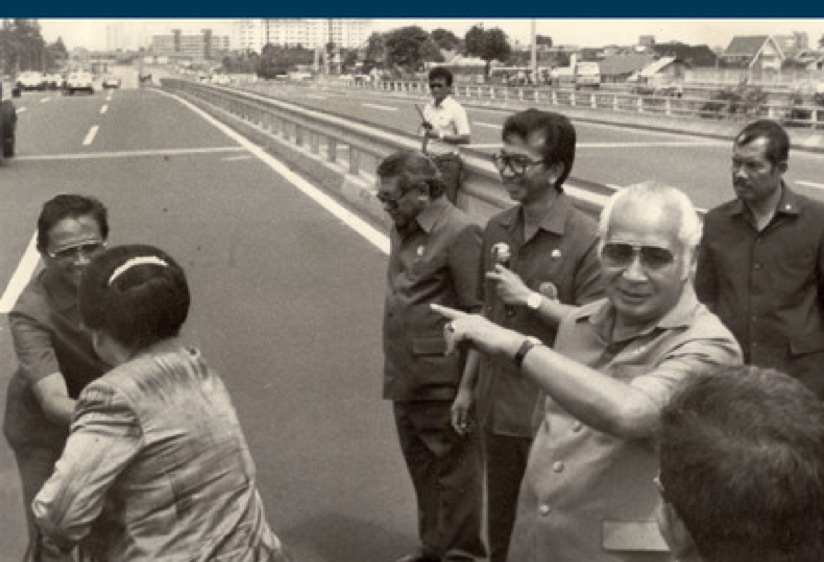
INDONESIA'S Changing Political Economy

Governing the Roads



JAMIE S. DAVIDSON

Indonesia's Changing Political Economy

Indonesia is Southeast Asia's largest economy and freest democracy, yet vested interests and local politics serve as formidable obstacles to infrastructure reform. In this critical analysis of the politics inhibiting infrastructure investment, Jamie S. Davidson utilizes evidence from his research, press reports, and rarely used consultancy studies to challenge mainstream explanations for low investment rates and the sluggish adoption of liberalizing reforms. He argues that obstacles have less to do with weak formal institutions and low fiscal capacities of the state than with entrenched rent-seeking interests, misaligned central–local government relations, and state–society struggles over land. Using a political-sociological approach, Davidson demonstrates that getting the politics right matters as much as getting the prices right or putting the proper institutional safeguards in place for infrastructure development. This innovative account and its conclusions will be of interest to students and scholars of Southeast Asia and policymakers for infrastructure investment and economic growth.

JAMIE S. DAVIDSON received his Ph.D. in political science from the University of Washington and is currently Associate Professor of Political Science at the National University of Singapore. His previous books include *From Rebellion to Riots: Collective Violence on Indonesian Borneo* (2008) and *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism* (co-edited with David Henley, 2007).

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Jamie S. Davidson
National University of Singapore

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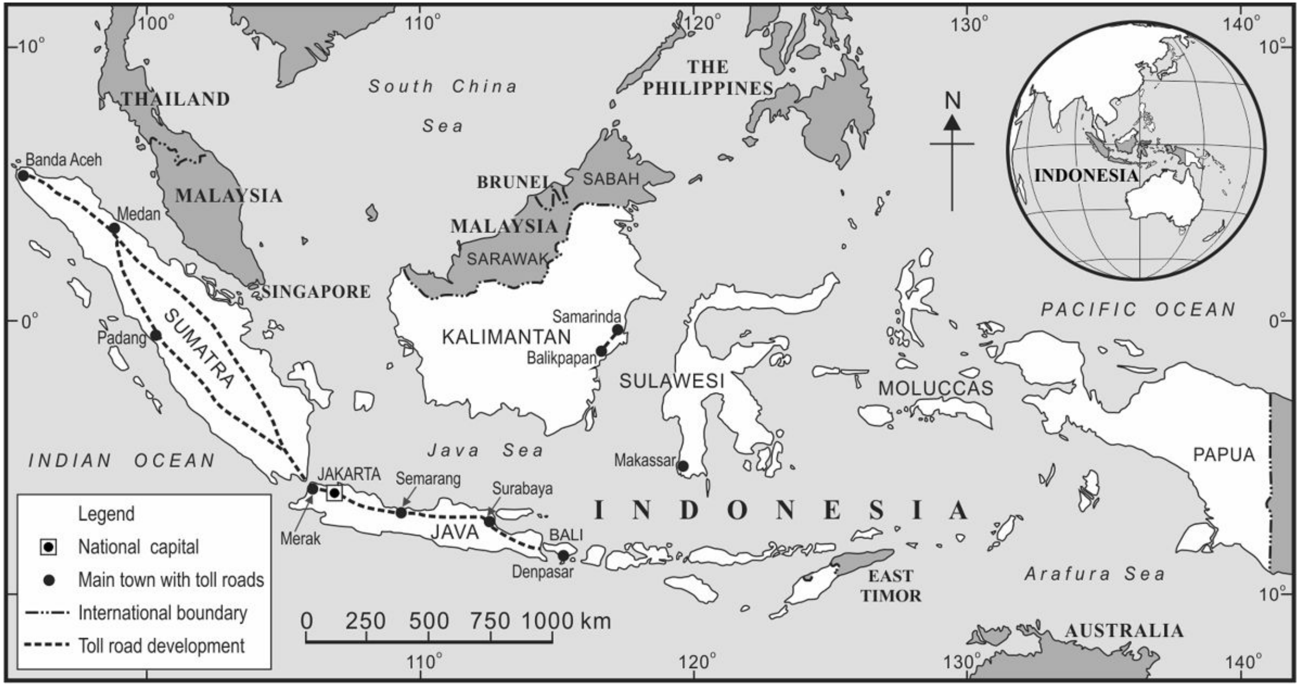
For Sam, my biker,
and
Amihan, my ballerina,
with boundless love and affection



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Acknowledgments

I am the first to admit that I benefited from the lengthy delays behind the completion of Indonesia's Trans-Java Expressway. While they scuttled plans for opening the book with an ethnographic account of traveling the entire length of the new expressway, the delays facilitated a leisurely pace of writing the manuscript, not unlike constructing the expressway itself.

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Because of developments in my personal life (touched on below), I did not present conference papers based on the material contained in this book as widely as I would have anticipated, but papers were delivered (admittedly some time ago) in the US (at the Association of Asian Studies conference in Chicago and UC-Berkeley) and Australia (at the Indonesian Council Open Conference at Monash University). I thank participants for their useful suggestions. Billy Nessen (again) and Jeremy Gross attentively and skillfully edited the manuscript. Lee Li Keng (again) expertly prepared the book's maps. I owe the book's subtitle to Paul Hutchcroft. Reviewers for Cambridge University Press, later revealed to be John Sidel and Bill Liddle, read the manuscript with prodigious attention to empirical detail and conceptual clarity. The book only works (to the extent that it does) because of their input. I thank them profusely. Fleur Jones, Chloé Harries, and Puviarassy Kalieperumal guided the manuscript through the publication phase with aplomb.

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Portions of this book draw on material previously published as "How to Harness the Positive Potential of KKN: Explaining Variation in the Private Sector Provision of Public Goods in Indonesia," *Journal of Development Studies* 46 (2010): 1729–48 and "Driving Growth: Regulatory Reform and Expressways in Indonesia," *Regulation and Governance* 4 (2010): 465–84. I thank the editors of these journals for granting me permission to use this material here. In this vein, I am not only appreciative of the reviewers of these journals for endorsing my articles for publication but also tip my cap to those who rejected submissions elsewhere. Their criticisms shed instructive light on the project's limitations and provided a guide for improvement. All the people in Indonesia (and elsewhere) who graciously took time from their busy schedules to discuss with me all sorts of topics related to this project deserve a heartfelt thanks (many are named in the book's Appendix). I wish Pak Sumaryanto Widayatin a full and speedy recovery, and acknowledge the heroic efforts of Pak Wawan Cholid of the CMNP toll-road corporation who faithfully uploaded daily press reports on Indonesia's toll-road sector to the company's website. I can't imagine where this project would be without these two individuals.

My love for and deep admiration of the four people to whom I dedicated my first book remains steadfast. I still miss Dan terribly, my parents continue to be absolute bedrocks of support, and Portia remains a stunningly wonderful and gracious life partner. The great transformation, of course, has been the arrival of our beloved twins, Amihan and Samuel, which happened as this project took shape. Raising and watching them transform into real little, delightful people, stickering, drawing, visiting zoos, aquariums, bird parks, and grandma and grandpa's and *lola*'s houses, and reading and answering incessant questions about princesses, superheroes, dinosaurs, and all sorts of animals and other characters has enriched this work, giving it meaning in ways that I am hapless to describe. For this and more, I lovingly dedicate this book to them.

Singapore
August 2014

Note on currency and lengths

For the period that this book covers, roughly the mid-1960s to 2014, the value of the Indonesian currency (*rupiah*, Rp.) relative to the US dollar has varied considerably. I have striven to use its relative value at the time pertinent to the discussion in the text. For historical exchange rates, I relied on Hamilton-Hart's (2002) useful Appendix. For more contemporary rates, I used such websites as oanda.com and xe.com.

Regarding the distances of toll roads, turnpikes, sections, links, expressways, and similar structures referred to in this book, a word of caution is in order. The writing of this book would have been far easier if all sources agreed on the same length for each road, but they do not. Part of the problem is that some roads get extended over time, so newer sources clash with older ones. Another is that some sources take into account access roads, while others do not. Nor can we discount faulty reporting. Despite my best efforts, all lengths of roads reported in this book should be taken with a grain of salt.

Abbreviations and glossary

ABRI	Angkatan Bersenjata Republik Indonesia (Indonesian Armed Forces)
ADB	Asian Development Bank
ATI	Asosiasi Jalan Tol Indonesia (Indonesian Toll-Road Operators Association)
BAL	Basic Agrarian Law
BCA	Bank Central Asia
BLU	Badan Layanan Umum (Land Acquisition Funds; literally, General Service Board)
BNI	Bank Nasional Indonesia (Indonesian National Bank)
BOT	build–operate–transfer
BPJT	Badan Pengatur Jalan Tol (Toll-Road Regulatory Agency)
BPMigas	Badan Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi(Upstream Oil and Gas Regulatory Agency)
BPN	Badan Pertanahan Nasional (National Land Agency)
BRI	Bank Rakyat Indonesia (Indonesian Peoples' Bank)
BTR	Bakrie Toll Road
BUMD	Badan Umum Milik Daerah (Regional Government Owned Enterprise)
bupati	district executive
BUS	Bhaskara Utama Sedaya (a Trans-Java Expressway consortium)
CBMP	Citra Bhakti Margatama Persada (a former JORR concessionaire)
CGMN	Citra Ganesha Marga Nusantara (former concessionaire of the Cipularang Turnpike)
Cipularang	Cikampek-Purwakarta-Padalarang (Turnpike)
CLP	Citra Lamtorogung Persada (Tutut's conglomerate)
CMNP	Citra Marga Nusaphala Persada (CLP's toll-road unit)

CMSP	Citra Mataram Satriamarga Persada (a former JORR concessionaire)
CPI	consumer price index
DRB-Hicom	Diversified Resources Berhad-Heavy Industries Corporation Holdings Berhad
FKJT	Forum Komunikasi Jalan Tol (Toll-Road Communication Forum)
FKPPPJT	Forum Komunikasi Penandatangan Perjanjian Pengusahaan Jalan Tol (Communication Forum of Toll-Road Agreement Signatories)
GDP	gross domestic product
Golkar	Golongan Karya
IBRA	Indonesian Banking Restructuring Agency
IFI	international financial institutions
IGGI	Intergovernmental Group on Indonesia
IMF	International Monetary Fund
IMI	Infrastructure Management International
IPO	initial public offering
IRA	Independent Regulatory Agency
Jagorawi	Jakarta-Bogor-Ciawi (Tollway)
JARNS	Java Arterial Road Network Study
JICA	Japanese International Cooperation Agency
JIRR	Jakarta Inner Ring Road
JLJ	Jalantol Lingkar Jakarta (a JORR concessionaire)
JORR	Jakarta Outer Ring Road
JTD	Jakarta Toll-Road Development
Kadin	Kamar Dagang Indonesia (Indonesian Chamber of Commerce and Industry)
KKN	Korupsi, kolusi, nepotisme (Corruption, collusion, nepotism)
KKSK	Komite Kebijakan Sektor Keuangan (Committee on Fiscal Policy Sector)
Kostrad	Komando Cadangan Strategis Angkatan Darat (Army Strategic Reserve Command)
KSI	Karsa Semesta Indah (a former Trans-Java Expressway concessionaire)
LMS	Lintas Marga Sedaya (a Trans-Java Expressway concessionaire)
Malari	*Malapetaka Januari* (the January Disaster; 1974 Jakarta riots)

MCB	Mataram Citra Binangun (a former JORR concessionaire)
MMS	Marga Mandala Sakti (Tommy Soeharto's former toll-road corporation)
MNA	Marga Nujyasumo Agung (a Trans-Java Expressway concessonaire)
MNB	Marga Nurindo Bhakti (a former JORR concessionaire)
MNC	Media Nusantara Citra (a media holding company of Hary Tanosoedibjo)
MoU	Memorandum of Understanding
MP3EI	*Masterplan* Percepatan dan Perluasan Pembangunan Ekonomi Indonesia (Master Plan for the Acceleration and Expansion of Economic Development in Indonesia)
musyarawah	(collaborative) deliberation
NGO	non-governmental organization
NIE	New Institutional Economics
NIMBY	not in my backyard
NJOP	*Nilai Jual Obyek Pajak* (sale's value as a tax object)
OECD	Organization of European Cooperation and Development
PAN	Partai Amanat Nasional (National Mandate Party)
pansus	*panitia khusus* (inter-commission [parliamentary] committee)
PD	Partai Demokrat (Democrat Party)
PDI-P	Partai Demokrat Indonesia-Perjuangan (Indonesian Democratic Party of Struggle)
PKB	Partai Kebangkitan Bangsa (National Awakening Party)
PKS	Partai Keadilan Sejahtera (Justice and Welfare Party)
PLUS	Projek Lebuhraya Utara-Selatan (North-South Expressway Project)
PPJT	Perjanjian Pengusahaan Jalan Tol (toll-road contract)
PPP	public–private partnership
pribumi	native, indigenous, non-Chinese
PT	Perusahaan Terbatas (Limited Corporation)
PU	Pekerjaan Umum (Public Works)
P2T	Panitia Pengadaan Tanah (Land Purchasing Committee)
Rp.	*rupiah* (the Indonesian currency)

RTRW	Rencana Tata Ruang Wilayah (Regional Spatial Planning)
SMJ	Sumber Mitra Jaya (a former Trans-Java Expressway concessionaire)
SMR	Semesta Marga Raya (Bakrie's former Trans-Java Expressway consortium)
SOE	state-owned enterprise
SPJT	Sarana Pembagunan Jawa Tengah (a holding company of the Central Java provincial government)
SPV	special purpose vehicle
Tipikor	Pengadilan Khusus Tindak Pidana Korupsi (Special Corruption Court)
TMJ	Trans Marga Jateng (a Trans-Java Expressway concessionaire)
TPT	Tim Pengadaan Tanah (Land Acquisition Team)
UEM	United Engineers Malaysia
UK	United Kingdom
undang-undang	parliamentary law
US	United States
USAID	United States Agency for International Development
YDPK	Yayasan Dharma Putra Kostrad (Foundation of the Sons of the Army Strategic Reserve Command)

Introduction

Infrastructure as a problem

In early 2005, ninety days into his first term, Indonesia's president, Susilo Bambang Yudhoyono, hosted an infrastructure summit at a premier hotel in Jakarta, the nation's capital. The year before, the World Bank had declared an end to the Indonesian financial crisis that, beginning in 1997, was so severe that it not only wiped out much of the capital accumulation and poverty alleviation achieved under the New Order regime (1966–98), it also helped to sweep the regime's strongman, Soeharto, from power in 1998 after thirty-two years of authoritarian rule. Six years later, in 2004, the Bank's report on the state of the Indonesian economy noted, "Indonesia is turning a corner, from crisis management towards growth. For the first time, after the crisis, Indonesia is able to focus on longer-term development policies. Reversing the trend of deteriorating infrastructure is one of the top priorities."[1] More than 500 representatives of domestic and international capital attended Yudhoyono's summit, eager to learn about the projects on offer and what incentives the government was providing. In his speech, the vice president of the World Bank for East Asia and the Pacific referred to the summit as an "unusual opportunity to help this new Government build a new Indonesia, an Indonesia which fulfills the national hopes and aspirations of all Indonesian people."[2]

Clearly, it was believed that a rapid expansion of the country's toll-road network was key to achieving this lofty goal. The thirty-eight expressways being offered for tender with a total investment value of US$9.4 billion were by a large measure higher than any other infrastructure project category.[3] Investors were expected to bid on and

[1] World Bank 2004, p. 1. See also Shirashi (2006, pp. 42–45). [2] Kassum 2005.

[3] The next highest number being for water supply (twenty-four), but in terms of capital value, it was for electricity generation at US$5.9 billion (PT Data Consult 2005). In the literature, "expressway" connotes a limited-access, high-grade highway that is tolled so is interchangeable with tollways and toll roads. "Highway" is ambiguous, "freeway" less so.

build these projects. After all, Indonesia had some experience in developing tollways. In the 1970s and 1980s, the state toll-road corporation, Jasa Marga, had built a number of relatively short toll roads in the greater Jakarta area and selected major cities, including Semarang, Surabaya, and Medan. By the late 1980s, private investors were coming on board. However, Soeharto's children, notably his eldest daughter, Siti Hardiyanti Rukmana (popularly known as Tutut), dominated the field. Endowed with generous funding from state banks, her company helped to complete the incredibly profitable Jakarta Inner Ring Road (JIRR). Nevertheless, the devastation of the 1997–98 Asian financial crisis scuttled the government's plan to expand nationally the toll-road network in which private domestic capital, in some cases in partnership with foreign investors, was expected to play a leading role.[4]

In addition to Indonesia's "turning of the corner" financially, several factors prompted the pomp-and-circumstance of Yudhoyono's 2005 Infrastructure Summit. The country's physical infrastructure was a wreck.[5] Under Soeharto's New Order regime, high rates of fixed capital investment were crucial to support Indonesia's average annual growth rate of 7 per cent. Improvements to the country's infrastructure, mostly financed by the state, were so profound that two scholars described them as a "quiet revolution." For example, from 1967 to 1985, the length of roads increased roughly two-and-a-half times, and the number of roads deemed to be in "good" condition rose about sixfold.[6] But since the Asian financial crisis, low rates of investment had bedeviled Indonesia. Not until 2005 did foreign direct investment flows into Indonesia return to positive levels; this was longer than any other crisis-affected country.[7] And not until 2009 did relative levels of investment surpass the levels achieved prior to the crisis.[8] Yudhoyono and his advisors could not help but be aware of the effect that the dangerous decline in private and public investment was having on the country's infrastructure. The World Bank noted that in 1996 Indonesia outranked Thailand, China, and Sri Lanka in physical infrastructure. By 2002, all three countries surpassed Indonesia.[9] In global surveys, Indonesia's

4 For a comprehensive list, see "Jalan Tol Kian Panjang, Perlu Transparansi," *Suara Pembaruan*, February 24, 1997 (library.ohiou.edu/indopubs; last accessed March 19, 2014).

5 The World Bank identifies physical infrastructure to include the sectors: power (or related energy sources); transport (airports, ports, roads, and railways); water, sanitation, and irrigation; and telecommunications (World Bank 1994, p. 2 [Box 1]).

6 Dick and Forbes 1992, p. 267.

7 Aswichayono, Hill, and Narjoko 2010, p. 1087; OECD 2010, p. 46, Figure 1.2.

8 It reached 31.1 percent of GDP, surpassing the precrisis mark of 30 percent.

9 World Bank 2005, p. 74.

ranking in infrastructure quality fell from 46 out of 142 countries in 2001 to 78 in 2012.[10]

How much investment in infrastructure, then, does Indonesia need? To achieve a growth rate of 7 per cent and above, the government would need to spend an estimated 5 per cent of its gross domestic product (GDP) on infrastructure, based on a benchmark established by international financial institutions (IFIs) for developing countries. However, the Indonesian government had budgeted only around 3 per cent for 2000, with the level of investment improving to just above 4 per cent in 2009. During this period, the figures for Thailand, Vietnam, and China were each likely over 7 per cent.[11] In 2011, the head of Indonesia's Coordinating Board for Investment estimated US$200 billion in infrastructure spending would be required over the next five years to achieve 7 per cent growth. But the government seemed only capable of supplying about one-third of that.[12] So, even as post-Soeharto administrations steered a course of fiscal responsibility, they had already begun to hint that outside help was needed – and was even expected – to close this yawning investment gap, as exemplified by the 2005 Infrastructure Summit. The buzz-acronym in Indonesia, as elsewhere around the world, was PPP – public–private partnership. PPPs promise private investors special benefits and cost advantages; in return, the government gets infrastructure developed with a lower burden on its own finances.[13]

Despite the pressing problem of an investment shortfall and a decline in the infrastructure stock, optimism in Yudhoyono's administration was high. State officials were confident they could capitalize financially on the former army general's 2004 election, the first direct election of an Indonesian president. In October 2004, a month following that historic election, Yudhoyono's predecessor, Megawati Soekarnoputri, signed into law a new road bill that was broadly in line with the pro-market and pro-foreign direct investment policy orthodoxy "best practices" of the World Bank and International Monetary Fund (IMF). Prior to this, Megawati had tried to jump-start private investment in toll roads. Domestic and foreign investors, who frown upon their competitor also acting as their regulator, showed no interest in putting money into projects in the absence of long-sought-after reform of the dual developer-regulator functions of Jasa Marga, as practiced under the

[10] Schwab 2012, p. 16, Table 5. The rankings are surveys of perception, not physical measurement.
[11] World Bank 2012, p. 15. [12] Dachlan 2011.
[13] I follow Delmon's definition of PPP as "in its most inclusive form, to mean any contractual or legal relationship between public and private entities aimed to improving and/or extending infrastructure services, but excluding public works contracts" (2011, p. 2).

New Order. At the end of her term, Megawati therefore put through a law stripping Jasa Marga of its regulatory function, establishing a separate toll-road regulatory agency. (One might argue that Megawati's administration learned the hard way to avoid the mistakes of the expressways privatization programs in Latin America. There, the "privatize now, regulate later" approach led to distortions of and disappointments with these projects.)[14] Officials were thus fitting themselves to a model of regulatory capitalism that the IMF had imposed on Indonesia after the 1997–98 crisis as part of its attempt to restructure the country's economy in exchange for multi-billion dollar loans.

A tangible expression of the type of regulatory capitalism the IMF had in mind was the establishment of independent regulatory agencies (IRAs). Indeed, starting in 1998, the IMF insisted that the Indonesian government form IRAs in a number of key sectors.[15] According to the Organization for Economic Cooperation and Development (OECD), IRAs help to depoliticize economic management. As particular governmental powers are transferred to regulatory bodies – staffed by non-elected technocrats rather than politicians or political appointees – those powers become protected (at least in theory) from political pressure. The credibility of government commitment to policies is thereby enhanced.

This was what was hoped for in Indonesia. In so-called difficult environments where rule of law institutions are weak (for instance, compromised or politicized judiciaries that cannot be relied upon to enforce property rights and contracts impartially), IRAs are also expected to have a wider institutional role. They are seen as a means to help instill a rule-based "good governance" program that enhances accountability, transparency, and predictability in economic policymaking.[16] In short, for good or ill, Indonesia was being dragged into the era of regulatory capitalism.[17]

In addition to the establishment of a toll-road IRA, Megawati's 2004 Road Act contained an automatic toll-rate-adjustment mechanism, something that foreign and domestic investors in Indonesia, including Jasa Marga, had long sought. The law mandated raising toll rates every two years based on inflation. For license-holders and operators, this was a leap forward in transparency and predictability from the way rates and their increases were determined under the New Order, which was on the whims of President Soeharto. Investors and market liberalizers also appreciated that these reforms were introduced through a parliamentary law of higher

[14] Engel *et al.* 2003.
[15] They included the Upstream Oil and Gas Regulatory Agency and the Business Competition Commission (Pangestu *et al.* 2002; Davis 2008).
[16] Jordana and Levi-Faur 2004; Levi-Faur 2005.
[17] Braithwaite 2008.

legal standing than a presidential decree. In a democracy, in theory, acts of parliament are harder to change or discard than a presidential order. The passage of this law was expected to impart greater predictability and certainty to Indonesia's tollway sector, thereby inspiring greater investor confidence and resulting in the construction of new expressways held by private concessionaires.

However, this did not happen. Yudhoyono's 2005 Infrastructure Summit flopped. As of 2010, not a single project on offer at the extravaganza was in operation.[18] By mid-2014, not one of the thirty-eight tollway proposals had been completed.

This book details the mighty struggles of a democratic yet weakened central government to implement regulatory reforms. It explains the summit's failures despite the efforts of state officials to lay the foundations of a reasonable regulatory framework. It highlights the obstacles that the government – in a country with a deeply authoritarian history – has faced in trying to acquire the land needed for tollway construction from angry citizens. This contextual study examines the trail of broken promises to invest in turnpikes made by license-holders. Some concessionaires have desperately clung to their licenses; others have obtained sizable rents by reselling their concessions. This book documents government infighting over the role of the private sector in the economy and over how much and by what means public funds would contribute to the building of new expressways. It shows how the courts failed to mediate between competing public and private interests. It also recounts the threats from an increasingly populist parliament to tamper with the 2004 Road Act, including its key provision, the automatic tariff adjustment, over increasing frustration with the poor operational standards of the country's existing expressways, particularly in the greater Jakarta area.

Empirically, this monograph aims to explain the steady yet exasperatingly slow pace of the construction of an approximately 620-km toll road connecting Jakarta and Surabaya, the country's two industrial centers located on almost opposite ends of the island of Java.[19] The "anatomy of ambition" of state officials and politicians to complete this expressway arose from several sources.[20] First, there were the mesmerizing effects of the "megaproject." Creating engineering marvels, despite huge cost overruns, has lured and transfixed government officials from Boston to Copenhagen to Beijing. Second, there were the pressures to complete

[18] Business Monitor International 2011 (Q4), p. 10.

[19] Reports on the distance varies, depending on whether existing links or those beyond Surabaya are taken into account.

[20] Flyvbjerg *et al.* 2003.

unfinished business. Detailed plans for Java's end-to-end expressway were first laid out in the early 1970s, although licenses for eighteen inter-urban segments that comprise the Trans-Java Expressway were not doled out until just prior to the onset of the 1997–98 Asian financial crisis. Third, state elites have been sincere in their belief that this road promises crucial multiplier effects that will encourage investment beyond infrastructure.[21] They maintain that it will boost the island's manufacturing competitiveness by dramatically lowering the cost of moving goods and services. Fear in government circles of falling behind India, China, Vietnam, and other low-wage producers has been pervasive. Transport bottlenecks threaten economic growth because about 75 per cent of the country's traffic of inter-district and inter-city goods are trucked on Java's narrow roads.[22]

To say that the construction of this tollway, which should cut by half the nearly three-day travel time needed to go from Jakarta to Surabaya, has been easy would be a gross misstatement. Complications and attendant risk have been profound. Illustratively, Megawati's 2004 Road Act permitted many renowned New Order-era rentiers such as Aburizal Bakrie and Jusuf Kalla to retain their licenses. (Arguably it would not have been lawful for her government to summarily cancel rightfully obtained licenses that lacked expiry dates.) That rent-seeking through the selling or flipping of these licenses prevailed has surprised few observers.

