

# URBAN LAND POLICY FOR INDONESIA: THE NEED FOR REFORM

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## ABSTRACT

*Urban land policy and management in Indonesia are very weak; some problems can be identified, i.e. problems in land tenure system, land registration systems, land delivery and acquisition, land use planning, land taxes, and land ceiling. At the same time, the process of urbanization and urban growth are increasing and the problem of urban land is getting more complex and capable of creating conflicts. Considering the importance of the efficient use of land and its equal distribution for a sustainable development, this paper argues that reformation in land policy and management in Indonesia is needed both at the level of policy guidelines and at the level of implementation.*

## I. INTRODUCTION

As indicated by studies on land use policy in Asian countries, public intervention in the land market has been extremely weak in Indonesia. There is a general reluctance of the Indonesian government to use constitutional power to expropriate urban land for more efficient uses and for more equitable distribution of its benefit (Menezes, 1988). Several studies show that local governments in Indonesia are lack of legal and institutional support to strengthen urban land policy and management in their areas (NUDS, 1985; P4N-UGM, 1993). As the efficient use of land and its equal distribution are the key criteria for sustainable development, it is very important to develop a better urban land policy and management in Indonesia.

The aim of this paper is to present the state of the art of urban land policy and management in Indonesia and to argue that a reform is urgently needed. It indicates several considerations for the reform both on the level of policy guidelines and of implementations. It also proposes two major research themes that are very important for the development and implementation of urban land policy in Indonesia.

This paper is organized into four sections. **First**, the trend and problem of urban growth in Indonesia. This will provide background on the critical issue of urban land in Indonesia. **Second**, the nature, rationales, and forms of urban land policy and management, as discussed in the literatures, are presented, as they will guide to analyze the situation in Indonesia. **Third**, the state of the art of urban land policy and management in Indonesia is described and evaluated. **Finally**, a conclusion is drawn and a research agenda is proposed for the purpose of developing a better urban land policy and management in Indonesia. This paper is developed based on secondary data such as: government laws, regulations, documents and writings on land issues in Indonesia.

## II. URBANIZATION TREND AND URBAN PROBLEM IN INDONESIA

### 2.1 Urbanization Trend in Indonesia

In 1990, though the percentage living in urban areas in Indonesia (31 percent) was considerably below that of developing countries (37 percent), its annual growth (5.4 percent) and absolute number (55.5 million) are phenomenal. It has been pre-

dicted that urban population will be about 76 millions (36 percent) by the year 2000.

From 1990 to 2000, the prediction of urban growth rate continues at 5.4 percent per annum, while the average annual growth rate of the total population is only 1.8 percent. It implies that about two thirds of the total population growth, or around 2.2 millions per year, will accrue to urban area (BPS, 1990).

According to the National Urban Development Strategy (NUDS, 1985), there are 700 cities in Indonesia. These include five big cities with a population of more than 1 million, about 33 middle cities with population from 100,000 to 1 million, and about 662 small cities. According to the National Urban Development Strategy (NUDS, 1985), there are 700 cities with populations from 10,000 to 100,000. But, among those cities, only about 55 cities have a formal status as a municipality. It means that most cities do not have a full governmental body, and are still under the administration of a county.

## 2.1 Urban Problems

While, increasingly, cities are making contributions to national productivity, they also give rise to many economic, socio-political, and environmental problems. Cities in Indonesia are growing organically. They have to face unmanageable problems of job opportunities, social problems, land use conflicts, housing shortage, lack of basic services, and other deteriorations of the urban environment. These are very significant and warrant serious concerns among policy makers and planners. Many studies explain that urbanization trends in developing countries have increasingly put pressures and problems on urban areas. Specifically with respect to Southeast Asian cities, McGee, more than three decades ago, has argued that housing, particularly access to land, has become a crucial problem in urban areas.

In Indonesia, according to Struyk (1990, 27-29) problems on housing is crucial. In his

comprehensive study on housing problem in Indonesia, Struyk predicted that by the year 2002, the average annual housing need in urban areas will be about 1.7 million units. Housing problem is partly caused by land problem. In Indonesia, land is often owned by a quite small group of people and, therefore, low-income people have neither the capital nor access to own land. Consequently, they often occupy public or government land illegally.

Another important urban problem in Indonesia is inefficiency in using land, particularly in the form of haphazard and scattered pattern of urban growth. The weakness of land use control system causes the decreasing of productive agricultural land, while idle lands are increasing within urban areas because of land speculation.

