it possible for districts to assert independence in spatial planning. The Plan further indicated how it should function as a directive and reference: by designating which cities were to function as primary, secondary and tertiary growth poles (Art. 15), by designating conservation areas within the districts (Arts. 16-19) and protected areas (Arts. 20-22), by specifying future infrastructure projects (Art. 23-26) and by designating strategic areas (*kawasan strategis*) and priority areas (*kawasan prioritas*) either for development of industries or for reasons of conservation (Arts. 27-28).

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[392] Joint declaration (Surat Kesepakatan Bersama) 31/2004; 23/2004, 21/2004; 650/Kep.521-Bappeda/2004; 23 of 2004) re. cooperation with regard to infrastructure management and development of the Bandung Metropolitan Area.

[393] For an attempt of such effort see Ari Djatmiko, "Arahan Pengembangan Ruang Wilayah Metropolitan Bandung", (Infomatek vol. 6 no. 3 September 2004): 155-160.

Art. 7(a) underlined the status of provincial spatial planning as an elaboration of the national spatial planning strategy (*RTRNasional/*GR 47/1997) and Art. 7(b) stipulated that the provincial spatial plan should function as a binding reference (*acuan yang mengikat*), synchronizing (*penyelaras)* provincial and district spatial plans. The term 'binding reference' seems to have been used to counter the argument that directives were not legally binding. As it stood, provincial governments did not rank higher than districts and districts possessed the power to pass "democratically legitimised" district regulations, but a 'binding reference' was apparently thought to redress that point.

In short, the Central Java Provincial government, while paying lip service to the regional government law and GR 25/2000, proceeded as if nothing had changed regarding its position vis-à-vis the districts. It simply applied the hierarchical system of spatial planning established in the SPL 1992. West Java and Central Java thus demonstrate that the RGL 1999 did not immediately change embedded perceptions regarding the provinces' higher status and the extent to which districts could enjoy their autonomy as granted by the Constitution and the law. However, there was a slight difference. The West Java provincial government emphasized its co-ordinating position, acting as a bridge between the districts and the central government. Central Java had shopped the SPL 1992 and the RGL 1999 even more selectively in favour of continued central rule.

We now will turn how the municipality of Bandung responded to the opportunity to formulate its spatial plan as a reflection of its autonomy.

5.4.4 District Spatial Management: Bandung Municipality's Spatial Plan

Bandung Municipality's spatial plan of 1992 (Perda 2/1992; RUTRK Bandung 1991-2001) expired in 2001, but three years passed before a successor was enacted. Government officials interviewed about the reason why this took so long indicated a kind of indifference. The municipality did promulgate Perda 5/2000 on the basic patterns of regional development of Bandung (*pola dasar pembangunan daerah kota Bandung tahun 2000-2004*) elaborated in Perda 9/2001 on regional development programs (*program pembangunan daerah/propeda tahun 2000-2004*), one year before the spatial plan expired, but apparently the. Bandung municipal government decided to prioritize other issues over spatial planning.

In any case, in 2004 Bandung Municipality enacted a new spatial plan (Perda 2/2004).[394] Its consideration states that (c):

> "Perda 2/1992 on the Master Plan of Bandung (1991-2001) has expired and does not conform to existing regulations, and therefore the need has arisen to formulate a new spatial plan in conformity with Government Regulation 47/1997 on the national spatial plan;"

Like its predecessor, this 2004 plan was closely linked to existing regulations pertaining to municipal development policy and programs.[395] Spatial planning was still perceived as a corollary to (centralized) development planning, to translate development programs into future land use plans. A reference to a general obligation to break the general spatial plan down into more detailed rules controlling land use also remained in place. On this basis the municipal government would elaborate the general spatial plan into detailed town spatial planning and/or a design plan (*rencana rancangan*), complete with zoning regulations, architectural and environmental design, building plans (blue prints) and other technical requirements (arts. 6(2 c); 30 & 101(3)).