The great difficulties in appropriating private land serve as an even more outstanding example of the complexities involved in realizing this vital development task. Java's extreme population density is one factor. Java is roughly the size of the state of New York, but its population density is more than five times that of New York's and more than twice that of New Jersey, the state of the United States with the highest population density. Java's population of about 118 million approximates the combined population of Texas, California, Florida, Pennsylvania, Ohio, Illinois, and New York.[23]

Java's extreme population density is only part of the problem resulting in sluggish land acquisition; the messiness of implementing eminent domain powers that rest on weak and incoherent land laws has also been critical. Weak law enforcement allows inter-ministerial dissension and

[21] The term multiplier effect connotes temporary impact. But benefits should accrue from the increased productivity of the land that will be connected to the expressway permanently. I use the term because of its dominant use in the local discourse. I thank Ross McLeod pointing this out (email communication, September 12, 2011).

[22] Direktorat Jenderal Perhubungan Darat, 2005, p. 44.

[23] See indonesianembassy.org.uk/transmigration-7.htm (last accessed March 19, 2014). These seven states comprise nearly 40 per cent of the US electoral college.

recalcitrant license-holders to take little heed of official land use and ownership warnings, so hampering the financing of the government's eminent domain claims (often on behalf of private license holders). Moreover, the construction of this expressway, which cuts across three provinces and over two dozen now-autonomous districts and cities, sheds light on the general difficulties of implementing decentralization in post-Soeharto Indonesia.

This weakness exposes competing incentive structures between central government officials and local government officials. The former – in charge of toll-road policy – have wanted a rapid land purchase process, while the latter – who had been responsible for involuntary land acquisition under decentralization – dragged their feet. Underpaid and with little to gain in the short term from the completion of tollways, local officials often retreated in the face of angry citizens, emboldened by a greater awareness about rights and willingness to protest in democratic Indonesia. Unlike the New Order era, the army no longer acts as the state's enforcer of land expropriation, and the penalties for grassroots resistance are substantially lower. Citizens are now armed with much stronger rights-based consciousness. That said, as trust in the Indonesian government among its citizens ebbs to alarmingly low levels, we have to move analytically beyond the dualism of the heavy-handed, rapacious, land-grabbing state versus repressed "little people" who resist capitalist development on class- or morality-based grounds, as similar land battles under the New Order were described. The Trans-Java Expressway is unlike a shopping mall, tourism complex, golf course, or luxurious gated housing community, as this infrastructure project is seen to promise genuine developmental benefits.[24] Moreover, a diversity of views and behaviors among landowners regarding forced relocation exists. While some have steadfastly refused to sell and many more are not pleased about being dispossessed, thousands of citizens have willingly released their rights to their land provided that they receive what they see as fair compensation. This means as close to market price as possible. After all, in such countries as India, merely accepting market rates is increasingly considered a "raw deal."[25] However, in shortsighted fashion, the Indonesian government has been reluctant to accede to this demand, resulting in delays which, in turn, inflate long-run project costs.[26] In other words, I have found it painstakingly difficult to make generic statements

[24] Of course, its construction can spawn such projects, but that is a different matter.
[25] Balakrishnan 2013, p. 805.
[26] Other obstacles, such as reliance on short-term bank loans, will be addressed in later chapters.

regarding the moral implications of involuntary land acquisition for the Trans-Java Expressway. After all, since 2004 the president, and since 2005 district executives (*bupati*) and mayors – officials with the most authority over land matters in a decentralized post-Soeharto Indonesia – have been democratically elected to office.

Infrastructure as a political problem

Accounting for the serious problems state officials have encountered in institutionalizing a new regulatory regime to secure private investment for this megaproject, on the one hand, and explaining the construction's marked progress, on the other, offers several empirical and conceptual puzzles. One particular question animates this book: Under conditions of considerable uncertainty – political, economic, legal, and the like – how does a weakened democratic government with a checkered past of enforcing property rights and contracts establish a regulatory framework to promote private sector investment in infrastructure? Economic history is littered with examples of the catalytic role of infrastructure in economic growth and development, from the canals and roads of the UK during the Industrial Revolution to the railways at the turn of the twentieth century and highways after WWII of the US. Puzzlingly, infrastructure's significance for economic growth was lost in the din of post-WWII debates over trade policy and financial liberalization.[27] Significantly, in its well-publicized 1993 report on the role of the state in economic development, the World Bank overlooked the pivotal contributions infrastructure played in the economic success stories of the East Asian Tigers.[28]

Today, the role of physical infrastructure has rightly retaken center stage. Globally, governments are building new airports and expanding existing ones,[29] while leading newspapers routinely spotlight the infrastructure bottlenecks that are crippling once fast growing economies, including that of the US and India.[30] Over the past twenty-five years, abundant empirical findings have underscored infrastructure's impact on economic growth, especially at lower levels of development.[31] One key

[27] Writing in 1990, Haggard stated that the "most important debate in development studies over the last two decades has concerned the appropriateness of market-oriented policies for solving the problems of backwardness" (1990, p. 268).

[28] Mody 1997, p. xi. Exceptions included a (modernization theory-infused) specialized transport literature. See Wilson *et al.* (1968), Owen (1987), and on Indonesia, Leinbach (1983).

[29] See www.airport-technology.com/projects (last accessed March 19, 2014).

[30] Baker and Schwartz 2013; Haberman 2014; Bagri 2014.

[31] Estache and Fay 2007, p. 6.

study found that East Asia's superior infrastructure accounts for one-third of the difference in output between that region and Latin America.[32] In another, the economist Pranab Bardhan cites the "dazzling difference" of responsible financial management of large-scale infrastructure projects in China as compared to India as a main cause of the different rates of economic growth in these two countries.[33]

This is a lesson that has not been lost on top Indonesian policymakers. In 2010, during his first major interview, Indonesia's newly appointed finance minister pinpointed weak infrastructure as a chief obstacle to the sustainability of growth in Southeast Asia's largest economy.[34] In the same year, the trade minister similarly maintained that the keys to growth promotion were "infrastructure, infrastructure, infrastructure."[35] This was five years after the 2005 Infrastructure Summit was to address these issues. Why, then, have officials seemed powerless to prevent the continuing crumbling of the country's infrastructure and the persistent delays of projects despite their anticipated benefits?

According to World Bank literature, upgrading infrastructure is primarily a technical matter. Policy elites identify bottlenecks and parliament passes competition-inducing legislation to encourage private investors to fix the bottlenecks. The government establishes strong institutions capable of regulating the sector to prevent market failure or capture by predatory interests. The essence of this technical approach is captured by a leading World Bank scholar who wrote: "After nearly 20 years of experience, countries have no excuse for most errors in the design and implementation of concessions and related regulations."[36]

This book takes issue with this technocratic and apolitical view. In its stead, I conceive Indonesia's "errors" as the outcomes of intensely political contests burdened by the past and saturated with new power dynamics. This monograph chronicles mistakes Indonesian officials have made. But against the technocratic literature's propensity to emphasize choice in the selection of policy and design,[37] I show how historical precedent and evolving social conflict weigh heavily on policymakers and other key actors. These "stakeholders" are not unencumbered players free to choose from and apply a range of policy options and practices. They are pushed and pulled by the political institutions, competing interests, and power struggles in which they are embedded. While some technicists do acknowledge the importance of politics,[38] they view it as something

[32] Calderón and Servén 2003, p. 113 [33] Bardhan 2010, p. 54.
[34] "Agus Martowardjo: Saya Tak Akan Pilih Kasih," *Tempo*, July 11, 2010, pp. 133–35.
[35] Lee 2010. [36] Guasch 2004, p. 9. [37] Vives *et al.* 2006.
[38] Estache and Fay 2007, p. 25.

exogenously imposed upon infrastructure provision rather than a condition intrinsic to the process.

A central proposition of this book is that the burdens state officials have encountered in rectifying Indonesia's crumbling infrastructure are the result of what are principally political and not technical or administrative problems. Explanations of processes that undergird infrastructure traverse a landscape fraught with conflict and contestation. A country's evolving institutional architecture, uneven relations of private and public power, conflicting interests, and complicated and opaque policy and legal undertakings number among the most significant of these features. State officials also must grapple with diverse and often contradictory ideas about development and growth, with complex decisions requiring the investment of hundreds of millions of dollars in projects whose returns will be spread over many years, and with the rent-seekers, reformers, and ordinarily poor citizens whose lives will be impacted directly by infrastructure investment – for good or ill. By conceiving infrastructure investment as a political endeavor, this account foregrounds historical, institutional, and sociological factors and intermediate causal mechanisms typically overlooked in economic analyses that stress efficiency and desirability of outcome. I will attempt to meet Timothy Frye's provocative dictum that, "satisfying explanations should account for the processes by which outcomes are achieved rather than just for the outcomes themselves."[39]

By considering the development of physical infrastructure as a means of economic growth promotion in post-Soeharto Indonesia, this study will provide insights into debates on the country's political economy. These range from the impact of decentralization on economic growth, the effect competitive elections have had (or not had) on policymaking, to enduring patterns of rent-seeking and the form of regulatory capitalism that is taking shape in the country. This detailed study of infrastructure development in the world's third largest democracy also provides a useful prism for understanding the provision of quasi-public goods in comparative perspective. Intellectually, I draw from a research tradition that recognizes the complexity and contested nature of the political economy of infrastructure development. The post-WWII construction of modern ports, airports, and highways that transformed bustling metropolises like Los Angeles, New York, and Tokyo into mega-centers of world trade and development was the product of bruising political battles. As Steven Erie wonderfully describes in his account of the rise of Los Angeles, Robert

[39] Frye 2007, p. 941.

Caro in his magisterial recounting of Robert Moses's rise and fall in New York City, or Apter and Sawa in their poignant retelling of the farmers' protests against the construction of the international airport outside Tokyo, epic tussles over projects worth billions of dollars have pitted municipal departments against central bodies and inter-agency institutions, elected politicians (with their short-term time horizons) against seasoned power-wielding bureaucrats, and have culminated in clashes, both physically and metaphorically, between land-grabbing governments and angry citizens threatened with displacement.[40]

Even Erie admits, however, that today's environment poses more challenges to the implementation of megaprojects than yesteryear.[41] In southern California and elsewhere in developed countries, one reason for this has been the stock of local social capital that materializes in "not in my backyard" (NIMBY) movements. Worried about increased noise levels from airports or toxic waste from nuclear power plants, neighbors have regularly joined forces to fight a project's implementation.[42] As importantly, stringent environmental regulation in developed countries now hinders plans to expand infrastructure on grand scales.

This is less the case in developing countries. There governments are less inhibited by environmental regulations or NIMBY movements because civil society is generally weaker, and the diversity in income level and ethnicity found in neighborhoods can complicate collective action. Thus it is the financing, especially of the public kind, that has emerged as a main constraint in developing countries. Moses's New York City highways, Los Angeles' and Long Beach's ports, and Narita's international airport were state-financed. This is why discussions of infrastructure investment in the developing world must contend with the degree to which private capital will play in realizing ambitious infrastructure plans, or what O'Neil refers to as "the financialisation of infrastructure."[43] This pertains to complete privatization or, more commonly, to PPPs, as mentioned above.

Any mention of private capital investment in the developing world must consider not only capital returns – which can be enticingly attractive – but also property rights' protections and other institutional safeguards. Put differently, this study, which focuses on the building of the Trans-Java Expressway, serves as an instructive lens for scrutinizing competing theories of governance and the provision of semi-public goods. Currently, a dominant view of the workings of private sector participation in infrastructure development is a body of work known by the name New Institutional Economics (NIE). In concert with this study, NIE conceives

40 Erie 2004; Caro 1974; Apter and Sawa 1984. 41 Erie 2004, pp. 8–9.
42 Aldrich 2008. 43 O'Neil 2013.

of infrastructure provision as a political problem. According to NIE, private investment in the infrastructure sector in the developing world lags (and utilities underperform) because a country's institutional framework lacks proper safeguards to protect adequately the property rights of investors. NIE sees institutions as the outcomes of long, drawn-out conflict and compromise among competing interests.

A main contention of this book, however, is that NIE proponents do not take their political argument far enough. NIE adopts a narrow governance lens that highlights constraints on legislative and especially executive discretion – the need to tie the grabbing hand of government in order to lower the fears and costs associated with expropriation. While there are several variations of the NIE approach to infrastructure provision, they suffer from a common malady, suggested by its very name – a focus on formal institutional arrangements. In its stead, I propose a wider lens: *political sociology of infrastructure development.*[44]

Formal rules and institutions are crucial contributors to the level of private sector participation in infrastructure development, but these "levels" are only a part of what constitutes a comprehensive analysis of infrastructure politics. A political-sociological approach begins where NIE's formalistic perspective leaves off. As a complement to NIE, it broadens our analytical scope by paying informal linkages and processes and institutions equal attention. As importantly, it emphasizes social and political fields of power, including actors, coalitions, and arenas of contestation that operate outside and largely unconstrained by formal arrangements. To demonstrate that a political sociology approach does not merely contain everything beyond formal institutions, Chapter 1 spotlights three areas that come to the fore in a political sociology of infrastructure development. These elements – (1) state-business relations and variations in rent-seeking outcomes, (2) extra-parliamentary rulemaking, and (3) the contestation that has characterized the application of eminent domain powers – are issues that NIE handles less well because of its focus on formal institutions.

To recapitulate, explanations of how successive post-Soeharto administrations have sought to secure private infrastructure investment in the face of a number of obstacles are at the heart of this book. It is common to note that Indonesia lacks reliable bases for the establishment of the rule of law – professional and impartial police, prosecutors, and courts to name a few. It is a more difficult task to explain the specific measures officials have undertaken to overcome the obvious impediments, what alternatives have

[44] I borrow this terminology from Gourevitch's "political sociology of political economy" (1986, p. 19).

been considered, where the ideas behind these policies may have originated, and what accounts for their mixed outcomes. Statutory liberalization in key industries has been enacted, and new institutions have been established, but officials have had to contend with the tangible legacies of asymmetries in social and economic power that have given distinctive shapes to certain sectors of Indonesia's economy. The institutionalization of a new regulatory regime, this book demonstrates, is a path-dependent process. Building on a political sociology of infrastructure development approach, this account sheds light on the intricate social and historical relations and uneven fields of power in which policymakers, politicians, and economic actors find themselves and shows how this environment constrains both policymaking and its implementation. Changes in rules generate a moment in which social and political forces come into play, and those forces, rather than the policy itself, determine the form implementation takes, and crucially, whether it promotes its stated aim.

Why toll roads?

There are compelling reasons to limit this book's focus to toll roads. Despite the deep and controversial participation of Soeharto's children, tollways in Indonesia have not attracted the scholarly attention other infrastructure sectors have. As a sector, it also occupies an important middle ground that highlights the importance of instituting a sound regulatory regime in order to induce private investment. Conventional wisdom underscores the need for institutionalizing regulatory reforms as a means to enhance property rights which, in theory, will lead to increased private investment. However, the role regulatory regimes play varies across project types because infrastructure sectors differ appreciably in their features and in their performance.[45] The telecommunications sector, for example, enjoys such distinct advantages over other infrastructure sectors as low sunk costs, high risk-to-reward ratios due to rapid technological advances, and quick payoff periods.[46] These features have helped make it globally the most attractive infrastructure sector among private investors.[47] Although efficiency and coverage can improve when effective regulation has been introduced,[48] private telecommunication investors, lured by the potential of high profit margins, have not shied away from entering difficult environments characterized by dysfunctional regulations. In Brazil, one account observes: "What is puzzling about this success [of the telecommunications sector] is the fact that the regulatory

[45] Easterly and Servén 2003; Romp and de Haan 2007; Estache and Fay 2007.
[46] Kohli, H. 1995, p. 8. [47] Estache and Fay 2007, pp. 21–22. [48] Wallsten 2003.

system and the rules of the game were not yet defined at the time of privatization, so that investors, both foreign and local, faced considerable regulatory risk and uncertainty regarding the prospects of administrative expropriation."[49] Investors rushed in, regardless. In the development laggard known as the Philippines, the outcome of telecommunications privatization has been reviewed in positive terms.[50] In India, the sector's exponential growth has surpassed the most optimistic forecasts.[51] Even with Indonesia's regulatory gaps, the industry has not been short of private investors. Indeed, telecommunications was not even part of a World Bank PPP development and loan program because the Bank thought that it was "already largely privatized and commercialized and did not require further technical assistance."[52]

At the other end of the spectrum lies the supply of clean water. Here difficulties in attracting investors extend beyond the renowned corruption and ineptitude of regional government water supply corporations in Indonesia. Globally, and in Indonesia in particular, water features regularly in pro-poor debates because of its direct effect on the health (and survival) of society's neediest. Allowing investors to charge the rates necessary to generate competitive returns in the face of pressure from populist politicians and activists has been a massive challenge.[53] Not unexpectedly, globally this sector has been the least favored among private investors.[54] Expecting that a sure-fire regulatory regime alone will attract substantial private capital in Indonesia is overly optimistic.

Energy is an intriguing case. Worldwide it ranks behind telecommunications for private sector interest. In Indonesia, the sector has, like toll roads, a notorious past, with foreign interests partnering with Soeharto's children and cronies to secure contracts. Like toll roads, many of these projects were cancelled by a 1997 decree of Soeharto which, as the financial crisis unfolded, halted spending on large-scale infrastructure projects. This turn of events touched off rounds of toxic renegotiations between investors and post-Soeharto governments, which did not want to be bound by contracts colored by corruption and nepotism. Much of this story has been richly and ably told elsewhere.[55] Nevertheless, it is worth noting that the modality of the energy sector, unlike tollways, facilitates "unbundling."[56] This, in turn, allows for greater commercial viability. For

[49] Mueller 2001, p. 622. [50] Salazar 2007.
[51] Mukherji 2009. On China, see Bai and Yingyi (2010, p. 35).
[52] World Bank 2002, p. 6; Lee and Findlay 2007.
[53] The Jakarta municipal government, which had a PPP contract in place as the 1997–98 crisis unfolded, is a partial exception yet had many of its own problems (Bakker 2007). See also Iwanami and Nickson (2008), Lewis and Woodward (2010), and Winters *et al.* (2014).
[54] Estache and Fay 2007, pp. 21–22. [55] Wells and Ahmed 2007.
[56] Unbundling is the vertical separation or restructuring of utilities (Gómez-Ibáñez 2003, pp. 15, 247).

instance, in electricity generation, the Indonesian state continues to seek foreign and domestic private investment to help the country's supply keep pace with demand.[57] In electricity distribution, however, subsidies still play a role. In the toll-road sector, because expressways cannot be unbundled in the way that electricity can, the guiding principle has been user pays.

In sum, middle cases, like the toll-road sector, require more attention than they have received. In infrastructure, middle cases lack the "easy" profits that telecommunications have generated but enjoy greater commercial potential than water supply. In these situations, the importance of the quality of sectoral regulation comes to the fore. Without much recourse to a general rule of law, toll-road private investors need to understand and appreciate more than most the long-term implications of sectoral governance.[58] To be sure, private toll-road investors would like to see their risk mitigated and their property rights secured by the institutionalization of reliable rules and procedures. That said, it would be disingenuous not to admit that capital-holders also appreciate a degree of government discretion, especially when it favors their interests. How well these competing and sometimes complementary processes are balanced will go a long way in determining toll-road investment and long-term viability, and consequently economic growth in Indonesia. Ultimately, this is a political question.

The book

This book is based on domestic press accounts, government studies, business publications, corporate reports, and rarely used consultancy studies. From mid-2007 to early 2014, I conducted nearly 100 interviews in Indonesia and elsewhere with, among others, concessionaires, bankers, government officials, parliamentarians, financial analysts, journalists, consumer advocates, and landowners affected by the proposed expressway. (Interviews cited in this work are listed in the Appendix.) With exceptions, the higher up the public and private sector "food chain" I went in Indonesia, the more often my interview requests were rebuffed, understandably because this book covers a sensitive topic that features

[57] Privatization had been restricted to power generation as the state-owned electric company was responsible for transmission and distribution. Law 30 of 2009 on electricity allows for the liberalization of transmission, distribution, and retail operations (Business Monitor International 2011 [Q4], p. 60).

[58] On the importance of analyzing "middle cases" in development, see Doner (2009, pp. 2–3). On the importance of sectoral-level (as opposed to national-level) regulation, see Kitschelt (1991).

many conflicts of interest and many millions of dollars at stake. *Indonesia's Changing Political Economy* examines the exasperating struggles Indonesian officials have endured in constructing an expressway across one of the world's most densely populated islands and in instituting a regulatory regime to govern this process that both induces foreign investment and protects the property rights of investors. This monograph also presents several contextualized analyses of concession holders and turnpikes.

Chapter 1 begins by highlighting how infrastructure has become a featured topic in development debates because it reflects the larger question of the role of the state in a market economy. International ideas about infrastructure investment have shifted since WWII. Starting in the early 1980s, the once-predominant state-led model gave way to the view that increased private sector participation, with its efficiency gains and entrepreneurial know-how, held the key to unlocking future growth. By the 1990s, many developing countries had embraced the new model, and hundreds of billions of dollars of private capital flowed into their infrastructure sectors. In time, this shift brought a backlash among citizens and unanticipated private capital risk as a result of a number of economic crises. Currently, the pendulum seems to have shifted to the middle, at an arguably pragmatic balance between the public and private sectors, that is, the PPP.

Chapter 1 goes on to investigate the ways in which private investment in infrastructure in the developing world has been studied. It argues that the focus on formal institutions by mainstream approaches has limited their analysis of infrastructure investment. If weak institutions are what characterizes a developing economy, it behooves us to look seriously at key non-institutional forces that keep those very formal institutions from gaining coherence and effectiveness. In this context, I introduce and develop the political sociology of infrastructure development approach.

Chapter 2 charts the governance history of Indonesia's toll-road sector from its origins in the early 1960s under Indonesia's first president, Soekarno, to the onset of the 1997–98 Asian financial crisis. It depicts the New Order state as one in command and control of its economy (and politics), as reflected in the state-led model of infrastructure investment. This pattern was disrupted in the mid-to-late 1980s when Soeharto's children came of age and entered the sector. They came to dominate choice routes, especially in Jakarta, eliciting a response from the state toll-road corporation, Jasa Marga. Law and politics sought to mediate between these competing interests. The chapter then demonstrates that the sector was on the cusp of a boom prior to the crisis that helped to sweep Soeharto from power in 1998. I show how Soeharto had divided control of an expressway across Java into many concessions as a means to spread the wealth, particularly among connected native (*pribumi*) contractors.[59] Resentment, after all, was growing against the stranglehold his children maintained over the sector, and the Sino-Indonesian conglomerates maintained over the economy more broadly. This chapter investigates these *pribumi* contractors, the turnpikes they acquired, and how they acquired their concessions. This recounting exhibits that rents were distributed more broadly among *pribumi* businessmen than an institutionalist model would suggest.[60]

Chapter 3 chronicles the early reform efforts of the Abdurrahman Wahid, Megawati Soekarnoputri, and first Yudhoyono administrations. It includes a detailed discussion of the 2004 Road Act, and how officials subsequently dealt with two problems bedeviling the toll-road sector. The first was strengthening the state's eminent domain powers, which Yudhoyono addressed by promulgating a controversial presidential decree in 2005 that was rejected by civil society, so forcing amendments to it in 2006. The second problem concerned mobilizing financial resources. Yudhoyono's first vice president, Jusuf Kalla, pressured state banks to reach loan agreements with license holders, but progress on the ground remained minimal, as inter-ministerial dissension slowed the distribution of state monies for land acquisition.

Chapter 4 explores Yudhoyono's second term (2010–14) and the difficulties encountered in instituting reforms and building the expressway's links. A private business association, the Indonesian Toll-Road Operators Association (ATI), lobbied the government to pass more pro-investor legislation. Involuntary land acquisition hampered progress, however, even with bank loans in place. Under decentralization, local officials were now in charge of compulsory purchases but not of the turnpikes themselves. This resulted in a clash with central government officials. Exasperated, the latter recentralized the land acquisition process, but the relevant legislation proved contentious and was subject to delays in its passing. Controversies over the 2012 law on eminent domain emerged immediately. Meanwhile, frustrated populist parliamentarians began to threaten to undo some of the reforms in this sector, including its holy grail, the pro-investor, automatic toll-rate-adjustment mechanism.

Chapter 5 spotlights the issue of ownership. While the NIE literature is ill-equipped to disaggregate the private sector, this chapter clearly shows

[59] The term *pribumi* (indigenous or native) is used in Indonesia in contrast to the Chinese or Sino-Indonesian minority (2 to 3 percent) that has long dominated the private business sector.

[60] McLeod 2005a.

two things: Differences in ownership matter, and a firm-level analysis and state-business politicking explains important intra-sectoral variations. The chapter begins with in-depth studies of two licenses held by some of the country's most powerful players of the post-Soeharto period – the now two-time Vice President Jusuf Kalla in one case and Indonesia's onetime richest businessman Aburizal Bakrie in another. Unlike ATI, they engaged in particularistic bargaining with state agencies. These cases demonstrate how rent-seeking efforts led to serious delays in the building of the Trans-Java megaproject. Moreover, these two cases demonstrate that negative rent-seeking outcomes can vary considerably. The chapter then delves into the case of Jasa Marga, a more positive rent-seeking example. I suggest that domestic politics rescued the firm that, as a result of the 1997–98 financial crisis, was mired in debt and targeted for dismantling by pro-market reformers.

Local non-institutional outcomes often fall outside the purview of the NIE literature. Chapter 6 addresses this limitation by turning from a national focus to a case study of local politics shaping a turnpike in Central Java. Here we see close up how local civil society, district-level council members, and threatened landowners frustrated the efforts of the governor, a former New Order general, to mobilize local state resources and society for the construction of the turnpike. The exasperated governor could not command or control a newly democratic Indonesia. I then offer another examination of two cases of proposed inner-urban toll roads (one in Jakarta, the other Surabaya) that have been opposed by recently elected "reformist" heads of local government and civil society. Unlike the case of the Trans-Java Expressway, the analysis stresses that forces favoring the roads' development have local, not national, sources.

The conclusion recapitulates key findings on Indonesia's changing political economy and offers from this contextual study of the Trans-Java Expressway important lessons on regulatory reform and the feasibility of the World Bank PPP model of infrastructure development.

1 Infrastructure investment and institutions: conceptual concerns and debate

The significance of investment in infrastructure goes beyond the enormous sums of money at stake. Reliable physical infrastructure is a widely recognized feature of developed economies, and its absence or low quality in developing countries stands as a major obstacle to economic growth and poverty alleviation. Searching for reasons to explain the dilapidated state of infrastructure in poorer countries convinced many that the fault lay with the state-led financing approach. Since the early 1990s, urged on by international financial institutions (IFIs), state officials have increasingly looked to the private sector to provide the investments in capital improvements that the state is too often unable to accommodate.

As private sector participation in infrastructure development has increased, a large body of research tracking this trend has been generated. Explanations concerning levels of private sector investment in infrastructure across countries have figured prominently in this literature. This chapter subjects one dominant explanatory approach, known as New Institutional Economics (NIE), to close scrutiny. In doing so, a twofold argument is advanced. First, I note NIE's ability to account for sector performance in aggregate and over time. NIE shows that investment is conditioned and determined by the institutional context in which transactions transpire and that the specifics of the context have considerable influence on whether the private sector invests in infrastructure. NIE posits that strong, endogenous formal institutions boost investor confidence, promote private sector efficiency, strengthen the credibility of economic policies, and bolster the protection of property rights by tying the hands of government. This in turn induces private investment. In this way, the NIE framework is consistent with my treatment of infrastructure as a political problem. It considers formal institutions as political products of conflict, compromise, and competing interests.

