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## **Tenure Security for Indonesia's Urban Poor : a socio-legal study on land, decentralisation, and the rule of law in Bandung**

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## 5.1 INTRODUCTION

As discussed in Chapter 3, the Indonesian state can limit the exercise of land rights (and claims) as part of spatial planning. Land use is determined by town plans and spatial plans. These plans form the frame of reference for a licensing system. A landholder is only allowed to build a house if he holds a building permit. Developers are only allowed to initiate land clearance for commercial development if they hold a site permit. A government institution is only allowed to clear land for development in the public interest if the District-Head/Mayor has given permission, which should be in accordance with spatial plans. Spatial planning thus has a potentially significant impact on the legal tenure security of landholders. For that reason it is of utmost importance that landholders can participate in spatial planning, that the government informs them about this process, and that their interests are taken into account.

In view of the above, this chapter discusses the law and practice of spatial planning during the New Order and, after having paid attention to Post-New Order reforms, takes a close look at the practice of spatial planning in Post-New Order Bandung. It assesses to what extent the general public and particularly kampong dwellers now have the opportunity to be actively involved in spatial planning. In doing so, the chapter also looks into the role of the Municipal Council, higher levels of government, and 'civil society' in supporting kampong dwellers' interests. Furthermore, it assesses to what extent spatial planning has become more transparent. In closing, it reviews to what extent the interests of kampong dwellers are taken into consideration in spatial plans.

This chapter is divided into seven sections. The next section discusses the law and practice of spatial planning in the late New Order. This is followed by a description of Post-New Order spatial planning related reforms. Section 5.4 focuses on spatial planning practices in Post-New Order Bandung, by analyzing the lawmaking process of the General Spatial Plan in 2004 and its premature revision in 2006. Next, spatial planning is analysed further from a rule of law perspective. Section 5.6 discusses some recent spatial planning related reforms, after which the chapter concludes.

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1 A summary of this chapter was published as Reerink, G.O. (2009), 'When Money Rules over Voice, Regional Autonomy and Spatial Planning in Bandung Benefits the Elite', *Inside Indonesia* (98).

## 5.2 SPATIAL PLANNING UNDER THE LATE NEW ORDER

Spatial planning is a relatively new phenomenon in Indonesia. As discussed in Chapter 2, the first centrally-formulated Town Planning Ordinance, of which spatial planning was initially a part, was enacted by the colonial government in 1948.<sup>2</sup> After independence, the colonial legislation was maintained.<sup>3</sup> In addition, two competing departments, the Department of Home Affairs and the Department of Public Works, enacted various regulations on town planning. It falls outside the scope of this chapter to discuss these regulations in detail, other than to notice that because of a lack of coordination among the two departments, they were largely contradicting each other.<sup>4</sup> In addition, this legislation overlapped with a system of land use planning established according to Article 14 of the BAL (Otto & Syafrudin 1990).

The last pieces of town planning legislation that were enacted during the New Order were the Regulation of the Minister of Home Affairs No. 2/1987, and the implementing Decision of the Minister of Home Affairs No. 59/1988.<sup>5</sup> On the basis of this legislation, urbanised Districts and Municipalities were required to design and enact a General Town Plan (*Rencana Umum Tata Ruang Kota*), Detailed Town Plans (*Rencana Detail Tata Ruang Kota*), and Technical Town Plans (*Rencana Teknik Ruang Kota*).<sup>6</sup> The General Town Plan covered the whole territory of a Municipality.<sup>7</sup> It contained general directions on how space should be used, as well as maps. The Detailed Town Plans covered the whole or part of the territory of a Municipality and included zoning provisions.<sup>8</sup> These provisions were supported by maps of a smaller scale than those accompanying the General

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2 The Town Planning Ordinance was implemented by the 1949 Town Planning Regulation.

3 In 1973 the Minister of Home Affairs declared the Town Planning Ordinance applicable to all urban settlements (Circular Letter Pemda 18/2/6, dated 15 May 1973). This was confirmed by Presidential Instruction No. 1/1976 on the Coordination of Tasks in the Field of Agraria with those in the Fields of Forestry, Mining, Transmigration and Public Works (*Inpres No. 1/1976 tentang Koordinasi Tugas Bidang Keagrariaan dengan Bidang Kehutanan, Pertambangan, Transmigrasi dan Pekerjaan Umum*). The Ordinance was finally annulled by the 1992 SML (Art. 31 1992 SML).

4 See on this point and for an overview of the history of town planning in Indonesia, Niessen 1999:220-36.

5 Regulation of the Minister of Home Affairs No. 2/1987 on Guidelines for the Formulation of Town Plans (*Permendagri No. 2/1987 tentang Pedoman Penyusunan Rencana Kota*); Decision of the Minister of Home Affairs No. 59/1988 on the Directives for the Implementation of Regulation of the Minister of Home Affairs No. 2/1987 (*Keputusan Menteri Dalam Negeri No. 59/1988 tentang Petunjuk Pelaksanaan Permendagri No. 2/1987*).

6 Art 1 and Art. 5 Regulation of the Minister of Home Affairs No. 2/1987.

7 The following description also applied to urbanised Districts.

8 Art. 6, under c and 7 Regulation of the Minister of Home Affairs No. 2/1987.

Town Plan.<sup>9</sup> The Technical Town Plans dealt with infrastructure and buildings.<sup>10</sup>

The municipal governments had authority in town planning, including both the design of town plans and their implementation, but they needed to coordinate, integrate, and synchronise with 'related bodies', consisting of deconcentrated Central Government Bodies and Municipal Services.<sup>11</sup> Specifically, town planning was carried out by the Regional Development Planning Agencies (*Badan Perencanaan Pembangunan Daerah* or BAPPEDA) at the municipal level.<sup>12</sup> These agencies were entitled to contract consultants to assist in the design of plans.<sup>13</sup>

According to the legislation, town planning was not intended to be just a bureaucratic process. The municipal governments were required to take into account the aspirations of the people. To meet that aim, they were meant to organise discussion meetings and seminars, where representatives of the people could provide input.<sup>14</sup> The Municipal Councils also had a role in communicating such views to the municipal governments, which were meant to use this input to improve drafts.<sup>15</sup> Once designs were ready, they were sent to the Municipal Councils to be enacted by bylaw.<sup>16</sup>

The final steps in the decision-making process in town planning were the recommendation and legalisation of town plans by higher administrative levels. In the case of General Town Plans and Detailed Town Plans, the Governor first needed to give a recommendation, at which occasion it was checked whether the development programmes of the municipal governments were integrated with those of neighbouring regions in accordance with the provincial governments' development policies.<sup>17</sup> Thereafter, the Director-General of Regional Development verified whether the procedure for the design of plans had been followed.<sup>18</sup> Finally, the plans had to be legalised. As for the General Town Plans and Detailed Town Plans, this was the authority of the Governor or, if the plans concerned a provincial capital

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9 The scale of the maps of the Detailed Town Plan was 1:5,000, while that of the General Town Plan was 1:10,000 for a Municipality with less than 1,000,000 inhabitants, and 1:20,000 for a Municipality with more than 1,000,000 inhabitants (Art. 11 and 7 Regulation of the Minister of Home Affairs No. 2/1987).

10 Art. 10, under b Regulation of the Minister of Home Affairs No. 2/1987.

11 Art. 12-14 and 25 Regulation of the Minister of Home Affairs No. 2/1987.

12 Art. 16 Regulation of the Minister of Home Affairs No. 2/1987.

13 Art. 18, 54, 62, and 82 Decision of the Minister of Home Affairs No. 59/1988.

14 Art. 14 and 25 Regulation of the Minister of Home Affairs No. 2/1987.

15 Art. 34, 44, 52, under a, and 60 Decision of the Minister of Home Affairs No. 59/1988.

16 Art. 26 Regulation of the Minister of Home Affairs No. 2/1987. If the design of plans had been contracted out to consultants, they could inform councillors about the technical aspects of the drafts (Art. 76(3) Decision of the Minister of Home Affairs No. 59/1988).

17 Art. 28 Regulation of the Minister of Home Affairs No. 2/1987; Art. 78(3) Decision of the Minister of Home Affairs No. 59/1988.

18 Art. 79 Decision of the Minister of Home Affairs No. 59/1988.

or a city with a strong population growth and a strategic position in national and regional development, the Minister of Home Affairs. Technical Town Plans were always to be legalised by the Governor.<sup>19</sup>

On the basis of the 1974 Decentralisation Law, the plans could be implemented as soon as they had been legalised, or three months after they had been sent to the relevant officials and no decision had been taken. This term could be extended for another three months if the relevant officials informed the municipal governments about the matter within this term.<sup>20</sup>

Once the bylaw enacting a town plan had been legalised, the public could apply at the Supreme Court for judicial review of the bylaw against higher legislation, although only in relation to a concrete case.<sup>21</sup> If the Supreme Court ruled that the bylaw contradicted higher legislation, it would be void and no longer applicable.<sup>22</sup>

The above shows that the legislation on town planning contained some safeguards that could protect the interests of landholders, but that they were rather weak. The provisions on participation and transparency for instance required municipal governments to “take notice of the aspirations of the people” in town planning, but it did not clarify what consequences this should have. Furthermore, the legislation did not make provision for all interested parties to have input, but only for “representatives of the people”, without clarifying who these could be. Finally, the legislation contained no provisions requiring the plans to be available for inspection by the public once enacted.

In 1992 the first umbrella spatial management law was enacted, Law No. 24/1992 (hereafter the 1992 SML).<sup>23</sup> The aim of the 1992 SML was to manage natural resources in a more coordinated and integrated way. It therefore incorporated town planning into the broader context of spatial management, which involved planning (*perencanaan tata ruang*), utilisation (*pemanfaatan ruang*), and control of use (*pengendalian pemanfaatan ruang*) of land, water, and airspace at all government levels. The SML required the enactment of several implementing regulations. Until these regulations were enacted, older legislation was to remain in force.<sup>24</sup>

The 1992 SML created a whole new planning framework, including new terminology. At the municipal level, General Spatial Plans (*Rencana Umum Tata Ruang*) were to be enacted (replacing the General Town Plans),

19 Art. 28-9 Regulation of the Minister of Home Affairs No. 2/1987.

20 Art. 69(1-2) Law No. 5/1974.

21 Art. 26 Law No. 14/1970 on the Basic Provisions for Judicial Power; Art. 11(4) People’s Consultative Assembly Directive No. III/MPR/1978 on the Position and Working Relation of the Highest State Bodies with/or between High State Bodies (*TAP MPR No. III/MPR/1987 tentang Kedudukan dan Hubungan Tata-Kerja Lembaga Tertinggi Negara dengan/ atau antar Lembaga-Lembaga Tinggi Negara*); Art. 31 Law No. 14/1985 on the Supreme Court (*UU No. 14/1985 tentang Mahkamah Agung*).

22 Art. 31 and Elucidation Law No. 14/1985.

23 Law No. 24/1992 on Spatial Management (*UU No. 24/1992 tentang Penataan Ruang*).

24 Art. 30 Law No. 24/1992.

which were valid for 10 years. The plans followed the plans of higher administrative levels as guidelines. The General Spatial Plans formed the basis for Elaborated Spatial Plans (*Rencana Rinci Tata Ruang*), consisting of Detailed Spatial Plans and Technical Spatial Plans (replacing the Detailed Town Plans and Technical Town Plans respectively).<sup>25</sup> The 1992 SML required the enactment of a government regulation regarding the form and content of the plans, but such a regulation was never enacted.<sup>26</sup> Regulation of the Minister of Home Affairs No. 2/1987 thus remained the guiding document in relation to this matter.

The Governor had authority in spatial management within the Province, and the Mayor within the Municipality.<sup>27</sup> In order to improve coordination between and among the different administrative levels, a National Coordinating Board for Spatial Planning (*Badan Koordinasi Tata Ruang Nasional*) was established, which was chaired by the Head of the National Development Planning Agency (*Badan Perencanaan Pembangunan Nasional* or BAPPENAS).<sup>28</sup>

The 1992 SML explicitly granted the public the right to participate in planning, and even required the central government to enact a separate government regulation on this matter.<sup>29</sup> This regulation was enacted four years later: Government Regulation No. 69/1996.<sup>30</sup> In the drafting process of the General Spatial Plan at the municipal level, the public (consisting of individuals, communities, or legal bodies) could give input regarding the direction of regional development; identify potential issues and problems regarding development; give input on the formulation of spatial planning; provide information, proposals, judgments and opinions on the strategic organisation of spatial use within the Municipality; object to the draft General Spatial Plan; collaborate in research and development; and/or give specialized support.<sup>31</sup> The public also had a similar right to participate in the drafting process of detailed plans.<sup>32</sup> Any form of public participation in the drafting process of spatial plans at the municipal level had to be directed towards the Mayor in written or oral form. Detailed provisions regarding this matter were to be formulated by the Minister of Home Affairs.<sup>33</sup>

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25 Art 20(3-4), 21(3-4), 22(3 and 5) Law No. 24/1992.