What *is* remarkable is that the new regulation was only formulated with reference to national laws and their implementing regulations, notably the RGL 1999 and GR 25/2000.[396] No reference was made to ministerial regulations issued by Home Affairs or Public Works determining the scope of competence and content for spatial planning at the district/municipal level. This may indicate that the municipal government did not regard these as binding anymore and conforms to the fact that spatial planning authority was attributed to the districts by law as part of their autonomy. The West Java Spatial Plan (Perda 2/2003) was only 'taken into account'. The general elucidation explicitly states that:

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[394] Bandung Municipality Regulation (DR) 2/2004 on spatial planning of the city of Bandung (*rencana tata ruang wilayah kota Bandung*) dated 10 February 2004). In 2005, an effort to amend this DR had already begun. In 2006, the municipal government issued DR 3/2006 on the amendment of DR 2/2004. This amended only a few articles related to certain rules on the development of north Bandung. Basically thus, DR 2/2004 with slight modifications (DR 3/2006) is still valid. More about this in the next chapter.

[395] DR 5/2000 *tentang Pola Dasar Pembangunan Daerah Kota Bandung 2000-2004*, and DR 9/2001 *tentang Program Pembangunan Daerah (Propeda) Kota Bandung 2000-2004*.

[396] But also Law 28/2002 on the Construction of Buildings; GR 26/1985 on (the construction of) public roads; GR 8/1990 (construction and management of toll roads); GR 41/1993 (public transportation); GR 43/1993 (traffic infrastructure); GR 35/1991 (management of rivers); GR 68/1998 (management of nature conservation areas).

> ”spatial planning cannot be considered a top-down process, but should be based on an agreement made by and between the province and the district concerned (…). that the Bandung Spatial Plan shall function as the basis to harmonize and guide the formulation of spatial planning policy at the provincial level.

In other words, Bandung Municipality chose to interpret GR 25/2000 to the letter and thus went against the SPL 1992 with its top-down approach. However, Bandung Municipality's understanding of spatial management authority also seems to indicate that each district could regard itself as completely free to formulate individual spatial plans without regard for adjoining regions. This would result in provincial spatial plans being reduced to a mosaic of diverse and potentially conflicting district spatial plans.

The obvious downside to such a scenario is its probably negative effects for ecologically sustainable development and the problem to develop a synchronized regional or trans-district based land use policy.[397] As worded by Head of the Directorate General of Spatial Planning (Ministry of Public Work)[398] Hermanto Dardak, spatial planning made only on the basis of district interests may end up in a "tragedy of the commons". This rings particularly true for the management of forest areas and river basins extending beyond the administrative borders of more than one district. It supports the argument for the need of formulating umbrella spatial plans for megapolitan areas, whose management would necessarily require co-operation between adjoining districts. Moreover, Art. 9 par.(1 & 2) of the RGL 1999 provides for provincial or even central government management in the case of trans-border issues or other governmental issue which go beyond districts capacity to handle. Whether such approach will and can resolve tension between the provincial and districts remain to be seen.

We will return to this issue in our discussion of the North Bandung Area's spatial planning. First I will explain shortly how Bandung developed its permits in controlling land use.

[397] I am grateful to Asep Warlan Yusuf for pointing this out to me.

[398] Direktur Jenderal Penataan Ruang, Depkimpraswil, "Perencanaan Tata Ruang Wilayah dalam Era Otonomi dan Desentralisasi", (paper presented before Program Pascasarjana Magister Perencanaan Kota dan Daerah, UGM-Yogyakarta, 5 May 2003).