Secondly, I suggest that NIE, while providing a good "first cut," does not press the political aspect of infrastructure issues far enough. With a focus on formal institutional frameworks, this perspective tends to overlook the interplay of interests, actors, and coalitions in arenas of contestation that arise in part unconstrained by formal arrangements. Accordingly, NIE offers a partial explanation for how private infrastructure investment is governed and regulated within a given country. Whether private capitalists invest is a pivotal question, but it does not exhaust the study of the politics of infrastructure. A compelling account, particularly in the developing world, needs to extend beyond formal rules and constraints.

This chapter does not propose a rival theory of infrastructure provision per se. More modestly, it puts forward a political-sociological approach as a complement to NIE, along with as an exploratory guide to support such an analysis. As a field of multidisciplinary inquiry, political sociology views formal and informal institutions as entangled elements of a wider field of social and power relations. By identifying key actors and relationships, it enables us to trace the multiple causal pathways of complex political phenomena.

Through this conceptual lens, which I label a political sociology of infrastructure development, I address three specific shortcomings of NIE-oriented research on infrastructure investment in the developing world that result from its singular focus on formal institutions.

The first limitation is its inattention paid to competing societal interests, such as state-business relations and how this dynamic can account for variations in rent-seeking outcomes, particularly within a sector. As NIE aggregates its findings at the sectoral level, it cannot make finer comparisons. It also prioritizes negative rent-seeking outcomes at the expense of positive examples.

NIE's second drawback concerns its inattention to extra-parliamentary regulation-making. NIE concentrates on parliamentary bargaining and rulemaking. It assumes the primacy of parliament, a structure that is bounded by publicly known rules and procedures. However, vested interests and power can also metastasize in regulations produced in the murkier world of line ministries, where less formal rules exist. These legal products, produced and promulgated subsequent to the passing of parliamentary statutes, contain the detail that regulates key economic activities. These regulations should be written within the spirit of the law, but in reality can subvert the law. Products of insider, informal bargaining, they emerge as key causal mechanisms linking parliamentary law to implementation outcomes or lack thereof.

Lastly, a contextual study of infrastructure politics demands taking the conflict and contestation inherent to compulsory land acquisition seriously. Without the necessary land, infrastructure development would stall. NIE assumes regular and enforceable eminent domain powers, even in weaker states.

This chapter begins by surveying the shift from state-led infrastructure provision to private sector participation in developing economies, a strategy that took hold in the early 1990s. An introduction to NIE follows. In this section I examine a key paper, a 1994 article by Levy and Spiller that links poor infrastructure and slow growth to endogenous institutions.[1] The influence of their research helped to propel NIE-oriented analyses of infrastructure into the mainstream, although subsequent studies sought to improve methodologically upon their work. I then introduce the political sociology of infrastructure development approach, drawing upon case materials from Indonesia and elsewhere as entry points to address the three shortcomings noted above. The chapter concludes by suggesting ways in which NIE and the political sociology frameworks can and cannot be reconciled.

From public to private infrastructure investment

In the 1850s, the federal government of Brazil provided the key capital contribution for its embryonic railway network. This facilitated the export of coffee, the country's chief commodity. Only after the state took this first, risky step did British capitalists follow suit, allowing the network to be extended considerably. Over time, this expansion led to the growth of Brazil's sizable domestic industrial base.[2] A century later, the US federal government's passage of the 1956 Federal-Aid Highway Act enabled the completion of an integrated network of thousands of miles of highways, work that had been begun by small private companies in fits and starts over the previous 200 years. Economic and defense considerations motivated the federal government to finance the massive project.[3] These two examples occurred 100 years apart and took place in differing locales – one in the periphery, the other in the core. These examples also highlight contrasting causal chains: In the first case, state capital spurred private investment; in the second, public capital finished what its private counterpart could not. Taken together, they illustrated the once-dominant thinking that infrastructure investment is best financed by the state.

Two success stories from East Asia vindicated the state-led approach in infrastructure provision. In 1960, South Korea had a gross domestic product (GDP) per capita of US$80 dollars. In this same decade, the authoritarian government of Park Chung Hee, against the advice of and without funding from the World Bank, built a 426-km expressway connecting Seoul in the north to Busan in the south. This endeavor helped

[1] Levy and Spiller 1994. [2] Evans 1979, pp. 61–63. [3] Levy 1996, Chapter 2.

to jump-start the national construction and car industries.[4] In the following decade, the Kuomintang-led government in Taiwan took to joining its two main urban centers (Taipei and Kaohsiung) by means of a north-south expressway running more than 350 km. Part of an enormous government stimulus program, known as the Ten Major Projects, it aimed to deepen Taiwan's industrial base in order to boost its autonomy amid grave uncertainties caused by the global oil crisis and US overtures to the People's Republic of China.[5] In both examples, the highways facilitated the integration of national economies and, in turn, created links with international markets. As firms relocated along these highways to take advantage of the reduction in transport costs, industrial, metropolitan corridors took shape. Thus, the highways symbolically testify to the developmental achievements of each country.[6]

Such feats lent credence to the success of the developmental state, as both the concept and its practice spread beyond its Japanese origins.[7] However, for every South Korean or Taiwanese state highway corporation, there were scores of state-owned enterprises (SOEs) elsewhere not meeting the need for the expansion of networks (in either rail or roads) or in the improvement of connectivity (in either water or electricity).

Intellectually and politically empowered by a Keynesian approach to economic management, the development economists of the Western powers were supporters of SOEs, seeing them as incubators of economic growth in environments of weakly organized local bourgeoisie without regular access to capital. Simultaneously, the home governments of these development economists were happy to prop up the state sector with generous aid packages in those countries deemed to be critical Cold War allies.[8]

By the 1980s, the international economy was characterized by high oil prices and low commodity prices, and for many developing economies outside of East Asia, sluggish growth and debt crises. These crises helped to turn the tide against the state-led model in infrastructure development.[9] IFIs like the World Bank and the IMF now saw SOEs as obstacles to the greater marketization of developing economies. In the eyes of these organizations, SOEs were political, not economic, creatures. Rather than

[4] Reinfeld 1997, pp. 3–26. [5] Gold 1986, Chapter 7.

[6] McGee and Lin 1993; Reinfeld 1997. For a more nuanced view, see Jeon (2010).

[7] Woo Cummings 1999.

[8] Recipient state elites saw these aid programs as "the outstretched hand from abroad dispensing freebies" (Woo 1990, p. 407).

[9] Even neoclassical economists had been supporters of state-financed infrastructure. This was one of the few roles they believed the state could ably fulfill in generating economic growth (Gómez-Ibáñez 2003, pp. 4–6).

being guided by efficiency concerns, SOEs were run by bureaucrats whose decision-making pivoted on political considerations. Populist pressures kept utility pricing below long-term marginal costs, ensuring sustained losses and depressed reinvestment.[10] SOEs also served other political needs, like absorbing labor and acting as conduits in the distribution of artificial rents to politically connected businessmen.[11]

The IFIs pushed for a reduction in state intervention by promoting the competitive energies and allocative efficiencies that the private sector and free markets bring to bear on economies. A key element of this policy shift that emanated from the Reagan and Thatcher administrations in the US and UK was the privatization of SOEs and other parastatals. Deregulation, it was theorized, would create more opportunities for the private sector, giving it a freer hand to wield its entrepreneurial expertise and decentralized form of decision-making that leads to innovation, efficiency, proper risk analysis, and, ultimately, profits and economic growth. Through privatization, it was (and continues to be) argued that states receive budgetary relief through divestiture and a reduction in public expenditures. Furthermore, the projects that state elites desire to build still are, thus allowing a rising demand for infrastructure services to be met.[12] Argentina under President Carlos Menem was one of the first states to resemble the "leaner, meaner" kind that Evans has described.[13] Menem helped kick off the privatization craze in the global south by passing the 1989 State Reform Law that made hundreds of SOEs eligible for privatization. His government then privatized a number of ports and thousands of kilometers of highways and railway (with varying degrees of success).[14]

The 1990s boom in private investment in infrastructure in the developing world exceeded the predictions of even the most ardent market liberals. Figures "grew on average 30 percent a year from 1990 to 1997, increasing from US$18 billion to US$128 billion."[15] Industry-specific factors helped to

[10] Harris 2003, p. vii.
[11] Writing in 1993, Anne Krueger (1993, p. 28) of the IMF summed up this condemnatory view of SOEs vividly: "Yet in most of the countries with pervasive controls over private sector activity, infrastructure development was sadly neglected, poorly done, or both. Showcase large-scale investments were often uneconomic; simultaneously even those investments that might have been highly productive were often not maintained. Stories of divided highways returning to the jungle within a decade of completion, of telephone systems that do not work, of power failures with their attendant high costs for industrial activity, and so on, are rife."
[12] Megginson and Netter 2001. [13] Evans 1997.
[14] Under Pinochet, Chile in the mid-1970s began a privatization program, but it did not precipitate the boom in developing countries the way Argentina's program did. Argentina's privatization was also more extensive (Estache 2006, p. 3; Estache *et al.* 1999).
[15] Harris 2003, p. 2.

fuel the boom. These included the loosening of natural monopoly characteristics that once pertained to infrastructure.[16] In the electricity sector, for example, unbundling policies facilitated the discrete handling of generation, transmission, and distribution. These changes convinced some firms, eager to expand beyond the traditional confines of the US and Europe with their steady but non-spectacular growth rates, to move into new markets. Such regulatory risks as weak property rights and currency devaluations loomed, but capitalists were lured by, for example, the potential of windfall profits by capturing first-mover benefits and the opportunity to cherry-pick among projects while competition lagged.[17] Some also took advantage of governments anxious for capital investments by securing lopsided deals that passed much of the investment risk onto these governments, especially early on during this privatization craze.

A new way of financing these projects contributed to the investment upswing. Project finance, as it is known, differs from traditional lending practices. First, a project is established as a separate special-purpose vehicle (SPV), where the project company provides a certain amount of the equity of the project. This is done to link project management to finance provision. Second, in SPV arrangements lenders have "only limited recourse to the government or to the equity-holders in the event of default."[18] Third, under project finance, SPV's debt is serviced through cash flows generated from the project rather than sovereign or corporate credit standing.[19] Finally, as a means to allocate risk among a consortium of investors, SPVs ordinarily have local firms as minority partners to provide the political clout to conclude deals and to protect assets once sunk. In Asia, enthusiasm and competition among foreign financial institutions (traditional merchant banks and Wall Street firms) contributed to project finance's popularity.[20] Also in Asia, many of these private–public partnerships (PPPs) were structured as build–operate–transfer (BOT) schemes, in which the private company enters into a long-term contract with the host government. The SPV, through an arrangement with a syndicate of lenders, provides the financing to construct the facility. In exchange, the SPV is given a license to operate and receive revenues from the project for a specified duration. Upon expiry, the facility reverts to the state. Typically, host governments also provide such incentives as tax holidays, soft loans, revenue guarantees, and the land necessary for the project.[21]

[16] Ramamurti and Doh 2004.
[17] Daliami and Leipziger 1998. Wells and Ahmed (2007) stress that many firms who joined the bandwagon had inadequate international experience and conducted poor due diligence.
[18] Brealey *et al.* 1996, p. 25. [19] Chan 1993. [20] Ibid. [21] Delmon 2005, Chapter 3.

Country-specific factors also played their part in the privatization boom.[22] In trying to attract foreign investment, officials instituted market-oriented reforms that improved investment climates. In addition to the sweeteners noted above in PPP deals, they lifted investment restrictions in closed sectors and other quotas and tariffs. Wide-ranging attitudinal and ideological change among these officials, while often unwitting, accompanied the liberalization of investment and trade regimes. Fear among investors of state expropriation of foreign assets also dissipated. Privately financed infrastructure projects mushroomed across Asia, from power plants in Indonesia, Malaysia, and the Philippines to toll roads in Hong Kong, southern China, Thailand, Malaysia, and Indonesia. With its blinking lights piercing the dark blanket of the rural horizon, the ubiquitous telecommunications tower was a striking symbol of this sea change.

NIE and infrastructure

The devastation wrought by the 1997–98 Asian financial crisis brought the privatization of infrastructure craze to a halt; in Latin America, citizen backlash against privatization has been unmistakable, especially among the poor and in countries with high income inequalities.[23] While these downturns led some to believe that infrastructure privatization in developing countries was oversold, reasons for its rise continued to attract attention.[24] Scholars grappled with the boom's uneven investment patterns. Why did investment, for example, congregate in the power and telecommunications sectors in Latin America and East Asia?[25] To explain the boom's sectoral and regional concentrations, scholars seized on the significance of the institutional arrangements of host countries and the degree to which they facilitated or discouraged private investment. They surmised that the different capacities of these formal frameworks to protect private property rights and to enhance the efficiency and credibility of government economic policies might explain levels of investment. Surmising it was one thing, substantiating it another. Giving intellectual coherence to these explanatory probes was an influential branch of

22 Ramamurti and Doh 2004.

23 In 2002, at US$46.7 billion, commitments of private investment in infrastructure were "the lowest level of investment since 1994" (Esatche and Pinglo 2005, p. 48). On backlash in Latin America, see Checchi, Florio, and Carrera 2005.

24 Wells and Ahmed 2007, Chapter 1.

25 Further specification showed that, generally speaking, investors preferred new, or greenfield, projects in East Asia, whereas governments in Latin America tended to privatize, or concession, existing assets.

economic history and political economy known as New Institutional Economics.[26]

A foremost practitioner noted that NIE has been "preoccupied with the origins, incidence, and ramifications of transaction costs."[27] By emphasizing the roles transaction costs and institutions play in economic performance, NIE gained momentum in the 1960s and 1970s as an advancement in neoclassical economics. The latter was considered "overly abstract and incapable of dealing effectively with many current problems."[28] Worse, it oversimplified the utility maximizing view of individuals. Douglass North notes that the "motivation of the actors is more complicated (and their preferences less stable) than assumed in received theory . . . Individuals make choices based on subjectively derived models that diverge among individuals and the information the actors receive is so incomplete that in most cases these divergent subjective models show no tendency to converge."[29]

NIE posits that most transactions in complex societies do not occur in a frictionless vacuum but in an environment where "transaction costs and imperfect information are important: the terms and conditions of contracts in various transactions, which directly affect the efficiency of resource allocation, now crucially depend on ownership structures and property relations."[30] Within this understanding, the costliness of information is vital. It is "the key to the costs of transacting, which consist of the costs of measuring the valuable attributes of what is being exchanged and the costs of protecting rights and policing and enforcing agreements."[31]

NIE postulates that individuals seek to organize themselves in ways that minimize these costs and reduce related uncertainties that arise from opportunism and imperfect information.[32] As a result of this organizing, such institutions of governance as the hierarchical firm or the state take shape.[33] Much theoretical and historical work proposed that the quality of

[26] There is a heterogeneous group of scholars who for simplicity's sake can be associated with this school. Not all of their work may be labeled as such. Some prefer the moniker "neo-institutionalism."

[27] Williamson 1979, p. 233.

[28] Furubotn and Richter 1991, p. 1. They continue: "[C]onventional microeconomics fails in those (every day) situations where transaction costs are greater than zero, and where property rights to resources take form different from the idealized pattern hypothesized for classical capitalism."

[29] North 1990, p. 17. [30] Bardhan 1989, p. 1389.

[31] North 1990, p. 27. He continues: "The costliness of economic exchange distinguishes the transactions costs approach from the traditional theory economists have inherited from Adam Smith."

[32] Bardhan (1989) sees these as two schools within NIE – transaction costs and imperfect information.

[33] Furubotn and Pejovich 1972; Williamson 1979.

these formal institutions, which also include an impartial judiciary that can enforce contracts and property rights, has tremendous implications for investment and long-term economic growth of societies.

At the time, NIE practitioners had little interest in the empirical problem of slow growth in the developing world and were not attracted by the specific problem of infrastructure.[34] This changed with a 1989 study by the economist David Aschauer that showed very robust returns to public capital investment.[35] Aschauer's findings drew a torrent of criticism that unintentionally rekindled interest in the question of infrastructure's productivity.[36] The debate was largely confined to the US until Levy and Spiller published a provocative article in 1994 that examined infrastructure investment in the developing world from a distinctly NIE perspective.[37]

The work on infrastructure privatization before Levy and Spiller focused on the content of regulations – for example, getting the rules or prices right. Doing this successfully, it was believed, would create the proper incentives to induce private investment. This regulatory design approach, however, fatally assumes that parties to the contract fulfill their obligations faithfully. Instead, by drawing on the work of Oliver Williamson, Levy and Spiller viewed regulation as a contracting dilemma. This is where opportunistic, "self-interest seeking with guile" pervades post-contractual relations.[38] Levy and Spiller conceived regulatory governance, defined as "the mechanisms that societies use to constrain regulatory discretion and to resolve conflicts that arise in relation to these constraints," as a principal method of combating opportunism.[39] In short, Levy and Spiller placed the promises and pitfalls of infrastructure privatization within the broader institutional framework of the country in question.

Having devised a qualitative framework of different institutional typologies – the parliamentary system, the presidential system, and the rent-seeking presidential system – Levy and Spiller concluded that judicial independence *and* credible administrative restraint on legislative and executive discretion adequately accounts for the level of private investment in a given country. As such, Levy and Spiller's work provided important causal evidence that linked formal endogenous institutions to growth via privatized infrastructure provision.

Levy and Spiller's article helped to make NIE a standard approach for the study of infrastructure. Subsequent researchers, however, sought to build on their insights by improving their methodology.

[34] Williamson 1985. [35] Aschauer 1989. [36] Gramlich 1994.
[37] Levy and Spiller 1994. [38] Williamson 1985, p. 47. [39] Levy and Spiller 1994, p. 205.

Political economists Haggard and McCubbins endeavored to advance the debate beyond the platitude "institutions matter" and beyond Levy and Spiller's comparative institutional analysis that pivoted on the popular presidentialism versus parliamentarism dichotomy. Levy and Spiller, for example, could not control for differences intrinsic to the two types of systems. Haggard and McCubbins aimed to account for such effects by showing how policymaking can vary within a single constitutional arrangement – in this case, presidential regimes. Their 2001 co-edited volume included case studies on electricity regulation, policy, and pricing in Taiwan, Argentina, and Chile.

What explains systematic variation within presidential regimes? Haggard and McCubbins argued that the separation of power – "the defining feature of presidential systems" – and the separation of purpose, where "different parts of the government are motivated to seek different goals," are two principal determinants.[40] In a subsequent chapter, Cox and McCubbins demonstrated how these two dimensions influence whether a government will prove decisive, on one hand, or resolute, on the other.[41] This conclusion echoed Levy and Spiller's findings.

Cox and McCubbins then introduced a second trade-off, one between "the *private*- and *public-regardedness* of policy produced."[42] As such, they asked, "how much of the policy-making is distributive in intent, and how much aims to provide public goods, improve allocative efficiency, and to promote the general welfare?"[43] For them, the answer was that "the greater the number of effective vetoes, the more private regarding will be the policies enacted; the reverse is also true."[44] The number of effective vetoes in a system, to an extent, will be determined by the country's party system and the distinctiveness of its electoral regime. Incorporating electoral and party system variables into analysis provides a more comprehensive explanation than only focusing on the traditional troika of government – the executive, legislative, and judiciary – that Levy and Spiller had considered.[45]

40 Ibid., p. 3.

41 "At one end," Cox and McCubbins (2001, pp. 22–23) write, "a polity that lacks decisiveness will encounter gridlock and stalemate. At the other end, a polity that lacks resoluteness will be threatened by a lack of stability."

42 Ibid., p. 23. Italics in original. 43 Ibid. p. 28.

44 Haggard and McCubbins 2001, p. 7.

45 Quantitatively oriented scholars also sought to improve upon Levy and Spiller's study. Associated with the new growth literature, these studies have compiled large databases and used cross-national regressions that rely on aggregate measures of key variables to show strong correlations among institutional quality and a range of variables. In two important papers on the role of infrastructure, Henisz (2002) and Esfahani and Ramírez (2003) each arrive at overlapping conclusions: There is a close fit between strong

Toward a political sociology of infrastructure development

NIE-oriented studies on infrastructure provision underline the importance of formal institutions. At their most basic level, formal institutions constrain our behavior, limit our options, and steer us in certain directions. They can alter incentive structures, ease strategic interaction, and lower transaction costs by reducing uncertainty. Given the demonstrable correlation between economic development and robust formal institutions, NIE has made significant strides in helping scholars grapple with the perennial question: "Why have some of these [developing] states been more successful at facilitating industrialization than others?"[46]

This chapter contends, however, that this research tradition, especially on the question of private sector participation in infrastructure, suffers from a common weakness – a fixation on formal institutions.[47] In developing world settings, precisely because formal institutions are weaker and more susceptible to capture by powerful interests, it is critical for informal forces and processes to be analyzed.[48] To this end, I subscribe to an approach I dub a political sociology of infrastructure development.[49] It complements NIE through its stress on formal institutional arrangements but broadens the mainstream's purview. Not a unified theory, it resonates with what Campbell and Pedersen describe as the "second movement" of institutional analysis that values cross-fertilization, a trend born out of the "increasing recognition that institutions and institutional change are more complex than any paradigm portrays by itself."[50] Straddling the border of political science and sociology, political sociology as a field has been difficult to define and delineate.[51] For the purpose of this book, its embrace of formal institutions *and* informal linkages is foundational.[52] This multidisciplinary tradition privileges neither a priori. Rather, it sees them as mutually constitutive, mediated by power relations that pervade inter-group dynamics among key stakeholders.

institutions and good infrastructure, which, in turn, positively correlates with economic growth. The more credible the policy environment is, the more incentives capitalists have to invest in a particular sector.

46 Kohli 2004, p. 1.

47 In an important, subsequent article, Haggard gives informal institutions more credence. He notes: "Formal institutions are important, but, particularly in developing countries, informal institutional arrangements play a significant part as well" (Haggard *et al.* 2008, p. 217).

48 Helmke and Levitsky (2004, p. 727) define informal institutions as "*socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels*" (italics in original).

49 I borrow from Gourvetich's approach that he dubs a "political sociology of political economy" (1986, p. 18).

50 Campbell and Pedersen 2001, p. 2.

51 Amenta *et al.* 2012.

52 Helmke and Levitsky 2004; Grzymala-Busse 2010.

This approach starts with an interest-based political economy that inductively focuses on the material aspects of the struggle of groups, differently positioned in society, over scarce resources, rather than, for example, the deductive modeling of the interests of individuals. By pursuing "theoretically informed empirical political analysis,"[53] value can still be found in Migdal's popular state-in-society perspective with its stress on informal politics and disaggregation. Disaggregation can apply to the state – both horizontally (across space or down to the field offices) and vertically (inter-ministerial dissension, for example). Society's composition requires analytical dissection too. Competing or cross-cutting groups are significant actors, but just as importantly, we must acknowledge that multiple constellations of norms, behaviors, and other rules of the game among groups exist within a society at any point in time.[54] A state-in-society framework also promotes the use of ethnographic tools that some policy scholars lament have been underutilized in their field.[55]

A focus on entangled state and social forces helps to overcome sociology's tendency to overlook the state.[56] That said, at the heart of the sociological enterprise lies an instructive conception of social action that is irreducible to individual behavior. In this relational framework, made famous by Granovetter, neither the extremes of self-interested rational maximization nor the binding constraints of a generalized culture or morality predominate. Thus, it is not just who you are but who you know and how well you know them that gives shape and meaning to a social structure and an economic order.[57]

A relational perspective aligns nicely with sociologically infused network analysis. Networks are "critical mediating variables that affect the distribution of power, the construction of interests and identities, and the dynamics of interaction."[58] Network analysis recognizes the complexity of relationships and that networks can be both resourceful and constraining. I do seek to interject more fluidity and uncertainty into network analysis and policymaking than enthusiasts of this approach typically do.[59] Finally, network analysis understands networks as mechanisms of differentiation. As Ansell remarks, not "only is the social world complex, but also highly biased."[60] Bias and differentiation invoke the

[53] Kohli, A. 1995, p. 2. [54] Migdal 1988, 1994.
[55] Rhodes 2006, p. 437. Exemplary ethnographies of the sociological and political aspects of infrastructure are Wade (1982, 1997).
[56] Katzenstein 1995, p. 12.
[57] Granovetter 1985. Adopting a sociological viewpoint does not predetermine one's stance on the matter. Max Weber, for example, is a methodological individualist (Weber 1968, pp. 13–14).
[58] Ansell 2006, p.75. [59] Richardson 2000. [60] Ansell 2006, p. 76.

prominence of asymmetrical power relations that sociologists and historical institutionalists handle well.[61] Conceiving power as a relational concept keeps the force of structures in view.[62]

A political sociology of infrastructure development framework is best deployed at a middle range level of analysis. It mediates the microanalysis of individual actors and detailed policymaking processes and the macrolevel of the societal distribution of power. Moreover, the approach provides the conceptual equipment for contextualized case analysis. As Evans describes, this strategy draws on "general theories whenever it can but also cares as deeply about particular historical outcomes. . . . Cases are always too complicated to vindicate a single theory, so scholars who work in this tradition are likely to draw on a mélange of theoretical traditions in hopes of gaining greater purchase on the cases they care about."[63] My case is about the political economy of tollways in Indonesia but contains sub-cases as well. Discreet time periods are analyzed, and concessionaires and turnpikes are examined in comparative perspective. Through a political sociology of infrastructure development perspective, I explore this empirical tapestry to illuminate some of NIE's blind spots, namely, state-business relations and rent-seeking, extra-parliamentary rulemaking, and the problem of eminent domain.

State-business relations and rent-seeking

NIE sees infrastructure lagging in the developing world because of weak institutional environments. However, as Douglass North has taught us, not all institutions are of the formal variety. NIE analysis of infrastructure investment ironically has overlooked this point because North is a leading NIE theorist. Nevertheless, key parts of his message that are difficult to model or quantify have been sidelined in subsequent NIE-oriented research. Levy and Spiller's article is a prime example.[64]

Drawing from North's celebrated 1990 book on institutions and institutional change, Levy and Spiller emphasize two components that comprise a country's institutional endowment: (1) legislative and executive institutions and (2) judicial institutions.[65] Doing so, however, amounts to

[61] Hall and Taylor 1996, p. 938; Thalen 1999. [62] Knoke 1990.
[63] Evans 1995b, p. 4.
[64] North's conception of informal institutions, however, is pervaded by the use of a static notion of culture. He does not allow for culture's dynamic inter-subjectivity (Dirks 1992).
[65] The others are: (3) "customs and other informal but broadly accepted norms that generally are understood to constrain the action of individuals or institutions"; (4) "the character of contending social interests within a society and the balance between them"; and (5) bureaucratic capacities (Levy and Spiller 1994, p. 206).

a selective reading of North, who lays tremendous stress on informal institutions. In fact, the latter's incorporation into economic historical analysis is arguably the book's major theoretical contribution, its most damning critique of neoclassical economic theory, and what accounts for its perceived brilliance and enduring influence. Even in a chapter devoted to formal constraints, North concludes that "a mixture of informal norms, rules, and enforcement characteristics together defines the choice set and results in outcomes. Looking only at formal rules, therefore, gives us an inadequate and misleading notion about the relations between formal constraints and performance."[66]

By downplaying the informal components of a country's institutional endowment, Levy and Spiller cannot explain, for example, puzzling outcomes in the single sector they study, telecommunications. Levy and Spiller describe the Philippines, one of their case studies, as an example of poor regulatory governance without credible restraint on regulatory discretion. As a consequence, "investment decisions have been made with very short horizons, with negative implications for long-term performance."[67] However, Salazar compellingly shows that in the Philippines, although a laggard among the fast-growing economies of Southeast Asia on account of weak state institutions captured by powerful interests, telecommunications liberalization led to a more optimal outcome than it did in Malaysia, a wealthier country with a tradition of stronger regulatory governance and (foreign) private sector participation.[68] For her, the key variant is informal state-business relations. In Malaysia, politically connected *bumiputera* (native Malay) firms lobbied for reform as beneficiaries of the sector's privatization. This ensured that rent-seeking would remain prevalent. By contrast, Philippine academics and technocrats pushed for reforms under President Fidel Ramos (1992–98). This difference contributed to clearer and stricter rules on market entry in the Philippines than in Malaysia. In short, the formal institutional endowment of a country cannot change rapidly or be flexible enough to explain why a country may succeed in liberalizing one sector and not in others.