Without appropriate planning and management of urban environment, the rapid growth of urbanization will create unprecedented socio-economic and political problems in Indonesia. According to data from Devas and Rakodi (1993), about 26 percent of urban population in Indonesia are regarded as being below the poverty line.

Data from the past decade reveals that 1,465 hectares of agricultural land in Central Java were lost to rice production, annually. In the Province of Yogyakarta, during 1989-1993, about 341.17 hectares of rice field were converted into urban uses. While in Denpasar, the capital of the Province of Bali, about 120 hectares of productive agricultural land were converted into urban uses per year (Setiawan, 1993). It is important to note that urban problems do not occur only in big or primate cities such as Jakarta, Surabaya, Bandung, but also in middle and small cities. Studies in Denpasar, Yogyakarta, and several middle cities in Central Java show that squatter settlements have existed and tend to increase (Setiawan, 1987, 1994). Such urban problems should be anticipated, particularly as they relate very much to urban land issues.

### III. URBAN LAND POLICY AND MANAGEMENT: LITERATURE REVIEW

#### 3.1 Terminology and Rationale

According to Archer (1994, 47), urban land policy can be defined as government intervention on the ownership and use of urban land for the benefit of both private and public. It encompasses the urban land system created by government for the private sector control of urban land, as well as the current government policies, programs and activities on the development and use of urban land. Although many countries have laws or regulations on land tenure and transfer, urban use, etc., only a few of them have considered and stated urban land policies. In other words, implementing several laws and regulations concerning urban land but, with no clear goals or objectives, according to Archer, are not land policy. Thus, clear-stated goals or objectives in urban land policy are very fundamental. That "policy", according to Ham and Hill (1984), involves a course of action or a web of decisions rather than one decision, urban land policy then can be seen as a various government decisions and measures on the ownership, tenure and transfer system, the allocation and the use of land, aiming to achieve stated goals.

Darin-Drabkin (1977, 181) explained that the explicit goal of land policy is providing the land needed at the right time, location and price. However, since land has other socio-political and environmental dimensions, the goals of land policy explained by Darin-Drabkin seem very pragmatic, functional, and stress more on the efficiency aspect of land. In fact, the social allocation of land to different uses and activities is fundamental in every society. As Doebele (1987) argued, the "equity" aspect of land policy is very important. He considers that it is a task of every society to set a balance between "efficiency" and "equity" in developing land policy or a balance between "social" and "private" control over the land.

What makes land use policy different from other public policies is because of the specific nature of land. Land cannot be produced and replicated and also every parcel of land has its own value. It is very unique compare to other resources, because it is fixed in location, immovable, incapable of expansion of supply. In other words, land is a critical resource, limited in its supply but endless in the variety of its uses. The dilemmatic question concerning land is because it is not only essential for food production but also provides place and space for living in its many needs. Further, beyond its explicit uses, land has a very specific place in society, socially, culturally and religiously. Land, land problems, and land conflicts have historically often proved to be sources of major societal conflicts. The decision in distributing or transferring and using land, therefore, is very crucial as they have very complex and long implications.

However, it is interesting that debates on whether or not land use policy is necessary are continuing. In one side, those who believe in free market, argue that there is no reason for the public sector to intervene in land market. They believe that untrammelled land markets are the best means of allocating land among competing users. On the other side, some argue that in practice, land market is in failure. Thus, where there is an imbalance of land ownership and where land market is imperfect, urban land policy is needed. As documented in many studies, the existing free market of land tends to exclude the poor from access to land, and that the inefficient use of land cause several environmental problems (Doebele, 1987; Menezes, 1988; Archer, 1994). As Lim (1987) argued, there are at least three reasons why public intervention on land market is necessary: (1) land market imperfection and failure; (2) distributional aspects of land ownership; and (3) severe imbalance in land markets. Perhaps one more reason is the reality of inefficient use of land, which then, creates several environmental problems. In other words, the essential justification for

government intervention in urban land issue is to provide an outcome that is satisfactory to society as a whole.

Particularly in developing countries, where the traditional-feudalistic system brings imbalance ownership of land, and where the market power rests in the hands of a few groups, public policy on land is very important. It was brought clearly by the International Conference on Human Settlements in Vancouver in 1976 that in order for land to be used for the interests of society as a whole, the conference recommended that action should be done by government in relation to land-resource management, control of land-use changes, recapturing plus value, public ownership, patterns of ownership, increase in usable land and information needs (UNCHS, 1984). As argued by Devas and Rakodi (1993), the question is not whether the state should intervene, but rather to what extent it should intervene, and what form that intervention should take.

