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

Reerink, G.O.

7 Dealing with the urban poor

Law and practice of commercial land clearance[1]

7.1 Introduction

Land clearance can not only be conducted by the state, but also by private parties, usually developers, who need land for the realisation of commercial projects. Just as land clearance by the state, such commercial land clearance relates directly to the land tenure security of the urban poor, taking form in involuntary removal from the land on which they reside, without due process of law or even payment of proper compensation.

In view of the above, this chapter discusses the law and practice of commercial land clearance during the New Order and takes a close look at the practice of commercial land clearance in Post-New Order Bandung. In doing so, it focuses on the legality of the permit issued for commercial land clearance and, just as Chapter 6, the nature of the negotiation process, and the level of compensation offered. It also emphasises the nature of resistance – including the role of legal norms and institutions -, the response to such resistance, and the effect.

This chapter comprises six sections. The next one establishes the legal framework pertaining to commercial land clearance and describes commercial land clearance practices and resistance during the late New Order. It is followed by an overview of legal reforms in relation to commercial land clearance. Section 7.4 forms the major part of this chapter, presenting the land clearance process for the development of the Paskal Hyper Square, Bandung's biggest business centre to be. This case is further evaluated in the light of past reforms from a rule of law perspective in Section 7.5, after which the chapter concludes.

1 An earlier version of this chapter will be published as: Reerink, G.O. (Forthcoming), 'Dealing with the Urban Poor, Changing Law and Practice of Commercial Land Clearance in Post-New Order Bandung', In: A. Lucas & C.A.B. Warren (ed.), *Land for the People: State Policy and Agrarian Conflicts in Indonesia*, Athens: Ohio University Press.

7.2 Commercial land clearance under the late New Order

In the first decades after independence, commercial land clearance remained unregulated in Indonesia. It was simply a matter between private parties, without interference by the state. This changed in the 1970s. Following the New Order's 'developmentalist' shift to state-led industrialisation and large-scale exploitation of natural resources as well as the enactment of the two laws on foreign and domestic investment in 1967 and 1968 discussed in Chapter 3, the Minister of Home Affairs in 1974 promulgated Regulation No. 5/1974 on the disposal of land for commercial interest, with particular reference to housing and industrial estates.[2] The regulation's aim was to enhance economic growth by meeting developers' need for land.[3] To that purpose it created a permit mechanism, which – theoretically at least – took account of spatial planning law and the 'social function' of land as formulated in the BAL.

Although the 1974 regulation was not primarily meant to protect landholders, it did contain some provisions that could potentially contribute to this. The Mayor could for instance mediate in case problems arose in the negotiating process. He could even cancel a permit in case the land clearance process was not implemented the way it should or not within a certain time limit.[4]

As discussed in Chapter 6, soon after the promulgation of the 1974 regulation, the Minister of Home Affairs 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.[5] Developers were thus enabled to call on the assistance of the authorities in commercial land clearance. The regulation resulted in an unclear distinction between public interest and commercial interest.

---

2 Law No. 1/1967 on Foreign Investment; Law No. 6/1968 on Domestic Investment; Regulation of the Minister of Home Affairs No. 5/1974 on Provisions for the Disposal and Delivery of Land for Business Interests (*Permendagri No. 5/1974 tentang Ketentuan-ketentuan mengenai Penyediaan dan Pemberian Tanah untuk Keperluan Perusahaan*).

3 General Consideration, under c BAL.

4 See for instance Art. 11(3 and 5) Regulation of the Minister of Home Affairs No. 5/1974.

5 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*).

Although the legal basis for commercial land clearance changed constantly, the permit mechanism remained pivotal.[6] A permit that played a central role was the site permit (*izin lokasi*), which allowed a developer to try and clear land in a designated area for a specific purpose through *musyawarah*, the traditional process of discussion and deliberation. This procedure had to be followed with regard to all types of landholders, including informal landholders, and under the supervision of the authorities that had issued the permit, for instance on the basis of reports and site visits.[7]

From the late 1980s, a number of significant developments took place in commercial land clearance law. First, in an effort to increase oil-independent economic growth, the Indonesian government introduced a series of deregulation measures, enacting separate regulations on commercial land clearance for housing development and the development of industrial estates in 1987 and 1989 respectively.[8] In 1992, the 1974 regulation was finally replaced by Regulation of the Head of the NLA No. 3/1992, which was to improve and speed up the permit granting process for commercial

6 See Regulation of the Minister of Home Affairs No. 3/1987 on the Allocation and Granting of a Right on Land for the Need of Housing Development Companies (*Permendagri No. 3/1987 tentang Penyediaan dan Pemberian Hak atas Tanah untuk Keperluan Perusahaan Pembangunan Perumahan*); Presidential Decision No. 53/1989 on Industrial Areas (*Keppres No. 18/1989 tentang Kawasan Industri*); Regulation of the Head of the NLA No. 3/1992 on the Procedure for a Company to Obtain a Land Banking Facility, Site Permit, Granting, Extension, and Renewal of the Right of Land and the Issuance of a Certificate (*Peraturan Kepala BPN No. 3/1992 tentang Tata Cara bagi Perusahaan untuk Memperoleh Pencadangan Tanah, Izin Lokasi, Pemberian, Perpanjangan dan Pembaharuan Hak atas Tanah serta Penerbitaan Setipikatnya*); Regulation of the Head of the NLA No. 2/1993 as elaborated by Decision of the Head of the NLA No. 22/1993 on Operational Directives on the Granting of a Site Permit for the Implementation of State Minister of Agrarian Affairs/Head of the NLA Regulation No. 2/1993 (*Keputusan Kepala BPN No. 22/1993 tentang Petunjuk Pelaksanaan Pemberian Izin Lokasi dalam Rangka Pelaksanaan Peraturan Kepala BPN No. 2/1993*); Decision of the Head of NLA No. 21/1994 on the Procedure to Obtain Land for Companies in the Framework of Investment (*Keputusan Kepala BPN No. 21/1994 tentang Tata Cara Perolehan Tanah bagi Perusahaan dalam Rangka Penanaman Modal*).

7 Compare Art. 11(3) Regulation of the Minister of Home Affairs No. 5/1974 and Annex, under B Decision of the Head of the NLA No. 22/1993 on Operational Directives on the Granting of a Site Permit for the Implementation of State Minister of Agrarian Affairs/Head of the NLA Regulation No. 2/1993 (*Keputusan Kepala BPN No. 22/1993 tentang Petunjuk Pelaksanaan Pemberian Izin Lokasi dalam Rangka Pelaksanaan Peraturan Kepala BPN No. 2/1993*). Notably, the Annex only requires the developer to state his willingness to pay compensation or offer an alternative site to 'title holders', not to others, such as informal landholders. See however Art. 6(9), which requires a developer wishing to obtain a land right on state land to first clear it of *garapan* (occupation by cultivation) and other forms of occupation.

8 Regulation of the Minister of Home Affairs No. 3/1987. For a discussion of the main provisions of this regulation, see Struyk, *et al.* 1990:129-34; Presidential Decision No. 53/1989.

land clearance by simplifying procedures.[9] In 1993, the 1992 regulation was replaced by yet another regulation, Regulation of the Head of the NLA No. 2/1993, which centralised the authority to issue site permits from the provincial Governor to the NLA.[10]

The deregulation policies significantly contributed to commercial land development becoming one of the country's prime investment sectors. It not only became easier for developers to obtain the permits required for land clearance; the banking sector and thus the credit market for housing also expanded. After a dip in the early 1990s, further deregulation policies ensured that land development was again booming by 1993 (Winarso & Firman 2002:488-91).