Informal institutions, including competing societal interests and informal state-business relations, also gain analytical traction in Indonesia's toll-road sector. In such developing countries as Indonesia, especially where the rule of law is weak, businesses organize associations to solve collective problems and press the government for favorable policies at the industry or sectoral level. These efforts can promote deleterious rent-seeking or efficiency gains that enhance public welfare.[69] In this way,

[66] North 1990, p. 53. [67] Levy and Spiller 1994, p. 237. [68] Salazar 2007.
[69] Haggard *et al.* 1997. On Indonesia, see Hamilton-Hart (2007).

business associations are conceived as formal organizations. This applies to the Indonesian Toll-Road Operators Association (Asosiasi Jalan Tol Indonesia, or ATI), a key actor in this book. Since its inception in 2000, ATI has lobbied the government to legislate pro-investment policies, with some successes and failures to its name. As Chapter 4 demonstrates, one shortcoming of ATI has been its membership structure; it represents toll-way operators, not license holders. For a significant period of time that this book focuses on, from around 1995 up until 2014, the latter have far outnumbered operators. As a result, the Public Works Ministry, the Toll-Road Regulatory Agency, and the vice president's office have spent considerable time and energy in negotiations and meetings with the representatives of individual license holders, who are not formally organized.[70] In other words, the operation of power relations in this sector has continued to be dominated by informal dealings between the government and individual firms. This arrangement has been particularly pronounced in toll-road cases that have involved some of Indonesia's most powerful players.[71]

The operation of informal institutions also helps to explain variation in rent-seeking outcomes in Indonesia's toll-road sector. Mainstream approaches on rent-seeking rarely consider positive examples. In a 2000 co-edited volume, Khan and Jomo seek to repudiate this unremitting condemnatory view of rent-seeking. The established literature, according to Khan, "has often assumed that rents are *always* socially harmful and that their existence signals adverse effects for efficiency or growth. This is a misleading and restrictive view of rents in general, particularly in developing countries, and has important implications for the analysis of rent-seeking."[72]

Rent-seeking prevails in developing *and* developed economies. Therefore, the conditions embedded in the broader system of state and society relations in which rent-seeking occurs and not the activity itself determines the degree to which it will have socially beneficial or distorting consequences. To give empirical evidence to support his theoretical claims, one case Khan examines is the South Korean state's strategy of selecting export champions. The rents with which these companies were provided, notably access to cheap credit, contributed to the success of the country's export industrialization.[73]

How does this neo-rent-seeking perspective (for the lack of a better name) shed light on infrastructure politics in the developing world? Explaining different rent-seeking outcomes reveals key insights because

70 Chapter 5 discusses a loose informal group these concessionaires did form.
71 I return to these cases briefly below and more in depth in Chapter 5.
72 Khan 2000, p. 24 (italics in original). 73 Ibid.

rent-seeking is pervasive. Moreover, the degree of rent-seeking varies not only from country to country and from sector to sector, but also *within* sectors of individual countries. Wedded to formal institutions, NIE is ill-suited to handle such intra-sectoral variation.

Toll-road concession-holders in Indonesia are enmeshed in an essentially uniform institutional structure – the country's executive, parliament, and judiciary, plus its toll-road regulatory agency (working under the aegis of the Ministry of Public Works). While negative rent-seeking outcomes in the sector have outpaced positive instances, variation in outcomes still exists. As Chapter 5 will show, variation is even apparent among negative examples. In 2006, the then vice president, Jusuf Kalla, a minority partner in a toll-road venture, and his majority sponsor, Edwin Soeryadjaya, one of Indonesia's richest businessmen, sold a majority share of their license to a Malaysian entity. The transaction contravened Indonesian law. Kalla, however, ensured the pertinent regulation was amended retroactively. (It should be noted that Soeryadjaya was a leading financial donor to Yudhoyono's 2009 reelection campaign.) The sale led to a lengthy delay in the turnpike's construction. Construction did commence in early 2013, largely because the Malaysian company was determined to earn profits from the turnpike's operation.[74]

Another example involves Aburizal Bakrie, a former minister and the quintessential New Order politico-businessman who has thrived in the post-Soeharto state thanks to political connections. In 2007, a subsidiary of his conglomerate acquired tollway licenses from three financially distressed private concessionaires. Similar to Kalla's case, the government hoped that the sale would accelerate construction as the new owners would be especially motivated. But Bakrie was not. Nearly six years later, in late 2012, having made minimal progress on land acquisition, let alone construction, and without a sizable foreign partner adamant about building the turnpikes, his firm resold the licenses to a domestic conglomerate (Chapter 5).

While the impact of these two cases is noticeable, not all cases have had distorting consequences. The state toll-road corporation, Jasa Marga, has purchased concessions from bankrupt consortia. In two instances, Jasa Marga commenced with construction while finalizing compulsory land purchases. In these cases an understanding of firm-level incentives is

[74] The company is known as PLUS Expressways Berhad (see Chapter 5). As a PLUS representative explained, the government-linked company feels that the Malaysian market is almost saturated; hence, PLUS must seize international opportunities if it intends to grow (Interview, Oslan Mohamed Isa, Jakarta, July 7, 2010). PLUS has invested in tollway projects in India.

beneficial, just as it is in explaining differences in negative rent-seeking outcomes between Kalla and Soeryadjaya's and Bakrie's entities. Unlike these other firms, Jasa Marga earns nearly all of its revenue from toll roads. Therefore, it has strong incentives to build the roads for which it has licenses. In all, the Indonesian cases demonstrate the utility of understanding variations in rent-seeking outcomes, especially when we home in on power structures in conjunction with firm-level incentives.[75]

Extra-parliamentary rulemaking

Besides rent-seeking, NIE also spends a great deal of effort explaining the lawmaking process and its outcome.[76] NIE sees lawmaking as a bargaining game among competing interests; those within parliament and outsiders looking to influence internal proceedings. As NIE ordinarily focuses on such outside actors as business organizations, it demonstrates that the variability of associational strength, along with parliamentary structure and rules – for example, how political parties gain seats in the legislature – determine parliamentary output and whether this output reflects the interests of certain political parties, their constituents, special interests, or the general welfare.[77]

This is a laudable but limited picture of lawmaking. It is not unreasonable to depict lawmaking as a pitched political battle among variably organized groups that, through legislation, either seek to change or maintain the status quo, with political parties acting as key intermediaries. Nor is it wrong to model politicians' preferences and behavior ex ante with an eye on formal institutional rules, including the electoral system.[78] Some take issue with this model's assumption that actors operate without cognitive limitations.[79] But I find NIE's understanding of lawmaking partial because, especially in developing countries, a host of strategic rules regulating economic activity, sometimes referred to as "soft law," are produced by extra-parliamentary bodies. In rulemaking, the preeminence of parliament should not be taken for granted.

Institutionalists favor the legislative process in part because parliament is a structure comprised of rules and procedures, where formal models of

75 For a fine application of firm-level differences explaining outcomes of dispute resolution in the electricity sector in Indonesia, see Wells and Ahmed (2007).

76 Shepsle (2006, p. 28) describes it as the "single biggest success of the rational choice institutionalism program."

77 NIE scholars also evaluate legislation for its efficiency and credibility. Both are considered integral to the establishment of the rule of law – the holy grail of economic management under which prodigious amounts of productive investment transpire.

78 Shepsle 2006. 79 Henisz and Zelner 2005, p. 363.

interactions based on those rules and procedures can be devised.[80] This is a knottier proposition where bargaining takes place in conditions where publicly available rules or formal procedures hardly exist. Actors seek to influence the contents of decrees, whether they are of the presidential or ministerial variety, in strikingly informal settings. Beyond the constraint of formal rules, informal power relations emerge as a crucial causal variable in formulating such regulations – or who gets what in the politics of redistribution. While the opacity of the process makes knowing what transpired difficult to establish, this same murkiness renders modeling such interactions unlikely.

In the view of NIE, decrees are deemed inferior to parliamentary law; the latter is more credible since it represents an institutionalized product of compromise among competing interests. Decrees, by contrast, are susceptible to amendment at the whim of the president (or minister). This breeds caution among investors, leading to underinvestment – as Brunetti and Weder argue in their influential article.[81] While decrees may be less credible, they are not immaterial. In fact, decrees matter *because* they are a regularly used tool of governance in weak democracies, a point that Brunetti and Weder concede. They still condemn them, however, for their adverse effects on private investment. Nevertheless, by not conceiving decrees as critical outcomes of intensely political processes, Brunetti and Weder miss a significant portion of what constitutes infrastructure politics in the developing world.

While the problem of presidential decrees in protecting the property rights of investors is well known, the substantial role these decrees and other related government regulations play in the policymaking process is less understood. Such is the case in Indonesia, although little is known about how the use of these decrees has changed over time.[82] In Indonesia, policymaking has reached the point where parliamentary statutes (*undang-undang*) are almost meaningless in the absence of the issuance of implementing regulations by the executive branch, a process that can take years. A ministry or a cross-ministry team is typically established to write the regulations.[83] This is needed, as basic statutory clauses "must be

[80] Not all rules are written, but some become routinized and thus stable (and publicly known) over time (Shepsle 2006). These then "can be modeled in the context of wealth-maximizing models" (North 1990, p. 40).

[81] Brunetti and Weder 1994.

[82] It existed under the colonial regime but was not intended to be this way (Email Communication, Adriaan Bedner, February 7, 2014). Generally, it is believed to have peaked under the New Order and has continued into the post-Soeharto period. The topic calls for further research.

[83] Some of this has legal standing (Law 12 of 2011 on Lawmaking, arts. 54 and 55).

further built upon specific regulations in order to be implemented."[84] Given the prominence of this post-statutory enactment phase,[85] the executive branch gains an upper hand over an increasingly pro-active but underachieving parliament in terms of new quality crafted legislation. Without serious consideration of this post-enactment phase, discussions on policy variation and outcome in Indonesia lose their analytical edge.[86]

A range of actors can have input on legislative drafting. Influences differ across groups as a result of differentials in access and material resources. Variation of influence also occurs depending on the topic or content of the bill – for example, how controversial it is, how many or which specific vested interests are at stake, and the bill's economic value. A high value means it is "wet" with rent-seeking or corruption opportunities; low value is referred to as "dry." Whether the draft originates with the executive branch, which happens more often than not, or with parliament also has an impact. Broadly conceived, groups that influence legislative drafting in Indonesia include:

1) Parliamentary committees: Parties are important, but it is well known that the committee loyalty of parliamentarians can trump that of party loyalty.
2) Executive branch, including ministries: For sectoral legislation we would expect the relevant ministry to take the lead, but some laws are complex and cross ministerial boundaries, so require coordination and cooperation.
3) Business: Individual entities can engage in particularistic lobbying or negotiation or collectively through associations.
4) Civil society organizations: Their influence has grown considerably in the post-Soeharto era, with parliamentary committees frequently seeking their input. Representatives can range from academics and NGO activists to former governmental officials and key persons from mass-based religious or labor organizations.
5) IFIs: Depending on the topic at hand, their influence varies. Their input can include the funding of local think tanks to study international "best practice" or the hiring of consultants to draft the statute directly.[87]

There are always variations at the margins, yet this is a general picture of the relevant actors. But in Indonesia, the parliamentary lawmaking

[84] Bedner 2008, p. 177. [85] I thank Don Horowitz for helping to name this phase.
[86] Pepinsky 2013. For a rare consideration of the post-enactment phase by political scientists (and the politics of lawmaking), see Rosser and Edwin (2012).
[87] An arena, not an actor, where ideas are debated and relations forged happens in Indonesia's busy seminar circuit (Email Communication, Adriaan Bedner, February 7, 2014).

phase in reality is not the final step in the policymaking process; greater emphasis must be given to the post-enactment phase. However, this phase, which should link the objectives of legislation to their implementation by determining the contents of the necessary implementing regulations, is opaque. Without the regulations being issued, the higher-level laws, vaguely worded and susceptible to multiple interpretations,[88] float about in an ethereal world of reality. They exist but cannot be implemented.

Unlike legislative drafting, which is process bound and must in theory conform to an open and participatory process, the regulatory drafting phase is the domain of particular ministries. As a result, the role of actors involved in the legislative stage, including civil society organizations, the IFIs, and parliamentary committees, is marginalized, and their influence over post-enactment development wanes. What remains are tussles within and among the ministries with business interests. The opaqueness of the process is characterized by informality and the unmistakable haggling, jostling, bargaining, and negotiating that determine the content of enabling regulations.[89]

At this stage, the intent of particular legislative acts or clauses can be diluted or undermined; conversely, they also can be strengthened. In practice, such reinterpretations occur without recourse, because although the Supreme Court can rule against government regulations, it rarely exercises this prerogative.[90] By contrast, the Constitutional Court has bared its teeth since its establishment in 2003, but it can only rule against parliamentary laws if someone comes forward to file for judicial review of the law on the grounds it is unconstitutional. Thus, the post-enactment phase is where the behind-the-scenes, under-the-radar approach to policymaking continues unabated, out of the public (and press) spotlight, and unchecked by judicial oversight. It is an arena where informal power relations come to the fore and interests are revealed.[91] The pervasiveness of this phase helps to account for policymaking's slowness in Indonesia. Enabling regulations, or other binding output such as ministerial decrees, can take months or years to be published, if at all.

88 Ziegenhain, 2008, p. 170.

89 No matter the opaqueness of the legislative drafting phase (Sherlock 2008; Horowitz 2013, pp. 279–80, note 34), the post-enactment phase is far more so.

90 The Court has gradually begun to exercise such judicial review powers, especially in cases that involve bylaws of regional governments (Butt and Parsons 2014).

91 In a well-publicized case, press coverage of anti-tobacco clauses that were stricken from the 2009 Health Act after it had been passed by parliament forced Yudhoyono to insist on their reinsertion before signing the bill (Rosser 2013). However, this example pertains to a parliamentary law, not a post-enactment decree or regulation.

Table 1.1 *Sources and hierarchy of laws in Indonesia (since 2011)*

1	The 1945 Constitution
2	Decision of the People's Consultative Assembly
3	Parliament-enacted law/Government regulation in lieu of legislation
4	Government (implementing) regulation
5	Presidential decree
6	Provincial regulation
7	Municipality/district regulation*
8	Ministerial decrees, Supreme Court decisions, Bank of Indonesia decrees, and many other government institutions or agencies established by law**

Source: Law 12 of 2011 on Lawmaking (arts. 7 and 8)
*If the regional regulation is predicated on the authority granted to the region(s) by statute, it can override a presidential decree and government regulation (Email Communication, Adriaan Bedner, February 7, 2014).
**For a full list, see Article 8(1). On the legal hierachy's confusion and ambiguity in practice, see Butt and Parsons (2014).

As this book will show in detail, the post-enactment phase has had a significant impact on the toll-road sector. The implementing regulation of the 2004 Road Act, for example, was produced by the Public Works Ministry within six months of the law's passing. Considered swift for Indonesia today, it demonstrated the first Yudhoyono administration's resolve to attract new toll-road investment and to jump-start construction. Subsequent ministerial regulations related to the toll-road sector have been the products of heated negotiations among the Public Works Ministry, ATI, toll-road license-holders, and the Finance Ministry. The latter has sought to reign in tax breaks, loopholes, and other incentives that Public Works has offered to support its toll-road building plan. A prominent example was a decree from the Public Works Ministry on the use of government funds to purchase the public right of way for sections of the Trans-Java Expressway (Chapter 4). Not only were parliamentary interests excluded from the bargaining in general, but there also were instances where post-enactment output has reinterpreted higher parliamentary law. A notable instance was the stripping of authority of the toll-road regulatory agency at its inception, even though the IRA was established by parliamentary statute (Chapter 3). Decrees from the Public Works Ministry have also postponed tariff hikes on account of substandard service, even though the 2004 Road Act stipulates rates are to be raised automatically every two years.

Another case of post-enactment reinterpretation concerned the 2012 law on eminent domain (Chapter 4). The law indicated that the new statutes governing eminent domain *could be* applied to existing cases.

The law's first implementing regulation, however, stipulated that prior regulations *must* be deployed in such instances. The toll-road operators association (ATI) felt aggrieved by the change in interpretation and (rightly) argued that the change would cause delays in land acquisition. In all, decree- and regulation-making involves consequential informal political processes, unencumbered by formal rules or party structure or systems. While decrees are insecure protectors of property rights, they do matter, especially if one seeks to explain the broad category of mixed outcomes – the good, the bad, the middling – so characteristic of infrastructure provision in the developing world.

Land acquisition

It should come as little surprise that several of President Yudhoyono's key legal products were in the form of decrees. Those on eminent domain, our final topic at hand, are illustrative. Yudhoyono followed a New Order tradition of using presidential decrees to regulate eminent domain powers (Chapter 3). However, with Indonesia's democratization and the army's withdrawal from the role of land acquisition enforcer, Yudhoyono's own decree juridically required more teeth. Therefore, the democratically elected Yudhoyono granted himself the prerogative to abrogate peoples' rights over land, a discretionary power absent from his authoritarian predecessor's 1993 decree. This insertion drew the ire of civil society groups, which managed to secure minor alterations to the decree. The changes led to some uncertainty that, in turn, resulted in a slowdown of project construction on the Trans-Java Expressway.

Any research on land in the developing world will inevitably remark on its sociopolitical significance, notably how locals connect intimately with their land and form strong identities based on it, how it serves as the source of livelihoods for tens of millions of people, how access to land determines class or status positions, and how individuals and groups lay claim to land ownership or possession in a myriad of historically informed ways. However, these often informal dynamics sit askance with the formal institutional powers states possess.

In theory, most states retain eminent domain authority, but in practice their capacity to execute this authority varies widely.[92] Implementation results in competing and conflicting interests. These can become explosive when issues of procedural fairness are violated or conceptions of social justice ignored, matters that come to the fore more frequently

[92] Keith *et al*. 2008.

than state officials care to admit. It is this mismatch between state and societal perceptions that makes the issue sensitive. This is particularly acute in relation to the subject of compensation, for which today's "best practice" recommends following the equivalence, or equity, principle.[93]

NIE research on infrastructure provision in the developing world has tended to overlook the contested nature of eminent domain powers, in large part because its application is messy, conflictual, and resolved in highly informal ways, especially in the developing world. One way it has skirted the issue has been to focus on the power and telecommunications sectors. Not only have these two sectors been the most successfully privatized, but also, and perhaps not coincidentally, their land requirements are lighter than those needed for airports, seaports, drainage canals, railways, and, of course, toll roads.[94] However, neglecting the eminent domain process is ironic, as a foundational premise of NIE is the protection of property rights, although this has mostly meant the economic rights of investors rather than the land rights of citizens, regardless of the sociopolitical implications.[95]

Grounded political-sociological studies of infrastructure have underscored the complexity of and contestation intrinsic to land claims, clearance, and compensation. *The Power Broker*, Caro's biography of Robert Moses, is a classic in this genre. He notes how when Moses, an unelected official, was pushing to clear apartment buildings in New York City to make way for his elaborate inner-city transportation plans, local resistance was stiff but ultimately futile, in part because the majority of the apartments were located in ethnic minority neighborhoods. Caro estimates that Moses's plans resulted in more than 250,000 citizens being forcibly relocated. His hard-nosed "success" went on to serve as the model for the US federal government's relocation strategy for the building of the inter-state highway system.[96]

In Apter and Sawa's riveting study of grassroots resistance to the building of Narita International Airport in the 1970s, the contestation of eminent domain claims is easily revealed, even in a society stereotyped for its deference to authority. Apter and Sawa situate the long-standing protests in a counter-tradition of indigenous radicalism, infused with such external influences as Marxism and Protestant Christianity.[97] The violence the movement deployed is well documented; less well known are the bloody protests that forced the government to change the original site for the airport (in Tomisato, Chiba Prefecture) to its current location.

93 Ibid. 94 An exception involves nuclear power plants.
95 For a welcome exception, see Hamilton-Hart (2013). 96 Caro 1974, pp. 1–21.
97 Apter and Sawa 1984, p. 12.

Despite the militancy of some of the Sanrizuka farmers and the radical groups drawn to their plight, there was little chance the Japanese government, intent on constructing a modern airport to reflect its post-WWII economic prowess and ascendant international stature, would capitulate a second time. Protests persisted far past the publication of Apter and Sawa's book in 1984.[98]

The number of New York apartment dwellers or Japanese farmers who happened to be in the way of their governments' modernizing drives is dwarfed by the number of Chinese citizens, estimated to be between 60 and 75 million, displaced by urban redevelopment and farmland conversion between 1990 to 2007.[99] Hsing's insightful study of this great transformation – precipitated by the 1988 official initiation of China's land leasehold market – shows how excesses have emerged as a result of the central government's strict definition of local cadre "success" in economic terms, where success is typically tied to local GDP growth. This has stimulated a rapacious accumulation of land by local officials for conversion into industrial parks or high-end residential buildings in conjunction with select private entities and often unchecked by central government regulation.

As these three cases demonstrate, eminent domain contestation pervades democracies and non-democracies alike. In Indonesia's case, it continues to resonate even as the country transitioned from authoritarianism to a vibrant though flawed democracy. Reasons for the instrumental role land acquisition has had in the underperformance of the country's toll-road sector are best understood in these changing contexts of state–society relations. Under Soeharto, while state regulations governed land acquisition, state coercion was the final arbiter. Authorities cleared the land of inhabitants, paying the latter minimal compensation. Resistance was rare. When it did flare, it was met by state or state-sponsored violence. The post-Soeharto state has not been strong enough to replicate the coercive informality of this process. Moreover, citizens now benefit from having a rights-based consciousness, ensuring democratic values go deeper than the existence of a democratic electoral system. As Chapter 6 discusses, state officials are also sensitive to rights violations now, so in many cases have tread lightly on the ground. An example of this was the extraordinary reluctance of President Yudhoyono's administrations to implement many of the stipulations contained in his eminent domain decrees. These included negating land rights by way of presidential discretion, enforcing deadlines on negotiations, and depositing

98 See the website: japansubculture.com/the-phantoms-of-narita-airport-the-forgotten-warriors-in-fading-green-fields (last accessed February 21, 2014).
99 Hsing 2010, p. 2.

compensation at district courts to move projects forward.[100] Yudhoyono's hesitancy did not come from formal institutional considerations or even party structure.[101] It was the result of aligning his administrations' approach with the values of a democratic Indonesia. Protecting his image also mattered. He feared appearing abusive in a way that would recall New Order practice. This meant that negotiations in many cases dragged for years.

Because of the frustratingly slow acquisition process, the central government enacted changes that it hoped would accelerate matters. As Chapter 4 shows, chief among them was upgrading eminent domain regulations from a presidential decree to a parliamentary law in 2012. Only with Yudhoyono's 2009 reelection was a post-Soeharto president powerful enough to accomplish this. Notably, the new law reversed a prominent feature of decentralization, as Jakarta recentralized authority over eminent domain for projects in the public interest. Removing the responsibility for clearance from local officials – scapegoats of the central government for the sluggish process – the new law returned it to the National Land Agency, a notoriously corrupt and inept central government institution. Some private concessionaires exploited the quagmire as an excuse not to pay for land clearance, diverting attention from their own financial uncertainties. But on routes where investor finances have been in order, the central government did begin to impose its will, enforcing its statutes more strictly and, on occasion, abusively so (for one troubling case, see Chapter 5). Nevertheless, it is a tricky proposition to conclude through the lens of eminent domain that society has triumphed over the state in the post-Soeharto era, in contrast to the New Order, when conventional wisdom held the state to be dominant.[102]

Time will tell whether recentralization of involuntary land acquisition proves more effective than its decentralized counterpart. Embroiled in confusing land laws and regulations, coercive informal and formal processes, and contestations over the meaning or legitimacy of the "public interest" in infrastructure provision (which becomes especially acute when assets are transferred to private or joint-venture entities),[103] the application of eminent domain powers in Indonesia remains complicated and contested, as this book elucidates. Studies of infrastructure in the developing world would be best served by tackling and not shying away from such complexity.

[100] Presidential discretion was made explicit in the 2005 decree but excised from the 2006 version. Still, the 1961 law, upon which this power rests, at the time remained in effect and thus the power was legal (see Chapter 5).

[101] On Yudhoyono's hesitancy and lackluster performance more generally, see Liddle (2013).

[102] MacIntyre 1991, p. 6.

[103] Hall, Hirsch, and Li 2011, p. 15.

Concluding thoughts

As approaches to the study of infrastructure provision, NIE and political sociology are not poles apart. Both reject the treatment of infrastructure as primarily a technical matter. They understand its political properties because they recognize the importance of formal institutions that condition investment and regulation. They conceive of such institutions as products of conflict and compromise and realize that differences in the strengths of national institutional frameworks matter appreciably. This is especially so in the protection of property rights, which has a great bearing on private investment. But differences remain, including the inductive strategy of political sociology and its non-individualist orientation. Empirically, political sociology gains traction where NIE analysis stops. The former emphasizes non-institutional politics as a means to capture messy overlapping processes, competing interests, and power relations that transpire beyond the world of formal constraints.

To flesh out the political sociological approach to infrastructure, I have argued that special attention should be devoted to intra-sectoral variation in rent-seeking outcomes, extra-parliamentary rulemaking as a critical bridge between legislation and implementation, and the contested application of eminent domain powers. By paying attention to these blind spots within the NIE approach, this book aims to generate a richer account of infrastructure politics in the developing world. Further integration of the two approaches should lead to fruitful insights on the complexity of causal pathways and institutional change.

2 Legacies of New Order governance

By the end of the New Order, Indonesia's toll-road industry had become so synonymous with Soeharto's children that this association has obscured developments preceding their involvement. In part, this chapter is an effort at resurrecting this prior history. It charts how the sector was governed before and after the palace children's participation. The chapter begins with the plan of Soekarno's government to construct the country's first highway, connecting Jakarta to Bogor. The anticommunist massacres of 1965 and 1966 and the associated mayhem unleashed by General Soeharto and the army, however, made the undertaking of such a task impossible. Even after the killings subsided, the plan was further delayed by the arduous efforts of Soeharto's top officials as the regime focused on consolidation. Once threats to the now-President Soeharto's power were minimized, and with the financial backing of the Western powers, state officials revisited the highway idea. They hoped the road would spark industrial upgrading and expansion. The 1973 oil boom benefitted the regime financially and ensured that the toll road (as it had become) would be realized.

With US loans and Korean construction expertise, 1978 the saw the opening of the country's first toll road, known as "Jagorawi," and also gave birth to the state toll-road corporation, Jasa Marga (Persero)[1]. Although the Jagorawi was a commercial success, and Jasa Marga would go on to build turnpikes in Semarang, Medan, Jakarta, and Surabaya, the recession of the early 1980s frustrated ambitious expansion plans. Still, despite bumps in the road, the 1980s represented the heyday of the strong autonomous state in command of its economy.[2]

As the country's technocrats initiated a program of financial liberalization and deregulation in response to the recession, without the

[1] Persero is a limited liability company with "the highest degree of autonomy in a formal sense," but is "controlled by the respective departments through the board of directors and appointment of senior management" (Soesastro, Simandjuntak, and Silalahi 1988, p. 85). Most SOEs under the New Order comprised this type (Sungkar 2008, p. 98, note 1).