### **3.2 Some Considerations for Formulating Urban Land Policy**

As land is a complex and unique issue, some important considerations are prerequisite before formulating, implementing, and evaluating urban land policy. The first is that urban land policy is a part of urban development policy and must be viewed within the framework of general development policy. It can be said that urban land policy might be seen as one of the means to achieve the goals of the urban development policy (Darin-Drabkin, 1977:182-193). Because urban land policy is one of the means to achieve the goals of urban development policies, the formulation and implementation of land policy are influenced by the social, economic and political structure of the city and the country.

The second important consideration is that urban land use policy should be distinguished from rural land policy for several reasons. Archer (1994, 49) mentions that

urban land policy has several characteristics that need special attention. These characteristics range from the key importance of location to the perennial pressure towards excessive land speculation. Whereas the best use of rural land depends mainly on the fertility of the land and on the product prices, the best use of each urban land depends on many factors such as its accessibility, infrastructure, and several socio-economic and political situation of the city. Archer argues that although urban land is essentially different from rural land, many governments have not properly recognized the differences, so that rural land policy measures often inappropriately applied to urban land.

Lastly, there is an increasing understanding that "policy" could not be separated entirely from implementation. Devas and Rakodi (1993) state that policy is essentially the process by which decisions are made about the objectives to be pursued and the actions to be taken in order to realize those objectives. Thus, any policy should have not only goals or objectives but also means (tools, instruments) on how the goals and objectives are to be realized. Here, the term management is commonly used interchangeably with the term policy and also planning to stress the important of means or actions employed in achieving the objectives.

### **3.3 Instruments/Tools in Urban Land Management**

A policy is a course of decisions and actions rather than one decision and action, therefore, urban land policy consists of various means or instruments. The day-to-day practice of these means can be said as urban land management. Lim (1987) categorized land management into two broad categories, "explicit" and "implicit" land management (diagram 1). The explicit land management is a set of instrument deliberately designed to achieve certain goals of land use. Whereas the implicit land management is a number of public policies not explicitly directed toward the goals of

land use but lead to an inevitable influence over land use decisions.

Under these two broad categories, depending on the level and direction of policy intervention, there are three basic approaches of public intervention into land market: (1) market incentives; (2) regulatory measures; and (3) direct public ownership. As can be seen in diagram 1, the matrix relates explicit and implicit land policies to levels of intervention - market incentives, regulations, and public ownership. There are at least nineteen options/instruments/tools that can be used in land management.

What is very important from the diagram is that zoning, as it is perceived by government officials in developing countries, is not the only instrument on land use policy but there is a wide range of options/instruments. All of these instruments, if conducted comprehensively, might achieve the goals or objectives of urban land policy. The framework, as Lim also suggested, can be used to empirically study the nature and effectiveness of urban land use policies.

### 3.1 Ethical Issues in Land Policy

Since land is very fundamental in urban and national development, decision about land

use raises fundamental and complex moral and ethical issues. Yet the existing normative framework traditionally used to guide and evaluate such land policy, according to Beatley (1991), is narrowly economic and utilitarian. The formulation, implementation and evaluation of land policy are often discussed entirely in technical, legal or political terms. Beatley furthermore suggested that a comprehensive theory and evaluation on land use policy must acknowledge a wide range of ethical obligations. He proposed several ethical principles to guide and evaluate land policy. Three of them seem to be very important for developing countries.

**First**, land use policy is clearly unethical when it serves to worsen the condition of the needy. It, therefore, must strive to promote the interests of the least-advantaged society. Public decisions on land have tremendous impact on the welfare and life prospects of individuals. **Second**, land policy must protect the minimum environment and other rights due to every individual irrespective of income or social position. **Third**, land policy acknowledges important obligation to prosperity and to people and generation yet to come

**Diagram 1.**  
**Classification of Land Policy Measures/Instruments**

Level of Intervention			
Explicitness of land use goals	Market incentives	Regulatory measure	Direct Ownership
Explicit Land Policy	Land value increment tax Property Tax  Housing subsidy	Zoning  Subdivision control  Green belts Maximum land holding Licensing of developers and Intermediaries	Public land banking  Public industrial estate Land readjustment Nationalization of land
Implicit Land Policy	Investment tax credit Tax benefit for export Tax benefit for foreign investment	Import restriction Anti-trust measures Free export zone	Military base

Source: Gill-Chin Lim, 1987

#### IV. CRITICAL OVERVIEW ON URBAN LAND POLICY AND MANAGEMENT IN INDONESIA

##### 4.1 General Background

Retracing its historical background can significantly enhance an understanding of urban land policy in Indonesia. According to MacAndrews (1986), Indonesia has not in the past seen any form of comprehensive national land policy. He classified land policy in Indonesia into four periods: the colonial period, the post independence period, the Basic Agrarian Law of 1960 period, and the New Order period. Although in the past some royals have implemented their own land law through customary law, the initial steps toward evolving a specific policy to deal with land problems in Indonesia were taken in the period of colonial rule from the seventeenth century to 1947. In this period there were two distinct legal systems of land laws, for Indonesia and for foreigners. For the former, *adat* or customary law was followed and holdings were not surveyed, registered, or titled. For the latter, a western civil law procedure was employed in which lands were surveyed, registered, and titled.