The above developments resulted in more landholders being affected by commercial land clearance. This also led to land clearance practices coming under increasing public scrutiny. Another development, part of the general policy of 'openness' as a response to increasing criticism of the New Order regime, involved legal reforms that potentially supported the interests of landholders. So in 1990, the Head of the NLA sent a circular letter to the Land Offices at the provincial level, requesting them to establish separate Supervision and Control Teams for Commercial Land Clearance (*Tim Pengawasan dan Pengendalian Pembebasan Tanah untuk Keperluan Swasta*, also called Tim Wadal) at the district/municipal level. Consisting of government officials only, the teams had the task to monitor the land clearance process and enforce related norms.[11] Furthermore, as discussed in Chapter 6, in 1993 the 1975 Regulation on Land Clearance for Development in the Public Interest was replaced by Presidential Decision No. 55/1993. Annulling Regulation of the Minister of Home Affairs No. 2/1976, the 1993 decision no longer allowed developers to apply the procedure for land clearance for development in the public interest for commercial purposes.[12]

---

9 Regulation of the Head of the NLA No. 3/1992. The regulation implemented Presidential Decision No. 33/1992 on the Procedure for Investment (*Keppres No. 33/1992 tentang Tata Cara Penanaman Modal*).

10 Art. 3 and Annex, under D Regulation of the Head of the NLA No. 2/1993. The Regulation was elaborated by Decision of the Head of the NLA No. 22/1993 and Decision of the Head of NLA No. 21/1994 on the Procedure to Obtain Land for Companies in the Framework of Investment (*Keputusan Kepala BPN No. 21/1994 tentang Tata Cara Perolehan Tanah bagi Perusahaan dalam Rangka Penanaman Modal*).

11 Circular Letter of the Head of the NLA No. 580.2-5568.D.III, dated 6 December 1990. See also Art. 47 Regulation of the Head of the NLA No. 1/1994 and Circular Letter of the Head of the NLA No. 500-1988, 29 June 1994, section 5. The teams were called Supervision and Control Teams for Land Preparation (*Tim Pengawasan dan Pengendalian Pengadaan Tanah*). The establishment of these Teams should have been (re-)regulated by Decision of the Head of the NLA, but such a decision was never enacted. Consequently, the establishment of the Teams remained based on the earlier discussed Circular Letter of the Head of the NLA No. 580.2-5568.D.III, 6 December 1990.

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

Landholders could initiate judicial proceedings against the Head of the Land Office issuing the site permit. As discussed in Chapter 6, before 1991 proceedings against the state should be initiated at a General District Court on the basis of a tort claim, which was hard to substantiate. Since in 1991 Administrative Courts have been established, administrative law proceedings can be commenced there. General District Courts obviously still hold jurisdiction over disputes between landholders and developers over the sale of land and/or buildings.

Though containing some safeguards to protect landholders, legislation pertaining to commercial land clearance could hardly contribute to this. The mechanism to monitor commercial land clearance was ineffective, because authorities could only issue warnings if a developer harmed the interests of landholders.[13] Legally, there was however nothing to prevent the government, after having issued several warnings, from suspending, revoking, or refusing to renew a permit.

Insofar as commercial land clearance law could theoretically protect landholders, this was not the case in practice, as several case studies, mostly from Jakarta, show. The permit mechanism had little meaning. Knowing that land speculators – frequently officials who knew (or others who had been informed by them) about a development plan – were active and that once a site permit had been issued land prices would rise, some developers started to acquire land before obtaining a permit. To speed up the process, they often employed their own middlemen (*calo*) (Leaf 1991:153-4). Developers (also) continued to acquire land after the term of their permit had already expired. Others simply never took the trouble to obtain a permit. Not that the authorities strictly adhered to the rules: frequently they issued permits that were not in accordance with spatial plans (Firman & Dharmapatni 1994).

Holding a site permit or not, developers commonly pressured landholders to give up their land at very low compensation rates. A site permit facilitated this process. Landholders were often made to believe that the permit formed a right to claim the land (Sumardjono 1999:16). Some developers limited residents' access to land, for instance by building walls around plots of those who refused to sell their land. They were also deliberately disturbed by construction activities (Suyanto 1996:47).

Although it was common knowledge that landholders were pressured to give up their land rights, the authorities did little to prevent this. According to Firman, many authorities regarded the permit procedure as a means to collect fees rather than a system to control commercial land clearance (Firman 1996:1041). In fact, authorities often assisted developers by lending their coercive power. Developers could deploy officials or even security

13 Compare Circular Letter of the Head of the NLA No. 580.2-5568.D.III; Annex, under E Decision of the Head of the NLA No. 22/1993 and Circular Letter of the Head of the NLA No. 460-572-DII, dated 21 February 1995. See also Sumardjono 1999:22-4.

forces to intimidate landholders. In combination with the large number of permits that were issued and the continuous extension of such permits, many landholders thus had to live in uncertainty for a long time. Authorities also assisted developers in commercial land clearance by applying alternative procedures to get people off their land. Developers generally preferred to follow the procedure for land clearance for development in the public interest (Struyk, *et al.* 1990:137-40), and municipal governments often applied this procedure for commercial land clearance, even after 1993, when legally this was no longer possible. As discussed in Chapter 6, they abused the concept of 'public interest', extending it to include such items as golf courses (Lucas 1997:235-42). In order to clear land occupied by informal landholders, municipal governments proved willing to apply the procedure as set out in a 1960 law on the prohibition to use land without permission of the title holder.[14] In other instances authorities reverted to municipal building regulations, on the basis of which they could demolish buildings erected without a building permit, without the obligation to compensate. Though constituting a clear abuse of power, some municipal governments justified the use of these regulations by the fact that they had not yet enacted implementing regulations regarding commercial land clearance (Struyk, *et al.* 1990:136).

The aforementioned conditions resulted in landholders accepting improper compensation. Not knowing that there was a plan to develop the land commercially, they accepted offers from speculators and front men that, had there been no development plan, sometimes seemed reasonable. The urban poor, always short on cash and often knowing little about market prices, were all the more inclined to do so. Many appeared unaware of the negative consequences of having to move to another place in the long term. As soon as it had become common knowledge that a developer held a site permit, the value of the land tended to rise. Yet landholders could not benefit from this, because the developer holding the site permit had an exclusive right to develop the area (Ferguson & Hoffman 1993:62-3). A survey in the late 1990s on land conversion on the fringes of Bandung showed that two thirds of the landholders had sold their land for the purpose of commercial development, despite low compensation offers, primarily because they believed they had no choice but to release it (Firman 2000:15). Compensation was particularly low if alternative procedures were applied to clear the land, such as the procedure for land clearance for development in the public interest. Informal landholders that were evicted on the basis of the 1960 law on the use of land without permission of the right holder often received no compensation at all.

Though repression was strong, some landholders dared to resist the above practices – particularly after 1989, when the period of political openness set in (Lucas 1997:243). From then on, rights-oriented NGOs, which

14 Law No. 51/1960. For a discussion of this law, see Chapter 6.

were already active in land disputes, were joined by the student movement (Lucas 1992:90). However, as discussed in Chapter 6, they tended to concentrate their attention on land clearance that affected peasants, rather than the urban poor. Where NGOs and the student movement had an interest in a case, they could seldom prevent commercial land clearance. Compensation was almost invariably inadequate. In this way, Struyk, et al. conclude that during the New Order, small landholders partially subsidised the cost of urban development (Struyk, et al. 1990:139).