[2] Anderson 1983; Robison 1986.

requisite institutional strength to combat profiteering and rampant speculation, so-called private capital joined state capital in the sector. Infamously, Soeharto's children had come of age and embarked on an aggressive strategy of capital accumulation.[3] They used their connections and other people's capital and expertise (including that of a disconcerted Jasa Marga) to dominate the toll-road sector. Soeharto's eldest daughter, popularly known as Tutut, took control of the lucrative Jakarta Inner Ring Road (JIRR). Preferential treatment did not end there; tariffs on the palace children's roads remained higher than on Jasa Marga's routes. But their deep involvement in the sector did not bring the efficiency or innovative gains to the sector that the "best practice" literature proposes.

This hardly mattered. The economy recovered from the recession and continued to grow. The tollway expansion Jasa Marga officials desired since the early 1980s was underway. Trusting in Soeharto's centralized hierarchal system of power that gave a sense of security to private property rights,[4] and with the country's burgeoning, car-owning middle class, foreign investors rushed to team with Tutut and, as mandated by law, with Jasa Marga. Meanwhile, the capital's expanding tollway network altered the spatial pattern of the middle class's workplaces and residences that proliferated (especially in new towns) along the capital's outskirts.

Lastly, this chapter considers how Jakarta's suburban expansion was set to be repeated across Java's dense north coast, as a major (not-yet-named) expressway project designed to connect Jakarta with Surabaya (and beyond) was put on offer. But resentment among native (*pribumi*) businessmen had been growing against the strangleholds that the Sino-Indonesian conglomerates had on the economy and that Soeharto's children had on the toll-road sector. In response, Soeharto divided the megaproject into many concessions to spread the wealth, particularly among *pribumi* contractors. This chapter details these *pribumi* contractors, which turnpikes they acquired, and how. But the project came to naught, as the financial crisis beginning in 1997 brought the economy and the infrastructure sector to a crashing halt. The crisis destroyed the command the president had exerted over the country's politics and economy, leaving officials, politicians, and investors in the post-Soeharto state scrambling to pick up the pieces.

[3] This can be referred to as the regime's third phase of oligarchic accumulation (Winters 2011, pp. 158, 166–79).

[4] McLeod 2000; MacIntyre 2000.

The early New Order: preconditions

Planners first explored the possibility of connecting Indonesia's steamy, bustling capital with the temperate hill town of Bogor to the south via a limited-access highway in 1963.[5] The plan evoked the grandeur of other megaprojects initiated by President Soekarno: the Gelora Stadium, the National Monument, the six-lane Thamrin Boulevard, the Hotel Indonesia, and the Sarinah department store, among others. Through these, he sought to bestow prestige upon the nation's capital as an inspiring world metropolis. The projects also aimed to divert attention away from the country's ills and the inadequacies of Soekarno's regime.[6] Whether his government could afford to build the highway remains an open question. Spiraling inflation, declining per capita income, stagnating industrial output, and depleting foreign reserves marred the country's economy. Even if the government had been capable of scraping the funds together or if the affable president had been able to cajole the Soviets or the Chinese into lending the requisite funds, the violence of the ensuing years would still have rendered the proposal inconceivable.[7] Firmly ensconced at the country's helm, General Soeharto in 1971 and 1972 revisited the project in earnest.

As a result of his consolidation of power, Soeharto brought the country relative political stability and helped to rekindle the inter-urban highway idea. To undertake such complex and costly development programs, New Order officials required confidence they would stay in power. Regimes in constant fear of being toppled typically do not attempt to execute such vast projects. By early 1972, a number of challenges had been addressed that nurtured self-assurance and lengthened the regime's time horizon. The government-led anticommunist massacres of 1965–66 – which had brought Soeharto to power in the first place and left hundreds of thousands, if not millions, of Indonesians dead in their wake – were over. By the early 1970s, most communists or those suspected thereof were either dead, in jail, or under tight surveillance.[8]

Having vanquished this threat from below, Soeharto neutralized potential threats posed by members of the armed forces, who might have questioned his newfound power. Those sympathetic to Soekarno or with leftwing sympathies were purged. Others were either transferred to

[5] Feasibility studies were conducted over nearly a decade, the first from 1963 to 1965 (Jasa Marga 1993, p. 6).
[6] Abeyasekere 1987, pp. 167–71, 178; Dick and Rimmer 2003, pp. 281–82.
[7] Soekarno had severed diplomatic relations with the "west" in 1963, withdrawing Indonesia's representation from the United Nations.
[8] Small bands of armed holdouts were pursued in areas far from the capital.

harmless staff positions or were bought off. From the outset of their rule, Soeharto and his inner circle began fostering a deep encompassing patronage system. As a leading observer put it, "Presiding over a system of balancing vested interests, Suharto seemed in the early 1970s to be in a position to maintain his regime indefinitely. As long as foreign aid, foreign investment and oil income continued to provide increasing resources available for distribution, it seemed rival groups in the army could be held together through judicious allocation of material satisfactions."[9]

The New Order also faced the onerous task of securing electoral legitimacy. In the late 1960s, bowing to pressure from the country's political parties, officials had promised elections, but reluctant authorities pushed them back to 1971. With electoral laws passed and the balloting drawing near, officials scrambled to strengthen the government's electoral vehicle, known as Golkar. The large amounts of money, planning, and coercion that were put into ensuring a successful outcome attested to the gravity the regime accorded its inaugural election.[10]

Antigovernment student protests also tested Soeharto. Only a few years earlier, many of these same student leaders had lent his regime critical support and legitimacy in its fight against Soekarno and leftist groups.[11] Disillusionment with the New Order among the young began to set in, however. Reports about abuse of authority, official malfeasance, corruption, and the extravagance of the generals' lifestyles proliferated.[12] As tensions mounted in 1971 over the heavy-handedness of government-led electoral preparations, activists seized on another issue – forced evictions to make way for the building of an elaborate cultural theme park, popularly known as *Taman Mini*.[13] Critics railed against the multimillion-dollar project on the outskirts of Jakarta as "a grossly luxurious use of funds."[14] Soeharto was enraged by what he saw as personal attacks against his wife, popularly known as Ibu Tien, the park's sponsor. In a well-known speech of January 1972, he threatened to smash critics and dissenters.[15] With overt violence restricted to a single occasion and arrests limited to a handful of student leaders, Soeharto demonstrated a degree of political flexibility.[16] His regime

9 Crouch 1978, p. 310. 10 Nishihara 1972.

11 The prominent organization here was the Joint Action Front of University Students of Indonesia (KAMI).

12 Starner 1974.

13 "Harga Indonesia Mini," *Tempo*, June 5, 1971, pp. 5–6. In English, it is often rendered as the Beautiful Indonesia-in-Miniature Park.

14 Pemberton 1994, p. 153. On non-student opposition, see Lane (2008, pp. 69–71).

15 Elson 2001, p. 199. The speech's text in English is reprinted in Smith (1974, pp. 235–40).

16 In December 1971, soldiers fired upon several protesters in front of Ibu Tien's Our Hope Foundation (Pemberton 1994, p. 153).

kept lines of communication open with students and gave them more freedom to demonstrate than labor for example.[17] Eventually, the general felt sufficiently secure in his presidency to begin dropping the students as reliable coalition partners. While they remained a thorn in his side until the late 1970s, a hardened Soeharto put the 1971–72 demonstrations behind him and further entrenched the patrimonial system of governance by which he had been ruling the country for a number of years.

Favorable economic fundamentals also helped the case for embarking on a highway-building program. Much has been written on the surprising economic turnaround spearheaded by the New Order beginning in 1966. Macroeconomic stabilization and rehabilitation featured a liberalized trade regime, a simplified foreign exchange rate, and a tight monetary policy accompanied by balanced budgets. These liberal orthodox policies, developed by an elite team of university economists, fostered a dramatic recovery.[18] The reining-in of runaway inflation spurred an average annual growth rate of 7.9 percent from 1967 to 1973.[19] Increased government expenditure, improved investment rates, and technological progress achieved in the manufacturing and agricultural sectors fueled soaring growth.[20] However, this growth was also politically underwritten by the generous aid packages that Western allies made available to Soeharto's anticommunist government in a region and a country the US had stamped as geostrategic. To coordinate these efforts among the country's creditors, in 1967 the Intergovernmental Group on Indonesia was established at the behest of the IMF. The group became a central pillar of support for the early New Order.[21]

It is misleading to portray the New Order's nascent highway program as a direct outcome of the 1973 oil boom. Some feasibility studies were completed, and others were underway, prior to the surge in world oil prices. That said, the unprecedented amount of resources the boom made available to the regime ("riches undreamed of hitherto") ensured that whatever plans had been conceived would be realized.[22]

Governments also require a critical mass of consumers financially able and willing to pay the tariffs that help to finance toll-road construction. This was no exception in Jakarta. As the capital became the country's political, economic, intellectual, and modern cultural center, it became a

[17] Smith 2007, p. 155; Aspinall 2005, pp. 119–20. Several leaders were coopted into government.

[18] Bresnan 1993, Chapter 3; Ransom 1974. [19] Hill 2000, p.3.

[20] Sundrum 1986, p. 42, Table 1; Booth 1992, pp. 4–19.

[21] Scott 1975. Sixty percent of the first five-year development plan in 1969 was sourced from foreign assistance financing (Mas'oed 1983, pp. 142, 147–48).

[22] Anderson 2008, p. 36. See also Booth and McCawley (1981, p. 147) and Bowie and Unger (1997, pp. 51–52).

magnet for migrants.[23] There was pervasive unemployment in the formal sector, but Jakarta's GDP per capita was twice that of the national average. From 1966 to 1970, its economy grew 2 percent faster than the national average of 5 percent. This economic pull contributed to the capital's rapid population growth of about 53 percent during the 1960s.[24] As its population approached 5 million, it looked like the city and its environs would keep growing.[25] By 1970, the greater Jakarta area had a population of 13.4 million, up 21.6 percent from 1961. This was forecast to increase nearly another 27 percent by 1980 to around 17 million.[26]

Although the majority of Jakarta's denizens, especially the migrants, could not afford a car, there was a burgeoning minority of self-employed professionals, managers and supervisors, military officials, professionals, and employers who could.[27] Swift population growth, combined with robust economic fundamentals like increases in income, resulted in more and more vehicles plying Jakarta's increasingly congested streets.[28] From 1967 to 1974, the number of passenger cars grew at an annual rate of 9.7 percent, reaching 131,587. The number of trucks grew at 11.9 percent (to 37,391) and buses expanded at 12 percent (to 8,554).[29] Motor vehicles per capita increased from under 27 per 1,000 persons in 1971 to nearly 39 by 1975.[30] The room for greater vehicle growth seemed limitless. Jakarta's middle-to-upper income groups and local industry seemed substantial enough to support a rudimentary toll-road network. Indonesia's consumerist middle class is commonly conceived of as a 1980s phenomenon, but by the early 1970s, Jakarta at least was home to a substantial middle class.

The Jagorawi

According to Jakarta's urban studies literature, the city's planning has been spectacularly inadequate. There have been plenty of long-term

[23] Silver 2008, p. 92. Thousands also fled anticommunist violence in the countryside (Kusno 2010). Jakarta's rural migration-fueled growth was the exception across Indonesia (Jones 1977). In the 1970s, natural population increase became as important (Erni and Bianpoen 1980, p. 64).
[24] Directorate General of Housing, Building Planning, and Urban Development, 1973, p. 33; Erni and Bianpoen 1980.
[25] This was despite the "closed city" policy, announced in 1970, which proved ineffective (Krausse 1975, p. 92).
[26] URS Research Company, 1972, p. IV-3.
[27] Dick 1985, p. 75, Table 2.
[28] Sundrum 1988. From 1969 to 1974, Jakarta's annual growth rate was almost 10 percent, the national rate roughly 7 percent.
[29] Arge Intertraffic Lenzconsult, 1976, Part A, Vol. I, pp. 93. Vehicular growth in West Java over the same period was about 7.4 percent. These figures exclude vehicles of the armed forces and the diplomatic corps (BPS 1970–71, p. 237, Table X.4).
[30] JICA 1978a, p. Table 1–10, p. 1–25.

plans, often supported by international money and expertise. However, few have been implemented because their planners have had little powers to do so. Grossly ill-equipped to tackle many of the area's problems, a patchwork or piecemeal approach to planning has become the norm. The building of the area's first toll roads was an exception. These were enormously expensive projects (with high sunk costs) that took years to construct. Returns on investment took even longer. Unlike many developments in the city, toll roads in Jakarta began with a plan that bore fruit.

With a dearth of technical knowledge and experience within the government on highway development, officials sought experts from allies of the young regime.[31] American civil engineering firms were brought in to conduct feasibility studies. One was completed in 1969; another in 1972 refined the original 1963–65 plan for the Jakarta-Bogor highway.[32] A third in 1973 analyzed a treasure trove of data for an ambitious "Trans-Java Highway."[33] On these plans, one commentator observed that the "development of toll roads was encouraged by the nation's newly opened relationship with the West… In the transport sector…lending agencies favoured large projects that imitated Western approaches such as freeway development in the U.S. These projects provided the local infrastructure to complement economic policies aimed at expanding spaces of flows within global trade networks."[34]

Firms from allies other than the US also joined in. In 1974, a Japanese development consultancy studied a highway designed to connect Jakarta to the port of Merak in West Java.[35] In the same year, a West German firm finished a study of the Jakarta Metropolitan area and another on a Jakarta–West Java tollway network in 1976.[36] These two systems years later came to comprise JIRR and three expressways leading west (to Tangerang), east (to Cikampek), and south (to Bogor) from the

[31] Jalarie 1978.

[32] Paid for by the International Bank for Reconstruction and Development, the first report was conducted by a US (Louis Berger Inc.) and a Danish firm (Kampmann, Kierulff, and Saxild A/S). The second report, funded by the main contractor of the Jakarta–Bogor link – Sverdrup & Parcel International (of St. Louis, MO) – was carried out by URS Research Company (of San Mateo, CA).

[33] Paid for by USAID, it was conducted by Lyon Associates of Hawaii.

[34] Lo 2010, p. 536.

[35] The study was completed by JICA's predecessor, the Overseas Technical Cooperation Agency. A detailed engineering design was carried out in 1977 (JICA 1979).

[36] An early New Order foreign loan (US$12.5 million) was from the West German government (Mas'oed 1983, p. 103). The first toll-road study (JMATS), paid for by the German Agency for Technical Cooperation, Ltd., was conducted by Arge Becker Intertraffic. Consultants were then asked to begin a second study (Arge Intertraffic Lenzconsult 1976, pp. 5–11).

capital. The report also identified links for a future arterial network orbiting the city.[37]

Officials tabbed the Jakarta–Bogor–Ciawi link (Soekarno's highway) as the first. In the pipeline for nearly a decade, its construction appeared manageable (unlike the proposed Trans-Java Highway[38]). The existing two-lane road on the route was already the greater Jakarta area's most densely used arterial. It was experiencing an annual growth rate of about 16 percent, with a daily traffic count of more than 10,000 vehicles.[39] Foreign consultants found the traffic's composition striking. A US firm described a bewildering array of "pedestrians, bicycles, betjaks, bemos, motor scooters, motorcycles, man-, horse- and ox-drawn carts, and a very wide range of sizes, makes, ages and types of autos, jeeps, buses, and trucks."[40] This "intensively used facility" also passed industrial estates, including a cement producing complex in Cibinong, located about 15 km south of Jakarta. Officials, consultants, and factory directors believed that a new highway would hasten distribution and output. The 1972 feasibility report was bullish on a new facility's ability to ease traffic congestion, on its potential to earn a high rate of return on the capital invested, and on its capacity to spark regional economic growth. It would pave the way, as it were, to a more industrialized economy aided by infusions of foreign direct investment.[41] A highway would also ease the commute for the many civil servants living between Jakarta and Bogor.[42]

After some four years of construction, on March 9, 1978, Soeharto opened the first 27 km of the Jakarta–Bogor–Ciawi highway, better known as the Jagorawi.[43] The ceremony featured the presentation of a small gift to the father of one of the twenty Indonesians who died while working on the road as a token of the president's appreciation for their sacrifices. He

37 Six different transportation studies of the 1970s did emphasize the need for mass transit (Silver 2008, p. 124).

38 The chairman of the firm that completed the study suggested that the government was concerned about acquiring the land and when the firm responded by attempting to route the road in hilly areas, it raised the project's costs considerably (Email exchange, Frank E. Lyon, Jr., March 9, 2011). A motivating local factor for much of the 1965–66 massacres on Java was conflict over land.

39 Directorate General of Housing, Building Planning, and Urban Development 1973, p. 87; Arge Intertraffic Lenzconsult 1976, p. 40.

40 URS Research 1972, III-1. A *betjak* is a three-wheeled pedal-driven passenger cart; a *bemo* is small motorized passenger vehicle.

41 Expected internal rates of return ranged from 15 to 33 percent. The report highlighted *Taman Mini*, a National Defense Headquarters, an industrial estate (including a large cement factory, PT Semen Cibinong), residential development, and recreational development (at Puncak).

42 Sudibyo 1978; JICA 1978b, p. 5.

43 The completed Jagorawi measures about 59 km, which includes access roads. Administratively deemed Section A, the Cibinong-Bogor section was opened in April 1979, followed by Bogor-Ciawi in August.

Figure 2.1 President Soeharto paying the toll to conclude the opening ceremony of the Jakarta–Tangerang turnpike (*Kompas*, November 28, 1984). There is a nearly identical photo of him becoming Indonesia's first toll-road customer (for the Jagorawi Tollway) some six years earlier (*Kompas*, March 10, 1978).

then presented Myung Bak Lee – then chairman of the project's builder, Hyundai Engineering and Construction Co. Ltd., and the recently defeated president (for reelection) of South Korea – with a picture of the Korean national who perished during construction. A drum band then presumably lifted the ceremony's somber mood. Soeharto concluded the day by paying his toll, becoming the country's first toll payer.[44]

One must wonder what Lee thought of the pomp and circumstance. In 1960, his country had a GDP per capita of US$80; yet by 1970, it had completed a tollway (from Busan to Seoul) nearly *sixteen* times longer than the Jagorawi's first stage. Lee may have surmised Indonesia's president lacked the vision to push his country along a path of industrialization that would pull millions out of poverty to the extent that Lee's own dictator back home, Park Chung Hee, had demonstrated.

[44] "Sistem Jalan-Tol Hanya di Daerah yang Tinggi Perkembangannya," *Kompas*, March 10, 1978. An American firm, Ammann & Whitney – or its subsidiary Trans Asia Engineering Assc. Inc. – served as Hyundai's technical supervisor.

In addition to Lee and the usual panoply of Indonesian dignitaries, the US ambassador, Edward Masters, was in attendance. His country's federal aid agency, the United States Agency for International Development (USAID), lent on generous terms nearly 40 percent of the project's Rp. 28 billion price tag (about US$67.5 million). The remainder and the repayments came from Indonesian government coffers. The 1973 contract estimated costs at Rp. 280 million per km; by 1978, they reached about Rp. 475 million, or an overrun of some 70 percent.[45] The Jagorawi's lifespan was designed for twenty years; the government anticipated breaking even after seven.[46]

Government officials had rejected the recommendation of foreign consultants to toll the highway. After construction commenced, however, officials changed their minds, causing a rushed design of changes needed to accommodate toll plazas.[47] Foreign consultants had pointed to restricted government finances as the need for tolling. For the Second Five-Year Development Plan from 1974 to 1979, the budget for Bina Marga (the Directorate General of Highways in the Ministry of Public Works and Electric Power) was roughly Rp. 353,000 million, or US$170 million annually. Three-quarters of this was earmarked for maintenance and upgrading of existing roads. The remainder was enough to build one or two highways.[48] This pace of expansion was deemed inadequate if highways were to help promote economic modernization in a number of growth centers officials had in mind.[49]

For these officials, the imperative of charging user fees extended beyond recouping costs to upgrade the country's transport network. Anxious to avoid the impression that his regime was catering to the wealthy, Soeharto admitted in his speech at the Jagorawi's opening that the government's intent could be readily misconstrued.[50] As if on cue, the

[45] JICA 1978b, pp. 45–46, Table 3.1. USAID lent US$26.8 million; Indonesian government costs were Rp. 16.87 billion. JICA lists a USAID loan interest rate of slightly below 10 percent with a fifteen-year payback period (1978b, p. 25). A Jasa Marga company history mentions 3 percent with a payback period twice as long (Herwanto 2003, p. 7). JICA blames the 1973 oil shock for cost overruns (1978b, p. 27).

[46] "Ini Bukan Pungli," *Tempo*, March 11, 1978, p. 52.

[47] Herwanto 2003, pp. 11, 36–37. In 1976, Bina Marga and Public Works and Electricity officials began exploring the idea of introducing tolls and conducted a study trip to Europe. In January 1977, emboldened by their findings, they approached Soeharto about the idea, which led to another trip, this time to East Asia.

[48] Costs for a four-lane highway then were about Rp. 600,000 million (US$1.5 million) per km (Arge Intertraffic Lenzconsult 1976, pp. 6–7).

[49] They included Jakarta, Surabaya, and Medan ("Lewat Jalan Tol: Sedan Rp. 600, Truk Rp. 900," *Kompas*, March 3, 1978).

[50] "Sistim Jalan-Tol Hanya di Daerah yang Tinggi Perkembangannya," *Kompas*, March 10, 1978.

Figure 2.2 The building of the Jagorawi's toll plazas in 1971 (*Tempo*/ Eddy Herwanto).

country's leading news magazine quipped in its coverage of the ceremony: "Is it right for the people of Irian Jaya to help pay for it?"[51] Soeharto pledged that the building of tollways would be reserved for high growth, and presumably urban, areas. To justify the expense, the president championed the multiplier effect. He prophesied that the Jagorawi would spread the fruits of Jakarta's growth to neighboring areas. Those

[51] "Ini Bukan Pungli," *Tempo*, March 11, 1978, p. 52. A notoriously poor province, Irian Jaya (as it was called then) is located some 3,500 km east of Jakarta.

further afield, in turn, would benefit. The country's paper of record, *Kompas*, toed the government's line. It suggested that the new road would serve as a form of justice (*keadilan*), since its costs would not burden the state budget whose funds could be presumably deployed for other less developed areas.[52]

The predicament of promoting the equity of regional development versus generating efficiency, or high national-level economic growth, has been a staple of mainstream development thinking for half a century.[53] In this case, the debate struck a deep nerve within the regime. The stress on regional fairness by Soeharto and *Kompas* was an obvious attempt to gloss over the pressing problem of class and Indonesia's growing income gap, especially in Jakarta, as the epicenter of the country's rapid capital accumulation.[54] Officials were concerned about the perception that they were spending scarce state resources on a road that only the rich would use, even as millions in Jakarta clung to subsistence levels.[55] Revealingly, neither the president in his dedication speech nor *Kompas* in its coverage made any allusion to "justice" for the thousands of those who were forced from their homes to make way for the Jagorawi.[56] However clumsily, the regime steered clear of addressing class conflict. New Order officials assiduously policed public discourse, scrubbing it clean of related issues. To run afoul of this unofficial policy brought branding as a communist.

The president certainly was aware of the brewing resentment over the rise of the country's new rich, which featured generals, senior officials, Sino-Indonesian businessmen, and select *pribumi* contractors who fed from the state's trough. The Malari Riots of 1974, sparked by the arrival in Jakarta of Japanese Prime Minister Kakuei Tanaka, had ripped through the city's streets only a few years prior, claiming about a dozen lives.[57] Japanese perceived "interference" in and "domination" of the local economy was in part the spark, but anger over the government's lavishing money on the decadent rich was its fuel.[58] Student-led

52 "Jagorawi Didisain untuk Kecepatan 120 Km per Jam," *Kompas*, March 7, 1978.
53 Hirschman 1958.
54 Jakarta's inequality was roughly 10 percent higher than Indonesia's urban average (Booth and Sundrum 1981, p. 196).
55 Although migration boosted incomes (Papanek 1975; King and Weldon 1977), nearly 90 percent of houses had no electricity or piped water connections (Erni and Bianpoen 1980, p. 67).
56 The state acquired about 8.6 million square meters, or 860 hectares, at a cost of some Rp. 3.9 billion, paying about Rp. 453 (US$1.10) per square meter (JICA 1978b, p. 46, Table 3.2). Deductions imposed by village leadership and by land brokers left locals with between one-third and one-half of this amount (Soerjani *et al.* 1983, p. 37).
57 Malari is an abbreviation of *Malapetaka Januari* (January Disaster).
58 Abeyasekere 1987, pp. 219, 234–35; Starner 1974. An internal army rift was also implicated in the violence (Crouch 1978, Chapter 12).

Figure 2.3 Overturned, smoldering cars on the streets of Jakarta's commercial district as a result of the 1974 Malari riots (*Tempo*/Syarir Wahab).

criticism of the impact of the regime's development policies reverberated for years after the violence.[59] Officials did not need reminding that hundreds of cars, symbols of high living, were burned and smoldered for days in Jakarta's major business districts.[60] Officials might have missed the irony, however, that the Jagorawi's first toll gate was built adjacent to *Taman Mini*, the controversial theme park whose construction had ignited the student protests back in 1971.

Post-Jagorawi developments

Notwithstanding the burning of cars in Jakarta's streets in 1974 and continuing student criticism of New Order-style development, the initial success of the Jagorawi was unmistakable. Its average daily traffic far outpaced expectations of officials and consultants. In only three months, it stood at some 4,000 vehicles, which exceeded its budgeted design volume of 3,600. On weekends and holidays, volume almost doubled.)[61] By 1982, the road's annual vehicular volume of 13.4 million was triple its number in

[59] Anderson 1978. [60] Awanohara 1974, pp. 12–14. [61] JICA 1978b, pp. 4, 47.

1979, the first full year in operation.[62] What, then, prevented this impressive performance of Indonesia's first turnpike from precipitating a rapid expansion of the country's tollway network?

In short, the dip in world oil prices and the onset of the world recession slowed Indonesia's economy considerably.[63] From 1981 to 1986, Indonesia's average annual rate of growth was less than half that from 1973 to 1981.[64] As the country's terms of trade worsened, it was earning far less from its (mainly oil) exports while addicted to increasingly expensive imports, so contributing to plummeting investment rates. Aggregate demand dropped while debt rose.[65] Officials curtailed the large-scale projects that the regime was fond of building during times of oil-driven fiscal prosperity.[66] Monetary tightening meant that only those toll roads at advanced planning stages would continue. The government's ambitious plan to build twenty-two toll-road projects at a cost of Rp. 1 trillion was reduced drastically.[67] As a result, only a handful of toll roads were opened between 1983 and 1988.

An addition of approximately 219.5 km to the toll-road network over a six-year period, or 35.4 km per year, was a limited expansion. As Table 2.1

Table 2.1 *Opened toll roads, 1983–88*

Route	Location	Opening date	Length (km)
Inner Semarang	Central Java	1983	6
		1987 (extension)	8.5
Jakarta–Tangerang	West Jakarta	1984	27
"Prof. Dr. Ir. Sedyatmo" (a pioneer in Indonesian highway construction design)	Pluit–Cengkareng (Sukarno-Hatta International Airport)	1984	14
Cawang–Semanggi	Central Jakarta	1987	8
Surabaya–Gempol	East Java	1986	49
Belawan–Medan–Tanjung Morawa ("Belmera")	North Sumatra	1986	34.5
Jakarta–Cikampek	East Jakarta–Bekasi	1986–88	72.5

62 Official figures cited in Honda 1986, p. 14, Figure 3.
63 It fell from US$38 per barrel in 1982 to US$12 in 1986 (MacIntyre 1992, p. 145).
64 Sundrum 1998, p. 43, Table 3.
65 The country's current account tumbled from a 1980 surplus of US$2.8 billion to a 1983 deficit of US$6.4 billion (Warr 1992, pp. 138–39, Table 5.2).
66 Liddle 1987, p. 207; Soesastro, Simandjuntak, and Silalahi 1988, pp. 2–3, 9–12.
67 "Gong Pertama dari Jasa Marga," *Tempo*, January 22, 1983, pp. 68–69.

