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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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6.1 INTRODUCTION

As discussed in Chapter 3, the Indonesian state can clear land if it is needed for development in the public interest. Furthermore, it can clear land if it is occupied without permission from the title holder. Land clearance by the state can easily take form in involuntary removal, without due process of law and payment of proper compensation. Therefore, it is of utmost importance that this process is carried out in an appropriate manner.

This chapter discusses the law and practice of land clearance by the state during the New Order and takes a close look at the practice of such type of land clearance in Post-New Order Bandung. In doing so, it focuses on, *inter alia*, the justification for land clearance, the nature of the negotiation process, and the level of compensation offered. It also emphasizes the nature of resistance – including the role of legal norms and institutions –, the response to such resistance, and its effect.

This chapter is divided into six sections. The next section establishes the legal framework pertaining to land clearance by the state, followed by a description of land clearance practices and resistance in the late New Order. Section 6.3 discusses the land clearance process preceding the construction of the Pasupati flyover, a case that is further evaluated in the light of past reforms from a rule of law perspective in the succeeding section. The chapter then discusses recent law reform pertaining to land clearance by the state, after which it concludes.

6.2 LAND CLEARANCE BY THE STATE UNDER THE LATE NEW ORDER

As discussed above, the Indonesian state can clear land if it is needed for development in the public interest. The law offers two options: compulsory and voluntary land clearance. Compulsory land clearance finds its legal basis in the 1960 BAL. Article 18 allows for such type of land clearance

1 A summary of this chapter was published as Reerink, G.O. (2006), 'The Price of Uncertainty: Kampung Land Politics in Post-Suharto Bandung', *IIAS Newsletter* 40, p. 14. An earlier version of this chapter was published as Reerink, G.O. (2010), "'Ganti Rugi? Ganti Untung!'" Hukum dan Praktik Pengadaan Tanah di Indonesia Pasca-Orde Baru', In: M.A. Safitri & T.P. Moeliono (ed.), *Hukum Agraria dan Masyarakat di Indonesia: Studi tentang Tanah, Kekayaan Alam, dan Ruang Masa Kolonial dan Desentralisasi*, Jakarta: Huma; Van Vollenhoven Institute; KITLV-Jakarta, p. 311-38.

through land expropriation (*pencabutan hak atas tanah*) if this is in the public interest (*kepentingan umum*), including the interests of the nation, the state, the people as a whole, provided that an appropriate compensation is paid and in accordance with a procedure laid down by act of parliament. According to the elucidation, this article is meant to protect the people with regard to their land rights.

In accordance with Article 18, Law No. 20/1961 sets out a procedure for compulsory land clearance.² The procedure is to be followed when all efforts to obtain the land voluntarily on the basis of *musyawarah*, the traditional process of discussion and deliberation, have not led to a resolution.³ Law No. 20/1961 also creates an alternative, accelerated procedure, but it can only be applied in case of emergency, for instance if an epidemic or a natural disaster occurs.⁴ In practice both procedures have seldom been used.⁵

The government institution requiring land for development in the public interest has to file a motivated request for expropriation of the land to the President through the Minister of *Agraria* (the Head of the NLA), who before the President takes a decision must consult the head of the region where the land is located (the District-Head/Mayor), an Appraisal Committee (*Panitia Penaksir*), the Minister of Justice as well as the Minister competent in the field the institution requesting the land to be expropriated is active.⁶ In case the alternative, accelerated procedure is applied, there is no need to consult the head of the region where the land is located and the Appraisal Committee.⁷ If landholders do not agree with the compensation offered, they can appeal to the Court of Appeal of the District/Municipality where the land is located.⁸

In addition to Law No. 20/1961 on compulsory land clearance, during the New Order several regulations on voluntary land clearance (through sale, exchange, or otherwise) were enacted. The first was Regulation of the

2 Law No. 20/1961 on the Revocation of Rights on Land and the Buildings Erected on It (*UU No. 20/1961 tentang Pencabutan Hak-Hak Tanah dan Benda-Benda yang Ada Diatasnya*).

3 General Elucidation, under 2 Law No. 21/1961.

4 Art. 6 and General Elucidation, under 4, under c, under 5 Law No. 21/1961.

5 Referring to a 1991 World Bank report, Fitzpatrick states that the non-emergency procedure has only been used once. In other cases, the procedure designed for emergency purposes was used, albeit not often (Fitzpatrick 1999:77).

6 Arts. 1-3 Law and General Elucidation, under 4, under c, under 4 No. 21/1961.

7 Art. 6(1) Law No. 21/1961.

8 Art. 8(1) Law No. 21/1961. In accordance with Art. 8(2) Law No. 21/1961, the procedure for the Court of Appeal to determine the level of compensation is set out by GR No. 39/1973 on the Procedure for the Determination of Compensation by the Court of Appeal in relation to the Revocation of Rights on Land and the Buildings Erected on It (*PP No. 39/1973 tentang Acara Penetapan Ganti Kerugian oleh Pengadilan Tinggi Sehubungan dengan Pencabutan Hak-hak atas Tanah dan Benda-benda yang Ada Diatasnya*).

Minister of Home Affairs No. 15/1975.⁹ A year later, the Minister promulgated Regulation No. 2/1976, which declared the procedure on voluntary land clearance for development in the public interest applicable to commercial land clearance if this was determined to be in the interest of the government.¹⁰ Developers were thus enabled to call on the assistance of the authorities in commercial land clearance. The regulations resulted in an unclear distinction between public interest and commercial interest. Containing few procedural safeguards, they met with severe and enduring criticism. After President Soeharto had started to endorse the policy of *keterbukaan* (openness), the regulations were therefore replaced by Presidential Decision No. 55/1993, which was implemented by Regulation of the Head of the NLA No. 1/1994 (Fitzpatrick 1999:78).¹¹

Presidential Decision No. 55/1993 is a major improvement in terms of protecting the interests of landholders, if only because it no longer allows developers to apply the procedure for land clearance for development in the public interest for commercial purposes.¹² Nonetheless, this decision too contains important weaknesses. It non-exhaustively lists development activities for which land clearance for development in the public interest is allowed. These activities are to be undertaken by the government and be non-commercial; this includes the development of a great variety of infrastructure.¹³ A government institution wishing to clear land for development in the public interest in principle has to file a request to agree with land clearance through the NLA to the District-Head/Mayor of the District/Municipality where the land is located.¹⁴ Next, it must be checked

9 Regulation of the Minister of Home Affairs No. 15/1975 concerning Provisions for a Land Clearance Procedure (*Permendagri No. 15/1975 tentang Ketentuan-ketentuan mengenai Tatacara Pembebasan Tanah*). Years later a separate regulation was promulgated for land clearance at the Sub-District level, as far as it involved plots of no more than 5 hectares (Regulation of the Minister of Home Affairs No. 2/1985 on a Land Clearance Procedure for Development Projects on the Sub-District Level (*Permendagri No. 2/1985 tentang Tatacara Pengadaan Tanah untuk Keperluan Proyek Pembangunan di Wilayah Kecamatan*)).

10 Art. 1 Regulation of the Minister of Home Affairs No. 2/1976 on the Use of the Procedure for Land Clearance in the Government's Interest for Land Clearance by Private Parties (*Permendagri No. 2/1976 tentang Penggunaan Acara Pembebasan Tanah untuk Kepentingan Pemerintah bagi Pembebasan Tanah oleh Pihak Swasta*) in conjunction with Regulation of the Minister of Home Affairs No. 15/1975 on Provisions regarding the Procedure for Land Clearance (*Permendagri No. 15/1975 tentang Ketentuan-ketentuan mengenai Tata-cara Pembebasan Tanah*).

11 Presidential Decision No. 55/1993 on Land Clearance for Development Activities in the Public Interest (*Keppres No. 55/1993 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum*); Regulation of the Head of the NLA No. 1/1994 on Implementing Provisions of Presidential Decision No. 55/1993 (*Permen Agraria / Kepala BPN No. 1/1994 tentang Ketentuan Pelaksanaan Keppres No. 55/1993*).

12 Art. 24 Presidential Decision No. 55/1993.

13 Art. 5(1) Presidential Decision No. 55/1993.

14 Art. 6(1) Regulation of the Head of the NLA No. 1/1994.

whether the envisaged land use is in accordance with the General Spatial Plan or, if no General Spatial Plan is available, another spatial plan. Only if this is the case, the District-Head/Mayor can agree to the request.¹⁵

As soon as the District-Head/Mayor has agreed, the government institution wishing to clear the land can start negotiations with title holders. For land clearance involving plots of less than one hectare, it can enter into direct negotiations with title holders.¹⁶ Otherwise, it must achieve consensus with title holders through a more formal procedure of *musyawarah*.¹⁷ The process of *musyawarah* must be organised by the Land Clearance Committee (*Panitia Pengadaan Tanah* or, in the vernacular, the committee of nine).¹⁸ In Municipalities it comprises nine senior officials, encompassing the Mayor, the Heads of the different Municipal Services, the Head of the District/Municipality's Land Office, the Sub-District Head (*Camat*) and the City Quarter Head (*Lurah*) in question.