26 Art. 23(1) and (3) Law No. 24/1992.

27 Art. 27(1) and 28(1) and Elucidation Law No. 24/1992.

28 Presidential Decision No. 75/1993 Presidential Decision No. 75/1993 on Co-ordination of the Organisation of National Spatial Planning (*Keppres No. 75/1993 tentang Koordinasi Pengelolaan Tata Ruang Nasional*) in conjunction with Art. 29 Law No. 24/1992.

29 Art. 4 and Art. 12 Law No. 24/1992.

30 GR No. 69/1996 on the Implementation of the Rights and Obligations as well as the Procedure and Form of Public Participation in Spatial Management (*PP No. 69/1996 tentang Pelaksanaan Hak dan Kewajiban serta Bentuk dan Tata Cara Peran Serta Masyarakat dalam Penataan Ruang*). The regulation will be discussed in further detail in the next section.

31 Art. 1(10) and 15 GR No. 69/1996.

32 Art. 18 GR No. 69/1996.

33 Art. 27 GR No. 69/1996.

As will be discussed below, the Minister enacted a regulation regarding this matter only in 1998, six months after Soeharto's fall.

The Municipal Council enacted General Spatial Plans by bylaw. The 1992 SML contained no provisions regarding the enactment of Detailed Spatial Plans, Technical Spatial Plans, or legalisation of plans. Regulation of the Minister of Home Affairs No. 2/1987 thus again remained the guiding document in relation to this matter, which means that these plans were also enacted by bylaw. General Spatial Plans and Detailed Spatial Plans were legalised by the Governor or the Minister of Home Affairs and Technical Plans by the Governor.

Just as in case of a town plan, once the bylaw enacting a spatial plan had been legalised, the public could apply at the Supreme Court for judicial review of the bylaw against higher legislation. This became easier from 1993, when the review no longer had to be related to a concrete case, but could be initiated separately following a complaint or request.<sup>34</sup>

The 1992 SML granted the public the right to be informed about regional spatial plans, and again required the central government to enact a regulation on this matter.<sup>35</sup> This was realised by the same government regulation as discussed before, Government Regulation No. 69/1996. It added to the right of the public to be informed about regional spatial plans, as enshrined in the 1992 SML, the concept of transparency (*mengetahui secara terbuka*), which made the law potentially more significant.<sup>36</sup> Likewise, it stated that the government had the duty to make enacted spatial plans publically available in government offices and public places.<sup>37</sup>

The right to be informed about regional plans formed part of a broader effort to increase the role of the public in spatial management. It was intended that members of the public should be able to obtain information easily and quickly, through the media and public forums, and could take initiatives to support the implementation of their rights. The government was supposed to support such initiatives by increasing public awareness, for instance through providing legal aid and education, as well as promoting transparency in spatial management.<sup>38</sup>

Spatial plans were also to be evaluated and revised. The criteria and procedures for the evaluation and revision of plans were to be elaborated by government regulation; but this regulation too was never enacted. In any event citizens had a right to participate in planning and to be informed about plans.<sup>39</sup>

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34 See Regulation of the Supreme Court No. 1/1993 on the Right to Substantive Review (*Peraturan Mahkamah Agung No. 1/1993 tentang Hak Uji Materiil*) in conjunction with Art. 79 Law No. 14/1985.

35 Art. 4 and 6 Law No. 24/1992.

36 Art. 2, under b Law No. 24/1992.

37 Art. 3(2) GR No. 69/1996.

38 Art. 30 GR No. 69/1996.

39 Art. 13(2-3) and Elucidation Law No. 24/1992.



The above shows that the 1992 SML and Government Regulation No. 69/1996 contained some new safeguards that could protect the interests of landholders, but that these safeguards remained weak – particularly for the urban poor. Government Regulation No. 69/1996 has been criticized, for several reasons. For instance, its provisions suggested that participation was an open process, to be initiated by the people themselves, upon which the government should create a forum or another framework in which people could express themselves. Yet, as Darminto has argued: “low income people tend to be hesitant to be involved in [spatial management], unless it will directly enhance the quality of their lives and their involvement will return tangible outcomes in which they have interests.” He thus concludes that low income people should be more directly and carefully encouraged to participate, and even be assisted in such efforts (Darminto 2003:10-1).<sup>40</sup>

Another point of criticism regards the fact that the government was in no way required to make use of the public input. The government could also not be ‘sanctioned’ if it failed to let the people participate in spatial planning or inform them about plans. As discussed in Chapter 3, the Administrative Courts established in 1991 only had jurisdiction to review government institutions’ written decisions with legal effect when the decisions were concrete, individual, and final. The Administrative Courts could thus not review a bylaw formalising a spatial plan; as the enactment of such bylaw is not considered to be a decision of a concrete or individual nature (Oetomo 1997:8).

Although the law created a mechanism that allowed the public to participate in spatial planning, there was no such participation in practice. As Salim noted, the public was not actively involved in planning processes from the beginning, and often played no role at all. Problems were thus not identified by the public, but by municipal governments, which were guided by the policies of the central and provincial governments. If the public was consulted before the enactment of plans, this typically took place after the plans had already been designed, which left little room for discussion. As a result, the enacted plans did not usually reflect the needs of the public (Salim 2003:21).

The indirect influence of the public, through elected forums, was also limited. The only contribution of the Municipal Councils was in giving decisive consent to the plans (Niessen 1999:232-3). In effect the only ‘outsiders’ who could influence the outcome of plans were the consultants who were commonly contracted to advise on the design of plans. In some cities the Detailed and Technical Plans were actually enacted by decision of the Mayor, which means that contrary to prevailing legislation, the Municipal Councils played no role whatsoever in the determination of such plans (Niessen 1999:256).

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40 See also Salim, who stressed the need to empower the people (Salim 2003:23).



The central government appeared to have little interest in spatial planning at the municipal level. Niessen notes that several years after plans had been enacted, they had often still not been legalised (Niessen 1999:254). As discussed before, according to the 1974 Decentralisation Law, plans could then be implemented; however in practice regional governments were reluctant to do so (Niessen 1999:209).

Transparency remained limited, even after plans had been enacted and legalised. According to Niessen, plans were not available for inspection. Officials often used the argument that they wanted to prevent land speculation. Aside from the fact that this argument may have been misleading, it was against the law to withhold from the public the information contained in the plans (Niessen 1999:254-5).

The enactment of the 1992 SML and Government Regulation No. 69/1996 did not significantly improve the situation. Since the legal framework regarding public participation remained unfinished, it was unclear how and in what form such participation should take place (Sumardjono 2005:73-4). Perhaps not surprisingly, plans typically facilitated development that benefited politico-economic elites. These groups could use plans to justify the appropriation of resources to further private interests, which often ran counter to those of the urban poor, who were simply ignored (Schulte Nordholt 1995:193-201).

There was little resistance against the above practices. Even the most critical elements showed little interest in spatial planning. As will be discussed in Chapters 6 and 7, from the early 1970s many rights-oriented NGOs, and from the late 1980s student movements, lent their support to (urban) low-income groups, but only as far as the latter's interests were directly threatened – such as in case of land clearance for development in the public interest. From the late 1980s, environmental NGOs emerged (Cribb 2003:45-6), some of which took a critical stance in spatial planning, but only as far as this related to environmental issues.

### 5.3 LEGAL REFORMS RELATED TO SPATIAL PLANNING

As discussed in Chapter 3, the fall of Soeharto in May 1998 marked the beginning of an ambitious reform programme. These reforms also extended to spatial management law. The Minister of Home Affairs enacted Regulation No. 8/1998, which contained new provisions regarding spatial management in the regions, and Regulation No. 9/1998, which constituted the

implementing regulation of Government Regulation No. 69/1996 discussed above.<sup>41</sup>

The new legislation formulates further standards for public participation in spatial management.<sup>42</sup> The Mayor is required to inform the public that a plan is being designed.<sup>43</sup> This information is to be disseminated for seven days through various media and public forums, which for General Spatial Plans should be organised at the Sub-District level; for Detailed Spatial Plans at the City-Quarter or Village level; and for Technical Spatial Plans at the Neighbourhood or Block level.<sup>44</sup> During the design process, discussions and seminars should be organised, to which government bodies, specialists, informal leaders, professional and civil organisations, and investors should be invited.<sup>45</sup> Mayors are under the obligation to take suggestions and opinions from the public and to use this input in the decision-making process.<sup>46</sup> As soon as the final draft of the design is completed, the Mayors have to announce this to the public.<sup>47</sup>

The role of Municipal Councils in spatial planning diminished. General Spatial Plans and revisions of such plans are to be enacted by bylaw; Detailed Spatial Plans by decision of the Mayor with agreement of the leadership of the Municipal Council; and Technical Spatial Plans by decision of the Mayor.<sup>48</sup>

The new legislation did not require municipal governments to obtain a recommendation from the Governor, nor require them to send General Spatial Plans to the Governor or the Minister of Home Affairs for legalisation. At the same time, it did not explicitly revoke Regulation of the Minister of Home Affairs No. 2/1987, which suggests that municipal governments were still required to take these steps. The 1999 RALs made clear that they only need to forward bylaws or decisions of the Mayor to the central government within fifteen days of their enactment, and that on the basis of the central government's review authority the legislation can be revoked if contrary to the public interest or higher legislation. If the bylaw is annulled, municipal governments can initiate proceedings against this decision at the Supreme Court.<sup>49</sup>

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41 Regulation of the Minister of Home Affairs No. 8/1998 on the Organisation of Spatial Management in the Region (*Permendagri No. 8/1998 tentang Penyelenggaraan Penataan Ruang di Daerah*); Regulation of the Minister of Home Affairs No. 9/1998 on the Method of Public Participation in the Spatial Planning Process in the Region (*Permendagri No. 9/1998 tentang Tata Cara Peran Serta Masyarakat dalam Proses Perencanaan Tata Ruang di Daerah*).

42 Art. 31, 35, and 38 Regulation of the Minister of Home Affairs No. 8/1998.

43 Art. 7(1 and 4) Regulation of the Minister of Home Affairs No. 8/1998.

44 Art. 13(4-5) Regulation of the Minister of Home Affairs No. 9/1998.

45 Art. 8(3) Regulation of the Minister of Home Affairs No. 8/1998.

46 Art. 5, under b and c Regulation of the Minister of Home Affairs No. 8/1998.

47 Art 5, under a, 8(4) Regulation of the Minister of Home Affairs No. 8/1998.

48 Art. 44(2) and 47(3) Regulation of the Minister of Home Affairs No. 8/1998.

49 Art. 113-114 Law No. 22/1999.

As discussed in Chapter 3, in 2004 the role of higher administrative levels increased as a result of the revision of the RALs, also in spatial management. The provincial governments now obtained a shared authority with the municipal governments in the fields in which the latter previously held exclusive authority.<sup>50</sup> The Governor has the task of guiding and supervising the municipal governments, as well as coordinating government matters.<sup>51</sup> It is for this reason that, prior to the enactment of a draft bylaw related to municipal spatial planning, a Mayor must send a copy of the draft to the Governor for evaluation, within three days of having reached agreement with the Municipal Council over the draft. This evaluation should be completed within fifteen days. If the Governor considers the draft bylaw to be not in accordance with the public interest or higher legislation, the municipal government is required to correct it within seven days. If the municipal government fails to do so, the Governor annuls the draft bylaw. If the bylaw is annulled, the municipal government can start proceedings against this decision at the Supreme Court. The Governor forwards the result of his evaluation to the Minister of Home Affairs. This process should be coordinated with the minister dealing with spatial management, *i.e.* the Minister of Public Works.<sup>52</sup>

As soon as the bylaw has been enacted, the municipal government must forward a copy of the bylaw to the central government within seven days. On the basis of its review authority, the central government can annul the bylaw if it is deemed contrary to the public interest or to higher legislation by presidential regulation, within sixty days of having received a copy of the bylaw. If the bylaw is annulled, municipal governments can start proceedings against this regulation at the Supreme Court.<sup>53</sup>

Review by the central government is not the only way a bylaw can be annulled. After its enactment, people can also file a request to the Supreme

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50 Art 13 and 14 Law No. 32/2004.