Figure 2.4 Construction of the Jakarta–Cikampek Tollway in 1986 (*Tempo*/Anizar M. Jasmine).

shows, Soeharto stuck to his 1978 pledge to confine toll-road building to major urban areas. Outside Java, to support development, only Medan warranted a toll road.

Who paid for this limited expansion? The state did in large part, including Jasa Marga. The World Bank and the Japanese, Saudi, Kuwaiti, West German, and Taiwanese governments also helped to finance a number of the turnpikes. But their aid was soft loans, not grants.[68]

Days prior to the March 1978 opening of the Jagorawi, Jasa Marga was established to operate and maintain the toll road.[69] Armed with a Rp. 10 billion (US$160 million) endowment from the state, the state-owned toll-road corporation turned to construction. In August 1979, it completed a modest 5-km river toll bridge in Citarum, West Java. More small-scale projects allowed Jasa Marga to gain the experience to handle the construction of the additions needed for the country's toll-road system.

[68] Dikun 2003, p. 163.
[69] Its tasks are listed in the regulation (no. 4 of 1978) upon which the company was founded. JICA describes the preparation and promulgation of this regulation as "hurried" (1978b, p. 27).

Officials used receipts from the booming Jagorawi to fund this expansion. But more was needed because of the reduction in state expenditures and the tightening of preferential credit schemes to state enterprises. As a result, Jasa Marga tried its hand at fund raising, becoming the country's first company to sell domestic bonds.[70] Its initial March 1983 auction netted around Rp. 23 billion (US$23 million); proceeds helped to finance other toll roads including the Jakarta–Tangerang link.[71] More bond issuances followed. By 1990, the total value raised was around Rp. 689,000 billion (US$363 million), with purchases by government employee pension funds accounting for the lion's share.[72] Nevertheless, the World Bank concluded that Jasa Marga fell short of expectations: Although the SOE "was intended to be financially independent, approximately two-thirds of its investments during this period were financed through foreign loans on which the Ministry of Finance, rather than Jasa Marga, had made all the interest and principal payments."[73]

Thus far, Indonesia's toll-road experience was congruent with mainstream development policy and practice, which posited that in developing countries with poorly endowed private sectors, the state should be at the forefront of infrastructure investment. Due to the political exigencies of the Cold War, many governments had access to capital, typically from aid packages. To carry out infrastructure projects, the public sector was encouraged to form SOEs free from profit-making pressures, functioning as "the engines of modernization, the mechanisms for achieving a better future."[74] Infrastructure was touted as a public good for which the state should absorb the cost, with the hope of generating private investment and productive economic activity.

But in Indonesia, this thinking soon came under attack from two directions, international and domestic. From abroad there was a rise of market-inspired policies emanating from the Reagan and Thatcher regimes in the US and the UK. Multilateral lending institutions took their deregulatory message to heart and by the late 1980s began to shift emphasis onto the private sector. They deemed the latter as best equipped to bring efficiency and effectiveness to large-scale infrastructure projects. The second attack came from inside Indonesia, where there was an onslaught on the country's business sector by Soeharto's children, who

[70] "Gong Pertama dari Jasa Marga," *Tempo*, January 22, 1983, pp. 68–69. Jasa Marga was paying 2 percent more than the bank interest rate of 15.5 percent, but banks would not lend the amount of funds the company needed.
[71] "Presiden Resmikan Pemakaian Jalan Tol Jakarta–Tangerang," *Kompas*, November 28, 1984.
[72] Herwanto 2003, p. 39. [73] Kuranami *et al.*, 1999, p. III-59.
[74] Yergin and Stainslaw 1998, p. 80.

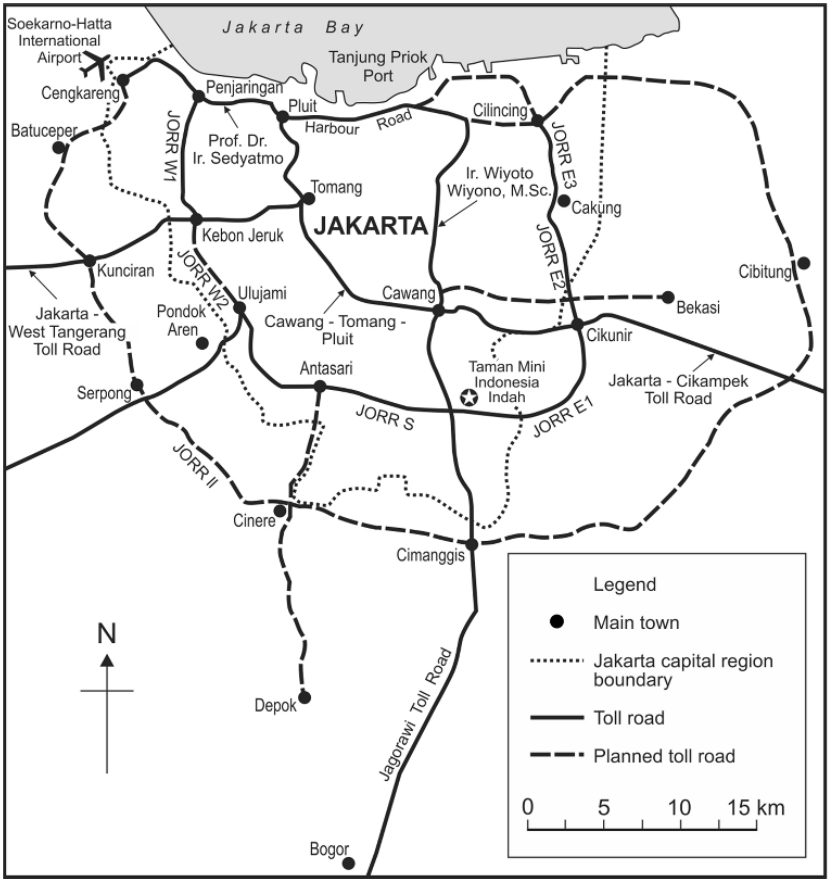
saw the toll-road sector as decidedly attractive. Their participation in this industry, camouflaged as "the private sector," would earn Indonesia praise from the World Bank.[75]

Enter the palace children

It is no secret that Soeharto's children became major players in Indonesia's economy, advantaged by the authoritative presence of their father. By the 1990s, their trading companies had proliferated into vast conglomerates, securing profitable government contracts, joining ventures with established cronies of their father, and amassing great wealth. For lucrative projects, it was nearly axiomatic for private sector bidders to include one of the children on their bid. The children's interests became so pervasive that for the same auction a number of bidders had different children in their respective corners.[76] Bickering among them became both legendary – and destabilizing.[77] Their business interests reached from westernmost Aceh to distant East Timor, and with other members of Soeharto's extended family, as a group, they became known as "Cendana."[78] One estimate valued the First Family's worth at more than US$73 billion at the time of Soeharto's resignation.[79] From coal, cement, and chemicals to oil, timber, television, and telecommunications, the palace children had fingers in nearly every major industry and sector.[80] Perhaps due to the public nature of toll roads – hundreds of thousands of increasingly ordinary Indonesians (or at least Jakartans) were using them daily – the children's stakes in toll roads became the public face of their business empires. Their toll-road domination symbolized the infectious rot that had started to afflict the regime.[81] Their interests became an outstanding example of the politically powerful slogan of KKN (*korupsi*, *kolusi*, *nepotisme*, or corruption, collusion, and nepotism) that the democratization movement exploited to such great effect to unseat their father in May 1998.

By the mid-to-late 1980s, to accommodate increases in traffic into Jakarta via the Jagorawi and the recently opened Jakarta–Tangerang and Jakarta–Cikampek tollways, the government sought to expand the capital's toll-road network.[82] Around the same time, the young companies of

[75] Kuranami *et al.*, 1999, p. I-2, Table 1.
[76] For example, see Schwarz (1994, pp. 144–45).
[77] Winters 2011, pp. 170–72.
[78] Named after the residential street in central Jakarta where many of them, including Soeharto, lived.
[79] Colmey *et al.* 1999.
[80] Aditjondro ca. 1998–99; Schwarz 1994, Chapter 6.
[81] In this respect, perhaps toll roads were surpassed only by their stakes in broadcasting.
[82] Running along east-west axes, these two were exceptional, because they conformed to planning recommendations made for the capital region (Cowherd 2002, p. 191).



Map 2.1 Jakarta Area Toll Roads

Soeharto's children were floundering, especially the agro-industry businesses of Soeharto's eldest daughter, Tutut.[83] The toll-road expansion presented an opportunity to change their fortune. Indeed, the fortunes of Tutut's holding company, PT Citra Lamtorogung Persada (CLP), soon changed dramatically. In 1987, the government selected CLP's toll-road unit, PT Citra Marga Nusaphala Persada (CMNP), to build Jakarta's

[83] "Sukses Tutut Berkat Tol," November 14, 1995, retrieved from apakabar@access.digex.net Listserv (library.ohiou.edu/indopubs; last accessed March 19, 2014).

north harbor toll road together with Jasa Marga.[84] Considered Indonesia's first privately operated toll road, its first section opened in 1989. In 1996, the North–South Link, as it is known, was extended some 14 km westward to Jembatan Tiga in Pluit.

Tutut's youngest brother, Hutomo Mandala Putra – popularly known as Tommy – lost to his sister in the bid for the North–South Link.[85] Presumably in return, he was awarded the rights to extend the Jakarta-Tangerang turnpike another 73 km to Merak, a busy port city with the massive, state-owned Krakatau Steel factory. Tommy's conglomerate, PT Humpuss, completed the tollway, in stages, from 1992 to 1996.

The partners Tutut and Tommy cobbled together captured the blurring of the private/public sector divide and the KKN that had become fundamental to the New Order. In 1987, the year CMNP was established, its shareholders included:

- PT Usaha Gedung Bank Dagang Negara (29.4 percent): a subsidiary of a private bank whose owner (Syamsul Nursalim) was a regime oligarch.[86] The bank, PT Dagang Negara Indonesia, was the lead lender on the project.[87] A year later, its controlling interest was passed to a Soeharto family-controlled foundation (Purna Bhakti Pertiwi).[88]
- Indocement Tunggal Prakasa (11.7 percent): the cement company of Liem Sioe Liong, then Indonesia's richest businessman and close confidant of Soeharto.[89]
- CLP (8.8 percent)
- Yala Perkasa International (5.8 percent), Tutut's construction company
- four SOEs:
  - Jasa Marga (23.5 percent)

[84] It is named after Ir. Wiyoto Wiyono, Jasa Marga's executive director who suffered a fatal heart attack during its construction. The road is 19 km (13.6 elevated, 5.4 at grade) according to CMNP's website.

[85] Borsuk 1990. According to a former New Order public works minister, Tutut's proposal was more financially sound because she claimed to have the backing of the Sultan of Brunei (Lesmana 2008, pp. 373–74). That this loan was not used for its stated purpose is addressed in Chapter 3.

[86] The subsidiary was the private property arm of the bank. Both were part of Sjamsul Nursalim's Gajah Tunggal Group (Sato 2003, pp. 111–15).

[87] The two other lending banks were Bumi Daya and Bapindo ("DPR Tolak Usulan Kenaikan Tarif Tol," *Republika*, February 21, 1995). The director of the former bank apparently was fired when he rejected Tutut's request for an interest-free loan (Colmey *et al.* 1999).

[88] All figures are taken from CMNP 2008, p. 88. By 1992, the shares of the three construction firms – Hutama Karya, Yala Perkasa International, and Jaya Konstruksi Manggala Pratama – were apparently subsumed by the toll-road firm Bhaskara Dunia Jaya (17.6 percent) in which Tutut held a substantial equity stake (see below). In December 1994, CMNP sold 29 percent of its shares to the public.

[89] Soeharto's cousin, Sudwikatmono, is often listed as a co-founder of the company.

- Krakatau Steel (11.7 percent)
- Jaya Konstruksi Manggala Pratama (5.8 percent)[90]
- Hutama Karya (5.8 percent).

Tommy's consortium, Marga Mandala Sakti (MMS), was formed in 1989. In addition to his Humpuss conglomerate,[91] it featured a company, Hanurata Coy Ltd.,[92] founded by Soeharto and his half-brother Probosutedjo, a Soeharto family-controlled foundation (Sarana Wanajaya), Krakatau Steel, and Jasa Marga.[93] CMNP and MMS could be seen as representatives of the PPP concept that the World Bank and others were touting for infrastructure investment. However, doing so misses the incisive point of how power, money, politics, and the law operated under the New Order and how these elements intersected to produce an arbitrariness in policy-making when there were matters pertaining to the palace children's business interests. Fissures within the state also arose as a result of such favoritism, especially when a government entity stood to lose from the children's rent-seeking activities. By the end of the New Order, Jasa Marga and Soeharto's children were perceived as cozy collaborators in the sector's KKN. But the early stages of their relationship were colored by mistrust and apprehension.

In the late 1980s, the companies of Soeharto's children were too small to absorb the sums and risks involved in tollway building single-handedly. A former high-ranking official at Jasa Marga remarked, "There were no Hyundais [the massive Korean car and construction conglomerate]".[94] However, the number and kinds of stakeholders in the children's consortia is better explained by the fact that Tutut and Tommy preferred to use other people's money, including that of their father's cronies and the state, in their projects. Jasa Marga was no exception. It held minority stakes in these putatively "private sector" toll-road firms. The emergence of these firms, however, unnerved Jasa Marga's top brass, as the following example of the unfolding legal foundations of the toll-road sector and the revenue-sharing arrangement for the North–South Link exemplified.

The 1980 Road Act (no. 13) had given ownership and operational monopoly rights to the government (art. 13) or a SOE (art. 17[1]). For several years the status quo held. The impending involvement of the palace children prompted an amendment, however. Rather than change

90 Today it is called Jaya Konstruksi.
91 Tommy controlled 60 percent of Humpuss; his older brother, Sigit Hardjojudanto, 40 per cent (PT Humpuss 1998, p. 8).
92 On Hanurata, see below.
93 Public Works 1992, n.p. Ownership shares are not listed. A state bank (Indonesian Development Bank, known as Bapindo) bankrolled the US$110 million project.
94 Interview, Anhar Rivai, Jakarta, September 23, 2010.

the statute (*undang-undang*), apparently a laborious process even under authoritarian conditions, in 1987 Soeharto issued a simple two-page presidential decree (no. 25). It permitted Jasa Marga to involve national and foreign private investors in tollway projects. The same former official attested to the dramatic change in the way Indonesia would develop toll roads as a result of this brief edict.[95]

In 1987, CMNP and Jasa Marga had reached an agreement to build and operate separately two connecting toll roads in Jakarta. Jasa Marga built a 7-km link in west Jakarta between Tomang and Semanggi that connected to the Semanggi–Cawang section the company had completed in 1987. Meanwhile, CMNP would construct a 5-km stretch from Cawang to Rawamangun. It would then extend an elevated section northward to Jakarta's port, Tanjung Priok. In early November 1989, days prior to the roads opening, the government issued a decree overriding the original contract. Now the two links (Tomang–Cawang and Cawang–Tanjung Priok) would be managed jointly.[96] CMNP would receive 75 percent of their toll revenue, Jasa Marga 25 percent.[97]

The decision was controversial enough to compel a rare government response.[98] In parliament, the Public Works Minister Radinal Moochtar testified that the new arrangement reflected the companies' different construction costs. CMNP's costs were four times that of Jasa Marga's (due to the construction of this elevated link). Critics queried the minister's reasoning on two counts. First, they wanted to know why the toll roads were merged into one.[99] Second, it turned out that Jasa Marga's costs actually exceeded that of CMNP's. (Moochtar had not given Jasa Marga's real construction expenses.) In fact, CMNP had shaved about Rp. 70 billion off the estimate by finishing ahead of schedule and by dubiously building the carriageway more narrowly than the contract's specifications.[100]

In the end, although Jasa Marga did not get the 60 percent share it sought, it did receive roughly 43 percent of the revenue – 25 percent

[95] Ibid. The palace children's business empires, Robison and Hadiz tell us, were "made possible as the state's grip over a range of monopolies was lifted in the 1980s" (2004, p. 58).
[96] The 13-km elevated section (Rawamangun–Tanjung Priok) opened in March 1990.
[97] Rumors circulated that the split would be 63:37 (Bachtiar and Jahja 1989).
[98] Schwarz called this controversy Tutut's "first real splash" (1994, p. 142).
[99] Borsuk 1990.
[100] Tutut also captured much of construction costs since her firm, Yala Perkasa International, was a main contractor on the project ("Corruption Suspected in Toll Road Construction," *The Jakarta Post*, March 25, 2000 [thejakartapost.com; last accessed March 25, 2014]; "DPR Tolak Usulan Kenaikan Tarif Tol," *Republika*, February 21, 1995 [library.ohiou.edu/indopubs; last accessed March 27, 2014]; Johnson and Lubis, 1997, p. 41, Table 5.1.1; "Sukses Berkat Tol" 1995 [see note 83 above]).

Figure 2.5 A giddy Tutut during the opening ceremony of her company's Cawang–Tanjung Priok (Ir. Wiyoto Wiyono) toll road in 1990 (*Tempo*/Ali Said).

from the new arrangement and almost 18 percent from its ownership stake in CMNP.[101] Opposition MPs continued to question the outcome, saying that CMNP "never spent one cent on the road built by Jasa Marga, so why should they [sic] get 75% of the toll collected on that stretch?"[102]

Despite this, Jasa Marga officials worried about being cut out altogether from future projects. If they were forced to accept one-quarter this time, why not less the next time? Jasa Marga lobbied the public works minister, who oversaw the SOE, for a government regulation that would guarantee the corporation's right to participate in all toll-road projects. Government regulation number 8 of 1990 did just that. Jasa Marga's minor victory did not mean, however, that the more powerful arms of the state would regularly side with the company. In 1995, the Public Works Ministry

101 Borsuk 1990. 102 Ibid.

granted CMNP's request to extend its twenty-two-year concession for JIRR by fifteen years, to the consternation of Jasa Marga.[103]

The preferential treatment the palace children received was further revealed in the setting of tariffs, although on paper "private investors" were placed on equal footing with Jasa Marga.[104] The government had set the Jagorawi's tariff well below what a standard cost-benefit analysis would have yielded; the rate remained unchanged for six years.[105] Once the palace children got involved, initial tariffs were set higher and the pace and size of increases changed. For example, another controversy that arose from the 1989 opening of the Tomang–Rawamangun link was the flat fee of Rp. 1,500 (US$0.85) that motorists had to pay regardless of the distance traveled.[106] A minister recounted a popular joke to a foreign reporter, "India has the Taj Mahal. . .We have the Toll Mahal."[107]

Due to the middle-class outcry that greeted this new pricing, Soeharto responded by issuing regulation number 8 of 1990, which reaffirmed what the 1980 Road Law had conferred upon the president: the authority to set initial rates and approve subsequent increases (art. 40). In practice a dual-track policy emerged. On Jasa Marga's routes, tariffs were kept low and raised infrequently. From 1988 to 1997, eight of its nine turnpikes experienced a single modest increase (in 1992), with the government rejecting a 1996 proposal by Jasa Marga for an across-the-board price hike.[108] By 1997, according to an Asian Development Bank (ADB) study, the real tariff for five of the company's roads had "fallen to 63% of its 1992 value in constant terms."[109] This evidence supports the notion that the former general

[103] This was granted upon the opening of the Tanjung Priok–Ancol extension in June. The concession's duration had been twenty-two years, starting from 1987. CMNP's concession in 1995 was extended for eight years but starting from 1994 ("Naiknya Tarif Tol Tutut," October 19, 1995, retrieved from apakabar@access.digex.net Listserv (library.ohiou.edu/indopubs; last accessed March 19, 2014). In 1996, Tommy's concession was extended by ten years to 2011.

[104] Government Regulation no. 8 of 1990, art. 39(1).

[105] Jasa Marga maintained that the tariff was 40 percent below market value. ("Menghitung Tarif Tol," *Tempo*, December 8, 1984, p. 25), although it may have been between 50 to 60 percent (Batubara 1991). Despite subsequent raises (1983, 1985, 1988), at Rp. 80/km (US$0.03) the Jagorawi remained among Indonesia's cheapest toll roads (Johnson and Lubis 1997, p. 12, Table 3.1).

[106] Borsuk 1990. The fee for the Semanggi-Cawang section was tripled to Rp. 1500. In response, motorists clogged parallel public roads (see the relevant photo in Said 1989).

[107] *Mahal* means expensive in Indonesian. Erlanger 1990, cited in Winters 2011, p. 170.

[108] Jasa Marga 2007, pp. 78–93; Herwanto 2003, p. 86.

[109] Jagorawi, Jakarta–Cikampek, Jakarta–Tangerang, Semarang, and Padaleunyi (Johnson and Lubis 1997, p.13).

had aspired to create what Howard Dick has called a system of "middle-class welfare."[110]

But the tollways of the palace children showed a different system. There, motorists felt the costly pinch of KKN. The initial 1992 tariff for Tommy's Tangerang–Merak expressway was Rp. 153 per km, or nearly twice that of prevailing rates for the Jagorawi and Jakarta–Cikampek turnpikes. With increases on JIRR in 1992 and again in 1995, the rates on Tutut's road were about 18 percent above Tommy's tollway.[111] The same ADB study reported that JIRR's rates were about twice that of off-peak tariffs on a new privately operated expressway in southern California.[112]

A boom before the broom

As the 1990s advanced, Indonesia seemed once more on the cusp of a boom in tollway construction, precipitated by an economic recovery and a wave of investor confidence. The business interests of the palace children were firmly established in the sector, and the 1990 government regulation had opened the sector to private (especially foreign) investment. In 1993, the World Bank anointed Indonesia an emerging East Asian tiger.[113]

Reignition of the economy was again rooted in a set of deregulatory, pro-market policies championed by government technocrats. The technocrats did, however, face stiff opposition from economic nationalists and state patronage-based interests.[114] The decline in oil prices, first in 1982 and more drastically in 1986, had forced the government to reappraise its interventionist industrial policy. It turned to "an export-oriented strategy dominated by the private sector responding to market signals."[115]

The government announced structural reforms in a series of policy packages that began in 1983 with the partial liberalization of the country's tightly regulated state-dominated banking sector.[116] A more substantial 1988 deregulatory package sparked an explosion in the number of private banks. Stiff competition led to easier access to credit, boosting domestic

110 Dick 2007, p. 57. A popularly known component of this tactic was subsidized fuel (Dick 1995).

111 The 1995 hike was met with derision. The 20-percent increase of Rp. 500 was justified as an inducement to attract foreign investors for the 1995–96 auctions (see below) ("DPR Tolak Usulan Kenaikan Tarif Tol," *Republika*, February 21, 1995 [library.ohiou.edu/indopubs; last accessed March 27, 2014]); "Naiknya Tarif Tol Tutut" 1995 (see note 103 above).

112 Johnson and Lubis 1997, p. 12, Table 3.1, and p. 16.

113 World Bank 1993.

114 This dynamic explained Indonesia's patchwork approach to economic structural transformation (MacIntyre 1992, p. 145; Liddle 1987, p. 207).

115 Hill 1992, p. 205.

116 On the banking sector, see Rosser (2000, Chapter 4).

investment. The country's tax system was reformed and corruption in part was tackled at Jakarta's Tanjung Priok port by assigning the management of customs to a Swiss firm.[117]

The export of non-oil manufactured products generated the foreign exchange needed to pay down the government's large external debt.[118] Import schemes and duties were dismantled to help exporters and currency devaluations also took place in 1983 (28 percent) and in 1986 (31 percent), so making Indonesia's products more competitive on the international market. One economist noted, "The resulting increase in nonoil exports…[was] dramatic. In only six years, nonoil exports almost tripled, from $5 billion in 1983 to $14.4 billion in 1990, and their share of total exports rose from 25 percent to 56 per cent."[119]

Two animating differences set these structural reforms apart from those of the late 1960s. One was an emerging sea change in the views of ordinary Indonesians toward the acceptance, both ideologically and socially, of capitalism. The headlong chase for profit had traditionally been viewed with suspicion as being stereotypically "Chinese."[120] The second was Indonesia's new place in the world of international finance, with the country becoming a popular destination for inflows of foreign capital. Some of it went into factories. The appreciation of the yen boosted low-wage manufacturing as Japanese firms set up shop in Indonesia and throughout Southeast Asia.[121] Global hedge fund managers also began embracing the alluring concept of "emerging markets." Their returns (but also risks) promised to outpace those in the traditional and safer US and European markets.[122] As it did elsewhere, this trend breathed fresh life into Indonesia's then moribund stock market, which had opened in 1977.[123]

Rather than rely on bank loans, local companies also turned to the exchange to raise capital.[124] Despite blips, like in 1991 and late 1992,[125] the market boomed. From 1988 to 1995, "the number of listed firms increased tenfold, from 24 to 238, while the volume of listed shares skyrocketed from 60 million to nearly 46 billion."[126] Meanwhile, international banks eagerly extended loans to Indonesian corporations, especially

117 For a good summary, see Booth (1992, pp. 23–28). 118 Azis 1994, p. 392.
119 Ibid., p. 392. For a comprehensive list of reforms, see pp. 394–97, Table 2.
120 MacIntyre 1992, p. 151.
121 Pangestu 1991. The country also became a great source of overseas development assistance, especially from Japan (Bowie and Unger 1997 p. 42).
122 Yergin and Stainslaw 1998, p. 153. 123 Cole and Slade 1996, Chapter 6.
124 Private-to-private capital inflows of US$3.7 billion in 1994 soared to US$11.5 billion by 1996 (Matsumoto 2007, p.5).
125 Cole and Slade 1996, p. 174. 126 Borsuk 1999, p. 144.

those considered blue-chip.[127] As a result, these conglomerates became reliant on offshore syndicated loans. In 1994, they obtained US$20.6 billion in such loans and US$34 billion by 1996.[128] In all, the appreciable mobilization of private capital augured well for investment in the country's middling toll-road industry.

Authorities expanded plans. The most lucrative promised to be a toll road encircling the capital, first proposed in the aforementioned 1975–76 West German study. In 1990, the construction cost of the 69-km project, known by the acronym JORR (Jakarta Outer Ring Road), was estimated to be Rp. 1.3 trillion (US$684 million).[129]

Changes to JORR's ownership structure over time are difficult to piece together. In an interview, a former high-ranking Jasa Marga official said that in the 1980s the project may have been packaged as a single concession, possibly held jointly by a French firm and Jakarta's development company (PT Pembangunan Jaya).[130] He could not recall why the arrangement fell through. Thereafter the ring road was chopped into seven sections, with following designations: N, E1, E2, E3, S, W1, and W2 (see Map 2.1).[131]

JORR's division ensured that it would be built in stages. In 1990, Jasa Marga completed the E2 section (Cakung–Cikunir, 9 km).[132] It was built first because officials hoped that connecting to the busy Jakarta-Cikampek tollway and acting as a feeder to CMNP's elevated harbor toll road would alleviate the area's dense traffic.[133] The next section of JORR would not be completed for another five years; consortiums for the remaining portions were still being formed and ownership was later in flux.