5.4.5 Bandung permits for controlling land use

In contrast to what had been common in the past, the 2004 Bandung Spatial Plan (BSP 2004) has been elaborated into more detailed and technical rules by *peraturan walikota* (general regulation issued by the mayor)[399] instead of by *peraturan daerah* (district regulation) which requires approval from the local parliament. The reason given was that detailed planning does not need parliamentary approval, as it is simply an elaboration of the BSP 2004. This has given the mayor wide discretionary powers in interpreting the district spatial plan and put him into a very advantageous position regarding the issuance of permits for land acquisition and use. The power of the district parliament has been reduced accordingly.[400]

The importance of the elaboration of general regulations into detailed and technical rules is apparent in how the BSP 2004 regulates the issuance of development permits *(perizinan pembangunan),* and spatial utilization permits (*perizinan pemanfaatan ruang*). Both function as tools for overseeing actual spatial utilization (*pengendaliaan pemanfaatan ruang*). A whole chapter (Chapter VII) has been devoted to regulating permits related to spatial planning and their functions. In this chapter, permits are perceived, first, as a tool for controlling actual land use for development purposes and, second, for providing a legal basis for oversight and enforcement action.

The BSP 2004 underscores the municipality's authority to determine what permits/licenses one needs (art. 102(4)). Additional requirements for applicants to be made in the public interest may be appended to the discretion of the municipal government (art. 102(5)). The latter has used this opportunity to the full, by incorporating specific requirements for carrying out public duties – which are normally fulfilled by the government – into permits. This has serious implications for public accountability within the framework of public-private cooperation or partnership arrangements, as will be further discussed in Chapter 8 when we will discuss the practice of land acquisition by private commercial company.

The BSP 2004 does not specify the number and names of the permits required, although such information is important for investors and individuals looking to acquire and use land. Only the Elucidation to Art. 102(2) stipulate that spatial-land use permits include the land use permit (*Izin Peruntukan Penggunaan Tanah* or IPPT) and the building or construction

[399] See Mayoral Regulation (*Peraturan Walikota 981/2006* on the detailed spatial planning of the development area of Cibeunying (*Rencana Detail Tata Ruang Kota (RDTRK) Wilayah Pengembangan Cibeunying*) and 685/2006 on the detailed planning for the development area of Gedebage (RDTRK *Wilayah Pengembangan Gededage*).

[400] Personal communication (Asep Warlan), 27 August 2005.

permit (*Izin Mendirikan Bangunan* or IMB). These permits may be granted only if the applicant has already obtained recommendations from the relevant municipal services.[401] Earlier, in 1999, the Bandung municipality already acquired the authority to process application of permits-in-principle (*izin prinsip*) and site permits (*izin lokasi*).[402] Both permits have been important in controlling investment initiatives and in the allocation of land to support district economic growth. The emphasis in permitting has thus clearly shifted from the central government to the district level. By having control over the land use permits, the district governments may autonomously manage land use according to their own district spatial plans, while local citizens may hold them directly accountable for spatial mis-management.

Under the new spatial planning system, each district is thus free to determine which permits it prefers to use in regulating and controlling land use. A freedom which, as discussed in the preceding chapter, did not exist during the New Order government with its emphasis on centralized command and control. In other words, each district after 1999 possesses the power to develop its own system of permits and licenses to control land use. [403] At the same time, such freedom opens up the possibility of each district developing different systems to control access to land and its use.

These differences between districts, especially after the promulgation of RGL 1999 and the devolution of a number of land authorities to the districts are potentially significant as they may introduce competition between districts in attracting investors. While neoliberals may be in favour of this, the downside is that it works against districts with stricter permit regimes. In the worst case such a pluriform system may result in a race to the bottom in which each district decides to lower its standards controlling peoples' access to land. In developing its particular land use policy, districts may be tempted to consider only short term economic gains rather than sustainability of land use.

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[401] i.e. city planning service: *dinas tata kota*), land service: *dinas pertanahan*, environmental impact assessment commission of the BPLHD {environmental board} and the public transportation service, which must conduct and approve traffic impact analyses {*analisis dampak lalulintas}.*

[402] Mayoral Decree (*Keputusan Walikotamadya Kepala Daerah Tingkat II Bandung)* 170/1999)on the process of issuing site permits to implement Ministry of Agraria/Head of BPN regulation 2/1999 on the procedure to obtain a site permit (*tatacara pemberian izin lokasi dalam rangka pelaksanaan PerMenAg/kepala BPN no.2/1999*).