7.3 Legal reforms related to commercial land clearance

As discussed in Chapter 3, after 1998 limited land law reforms were initiated. Some of these reforms were related to commercial land clearance. Just a month after Soeharto's fall, there already were indications that the government wanted to bring an end to the past practices of commercial land clearance. In June 1998 the Head of the NLA sent a letter to the Land Offices at the provincial level, asking them to remind permit holders whose site permits could no longer be extended because the term of their permit had already expired and who had not started development activities, that these permits were null and void and could no longer be used for land clearance. Henceforth, permits to clear remaining land would only be issued to those who were "really serious and acted in good faith".[15] A few days later, the Head of the NLA sent another letter, in which he referred to deviations in past commercial land clearance practices and required the Land Offices to include several new provisions in allocated site permits, namely that the site permit would not reduce the rights of landowners[16] in the area for which the permit had been issued; that it would be forbidden to limit access of people in the area; that the permit holder had the obligation to protect the wider public interest as well as that of local people, and; that there was an obligation to create an enclave or consolidate land for those landowners who did not want to give up their rights. Representatives of landowners would now have to be involved in the permit granting procedure through the organisation of a coordination meeting. In case of field monitoring, officials of the NLA should identify the occurrence of informal tenure as well as examine the willingness of landowners to give up their rights. Finally, the Land Offices at the district/municipal level should still provide services to those landowners who had not yet given up their rights.[17]

The above letters suggested a new stance of the government toward commercial land clearance. They did not, however, ultimately lead to better

15 Letter of the Head of the NLA No. 462-2033, dated 26 June 1998.
16 Please note, the letter explicitly refers to landowners, not landholders generally.
17 Letter of the Head of the NLA No. 462-2083, dated 30 June 1998.

protection of landholders confronted with developers wishing to clear their land. This was mainly due to the promulgation of Regulation of the Head of the NLA No. 2/1999, effectively replacing the 1993 regulation.[18] In accordance with the spirit of regional autonomy, the regulation acknowledges that not the Head of the NLA but the District-Heads/Mayors hold the authority to issue site permits.[19] With regard to the interests of landholders, the regulation is ambivalent.

To start with the positive changes, landholders are now to be consulted before a site permit is issued. The purpose of this consultation is to inform them about the investment plan, its spatial effect, and the plan to clear the land as well as to resolve problems related to that matter; give title holders the opportunity to ask for clarification about the investment plan and look for alternatives to resolve related problems; collect direct information from the people regarding social and environmental aspects, and; to allow them to propose alternatives regarding the form and amount of compensation to be paid by the developer.[20]

To avoid any misunderstanding about the rights attached to the permit, the regulation clarifies that as long as a developer has not reached agreement with a right holder regarding the transfer of the land, all rights and interests regarding the land are to be maintained, including the right to obtain a land certificate, to use the land in accordance with the General Spatial Plan, and to transfer the land to private parties (non-developers).[21] So a permit holder is required to respect the interests of others on land that has not yet been cleared, not to close or limit people's access around the location, and protect the public interest.[22] At the same time officials must keep providing their services to these landholders.[23]

Aside from these positive changes, Regulation of the Head of the NLA No. 2/1999 again creates an ineffective mechanism to monitor commercial

---

18 Regulation of the Head of the NLA No. 2/1999 on Site Permits (*Peraturan Menteri Agraria/Kepala BPN No. 2/1999 tentang Izin Lokasi*). The regulation does not annul the earlier discussed Regulation of the Head of the NLA No. 2/1993, which means that formally the regulation is still applicable. See also Letter of the Head of the NLA No. 110-424 (*Surat Menteri Agraria/Kepala BPN No. 110-424 tentang Penyampaian PMA No. 2/1999*), which explains the aims of Regulation of the Head of the NLA No. 2/1999.

19 The NLA's role is now limited to collecting all required documents and preparing a coordination meeting with related bodies.

20 Art. 6 Regulation of the Head of the NLA No. 2/1999. In the explanatory letter, the Head of the NLA explains that this form of public participation should lead to people supporting the land clearance process (Letter of the Head of the NLA No. 110-424, under 7).

21 The Head of the NLA explains that this provision is needed because in the past there had been misconceptions about this matter (Letter of the Head of the NLA No. 110-424, dated 10 February 1999, under 1 and 4).

22 Art. 8(2-3) Regulation of the Head of the NLA No. 2/1999.

23 Letter of the Head of the NLA No. 110-424/4, under 4. Interestingly, the Head of the NLA qualifies a refusal to provide such services not as a professional decision, but a private decision of that official, for which an official is personally responsible.

land clearance and enforce related norms. In fact, it fails to refer to any concrete form of supervision, for instance by the previously discussed Supervision and Control Teams for Commercial Land Clearance. In addition, the regulation does not refer to any sanctions that can be imposed on developers who fail to respect the interests of landholders.

The regulation contains some other bad news for landholders. Many landholders cannot benefit from any of the above potentially protective provisions, as the regulation refers to an extensive list of commercial land clearance cases in which no site permit is required. This exemption for instance applies to land needed for non-agricultural investment of less than one hectare, a size most urban development projects will not pass.[24] A developer is only required to inform the NLA about the development plan, after which he can directly start acquiring the land. This does not mean that the developer needs no permits at all to realise a project. This requires other permits, such as the land allocation and use permit and building permit, which can only be obtained if in accordance with spatial plans.[25] Further details on the site permit procedure should be regulated by the District Head/Mayor.[26]

As discussed in Chapter 3, on the basis of the 1999 RALs, part of the authorities in the land sector was transferred from the central government to the Districts/Municipalities. Their authority to issue site permits, as granted by Regulation of the Head of the NLA No. 2/1999, was thus reconfirmed. It must be noted, however, that District-Heads and Mayors felt free to depart from the regulation's intent. Though referring to it, the implementing decision of the Mayor of Bandung makes no reference to the consultation procedure. So contrary to what the regulation requires, the Mayor can issue a site permit without the prior involvement of landholders.[27]

Despite its ambivalence with regard to the position of landholders and its lack of legislative status, Regulation of the Head of the NLA No. 2/1999 still provides more safeguards than previous legislation related to commercial land clearance. It may thus contribute to tenure security of the urban poor, particularly in combination with the general reforms discussed in Chapter 3. The following section takes a close look whether, and if so how, practices of commercial land clearance have changed in Post-New Order Bandung.

---

24 Art. 2(2), under f Regulation of the Head of the NLA No. 2/1999.

25 See in case of Bandung as for the use permit Art. 7(1) Law No. 4/2002 on the Land Use Permit (*Perda No. 4/2002 tentang Izin Peruntukan Penggunaan Tanah*) and the building permit Art. 41(1) Bylaw of Bandung Municipality No. 14/1998 on Buildings in the Municipal Region Level II Bandung (*Perda Kotamadya Bandung No. 14/1998 tentang Bangunan di Wilayah Kotamadya Daerah Tingkat II Bandung*).

26 As far as no such regulation has been implemented, the 1993 regulation remains in force (Art. 7 Regulation of the Head of the NLA No. 2/1999).

27 Decision of the Mayor of Bandung No. 170/1999.

7.4 Practice of commercial land clearance in Post-New Order Bandung

In the first years of the Post-New Order, clearance of urban kampong land for commercial purposes was limited. Indonesia's economic crisis affected the urban economy, in particular the manufacturing and property sector. As a result, land development activities slowed down. Business, offices, and condominium construction projects came to a standstill and land that had been acquired for commercial development remained unutilised (Firman 2002:234-6). As happened on plantation land across Indonesia, some land in the fringes of large cities was re-occupied by people who had earlier given it up (Firman 2000:17-8).

The period of economic decline did not last long; within two years Indonesia's economy showed signs of recovery. In Bandung this was evidenced by the initiation of a considerable number of commercial development projects. Malls, factory outlets, upper-class real-estate complexes and luxury hotels are built, particularly since the opening in 2005 of the Cipularang toll road between Jakarta and Bandung and the connecting Pasupati flyover, which leads to an increasing functional relationship between the two cities. To realise these projects, there is again a great appetite for land. This appetite has actually increased compared to the New Order years.