Through a 1989 tender, a consortium named PT Mataram Citra Binangun (MCB) won the rights to W2 (Kebon Jeruk–Pondok Pinang, 11 km).[134] With Jasa Marga, Tutut's CLP, and the Sultan Hamengkubuwono X of Yogyakarta as partners, the auction's outcome was likely predetermined. In 1991, MCB signed an operational agreement with its partner, Jasa Marga, the sector's regulator.[135] Little

[127] Matsumoto 2007, p. 14. They did so as a substitute for the country's weak legal system.
[128] Ibid., pp. 5, 13. In the mid-1990s, these amounted to more than 80 percent of private sector debt.
[129] Nasution and Indrawan 1990.
[130] Interview, Anhar Rivai, Jakarta, November 22, 2011. The French firm might be Trans Road (whose headquarters are in Colombes, France). A French toll-road consultant is also known by the name Transroute (Levy 1996, p. 254).
[131] See (interview) note 130 above. See also Public Works (1992, p. 13). For unexplained reasons, section N was not on offer (see also Chapter 5).
[132] For an undetermined reason, its opening was delayed for almost a year.
[133] Nasution and Indrawan 1990.
[134] Public Works 1992, n.p.
[135] Ibid.

progress was made and by 1996, MCB's original ownership structure was altered to the following:

- MCB (50 percent)
- the Tutut-linked PT Tridan Satria Putra Indonesia (25 percent)
- Jasa Marga (15 percent)
- Bhaskara Dunia Jaya (10 percent).[136]

With Tutut as Executive Director, the consortium was renamed PT Citra Mataram Satriamarga Persada (CMSP).[137]

Around the same time MCB had formed, another consortium, PT Marga Nurindo Bhakti (MNB), was established and comprised:

- Brey Construction (UK) (80 percent)
- Jasa Marga (10 percent)
- PT Marga Strukurindo Raya (5 percent)
- PT Hanurata (5 percent).[138]

The consortium "won" the rights to sections S and E1, totaling 25.5 km.

The thirty-year BOT contract, which took two and half years to negotiate, estimated construction (excluding land) costs at Rp. 536 billion (US$254 million).[139] When Brey (the majority partner) failed to provide the funding it pledged, reportedly it was replaced by the state-owned PT Barata Indonesia. This abrupt change in ownership led to the project's delay.[140]

The jumbling of ownership in MNB continued, as Barata's inclusion disappeared.[141] Three of the original companies (Jasa Marga, 10 percent; Marga Strukturindo Raya, now 10 percent; and Hanurata, now 7 percent) were joined by Tutut's CLP (10 percent), Bhaskara Dunia Jaya (25 per cent), and Investa Kusuma Artha (38 percent). Who were behind the latter two entities that now combined to own 63 percent? Bhaskara was controlled by Djoko Ramiadji, a trained engineer and former executive in Tutut's CMNP. The cosmetic tycoon Mooryati Soedibyo of Mustika Ratu fame ran Investma Kusuma Artha. She was also Ramiadji's mother.[142] MNB completed section S in 1996.[143] Dense with traffic, the area included the opening of a new shopping mall (Pondok Indah). Section S also connected to the busy Jagorawi.[144]

136 On Bhaskara Dunia Jaya, see below.

137 Jasa Marga 2000, p. 51.

138 One of the first private companies founded by the Soeharto family, see below.

139 Public Works, 1992, n.p; "PMA Pertama di Jalan Tol," *Tempo*, March 6, 1993, p. 95. Section S (Pondok Pinang-to-Taman Mini Junction) was 14 km; section E1 (Taman Mini Junction-to-Cikunir) 11.5 km.

140 This new arrangement lessened the need for offshore financing ("Jakarta Ring Road Revives," *Project Finance International*, Issue 43, ca. 1993–94).

141 Jasa Marga 2000, p. 47.

142 Ramiadji was executive director; Tutut chaired the board (Ibid., pp. 47–48).

143 A first stage of 9 km was finished in 1995.

144 Interview, Anhar Rivai, Jakarta, November 22, 2011.

Another consortium, PT Citra Bhakti Margatama Persada (CBMP), was formed in December 1995 and secured the license for E3 and N, whose ownership was then emerged with E2 that was already built by Jasa Marga.[145] CBMP's ownership reflected what had by then become the usual players:

- Tutut's CLP (37.7 percent)
- Jasa Marga (34.8 percent)
- Tridan Satria Putra Indonesia (15 percent)
- Bhaskara Dunia Jaya (12.5 percent).[146]

The final JORR consortium was the only one without Tutut representation. Called PT Jalantol Lingkar Baratsatu, its main sponsor was the construction firm PT Bangun Tjipta Sarana.[147] In exchange for building the second carriageway of the Jakarta–Cikampek tollway, Bangun Tjipta was to receive 69 percent of the turnpike's revenue for twenty-six years.[148] The company's founder was the well-known *pribumi* businessman, Siswono Judo Husodo.[149] Siswono refused to budge on his JORR W1 license until there was through-traffic from other sections. This necessitated at least the construction of W2, which did not take place. (Siswono's obstinacy proved prescient: When the financial crisis hit, leading to the temporary abandonment of JORR, his company remained debt-free. It was the only consortium of the four to retain its concession once the project was restarted in 2000 [see Chapter 5]).

During JORR's first seven or so years, not a single pair of contiguous sections was built.[150] However, the sector still had a buzz around it. The four JORR concessionaires were actively scouring international markets for loans worth up to nearly US$120 million.[151] Coveted projects were becoming more plentiful. In addition to the extension to Merak by Tommy's MMS and Bangun Tjipta's widening projects, there was a

145 E3 (Cakung–Cilincing) and N (Cilincing–Tanjung Priok) cumulatively were 19 km.

146 Jasa Marga 2000, pp. 41–42. Of the JORR four concessions, Jasa Marga's shares in CBMP were its highest, likely because of its construction of section E2.

147 As of 2000, it held 95 percent, Jasa Marga the remainder (Ibid., 61). These figures may not reflect the original ownership structure.

148 This arrangement between Bangun Tjipta and Jasa Marga was the country's first BOT contract. The concession was between Cibitung and Cikampek (47.5 km) (Public Works 1992, n.p.). In 1994, Bangun Tjipta was awarded a widening project from Cawang to Cibitung.

149 As Robison describes in his magisterial *The Rise of Capital*, in the 1970s the "most interesting indigenous capitalists who emerged around Pertamina [the state oil company] were a group of young, rich businessmen from prominent families. . .The foremost of these was Siswono Judo Husodo, the son of the former deputy governor of Jakarta Dr. Suwondo" (1986, pp. 335, 337).

150 Some land for section W2 had been cleared but none for sections W1, E1, E3, and N.

151 "On the Road to Financing," *Project Finance International*, Issue 97, May 1996.

route from eastern Jakarta (Cikampek) to western Bandung (Padalarang), nicknamed Cipularang. This BOT contract, worth Rp. 1.3 trillion, took six years to negotiate, but was finally signed in 1994. The syndicate comprised Trafalgar House, a British company (40 percent), Tutut's CLP (30 percent), and Jasa Marga (30 percent). It was the first international joint-venture to sign a toll-road contract.[152] The increasing presence of foreign players was a conspicuous change heralding a rosy future for the sector and for Indonesian infrastructure generally. In late 1996 or early 1997, a consortium of foreign investors paid some Rp. 425 billion (US$181 million) for a majority percentage stake in Tommy's MMS.[153]

Richard Borsuk of the *Asian Wall Street Journal* summed up the concerns of foreign capitalists prior to the 1990s:

> There was only marginal interest when the government sought investors. Foreign companies stayed away because the government couldn't guarantee loans and exchange rates; the companies felt there was too much risk to their toll revenue from a potential devaluation. Between 1978 and 1986, Indonesia had three major devaluations. Improved economic performance and management have created some confidence in the local currency in recent years, but many investors looking at long-term projects – such as a toll road – still want their revenue in dollars, not rupiah.[154]

Foreign firms continued to prefer their revenue in dollars. But Indonesia's deregulatory measures and boom economy of the early 1990s began to allay their apprehensions somewhat, as did partnering with Soeharto's children.[155] The circulation of bullish industry accounts added to the sector's buzz. These reports cited strong government commitment to private sector investment and enough data to make investors drool – the need for improvement of an anemic toll-road network suffering under the weight of exploding volumes in traffic and in vehicle ownership.[156]

The boom seemed limitless, with more than sixty toll-road projects either on offer or in the planning stage.[157] By the mid-1990s, expressways had already changed radically how and where residents of the Jakarta metropolitan area lived and worked. What the railways were to Java in the late nineteenth century, the toll roads had become to Jakarta in the late twentieth century.[158] They had profound social, cultural, economic, and

[152] The consortium was named PT Citra Ganesha Marga Nusantara (CGMN). On its complicated international financing scheme, see Orr (1996). On Trafalgar, see Levy (1996, Chapter 9).

[153] One recognizable name was Li Ka Shing's Hongkong Land (the subsidiary was Asian Infrastructure B.V.). Humpuss retained 15.65 percent (Jasa Marga 2000, p. 47).

[154] Borsuk 1990. [155] Sidel 1998, p. 165. [156] Tiemann 1996.

[157] "Jalan Tol Kian Panjang, Perlu Transparansi," *Suara Pembaruan*, February 24, 1997 (library.ohiou.edu/indopubs; last accessed March 19, 2014); Jasa Marga 2000, pp. 75–76.

[158] On the impact of the railways, see Anderson (1996, pp. 26–27).

spatial ramifications.[159] One was further integration with the world economy, as foreign investment, especially from East Asia, poured in.[160] Taking advantage of the logistical convenience that the tollways provided, capitalists opened factories on the periphery of the greater Jakarta area, with lower land and labor costs acting as pulls. This kept Indonesia's exports competitive internationally, as cheaper inputs offset an increase in transport costs for the Jakarta market.[161]

Unleashed by the president and his closest circle, a select coterie of powerful private property developers followed the factories. The developers built US-style gated housing estates in the peri-urban areas.[162] As the suburban housing boom spiraled out of control and was gripped by a "BMW vision" of the expanding capital,[163] developers flouted scores of local regulations on water conservation and open space.[164] Jakarta was transformed into what geographers call an extended mega-urban region.[165] Although the label "Jabotabek" had been in circulation since the early 1970s as a planning model to deconcentrate the population and economic activity from Jakarta proper, only around this time did the concept begin to take shape.[166] Population growth in the surrounding districts (Bogor, Tangerang, and Bekasi) soon raced past Jakarta.[167] A special feature of this growth was the mushrooming of new towns. From 1985 through to 1995, their number rose from zero to twenty-five.[168] As Dick and Rimmer aptly put it, Jakarta's toll roads "knitted together the satellite towns, industrial estates, shopping malls, airport, seaport with expanding, high-rise central business districts into a bustling, air-conditioned quasi-First World city. Beneath and around it was the slow-speed, heavily polluted, Third World city of the large majority of the population."[169] While the poor majority suffered more profoundly, the rich also felt the toll on the environment. Increased flooding (due to the loss of water catchment areas), worsening air and noise pollution, and rapid aquifer depletion were only the most noted problems.[170]

[159] Cowherd 2002; Silver 2008. [160] Douglass 1997, pp. 111–41.

[161] Henderson and Kuncoro 1996. This industrial deconcentration followed international patterns; Seoul and Sao Paulo were exemplary (Straub 2008, p. 29).

[162] More specifically, they were based on southern California models (Cowherd 2002). On the land use planning system and regulations that facilitated this, see Moeliono (2011) and Archer (1994).

[163] Leaf 1996. [164] Susantono 1998, esp. pp. 136–41.

[165] McGee and Robinson 1996; Douglass and Jones 2008.

[166] Jabotabek is derived from JA-karta, BO-gor, TA-ngerang, and BEK-asi.

[167] From 1980 to 1990, Jakarta proper grew 2.4 percent per annum, these districts 5.2 percent (Jones and Visaria 1997, p. 11).

[168] Cowherd 2002, p. 97. See also Sujarto (2002). [169] Dick and Rimmer 2003, p. 287.

[170] Firman and Dharmapatni 1994.

One major toll-road project that was on offer in the mid-1990s stood to repeat this class-polarizing, suburbanizing, environmentally damaging experience. The impact, however, would not be confined to the capital area, but would be felt right across the densely populated north and central corridors of Java.

The Trans-Java Expressway

Some 180 years after the Dutch built the bumpy Great Post Road traversing Java that cost the lives of thousands of corvée laborers, and some twenty-two years after the first feasibility study was completed, the New Order regime sought to turn the idea of building a modern, limited-access highway across Java into reality.[171] In 1995, the government announced tenders for nineteen concessions for an accumulative length of 770 km (most of which was on Java). Exclusive of land acquisition costs, the total investment was valued at Rp. 5 trillion (US$21.7 billion).[172] This new facility was designed to run parallel with the existing two- and sometimes four- lane, congested, and accident-filled road. For planners, the tollway presented an opportunity to build up population densities and capital formation along the small and intermediate cities of Java's northern and central corridors.[173]

Authorities tasked Jasa Marga, as the state's procuring agency, with overseeing the bidding. The corporation also stood to gain handsomely, for it would hold a minority share in each link. More than eighty-five domestic and foreign firms submitted papers, of which around half passed Jasa Marga's qualifying criteria.[174] Authorities unveiled six concession winners in April 1996 and another batch in August. Winners had ninety days to form a consortium; many awardees were expected to partner with foreign firms. This meant the likelihood of resorting to offshore financing, although some international lenders were skeptical without government guarantees on a minimum level of revenue.[175] Nevertheless, it was reported widely that Soeharto expected the as-yet-unnamed Trans-Java Expressway to be completed by 2003.[176]

171 It was built in anticipation of a British invasion that never came (Nas and Pratiwo 2002). In many places, the preexisting pathway was only widened or hardened (Toer 2005). See Pramono (2008) on the road's two hundredth anniversary.

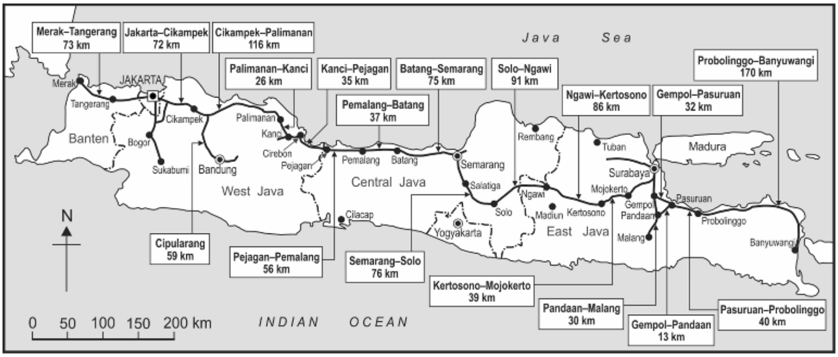
172 Tiemann 1996. See also Levy (1996, p. 367).

173 On these corridors, see Firman 1992.

174 Firms from Singapore, Malaysia, the Philippines, Taiwan, and Japan were represented (Boey 1995).

175 Ibid.

176 Tiemann 1996; Boey 1995. There were a few exceptions (see below). "*Trans-Jawa*" does not appear in the Indonesian press at this time (see Chapter 3). It appears occasionally in



Map 2.2 The Trans-Java Expressway

Before describing each of the concessionaires (from west to east), it bears mentioning that several of them had been appointed directly by the government prior to the 1995–96 auctions.[177] As such, the Trans-Java Expressway illustrated the mixed economic governance system with which Soeharto ran the country,[178] where KKN elements, in the form of direct appointments or bogus auctions, combined with private companies, in the form of competitive auctions.

Sadang–Subang (37 km)

Surprisingly, a little known garment company, Concord Benefit Enterprises Ltd., won the franchise rights for this West Java turnpike. This begs the question: How did this obscure clothing company come to post a bid of Rp. 476 billion (US$207 million) on a toll-road concession?[179]

One could hypothesize that Concord's entry into the sector was exemplary of the structural transformation of Indonesia's economy. The company rode the post-oil boom export promotion of non-oil manufacturing to great heights. Concord's first factory opened in 1980 in Bogor. As the

the English language press – e.g., "Trans-Java toll road opens in 1999" (*Project Finance International*, Issue 34, October 1993); and Boey 1995. The aforementioned 1973 feasibility used "Trans-Java" in its report.

177 "Trans-Java toll road opens in 1999," *Project Finance International*, Issue 34, October 1993.

178 McLeod 2005a.

179 One foreign industry report called it the "most curious" winner of the 1996 concessions (Tiemann 1996). Partnering with Jasa Marga (33 percent), the special purpose vehicle was called PT Harmoni Marga Jaya.

company grew, it established a number of subsidiaries and expanded its export network to include the US, Europe, the Middle East, and Japan. Spurred by this success, in late 1993 or early 1994, it joined the herd of private firms listing on Jakarta's bullish stock exchange.[180]

Concord's involvement in toll roads, in fact, was emblematic of the murkier side of corporate growth under the New Order, with investors or insiders abusing and exploiting a system of lax regulatory enforcement and weak institutions. According to a former company director, Concord had no interest in toll roads until its board agreed to an offer by a group of (nameless) investors who sought to use the now-listed company as a proxy to bid on the concession.[181]

Subang–Dawuan (52 km)

With a winning bid of Rp. 407.5 billion, PT Bhaskara Lokabuana won these concessionary rights. The company was owned by PT Bhaskara Dunia Jaya, which was part of the Drassindo Group. Drassindo in turn was headed by Djoko Ramiadji.[182] Ramiadji's closeness to Tutut and his mother's wealth helped him become an established player in the sector.

Dawuan–Palimanan (24 km)

The name most closely associated with the rights to this turnpike was Johannes Kotjo,[183] a former executive in Indonesia's preeminent conglomerate, the Salim Group. As is widely known, the fortune of the group's founder, Liem Sioe Liong, in large part came from his close, personal relationship with Soeharto that dated to the 1940s (or 1950s) when the latter was only a Lt. Colonel in the Diponegoro Division of Central Java. By the mid-1990s, thanks to state patronage and an industrial policy that favored import substitution, the Salim Group was three times the size of its next largest domestic competitor, the Astra Group. It was also bigger than any conglomerate in Southeast Asia, Taiwan, or Hong Kong.[184]

[180] PT Concord Benefit Enterprises Tbk 2000.

[181] Confidential telephone interview, Jakarta, September 20, 2010. He declined to reveal their identities.

[182] The consortium's name was PT Lintas Marga Karya. As of 2000 Bhaskara Lokabuana held 69 percent, Jasa Marga 31 percent (Kimpraswil 2000, n.p.). Minority partners of the former may have included Probosutedjo (of the Mercu Buana Group) and the tycoon Tomy Winata (of Artha Graha Loka). I thank Vedi Hadiz for pointing out these possibilities.

[183] His Indonesian surname can appear as Sukotjo.

[184] Hill, p. 113, Table 6.7

In the early 1990s, Kotjo ventured into business on his own.[185] He joined the rush of wealthy Indonesians who purchased companies on Singapore's stock exchange to enhance their international profiles and to acquire access to cheap money.[186] One company Kotjo acquired was Van der Horst, Ltd. A money-losing venture, the fortunes of this construction, power, and engineering firm received a boost in 1995, when Bambang Trihatmodjo, of the Bimantara Group and Soeharto's second son, acquired a 10 percent stake and joined its board. Lucrative government contracts poured in, including a pipeline construction in Bali valued at US$59 million, a sub-contracting job worth US$142 million on an East Java power station (in collaboration with Enron),[187] and the license for this US$144 million West Java toll road.[188] Kotjo was a man with the Midas touch, according to the Indonesian media, flatteringly nicknaming his company Van der Horse.[189]

Kanci (Cirebon)–Pejagan (Brebes) (35 km)

Bakrie Investindo was the principal firm behind this proposed route crossing the West Java–Central Java provincial boundary.[190] At its helm stood Aburizal Bakrie, a powerful and controversial personality in Indonesia today. In the 1950s and 1960s, Bakrie's father was a prominent businessman, considered *pribumi* despite his Arab origins because he was not ethnically Chinese.

In the early 1970s, the fortunes of the family flagship, PT Bakrie & Brothers, were bolstered by the deluge of state funds that flowed from Pertamina, the state oil company. As a result of the 1973 oil boom, Pertamina and its director, Gen. Ibnu Sutowo, obtained access to untold sums of money. Even before the boom, Pertamina functioned as a key source of off-budget financing for the army and as a cash cow to enrich

185 Allegations that Liem financed his business dealings were rife.
186 Other notable newcomers included Bambang Trihatmodjo, Soeharto's second son and boss of the Bimantara Group; Henry Pribadi of the Napan group (see Chapter 5); and Endang Utari Mokodompit, daughter of Ibnu Sutowo, the former head of Indonesia's state oil company, Pertamina (Kassim 1995).
187 "Van der Horst Unit Wins S$197M Power Job," *Straits Times*, August 11, 1995.
188 The consortium (PT Dawuan Palimanan Marga Sakti) comprised Van der Horst (36 percent), Van der Horst-affiliated PT Super Indah Makmur (4 percent), PT Infratek Indonusa (30 percent) and Jasa Marga (30 percent) ("Van Der Horst Leads Venture to Build S$204M Toll Road in Java," *Straits Times*, October 1, 1996).
189 Shih 1995.
190 According to 2000 government data, Bakrie Investindo controlled 80 percent of the concession. The company of the son of a New Order public works minister, Radinal Moochtar, called PT Arthayasa Karya Bina Caraka, owned 12 percent, and Jasa Marga 8 percent (Kimpraswil 2000, n.p).

Soeharto and other generals.[191] Under the control of economic nationalists, it also served as a prime distributor of patronage and contracts for aspiring *pribumi* capitalists. Bakrie was a prime example.

Pertamina almost collapsed because of director Sutowo's profligate spending and excessive short-term borrowing; the government spent billions of dollars to bail the company out.[192] But Bakrie's firms continued to prosper. In the 1980s, the chief supplier of government contracts under the control of Soeharto and the powerful State Secretariat was a board of high-ranking officials known as Team 10. In a sense, Team 10 was the 1980s answer to the Pertamina of the 1970s.[193] As its coffers were enriched by the 1979 oil boom, Team 10 became a primary nexus of power, resources, rent, and corruption. It channeled billions in contracts and services to *pribumi* and loyal Golkar capitalists, again including Bakrie. In 1996, when his investment firm secured the rights to the Kanci–Pejagan turnpike, Bakrie headed the country's peak business association, the influential and pro-*pribumi* Indonesian Chamber of Commerce and Industry (Kadin).

Pejagan–Pemalang (56 km) and Pemalang–Batang (37 km)

The controlling shareholder of the concessions for these consecutive routes in Central Java was PT Sumber Mitra Jaya (SMJ).[194] SMJ was founded in 1982 as an earth-moving company.[195] It then expanded into an infrastructure and construction company as it secured government contracts for road and bridge projects in Jakarta and then on Java, Kalimantan, and Sulawesi. Its parent company, the Mitra Jaya Group, concurrently moved into the lucrative coal mining business, with its first major operations in southern Sumatra. It served as the principal contractor of then state-owned PT Tambang Batubara Bukit Asam.[196] Given SMJ's experience in procuring government contracts and its expertise in road building, it should be no surprise that SMJ secured these concessions in late 1996. In 2002, SMJ's principal director, K. Gowindasamy, was hailed by the press as a businessman with international ambitions.[197] At

[191] Crouch 1975–76. [192] Bresnan 1993, p. 189. [193] Winters 1996, p. 125.

[194] According to 2000 government data (Kimpraswil, n.p.), the partnership behind the Pejagan–Pemalang route, called PT Mitra Jaya Artha Marga, comprised SMJ (80 percent), Moochtar's son's Artha Karya Bina Caraka (10 percent), and Jasa Marga (10 percent). For Pemalang–Batang, a consortium named PT Sumber Mitra Artha Marga comprised SMJ (70 percent), Jasa Marga (20 percent), and Artha Karya Bina Caraka (10 percent).

[195] See its website: mitrajaya.co.id. [196] Ibid.

[197] "Obsesi PT Sumber Mitra Jaya Menembus Dunia," *news.liputan6.com*, November 15, 2002 (last accessed April 1, 2014).

the time, the group's leading earner was its coal-producing unit, PT Kalimantan Energi Lestari.

Batang–Semarang (75 km)

The identities of the sponsors behind this Central Java turnpike remain murky. The only name I have been able to connect with some certainty to this license is a Michael Lie. Press reports regularly mention, however, that the license was obtained as early as 1992. Interestingly, an early foreign source ties this license to PT Intsia Persada Permai, a high-end furniture maker in Jakarta.[198] According to Intsia Persada Permai's article of incorporation, its principal owner is Gerard Karnadi Lie, presumably a relative of Michael's. A journalist in Jakarta who once conducted a telephone interview with Michael assumed he was a business associate of Govindasamy's.[199] A former high-ranking official at Jasa Marga believes that he was involved in the construction (or financing) of Tommy's Tangerang–Merak turnpike.[200] Eventually, the consortium associated with this license became known as PT Marga Setiapuritama. Confirming the mystery surrounding this license, a normally reliable 2000 Public Works report does not list the consortium's members.[201]

Semarang–Solo (76 km)

In August 1996, this turnpike, designed to link Central Java's largest city with the province's central plains, was awarded to a special purpose vehicle, PT Karsa Semesta Indah (KSI). I have not come across any press reports that detail KSI's original investors. According to the company's deeds, KSI's majority shareholder, as of 2002, was PT Bangun Intiperkasa; its minority shareholder was PT Gunung Sewu Pratama.[202] The person behind these two companies, Husodo Angkosubroto, is not our focus. Husodo's father, the wealthy Go

[198] "Toll Roads Roll In," *Project Finance International*, Issue 70, April 1995.
[199] Interview, Yandhrie Arvian, Jakarta, July 7, 2010.
[200] Interview, Anhar Rivai, Jakarta, September 23, 2010. This may explain how Lie was able to obtain the license in 1992.
[201] Around 2007, members of the consortium were reported as Banyuwen Permatasari (55 percent), Intsia Persada Permai (40 percent), and Karya Terampil Mandiri (5 percent). It is not clear what happened to Jasa Marga's minority shares.
[202] KSI's minority investors were PT Arcadia Chandra, a domestic engineering firm; Li Ka Shing's Asian Infrastructure Fund of Hong Kong; and a company called Global Texas USA. Telephone interview, Dina Chandra, vice-president of Business Development and Acquisitions, Arcadia Chandra International, May 27, 2012.

Soei Kie (Dasuki Angkosubroto), is. Go's Gunung Sewu (Kencana) trading company, founded in the 1950s, was, like Liem's Salim Group, emblematic of the rise and pervasiveness of the conglomerates headed by ethnic Chinese traders and entrepreneurs under Soeharto. Indispensable to the Indonesian economy, and targets of resentment by *pribumi* businessmen, they fused state and private capital with great effect to serve as a primary means of domestic capital accumulation under the New Order.

Go was an active participant in the trading network spawned by Bulog, the state-owned monopoly rice supplier and distributor. In the late 1960s and early 1970s, Bulog was "a major launching pad for domestic corporate capital, through its power to allocate distributorships and contracts, as well as a major source of funds for the private and political needs of the politico-bureaucrats who have controlled it."[203] Bulog was controlled by generals close to Soeharto, especially those from the elite Army Strategic Reserve Command (Kostrad). Go Swie Kie emerged from a coterie of bureaucrats, generals, and ethnic Chinese traders in the early 1970s "to secure a lion's share of the importing and distributing monopolies."[204] As chairman of the Gunung Sewu Group, Go is a regular on lists of Indonesia's richest businessman.