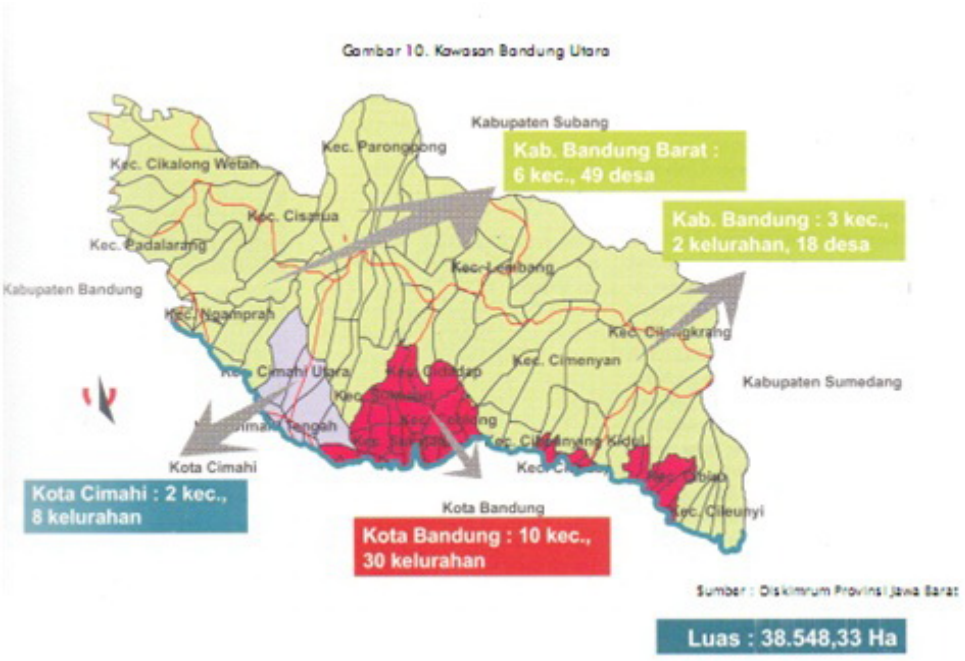
[403] How such permits issued by the district government relates to other permits controlling access to land issued by central government agencies will be discussed extensively in Chapter VII.

The next section shows how such different permitting regimes played a role in the disputes about land use control in the North Bandung area between the provincial government of West Java and three autonomous districts.

5.4.6 Conflict and competition in controlling land use of protected areas: North Bandung

As discussed above, the West Java provincial government held the position that its spatial plan should be used by districts governments as a point of reference, but district governments – at least Bandung municipality – held a different view, referring to GR 25/2000. This is illustrated by the case of North Bandung. The West Java Spatial Plan of 2003 and its predecessor designated the North Bandung Area as a conservation area, but the newly established municipality of Cimahi (autonomous since 2001), the district of Bandung and the Bandung municipality, simply disregarded directives and limitations on land use issued by the provincial government on this basis. The joint border of the districts sharing this Area is depicted below.

Figure 5-4: Map of North Bandung Area



Instead, each district (and municipality) sharing the authority of managing the area decided to regulate land use planning for the conservation area of North Bandung according to its

individual needs. Bandung district (*Kabupaten Bandung*), pursuant to Perda Kabupaten Bandung 12/2001, declared the part of North Bandung within its territory to be a special zone (*kawasan tertentu*)[404], not particularly an area designated as protected area, and accordingly allowed for the development of that area as a cultivation area. The Bandung district government in fact supported the urbanization of agricultural areas such as Lembang, Cisarua, Parongpong (after 2009 falling under the jurisdiction of the newly established West Bandung district (*Kabupaten Bandung Barat*) by allowing investors to construct hotels-restaurants within the area, and even converting fertile agricultural land (tea plantations) into luxurious residential areas. Bandung municipality's BSP 2004 determined that the part of north Bandung within its domain was a conservation area, but put aside a maximum of 20% of the area for construction and other infrastructure. Just as the Bandung district government, the Bandung municipal government seemed to be powerless to stop the proliferation of kampungs and residential areas within the North Bandung Area under its jurisdiction. In contrast, Cimahi, completely disregarded the designation of North Bandung Area as protected area by declaring the whole area under its jurisdiction, by Perda 23/2003 as cultivation area.[405] To stress its point, the Cimahi government built its municipal office at the Cimahi river basin lying within the North Bandung Area, and converted much of the surrounding fertile rice fields.