51 Art. 38 Law No. 32/2004.

52 Art. 189 in conjunction with Art. 186 Law No. 32/2004. These provisions are implemented by Art. 37-42 GR No. 79/2005 on Guidelines for Guidance and Supervision of the Exercise of Regional Government (*PP No. 79/2005 tentang Pedoman Pembinaan dan Pengawasan Penyelenggaraan Pemerintah Daerah*). According to Art. 42 GR No. 79/2005, Art. 37-39 GR No. 79/2005 should be implemented by ministerial regulation, but this was only done in 2008 (see Section 5.6 below).

53 Art. 145 Law No. 32/2004. Notably, Law No. 32/2004 only requires a Mayor to forward a draft bylaw to the Governor for evaluation, and to the central government; GR No. 79/2005 requires a Mayor also to forward a draft regulation of the Mayor to the Governor for evaluation; decisions of the Mayor are not required to be forwarded. As Detailed Plans and Technical Plans are enacted by decision of the Mayor, they are thus not evaluated by the Governor. The General Elucidation however notes in general terms that in cases where a municipal government is negligent or commits violations, the central government can impose sanctions, including in the form of annulment of decisions of the Mayor. See General Elucidation, under 9.

Court for judicial review of the bylaw against acts of parliament.<sup>54</sup> Review of the bylaw against other types of higher legislation (government regulations and presidential regulations) is no longer possible.<sup>55</sup>

As soon as a spatial plan has been formalised by bylaw, the Mayor is required to disseminate the plan through the media and to 'socialise' it.<sup>56</sup> In addition, the public should be able to access the plan in a quick and easy manner, through the press, electronic media, or public forums.<sup>57</sup>

The above shows that spatial management legislation contains further safeguards that could protect the interests of landholders. Most importantly, it lists various obligations of municipal governments in relation to public participation and transparency. However, most obligations are still not clear and enforceable. How many discussions and seminars should be organised during the plan's design process? Government bodies, specialists, informal leaders, professionals and civil organisations are invited to these discussions and seminars on the basis of what selection criteria? How should suggestions and opinions from the public be used in the decision-making process? What are the sanctions if municipal governments fail to meet these and other obligations in relation to public participation and transparency? In addition, the role of the Municipal Councils has diminished, in the sense that technical spatial plans are enacted by decision of the Mayor alone, which means that democratic control has actually weakened. Finally, the provincial and central government's role with respect to guidance and supervision also remains limited, although this role has increased since 2004. Despite these weaknesses, the regulations could still offer some protection to the urban poor in spatial planning, particularly in combination with the general reforms discussed in Chapter 3. The following section takes a close look whether, and if so how, spatial planning practices have changed in Post-New Order Bandung.

#### 5.4 PRACTICE OF SPATIAL PLANNING IN POST-NEW ORDER BANDUNG

Shortly after the fall of Soeharto, plans for democratic reform entered Bandung's political agenda. In 1999 the then Mayor of Bandung, Aa Tarmana, a member of Soeharto's Golkar Party and of military background, formulated Reform Principles for Regional Development (*Pokok-Pokok Reformasi Pembangunan Daerah*), in which he announced that local politics would democratise and involve public participation.<sup>58</sup> The council elections of

54 Art. 11(2), under b Law No. 4/2004 on Judicial Power; Art. 31 Law No. 5/2004 on the Revision of Law No. 14/1985 on the Supreme Court.

55 Since the enactment of Law No. 10/2004 on lawmaking, municipal bylaws and provincial bylaws have the same hierarchical status.

56 Art. 10 and 5, under e Regulation of the Minister of Home Affairs No. 8/1998.

57 Art. 41(1) Regulation of the Minister of Home Affairs No. 8/1998.

58 Attachment, p. 10, Decision of the Mayor of Bandung No. 103/1999.

May 1999 resulted in a landslide victory for the Indonesian Democratic Party of Struggle (*Partai Demokrat Indonesia-Perjuangan* or PDI-P). Though still the third largest party, Golkar lost its dominant position.<sup>59</sup> In 2001 the 1999 RALs came into force, which strengthened the position of the Municipal Council vis-a-vis the municipal government. Finally, in the same year the Reform Principles for Regional Development were elaborated in a Regional Development Programme (*Program Pembangunan Daerah* or PRO-PEDA), which explicitly underlined the need to develop a new paradigm in planning, with room for public participation, involvement of stakeholders, and decision-making at the lowest possible level.<sup>60</sup>

Whether the idea of democratisation was indeed taking root, or whether it remained just political rhetoric, was soon tested. Bandung was due for a new General Spatial Plan before 2005, and in October 2001 the municipal government therefore began to design a draft. A technical team, consisting of officials from several Municipal Services, was responsible for this process.<sup>61</sup> However, the draft plan was actually designed by a private consultancy firm, PT Surya Anggita Sarana Konsultan, which had been selected following a public tender (Sari 2003:63-4).

Various NGOs in Bandung advocated for participation in spatial planning. The Discussion Group for the Citizens of Bandung (*Sarasehan Warga Bandung* or Sawarung), a citizens' forum established in July 1999 by 18 community development NGOs, was the most vocal organisation.<sup>62</sup> It consisted of several working groups, including a group called the Spatial Planning Enclave (*Enclave Tata Ruang*), which consisted of ten representatives from various larger and smaller NGOs in Bandung. These representatives were well related to and sometimes actually members of the city's kampung communities.<sup>63</sup>

Enclave Tata Ruang noticed that the general public did not know how to voice its discontent with government policy. The organisation therefore launched various initiatives, including a study, a survey, focus group discussions, and workshops to identify problems and needs in spatial plan-

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59 The 45 seats of the Municipal Council were divided as follows: PDI-P – 14; PAN – 8; Golkar – 6; Keadilan Bulan Bintang – 5; PPP – 4; Kebangkitan Bangsa – 2; Keadilan dan Persatuan – 1; TNI / POLRI – 5.

60 Attachment, p. 9, Bylaw of Bandung Municipality No. 9/2001 on the Regional Development Programme of Bandung Municipality Year 2000-2004 (*Perda Kota Bandung No. 9/2001 tentang Program Pembangunan Daerah (Propeda) Kota Bandung Tahun 2000-2004*).

61 Decision of the Mayor of Bandung No. 650/Kep.243-Bag.Huk/2001.

62 Aside from developing a mechanism to participate in decision-making processes, the objective of Sawarung was to monitor the implementation of government programmes. These activities required local knowledge, for which the forum established a database network, known as Combine. This network relied on the collection and updating of data concerning local conditions, resources, development needs and problems by the communities themselves.

63 For example, one of the members was a resident of kampung Cimaung, one of the kampongs in Taman Sari discussed in Chapter 2.

ning (Enclave Tata Ruang 2004b:7-12). It also developed an alternative planning mechanism, called *Mistar* (short for *Model Interaksi Stakeholder Tata Ruang*), which aimed at creating interaction between various stakeholders in spatial planning (Enclave Tata Ruang 2004a). For this purpose, the activists argued, a new body would need to be established within the municipal government.<sup>64</sup>

The municipal government offered little response to these initiatives; and the involvement of the public in spatial planning still remained limited. During the design process the municipal government only once organised a seminar to get input from stakeholders. This seminar, organised in January 2002, consisted of a dialogue and workshop about the General Spatial Plan, in which various NGO activists, academics, members of the Municipal Council, and representatives of the media participated. Notably, there were no clear criteria for the selection of these stakeholders (Sari 2003:69-70).

Between October 2002 and February 2003, the first draft was 'socialised', to enable it to be further improved (Sari 2003:64). During this process the municipal government organised a small seminar; however aside from government representatives only journalists participated, so it was little more than a press conference (Sari 2003:70). The municipal government also organised a survey among the general public; but did not see the need to organise a public forum, as the General Spatial Plan was only a macro plan and, according to the municipal government, the public had been sufficiently represented by stakeholders during the seminar in 2002 (Sari 2003:72).

Despite the provision for participation, the input given by stakeholders was largely ignored. As a senior academic who participated in the 2002 seminar argued: "In the first year the plan would be formulated with representative participation, in the second year the public would be asked to participate. However, in fact this was just token participation."<sup>65</sup> Separately, two NGO members who participated in the seminar came to a similar conclusion: "public participation was only a formality really."<sup>66</sup>

The drafting process of the General Spatial Plan was more transparent than before, but there were still some deficiencies. This was confirmed by research by Zulkaidi & Sari, who analyzed the transparency in the different stages of the drafting process as regulated by Regulation of the Ministry of Home Affairs No. 2/1987. Aside from organising the seminars and survey, and coordinating the meetings previously mentioned, the municipal government disseminated information through various media, namely local radio, local television, the internet, and local newspapers. The drafting process was sufficiently transparent in terms of the comprehensiveness of

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64 Personal communication of several NGO members, Bandung, 10 August 2004.

65 Personal communication of a senior academic, Bandung, 21 July 2008.

66 Personal communication of NGO members, Bandung, 22 July 2008.



the information provided, thus accommodating the opinion of stakeholders, as well as in terms of the procedures followed to organise and target information. However, the process did not meet other essential transparency standards, namely in relation to the way in which information was provided and the variation of the media used to provide the information (Zulkaidi & Sari 2004).<sup>67</sup>

The final draft of the General Spatial Plan was completed in February 2003. It had taken little consideration of the interests of kampung dwellers. The draft proposed the restructuring of 'slum areas' (*kawasan kumuh*) by the construction of tenement buildings, so that the remaining land could be used for commercial purposes.<sup>68</sup> Bandung's municipal government thus broke with the policy of kampung improvement that, as noted in Chapter 2, had been implemented since the 1970s. Instead, it adopted a policy of drastic urban renewal. The draft risked damaging the economic position of kampung dwellers, most of whom work in the informal sector. Traditional markets that were considered 'disturbing' or lacked infrastructure could be relocated, as could local markets that were no longer in accordance with the General Spatial Plan; the activities of sidewalk vendors would be regulated and curbed and they were to be encouraged to trade without utilizing public space.<sup>69</sup>

A month later the municipal government sent the draft Plan to the Municipal Council, which formed a Special Committee for the General Spatial Plan (*Panitia Khusus Rencana Tata Ruang dan Wilayah* or Pansus) to deliberate over the draft. Public participation was again very limited. The Municipal Council was under time pressure, as elections were being held soon. As the previously quoted senior academic involved in the process noted: "Those who were consulted were technical specialists, not people who would be affected by the General Spatial Plan. Besides, they were only asked to participate in the evaluation of the draft plan after the Special Committee had already decided to support it. Public participation of this kind was only a way to legitimise the decision already taken."<sup>70</sup>

The Municipal Council's final deliberations hardly addressed the substantive issues any further. Councillors primarily focused their attention on the wording of Article 22, under c of the draft General Spatial Plan, which stated tourist and recreational activities that were not in accordance with

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67 Notably, the researchers qualify their findings, since they draw from sources within the Regional Development Planning Agency only – sources that could not be crosschecked. Further, it was hard to estimate the fulfilment of some of the standards. Finally, the study only assessed compliance with (minimum) transparency standards and did not look at the quality of such compliance.

68 Art. 14(2), under c of the draft plan.

69 Art 17, under a and j-m and Art 42(3), under d of the draft bylaw. On the implementation of these measures, see also Art. 79, under f-g and Art. 80, under c-e in conjunction with Art. 42 of the draft bylaw.

70 Personal communication of a senior academic involved in the drafting process, Bandung, 22 July 2008.



the “local people’s religious and cultural standards” were to be curbed, limited or prohibited. After objections from religious parties like the United Development Party (*Partai Persatuan Pembangunan* or PPP) and Justice Moon and Star Party (*Partai Keadilan Bulan Bintang* or PKBB), it was decided that the words ‘curb’ and ‘limit’ would be dropped.<sup>71</sup> Otherwise, the Municipal Council proposed no major revisions. On 10 February 2004, just weeks before the Municipal Council elections, the General Spatial Plan was enacted by Bylaw No. 2/2004.<sup>72</sup>

Soon after the formalisation of the General Spatial Plan, it emerged that the councillors had overlooked a major issue – at least, they claimed to have overlooked it. This concerned Punclut, a 268 ha conservation and water catchment area situated in the scenic hills of North Bandung, which is part of the environmentally significant North Bandung Territory (*Kawasan Bandung Utara* or KBU). Protection of the area is considered of utmost importance to guarantee the city’s water supplies and to prevent flooding downhill.<sup>73</sup> Notably, the area is also inhabited by a large kampong community, which has built the land with low-density, semi-permanent housing.