Compensation (*ganti kerugian*) can come in any form agreed upon by the parties.¹⁹ Calculation of the compensation must be based on the real or actual value of the land, with attention being paid to its Sale Value as a Tax Object (*Nilai Jual Obyek Pajak* or NJOP), the market value of the buildings on the land as estimated by the Municipal Building Service, and the market value of the crops on the land as estimated by the Municipal Service for Agriculture.²⁰ Compensation must be aimed at such level that the living conditions of the people are not affected, which means that they must be able to resettle on a similar site.²¹ Implementing legislation also provides guidelines for the level of compensation that landholders with a semi-formal right (colonial adat ownership right) or formal right other than an ownership right are to receive. Those with a semi-formal right are to receive 90 per cent of the compensation to be received by those who have a registered ownership right. Landholders holding a construction right (*hak guna bangunan* or HGB) are to receive 80 per cent. Finally, those who have not

15 Art 7(2-3) Regulation of the Head of the NLA No. 1/1994 in conjunction with Art. 4 Decision No. 55/1993.

16 Art. 23 Presidential Decision No. 55/1993.

17 Art. 1, 9, 10, 16 Presidential Decision No. 55/1993.

18 Art. 8, 10 Presidential Decision No. 55/1993.

19 Art. 13 Presidential Decision No. 55/1993.

20 Art. 15 Presidential Decision No. 55/1993.

21 Art. 16(4) Regulation of the Head of NLA No. 1/1994. This provision corresponds with the General Elucidation of GR No. 39/1973 on the Procedure for the Arrangement of Compensation by the High Court related to the Revocation of Rights on Land and the Buildings Erected on It (*PP No. 39/1973 tentang Acara Penetapan Ganti-Kerugian oleh Pengadilan Tinggi Sehubungan dengan Pencabutan Hak-Hak atas Tanah dan Benda-Benda yang Ada Diatasnya*), which states that the position of the title holder should decline neither from a social nor an economic perspective. The influential academic Boedi Harsono argues that the principle set out in this Decision should be considered as a general principle, not only applicable in case of compulsory land clearance but also in case of voluntary land clearance (Harsono 2005:413/454). See also: Sumardjono 2005:76-7.

extended the duration of that right but still use or allow someone to use the land receive 60 per cent.²²

If, after repeated deliberations, the parties have failed to reach an agreement, the Land Clearance Committee decides on the matter. In case title holders oppose the committee's decision, they can file an appeal to the Governor.²³ If the title holders still disagree with the compensation offered, the Governor is to follow the procedure for compulsory land clearance as elaborated in Law No. 20/1961.²⁴

The procedures as set out above apply to title holders. For those who use land without permission from the title holder (informal landholders, squatting the land), Law No. 51/1960 applies.²⁵ The law forbids such use and even makes it a criminal offence.²⁶ It also grants the District-Head/Mayor discretionary power to evict these informal landholders, thus taking form in compulsory land clearance.²⁷ Nonetheless, their interests and their plans of use and purpose are to be taken into account. This could lead to compensation in the form of 'assistance/sympathy money' (*uang santunan*).²⁸ The Land Clearance Committee determines the amount of assistance/sympathy money on the basis of the District-Head/Mayor's directives.²⁹

Landholders can start judicial proceedings in relation to land clearance by the state. Before 1991 judicial proceedings should always be initiated at a General District Court on the basis of a tort claim, which was hard to substantiate. Since the establishment of Administrative Courts in 1991, administrative law proceedings can be commenced there as far as it concerns government decisions to expropriate landholders and pay compensation on the basis of Law No. 20/1961 and decisions to evict landholders, demolish their houses, and pay assistance/sympathy money on the basis of Law No. 51/1960.³⁰ The Administrative Courts have no jurisdiction to rule over decisions on the location of land clearance in the framework of Presidential Decision No. 55/1993 (and its successors, discussed in section 5), since such

22 Art. 17 Decision of the Head of NLA No. 1/1994.

23 Art. 20 Presidential Decision No. 55/1993.

24 Art. 21 Presidential Decision No. 55/1993.

25 Law No. 51/1960 regarding the Prohibition to Use Land without Permission of the Title Holder (*UU No. 51/1960 tentang Larangan Pemakaian Tanah Tanpa Izin yang Berhak atau Kuasanya*).

26 Art. 2, 6(1), under a Law No. 51/1960.

27 Art. 4 Law No. 51/1960.

28 Art. 20 Regulation of the Head of NLA No. 1/1994. Notably, the decision speaks of assistance/sympathy money, not compensation (*ganti kerugian*, literally meaning compensation for damages). It thus denies that it involves damages and that there is a right to compensation.

29 Art. 21 Regulation of the Head of NLA No. 1/1994.

30 As noted above, Law No. 51/1960 creates broad discretionary power for the District-Head/Mayor whether or not to evict landholders, demolish their houses and pay assistance/sympathy money. Therefore, the Administrative Courts must take a reticent attitude when reviewing the substance of such decisions.

decisions are not individual, or decisions of the Land Clearance Committee and the appellate decisions of the Governor on the level of compensation in the framework of this same presidential decision, since these decisions are not binding (Bedner 2001:155-8).

The above shows that legislation pertaining to land clearance by the state contains few safeguards to protect landholders. The authorities have a broad discretion to determine for what purpose land is cleared. They have no legal obligation to explore feasible alternatives. Legislation contains some procedural protections and offers legal remedies, but it does not formulate such obligations as genuine consultation with affected landholders, adequate and reasonable notice prior to land clearance, the provision of information on the proposed eviction and on the alternative purpose for which the land is to be used, or the provision of legal aid. The right to proper compensation is not guaranteed. The Municipal Building Service that estimates the market value of the buildings is obviously not independent. This also applies to the Land Clearance Committee that decides over compensation in case no agreement can be reached. Legislation does not guarantee a right to adequate alternative accommodation. Informal landholders in particular are little protected. Law No. 51/1960 provides no standards whatsoever in what case such occupation is treated as a criminal offence and in what case a perpetrator receives assistance/sympathy money.

As discussed in Chapter 4, kampong dwellers in Bandung have always enjoyed a high degree of administrative recognition. Most landholders, even informal landholders, have been living on the land for decades, which means that the state has for a long time condoned non-formal land tenure. During the New Order, land clearance as a single enforcement measure, for instance because a landholder resided on land without the permission of the right holder or because they lacked permits to reside on the land, was indeed rare. The Indonesian state usually cleared land if it was needed for specific development activities.

Insofar as the above legislation could still theoretically protect landholders in case the state wished to clear land needed for development activities, this was not the case in practice, as is evidenced by an extensive body of (international) literature.³¹ While Soeharto's 'developmentalist' regime proved economically successful, it had little regard for the interest of indigenous communities, peasants, and the urban poor. Neither was such development always in the public interest. In a context of rampant KKN, Soeharto and his cronies exploited the country increasingly for personal gain. Backed by the military, authorities generally undertook land clearance without prior or with short notice. They intimidated those affected and seldom paid appropriate compensation. Land clearance often involved human rights violations, with perpetrators rarely punished.

31 See for instance Lucas 1992; Fitzpatrick 1997; Lucas 1997; Fitzpatrick 1999; Bachriadi & Lucas 2001; Ganie-Rochman 2002.

The authorities made little effort to justify their actions. In practice, they abused the concept of public interest so badly that they interpreted it to include such items as golf courses (Lucas 1997:235-42). So as the distinctions among development, the public interest, and commercial activities were irrevocably blurred, political and business elites gained at the expense of the vulnerable.

Even when land clearance was in fact justified by a genuine public interest, the aforementioned procedures were not always followed (Fitzpatrick 1999:82-8). Authorities sometimes reverted to other provisions facilitating land clearance. For instance, on the basis of (municipal) building regulations, as an enforcement measure, buildings can be demolished if they are constructed without a permit. Sometimes such enforcement measures were taken to actually clear land for development activities, constituting a clear case of misuse of power.

As far as the procedure for voluntary land clearance as set out in the 1993 Presidential Decision and its predecessors were applied, it often took on compulsory characteristics. Consensus was rarely reached, and often the City Quarter Head was 'convinced' to side with the power holders in negotiations. Intimidation was common, whether from the municipal administration, security forces, or hired thugs. To refuse meant being perilously labelled a communist. That land clearance practices violated the civil and political rights of those affected was undeniable. Between July 1994 and September 1996, for instance, the National Human Rights Commission recorded 891 incidents of human rights violations related to land clearance (Lucas & Warren 2000:223). These figures shed critical light on New Order *Pancasila*-democracy, where state-society harmony was assumed, and conflict and upholding individual rights was ignored.

When compensation was paid, its amount and form were typically inadequate. In practice, the land's Sales Value as a Tax Object was often a fraction of the actual market value; the Sales Value as a Tax Object was also usually frozen prior to land clearance to keep compensation low. Otherwise it was assessed on an ad hoc basis without any explanation. Such assessments put title holders at a disadvantage, for the Land Clearance Committee was staffed by government officials.

Informal landholders had it worse. As discussed above, they were not entitled to compensation. Often they not even received the aforementioned assistance/sympathy money. It made no difference how long the land in question had been in possession or whether land taxes had been paid faithfully. In practice this proved discriminative against the socially or economically disadvantaged. Registered land is of higher value than unregistered land, but as discussed in Chapter 4, it is exceedingly difficult for these people to register land (Fitzpatrick 1999:81-2).