In post-independence period from 1947 to 1960 there were two main streams in viewing land law. One stream preferred a total reconstruction of land law, and emphasized land reform and land redistribution. The second stream preferred a continuation of the previous dual system, and emphasized land tenure arrangements. A compromise resulted in the Basic Agrarian Law of 1960 (The BAL'60). The BAL'60 introduced a fundamental concept of land based on the basic constitution of Indonesia, that land has a social function and that all matters are controlled by the state of Indonesia as the representative authority of the people of Indonesia. This basic concept was then elaborated by detailed principles and provisions based on the modern land law system. Two important elements in the BAL are the land reform system, and types of land rights.

Beginning in the middle of 1960's, with the coming of the New Order government, priority was given to economic development. Therefore, land reform and land redistribution that had been an important part of government policy in the early 1960s was neglected. Thus, the focus of land policy in the 1980s moved from land redistribution to the need to solve land problems that was hindering the government development program. As Henssen (1989) pointed out, while dealing with mounting land problems posed by rapid development programs, improvements in land policy in Indonesia, especially for urban areas, tended to be ad hoc. The effect is that now land policy and management in facing a serious problem in Indonesia.

##### 4.2 Several Problems of Land Management in Indonesia

###### Land Tenure System

As stated above, before the BAL'60, there were two land tenure system in Indonesia: the customary system and the western system. The BAL changed this dual system, and attempted to combine them into one set of land tenure arrangements as stated in article 2. There are two general types of land tenure: the primary and the secondary rights. Five types of primary rights can be registered and used for security (credit loan). They are (1) right of ownership, (2) right of building, (3) right of use, (4) right of management, and (5) right of exploitation. The secondary right has four types recognized by the government, but cannot be used for security. They are (1) right of lease, (2) right of share cropping, (3) right of lodging, and (4) right of land pledge.

These variety of rights show the complex system of ownership, which logically without an adequate land administration system (as happened in Indonesia) can create many land disputes. However, the basic ideology of land ownership in Indonesia has been stated in Indonesian Constitution, that control of land is the responsibility of the go-



building tax." This tax was to be an important source of government revenue especially after the oil price decreased in the 1980s. This tax is the central government's duty and collected by the Ministry of Finance. The local government is a passive recipient of about 65 percent of the total tax collected. While land tax is generally accepted as an effective tool in land management, it was not designed for this purpose in Indonesia. Its practice has some weaknesses. First, lack of land administration system, combined with confusions in land ownership, makes it difficult to cover all tax objects. In 1986 for example, not more than 50 percent of total tax objects in Indonesia were documented (Henssen, 1990). Second, it is not accompanied by a reliable system of property assessment. In Denpasar, for example, during the past five years, this tax has comprised an increasing share of local government revenue. Still, in 1990, this tax comprised only about 10 percent of the total local revenue. It is unfortunate that, with the trend toward using property rights for economic and speculative purposes, this tax does not function as a mechanism for managing urban development.

#### Land ceiling

As mentioned earlier, the focus of the BAL '60 was land redistribution particularly in rural areas, so it does regulate the maximum and minimum areas of limitations on agricultural land. Article 7 stated that "in order not to harm the public interest, excessive ownership and control of land are not permitted." However, there is no such regulation for urban land. Today, there are many discussions on this issue in Indonesia, but there is no solid perception on that. It seems that the choices are between the explicit re-gulation on the maximum of urban land holding as employed in some socialist countries and the progressive urban land tax as employed in capitalist countries. This issue should be critically examined, since some documents indicate the accumulation of urban land on very few people (Dorleans, 1993; Setiawan, 1994).

### **4.3 Institutional Problems**

Institutionally, land management in Indonesia is the responsibility of the national land agency (NLA). NLA operates at national, provincial, and local levels and can be regarded as "backbone" of land management. It governs all administrative aspects of land: mapping, documentation, registration, transfer, and acquisition. In practice, however, since the responsibility of urban management is under the local government, the day-to-day practice of urban land management in Indonesia is ambiguous. As land management is a part of urban management in general, an agency responsible for land management separates from local government obviously creates problems.