Punclut had already been surrounded by controversy for decades. In the past the provincial government and later the NLA issued site permits to developers, allowing them to clear land for the development of real estate – in which the NLA even assisted a developer by annulling existing land rights.<sup>74</sup> The issuance of these permits was in violation of Bandung’s 1992 General Town Plan, which did not allow real estate development in Punclut. However, until the enactment of the General Spatial Plan, no development had taken place and existing site permits had expired.<sup>75</sup>

The councillors claimed to have overlooked that the General Spatial Plan contained a map designating part of Punclut in yellow, which signified that low-density real estate development would now be allowed.<sup>76</sup> A plan for which in previous years land had been cleared could thus finally be realised. Notably, the bylaw that enacted the General Spatial Plan also contained a provision stating explicitly that in the North Bandung Area no new permits would be issued, no access road could be built, and no new infrastructure would be realised, unless it involved infrastructure that was

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71 ‘Perda RTRW Kota Bandung Disahkan, Dilarang, Hiburan yang Langgar Norma Agama’, *Pikiran Rakyat*, 11 February 2004.

72 Bylaw of Bandung Municipality No. 2/2004 on the General Spatial Plan of Bandung Municipality (*Perda Kota Bandung No. 2/2004 tentang Rencana Tata Ruang Wilayah (RTRW) Kota Bandung*).

73 Punclut is an acronym for Puncak Ciumbuleuit, or Top of Ciumbuleuit, which is the City Quarter in which Punclut is located.

74 In 1961 the ownership rights had been granted to former military personnel. In 1997 the Head of the NLA annulled this decision, on the basis of which these rights had been granted, because the right holders were said to have failed to meet the requirement of building houses on the land (Decision of the Head of the NLA No. 19-VIII-1997).

75 See also Niessen 1999:274-89; Hardjono 2005.

76 ‘Ada Manipulasi Peta RTRW Kota Bandung’, *Kompas*, 22 June 2004.

'vital for the area'.<sup>77</sup> It thus seemed that there was no risk that real estate development would expand in Punclut.

Once the 'mistake' had been discovered, councillors of the Special Committee for the General Spatial Plan claimed that Bandung's Regional Development Planning Agency had failed to inform them about the revision. Since the councillors had never changed the map themselves, they had not taken the trouble to check it again. Deliberations instead concentrated on the provisions in the draft bylaw.<sup>78</sup> There is anecdotal evidence that during the final deliberations over the enactment of the General Spatial Plan, the map had been distributed in black-and-white. As a result, the councillors could not discern that part of the Punclut area was coloured yellow instead of green.

Notably for this case, less than a year before, Uce Salya, a councillor and an undisclosed source of *Pikiran Rakyat* daily, declared that in January 2003 – two months before the draft General Spatial Plan had been sent to the Municipal Council –, several councillors responsible for spatial planning had received money from PT MS, one of the companies that held a site permit in Punclut. Uce Salya acknowledged that he had received Rp. 15 million, but claimed he had returned the money three months later, not to the company – which refused to take it back – but to Ecih Sukaesih, the secretary of the Municipal Council. The councillors as well as the leadership of PT MS rejected the allegations, and reported Uce Salya to the police for libel.<sup>79</sup> A few days later the dispute took a very different turn. Uce accepted the reading of his fellow committee members that they had never received any money, and apologised for accusing them of any wrongdoing.<sup>80</sup> The police never seriously investigated the allegations.

The Municipal Council demonstrated little commitment to rectifying the mistake in the General Spatial Plan. The Municipal Council's Chairman decided to postpone the revision of the plan until after the council elections. This decision was fiercely rejected by a few councillors, as the changed maps would remain applicable for quite a long time, without maintaining the area's status quo.<sup>81</sup> The Municipal Council did set up meetings to generate input from the public (including members of NGOs and well-known artists) regarding the future of Punclut. At these occasions

77 Art. 100(2) Bandung Municipality Bylaw No. 2/2004.

78 'Perubahan RTRW Bandung Utara Tidak Diketahui DPRD', *Kompas*, 2 July 2004; 'DPRD Kecolongan, Peta Punclut Telah Diubah, Bappenas Keberatan Pembangunan Punclut', *Pikiran Rakyat*, 2 July 2004.

79 'Pengembang Puncrut Diduga Main Suap', *Kompas*, 23 April 2003; 'Anggota Dewan Berekasi Keras, Uce Diminta Membuktikan Soal Isu Sogokan Rp 15 Juta', *Pikiran Rakyat*, 24 April 2003; 'Menyusul Pernyataan Uce Salya tentang Uang Suap', *Pikiran Rakyat*, 26 April 2003.

80 'Usulan Dewan Kehormatan Batal', *Pikiran Rakyat*, 1 May 2003.

81 'BEM Mal tak Sesuai RTRW 2004', *Pikiran Rakyat*, 29 July 2004; 'Bappeda Salah Masukkan Peta, DPRD Jabar Teliti Jalur Dago-Lembang', *Pikiran Rakyat*, 14 July 2004.

various objections were conveyed against the plan to develop real estate in the area, but to no avail.<sup>82</sup>

Similarly to the Municipal Council, the new Mayor of Bandung, Dada Rosada (Golkar), who had been elected by the Municipal Council in September 2003, and the Regional Secretary denied having prior knowledge of the issue.<sup>83</sup> The Head of the Regional Development Planning Agency, Tjetje Soebrata, argued that in any event, the development of Punclut was consistent with the General Spatial Plan that West-Java Province had enacted in January 2003. "So why these allegations that the municipal government has manipulated the General Spatial Plan's map," he questioned.<sup>84</sup>

However, the argument that the development of Punclut was consistent with the West Java Province's General Spatial Plan is disputable. It designated the whole North Bandung Territory as a protected area (*kawasan lindung*), specifically a protected forest area (*kawasan hutan yang berfungsi hutan*), which must be preserved permanently. In addition, the plan generally designated water catchment areas (*kawasan resapan air*) as protected areas. These areas in particular were considered important to be preserved, in order to secure the availability of drinking water.<sup>85</sup> It is hard to perceive how real estate development can be combined with the preservation of Punclut.

Despite this inherent inconsistency, there was little West-Java's provincial government could do. Again, on the basis of the 1999 RALs the implementation of the General Spatial Plan no longer required a recommendation from the Governor. Early July 2004, Governor Danny Setiawan therefore stressed that Punclut formed a conservation area, but noted that if the General Spatial Plan were violated, it was not West-Java's provincial government, but Bandung's municipal government that should act first. "In accordance with Law No. 22/1999, the only role we play is to confirm the acts of the municipal government. After all, under this law, coordination between the central government, the provincial government, and the district/municipal governments has become weak. We'll have to wait and see what the revision of this law leads to."<sup>86</sup>

In fact, the Governor did take several measures to avoid real estate development in Punclut. In June 2004 he sent a circular letter to the Mayor of Bandung and other responsible regional heads, in which he requested

82 'Soal Rencana Pembangunan Punclut, Bimbo Tegur DPRD', *Kompas*, 2 July 2004.

83 'Perubahan RTRW Bandung Utara Tidak Diketahui DPRD', *Kompas*, 2 July 2004.

84 'DPRD Kota Bandung Tidak Setuju Punclut Dibangun', *Kompas*, 26 June 2004.

85 Art. 31 and 33-34 Regulation of West-Java Province No. 2/2003 on the General Spatial Plan of West-Java Province (*Perda Jawa Barat No. 2/2003 tentang Rencana Tata Ruang Wilayah Provinsi Jawa Barat*).

86 'Bappenas: Punclut Tidak Direkomendasikan untuk Dibangun', *Kompas*, 3 July 2004. See also 'DPRD Kecolongan, Peta Punclut Telah Diubah, Bappenas Keberatan Pembangunan Punclut', *Pikiran Rakyat*, 2 July 2004.

them to put a restraint on spatial use in North Bandung Territory.<sup>87</sup> A month later, he succeeded in persuading the Mayors of Bandung and Cimahi, as well as the District-Heads of Bandung and Sumedang, to sign a Memorandum of Understanding (MoU) in which they agreed to collaborate with the Province and with each other in spatial management and environmental protection.<sup>88</sup> To that purpose a General Spatial Plan for the Metropolitan Territory Bandung (*Kawasan Metropolitan Bandung* or KMB) was to be designed. The Governor also established the Coordinating Team for Spatial Management of West-Java Province (*Tim Koordinasi Penataan Ruang Daerah Propinsi Jawa Barat* or TKPRD).<sup>89</sup> Finally, in August 2004 he sent a circular letter to the Mayor of Bandung and other responsible regional heads, in which he called upon them i) not to issue permits until a spatial management policy for the Metropolitan Territory Bandung as well as operational directives for spatial use in North Bandung had been formulated, ii) to review the status of permits that had already been granted in accordance with prevailing legislation, iii) not to extend the permits of developers that undertook development activities not in accordance with formulated conditions, and iv) to implement the circular letter he had sent in June.<sup>90</sup>

The Provincial Assembly supported Governor Danny Setiawan in his measures, which were the first Punclut-related measures a Governor had taken since 1994.<sup>91</sup> However, given that the measures took the form of circular letters and an MoU, they had little binding force. Unfortunately, the Governor was also grappling with a credibility issue, since the provincial government was itself planning to construct a road in the North Bandung Territory.<sup>92</sup>

As was explained in Section 5.3, the Department of Home Affairs could have annulled Bandung Municipality's General Spatial Plan on the basis of its review authority. However it did not do so, despite the fact that the Head of the Spatial Planning and Land Section of the National Development Planning Agency, Sujana Royat, stated that he would not recommend the development of Punclut. He said that to this purpose, the Agency

87 Circular Letter of the Governor of West-Java No. 650/1704/Bapeda, dated 14 June 2004.

88 Joint Decision of the Governor of West-Java, Head of District Bandung, Head of District Sumedang, Mayor of Bandung, and the Mayor of Cimahi No. 31/2004-23/2004-21/2004-650/Kep.521-Bappeda/2004-23/2004. It took more than a year before the Provincial Assembly officially agreed with the MoU. See also 'Disetujui, MoU Pengelolaan Bandung Metropolitan, RTRW Kota/Kab. di Cekungan Bandung Harus Mangacu ke Provinsi', *Pikiran Rakyat*, 14 September 2005.

89 Decision of the Governor of West-Java No. 120.05/Kep.691-Org/2004. Art. 20 of Regulation of West-Java Province No. 2/2003 required the establishment of this team.

90 Circular Letter of the Governor of West-Java No. 650/2530/PRLH, dated 18 August 2004. See also 'Gubernur Minta Izin di KBU Tidak Diperpanjang', *Kompas*, 5 August 2004.

91 'Soal KBU, Gubernur Harus Didukung', *Pikiran Rakyat*, 1 August 2004; 'Gubernur: Pembangunan Punclut Harus Dihentikan', *Kompas*, 13 January 2005.

92 For a short description of this case, see: Hardjono 2005:218-20.

would take initiatives to improve the legislative framework. "However, for now it is most important that the people show stronger resistance against development activities in Punclut." Notably, Royat did not specify what form such resistance should or could take.<sup>93</sup>

The objections of the provincial and central governments against real estate development in Punclut did not prevent Mayor Dada Rosada from issuing the required permits for that purpose. Soon after the enactment of the General Spatial Plan, the Mayor announced that some 130 Ha of the area would be developed by private companies, including PT DAM and PT MS.<sup>94</sup> In October 2004 he issued a Land Use Permit to PT DAM.<sup>95</sup> A few months later, in January 2005, the Mayor issued two other permits, which allowed the company to clear the land for building and to construct a 2.2 kilometres long access road in Punclut.<sup>96</sup> More development activities could thus be undertaken than could be justified on the basis of the new Spatial Plan.