In the mid-to-late New Order, meaningful resistance to the above practices originated through rights-oriented NGOs like the Legal Aid Institute (*Lembaga Bantuan Hukum* or LBH) (Lev 2000b) and other organisations that followed suit. In this way, a NGO network coalesced, sometimes gaining

press and the attention of the international human rights movement. When Soeharto endorsed the policy of openness in 1989, students joined the resistance against land clearance, mainly in Jakarta, Yogyakarta, and Bandung, which then spread to other cities.

NGOs and students tended to oppose land clearance that affected peasants, rather than the urban poor.³² For one thing, massive infrastructure projects in rural areas sometimes displaced thousands or tens of thousands, while urban cases generally involved smaller projects, affecting fewer people per cases. Ideologically, the activists were influenced by 'structural' and 'dependency' theories that prioritized peasants and the working class as potentially strategic political forces. The former were engaged through labour conflicts, while the latter were romanticized as the receptacles of a pure or authentic Indonesia. In either of these conceptions, the urban poor fell through the cracks.

Legal activists typically would approach people and offer assistance. They thus became important mediators in translating land claims into legal and political action. Legal action came in the form of litigation against land clearance (and other actions that led to the loss of property) and the level of compensation. Commonly they would commence proceedings in court, which could be a General District Court or, from 1991, an Administrative District Court, depending on the object of the claim (Bedner 2001).

Litigation rarely prevailed. Judges were susceptible to bribes from the well-to-do and equally susceptible to executive interference. When rulings did favour the claimants, they were hardly implemented (Nusantara & Tanuredjo 1997; Butt 1999). The notorious reputation of the courts weakened their authority in society. This, along with high moral standing, in part explained the rising popularity of the National Human Rights Commission. However, as noted in Chapter 3, it could only observe and investigate the implementation of human rights, give (non-binding) opinions, judgements and advice to government bodies on the implementation of human rights, so in the end not much changed for those concerned.

In their protest campaigns, activists still often pursued a legal discourse. They would not argue that property rights were being violated, but mostly referred to broader rule of law principles, including democracy and human rights. They often had no choice, since many of the land clearance cases involved land that had been occupied without permission from the title holder and as discussed above, the law offered little protection in such case. But there was a strategic reason too. Since land clearance practices so clearly exemplified New Order excesses, attention to undemocratic rule and human rights violations formed the ultimate mode to destabilise the regime.

Combined with NGO-coordinated litigation, student activists 'lived in' in communities, mobilized, and organized protests (Aspinall 2005:116-25).

32 Thus, in urban areas LBH was mostly concerned with the status of petty traders, labour rights, wages, and conditions (Eldridge 1995:101).

Such campaigns did not always immediately present firm demands. Only after dialogue with officials or politicians proved fruitless would activists organise demonstrations. Physical confrontations with security forces, the destruction of property, and the arrest and prosecution of demonstrators was common (Aspinall 1996:41-4).

When in mid-1994 the period of political openness came to an end, NGOs like LBH continued their activities in relation to land, but the student movement generally shifted their focus from direct organisation of peasants and the urban poor to 'elite' issues like corruption at the national level and the presidency. This was not only the result of a generational succession, but in part also a clear strategic shift. Some had come to the conclusion that mobilizing people in land disputes was useless. Only a few groups, especially in Central and East Java, continued to be involved in resistance against land clearance (Aspinall 2005:127-9).

NGOs and students had an influence on the course of land disputes, but rarely enough to prevent land clearance. Under the repressive New Order, it was typically satisfying for legal aid and student activists if the political intent of their struggle was understood by the powers-that-be.

6.3 PRACTICE OF LAND CLEARANCE BY THE STATE IN POST-NEW ORDER BANDUNG

As discussed in Chapter 3, land law reform has been limited in post-1998 Indonesia. Like most land related legislation, the 1993 Presidential Decision and other land clearance related legislation initially remained in force. This raises the question whether the general reforms and the RALs have changed practices of land clearance by the state.

For one thing, the risk for kampong dwellers in Bandung to have their land cleared by the state as a single enforcement measure is still relatively small. The municipal government has stepped up its effort to enforce the municipal building regulation. So in 2003 its target was to impose enforcement measures with regard to 1,000 buildings, for instance because the buildings are built on land without the permission from the title holder or built without a building permit.³³ Notably, these landholders receive no compensation at all. However, this effort is still just a drop in the ocean: as discussed in Chapter 4, according to the estimation of an official of the Municipal Building Service, in the whole of Bandung 35-40 per cent of all buildings have been constructed without a building permit and according to our own survey, in kampongs this percentage amounts to 95 per cent.³⁴

33 'Disbang Tertibkan 1.000 Rumah', *Pikiran Rakyat*, 17 november 2003.

34 Personal communication of an official of the Municipal Building Service, 17 January 2005.

While the risk for kampong dwellers to have their land cleared by the state as an enforcement measure remains limited, this risk has increased in the framework of land clearance for development in the public interest. As discussed in Chapter 5, the municipal government wishes to restructure kampongs it qualifies as 'slum areas'. It has also selected the eastern outskirts of the city in Sub-District Gede Bage as an alternative city-centre. This is all part of a broader policy, inspired by regional autonomy, to promote economic growth and generate tax revenues. Increasing cooperation with Jakarta, which includes enhanced transportation systems, might attract more investors. To achieve this, the municipal government has initiated several infrastructure projects (Pemerintah Kota Bandung 2004a:2-39).

In this context, Bandung's municipal government has regularly applied the procedure for voluntary land clearance for development in the public interest as set out in Presidential Decision No. 55/1993. From 1998 to 2002 alone, it initiated at least twenty of such procedures, totalling some 1,630,000 m² or 163 hectares of land.³⁵

A major infrastructure project in the first years of the Post-New Order was the construction of the 2.147 kilometre Pasupati flyover, with a 300 meter cable stayed bridge, between the eastern and western part of the city.³⁶ The road and fly-over would enable urban traffic to flow easily from East to West Bandung. Today, these extensions feed into the new Cipularang tollway that connects Bandung to Jakarta. Funding for the project was provided by the Kuwait Fund for Arab Economic Development in the form of a US\$ 33 million loan and Rp 142.9 billion (about US\$ 14 million) support from the national budget.³⁷

The central government coordinated the construction of the Pasupati flyover with assistance of its provincial counterpart. The main task of the municipal government was to monitor and facilitate the project – in other words, to clear the needed land. For this purpose it formed a Technical Team, consisting of about twenty officials.³⁸ A subsequent Land Clearance Committee comprised nearly the same officials.³⁹

The plan to construct the Pasupati flyover was already coined in 1931 by the Dutch town planner Karsten in his *Autostrada* programme. The plan was included in Bandung's subsequent 1971, 1985, and 1996 spatial plans.

35 This estimation is based on the Decisions of the Mayor of Bandung available at the Municipal Legal Bureau. This actual figure is possibly higher.

36 The flyover is called Pasupati because it connects the streets called Jalan Pasteur and Jalan Surapati.

37 Internal documents of Bandung Municipality and the Ministry of Housing and Regional Infrastructure, Directorate General on Urban and Rural Management, Directorate Metropolitan Cities, on file with the author.

38 Decision of the Mayor of Bandung No. 631/SK.062-Bag.Huk/1996.

39 Decision of the Mayor of Bandung No. 631/SK.121-Bag.Huk/1996.

Bandung's Mayor could thus give permission to clear land for the project. This permission was given in January 1996.⁴⁰

Land that was to be cleared for the flyover mostly involved land in the kampongs in City Quarter Taman Sari, of which the history and contemporary characteristics were discussed in Chapter 2. It initially involved an area of about 23,500 m², a little less than half of what would ultimately be needed for the project. The area held 519 families, 114 sidewalk shops (*warung*), and a market.⁴¹ Some Rp 32 billion (about \$ 3 million) was allocated from the provincial and city budgets, funding that was however not readily available.⁴²

As discussed in Chapter 2, like most kampongs in Bandung, the affected kampongs in Taman Sari had a predominantly informal status in terms of land tenure and land use. Formal, semi-formal, and informal tenure were represented. Some private land was informally leased to third parties. There was public land too, which comprised state land controlled by the municipal government (hereafter municipal land). Some residents held permits and paid retributions to use this land. Indifferent of tenure status, most had paid the Land and Building Tax for decades, held identity cards (*Kartu Tandu Penduduk* or KTP), family cards (*Kartu Keluarga* or KK) and were formal receivers of water and electricity. The kampongs were composed of recognised Neighbourhoods and Blocks. Anticipating on the Pasupati project, the government prevented many of the non-formal landholders from registering their land.

Early 1996, the Land Clearance Committee started negotiations with landholders. Apparently the municipal government did not expect any problems. In December 1996, one official confidently stated that the land clearance process was nearly completed.⁴³ Little did he know that soon Soeharto would fall and that the process would take another seven and half years.

The Land Clearance Committee initially offered Rp. 225,000-325,000 per m² to landholders with a formal land right and 90 per cent of this figure to those with a semi-formal land right.⁴⁴ This was well below market value, which was estimated to be Rp 1.1-1.7 million per m². Not surprisingly, the majority of landholders were reluctant to accept the offer. However, it is said that some felt intimidated and were even forced by officials to sign papers.⁴⁵

40 Decision of the Mayor of Bandung No. 593/SK.071-Bag.Huk/1996.

41 Internal documents, Bandung's municipal government, on file with the author.

42 'Proyek "Paspati" akan Dimulai', *Pikiran Rakyat*, 10 October 1998.