Developers appear particularly interested in land that is held informally. This includes land that is situated alongside railway tracks. Most importantly, it is state land (*tanah negara*) managed by the state owned Indonesian Railway Company (*PT Kereta Api Indonesia* or PT KAI) that is mostly occupied by urban poor who have no (or no longer have) formal claims on the land, in theory making it relatively easy and cheap to clear. In addition, this land is centrally located, flat and therefore easy to build on.

PT KAI itself is also interested in developing the railway land, as it is in need of new revenue streams. In 1997 the World Bank launched the Railway Efficiency Project, which led to the reorganisation of PT KAI. This included the establishment of a property division, which should realise higher financial returns on the company's assets. In 2004 it started documenting the houses that had been built on its land as a first step to making this asset commercially productive.[28] In 2007 a law was enacted which requires the government to stop subsidizing PT KAI and to give private companies access to the railway network.[29] Finally, the revenues from ticketing have decreased significantly in recent years, particularly as a result of the previously mentioned opening of the toll road between Jakarta and Bandung, making it quicker to travel between the two cities by car than by rail.

28 'Rumah di Lahan PT KA Akan Didata', *Pikiran Rakyat*, 7 June 2004.

29 Law No. 23/2007 on the Railways (*UU No. 23/2007 tentang Perkereta Apian*).

To meet its financial needs, PT KAI now undertakes Public-Private Partnerships (*Kerjasama Operasi*, hereafter PPP) with developers, to which it grants construction rights on its land for a period of 34 years, that is 4 years for the development of the project and 30 years for its exploitation. PT KAI argues that this not only serves the company itself and developers, but also the common good. It can continue providing public transport which the exploitation of its assets cross-subsidises. Besides, the project is said to support the municipal government in spatial management as well as attracting investors.[30]

Developers who conclude a PPP agreement with PT KAI are required to clear the land themselves. "I therefore look for strong developers, who are able to get this done", the Head of the Property Division clarified.[31]

7.4.1 The Paskal Hyper Square project

The first project involving the development of railway land in Bandung on the basis of a PPP, forming a model for the many projects on PT KAI land to come, is the Paskal Hyper Square project, for which PT KAI signed an agreement with PT Citra Buana Prasida (PT CBP) on 25 April 2003.[32] PT CBP would develop Bandung's biggest business centre, consisting of shop houses, a trade centre, shopping mall, serviced apartments, and a five-star hotel, involving an investment of Rp. 350 billion (about US$ 35 million).[33] The project was to be realised on a plot of about 16.5 hectares in City Quarters Kebunjeruk (Neighbourhood 4) and Ciroyom (Neighbourhood 1), Sub-District Andir, West Bandung.

The plot on which the project was to be realised was not vacant. Over several decades migrants occupied and subdivided the land and built houses, which resulted in the area turning into densely populated kampongs. Most residents had moved in after 1975, but the oldest residents had been living there for more than 50 years. They generally worked in the informal sector as street hawkers, trading goods, or offering small services on the city-centre.[34] The central location of their kampong was thus impor-

30 'Ex. Stasiun Bandunggudang Untuk KSO', article from website of PT KAI, 16 April 2004; 'Penyewa Lahan PT KA Demo', *Pikiran Rakyat*, 15 May 2004.

31 Personal communication of the Head of the Property Division of the Indonesian Railway Company, 9 January 2005.

32 See Decision of the CEO of PT KAI No. U/A.35/KL401/KA-2003 and the PPP agreement, both dated 25 April 2003. The Minister of State Companies had approved the plan for a PPP by Letter No. S-560/M/MBY/2002, dated 28 August 2002.

33 'Dirut PT KA Resmikan Proyek "Paskal Hyper Square"', article from website of PT KAI, 23 September 2004; 'Proyek Bandung Super Block Dimulai Tahun Ini', *Business Indonesia*, 27 May 2004.

34 For population data and more information on the socio-economic and physical characteristics of the kampongs in Ciroyom, see Appendix II and III (p. 244-5).

tant for their livelihood. At the start of the project almost 1,500 houses, in which up to 10,000 people resided, were located on the land.[35]

The majority of the residents were informal landholders, squatting the land. Some 'bought' or 'leased' the land from so-called *oknum*, employees of PT KAI or outsiders who passed themselves off as employees of PT KAI and kept these revenues for themselves.[36] Since the 1980s, most residents signed short-term contracts with PT KAI granting them official lease rights (*hak sewa*). The contracts contained a provision requiring the residents to unconditionally clear and transfer the land in case the company would need it. If the residents refused to meet this obligation, they would be evicted by force. Since the 1990s the contracts were no longer renewed.[37]

PT CBP was exempted from the requirement to obtain a site permit, since PT KAI already owned the land and PT CBP implemented the investment plan of PT KAI. PT CBP did require a land allocation and use permit as well as a building permit. In November 2002, the Mayor therefore issued a land use agreement (*persetujuaan pemanfaatan ruang*).[38] This 'permit in principle' (*izin prinsip*) forms a first step to obtain these permits and allowed PT CBP to start clearing the land. The permit did contain a provision, requiring PT CBP to pay residents proper compensation for buildings, as well as a clause, stating that in the event PT CBP did not fulfil prevailing legal requirements, the agreement could be cancelled. The 'permit in principle' was extended in June 2004 – a few months after the new General Spatial Plan had been enacted, which actually stipulated that in West Bandung development of housing, trade, and services should be limited.[39]

35 The media reported that Kebonjeruk consisted of 393-434 and Ciroyom of 1,042-1,200 houses. See 'Soal Rencana Pembangunan Superblok di Tanah PT KAI, Warga Tuntut Wali Kota Turun Tangan', *Kompas*, 18 May 2004; 'PT KA Minta Kesadaran Warga Kembalikan Tanahnya', *Kompas*, 17 May 2004; 'PT KAI Tak Berkewajiban Bayar Ganti Rugi, Warga Kebon Jeruk Tolak "Superblock"', *Pikiran Rakyat*, 28 May 2004. It is hard to estimate the exact number of people that resided on the land because some residents had not formally registered at the City Quarter office and/or were circular migrants. The number mentioned here was derived from media reports. See 'Ratusan Warga Ciroyom Demo PT KAI Bandung', *Detik*, 14 May 2004; 'Bandung Squatters Reject Eviction', *Jakarta Post*, 15 May 2004; 'Penyewa Lahan PT KA Demo', *Pikiran Rakyat*, 15 May 2004; 'Paskal Hyper Square Didemo Warga', *Detik*, 24 January 2007.

36 Personal communication of two residents of Ciroyom, Bandung, 11 August 2008 and 14 August 2008 respectively.

37 'Warga Tolak Pembangunan Bandung Gudang PT KA', *Republika*, 17 April 2004.

38 Letter of the Mayor of Bandung No. 340/252.7-Bappeda, dated 12 November 2002.

39 Letter of the Mayor of Bandung No. 593/1766-Bappeda, dated 28 June 2004; Art. 14(2), under c Bylaw of Bandung Municipality No. 2/2004.