The issuing of these permits provoked strong reactions from the Municipal Council, NGOs and the media. Following these protests, Governor Danny Setiawan sent a letter to the Mayor, in which he requested that the activities of PT DAM be stopped, arguing they were not in accordance with Bandung Municipality's General Spatial Plan and higher legislation. The Governor also suggested that to respond to the needs of the people, the Punclut area should be planned "in a wise and transparent way, in coordination with the provincial government, and involving all interested parties".<sup>97</sup>

In February 2005 the Monitoring Body for the Upgrading of Sundanese Forestry and Environment (*Dewan Pemerhati Kehutanan dan Lingkungan Tatar Sunda* or DPKLTS), a local environmental NGO, initiated a procedure at Bandung's Administrative District Court, requesting the annulment of the land use permit that had been issued. The request was rejected by what may be considered an incorrect line of reasoning. Although acknowledging that Bandung Municipality's Bylaw No. 2/2004 did not allow new permits to be granted, the Court concluded that this permit could be granted because the General Spatial Plan of West-Java contained a map signifying Punclut as a protected area outside the protected forest area, and protected areas could involve both natural resources and man-made resources.<sup>98</sup> Even

93 'DPRD Kecolongan, Peta Punclut Telah Diubah, Bappenas Keberatan Pembangunan Punclut', *Pikiran Rakyat*, 2 July 2004. See also 'Bappenas: Punclut Tidak Direkomendasikan untuk Dibangun', *Kompas*, 3 July 2004.

94 'Walkot Dinilai Kontroversi, DPKLTS Ancam PTUN-kan Jika Punclut Dibangun', *Pikiran Rakyat*, 20 June 2004.

95 Decision of the Mayor of Bandung No. 503.640/2112/DTK/X/1004, dated 11 January 2005.

96 Decision of the Head of the Road-Construction Service of Bandung Municipality No. 593/01-DBM/2005; Decision of the Head of the Road-Construction Service of Bandung Municipality No. 620/06-DBM/2005.

97 Letter of the Governor of West-Java No. 912/424/Bapeda, dated 10 February 2005.

98 Ruling of Bandung's Administrative District Court No. 14/G.TUN/2005/PTUN-BDG, dated 13 September 2005.

if this were the case, the Court should accurately have taken into consideration the National Spatial Plan's stated objectives. These objectives include: i) that protected areas should be managed to prevent their nature functions from being damaged, and to conserve the protective functions that these areas may convey to nearby areas; and ii) that protected areas should be regulated (*pengawasan*) through the prohibition of human activities, except for activities that do not disturb the area's nature functions or change the landscape/ecosystem.<sup>99</sup>

Although the outcome of the court procedure eventually proved favourable to the Mayor, the above responses forced him to act – but not in the way protesters had hoped for. In mid-2005 he announced the revision of the General Spatial Plan, so that the issued permits would be in accordance with spatial planning legislation. According to the Mayor, this step was put through at the pressure of “investors and the people”.<sup>100</sup>

The drafting process of the revised General Spatial Plan was again a more or less bureaucratic affair – and as such contrary to existing legislation. Sabrina, who evaluated the drafting process, concluded that no stakeholders other than government representatives were involved (Sabrina 2008:79-83). Further, several academics concluded that the drafting process had not been transparent. “The mindset of the government apparatus is much like that of an investor”, one of them observed.<sup>101</sup>

The draft bylaw proposed the revision of seven articles, thereby creating more room for commercial development in Bandung. Not surprisingly, the plan legalised existing site permits. In addition, it even allowed for the issuance of new site permits, the construction of a road, and the development of new infrastructure for local needs in the area.<sup>102</sup> In relation to West-Bandung, the development of housing, trade and services would no longer be limited, but restrained. “Green light for developers who will construct shopping malls, shop houses, and apartments”, a journalist commented.<sup>103</sup> Further, a new provision allowed traditional markets that were considered “not proper” to be regulated, developed, or relocated.<sup>104</sup> Finally, the restructuring of ‘slum areas’ was to be realised *predominantly* by the construction of condominiums.<sup>105</sup> So on the basis of the draft, kampongs qualified as such could be restructured by relocation of residents, followed by the construction of shopping malls.

As participation and transparency remained limited, the draft-plan was forwarded to the Municipal Council by mid-August 2004, just a few

99 Art. 10(1) in conjunction with Art. 41(1), under a; 43(1) GR No. 47/1997 on the National Spatial Plan (*PP No. 47/1997 tentang Rencana Tata Ruang Nasional*).

100 ‘Wali Kota Bandung Ngotot Bangun Punclut’, *Kompas*, 5 September 2005.

101 ‘Revisi Perda RTRW Kota Bandung Tidak Transparan’, *Kompas*, 26 October 2005.

102 Art. 100(2) of the draft bylaw.

103 ‘Drama Paripurna’, *Pikiran Rakyat*, 6 January 2006.

104 Art. 42, under b-d of the draft bylaw.

105 Art. 14(2c), under c of the draft bylaw.



months after the municipal government had announced the revision. There were several reasons to expect that it would not be easy for the municipal government to get the revised plan accepted. Council elections had taken place in April 2004, and by early August 2004 the new Municipal Council was installed, in which the division of seats had changed significantly; not least because the electorate had punished the PDI-P for its alleged involvement in KKN.<sup>106</sup> There were thus many new councillors, some of whom, from their public statements, appeared more critical – at least about development activities in Punclut. They argued that the area should be restored to a conservation area.<sup>107</sup> Interestingly, no objections were raised against the proposed revision on the basis of the potential harm it could cause to the interests of kampung dwellers.

At the same time, NGOs took to the streets to protest against the revision of the General Spatial Plan. As with the councillors, they were not concerned about the consequences of the revision for low-income groups, but for the environment. Environmental NGOs in particular, organised in the 'Bandung Bermartabat' People's Coalition (*Koalisi Masyarakat Bandung Bermartabat* or KMBB, named after the Municipality's development concept), voiced their concerns. They called upon the Municipal Council to create room for public consultation before taking any decision.<sup>108</sup>

The protests had some effect. The Municipal Council asked the Provincial Regional Development Planning Agency to evaluate the draft bylaw. In its evaluation, the agency strongly criticised the revision, and advised that at least it should be postponed.<sup>109</sup> The Municipal Council's Special Committee for the Revision of the General Spatial Plan also invited twenty 'stakeholders', consisting of academics, members of NGOs, and representatives of the Punclut community, to provide input.<sup>110</sup> At this occasion, NGO members and most academics fiercely rejected the draft plan, in particular because it allowed for development activities in Punclut. Some also criti-

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106 The 45 seats of the Municipal Council were divided as follows: PKS – 11, PDI-P – 10, PD – 6, Golkar – 6, PAN – 6, and Persatuan Bintang – 6.

107 'Pembangunan di Punclut Dihentikan Secara Paksa, Pekerja PT DUS Tidak Melakukan Perlawanan', *Pikiran Rakyat*, 31 December 2004; 'Tak Menginginkan Perintah Wali Kota Bandung, Pembuatan Jalan di Punclut Akan Terus Dilanjutkan', *Pikiran Rakyat*, 7 January 2005; 'Pembangunan di Daerah Punclut Menyalahi Aturan', *Kompas*, 8 January 2005; 'Gubernur, "Pemkot Terkesan Tidak Konsisten Soal Punclut"', Dewan Akan Kirim Nota ke Wali Kota', *Pikiran Rakyat*, 13 January 2005.

108 'Pemprov Akan Tegur Pemkot Jika Perda RTRW tak Sesuai, Gubernur, "Harus Selaras dengan Aturan Lebih Tinggi"', *Pikiran Rakyat*, 21 September 2005.

109 Letter of the West-Java Province Regional Development Planning Agency No. 650/1539/PRLH, dated 21 November 2005.

110 It again remains unclear which criteria the Municipal Council used to select these stakeholders. They included some of the NGOs most critical of the development of real estate in Punclut, including KMBB and DPKLTS. These NGOs were probably selected because they had asked the Municipal Council to be involved.



cised the drafting process. In their view, no attention was paid to the views of the general public (Sabrina 2008:85-95/ Attachment C2).

Despite the above protests and objections, the Municipal Council agreed with the draft bylaw on the revised General Spatial Plan on 30 December 2005. Surprisingly, even the members who had earlier presented themselves as strong critics of the development activities in Punclut, now supported the revision. The former Head of the Legislative Team for the Formulation of a Study on Punclut, Muhammad Iqbal Abdul Karim (National Mandate Party – *Partai Amanat Nasional* or PAN), is a noteworthy example. Acting as the Chairman of the Special Committee for the Revision of the General Spatial Plan, he argued that because of the revision, there would be no need to annul permits that had already been granted, meaning that no compensation would need to be paid and no court cases fought, thus saving on the Regional Budget. “The only negative effect of the revision is the complaints from environmental observers,” he rather cynically argued. Only the Justice and Prosperity Party (*Partai Keadilan Sejahtera* or PKS), a relatively young party with a particularly clean reputation, and a single member of the Democratic Party (*Partai Demokrat* or PD) rejected the revision. During final deliberations, PKS representatives in the Municipal Council even staged a walk out as an act of protest.<sup>111</sup>

After the Municipal Council had agreed with the draft bylaw on the revised General Spatial Plan, it was sent to the Governor of West-Java on 3 January 2006 for evaluation.<sup>112</sup> Several members of the Provincial Assembly now began to voice their concerns. Earlier its Chairman, H.A.M. Ruslan, had sent a letter to Governor Danny Setiawan, urging him to annul bylaws related to the North Bandung Territory which contradicted higher legislation.<sup>113</sup> Several councillors now called upon the Governor to act accordingly. “The revision of this recently enacted bylaw is biased towards the interests of developers, not the interests of the people”, a prominent member of the Provincial Assembly commented.<sup>114</sup>

In order to convince the provincial government to reject the revision, the ‘Bandung Bermartabat’ People’s Coalition and its separate NGOs continued their protests.<sup>115</sup> The Indonesian Environmental Forum (*Wahana Lingkungan Hidup Indonesia* or WALHI), a well-known national environmental NGO, sent letters of protest to several high officials, including the Gover-

111 ‘Akhirnya DPRD Sahkan Perubahan Perda RTRW’, *Pikiran Rakyat*, 31 December 2005; ‘Drama Paripurna’, *Pikiran Rakyat*, 6 January 2006.

112 Letter of the Mayor of Bandung No. 101/149-Huk, dated 3 January 2006.

113 Letter without reference, November 2005, on file with the author.

114 ‘Batalkan Revisi Perda RTRW, Gubernur Jabar Mempunyai Hak Represif’, *Kompas*, 4 January 2006; ‘Revisi Perda RTRW Sebaiknya Ditolak’, *Pikiran Rakyat*, 4 January 2006; ‘Revisi RTRW Harus Sesuai Kebijakan Propinsi’, *Pikiran Rakyat*, 17 January 2006.

115 ‘Perda RTRW Hanya untuk Ekonomi Jangka Pendek’, *Kompas*, 3 January 2006; ‘Segera Putuskan Evaluasi Revisi RTRW’, *Pikiran Rakyat*, 12 January 2006.

nor and the Minister of Environment.<sup>116</sup> Later several NGOs issued a Red Report on the Mayor of Bandung (*Rapor Merah Wali Kota Bandung*), criticising him for trading the General Spatial Plan in the interests of a particular developer in Puncut, thus setting aside democracy and good governance.<sup>117</sup>

The NGOs' protests required courage in the face of groups of hoodlums (*preman*), such as the Siliwangi Youth Force (*Angkatan Muda Siliwangi* or AMS), the Pancasila Youngsters (*Pemuda Pancasila* or PP) and the Grouping of Sons of Siliwangi Elite Troups (*Gabungan Anak Siliwangi Barisan Utama* or GASIBU), who responded by organising counter-protests and intimidation campaigns.<sup>118</sup> At one of these occasions, they presented a Blue Report, expressing their support for Mayor Dada Rosada.<sup>119</sup> NGO staff members also reported that members of these groups made phone calls to activists and visited NGOs' offices, warning that staff would be harmed or even killed unless they ceased their resistance to development in Puncut.<sup>120</sup> Various sources argue that two members of the Municipal Council who are also affiliated to the Siliwangi Youth Force, Bandung's most powerful hoodlum group, played a central role in the mobilisation of these groups.<sup>121</sup>

Governor Danny Setiawan failed to issue a formal response within the required period of fifteen days after the submission of the draft bylaw on the revised General Spatial Plan.<sup>122</sup> Following the procedure set out in the 2004 RALs, he did coordinate with the Minister of Public Works, sending him a letter (of which a copy was forwarded to the Minister of Home Affairs), which referred to various weaknesses in the draft bylaw, including its inconsistency with higher legislation, and asking him to advise in the matter.<sup>123</sup>

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116 'Perda RTRW Jamin Kepastian Hukum', *Pikiran Rakyat*, 5 January 2006.

117 The NGOs involved in this action included KMBB, West-Java's branch of WALHI, DPKLTS, and several other environmental NGOs. See also 'Buruk, Kinerja Bidang Lingkungan', *Pikiran Rakyat*, 21 January 2006.