43 'Masalah Pembebasan Lahan Kini Hampir Tuntas, Tender Jalan Layang, April 1997', *Pikiran Rakyat*, 23 December 1996.

44 No formal documentation could be found on the first offer of the Land Clearance Committee, but several residents mentioned this amount.

45 'Dewan Duga Ada Pemyimpangan, Pimpro "Pasti" Dinilai Tidak Transparan', *Pikiran Rakyat*, 15 February 2000.

In August 1997, the municipal government devised a resettlement plan for 300 families residing on municipal land, both permit holders and informal landholders. They would be moved to a 'more representative location' at the city's outskirts at Cisaranten Kulon, near the soon-to-be city-centre, Gede Bage.⁴⁶ There they could build a house on municipal land, for which they would have to pay land use retribution to the municipal government.⁴⁷ To permit holders, compensation for their buildings, not the land, would be offered.⁴⁸ The amount of compensation was deemed non-negotiable. Meanwhile, informal landholders were to receive no assistance/sympathy money at all.

Needless to say, these offers were met with little enthusiasm. Residents did not want to move, let alone to Cisaranten, which they considered too far away from their livelihoods.

Following Soeharto's resignation, the municipal government continued the land clearance process and the New Order rhetoric. With respect to the Pasupati project, Mayor Wahyu Hamijaya reportedly said: "Every development project requires sacrifices, and victims need to be conscious and patient. This is so each project can be realised without putting aside the public interest."⁴⁹ In early 1999, the municipal government still thought the land clearance process would be completed by 2000, although at that time only 15 per cent had been cleared.⁵⁰

Consistent with the general *Reformasi* movement, resistance against land clearance soon took serious form though; one senior municipal official called it people "going over the top" ("*kebablasan*").⁵¹ Residents now had the courage to protest land clearance. In late 1998, residents, an NGO called Perisai, and members of the Forum of Student Activists of the nearby Bandung Islamic University (*Forum Aktivis Mahasiswa Universitas Islam Bandung* or FAMU) formed the Communication Forum for those Concerned with the Victims of Pasupati (*Forum Komunikasi Peduli Korban*

46 Decision of the Mayor of Bandung No. 593/SK.443-Bag.Huk/1997.

47 To acquire the land for relocation, a plot as large as 4.3 Ha, the municipal government initiated a land clearance procedure for development in the public interest in July 1999 (See Decision of the Mayor of Bandung No. 593/SK.319/Bag.Huk/99). The land was owned by a company, with which the municipal government reached agreement over sale of the land within a month. It paid a compensation of Rp 125,000 m² for the land (See Decision of the Mayor of Bandung No. 376/1999).

48 Since their permits had expired and could not be renewed, they would not receive any compensation for the land. It must have been for this reason that the Committee for the Release of Rights on Land and/or Buildings Owned/Controlled by Bandung Municipality (*Panitia Pelepasan Hak atas Tanah dan/atau Bangunan Milik/Dikuasai Pemerintah Kota Bandung*) was not involved in the procedure.

49 'Untuk Mengatasi Kemacetan di Kodya Bandung, Pembangunan "Pasupati" Dilaksanakan 1998/1999', *Pikiran Rakyat*, 14 August 1998.

50 'Rp 142,9 Miliar untuk Pasupati', *Pikiran Rakyat*, 28 April 1999.

51 Personal communication, Bandung, 20 October 2004.

Pa-supati or FKPKP).⁵² With the support of FKPKP, the residents of Taman Sari insisted that the project be annulled. After this proved unfeasible, they turned their attention to increased compensation, which was conceived as *ganti untung*, literally meaning fortunate compensation, as opposed to *ganti rugi*, the common term for compensation (damages), which with the experience of New Order practices was equated with improper compensation.

Starting in May 1999 FKPKP, usually joined by a handful of students from the Bandung Islamic University as well as tens and sometimes even hundreds of residents from Taman Sari, organized a series of demonstrations in front of the city hall and West Java's provincial government building. In Jakarta, they held rallies at the Kuwait Embassy, People's Representative Council, the Department of Public Works, and the popular protest destination Hotel Indonesia Square (Bundaran HI). At some of these occasions people were arrested.⁵³ The demonstrations were covered by the regional and the national press, including television stations.

The municipal government initially responded to the demonstrations with amazement. Mayor Aa Tarmana wondered: "when its boundaries were established, none of the residents who were hit by the project protested. Even the neighbourhood leadership agreed. So why act like this now? The Pasupati project is not in the interest of the municipal government, but for the public interest in an effort to solve the problem of traffic jams." In response, a member of FKPKP conveyed what most of his fellow protesters probably felt: "this project is a New Order product. At that time people would not dare to determine whether things said to be true were really true. Times have changed."⁵⁴

As the municipal government did nothing to accommodate the demands of the people, demonstrations continued. In June 2000 they reached a climax, when a group of hundred protesters occupied the Mayor's office. Their demands were clear: annul the project. The occupation lasted twelve days, with members of the police and fire brigade finally expelling the protesters. They remained on the grounds of the city hall,

52 Some of the students lived in Taman Sari. It is said that they had been approached by the residents just after Soeharto's fall. Most students were afraid to support the people (personal communication of a former UNISBA student, Bandung, 25 December 2004). The NGO was rather obscure. It was formed by the students and someone who claimed to be a lawyer. Except for the residents, nobody seemed to know the NGO. The lawyer was a controversial person in the kampong community. See also footnote 84.

53 'Soal "Paspati"', *Dengarkan Suara Rakyat*, *Pikiran Rakyat*, 28 May 1999; 'FKPKP "Duduki" Gedung Sate', *Pikiran Rakyat*, 3 June 1999; 'Warga Protes, Duduki Kantor Gubernur', *Kompas*, 3 June 1999.

54 'Walikota Aa Tarmana: "Paspati Bukan untuk Kepentingan Pemda!"' *Pikiran Rakyat*, 19 May 1999.

however, and days later reoccupied the Mayor's office. This time for ten days, after which they left the premises voluntarily.⁵⁵

The demonstrations provoked a reaction from the Municipal Council, albeit not by giving explicit support to the demonstrators. Some legislators distrusted the protestors' intentions, believing that certain parties had instigated the occupations to stir unrest. Some members of the Municipal Council argued that many of the protestors were not even affected by the project.⁵⁶ One councillor suggested that some 70 per cent of those affected by the project did not oppose the construction.⁵⁷ Instead, the Municipal Council focused on the way in which the municipal government was handling the case. It wanted the project postponed so that the rationale behind its construction could be better 'socialised'.⁵⁸ Members of the Municipal Council felt that the land clearance process was conducted in an opaque and corrupt manner. It was reported that landholders received less compensation than indicated in official documentation.⁵⁹ The councillors also emphasised that they did not have the right to stop the project; this was the Mayor's authority.⁶⁰ However, as the demonstrations went on, the Council concluded that it would be hard to continue with the project, which should therefore be reconsidered.⁶¹

The Municipal Council's stance drew criticism from various sides. For instance, AMS, which as discussed in Chapter 5 forms one of Bandung's most powerful hoodlum groups, denounced the Municipal Council for its apparent inability to voice the people's aspirations, thereby implicitly throwing their support behind the Mayor.⁶² Later the organisation criticised the Municipal Council for requesting the Mayor to postpone the project, which it qualified as a blunder and not in accordance with the law.⁶³ In fact, the AMS threatened to storm the Mayor's office to expel

55 'Pendudukan Balaikota Berakhir, Demo Pindah', *Pikiran Rakyat*, 18 June 2000; 'Warga Kembali Menduduki Balaikota', *Pikiran Rakyat*, 20 June 2000; 'Pengunjuk Rasa Henggang dari Balaikota', *Pikiran Rakyat*, 1 July 2000.

56 'Demo Proyek "Pasti" Tidak Murni?', *Pikiran Rakyat*, 9 June 2000; 'Wali Kota Nyaris Bentrok dengan Warga', *Kompas*, 29 June 2000.

57 'Dewan Ingin "Pasti" Diteruskan, Penangguhan Proyek tersebut Cacat Hukum', *Pikiran Rakyat*, 14 June 2000.

58 'Proyek "Paspati" Ditunda', *Pikiran Rakyat*, 1 July 1999.

59 'Dewan Duga Ada Pemyimpangan, Pimpro "Pasti" Dinilai Tidak Transparan', *Pikiran Rakyat*, 15 February 2000.

60 'Dipertanyakan, Penggunaan Dana Rp 27,9 Miliar, Dewan Desak Pemda Kota Hentikan Proyek Pasupati', *Pikiran Rakyat*, 1 February 2000.

61 'Proyek Paspati Makin Kabur, Aa Tarmana: Jika Masyarakat Menolak. Pemda Tidak akan Memaksa', *Pikiran Rakyat*, 9 February 2000.

62 'Warga "Menduduki" Balaikota, Memuntut Proyek Pasteur-Surapati Dibatalkan', *Pikiran Rakyat*, 7 June 2000.