7.4.2 Land clearance in Kebonjeruk

In order to facilitate the land clearance process, PT KAI and PT CBP formed a land clearance team (*Tim Terpadu Pengosongan Lahan Ex. Emplasemen Stasiun Bandung Gudang*), which consisted of employees of both companies.[40] In May 2003 this team 'socialised' their plan among local officials and community leaders. It underlined that residents were under contractual obligation to give up the land. They should in fact be grateful that they had been allowed to reside on the land for such a long time at such low cost and were certainly not entitled to any compensation. Yet 'out of humanity' the developer offered a nonnegotiable sum of assistance/sympathy money (*uang santunan*) of Rp. 60,000/m^2 for non-permanent, Rp. 110,000/m^2 for semi-permanent, and Rp. 210,000/m^2 for permanent buildings (about US$ 6–21/m^2).[41]

Although residents felt pressure to accept the developers' offer, most immediately rejected it. They did not want to give up the land on which some people had been residing for more than 50 years, let alone "for the realisation of a commercial project that only benefited the elite."[42] Besides, residents were generally of the opinion that the offer was too low as it did not enable them to buy a comparable dwelling.[43] They were also afraid to lose their source of income. Some of the residents were willing to move, provided that they received real compensation instead of nominal 'assistance/sympathy money'. This could come in the form of cash or new accommodation. Those who wanted money asked for compensation many times higher than the 'assistance/sympathy money' offered, namely Rp. 1-1.5 million/m^2 (about US$ 100-150/m^2).[44]

To enforce their claims, the residents established a community association called the People's Aspiration Team (*Tim Aspirasi Masyarakat*), consisting of a large group of formal and informal community leaders. The team soon started to organise street protests, which were initially aimed at convincing the developer to cancel the project altogether. When this proved unfeasible, the Team organised street protests to get support from the municipal government, the Municipal Council, and, through the media, the wider public. At this stage the residents proved sufficiently unified to

---

40 'Ex. Stasiun Bandunggudang Untuk KSO', article from website of PT KAI, 16 April 2004; 'Warga Tolak Pembangunan Bandung Gudang PT KA', *Republika*, 17 April 2004.

41 'Takut Digusur, Warga Resah', *Pikiran Rakyat*, 14 April 2004; 'Ex. Stasiun Bandunggudang Untuk KSO', article from website of PT KAI, 16 April 2004; 'PT KAI Tak Berkewajiban Bayar Ganti Rugi, Warga Kebon Jeruk Tolak "Superblock"', *Pikiran Rakyat*, 29 May 2004.

42 'Penyewa Lahan PT KA Demo', *Pikiran Rakyat*, 15 May 2004; 'Soal Rencana Pembangunan Superblok di Tanah PT KAI, Warga Tuntut Wali Kota Turun Tangan', *Kompas*, 18 May 2004; 'Jika Penggusuran untuk "Superblock" Dilanjutkan, Warga Kebonjeruk Ancam Gelar Tenda di Atas Rel', *Pikiran Rakyat*, 4 June 2004.

43 'Penyewa Lahan PT KA Demo', *Pikiran Rakyat*, 15 May 2004.

44 'Warga Tolak Pembangunan Bandung Gudang PT KA', *Republika*, 17 April 2004.

organise as a group. They did not look for assistance from NGOs or the student movement. Nor did the latter offer assistance.

The team felt that litigation was no option. As a former Neighbourhood Head argued: "People do not have ownership rights. They know if it becomes a legal process they will lose. Then the judge will ask: 'where is your certificate?'"[45] In their protests, residents also avoided legal discourse. So instead of referring to a right to compensation, the residents legitimated their demands by pointing to the hardship they would have to cope with if the developer did not offer real compensation.

There were grounds for litigation though. It was rumoured that PT KAI had never taken the trouble of obtaining an official state management right (*hak pengelolaan*) on the land concerned, on which the colonial 'Staatsspoorwegen' used to have European land rights. As discussed in Chapter 4, Presidential Decision No. 32/1979 sets a time limit for the registration of former European rights; all of those should have been registered before 1980. If not, the land reverts back to the domain of the state.[46] Kampong dwellers occupying such state land have in principle a priority right over third parties to request a (new) land right. As far as PT KAI did hold an official state management right on the land, it arguably qualified as neglected land. As discussed in Chapter 4, land qualifies as neglected land if it is deliberately not used in accordance with its physical condition or with the form and goal of the right to which it is subject or not well taken care of. Rights to land that is classified as neglected land, become forfeited, after which the land reverts back to the domain of the state and kampong dwellers occupying such land can request new land rights.[47]

The protests were widely covered by the media, but did not provoke the public response residents were hoping for. Several members of the Municipal Council called upon the municipal government not to issue the permits required for construction activities until the negotiations had ended and offered to support residents in the negotiations. Residents were sceptical about their intentions though. The municipal government ultimately did nothing beyond making false promises. The Mayor said he would construct tenement buildings for the residents, but this proposal never materialised. He did also not respond to the call of members of the Municipal Council to postpone the issuance of permits.

Despite the lack of support, residents managed to delay the land clearance process. In order to avoid any further delays, PT CBP adopted a new strategy. First, it decided to clear the land in successive stages. The first stage involved land clearance in Kebonjeruk for the construction of the shop houses (first zone); the second and third stages involved land clear-

45 Personal communication of a former Neighbourhood Head, Bandung, 11 August 2008.

46 Art. 1 and 5 Presidential Decision No. 32/1979 in conjunction with Art. 55(1) Law No. 5/1960.

47 Art. 3, 4, 8 Government Regulation No. 36/1998 in conjunction with Art. 27(a, under 3), 34(e), and 40(e) BAL.

ance in Ciroyom for the construction of the apartments (second zone) and hotel (third zone) respectively. Next, the developer subjected the residents of Kebonjeruk to divide-and-rule and intimidation practices. The developer sidelined the People's Aspiration Team by secretly commencing direct negotiations with individual residents. It particularly focused on influential residents, who were offered high compensation and also cash, a motorcycle, and even a house if they convinced other residents to give up their land.[48] Residents were harassed – typically at night – by people visiting them and telling them in an intimidating manner that they should give up their land, but they were not physically harmed. Several residents claimed they faced demands to sign a blank paper, which they had refused.[49] Employees of PT CBP, their front men, and members of the hoodlum group GIBAS were said to be responsible for these practices.[50]

The developer's approach proved successful. Various influential residents were co-opted, and over time more residents were willing to negotiate. Even members of the Forum started to back PT CBP. Several residents claimed that these Forum members had been bribed by the developer.[51] Under these conditions, community unity was replaced by an atmosphere of suspicion. By September 2004 land clearance in Kebonjeruk was accomplished, three months later than originally planned. To celebrate this, the CEO of PT KAI organised a special ceremony, at which occasion he thanked PT CBP for clearing the land and turning the area "into a more representative location."[52]

Despite – or as PT CBP argued, as a result of – the residents' resistance, compensation remained low. 'Ordinary' residents were offered 'assistance/sympathy money' and, depending on their cooperativeness, a so-called bonus of about 30 per cent of that sum, and some other minor fees.[53] Residents who needed time to move received part of the money and the rest as soon as their building had been demolished. The residents could choose to demolish their house themselves or leave this to PT CBP. In any event, they

48 Personal communication of a resident of Kebonjeruk, Bandung, 17 July 2006; a local official, Bandung, 24 July 2006; and another resident of Kebonjeruk, Bandung, 26 July 2006.

49 'Rumahnya Akan Dibangun Mal dengan Santunan Hanya Rp 250.000-m^2 2.000 KK di Lahan Milik PT KAI Bandung', *Pelita*, 25 October 2009. See also Ruling of the Bandung General District Court No. 424/PID/B/2008/PN.BDG discussed below.

50 Personal communication of a resident of Ciroyom, Bandung, 19 July 2006; another resident of Ciroyom, Bandung, 10 August 2008; a member of the People's Protection Team, Bandung, 14 August 2008.

51 Personal communication of a former member of the Forum, Bandung, 19 July 2006. The former forum member acknowledged that he had received higher compensation than ordinary residents.

52 'Dirut PT KA Resmikan Proyek "Paskal Hyper Square"', article from the website of PT KAI, 23 September 2004.