118 *Preman* is a term derived from the Dutch term 'vrij man', or free man.

119 'Giliran Ormas-OKP Berikan "Rapor Biru"', *Pikiran Rakyat*, 2 February 2006; 'Dada Tanyakan Obyektivitas "Rapor Merah"', *Kompas*, 2 February 2006.

120 Personal communication of two NGO members, Bandung, 21 July 2008; personal communication of a member of another NGO, Bandung, 21 July 2008; personal communication of a senior journalist, Bandung, 23 July 2008.

121 Personal communication of an NGO member, Bandung, 19 July 2008; personal communication of a senior journalist, Bandung, 23 July 2008; personal communication of a member of the Municipal Council, Bandung, 26 July 2008.

122 'Perda RTRW Masih Dikonsultasikan', *Pikiran Rakyat*, 25 January 2006.

123 The Governor consulted the Department of Public Works by Letter of the Governor of West-Java No. 188.342/220/Huk, dated 20 January 2006, of which a copy was sent to the Department of Home Affairs. The Department of Public Works responded by Letter of the Director-General for Spatial Management of the Department of Public Works No. PR.01.08-DR/14, dated 3 February 2006.

On 3 February 2006, the Department of Public Works responded to the Governor's letter.<sup>124</sup> The department expressed strong reservations against the bylaw, and concluded that the North Bandung Territory functioned mainly as a protected area and that development should be restrained in order not to harm that function. In addition, the department called for the restoration of the protection function of those parts of the territory which had already had their use changed.

On 20 February 2006, the Department of Home Affairs also sent a response. It was more favourable to the draft bylaw, arguing that apart from one provision, it had no objections.<sup>125</sup> The Department of Home Affairs wrote that "having studied the Provincial Spatial Plan, which states that Punclut is part of a cultivated area (*kawasan budidaya*), and given the technical difficulties which Bandung's municipal government was facing in retaining Punclut as a protected area, and also insofar as there would be technical guarantees that an effort were made to control spatial use in Punclut, the attempt to limit the size of the protected area [could] be justified." It went even further, advising that the draft be enacted as quickly as possible.

As the fifteen days term for evaluation had long expired, Mayor Dada Rosada could enact the draft bylaw, which indeed was his intention.<sup>126</sup> On 6 March 2006, he sent a letter to the Municipal Council, of which a copy was sent to the Governor, announcing that "for the benefit of legal certainty and in order to fulfil the aspirations of the majority of the people", he was planning to revise the draft bylaw in accordance with the input given by the Department of Home Affairs and enact it within two days.<sup>127</sup>

The Mayor's announcement was followed by a quick response from Governor Danny Setiawan. On the same day, he finally sent his evaluation to the Mayor of Bandung.<sup>128</sup> Despite new calls from various members of the Provincial Assembly to take a critical stance, he did not require the municipal government to correct the draft bylaw. Instead, he reminded the municipal government that it contained several weaknesses, and formulated two

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124 Letter of the Director-General for Spatial Management of the Department of Public Works No. PR.01.08-DR/14, dated 3 February 2006. On the position of the Director-General, see also 'Pengesahan RTRW Tunggu Gubernur, Secara Substansi Dinilai Tidak Ada Masalah', *Pikiran Rakyat*, 28 February 2006; 'Kawasan Punclut Tak Sesuai Kriteria', *Pikiran Rakyat*, 5 March 2006.

125 Letter of the Director-General for Regional Development of the Department of Home Affairs No. 188.342/172/IV/Bangda, dated 20 February 2006. The article of the draft bylaw that should be dropped was Art. 49(3), which is not relevant to discuss here. See also 'Revisi RTRW Segera Disahkan', *Pikiran Rakyat*, 24 February 2006.

126 See also 'Wali Kota Bandung Bisa Sahkan RTRW', *Pikiran Rakyat*, 21 February 2006.

127 Letter of the Mayor of Bandung Municipality No. 188.34/705-Huk, dated 6 March 2006.

128 Letter of the Governor of West-Java No. 188.342/710/Huk, dated 6 March 2006. See also 'Soal RTRW, Gubernur Beri Catatan', *Pikiran Rakyat*, 1 March 2006; 'Evaluasi RTRW Gubernur Agar Dibahas', *Pikiran Rakyat*, 3 March 2006; 'Gubernur Harus Tegas Sikapi Revisi RTRW', *Pikiran Rakyat*, 6 April 2006.

rather modest conditions before the bylaw could be enacted. He advised that the municipal government should realise that the draft bylaw was still partial; and thus only solved local, short-term problems, while having significant implications for various elements of the urban system. In addition, it contained a provision facilitating the granting of new site permits in Punclut, when it should instead restrain development. The Governor therefore ordered the municipal government to quickly enact a Detailed Spatial Plan, containing detailed provisions regarding zoning and building, which could be used as an instrument for regulation and enforcement. Finally, he reminded the municipal government that if environmental degradation occurred as a result of building activities, sanctions should be imposed upon both the responsible permit granter and the developer.

In accordance with his earlier announcement, Mayor Dada Rosada enacted the draft bylaw, without having made any substantial revisions to it, on 8 March 2006.<sup>129</sup> For this occasion, a special signing ceremony was organised in Punclut. "This forms part of our policy of transparency", the Mayor explained to the press.<sup>130</sup> The ceremony was attended by high officials and public figures; and guarded by the Siliwangi Youth Force.

Protests continued after the enactment of the bylaw. The 'Bandung Bermartabat' People's Coalition attempted to get the bylaw annulled by organising new protests, including a street protest in front of the Department of Home Affairs in Jakarta.<sup>131</sup> However the protests did not lead to any concrete results. The central government refused to use its review authority.

## 5.5 SPATIAL PLANNING, TENURE SECURITY, AND THE RULE OF LAW

Post-New Order spatial planning practices in Bandung show that despite major political and legal reforms, low-income kampong dwellers still rarely participate in spatial planning and are hardly offered the opportunity by Bandung's municipal government to do so. The municipal government now appears more inclined than during the New Order to follow the legally prescribed procedure to ensure participation and transparency in spatial planning. However, to date the procedure has not been followed to the full extent, and involves only token participation: such as seeking input from

129 Bylaw of Bandung Municipality No. 3/2006 on the Revision of Bylaw No. 2/2004 of Bandung Municipality on the General Spatial Plan of Bandung Municipality (*Perda Kota Bandung No. 3/2006 tentang Perubahan atas Perda Kota Bandung No. 2/2004 tentang Rencana Tata Ruang Wilayah (RTRW) Kota Bandung*). The only significant difference compared to the original draft was the reformulated Art. 49(3), as the Department of Home Affairs had requested.

130 'Revisi Perda RTRW Ditandatangani di Punclut', *Pikiran Rakyat*, 9 March 2006.

131 'Pengesahan Perda RTRW Dinilai Cacat Hukum', *Pikiran Rakyat*, 9 March 2006; 'Dada Bantah Penilaian Revisi RTRW Cacat Hukum', *Pikiran Rakyat*, 10 March 2006; 'Besok, Demo di Depdagri menentang Perubahan Kawasan Punclut Bandung', *Kompas*, 26 March 2006; 'Revisi RTRW Kota Bandung Diprotes', *Pikiran Rakyat*, 28 March 2006.

only a small selection of 'stakeholders', whose input may often then be ignored. Also, the municipal government still frequently acts in defiance of higher legislation, including both spatial planning and environmental laws and regulations. The interests of kampong dwellers, particularly as related to tenure security, are also not supported by the Municipal Council, higher levels of government or even civil society. Nor is spatial planning fully transparent, although it is becoming more so. This results in spatial plans that are adverse, particularly for kampong dwellers who reside in kampongs the municipal government qualifies as 'slums'.

Paradoxically, Post-New Order reforms and particularly regional autonomy have contributed to this state of affairs. Administrative decentralisation has resulted in an increased need for funds to finance local government.<sup>132</sup> In order to generate revenues, Bandung's municipal government introduced a new development policy in 2000 which was summarized by the concept 'Bandung: City of Services'. The policy refers to several economic activities that the municipal government wants to promote, including trade, banking and education, as well as local services.<sup>133</sup> As the city is not well endowed with natural resources and has an insignificant manufacturing industry, the services industry is the main sector that can generate these revenues.

The Mayor's newly acquired authority to grant site permits and the new fiscal relationship between Jakarta and the regions prove useful in this respect. Granting permits generates Regionally Generated Revenues in the form of regional retributions. Commercial land development also increases the value of land, which in turn brings in Balance Revenues (*Dana Perimbangan*) derived from Land and Building Tax and from Fees for Acquisition of Rights to Land and Buildings. Finally, such development produces extra Regionally Generated Revenues, through hotel and restaurant, entertainment, parking, and advertising taxes; particularly since the municipal government revised existing bylaws regarding such taxes and introduced new ones.<sup>134</sup>

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132 Personal communication of a former senior municipal official, Bandung, 19 August 2008.

133 Attachment, p. 10-1/37, Bylaw of Bandung Municipality No. 5/2000 (*Perda Kota Bandung No. 5/2000 tentang Pola Dasar Pembangunan Daerah Kota Bandung Tahun 2000-2004*); Bylaw of Bandung Municipality No. 9/2001.

134 See Bylaw of Bandung Municipality No. 18/1998 on Hotel and Restaurant Tax, after annulment by the Department of Home Affairs revised by Bylaw No. 2/2003 on Hotel Tax (*Perda Kota Bandung No. 2/2003 tentang Pajak Hotel*) and bylaw of Bandung Municipality 3/2003 on Restaurant Tax (*Perda Kota Bandung No. 3/2003 tentang Pajak Restoran*); Bylaw of Bandung Municipality No. 19/1998 on Entertainment Tax (*Perda Kota Bandung No. 19/1998 tentang Pajak Hiburan*), revised by Bylaw No. 11/2000; Bylaw of Bandung Municipality No. 13/2001 on Parking Taxes (*Perda Kota Bandung No. 13/2001 tentang Pajak Parkir*); Bylaw of Bandung Municipality No. 18/2001 on Advertising Taxes (*Perda Kota Bandung No. 18/2001 tentang Pajak Reklame*) revised in 2003 by Bylaw No. 8/2003).

Table 5.1 Selected overview of revenues of Bandung's municipal government (in millions of Rupiahs)

Year	Regional Taxes	Regional Retributions	Land and Building Tax	Fees for Acquisition of Rights to Land and Buildings
1997 – 1998	31,052	14,739	22,173	-
1998 – 1999	31,887	25,779	23,984	6,904
1999 – 2000	44,771	20,820	26,442	18,352
2000	(39,976) 53,302	(21,984) 29,312	(25,899) 34,532	(25,721) 34,294
2001	66,450	40,447	32,000	28,160
2002	85,000	61,655	34,000	35,660
2003	110,00	58,529	39,000	35,660
2004	123,072	60,403	52,590	45,000
2005	132,250	63,844	53,400	57,600
2006	152,228	71,234	61,420	58,218

Note: Due to an official change in calculation methods, the 2000 budget was based on the results of the last nine months of that fiscal year. Revenues for the full year are estimated by adding 25 per cent (three months) to the nine-month revenues provided in the budget.

A review of Bandung's Regional Budget demonstrates that the Municipality's new development policy has been financially successful (Table 5.1). Between 1997 and 2006, revenues from regional retributions increased by 500 per cent; regional taxes by 600 per cent; Land and Building Tax by 300 per cent; and Fees for Acquisition of Rights to Land and Buildings by a massive 900 per cent.

Political decentralisation and other reforms that were meant to strengthen democracy at the local level also required new revenues for the municipal government to finance political support, for instance for the approval of spatial plans. Such support could be guaranteed by, for example, allocating a generous budget to the Municipal Council, as Table 5.2 shows. Between 1997 and 2006 the funding for the representative body increased by almost 700 per cent.<sup>135</sup>

135 See also Haryadi & Sumindar 2002; Honna 2006:81-2.

Table 5.2 Overview of expenditure of Bandung's Municipal Council and Secretariat (in millions of Rupiahs)

Year	Expenditure
1997 – 1998	3,082
1998 – 1999	3,168
1999 – 2000	5,148
2000	(10,590)
2001	11,091
2002	14,970
2003	15,175
2004	18,590
2005	18,696
2006	20,066

Political support may also be financed by extra-budgetary revenues; which again partly derive from the newly acquired authority to grant site permits. An illustration of this were the 2003 mayoral elections. Despite an increase in the Municipal Council's total expenditure, it did not re-elect the incumbent Mayor Aa Tarmana, but Dada Rosada. A number of informed sources (including a member of council) independently acknowledged that Dada Rosada paid hundreds of millions of rupiahs to each councillor who voted for him. According to these sources, funding for the bribes was provided by developers, in return for 'compensation' in the form of site permits.<sup>136</sup> With the introduction of direct elections of regional heads in 2004, election costs grew considerably. According to Rinakit, during the 2005 elections, candidates at the district/municipal level spent between Rp 1.8 and Rp 16 billion for their campaigns. Such expenditures are still midget sized compared to those made at the provincial level; winning a governorship would require funds averaging Rp 100 billion (Rinakit 2005:2). In an important Municipality like Bandung and a key Province like West-Java, spending is probably much higher. With strong control mechanisms remaining absent, many donations, generally from the private sector, remain unreported. Once elected, the sponsors will have to be 'repaid' (Mietzner 2011).