63 'Warga Duduki Balaikota, Proyek Jalan Layang di Bandung Ditangguhkan', *Kompas*, 12 June 2000; '"Pasti" Akhirnya Ditangguhkan, Pembebasan Tanah dan Ganti Rugi Dihentikan', *Pikiran Rakyat*, 12 June 2000.

the demonstrators.⁶⁴ It was widely believed that the municipal government offered this group money to do so. The Regional Secretary (and future Mayor) Dada Rosada admitted that he was under pressure (from organisations he refused to specify) to give Rp 100 million to end the occupation. He claimed to have rejected the 'request'.⁶⁵

Despite the support of hoodlum groups, the municipal government gradually acquiesced to FKPKP's demands. It agreed that there would be no forced relocation and that relocation should lead to better socio-economic conditions for those afflicted.⁶⁶ A week following the occupation, Mayor Aa Tarmana officially postponed the project indefinitely.⁶⁷

FKPKP's success was short lived, however. The Municipal Council wanted the project to go forward; it said its main concern was to guard against the deterioration of the residents' socio-economic position.⁶⁸ The Municipal Council successfully lobbied Tarmana to reverse his decision.⁶⁹ They devised a new strategy to involve NGOs and affected residents.⁷⁰ The Municipal Council also established a Special Committee for the Pasupati Project, which in practice would play an insignificant role though.⁷¹ Meanwhile the municipal government continued to demolish houses in Taman Sari.⁷²

Conditions were still not favourable to the municipal government. The demolition of houses in Taman Sari provoked more demonstrations.⁷³ At one of these occasions five students were arrested for provocation.⁷⁴ Meanwhile, the municipal government was put under pressure by the Kuwait fund, which required construction activities to be initiated before Decem-

64 'Stop Pendudukan Balaikota, Warga: Kami Tetap Bertahan, Hingga "Pasti" Dibatalkan', *Pikiran Rakyat*, 17 June 2000.

65 'Warga Kembali Menduduki Balaikota', *Pikiran Rakyat*, 20 June 2000.

66 'Proyek Paspati Makin Kabur, Aa Tarmana: Jika Masyarakat Menolak. Pemda Tidak akan Memaksa', *Pikiran Rakyat*, 9 February 2000.

67 Letter of the Municipal Council of Bandung No. 600/191/DPRD of 8 June 2000; Instruction of the Mayor of Bandung No. 006/2000.

68 'Dewan Ingin "Pasti" Diteruskan, Penangguhan Proyek tersebut Cacat Hukum', *Pikiran Rakyat*, 14 June 2000; 'Proyek "Pasti" Tetap Berlanjut', *Pikiran Rakyat*, 29 August 2000.

69 'Cabut Segera SI No. 006/2000, Instruksi Walikota Itu Menghalangi Proyek Pasti', *Pikiran Rakyat*, 8 November 2000.

70 'Perencanaannya Tak Sentuh Aspek Sosial, Ekonomi dan Budaya, Proyek "Pasti" akan Direvisi', *Pikiran Rakyat*, 11 July 2000.

71 'Warga Memblokir Perempatan Jl. Aceh-Jl. Merdeka, Aksi Menentang "Pasti" Nyaris Sulut Bentrokan', *Pikiran Rakyat*, 26 July 2000.

72 'Penentang "Pasti" Demo Bawa Senjata', *Pikiran Rakyat*, 28 September 2000. See Letter of Bandung's Municipal Building Service No. 640/115-Disbang. In the letter residents who had received compensation were requested to demolish their house within two weeks, otherwise the Municipal Building Service would do so.

73 'Kecewa Jawaban Pansus, FKPKP Bakar Ban', *Pikiran Rakyat*, 10 August 2000.

74 'Pembangunan Jalan Layang Bandung Terbengkalai', *Pikiran Rakyat*, 4 October 2000.

ber 2001, or the loan would be cancelled.⁷⁵ As of early 2001, 144 of the 519 families or less than 28 per cent of the people had accepted the government's 'offer'. Most of them were formal landholders.⁷⁶

In accordance with the new strategy it had devised with the Municipal Council, the municipal government in February 2001 formed a Management Team, not unlike the Technical Team formed in 1996. The new team would not just monitor the project, but more actively assist the Land Clearance Committee and 'socialise' the project, in particular the relocation plans.⁷⁷ At the same, the Technical Team was renamed the Relocation Team – popularly known as Team 40 – and its tasks reformulated. Organisations involved in the Relocation Team included LPM-ITB, a research institute of the Bandung Institute of Technology (*Institut Teknologi Bandung* or ITB), as well as three grassroots organisations that had been established shortly after New Order regime collapsed, M2PT, Fordamasta, and Ko-operasi Serba Usaha (KSU) Amanah.⁷⁸ Their most important task was to assist in the 'socialisation' of the project. Some members, however, feared cooptation and were wary supporting relocation. Others were motivated by the fee allegedly promised for each family persuaded to resettle to Cisaranten.⁷⁹

The efforts of the Relocation Team – which included a field visit to Ci-saranten and communication sessions with politicians and officials – resulted in improved compensation, thereby in part satisfying the residents' demands.⁸⁰ Those residing on municipal land would not be forced to move to Cisaranten, but could opt for financial compensation. Informal landholders would also receive compensation. Those relocated to Cisaranten were offered a usage right (*hak pakai*) to a land plot of between 40-80 m²,

75 This only became clear after an interview with the Kuwait Ambassador in October 2001. See: 'Aksi Pro-Kontra Warnai Pemancangan Tiang Pertama "Pasupati", Pemkot Diminta Segera Bebaskan Semua Lahan', *Pikiran Rakyat*, 31 October 2001.

76 Internal document, Bandung Municipal Building Service, on file with the author.

77 Decision of the Mayor of Bandung No. 620/Kep.088-Bag.Huk/2001. The Technical Team's role had already been reformulated on the basis of a Decision of the Mayor of Bandung in 2000 (Decision of the Mayor of Bandung No. 377/2000), which was annulled by the 2001 Decision.

78 LPM-ITB is short for Social Servitude Body of the Bandung Institute of Technology (*Lembaga Penabdian kepada Masyarakat Institut Teknologi Bandung*), M2PT for Discussion Assembly for the Development of City Quarter Taman Sari (*Majelis Musyawarah Pembangunan Kelurahan Taman Sari*). This organisation is a merger of 17 Working Groups (*Kelompok Kerja* or *Pokja*) in City Quarter Taman Sari. Fordamasta means Public Forum of City Quarter Taman Sari (*Forum Masyarakat Kelurahan Taman Sari*). 'Kooperasi Serba Usaha (KSU) Amanah' means Business Cooperation Amanah. It was a government funded organisation. Some members of FKPKP suggested that the grassroots organisations had actually been established for the Pasupati project (personal communication, Bandung, 24 December 2004).

79 Personal communication of a Neighbourhood Head, Bandung, 18 September 2004.

80 Report of the visit prepared by the Relocation Team ('Laporan Singkat Kunjungan Warga Masyarakat Tamansari yang Terkena Proyek Jalan Layang Pasupati ke Tempat Relokasi di Cisaranten Kulon (Warga RW 11-15), Jumat 27 April 2001').

which later could be turned into an ownership right. The compensation also included a soft loan with a maximum term of 20-years for a house in Cisaranten of a predefined size and some additional subsidies and benefits.⁸¹

The municipal government's carrot approach was accompanied by measures with the stick, as the police stepped up pressure on demonstrators. After a demonstration in March 2001, three members of FKPKP were obligated to report to the police twice a week.⁸² Residents who still refused compensation said that intimidation, death threats, and physical confrontations by hoodlums were commonplace.⁸³

Soon, the carrot and the stick took their desired effect. FKPKP demonstrations began to dwindle, especially after one prominent informal leader of the resistance accepted the municipal government's offer.⁸⁴ Others followed suit.

By late 2002, about fifty families – mostly informal landholders – still held out. The municipal government began to realise the project would not meet a newly planned deadline, which was completion before the Second Asia-Africa Conference would be held. The Municipal Council thereupon promised to allocate more funds for land clearance, but also called upon the municipal government to better coordinate the project.⁸⁵

81 The offer was later fixed in Decision of the Mayor of Bandung No. 593/Kep.119-Huk/2002. The lawyer of the NGO Perisai claimed that he had done the negotiations on behalf of the residents that led to this Decision (personal communication, Bandung, 6 October 2004). The size of the houses was 2 x 18 m², 2 x 24 m², or 2 x 36 m². In housing terms, houses of this size are called 'Small Houses' (*Rumah Sederhana* or RS, Type 70 and 45), which are 70-22 m², or 'Very Small Houses' (*Rumah Sangat Sederhana* or RSS, Type 36), which are 21m² or less.

82 'Buntut Demo Penolakan Proyek "Pasti", Aktivis Dikenai Wajib Laporan', *Pikiran Rakyat*, 24 March 2001. According to the Police, the reason for this measure was that the protesters had violated Art. 160 of the Criminal Code, which forbids inciting public expressions.

83 Personal communication, Bandung, 19 September and 16 November 2004.

84 Decision of the Mayor of Bandung No. 475/Kep.1228-Huk/2001. See also Decision of the Mayor of Bandung No. 475/Kep.127-Huk/2002, No. 648/Kep.1249-Huk/2001 No. 593.82/Kep.1271-Huk/2001, No. 593.82/Kep.710-Huk/2002, No. 475/Kep.877-Huk/2002, No. 475/Kep.928-Huk/2002, No. 475/Kep.1338-Huk/2002, No. 477/Kep.1345-Huk/2002. It must be noted that financial compensation was very low. One resident received as little as Rp. 1,095,000 for his house. In an interview the informal leader said that he distrusted the outsiders supporting the protest, including a 'fake-lawyer'. He insinuated that they were actually paid by the municipal government (personal communication, Bandung, 29 September 2004). Others claimed that it was the informal leader who got a fee from the municipal government for each resident he would convince to move to Cisaranten (personal communication of NGO members, Bandung, 24 December 2004).