53 Personal communication of a resident of Ciroyom, Bandung, 11 July 2006; a resident of Kebonjeruk, Bandung, 26 July 2006; an associate of a legal aid organisation, Bandung, 19 August 2008.

were under the contractual obligation to leave within two weeks after the 'assistance/sympathy money' had been paid.[54]

Obviously, the compensation was insufficient to buy another house at a similar location. Most people moved away to the outskirts of the city, such as Buah Batu, or out of Bandung to their place of origin, such as Banjaran, Padalarang, Cipatat, Soreang, Cicalengka, and Garut, where they could afford to live. Only a few households found accommodation in the vicinity – usually a rented house.[55] Not surprisingly, all interviewed residents of Kebonjeruk felt victimised, as they lost their home and often also their livelihood, without receiving sufficient compensation to replace all this.

7.4.3 Land clearance in Ciroyom, second zone

In February 2005 PT CBP initiated the second stage of land clearance in Ciroyom. Initially, the process unfolded just as it had in Kebonjeruk. The developer held on to its offer to pay Rp. 60,000/m^2 for temporary buildings, 110,000/m^2 for semi-permanent and Rp. 210,000/m^2 for permanent buildings (about US$ 6–21/m^2).

Like the residents of Kebonjeruk, those of Ciroyom (again) rejected the offer. They renamed the community association to Kebonjeruk-Ciroyom Reject Eviction Forum (*Forum Tolak Penggusuran Kebonjeruk-Ciroyom* or Forum TPKC), consisting of new community leaders, and organised new street protests. Unlike what the name of the forum suggests, the residents realised it would be hard to prevent eviction. The main concern was now to obtain real compensation.

The street protests had some effect. Hearing about the negotiations in Ciroyom, the newly elected Municipal Council asked the municipal government not to issue the required permits for construction activities before the negotiations between PT CBP and the residents had been completed. One member of the Municipal Council, Aat Safaat Hodijat (Golkar), argued that although the residents were not the owners of the land, they should be protected. "Their compensation should not be too low, leaving people in misery," he stated.[56] The municipal government ignored this call, however.

Residents again refrained from litigation and avoided legal discourse. They acknowledged that legally they were in a weak position, but asked PT CBP to act on the basis of humanitarian considerations. The residents hoped they would have a better fate than those of Kebonjeruk, who were

54 Personal communication of a resident of Kebonjeruk, Bandung, 17 July 2006; and a former community leader, Bandung, 11 August 2008.

55 Personal communication of a resident of Ciroyom, Bandung, 11 July 2006; and a resident of Kebonjeruk, Bandung, 26 July 2006.

56 'Pemkot Jangan Dulu Keluarkan IPPT', *Pikiran Rakyat*, 22 February 2005.

now living in further poverty. All they wanted were sufficient means to afford a similar place to live.[57]

Meanwhile PT CBP took up its divide-and-rule and intimidation practices again and with success. This time the role of hoodlum groups was limited – likely because their assistance had proved ineffective. As in Kebonjeruk, the developer found it easier to co-opt influential residents, including members of the Forum. Many people in consequence gave up their land, and by December 2005 only 47 households in the second zone, occupying in total 6,877 m^2 of land, still refused to accept the offer of PT CBP.[58]

The last residents did not give up easily. As a replacement of the co-opted Forum, they established the smaller People's Rescue Team (*Tim Penyelamat Warga*), consisting of a handful of (new) neighbourhood heads.[59] It was formally registered as an association to avoid being accused of provocation. The Team also consisted of a 'militia' that coped with the police, the army, and hoodlums. It tried to negotiate a compensation rate of Rp 800,000 (about US$ 80/m^2) for all residents, irrespective of the quality of buildings or number of floors.[60]

When PT CBP failed to acquire the last plots of land, PT KAI requested the assistance of the Prosecutor-General of West-Java, Holius Hosen, to 'mediate' in the dispute.[61] He was willing to do so – some residents suspected, because he had been bribed by the developer – and ordered family heads to discuss the matter.[62] The order obviously worried the residents, who felt intimidated by the involvement of this new party. Still, about 10 residents dared to reply with a refusal to attend.[63] Other residents did attend, at which occasion they handed the Prosecutor-General a letter stating their willingness to give up the land, provided that they received proper compensation. If no such compensation would be offered, they wanted to stay and lease the land from PT KAI or the developer for the price that they used to pay.[64] The Prosecutor-General was not accommodating, however.

---

57 'Pembebasan Lahan Milik PT KA untuk "Superblock", Warga Tuntut Santunan yang Wajar', *Pikiran Rakyat*, 21 February 2005; 'Pemkot Jangan Dulu Keluarkan IPPT', *Pikiran Rakyat*, 22 February 2005.

58 'Kajati Jabar Diminta Tengahi Sengketa Tanah, Terkait Pengosongan Lahan Seluas 6,877 m^2', *Pikiran Rakyat*, 14 December 2005.

59 Referring to the number of Neighborhood Heads of which the Team was composed, it was also called Team of Five (*Tim Lima*).

60 Personal communication of a member of the People's Protection Team, Bandung, 14 August 2008.

61 See Letter of the CEO of PT KAI No. HK-214/XII/2/KK-2005.

62 Personal communication of a member of the People's Protection Team, Bandung, 14 August 2008.

63 'Warga Ciroyom Resah Terima Surat dari Kajati', *Galamedia*, 24 March 2006.

64 'Kajati Jabar Diminta Tengahi Sengketa Tanah, Terkait Pengosongan Lahan Seluas 6,877 m^2', *Pikiran Rakyat*, 14 December 2005.

Meanwhile, the residents continued with street protests. In March 2006, they gained support from members of the Provincial Assembly, who sent a letter to the Prosecutor-General, questioning the land clearance process. The Prosecutor-General replied that "the demand of residents for compensation could not be agreed to, as there was no legal basis for it and there was no report of any transfer of right."[65] Apparently this answer satisfied the members of the Provincial Assembly; they undertook no further action.

Basically the Prosecutor-General's 'mediation' effort failed. PT CBP thereupon reported residents to the police for unlawful land occupation, embezzlement/swindle, and slander. The developer also started civil proceedings against some residents, requesting a court order to demolish their houses. Some residents received a warning and an announcement that their houses would be demolished.

Faced with this new challenge, the residents started to look for support from legal aid organisations. As they were convinced that the dispute ultimately could only be won by political means, however, they deliberately looked for party-affiliated legal aid organisations.[66] The first organisation that assisted the residents was the legal aid organisation of the National Awakening Party (*Lembaga Hukum dan HAM Partai Kebangkitan Bangsa* or Lakum HAM PKB). Later, the representative of PKB's legal aid organisation was believed to be too close with the developer and was replaced by a commercial lawyer, who four months later was in turn replaced for the same reason by a legal aid organisation that has connections with the Indonesian Democratic Party of Struggle (*Partai Demokrat Indonesia-Perjuangan* or PDI-P).

The legal aid organisations could not prevent residents being prosecuted. In July 2006, a resident of Ciroyom was fined Rp. 25,000 (about US$ 2.5) and sentenced to five days imprisonment for unlawful occupation.[67] Next, the local police, PT CBP, and members of GIBAS demolished his buildings, including a building that later turned out to be someone else's. The action provoked fierce protests from residents and the perpetrators were reported to the Regional Police – to no avail.[68] In September 2006, the house of another resident was demolished, based on a court order in a civil proceeding of a year before.[69]

65 Letter of the West-Java Prosecutor-General No. B-1336/O.2/Gph/04/2006.

66 Personal communication of a member of the People's Protection Team, 14 August 2008.

67 Ruling of the Bandung General District Court No. 282/CR/PID/2006/PN.BDG. The resident was condemned on the basis of Art. 6(1), under b Law No. 51/1960.

68 'Ratusan Warga Hadang Pembongkaran', *Seputar Indonesia*, 15 May 2006; personal communications of associates of GPI, 11 August 2008; a member of the People's Protection Team, 14 August 2008.

69 The execution was covered by Metro TV, a national news channel. See 'Eksekusi Rumah di Bandung Diwarnai Adu Mulut', www.metrotvnews.com.