Even after strongly supporting a new Mayor's election campaign, developers may not be guaranteed the site permits they seek, since power has become more dispersed following Post-New Order reforms. Currently, spatial planning and permits also require the consent of other members of the Municipal Council, the Governor, the Department of Public Works and the Department of Home Affairs.

136 Personal communication of a senior journalist, Bandung, 23 July 2008; personal communication of a member of the Municipal Council, Bandung, 26 July 2008; personal communication of a political broker close to both candidates, Bandung, 11 August 2008.



A municipal government may achieve its ends by turning the vague, overlapping, and contradictory legal system to its advantage; such as by selectively invoking legislation that supports the government's interests. In this case the municipal government found its justification in the Provincial Spatial Plan, which provided insufficient clarity about the prohibition of development activities in Punclut. This plan, combined with the weakness of the provincial government in providing guidance and supervision, and the leniency of the central government, enabled the municipal government to approve development.

The actions of councillors and administrators are difficult to explain without raising questions of KKN, given that many councillors voiced strong initial opposition to the development. This hypothesis is particularly supported by the allegations of councillor Uce Salya that several members of Bandung's Municipal Council had accepted bribes from one of the developers in Punclut. KKN could also explain the Governor's acceptance of the spatial plan. Notably, shortly after losing the elections, Governor Danny Setiawan was arrested for corruption.<sup>137</sup> In May 2009 he was convicted, given four years imprisonment, and required to pay a fine of Rp 200 million and to refund Rp 2.8 billion.<sup>138</sup> Although Setiawan's arrest and conviction were unrelated to Punclut and the revision of Bandung's General Spatial Plan, his conviction indicates the existence of corruption at the level of regional authorities involved in spatial planning.

The general public and civil society made little attempt to prevent the revision of the General Spatial Plan. People seemed disinterested in spatial planning, and appeared not to value its importance. Although NGOs were active in the process, their influence was limited. Some community development NGOs with close relationships to the kampong communities participated in the planning process, but their input was ignored. Environmental NGOs led the protests against the revision of the General Spatial Plan; their primary concern was with environmental interests rather than the interests of the local population of Punclut or kampong dwellers generally.

The NGOs focused on political strategies, which mainly involved organising street protests. They also built coalitions – but notably, only with other NGOs. They did not collaborate with political parties; even though, as noted earlier, several factions in the Municipal Council and Provincial Assembly initially shared their concerns over Punclut. This lack of collaboration suggests that ten years after the fall of Soeharto, NGOs may still be in 'opposition mode' and may lack the pragmatism to collaborate with government groups; this would explain why their protests failed.

When asked why they did not focus more on legal strategies, such as filing a request with the Supreme Court for judicial review, one NGO staff member replied: "We have had bad experiences with this. It is very hard to

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137 'KPK Tahan Danny Setiawan', *Kompas*, 10 November 2008.

138 'Divonis 4 tahun penjara, Danny Setiawan Terima', *Kompas*, 30 June 2009.

win the case, and if you do win, it will be hard to get the ruling executed.”<sup>139</sup> This concern was apparently validated when the single court proceedings that were initiated by an NGO in relation to Punclut were lost on the basis of an incorrect line of reasoning.

The NGOs' protests were widely covered by the media, but the coverage was decidedly uncritical of the government's plans. This may be explained at least partly by the positive incentives the municipal government offered to journalists. Bandung's Regional Budget always reserves funds to support journalists, despite there being no specification in the budget for this to occur.<sup>140</sup> It is, for example, common for journalists to receive Rp. 500,000 at the Feast of Ramadan. Most local journalists appear to see no ethical problem in accepting such contributions. Nor do many local journalists, particularly freelance journalists, appear to see a problem in writing on demand, or being paid to write particular content.<sup>141</sup>

Fear is another potential reason for journalists – in particular journalists with permanent positions at regional 'dailies' – to limit their criticism of government. A journalist of *Pikiran Rakyat* feared that critical writing would be unwelcome with his editor, for whom it was important that the newspaper's leadership maintained a close relationship with Mayor Dada Rosada. Journalists also feared the threats of being sued for libel or harassed by hoodlum groups. In the Punclut case, several critical journalists confirmed that they did indeed receive threatening phone calls. According to the journalist of *Pikiran Rakyat*, hoodlums advised his editor to replace critical colleagues.<sup>142</sup>

The involvement of hoodlum groups in local politics is not new in Bandung, but their influence is unprecedented. Many of these groups, such as AMS, PP, and the Youth of Military Veterans (*Pemuda Panca Marga* or PPM) were already active during the New Order. They were linked to the municipal government, the military, and the ruling Golkar party. Since the fall of Soeharto, new groups have emerged, including GASIBU, and the militant Joint Initiative of the Sons of Siliwangi (*Gabungan Inisiatif Barisan Anak Siliwangi* or GIBAS), which formed a secession of the AMS and later split into two to create “a group of strictly Sundanese sons” (*Gabungan Inisiatif Barisan Anak Sunda Siliwangi* or GIBASS). Some of these groups are (still)

139 Personal communication of an NGO member, Bandung, 21 July 2008.

140 An item in the 2005 draft Regional Budget of West-Java Province reserved similar funds, but it was dropped after criticism from members of the Provincial Assembly. See 'Pemprov Tidak Keberatan Batalkan Honor Kemitraan', *Kompas*, 5 January 2005; 'Honor Kemitraan dan THR untuk Wartawan Akan Dicoret', *Kompas*, 6 January 2005; 'DPRD Sepakat Hapus Dana Kemitraan dan THR untuk Wartawan', *Kompas*, 11 January 2005.

141 These freelance journalists are also called *Wartawan Tanpa Surat* or WTS (journalist without papers), not coincidentally also an acronym for prostitute.

142 Personal communication of a journalist, Bandung, 13 January 2004; personal communication of another journalist, Bandung, 13 January 2005; personal communication of a senior journalist, Bandung, 23 July 2008, personal communication of another senior journalist, 7 August 2008.

loyal to the municipal government, the military and political parties, while others claim less attachment to specific interests.<sup>143</sup> The groups have thousands of members. The Bandung chapter of PP, for instance, claims a membership of 26,800 people.<sup>144</sup>

The loyalty of hoodlum groups can be explained by the funding they receive from the Regional Budget. Since the election of Dada Rosada as the city's Mayor in 2003, the Regional Budget has contained an item called 'Financial Support to Civil Society Organisations' (*Bantuan Keuangan kepada Organisasi Kemasyarakatan*), which supports local hoodlum groups in addition to other non-hoodlum, pro-government organisations. Funding is significant, as table 5.3 shows.<sup>145</sup>

Table 5.3 Overview expenditure of Bandung's municipal government on civil society organisations (in millions of Rupiahs)

Year	Expenditure
2003	101,909
2004	74,983
2005	85,209
2006	89,391

In addition to the size of this budget, there has been much criticism of the way it is allocated. The process for selecting organisations that receive funding lacks clear standards; there is little transparency around which organisations receive funding and how much they receive; and there is little accountability for how funding is used. Only once (in 2004) did the municipal government release a list identifying which organisations received funding and how much they received. The list included several of the afore-mentioned hoodlum groups. Interestingly the figures totalled to only about 10 per cent of the overall budget for this item. Mayor Dada Rosada has acknowledged publically that funding from the municipal government is allocated preferentially to organisations which support government policies.<sup>146</sup> Notably, criticism of this practice originates primarily from the Bandung Institute of Governance Studies (BIGS), a watchdog NGO,

143 See also Honna 2006:86-8; on the *Pemuda Pancasila*, see Ryter 1998.

144 'Kami Mendukung Segala Kebijakan Pemerintah...', *Bujet*, Is. 07, September 2006, p. 32.

145 According to one source, this is only part of the funding that hoodlum groups receive. Further funding derives from other vaguely-named items on the Regional Budget, including the Mayor's 'tactic fund'. Personal communication of a former senior municipal official, Bandung, 19 August 2008.

146 See 'Bantuan ke Ormas Harus Diaudit', *Pikiran Rakyat*, 18 February 2005; 'Dana Bantuan Ormas Naik', *Pikiran Rakyat*, 22 October 2005; 'Dari Kasus Bantuan Keuangan untuk Ormas: Kinerja Apa?', *Bujet*, Is. 01, February 2004, p. 15; 'Skandal Ormasgate: Ini Dia Daftar Penerima Dana APBD Kota Bandung', *Bujet*, Is. 03, April 2004, p. 51-6; 'Ada Apa dengan Bantuan Organisasi Kemasyarakatan?', *Bujet*, Is. 7, September 2006, p. 5-13.

and from the PKS faction in the Municipal Council. The practice does not meet with any other serious opposition.

Despite the Mayor's statements, as well as public allegations of KKN from other sources and the intimidation experienced by those protesting against the revision of the General Spatial Plan for Punclut, neither Mayor Dada Rosada, members of the Municipal Council, nor members of the hoodlum groups have been formally accused of any wrongdoing. The General Elections Committee (*Komisi Pemilihan Umum* or KPU) never identified any irregularities with campaign donations. The Supreme Audit Board (*Badan Pemeriksa Keuangan* or BPK) concluded that Bandung's General Spatial Plan was not in accordance with the Provincial Spatial Plan and recommended that the Mayor should be given a warning (BPK 2007:48-51). However, it never identified any misuse of the regional budget in relation to this matter. A report by BIGS led to the arrest of four leaders of the Municipal Council of the period 1999-2004, on the basis of corruption charges. Despite apparently strong evidence against them, Bandung's General District Court (*Pengadilan Negeri*) acquitted the four.<sup>147</sup> Following the Punclut protests, NGO members also reported hoodlums who had intimidated them to the police, but to no avail.<sup>148</sup>

It is difficult to say whether the practices of spatial planning in Post-New Order Bandung are representative of (urban) Indonesia, as little research has been conducted on this topic. However, it is clear that in policymaking processes at the local level generally, citizens and particularly the urban poor still play a limited role. There are some positive examples though. For instance, the Asia Foundation has undertaken three Indonesia Rapid Decentralisation Appraisals based on research conducted in eight Districts and four Municipalities, and its first two appraisals observed that citizens now had the opportunity to play a greater role in decision-making processes at the local level, through newly established organisations such as citizens' forums (*forum warga*), mass organisations, and social movements (The Asia Foundation 2002a:10,2002b:31). However in its third Appraisal, the Asia Foundation found that local communities still have very limited knowledge, awareness, and skills related to developing bylaws; and that public consultation in policy development (when it takes place at all) is often poorly used or conducted too early or too late, with local governments lacking knowledge about options for participation (The Asia Foundation 2003:16). Rosser, *at al.* argue that the poor and their NGO allies have been able to exercise greater influence over the policymaking process than before, "if only somewhat so" (Rosser, *et al.* 2005:54). While acknowledging the risk of elite-capture, Antlöv observes "an exciting wave

147 See 'Herry Mei, "Penggunaan Sesuai dengan Tujuan" Korupsi di DPRD Bandung?', *Pikiran Rakyat*, 15 June 2004; 'Korupsi di DPRD Kota Bandung ke Penyidikan', *Kompas*, 21 September 2004; 'Empat Mantan Pimpinan DPRD Divonis Bebas', *Pikiran Rakyat*, 6 June 2007.

148 Personal communication of two NGO members, Bandung, 21 July 2008.

of grassroots mobilisation and initiatives" (Äntlov 2003:77). Some local governments increasingly recognise the importance of public participation, as evidenced by the enactment of supporting bylaws. In some areas, as case studies from Surakarta Municipality and Bandung Municipality's neighbouring Bandung District show, this has resulted in participatory planning practices (Pratikto 2005:64-6; Sofhani 2006:96-128).