85 'Jadwal Proyek Pasupati Kemungkinan Besar Molor, Pembebasan Tanah Lamban', *Pikiran Rakyat*, 10 April 2002; 'Proyek Pasupati agar Tepat Waktu, Pelaksana dan Pemkot Jangan Saling Jatuhkan', *Pikiran Rakyat*, 15 May 2002.

The municipal government improved its offer by offering bigger plots and (greater) financial compensation – even to informal landholders, who were legally not entitled to any compensation.⁸⁶ After this offer, the Head of the Regional Planning Agency threatened to evict without any compensation if those staying on continued to object.⁸⁷ Meanwhile, construction of the fly-over continued apace, although the completion date was pushed to 2004 and additional funding had to be asked from the central government due to the unforeseen costs.

In the meantime residents who had already moved to City Quarter Cisaranten began to voice their dissatisfaction with their new settlement. They felt betrayed by the municipal government, since contrary to its promises it had still not issued formal titles for their houses and had failed to provide facilities. The residents therefore protested at various state institutions, including the municipal government and the Provincial Assembly of West-Java.⁸⁸ Four months later the Municipal Council agreed that the land would be given to them. The residents would still have to take out a loan for their houses.⁸⁹

In late 2003, the Land Clearance Committee reached agreement with thirty-eight holdouts in Taman Sari. Holders of private land, whether they had formal rights or not, received Rp. 672,500 m² for their land. And everyone, whether residing on private or public land, holding a formal, semi-formal, or informal land right, received Rp. 988,000 m² for their respective buildings. This left about a dozen residents who refused to move. In February 2004, the municipal government announced that it was preparing an appeal to the provincial Governor. At the same time it once more offered the same amount of compensation that other residents had received.⁹⁰ The threat of the appeal did not have much effect. In April 2004 the project again had to be delayed because some of the needed land had still not been acquired. It took a few extra months of negotiations to reach agreement with these final residents over compensation.⁹¹

In June 2005, two months after the (postponed) Asia-Africa conference, the Pasupati fly-over finally came into operation. At the opening ceremony the following month, President Susilo Bambang Yudhoyono stated that Indonesia needed more toll roads to stimulate economic growth. In so doing, he stressed that the government would not sacrifice the people's economy for the interests of the rich, and, as importantly, that the government would not behave arbitrarily in land clearance procedures.⁹²

86 Decision of the Mayor of Bandung No. 593/Kep.1696-Huk/2002.

87 'Pemkot Akan Ambil Langkah Tegas?', *Pikiran Rakyat*, 11 December 2003.

88 'Warga "Pasupati" ke DPRD Jabar', *Pikiran Rakyat*, 28 January 2004.

89 'Tanah untuk Warga yang Terkena Proyek Pasupati', *Kompas*, 9 June 2004.

90 'Pemkot Siapkan Banding ke Gubernur Jawa Barat', *Pikiran Rakyat*, 7 February 2004.

91 'Pembangunan Pasupati Terhambat Pembebasan Lahan', *Kompas*, 8 April 2004.

92 'Presiden Akui Sarana Jalan Tol Kurang, Lalu Lintas Ekspor-Impor Terhambat', *Kompas*, 13 July 2005. 'Presiden 36 Bukan untuk Semena-mena', *Kompas*, 13 July 2005.

6.4 LAND CLEARANCE BY THE STATE, TENURE SECURITY, AND THE RULE OF LAW

Post-New Order land clearance practices in Bandung show that the legal and de facto tenure security of low-income kampong dwellers remain limited. They still risk involuntary removal, without due process of law and payment of proper compensation. At the same time, it is higher than during the New Order years, which suggests that post-New Order reforms have benefited kampong dwellers who are confronted with the state wishing to clear land. Notably, for those who hold out, the level of compensation is practically indifferent of tenure status.

The above situation can again be explained by Indonesia's rule of law at the local level still being weak. This weakness is first of all the result of land clearance related legislation itself. As was discussed above, it contains few safeguards to protect landholders.

In practice, Bandung's municipal government refused to abide by the law. The plan to construct the Pasupati flyover was included in Bandung's 1996 General Spatial Plan and Detailed Plan. The Mayor was thus allowed to give permission to clear land for the project. The justifications for land clearance, still planned in the New Order, were also legally sound.⁹³ The construction of a fly-over is an activity for which the procedure for land clearance for development in the public interest can be applied. However, when the municipal government initiated land clearance in 1996, negotiations took the form of compulsory land clearance. Very few residents were willing to move, whatever they were offered. They had been very clear about this from the beginning. The municipal government nonetheless continued to pressure residents to give up their land. The initial compensation offered by the municipal government was not in accordance with legal standards. Compensation was a fraction of the market value of the land and far below its social or economic value. As noted above, most of the residents worked in the informal sector and were therefore dependent on living close to the city centre for their livelihood; they could not afford an increase in travel costs. Informal landholders were offered nothing.

After Soeharto's fall, the municipal government had difficulty doing away with their New Order rhetoric and mindset. Prioritising public interest over individual rights, it still offered low compensation. After it proved unfeasible to clear the land, the municipal government reluctantly assigned community development NGOs to sell the project through 'socialisation', showing they refused to really seek genuine consultation with those affected.

93 A related matter that is worth to discuss here is whether the municipal government has explored feasible alternatives for the development project, also in terms of its location. Unfortunately I could not find any information regarding this matter.

The Pasupati case also shows that the end of the New Order has brought with it freedoms for kampong dwellers to resist land clearance. The call for *ganti untung* is emblematic of this change. It denotes the possibility of changing power relations between state and society in Bandung. The general political openness of the reform period helped to spark residents organizing and subsequent demonstrations.

It is notable that the residents organised the protests with little support from traditional intermediaries like (rights-oriented) NGOs and the student movement. Local NGOs played a minor role at best, while established NGOs such as the Legal Aid Institute were never involved. Many of these NGOs remain focused on agrarian or environmental issues. The Bandung-based Consortium for Agrarian Renewal, discussed in Chapter 3, and the NGOs organised in the 'Bandung Bermartabat' People's Coalition, discussed in Chapter 5, are illustrative. One of the few NGOs supporting urban poor in land disputes is the Urban Poor Consortium (UPC). However, it only operates in Jakarta and surrounding suburbs (Edwin 2003:223-7).

Several reasons explain the limited involvement of NGOs in land disputes affecting the urban poor. To name a few, as noted above, 'structural' and 'dependency' theories that influenced NGOs and the student movement generally considered not the urban poor but peasants and the working class as potentially strategic political forces. Although no longer directly influenced by the previously mentioned theories, the traditional focus of NGOs on these groups never really changed. Past experiences of direct involvement in urban land disputes have shown how difficult it can be to organise the urban poor. For one thing, peasants and indigenous communities typically enjoy stronger communal ties than urban communities and stronger ties to the land. In addition, it seems easier to be funded by international NGOs if one champions indigenous rights than the urban poor.

The role of students was constrained too. Some supported the residents, but this did not take the form of mass support. While under the New Order students at ITB had played a major role in resistance, very few got involved in the Pasupati case, although the university is a stone's throw from Taman Sari. Kampong dwellers were backed by a dozen of students from UNISBA. Indeed, few students in Indonesia take interest in land disputes or social miscalls in general nowadays. Following Soeharto's fall, the student movement soon thereafter withered away; it lost its unity over a single, identifiable enemy in the form of Soeharto. Some remnants remain, but it focuses on more populist issues (Prasetyo, *et al.* 2004).

Another factor for students and NGOs playing a minor role was that in the early post-Soeharto state the hopes of the residents were pinned on politicians. They have assumed the roles of communicators and aggregator of interests that NGOs had fulfilled under the New Order (Hadiwinata 2003:114-5). Illustratively, the residents sought help from legislators at the city, provincial, and even national levels.

This development of the urban poor seeking support from politicians in land disputes appears a positive development, exemplifying Indonesia's democratisation process. However, in the Pasupati case politicians at most paid lip service to the residents' cause. 'Protecting the little people' (*rakyat kecil*) is an easy and clever way to gain electoral support, especially from the urban poor. Other interests may have been at work too; the problem of KKN in the regional councils discussed in Chapter 5 is indicative.

There are also new challenges for those who dare to protest land clearance. The military is no longer directly involved in the land clearance process, but kampong dwellers fell victim of intimidation practices committed by some of the hoodlum organisations discussed in Chapter 5. Since these groups operate outside the law, it is harder to hold them accountable than regular government entities. That in some cases the municipal government funds some of these groups' activities, and that they have close connections with the police certainly exacerbates the situation. While the media widely covered the Pasupati case, residents felt that the reporting favoured the municipal government. Some reports, for instance, contained misleading or false information. Again, a combination of positive incentives and fear may have influenced their viewpoints.

The residents of Taman Sari were unaware of the full extent of their rights. In the discourse between them and the politicians, there was scarce reference to human rights. And when there was, this terminology was used superficially, without reference to the Constitution or concrete laws, and (therefore) rather took form of a call for political favouritism. Likewise, members of the Municipal Council stated that the urban poor should receive money out of a sense of humanity (*manusiawi*), not because they have a *right* to compensation.