Also important in this context is the trend toward decentralization process undertaking in Indonesia now. There is ongoing debate whether land use is the responsibility of the NLA or the local government. Theoretically, coordination could be made: the NLA responsible for the administrative aspects of land and the local government responsible for the uses of land. But, since the NLA at the local level is directly under the NLA at the provincial and national levels, an effective coordination seems to be very difficult to achieve. Thus, there is a need for clarifying this ambiguous system of land management, with a focus on fostering the role of local government on land management as a part of urban management.

### **4.4 Urban Land Policy and Management in Indonesia**

While dealing with mounting land problems posed by rapid urban development, there does not exist a clear-stated urban land policy in Indonesia. Although several instruments on urban land policy have been employed at the local level, unfortunately they tended to be ad hoc and with no clear objectives or goals. There are no general urban land policy guidelines that could be elaborated further by local government.



Several land use instruments that have been implemented at the local level tend not to correlate each other. They are implemented by different government agencies, and many of them with no clear legal basis. At national level, there was no attempt to revise or improve the BAL, which was not designed for a complex problem of urban land. As Indonesia is transforming into urban environment in the next decades, the national government should recognize the importance of urban land reform.

Urban land reform can be defined as government action for a major change in the ownership of urban land and for the rights (and benefits) of private land-owner. (Archer, 1994) The need for urban land reform is becoming increasingly recognized in the developing countries. Starting by the recognition of access to land for the poor in the Habitat conference, in Vancouver 1976, urban land policy and management practices were promoted since then. However, effective program reforms were scarcely feasible in developing countries. In some countries, several number of land reform were carried out under the auspices of the Word Bank but, unfortunately not in Indonesia.

## **V. CONCLUSION: URBAN LAND REFORM FOR INDONESIA**

### **5.1 The Importance and Objectives of Urban Land Reform for Indonesia**

The discussion above has justified that a reform is needed for urban land policy and management in Indonesia. Such reform is urgently needed in order to achieve at least four main objectives: (1) to make land available for human settlements, particularly housing and basic infrastructure in response to the demand for better quality of life; (2) to ensure the optimum use of urban land for economic development; (3) to protect fertile and productive land from uncontrolled urban expansion in order to maintain self-reliance in food production; (4) to minimize possible social and political conflicts related to land.

Considering the stage of the development, and the socio-economic condition in Indonesia today, urban land reform in Indonesia should be formulated and implemented with regard to several critical issues. **First**, with the trend of widening the gap between the have and the have-nots, urban land policy must be developed to ensure more distribution of land. It means that urban land policy must become an effective means to eradicate the monopoly of land, and land speculation. **Second**, with the crucial role of food security for millions of Indonesians, urban land policy must be formulated with a focus on protecting productive agricultural land. With this perspective, urban land policy should be formulated as a part of a comprehensive national land policy.

**Third**, it is important to recognize the continuing role of land in the socio-cultural and political framework of Indonesian society. Conflicts over land historically has given rise to political unrest, and that possibly remain alive today. The existence of the country's numerous ethnic groups with their own tradition laws (even in the urban areas) should be flexibly incorporated into urban land policy. In this case, national urban land policy should be flexible enough that gives room for local government to adjust with the local situation.

**Fourth**, the fact that the future economic and political situation in any country is unpredictable now, particularly under the dynamic globalization around the world, flexibility of any public policy included land policy is very important. Thus for Indonesia, especially in the transformation process toward a more democratic and better society, the flexibility in national urban land is needed so that it can strategically adjust the changing socio-economic and political structure of the country. **Lastly**, the fact that land is a sensitive issue and that Indonesian society is not a homogeneous one, it is very important that the process of formulating national land policy, as far as possible, should be fair and demo-

land in Indonesia could be proposed. First, research on how land and property are themselves "produced" and consumed enters into the processes of economic production and consumption. This research is to gain knowledge of the processes of land and property development. Second, research that focuses on the role of the state in shaping the economic and political organizations of land development and on the impact of the state intervention on land market.

Understanding these processes and the impact of government's intervention on them, according to Healey and Barret (1990), is a necessary task, both to assist in the practical activities of urban management and property development, and to develop a critical capacity to evaluate such practice. For urban and regional planners, this lack of capacity to address the role of the state in land development and land conflicts is a major problem. The effect of this situation has been to limit what planners and policy makers have been able to do their role in the process of social and economic change through physical development. (Mattingly, 1991).

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