This fragmentary approach to the North Bandung Area's spatial management continued well into the coming years with the splitting of the District of Bandung and the establishment of the West Bandung District in 2009. The last named did not yet promulgate a spatial plan but may well sustain the previous land use policy developed by the Bandung district.

Provincial officials were uncomfortable with the districts governments' reading of the intent of the RGL 1999 and GR 25/2000. Those interviewed considered the districts at fault for carrying newfound freedoms too far. They would speak of "autonomy spinning out of control" ("*otonomi kebablasan"*). The case of North Bandung, which will be discussed in detail later, indicates the uncertainty of the post-1999 situation, if there is no willingness to co-operate on the part of the various levels of government. This involves district

[404] However, the District Government of Bandung contested the allegation that it did not care about the need to preserve the North Bandung Area. The Head of Development Planning Board of the District of Bandung, H.R. Wahyu G.P., pointed out that out of the 85 developers in possession of *izin lokasi* (renamed *izin pemanfaatan tanah*/land use permit) only 15 had been granted the permit by the District government. The other 70 acquired the permit during 1991-1996 from the provincial government. "90% Izin di KBU dari Pemprov" (Pikiran Rakyat, 14/08/2004).

[405] "Di Era Otonomi Daerah Kawasan Bandung Utara Tercabik-cabik" (Kompas, 19 June 2004); " Konsep KBU yang Tumpang Tindih Akan Diseragamkan" (Kompas, 30 April 2005).

governments developing spatial plans in response not only to local needs but also to other concerns such as the impact of land use to neighbouring districts. Such a fragmentary approach to spatial planning of shared areas (in this case the North Bandung Area) indicates also the difficulties the central and provincial government has faced in controlling land use at the district level before and after 2004 (when the provincial and central government attempted to recentralize spatial planning authorities). Illustrative is the failure of the West Java Provincial Government in controlling land use conversion in the North Bandung Area, despite the promulgation of the (provincial) Regional Regulation 1/2008 on the Control and Utilization of the North Bandung Area (*pengendalian dan pemanfaatan ruang kawasan Bandung Utara)*. Particularly worrisome is the rate of land use conversion around the Boscha Observatory (the only observatory in the southern hemisphere) which threatens its sustainable use.[406]

5.5. Conclusion

How the West Java provincial government and Bandung municipality responded to changes in the state and legal system reflects not only a conscious division of labour between the central, provincial and regional governments but also struggles over political and economic resources. At the core is the extent to which districts may enjoy autonomy in spatial management and development planning. The use of regional regulations to assert territorial claims and authority within administrative borders has been an important part of this struggle. The power to formulate spatial planning was delegated to the districts, which sooner or later started using the legal opportunities opened up by the RGL 22/1999 and GR 25/2000.

For a while the linkage between development permits (*perizinan pembangunan*), or spatial utilization permits (*perizinan pemanfaatan ruang*), and district spatial plans became more direct. Previously, districts only enjoyed a delegated responsibility to formulate spatial plans. In this respect, they were strictly controlled by the Ministry of Home Affairs and the

[406] Bosscha observatory has been declared as national cultural heritage (by the Ministry of Culture and Tourism Decree No, KM.51/2004 and Ministry of Culture and Tourism Regulation PM.34/2008 on the protection of important national cultural objects or heritage (*pengamanan objek vital nasional di bidang kebudayaan dan pariwisata*). See further, inter alia, "KBU dan Bosscha Jadi Perhatian Pansus RUU" (Republika Online, 1 September 2006); and "Alih Fungsi Lahan, Mengganggu Keberadaan Boscha" www.bplhdjabar.go.id , 28 July 2010, last accessed 14/01/2011). Cf."700 ha di KBU Beralih Fungsi" (galamedia online, 24 March 2009). It has been reported that in the period between 2009-2004, approximately 700 hectare of green open areas within the North Bandung Area (from the total of 38.000 hectares) had been occupied and converted to other uses.