The residents did not take their case to the courts.⁹⁴ Our survey indicates that they associate the courts with high costs, partly due to corruption. The urban poor do file complaints with the National Human Rights Commission, but few are from Bandung.⁹⁵ It must be noted that the Commission's reputation has worsened since 1998. People are also aware that it does not have much power. Nonetheless, many urban poor continue to file complaints with the Commission, perhaps also because they hardly have access to regular dispute mechanisms. The role of the National Ombudsman Commission (now called the Ombudsman) in land clearance cases is negligible.

94 This is not to say that Administrative Courts play no role in land disputes. In fact, the majority of cases brought to Bandung's Administrative District Court in the Post-New Order are land cases, namely 50 per cent in 1998, 51 per cent in 1999, 61 per cent in 2000, 50 per cent in 2001, 53 per cent in 2002, and 59 per cent in 2003. In absolute terms, the number of land cases has more than doubled in this period (34 in 1998 versus 73 in 2003). However, these cases generally involve land registration rather than land clearance disputes. (Data drawn from the archive of Bandung's Administrative District Court)

95 Internal documents of the National Human Rights Commission.

NGO involvement does not guarantee litigation either. Their advocacy strategies are typically non-litigation methods. As a commentator of UPC noted: "Based on the organisation's own experiences [...] litigation is not a reliable method of problem solving. The legal system and bureaucracy are explicitly biased in favour of interests of the state and the capitalists. Non-litigation advocacy is therefore preferable, through negotiations with decision makers, opinion-leading campaigns in the mass media and demonstrations and rallies" (Edwin 2003:227).

Despite these countervailing forces, the resistance garnered by the kampong dwellers of Taman Sari was relatively successful. The Pasupati project was nearly cancelled and negotiating eventually led to improved compensation. It was said that the value of the land even increased as a result of the land clearance process, because there was more demand for the land from people who felt that they could profit from future land clearance.⁹⁶ Ultimately, compensation still remained below the social and economic value of the land and buildings. Meanwhile, as noted above, residents in Cisaranten have had a tough time. Travel costs to the city-centre are high, jobs – even informal one – on the outskirts of Bandung are scarce, and many remain unemployed.⁹⁷ If they could, most would opt to return to Taman Sari.⁹⁸

A final question that rises is whether Pasupati forms a representative case for the practice of land clearance by the state in the Post-New Order for (urban) Indonesia. Again it is hard to generalise. *Kompas* daily stated that as a result of the delays in the land clearance process the construction of the Pasupati fly-over took more time than any fly-over that was built in that period, such as in cities like Medan, Surabaya, and Makassar.⁹⁹ This may be explained by the governments of these Municipalities being more repressive than Bandung's municipal government. In 2006, Human Rights Watch reported about excessive use of force by the Jakarta administration to clear out urban slums (Human Rights Watch 2006). It thus appears that involuntary removal without due process of law and proper compensation is still common.

Regional differences in the practice of land clearance, it seems, can to a large extent be explained by its current political character. It depends on the local power balance whether the urban poor succeed in preventing land clearance or at least in negotiating proper compensation. This also means that it would be wrong to even conclude that the little improvement, since the end of the New Order, of the tenure security of Bandung's urban poor is structural. The practice of land clearance can change easily. An interviewed

96 Personal communication of a RT Head, Bandung, 12 September 2004.

97 Personal communication of an NGO member, Bandung, 9 August 2004; personal communication of a relocated resident, Bandung, 29 September 2004.

98 Personal communication of a Neighbourhood Head, Bandung, 18 September 2004.

99 'Membangun Pasupati, Membangun Kepercayaan...', *Kompas*, 19 December 2002.

senior official of Bandung's municipal government stated that it had to be more careful in land clearance procedures because an increasing number of guardian institutions had been established, like Administrative Courts, the National Human Rights Commission, and the National Ombudsman Commission. Due to political circumstances, such caution was particularly required in the first years of the Post-New Order. However, he also suggested that a case like Pasupati would not reoccur, for he expected that the municipal government had learned its lesson and would take a firmer stance in future cases.¹⁰⁰

6.5 RECENT REFORMS RELATED TO LAND CLEARANCE BY THE STATE

The increasing difficulties to clear land in at least some parts of Post-New Order Indonesia, as the Pasupati case illustrated, made the central government decide to take action. At a real estate summit in January 2005, Real Estate Indonesia (REI), a developers' interest group, expressed its concern about the many stalled infrastructure projects due to land clearance related problems.¹⁰¹ It therefore urged the government to revise existing legislation pertaining to land clearance. On 3 May 2005 President Yudhoyono responded by passing a new regulation on land clearance for development in the public interest, Presidential Regulation No. 36/2005, replacing Presidential Decision No. 55/1993, which was considered no longer relevant for contemporary Indonesia.¹⁰²

Though enacted in the Post-New Order, in some respects the new presidential regulation is more 'draconian' than its New Order predecessor. It redefines the concept of public interest to mean not an interest of 'the people' (*masyarakat*) but of 'the larger part of the people' (*sebagian besar lapisan masyarakat*).¹⁰³ This narrowing of scope is accompanied by a broadening of the criteria of development activities for which land can be cleared in the public interest. Exemplary of this change is the inclusion of toll roads. Yet the list of activities is truly exhaustive now.¹⁰⁴ A request to allocate land for development activities in the public interest can now directly be filed to the District-Head/ Mayor, who only agrees if the development activities are in accordance with the General Spatial Plan or another available plan. Next,

100 Personal communication, Bandung, 20 October 2004.

101 Good examples of current projects in which land clearance led to high costs and long delays are the construction of the Eastern Flooding Canal (BKT) in DKI Jakarta and the Jatigede dam in Sumedang District.

102 Presidential Regulation No. 36/2005 on Land Clearance for Development in the Public Interest (*Perpres No. 36/2005 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum*).

103 Art. 1(5) Presidential Regulation No. 36/2005.

104 Art. 5 Presidential Regulation No. 36/2005.

the government institution wishing to clear the land must try to achieve consensus with title holders (or the representatives appointed by them) through *musyawarah*. In this process, the Land Clearance Committee still plays a central role.¹⁰⁵ For land clearance involving plots of less than one hectare, the government institution wishing to clear the land can still enter direct negotiations with title holders.¹⁰⁶

The compensation offered is based on an estimation of the value of land, which is now done by an independent Land Value Estimation Body (*Lembaga Penilai Harga Tanah*) or by a Land Value Estimation Team (*Tim Penilai Harga Tanah*) on the basis of the Sales Value as a Tax Object or the actual value with the Sales Value as a Tax Object taken into account, and of buildings and crops, which is done by officials of the regional government.¹⁰⁷ Compensation should offer a chance to improve socio-economic conditions and have a better life.¹⁰⁸ It can not only come in the form of financial compensation, but also alternative land and/or accommodation.¹⁰⁹

If from a spatial planning perspective, the development activities cannot be realised elsewhere, the negotiation process is limited to ninety days, after which the Land Clearance Committee decides the amount and type of compensation and stores this compensation at the General District Court of the District/Municipality where the land is located.¹¹⁰ If title holders oppose the decision of the Land Clearance Committee, an appeal can be filed to the District-Head/Mayor (or the Governor or Minister of Home Affairs, as the case will be), who will then take a new decision. If title holders still disagree and the development activities cannot be realised elsewhere, the procedure for compulsory land clearance as elaborated in Law No. 21/1961 is to be followed. To informal landholders, Law No. 51/1960 remains applicable.

President Yudhoyono's regulation drew a firestorm of criticism. NGOs, student, farmer, and urban poor groups, political parties, the People's Representative Council, the National Human Rights Commission, and even the Indonesian Assembly of Ulama (*Majelis Ulama Indonesia* or MUI) derided the regulation.¹¹¹ In July 2005, a number of NGOs requested the Supreme Court to declare the regulation null and void, since they considered it in violation with the spirit of the BAL.¹¹² This criticism successfully forced the government to amend the regulation, which it did with the

105 Art. 8-9 Presidential Regulation No. 36/2005.

106 Art. 20 Presidential Regulation No. 36/2005.

107 Art. 15 Presidential Regulation No. 36/2005.

108 Art. 1, under 11 Presidential Regulation No. 36/2005.

109 Art. 13 Presidential Regulation No. 36/2005.

110 Art. 10 Presidential Regulation No. 36/2005.

111 'DPR Minta Revisi, Komnas HAM Minta Cabut', *Kompas*, 14 June 2005.