## 5.6 MORE RECENT REFORMS RELATED TO SPATIAL PLANNING

Fairly recently, legislation related to spatial planning has been further reformed. In April 2007, Law No. 26/2007 (hereafter the 2007 SML) was enacted; followed in January 2008 by Regulation of the Minister of Home Affairs No. 1/2008, which finally replaces Regulation of the Minister of Home Affairs No. 2/1987, and Regulation of the Minister of Home Affairs No. 28/2008.<sup>149</sup> The system of spatial plans has to a large extent been maintained. Plans at the municipal level still consist of a General Spatial Plan and, if needed, Elaborated Spatial Plans, which consist of Detailed Spatial Plans and Spatial Plans for Strategic Areas (*Rencana Tata Ruang Kawasan Strategis*).<sup>150</sup>

The 2007 SML and implementing legislation contains some extra safeguards that could potentially protect the interests of vulnerable groups like the urban poor in spatial planning. The legislation creates the possibility to organise public participation through an urban people's forum.<sup>151</sup> Furthermore, all spatial plans at the municipal level are now enacted by bylaw, which means the role of the Municipal Councils has strengthened in spatial planning.<sup>152</sup> Finally, there is a stronger role for central and provincial governments in spatial planning at the district/municipal level. Before any Spatial Plan, including Detailed and Strategic Plans, can be enacted by the Municipal Council, district/municipal governments need to consult the Governor and the Ministers of Home Affairs and Public Works, who must give a recommendation for and agree to the draft plan respectively.<sup>153</sup>

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149 Law No. 26/2007 on Spatial Management (*UU No. 26/2007 tentang Penataan Ruang*); Regulation of the Minister of Home Affairs No. 1/2008 on Guidelines for Planning of Urban Areas (*Permendagri No. 1/2008 tentang Pedoman Perencanaan Kawasan Perkotaan*); Regulation of the Minister of Home Affairs No. 28/2008 on the Procedure to Evaluate Draft Bylaws on Regional Spatial Plans (*Permendagri No. 28/2008 tentang Tata Cara Evaluasi Rancangan Peraturan Daerah tentang Rencana Tata Ruang Daerah*). Regulation of the Minister of Home Affairs No. 28/2008 also implements Art. 37-39 GR No. 79/2005, in accordance with Art. 42 GR No. 79/2005.

150 Art. 14 Law No. 26/2007.

151 Art. 33 Regulation of the Minister of Home Affairs No. 1/2008.

152 Art. 28 in conjunction with Art. 26 Law No. 26/2007.

153 Art. 18 Law No. 26/2007; Art. 5, 10-13 Regulation of the Minister of Home Affairs No. 28/2008.

In April 2008, Law No. 14/2008 on transparency of public information was enacted.<sup>154</sup> Acknowledging the importance of transparency, it sets a general framework for freedom of information. In principle, all government information is open and accessible to the general public. Such information should be provided in due time, against low costs and through a simple procedure. Information that is not open and accessible comprises secret information, opinions, and information that, in case it were open and accessible, would harm overriding interests.<sup>155</sup> This includes information that can endanger the state, is related to the protection of companies from unhealthy competition, personal rights, the duty of professional confidentiality, or information that is not yet held or has not yet been documented.<sup>156</sup> Public bodies should not only provide information upon request, but also periodically (meaning, every six months) publish information regarding, *inter alia*, financial reporting.<sup>157</sup> In addition, government bodies should immediately announce information that forms a threat to the essentials of many people or the public order.<sup>158</sup> Finally, they should make permanently available information regarding, *inter alia*, policies and documentation underlying such policies.<sup>159</sup> To this aim, public bodies should appoint an information officer and create an information services system.<sup>160</sup>

Notably, public companies, political parties, and even “non-governmental organisations” should make certain information publicly available.<sup>161</sup> For political parties and NGOs, this includes information regarding the allocation and use of public funding. Notably, political parties are only required to provide information regarding the allocation and use of funding originating from the National/Regional Budgets, while NGOs are also required to provide information regarding the allocation and use of funding that originates from public donations and/or foreign donations.<sup>162</sup>

Law No. 14/2008 provides for the establishment of Information Commissions (*Komisi Informasi*) at the national and provincial levels, which have the task to implement the law and to resolve public information dis-

154 Law No. 14/2008 on Transparency of Public Information (*UU No. 14/2008 tentang Keterbukaan Informasi Publik*). The Law was implemented by GR No. 61/2010 on the Implementation of Law No. 14/2008 (*PP No. 61/2010 tentang Pelaksanaan UU No. 14/2008*).

155 Art. 2 Law No. 14/2008.

156 Art. 6(3) Law No. 14/2008. See also Art. 17-20 Law No. 14/2008.

157 Art. 9 Law No. 14/2008.

158 Art. 10 Law No. 14/2008.

159 Art. 11 Law No. 14/2008.

160 Art. 13 Law No. 14/2008.

161 Art. 14-16 Law No. 14/2008. “Non-governmental organisation” here has a broader meaning than the usual concept. It not only includes NGOs (*Lembaga Swadaya Masyarakat* or LSM), but also legal entities or non-legal entities that “constitutes a gathering” and non-governmental undertakings that receive funding from the National/Regional Budgets, donations from the public, and/or foreign donations (Elucidation Art. 16 Law No. 14/2008).

162 Art. 15, under d; Art. 16, under d Law No. 14/2008.



putes through mediation and/or non-litigative adjudication.<sup>163</sup> In case the provision of information is delayed or refused, the person who has requested the information can file an appeal to, in case the defending party is a public body, the Administrative District Court, or, in case the defending party is not a public body, the General District Court.<sup>164</sup> The Administrative District Court can award damages to a maximum of Rp. 5 million.<sup>165</sup> The person who does not accept the ruling of the Administrative District Court or General District Court can file an appeal with the Supreme Court.<sup>166</sup>

A public body (or its representative) that deliberately fails to meet the requirements set in the law to make public information available, thus causing damages to a third party, is penalised with a maximum sentence of one year prison or a Rp. 5 million fine.<sup>167</sup> Each person, including public body, that deliberately destroys, damages public information and/or makes such information disappear, is penalised with a maximum sentence of one year prison or a Rp. 10 million fine.<sup>168</sup>

In Chapter 3, reference was made to the launching, in October 2009, of the National Strategy on Access to Justice. This Strategy may also have an impact on spatial planning. Key policy recommendations not only include those discussed in Chapter 4, but also harmonising and improving the quality of local policies based on transparency, participation and accountability.<sup>169</sup> Further reforms can thus be expected. This is evidenced by the 2010-2014 National Legislative Programme, which for instance announces the introduction of bills on the revision of the 2007 SML, the revision of the 2004 RAL, competentional relations between the central government and the regions, and regional taxes and retributions.

The reforms are a significant step forward. A strengthened role of Municipal Councils in decision-making processes, and the requirement for municipal governments to obtain a recommendation from the Governor and an agreement from the Ministers of Home Affairs and Public Works before spatial plans can be enacted, are laudable. The implication of Law No. 14/2008 should not be underestimated. Contrary to the legislation on public participation, it imposes clear and enforceable obligations. In addition, the scope of the law is broader. The obligations apply to state bodies,

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163 Art. 23 Law No. 14/2008. See also Art. 35-39 Law No. 14/2008. The Information Commission at the national level should have been established within one year and the Information Commissions at the provincial level within two years after the enactment of the Law (Art. 59-60 Law No. 14/2008). The Information Committee at the national level has already been established and became operational on 1 May 2010. The Information Commission of West Java Province is in the process of being established.

164 Art. 4(4); Art. 47-50 Law No. 14/2008.

165 Art. 16 GR No. 61/2010 in conjunction with Art. 58 Law No. 14/2008.

166 Art. 50 Law No. 14/2008.

167 Art. 52 and Elucidation Law No. 14/2008.

168 Art. 53 and Elucidation Law No. 14/2008.

169 This information was derived from the LEAD page at [www.undp.org](http://www.undp.org).



public companies, political parties, and even NGOs. It can not only play a role in spatial planning but also in other (land related) fields. This new piece of legislation may thus lead to a general strengthening of Indonesia's rule of law. However, most obligations imposed to municipal governments to ensure public participation remain unclear and difficult to enforce.

## 5.7 CONCLUSION

This chapter has discussed the law and practice of municipal spatial planning in the New Order and the Post-New Order. It has been shown that New Order spatial planning law offered only partial protection to landholders, even if they had registered their land. The 1992 SML, which also regulates spatial planning, created a system to ensure that the interests of landholders were valued; but implementing legislation, particularly in relation to public participation and transparency, was only partly enacted. As far as such legislation had been enacted, it failed to assign clear and enforceable government duties to protect the rights of the public in spatial planning, and as far as these rights were protected, they had little substance. In practice, the Indonesian government showed little concern for the interests of vulnerable groups like the urban poor in spatial planning. municipal governments drafted plans with little room for the public to participate. The Municipal Councils functioned as 'rubber stamps', enacting the plans without any form of external input. As plans required a recommendation from the Governor, and had to be legalized by the central government, higher levels of government could control the planning process. After enactment, it was hard for the public to even get access to plans.

Post-1998 reforms included reforms to spatial management law. New legislation formulated further standards for public participation and transparency. It contains safeguards that could protect the interests of landholders, but still imposes few obligations on municipal governments to ensure public participation and transparency. In addition, the role of the Municipal Councils in spatial planning diminished. Finally, the provincial and central government's role with respect to guidance and supervision initially also remained limited, but this role has increased since 2004. Despite these weaknesses, in combination with the general reforms discussed in Chapter 3, the legislation has the potential to offer protection to kampong dwellers in spatial planning.

Despite the reforms, the legal tenure security of low-income kampong dwellers remains limited, as post-New Order spatial planning practices in Bandung show. Participation of kampong dwellers in spatial planning is still rare; the municipal government hardly offers them the opportunity to be involved in this process. The Municipal Council, higher levels of government, or civil society equally fail to support the interests of kampong dwellers. Though we can witness some improvement, spatial planning is also still not fully transparent. This results in spatial plans that are adverse,

particularly for kampong dwellers who reside in kampongs the municipal government qualifies as 'slums'.

The above practices are, at least in part, the result of Post-New Order reforms and particularly regional autonomy. Administrative decentralisation as well as the new fiscal relationship between Jakarta and the regions together have invited the municipal government to consider spatial planning merely as an instrument to stimulate economic development, without considering the interests of ordinary citizens. Political decentralisation required new revenues for the municipal government to finance political support, which can for instance be guaranteed by allocating a generous budget to the Municipal Council. KKN is also implicated, including such situations as developers financially supporting a particular Mayor (or mayoral candidate) in return for permits; and, before 2004, the beneficiary using these revenues to get support from the Municipal Council for election. Yet, even after strongly supporting a new Mayor's election campaign, developers may not be guaranteed the site permits they seek, since power has become more dispersed following Post-New Order reforms.

The municipal government succeeded in getting its spatial plan approved by using weaknesses in the legal system, selectively invoking legislation which supported its interests. The weak role of the provincial government in guidance and supervision, and the lenient attitude of the central government, both contributed to the ability of the municipal government to reach decisions that violate the public interest and higher legislation. The advocacy or support for such decisions by local councillors and administrators may again indicate the involvement of KKN in certain cases, particularly given the initial public rejection of the process by some councillors.

The general public and civil society have done little to prevent these developments. People seemed disinterested in spatial planning and did not appear to value its importance. Although NGOs have been active in the process, applying political strategies, their influence was limited; and they focused on environmental issues rather than the interests of kampong dwellers. NGOs which protested against the process found that their members were intimidated by hoodlum groups. The protests were widely covered by the media, but no journalists were critical of the process, perhaps also out of fear of being targeted by these same hoodlum groups. Despite the public allegations of KKN and the intimidation experienced by those who protested against the revision of the General Spatial Plan and Puncut, no one has been formally accused of any wrongdoing.

Recently, legislation related to spatial planning has been further reformed. The 2007 SML was enacted, followed by implementing legislation. A year later a Law on Transparency of Public Information was enacted. The new legislation contains some extra safeguards that could protect the interests of vulnerable groups like the urban poor in spatial planning and sets a general framework for freedom of information. The reforms are a significant step forward. Especially the implication of the 2008 Law on Transparency of Public Information should not be underestimated.

Now that the legal tenure security of kampong dwellers has been assessed in relation to land registration and spatial planning, the question arises as to the position of kampong dwellers when the state actually wishes to clear their land. The next chapter therefore deals with the topic of land clearance by the state.