The prosecutions did still not silence resisting residents. In 2007 they asked the support from the Islamic Youth Movement (*Gerakan Pemuda Islam* or GPI), some of whose members were part of the kampong community. With their support, residents organised new street protests.[70] For months negotiations were in a deadlock. The resisting residents of the second zone finally came to an agreement with PT CBP in August 2007. They received the compensation they had demanded of Rp. 800,000/m^2 (about US$ 80/m^2).[71]

Despite the agreement, as of mid-2008 PT CBP had not managed to clear all land in the second zone. One of the residents refused to demolish his house because he had only received the original 'assistance/sympathy money' offered and not the bonus the parties had finally negotiated. PT CBP reported the resident to the police, after which he was arrested, taken into pre-trial detention, and prosecuted for embezzlement and swindling.[72] The prosecutor demanded a sentence of one year imprisonment minus pre-trial detention. The court concluded that the case was not of a criminal law, but of a private law nature, but that there was no contractual breach on the side of the resident, and therefore acquitted thim.[73] Some believe that the political connections of the legal aid organisation contributed to this result, which its associates strongly deny.

7.4.4 Land clearance in Ciroyom, third zone

Before completing land clearance in the first and second zones, PT CBP had already been acquiring some land in the third zone. Nonetheless, to the end of 2007 many of the 183 households or about 1,600 people had not given up their land. With the support of GPI, the remaining residents continued with street protests, although solidarity remained fragile. Suspected of being too close with the developer, several members of the People's Rescue Team were removed.[74]

With the elections coming up in 2008, residents adopted a new strategy. In April 2008, the residents of the third zone announced they would lodge blank votes in the West-Java Governor elections. They blamed the candidates for having no moral commitment to their fate.[75] The threat had little effect. One of the candidates promised to visit the community, but did not

---

70 'Paskall HyperSquare Didemo Warga', *Detik*, 24 January 2007.

71 Personal communications: associates of GPI, 11 August 2008; member of the People's Protection Team, 14 August 2008.

72 Art. 372 and 378 of the Penal Code (*Kitab Undang-Undang Hukum Pidana)*.

73 Ruling of the Bandung General District Court No. 424/PID/B/2008/PN.BDG. The Public Prosecutor filed an appeal before the Supreme Court, thus bypassing the Court of Appeal. At the time of writing, a ruling is still awaited.

74 Personal communications, two members of the People's Protection Team, 14 August 2008.

75 'Warga RW 01 Ciroyom Pilih Golput', *Tribun Jabar*, 11 April 2008; 'Rumah Digusur, Ribuan Warga Ciroyom Ancam Golput di Pilkada', *Detik*, 11 April 2008; 'Selama Ini ami Tak Terdengar', *Tribun Jabar*, 12 April 2008.

keep his promise. Later it turned out that the action was not supported by all residents; a majority actually did vote.[76]

In August 2008 the remaining residents of Ciroyom threatened to lodge blank votes in the mayoral elections. This time, the candidates took the residents' threat seriously. Two of the three candidates visited the community, including the incumbent candidate, Dada Rosada. Notably, his partner candidate for Vice-Mayor was Ayi Vivananda, one of the founders of the legal aid organisation that supported the community. On that occasion Dada Rosada finally promised not to issue permits required for the construction activities to PT CBP in both the second and third zones until the negotiations had been completed.[77]

The latest strategy of the residents of Ciroyom finally seems successful. PT CBP has realised the Paskal Hyper Square project in the first zone, where it has built a shopping mall and shop houses. Most shop houses, sized 60-105 m^2, have been sold at Rp 1-1,815 billion (about US$ 100,000-181,500) each – a square meter price of up to 288 times the 'sympathy/assistance money' some residents were offered and still 21 times the compensation some resisting residents received.[78] At the time of writing construction activities in the second zone have yet to begin. Land clearance in the third zone continued for several month, but stopped in the course of 2009. The future of the project is uncertain. It seems that Dada Rosada, who won the elections, has kept his word not to issue the required permits. Furthermore, it is rumoured that business partners of PT CBP have been scared off by the long, difficult, and relatively costly land clearance process. In any event, in view of the sobering experiences in this 'model' project, developers may have lost interest in initiating other projects on railway land in the near future.

7.5 Commercial land clearance, tenure security, and the rule of law

Post-New Order commercial land clearance practices in Bandung show that the legal and de facto tenure security of low-income kampong dwellers, particularly if they are informal landholders, remain limited. They still risk involuntary removal, without due process of law and payment of proper compensation. At the same time, they succeed in negotiating higher compensation than during the New Order years and forcing developers to (partly) cancel projects, which suggests that post-New Order reforms have benefited low-income kampong dwellers who are confronted with a developer wishing to clear land.

76 'Ancaman Ribuan Warga Ciroyom Golput Tak Terbukti', *Detik*, 13 April 2008.
77 Personal communications, two members of the People's Protection Team, 14 August 2008.
78 Data derived from developer's brochure, on file with the author.

Aside from positive changes, Regulation of the Head of the NLA No. 2/1999 again creates an ineffective mechanism to monitor commercial land clearance and enforce related norms. In addition, many landholders cannot benefit from any of the regulation's potentially protective provisions, as it refers to an extensive list of commercial land clearance cases in which no site permit is required. In any event, District-Heads and Mayors, who were required to regulate further details on the location permit procedure, felt free to depart from the regulation's intent.

Apparently it is still common for authorities to issue permits that are not in accordance with spatial plans. This was already illustrated by the Punclut case discussed in Chapter 5. Site permits were issued for real estate development in this protected conservation and water catchment area before the General Spatial Plan, which did not allow such development activities, had been revised. The General Spatial Plan was actually revised to legalise these site permits. In case of the development of the Paskal Hyper Square no site permit was required, but the 'permit in principle' that was extended in June 2004 was in fact not in accordance with the revised General Spatial Plan, which stipulated that in West Bandung development of housing, trade, and services should be limited.

Developers also still commonly pressure the urban poor to give up their land, while offering low compensation. Aside from being subjected to divide-and-rule tactics by PT CBP, residents of Ciroyom were intimidated by members of the hoodlum organisation GIBAS. As noted in Chapter 5 and 6, since the fall of Soeharto, new groups have emerged in Bandung. Some are affiliated with and supported by the municipal government or political parties, others are loyal to whomsoever is willing to pay. Many of these organisations are now involved in land related disputes, yet GIBAS has one of the most notorious reputations (Honna 2006:87-8).

Authorities fail to protect kampong dwellers against the above practices. Even when residents started to organise street protests and the media began to report the developer's tactics pressuring residents to give up their land, the municipal government refused to offer support. It could have cancelled the developer's 'permit in principle', as it did not fulfil prevailing legal requirements, such as paying residents proper compensation for buildings.

Authorities' willingness to assist developers in commercial land clearance can be explained by the fact that they have vested interests in the success of development projects – particularly since the implementation of regional autonomy. By using its new permit granting authority, the municipal government can redevelop kampongs it classifies as 'slum areas', an ambition expressed in the Municipality's most recent General Spatial Plan (see Chapter 5).[79] More importantly, because of the new fiscal relations

79 See Art. 14(2c) By-law 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*).

between Jakarta and the regions, the municipal government gains extra revenue from commercial land development. Issuing permits generate regional retributions in the form of Regionally Generated Revenues. Besides, commercial land development increases the value of land, which in turn yields increased government tax income. It also results in extra Regionally Generated Revenues through advertising, parking, hotel and restaurant taxes. This again shows that the effects of administrative decentralisation and new fiscal relations between Jakarta and the regions are not necessarily positive. If democratic control fails, financial return is easily prioritised over social issues. Evidence is lacking, but corruption may play a role too. Issuing permits likely brings in extra-legal fees, which end up in the pockets of the municipal leaders, politicians, and officials.[80] The involvement of the Prosecutor-General also raises questions.