112 'Perpres No 36/2005 Potensial Picu Konflik', *Kompas*, 18 May 2005.

promulgation of Presidential Regulation No. 65/2006, which was further specified by Regulation of the Head of the NLA No. 3/2007.¹¹³

Presidential Regulation No. 65/2006 strongly limits the public interest development activities for which land can be cleared. In addition, it explicitly states that the infrastructure which is developed should be government-owned (in the future).¹¹⁴ On the basis of Regulation of the Head of the NLA No. 3/2007 the government institution wishing to clear land is required to submit a proposal to the District-Head/Mayor at least one year before initiating land clearance.¹¹⁵ If the proposal is agreed to, the decision determining the location of land clearance should be publicly announced within fourteen days and be 'socialised' among the people.¹¹⁶ The decision is valid, in case of a plot of less than 25 hectares, for one year, between 20-50 hectares, for two years, and more than 50 hectares, for three years. The validity of the decision can only be extended once for another year if at least 75 per cent of the land has been cleared.¹¹⁷

Compensation is still determined by an independent Land Value Estimation Body or by a Land Value Estimation Team, with the Sales Value as a Tax Object still playing an important role.¹¹⁸ In addition, several other factors are to be taken into account, including the location of the land, its status, its allocation, accordance of land use with spatial plans, available infrastructure, and other factors that determine the value of land.¹¹⁹

The time limit for negotiations is now extended to hundred twenty days.¹²⁰ If after several meetings with the Land Clearance Committee still 75 per cent of the title holders refuse to accept the land to be cleared and the project can be realised at another location, the institution requiring land is to propose an alternative location.¹²¹

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 land clearance by the state. Key policy recommendations not only include those discussed in Chapters 4 and 5, but also strengthening

113 Presidential Regulation No. 65/2006 on the Revision of Presidential Regulation No. 36/2005 (*Perpres No. 65/2006 tentang Perubahan atas Perpres No. 36/2005*); Regulation of the Head of the NLA No. 3/2007 on Implementing Provisions of Presidential Regulation No. 36/2005 as revised by Presidential Regulation No. 65/2006 (*Peraturan Kepala BPN No. 3/2007 tentang Ketentuan Pelaksanaan Perpres No. 36/2005 sebagaimana telah Diubah dengan Perpres No. 65/2006*).

114 Art I, referring to Art. 5 Presidential Regulation No. 65/2006.

115 Art. 4 Regulation of the Head of the NLA No. 3/2007.

116 Art. 8 Regulation of the Head of the NLA No. 3/2007.

117 Art. 6 Regulation of the Head of the NLA No. 3/2007.

118 Art. 27 Regulation of the Head of the NLA No. 3/2007. A Land Value Estimation Team is appointed by Decision of the District-Head/Mayor in the event no independent Land Value Estimation Body exists (Art. 1(3-4) Regulation of the Head of the NLA No. 3/2007).

119 Art. 28 Regulation of the Head of the NLA No. 3/2007.

120 Art. I, referring to Art. 10 Presidential Regulation No. 65/2006.

121 Art. 19(4) Regulation of the Head of the NLA No. 3/2007.

the reform agenda for justice institutions, including supervisory commissions, to improve professionalism and ethics in the police, public prosecution service and courts; formulating a comprehensive legal aid system; guaranteeing the constitutional right of poor people to defend and fight for their legal rights without discrimination; making legal services affordable and equally available for all; create dispute resolution mechanisms for land (and natural resources) disputes that protect the right of poor and disadvantaged groups, and transform conflicts into schemes of partnership among stakeholders, and; strengthen efforts to develop and promote paralegalism across Indonesia.¹²²

The Indonesian government soon took a first step in the formulation of a comprehensive legal aid system. In October 2009 Laws Nos. 48/2009, 49/2009 and 51/2009 were enacted.¹²³ On the basis of these laws, each person who is involved in a (civil or administrative) court case has the right to receive legal aid. To this aim, in each court a legal aid station must be established. Legal aid is to be provided at each judicial level until the court decision is final. The state bears the costs of a case of those who are not capable to bear the costs themselves. Such persons should provide as evidence a letter from the local government office of the City Quarter where they reside, stating that they are financially incapable.¹²⁴

A final initiative worth to mention here is the establishment, by President Susilo Bambang Yudhoyono, in December 2009, of a Task Force for the Eradication of Judicial Mafia (*Satuan Tugas Pemberantasan Mafia Hukum* or *Satgas PMH*).¹²⁵ The Task Force, which is directly responsible to the President, has a coordination, evaluation, correction and monitoring task to make the efforts of various institutions to eradicate KKN in the judiciary more successful.

In sum, the reforms are definitely a step forward. Presidential Regulation No. 65/2006 puts a limit on the activities for which a government institution can clear land for development in the public interest. It also provides formal and semi-formal landholders with more procedural protections, by formulating the obligations of genuine consultation with affected landholders, adequate and reasonable notice prior to land clearance, the provision of information on the proposed eviction and on the alternative purpose for which the land is to be used. The right to proper compensation is better guaranteed by the establishment of independent Land Value Estimation

122 This description was derived from the LEAD page at www.undp.org.

123 Law No. 48/2009 on Judicial Power (*UU No. 48/2009 tentang Kekuasaan Kehakiman*); Law No. 49/2009 on the Second Revision of Law No. 2/1986 (*UU No. 49/2009 tentang Perubahan Kedua atas UU No. 2/1986*); Law No. 51/2009 on the Second Revision of Law No. 5/1986 (*UU No. 51/2009 tentang Perubahan Kedua atas UU No. 5/1986*).

124 Art. 56-7 Law No. 48/2009; Art. I, under 25 (Art. 68A-C) Law No. 49/2009; Art. I, under 32 (Art. 144C-144D Law No. 51/2009).

125 Decision of the President No. 37/2009 on the Task Force for the Eradication of Judicial Mafia (*Keputusan Presiden No. 37/2009 tentang Satuan Tugas Pemberantasan Mafia Hukum*).

Bodies/Teams, which not only take account of the Sales Value as a Tax Object, but also various other factors when determining the value of land. As a result of the enactment of Laws Nos. 48/2009, 49/2009 and 51/2009, at least on paper, landholders who wish to seek legal remedies have better access to the judiciary, which as a result of the efforts of the Task Force for the Eradication of Judicial Mafia may also develop toward impartiality and independence. However, there is still no obligation for the authorities to explore feasible alternatives in consultation with landholders *prior* to land clearance. In addition, the right to adequate alternative accommodation is not guaranteed. In relation to informal landholders the law still creates broad discretion for the Mayor to determine whether in case of land clearance, they receive any 'assistance/sympathy money' and if so, how much.

Further reforms can be expected. This is evidenced by the 2010-2014 National Legislative Programme, which for instance announces the introduction of bills on land expropriation in the public interest and on legal aid. Meanwhile, general judicial reforms continue. In October 2010, the Supreme Court announced Blueprints for Judicial Reform 2010-2035 (*Cetak Biru Pembaruan Peradilan 2010-2035*), which form an elaboration of the 2003 Blueprints discussed in Chapter 3.

6.6 CONCLUSION

This chapter has described the law and practice of urban land clearance by the state in the New Order and the Post-New Order. During the New Order, legislation on land clearance by the state created a broad discretion for the authorities to determine for what purpose land was cleared. They also had no legal obligation to explore feasible alternatives. Procedural protections were limited. The right to proper compensation and the right to adequate alternative accommodation were not guaranteed. As for informal landholders the law gave authorities broad discretion to determine whether and, if so, how much compensation is due. In practice omnipotent state authorities, supported by security forces and hired civil militias, interpreted the law at their own will, forcing landholders off their land against little or no compensation. This led to human rights violations, without perpetrators being held accountable. From the 1970s LBH and other rights-oriented NGOs opposed these practices by litigation. By the end of the 1980s they were joined by the student movement. They jointly pursued strategies of litigation and political mobilisation in which they often used a legal discourse. Though causing some effect, both strategies generally could not prevent the urban poor losing their land.

Despite ambitious legal reforms, in the Post-New Order the legal and de facto tenure security of low-income kampung dwellers remain limited. Legislation pertaining to land clearance initially remained in force after 1998. Land clearance as a single enforcement measure, for instance because of a landholder residing on land without the permission of the right holder

or lacking permits to reside on the land, is still rare. However, the Pasupati case shows that if land is needed for development in the public interest, which is often the case in Post-New Order Bandung, kampong dwellers still risk involuntary removal without due process of law or proper compensation. However, they now succeed in negotiating higher compensation than during the New Order years, which suggests that post-New Order reforms have benefited kampong dwellers who are confronted with the state wishing to clear land. Notably, for those who hold out, the level of compensation is practically indifferent of tenure status. However, such compensation still remains below the social and economic value of the land and buildings, forcing people to move far away from their sources of income.

The authorities still refuse to abide by the law. They try to force kampong dwellers out of their homes while offering low compensation. Indonesia's new local democracy provides some counterweight. While support of NGOs and the student movement remains limited, kampong dwellers now dare to resist land clearance and demand better compensation. This resistance takes form in political mobilisation, organising street protests. Kampong dwellers refer little to the law or human rights. Neither do they use litigation methods. They are helped by the media, paying much attention to the protests, even though they appear to draw a biased picture. In addition, hoodlum groups still launch intimidation campaigns. Despite these countervailing forces, the urban poor prove able to achieve relatively beneficial outcomes.

As a result of the difficulties of local governments in at least some parts of Post-New Order Indonesia to clear land, a number of development activities have run aground. In 2005, President Susilo Bambang Yudhoyono therefore passed Presidential Regulation 36/2005 on land clearance for development in the public interest. The regulation was heavily criticised and therefore revised by Regulation No. 65/2006, which contains more safeguards. In addition, Laws No. 48/2009, 49/2009 and 51/2009 concerning Legal Aid were enacted. The reforms are definitely an improvement. However, there is still no obligation for the authorities to explore feasible alternatives in consultation with landholders *prior* to land clearance. Landholders are not sure to receive alternative accommodation. In relation to informal landholders the law still creates broad discretion for the District-Head/Mayor to determine whether in case of land clearance, they receive any 'assistance/sympathy money' and if so, how much.