Ministry of Public Works. As a result, district government agencies responsible for receiving and processing permit applications could avoid accountability by pointing out that it was not their decision that mattered; they simply implemented orders from higher authorities. During the brief period of 1999-2004, it was momentarily possible to hold the district government directly accountable for the process of spatial management. In other words, district governments would be directly accountable in the formulation of land use planning and the implementation thereof to the local population.

The negative side is that both the provincial and national spatial plans were completely ignored by the districts. This has been illustrated by the North Bandung Area case. Each district jointly sharing responsibility of the area may more or less with impunity disregard the provincial designation of that area as protected zone. To offset negative effects, a strengthening of the provincial position -deeply impaired by both the RGL of 1999 and GR 25/2000- should be initiated. The provincial government should have the power to intervene or to install a system whereby districts sharing the responsibility of managing a protected area may reach a consensus on how to establish a more synchronized effort at controlling land use for development purposes. Unfortunately, the way the central government has responded to such incidents has scuttled this experiment in delegating real power and authorities.

For a brief period (1999-2004), the central and provincial government seemed powerless to control the way district government realize their new found freedom in directly controlling access to land through spatial planning and the related permit system. In addition as pointed out by Hofman and Kaiser:[407]

> "Omission of a general clause in the law to state that the local government is bound by national law (omitted because the drafting team felt it was obvious) further obscured the exact extent and nature of decentralization. This confusion was further increased by the People's Consultative Assembly's decree of 2000 which determined the hierarchy of laws, but omitted the ministerial decree as a legal instrument."

[407] Bert Hofman and Kai Kaiser (World Bank), " The Making of the Big Bang and its Aftermath: A Political Economy Perspective" (paper presented at the conference: Can Decentralization Help to Rebuild Indonesia?), sponsored by the International Studies Program, Andrew Young School of Policy Studies, Georgia State University, May 1-3 2002

Unsurprisingly, the opportunity opened up by the shortcoming of the RGL 1999, has been successfully seized by districts wishing to assert their autonomy, especially in spatial management. Subsequently, the central government made a conscious effort to take back delegated powers. It not only amended the RGL 1999 by RGL 32/2004,[408] but went as far as superimposing a centralized, top-down planning system on top of the newly decentralized government structure. This has caused general confusion regarding which level of government is authorized to do what and the extent to which it may be held accountable for its actions. [409] The confusion stems from a tug of war between competing interests that have a concrete, material basis rather than a technical governance issue. How regional governments produce and implement spatial and development planning takes place in this context, between efforts to push decentralization forward and efforts to roll it back.

[408] The reasons prompting the amendment of RGL 22/1999 and 25/1999 (fiscal balance) have been discussed by Indra J.Pilliang, Dendi Ramdani, Agung Pribadi (eds.), Otonomi Daerah: Evaluasi dan Proyeksi, cetakan 1, (Jakarta: CV Trio Rimba Perkasa, 2003). He argues that there is a compelling need to seek a new political and legally supported compromise between the central government, who accused the regions of carrying their new found freedom too far, and the regional government who were fighting to maintain their autonomy. Other political consideration may prompted the central government to do so. See further Fitriani, Bert Hofman and Kai Kaiser, "Unity in Diversity? The Creation of New Local Governments in A Decentralizing Indonesia," (Bulletin of Indonesian Economic Studies, Vol. 41, no. 1, 2005) p. 60-61

[409] Cf. Vedi R. Hadiz, "Decentralization and Democracy in Indonesia: A Critique of Neo-Institutionalist Perspectives", (The Southeast-Asia Research Centre: Working Paper Series no. 47 May 2003) p. 705., which made a similar point in regard to decentralization.