Indonesia's new local democracy – also fostered by political decentralisation – partly compensates for the previously discussed state of affairs. Kampong dwellers now dare to resist commercial land clearance. The residents of Ciroyom organised street protests and used their right to vote to put political pressure on the executive. These acts were covered by the media, albeit only in the initial stage of the protests and not extensively. The Municipal Council and Provincial Assembly gave some support. In an interview, several members of the Municipal Council said they often handled commercial land clearance cases they considered 'inhumane'. Their support is what one member of the Municipal Council called "legal protection by political means."[81] However, some residents were suspicious about their intentions, which, considering the continuous reports on legislative corruption, does not come as a surprise. In any event, the influence of the Municipal Council and Provincial Assembly was limited vis-à-vis the executive. The Mayor was only willing to act when he risked losing votes.

The student movement remained absent, as initially did (rights-oriented) NGOs. In this case, a religious youth organisation served as champions protecting the little people (*rakyat kecil*). Rights-oriented NGOs only became involved after the residents asked for support. Notably, these legal aid organisations were party-affiliated. Subsequent resistance was more successful, but it remains unclear to what extent their political connections have contributed to this.

The residents did not initially opt for a litigation strategy and even avoided legal discourse. Instead, they presented their demand for better compensation as a moral claim. By doing so, residents put themselves in a vulnerable position, depending ultimately on political favouritism. Resi-

80 See also Pemerintah Kota Bandung 2004b, a joint research project of the Municipal Research and Development Office (*Kantor Penelitian & Pengembangan*) and a consultancy firm in which the problem of corruption in relation to permits is explicitly acknowledged.

81 Personal communication of members of the Bandung Municipal Council, 20 December 2004.

dents' choice of this approach is understandable, particularly given the level of reputed corruption in the judicial system. There are indications that they were unaware of the full extent of their rights. But the deliberate choice to ally with NGOs that had political connections indicates that residents had little trust in the law and legal institutions.

The residents' lack of trust in the law and legal institutions was soon affirmed. The military are no longer (directly) involved in land clearance, but the police, the public prosecutor, and even the Prosecutor-General proved willing to lend their coercive force to developers. Residents were intimidated by warnings, threats, and orders to report. Some became victims of arrest and prosecution. On the basis of Law No. 51/1960 on the use of land without permission of the right holder, several people were sentenced to fines and imprisonment and their property was destructed. Reports of unlawful acts by the developer and the police were ignored.

Despite these countervailing forces, the resistance garnered by the residents of Ciroyom was relatively successful. Negotiation eventually led to improved compensation and eventually the Paskal Hyper Square project was partly cancelled. Ultimately, compensation still remained below the social and economic value of the land and buildings. As a result, most residents moved away to the outskirts of the city or out of Bandung to their place of origin. It is unclear what are their living conditions, but considering the distance from labour opportunities, it is likely that these conditions have further declined.

A final question that rises is whether Paskal Hyper Square forms a representative case for the practice of commercial land clearance in the Post-New Order for (urban) Indonesia. This is difficult to say; as far as known, no research has been conducted on this topic. However, considering the fact that, as discussed in Chapter 5 and 6, there are regional differences in practices of spatial planning and land clearance by the state, it is likely that this is also the case in relation to commercial land clearance, particularly as far as the role of district/municipal governments in this process is concerned. At the same time, it is likely that despite these regional differences, involuntary removal without due process of law and adequate compensation is still common.

Recently, new legislation has been enacted that may have a positive effect for low-income kampong dwellers who are confronted by developers wishing to clear that land on commercial land clearance. As discussed in Chapter 5, in April 2007 a new Spatial Management Law was enacted. On the basis of Article 73 of this law, officials issuing permits that are not in accordance with spatial plans can now be sentenced to maximum five years imprisonment or fined up to Rp. 500 billion (about US$ 50 million) besides being dishonourably discharged. This stipulation may lead to stricter compliance in the issuance of (site) permits. In addition, the new legislation guaranteeing the right to subsidised legal aid and the establishment of the Task Force for the Eradication of Judicial Mafia, discussed in Chapter 6, may also benefit landholders who wish to seek legal remedies.

Finally, the National Strategy on Access to Justice will lead to further reforms, which may also have an effect on commercial land clearance.

7.6 Conclusion

This chapter has discussed the changing law and practice of commercial urban land clearance in the New Order and the Post-New Order. During the New Order, the legal basis for commercial clearance changed frequently. Basically, however, legislation created a permit system, in which the location permit was central; allowing a developer to start negotiations with landholders in a designated area on the basis of traditional deliberation. After the 1980s, two developments occurred. First, as part of a policy to stimulate oil-independent growth, the New Order regime introduced a series of deregulation policies, which contributed to commercial land development becoming one of the country's prime investment sectors. Second, as part of its policy of 'openness', the regime took measures purportedly to protect landholders. The measures held only a weak imperative, since there was no provision for authorities to impose severe sanctions against companies that failed to meet their obligations to landholders. In practice kampong dwellers were forced by developers, who could generally rely on the government's support, to give up their land for low compensation. Though repression was strong, some kampong dwellers dared to resist the above practices – particularly after 1989, when the period of political openness set in. In doing so, they rarely got support from rights-oriented NGOs and the student movement, which had little interest in commercial clearance of urban kampong land. If NGOs and the student movement happened to have an interest in a case, they often became important intermediaries in translating land claims into legal and political action. Yet, the results of resistance by the urban poor were generally disappointing.

The reforms that were implemented after 1998 were also related to commercial land clearance law. Several circular letters suggested a new stance of the government toward commercial land clearance. They did not, however, ultimately lead to better protection of landholders confronted with developer wishing to clear their land. This is mainly due to the enactment of Regulation of the Head of the NLA No. 2/1999. Apart from positive changes, it again creates an ineffective mechanism to monitor commercial land clearance and enforce related norms. In addition, many landholders cannot benefit from any of the regulation's potentially protective provisions, as it refers to an extensive list of commercial land clearance activities for which no site permit is required. In any event, District-Heads and Mayors, who were required to regulate further details on the location permit procedure, felt free to depart from the regulation's intent.

The Pascal Hyper Square case shows that, just as in case of land clearance by the state, in case of commercial land clearance kampong dwellers still risk involuntary removal without due process of law or proper com-

pensation. Commercial developers particularly appear interested in land that is held informally, such as land alongside railway tracks. They continue to pressure the urban poor to give up their land at low compensation levels. However, kampong dwellers now sometimes succeed in forcing developers to cancel projects or to negotiate higher compensation than during the New Order years. Such compensation still remains below the social and economic value of the land and buildings, which means commercial land clearance has adverse consequences for kampong dwellers in terms of work and income.

Instead of protecting kampong dwellers against the practices of developers, the authorities actually assist them. Because of regional autonomy and, possibly, KKN, they have a clear interest in the success of development projects. Indonesia's new local democracy partly compensates for these conditions. Kampong dwellers dare to resist commercial land clearance through political mobilisation, organising street protests and even using the right to vote to put political pressure on the executive. Kampong dwellers call in party-affiliated legal aid organisations, but legal strategies are avoided. Despite regular countervailing forces, this strategy proves relatively successful.

Meanwhile, new legislation has been enacted that could have a positive impact on commercial land clearance practices. A stipulation in the newly enacted 2007 Spatial Management Law imposes sanctions to officials who issue permits that are not in accordance with spatial plans. This stipulation may lead to stricter compliance in the issuance of (site) permits. In addition, the new legislation guaranteeing the right to subsidised legal aid and, finally, the National Strategy on Access to Justice is expected to lead to further reforms, which may also have a corrective effect on the practice of commercial land clearance.