Solo–Kertosono (177 km)

Today this route comprises two concessions: Solo–Ngawi (91 km) and Ngawi–Kertosono (86 km). It was originally four: (1) Solo–Mantingan, (2) Mantingan–Ngawi, (3) Ngawi–Caruban, and (4) Caruban–Kertosono. Because of this corridor's low traffic density, it was clear that these links were not to be completed before Soeharto's target date of 2003.[205]

Kertosono–Mojokerto (39 km)

The license to this East Java concession was handed to the Hanurata Group in 1996 or earlier.[206] In the late 1960s, General Soeharto and his half-brother Probosutedjo formed the company to take advantage of the forestry sector's explosive growth. The sector was a key foreign exchange earner for the regime. With Liem's help, Hanurata also began importing cloves and drilling machinery.[207]

[203] Robison 1986, p. 229. [204] Ibid., p. 232. [205] Boey 1995.
[206] According to Public Works data (Kimpraswil 2000, n.p.), Hanurata held a 45 percent stake, PT Meta Corp 30 percent, PT Satryo 15 percent, and Jasa Marga 10 percent.
[207] Liebhold 1998, pp. 40–41.

Hanurata's main shareholder has been Our Hope, one of Soeharto's massive foundations (*yayasan*).[208] These foundations were an integral part of Soeharto's strategy of personal and familial enrichment.[209] They also served as a critical link between the Soeharto family and Chinese business partners.

Mojokerto–Surabaya (37 km)

In 1994, the link designed to deliver the Trans-Java Expressway to Indonesia's second city was awarded to PT Moeladi. An obscure mid-sized contracting company established in the late 1960s by one Arry Moeladi Soemopawiro, it worked closely with Pertamina. The toll-road consortium, named PT Marga Nujyasumo Agung, held concessionary rights for twenty-nine years.[210]

Gempol–Pandaan (13 km)

In September 1996, the rights to this section south of Surabaya were awarded to investors who later formed a consortium named PT Margabumi Adhikaraya.[211] As of 2002, its two controlling stakeholders each held 35 percent. One was PT Margabumi Matraraya, builders and operators of the 22-km Surabaya–Gresik tollway, which opened in 1993.[212] The other was PT Tirto Bumi Adyatunggal. Both companies are controlled by Moertomo Basoeki, a low-profile businessman hailing from Surabaya.[213]

[208] The army's Trikora Foundation has held a minority stake (Robison 1986, p. 344, Table 10.3). A representative of Hanurata told me that the Soeharto's Harapan Kita foundation was a 90 percent shareholder and Trikora 10 percent (Interview, Winton Sinaga, Jakarta, June 19, 2008).

[209] Robison 1986, pp. 345–46.

[210] Its ownership structure was PT Moeladi (36.5 percent), Dressa Cipta (20 percent and likely a subsidiary of PT Moeladi), Jasa Marga (16 percent), PT Kaliurang Daya Cipta (or Kaliurang Dualimadua) (15 percent), and PT Induco Matra (12.5 percent) (Jasa Marga 1995, p. 27). Puzzlingly, this concession, then valued at US$300 million, was used a test case to convince international lenders to help finance the construction of the country's toll roads (Boey 1995).

[211] Jasa Marga held 15 percent, as did the construction company PT Adhika Prakarsatama. In 1994, it began a BOT contract to widen the Jakarta–Tangerang tollway.

[212] According to a 1992 Public Works source, behind this consortium, established in 1991, was Jasa Marga, PT Induco Matra, and PT Tirtobumi Adyatunggal (Public Works 1992). From 1994 to 1996, Jasa Marga held 10 percent (Jasa Marga 1996, p. 99). By 2000, shareholders had become Tirtobumi Adyatunggal (93.53 percent) and Jasa Marga (6.47 percent) (Jasa Marga 2000, p. 51).

[213] A press report describes him as unknown (*tak terkenal*) (Chamim *et al.* 1999). A staffer at one of his companies said that the family of the Surabaya-based, food and beverage giant

Pandaan–Malang (30 km)

With a bid of Rp. 217 billion, the Setdco Group was awarded the contract to build this turnpike that would run to the cool highland town of Malang.[214] A rock star-turned-businessman, Setiawan Djody controlled Setdco. Established in the late 1970s as a real estate and construction company, Setdco expanded into the oil transport business through a partnership with Tung Chee Wa, the son of a Chinese shipping tycoon and later Hong Kong's Governor. Djody was also a substantial shareholder in the former state telephone company, Telkomsel, and famously teamed with Tommy Soeharto to purchase a major stake in the luxury Italian sports car manufacturer Lamborghini.[215]

Setdco owned 80 percent of the consortium PT Setdco Graha Nusantara that was formed to finance the Pandaan-Malang route. In addition to Jasa Marga's minority shares (10 percent), two of Setdco's junior partners, each with a 5 percent stake, were military-owned. While the chronic shortfall in its budget under Soeharto forced the military to use its own devises to fill this spending gap, the military's deep involvement in business far surpassed meeting budgetary needs. In addition to the siphoning of resources, directly or indirectly, from state companies like Pertamina and Krakatau Steel, each branch of the military, including most divisions within the army, under the New Order owned companies and foundations.

PT Yamabri, one of Setdco's junior partners, illustrates such ownership. Founded in 1994, it was controlled by the headquarters of the armed forces (ABRI). Promoted by ABRI's then Commander-in-Chief, the late Gen. Feisal Tanjung, Yamabri established companies in various sectors. Most visibly, it ran an air cargo company named PT Manunggal Air Services. State companies, especially Pertamina, fed the latter a steady diet of contracts. An entity called PT Yamabri Dwibhakti Utama was established for the purpose of the Pandaan–Malang concession.[216]

The other military-related Setdco minority partner was PT Dharma Kencana Sakti. It was owned by the holding company of Kostrad, called Yayasan Dharma Putra Kostrad (YDPK).[217] As noted above, Kostrad

Kapal Api, Soedomo Margonto, was behind Basoeki. Another report names the family formerly behind the massive clove cigarette company HM Sampoerna as a collaborator with Basoeki on some projects (Confidential interview, Jakarta, June 8, 2011; "Jasa Marga vs Tirtobumi," *Indonesia Today*, January 17, 2013, *yosefardi.com* [last accessed March 5, 2013]).

214 "Indonesia announces winners of toll projects," *Reuters*, April 2, 1996.

215 Summit Reports (n.d.). On his relationship with Tommy (and Sigit), see Schwarz (1994, p. 150).

216 "Indon Allows Entry of 8 New Toll Road Investors," *Antara* (*Asia Pulse*), September 30, 1996.

217 In English, the Foundation for the Sons of the Army Strategic Reserve Command.

was active in the business affairs of Bulog. Founded in the mid-1960s, YDPK grew in large part thanks to a bank it owned (established with the help of Liem Sioe Liong). Subsequently, YDPK was the largest of the army foundations outside the direct control of central headquarters. In the 1990s, Kostrad's business interests stretched from forestry and construction to real estate and finance with more than a dozen known companies to its name.[218]

Gempol–Pasuruan (32 km)

The consortium behind this route (which was once in fact Pandaan–Pasuruan) might have been PT Marga Pexacor Adya Sedjati.[219] Little is known about this concessionaire.[220]

Pasuruan–Probolinggo (40 km)

In August 1996, the engineering firm PT Bukaka Teknik Utama secured the license for this route along East Java's north coast.[221] The name synonymous with Bukaka is Jusuf Kalla, Indonesia's two-time vice president. Born and educated through university in South Sulawesi, Kalla joined his father's business, N.V. Hadji Kalla. Its big break came in 1969, when one of the country's leading conglomerates, PT Astra International, granted it the sole Toyota automobile distributorship for eastern Indonesia.[222] Nearly a decade later, Kalla founded Bukaka Teknik Utama. Its success in securing government contracts to build power stations, bridges, and airports spawned more companies, including the formation of the Bukaka Group. It became eastern Indonesia's preeminent conglomerate. In 1995, in partnership with Singapore Telecom International (Singtel), it acquired the telecommunication rights for eastern Indonesia.

Like Bakrie, Kalla's political and associational activities aided his business interests. Under the New Order, he was a four-time Golkar regional representative to Indonesia's supreme parliament (MPR). He chaired the

[218] Crouch 1975–76, p. 529; Samego *et al.* 1998, p. 125.
[219] Kuranami *et al.* 1999, Appendix D-3; PT Data Consult 1999; "Jalan Tol Kian Panjang, Perlu Transparansi," (see note 157 above).
[220] According to the articles of incorporation of one PT Giri Adyasejati, a possible partner in this SPV, one-fifth of the company was owned by Raden Notosuwito, a younger stepbrother of Soeharto, who passed away in 2006.
[221] Kalla also won the concession for a non-Trans Java turnpike (Ciawi–Sukabumi in West Java).
[222] "Menyemi Konglomerasi dari Makassar," *Tempo*, October 30, 2005, p. 62.

South Sulawesi branch of Kadin for more than two decades and acted as its main coordinator for all of eastern Indonesia.[223] Bukaka Teknik Utama may have held as much as an 80 percent stake in the Pasuruan–Probolinggo concession with the remainder belonging to Jasa Marga.[224]

Probolinggo–Banyuwangi (170 km)

It is not clear if the license to this lengthy turnpike that would connect to Java's eastern tip was auctioned prior to the 1997–98 financial crisis. If it had been, it garnered no interest.[225]

Aggregate significance

Four main conclusions can be drawn from the above capsules. First, the high number of short-distance concessions on offer was striking. It was mentioned that Indonesia lacked a massive conglomerate with experience in the field, like that of Hyundai of South Korea, to build these projects singlehandedly. So, the plan's ambitiousness likely surpassed the capacity of the sector's established actors to do it themselves. More critically, however, was an overriding political concern to have more non-Cendana private sector players benefit from the sector's spoils. As resentment brewed about the stranglehold the palace's children had over the toll-road sector, the ageing Soeharto sought to spread the wealth, so to speak, by involving a wider swath of the political-business class. The resentment was particularly acute among the *pribumi* bourgeoisie who felt marginalized by the favoring of the Chinese conglomerates.

Consider the toll road across Java, which at this time was divided into eighteen separate concessions.[226] The average distance of each turnpike was about 42 km, the median 39.5. While perhaps politically expedient, the maneuver was inefficient economically. It stood in stark contrast to what Prime Minister Mahathir Mohamad – also well known for his cronyism – had done in Malaysia. After government efforts to build the North–South Expressway encountered financial difficulties, in 1988 Mahatir awarded the contract to build and operate the 973-km toll road to a single, though politically connected, firm. A subsidiary of United Engineers Malaysia (UEM) Berhad, PLUS Expressway Berhad, finished

[223] See tokohindonesia.com (last accessed March 27, 2014). [224] Kimpraswil 2000.

[225] A 2001 study recommended that this section be upgraded to a width of seven meters, not a dual carriageway, let alone a tollway (Carl Bro. International 2001, pp. 6–12–13).

[226] This number excludes the Tangerang–Merak, Jakarta–Cikampek, Palimanan–Kanci, and Probolinggo–Banyuwangi turnpikes.

it in 1994, more than a year ahead of schedule.[227] The giant Japanese firm Mitsui, a subcontractor on the Malaysian road, reportedly had requested to build the toll road across Java under one concession.[228] Apparently, Soeharto was not interested.

The directive to divide the toll road into a high number of concessions is readily apparent in several cases. A technical study from the early 1970s recommended two sections to cover the roughly 135 km from Cikampek (or Sadang) to Cirebon.[229] This route was later divided into four concessions – Sadang–Subang, Subang–Dawuan, Dawuan–Palimanan, and the Jasa Marga-operated Palimanan–Kanci turnpike that was opened in 1998.[230] Another study from the late 1970s reported on government plans to build a single toll road from Kertosono to Surabaya. Authorities later split these 76 km into two concessions.[231] A government-funded feasibility study analyzed the roughly 130-km Cirebon-to-Batang corridor as a single turnpike.[232] Subsequently, officials auctioned three licenses – Kanci–Pejagan, Pejagan–Pemalang, and Pemalang–Batang.

A second conclusion relates to the first. The upper echelon of *pribumi* contractors were best positioned to benefit from the Trans-Java project. Besides them, the main pillars of capital formation under the New Order – the state (Jasa Marga), the Cendana family, Sino-Indonesian capital, and, arguably, the army – were represented but in a less significant way.

The aggregate interests of Cendana were low. Probosutedjo was most likely a minority partner in Ramiadji's Bhaskara Lokabuana, the majority owner of the Subang–Dawuan franchise. Bambang owned roughly 10 percent of Kotjo's Van der Horst, which held a controlling stake in the Dauwan–Palimanan license. Hanurata was the majority investor of the minor Kertosono–Mojokerto link. Tutut and Tommy were not financially vested in this megaproject.

Sino-Indonesian capital was similarly underrepresented. Go Soei Kie and Johannes Kotjo were behind the Semarang–Solo and Dauwan–Palimanan franchises, respectively. Tomy Winata may have been a minority partner in the Subang–Dawuan license. But Liem's Salim Group, Soeryadjaya's Astra Group, Mochtar Riady's Lippo Group, Eka Tjipta

[227] PLUS is an acronym for *Projek Lebuhraya Utara-Selatan* (North–South Expressway Project). Connections between UEM and the ruling party, United Malay National Organization, are well documented (Gomez 1991, pp. 8–16; Kuppusamy 1995).
[228] Boey 1995; "Menteri PU: Jalan Tol Urusan Bisnis," *Kompas*, June 20, 1995.
[229] Lyon Associates, Inc. 1973, Table 9–5.
[230] Chapter 6 discusses how the three concessions were bundled into one license.
[231] JICA 1978b, p. 4. [232] Reported in Departemen Perkerjaan Umum 1996.

Widjaya's Sinar Mas Group, and others of the largest ethnic Chinese conglomerates apparently held no ownership stakes.[233]

Official army participation was also limited to two small shares in the Pandaan–Malang concession, and a small part (via Hanurata) in the Kerotosono–Mojokerto turnpike.

In all, save for Jasa Marga, *pribumi* capitalists, contractors, and businessmen – represented by Bakrie, Kalla, Gowindasamy, Moeladi, Djody, and Basuki – stood to gain the most from the building of the Trans-Java Expressway.

However, a third conclusion may erode the certainty of the first two: This concerns who in the final count held stakes in the project, an issue that remains a matter of conjecture. Facilitated by lax reporting laws and the ease of creating proxy companies, the hidden or secret nature of investor participation was prominent. We can identify nearly all of the majority shareholders, but identities of the many minority stakeholders remain unclear. Hanurata's partners included seemingly mysterious entities such as PT Meta Corp and PT Satryo. In addition to ghosts, we encounter shadows. Consider the case of Concord. While a former director admitted that "nameless" businessmen used his company as a proxy to secure the Sadang-Subang concession, it is doubtful Concord was alone in abetting this practice.[234]

The difficulties encountered in pinpointing the stakeholders result from the lack of disclosure laws and the attempts to evade taxes by establishing business fronts. Given the onset of the financial crisis that engulfed a number of investors in debt (see Chapter 3), many of the licenses also exchanged hands, some illegally. Therefore, when efforts to recommence the project's construction started around 2003 and 2004, it did not mean that many of the names associated with a concession were part of the original consortium.

The fourth and final conclusion concerns the competitiveness of the auction process. The international "best practice" literature emphasizes the competitiveness of auctions as a means to ensure efficiency, but how competitive the bidding was remains a difficult question to answer. This uncertainty sheds light on key characteristics of Indonesia's political economy at the New Order's twilight.

The simple answer would be that these auctions were not very competitive. Rigging of the bidding process under the New Order was widely

[233] Salim may have held a license for one inner Jakarta route (Sedyatmo-to-Tangerang). "Jalan Tol Kian Panjang, Perlu Transparansi," (see note 157 above).

[234] There was also the issue of using subsidiaries as junior partners. Kotjo's Van der Horst owned about one-third of PT Super Makmur. Moeladi and Bakrie used subsidiaries owned by their children.

known. Cartels controlled the process, including a system of alternating winners. Bidders also bid up prices to facilitate involving the losers in the spoils. Bribing, though discreet, was a matter of fact, and companies included it into their cost estimates.[235]

I discussed the degree of competitiveness with a former Jasa Marga official who sat on the auctioning committee for the 1995–96 tenders. Not surprisingly, he was keen to promote the process's competitiveness and stressed the committee's respect for the rules. Understandably, he sought to distance himself and Jasa Marga from the notorious improprieties associated then with the toll-road sector and the bidding for government projects generally. To support his case, he pointed to the number of new investors to the sector to show that concessions were not handed to established players. Press reports at the time did take notice of the newly involved, including the two military-related entities (Yamabri Dwibhakti and Dharma Kencana Sakti), Kotjo's Van der Horst, Djody's Setdco, Kalla's Bukaka, and others.[236] However, although new to the toll-road sector, they were *not* newcomers to the wheeling and dealing of the country's business world. All were well versed in securing sizeable rent from government officials and projects.

A second piece of evidence in support of the fairness of the concessioning process at the twilight of the New Order according to the Jasa Marga informant was that Tutut, the sector's "queen-pin," was not awarded a Trans-Java concession. The auctions were competitive and Indonesia was heading in the right direction, he maintained. The 1995–96 bidding was "not like before." In the late 1980s and early 1990s, Tommy's and Tutut's companies and those of their cronies had been essentially handed concessions.

A more reasonable explanation behind Tutut's absence, however, is the probability that she simply did not pursue these licenses. (The same could be probably said for the many Sino-Indonesian conglomerates.) Primarily an inter-regional tollway, the Trans-Java licenses did not promise to be as lucrative as CMNP's urban routes. To wit, as a result of the very same 1995–96 bidding, CMNP secured the rights to a 32-km tollway in eastern Surabaya. The investment value of this project (Rp. 475 billion, or US$205.7 million) was the highest of these tenders.[237]

235 Braadaart 1996.
236 "Indon Allows Entry of New Toll Road Investors" (see note 216 above).
237 Tiemann 1996. CMNP owned 85 percent of the concessionaire named PT Citra Margatama Surabaya, Jasa Marga the rest. Some sources valued the project at Rp. 410 billion. We return to this concession in Chapter 4. Meanwhile, Bambang's PT Tri Daya Esta held 95 percent of a license for a turnpike also in Surabaya, although it appears this license was distributed as early as 1992. We return to this concession in Chapter 6.

In the awarding of the concessions, given their large number, it is reasonable to believe that politics or connections played less of a role than normal in the awarding of a specific concession. To this end, however, what happened in those latter years on long-term projects like the Trans-Java tollway meant little. With the bursting of Bangkok's property bubble, a tidal wave of regional economic ruin swept away deals crooked and straight. It led to the end of Soeharto's long-standing presidency and gravely crippled Indonesia's economy and its business sector. Illustratively, in September 1997, as the value of Indonesia's currency began to tumble, Soeharto issued Presidential Decree 39, freezing government spending on large-scale infrastructure projects, although some of the palace children's projects were exempted. The unsuccessful efforts of state officials to revive the toll-road sector in the chaotic aftermath of the financial crisis are the subject of the next chapter.

3 Raising rates, raising capital, losing control

The literature on expressway privatization in Latin America has done an admirable job in documenting the mistakes that led to average, poor, or, in some cases, disastrous outcomes.[1] It has paid less attention to explanations of how preconstruction processes unfolded. More often than not, it has simply taken as a given – and then not investigated – the politics of the policy process and regulatory reform efforts. For the case of Indonesia, such a shortcoming would undermine any understanding of the fate of expressway construction and the problems of the Indonesian economy in the post-Soeharto era.

The impediments that post-Soeharto administrations faced in jump-starting the Trans-Java Expressway were formidable and some of them not of their own making. From the start, they had to contend with the stigma associated with expressway construction under the New Order. As Chapter 2 recounted, this sector typified the abuse of power and corrupt government-business relations captured by the widely used and resonant slogan KKN – corruption, collusion, and nepotism. KKN in expressway construction centered on companies either owned by or linked to Soeharto's children.

Similarly, the extent of the aftereffects of the Asian financial crisis on Indonesia was not the fault of post-Soeharto state elites. Understandably, the crisis's severity effaced Soeharto's initial target date of 2003 for the completion of the Trans-Java Expressway. In any case, few countries meet completion dates for massive public projects. However, the drastic changes for the Indonesian state and society after the fall of Soeharto and their impact on the economy, infrastructure investment, and public projects like the Trans-Java Expressway were extraordinary. In the throes of an emerging democracy, state elites could no longer command and control as they had previously. As a result, they struggled to implement

[1] A representative few: Gómez-Ibáñez 1996; Ruster 1997; Estache, Carbajo, and de Rus 1999; Engel *et al.* 2003.

policies in key economic sectors, regardless of whether those policies represented drastic reforms or not.

This chapter begins by examining the striking case of President Megawati. In 2002, she revoked Soeharto's 1997 decree freezing spending on large-scale infrastructure projects. In ways reminiscent of the New Order command economy, she oversaw Jasa Marga's building of the Cikampek–Bandung expressway. But this was the exception. Without the regulatory reforms that both private license holders and Jasa Marga were demanding, inducing private participation in the sector proved difficult. Revoking the licenses of private concessionaires who were understandably hesitant to invest in building their roads got tied up in the courts. Megawati's administration also failed to provide the government funds to support PPP projects. Her government held insufficient trust in the private sector.[2] Only at the end of her term was the liberalizing statutory reform, the 2004 Road Act, passed. For the private sector, its vital provision was its automatic tariff adjustment mechanism. Consonant with the framework of OECD-inspired regulatory capitalism, the law also reregulated the sector by mandating the establishment of a toll-road regulatory agency. Nevertheless, the Public Works bureaucracy ensured that this "independent" agency was in practice *not* independent.

This chapter shows that passing the law was easy, while implementing it and convincing stakeholders to respond to it in the hoped for ways were almost impossible. The law had brought new dilemmas into focus. Megawati's successor and a purported reformer himself, Yudhoyono made upgrading the country's infrastructure a priority. Nevertheless, at the 2005 Infrastructure Summit investors impressed upon him that the country's "land problem" required immediate attention. Therefore, Yudhoyono, like Soeharto before him, signed a presidential decree on eminent domain to speed up compulsory land acquisition. Unexpectedly, this decree became perhaps the most contentious regulation of his first administration. Its harsh elements, such as presidential power to abrogate land rights, drew the ire of civil society, and his administration was forced to revise it.

A second formidable obstacle emerged. Even if the necessary land were to be purchased swiftly (which did not happen), the sector would stall without private and public financing. Jusuf Kalla, then Yudhoyono's vice president, and a license-holder himself, set out to correct this by pressuring state banks to reach loan agreements with

[2] Hamilton-Hart 2007.

concessionaires. This began to happen in 2007. However, little of this money was dispersed, as progress on the ground was minimal. Thus the land purchasing/construction finance dialectic became increasingly intertwined. This chapter ends by detailing one reason behind this inertia – inter-ministerial dissension over state monies allocated for land acquisition in the public interest.

Old regime–new regime tensions

By asking for the IMF's help in late 1997 as the financial crisis deepened, Soeharto opened the door for reformers to curtail the privileges and business empires of his children and other cronies. In what Robison and Hadiz, in the premier study of the early post-Soeharto state, call the "politics of confiscation," the IMF and other reformers set their sights on monopolies and projects that under Soeharto were distributed without public tender. Here such illicit practices as the "over-pricing of contracts, illegal granting of credit, tax and import facilities, the sale of state assets at unjustifiable prices and compensation for unnecessary intermediary activities" were prevalent.[3] As a result, the Soeharto family and close cronies like convicted businessman (and former minister of trade and industry) Bob Hasan were deprived of profitable rents. In the toll-road sector, a number of projects linked to Tutut, Tommy, and Ari Sigit – a Soeharto grandson – were cancelled.[4] Robison and Hadiz suggest that the confiscation process only scratched the surface. Not only did the institutions that facilitated corrupt business practices remain resilient, but also "the vexed question of property rights constrained the authority of reforming ministers and officials."[5]

Aborted confiscation was powerfully on display in the tollway industry, where the participation of the palace children, especially Tutut, was so visible. But there was a twist. Robison and Hadiz note how reformers took aim at notorious Indonesian state gatekeeping institutions, like Pertamina, the state oil corporation.[6] In this case, it was a SOE that went on the offensive.[7]

Chapter 2 discussed the birth pangs of Jasa Marga's relationship with Tutut's toll-road firm, CMNP. But with Soeharto no longer in power, the SOE sought to rectify what it steadfastly believed was a decade-old wrong. It demanded revision of the 75 percent–25 percent revenue sharing

[3] Robison and Hadiz 2004, p. 201. [4] Samuel 1999.
[5] Robison and Hadiz 2004, p. 201. [6] Ibid., p. 201.
[7] A large number of Jasa Marga projects were still placed under investigation (see Chapter 5).

agreement in favor of CMNP that Jasa Marga had been forced to accept (in 1989) for JIRR. At a time of strong anti-Soeharto sentiments, the press sided with Jasa Marga, portraying it as a victim of the former First Family's voracity. Newspapers delighted in highlighting how the lopsided CMNP–Jasa Marga deal looked in practice. They reported statistics, for example, that showed CMNP was receiving three times more revenue than Jasa Marga. This was despite the fact that traffic was four times heavier on Jasa Marga's section (Cawang–Tomang–Pluit) than on the CMNP's (Cawang–Tanjung Priok–Pluit).[8]

The SOE insisted that a clause compelling it to guarantee CMNP's foreign debt also be nullified. Not surprisingly, CMNP officials balked at the SOE's advances. They contended that their agreement was legally binding until its expiry in 2023.[9] As CMNP's debt mounted – with loans denominated in foreign currency, and with both the value of the rupiah and traffic volume shrinking because of the financial crisis – the company struggled to repay its debts and neared bankruptcy. An independent audit warned that there was "substantial doubt about the Company's. . .ability to continue."[10] In dire need of revenue and with its earnings almost entirely dependent on Jakarta's tollway system, CMNP had powerful incentives to prolong negotiations.[11] Independent accounting firms were called in to help. In September 2001, they recommended Jasa Marga's share be increased to 45.9 percent. CMNP countered with 35 percent, while the SOE demanded 53 percent. Finally, in early 2003, with Tutut no longer holding a formal position or equity stake in the company, the two sides reached an agreement.[12] Jasa Marga would get 45 percent and be released from guaranteeing CMNP's foreign debt.

[8] For one example, see Wawa (2001).

[9] On the agreement, CMNP said: "The revenue sharing composition that was legal, and was even endorsed by the State by the way of the Joint Minister of Public Works and Minister of Finance Decree, is now being legally contested as unfair and even considered to have corruption, collusion and nepotism nuances" (CMNP 2001, p. 6).

[10] Prasetio *et al.* 1999, p. 1a.

[11] Its domestic debt was reportedly valued at Rp. 1.3 trillion, and CMNP held at least three tranches of foreign-dominated debt totaling nearly US$400 million that were due between December 1998 and 2002 (Prasetio *et al.* 1999, pp. 26, 29, 34; "Jika CMNP Limbung, PT Jasa Marga Bisa Terbawa-bawa. . ." *Kompas*, March 13, 1999; CMNP 2001, pp. 39; "Kilasan Ekonomi," *Kompas*, February 27, 2001). Net profits of Rp. 116 billion in 1997 became losses of Rp. 299 billion in 1998 and Rp. 117 billion in 1999 (CMNP 2008, p. 89).

[12] She may have quit her executive position early on but retained her board position until July 2002 ("Nama dan Peristiwa," *Kompas*, March 21, 1998; "Tutut Tinggalkan CMNP," *Kompas*, August 1, 2002). Around this time was also a large ownership reshuffle. Tutut's CLP, Krakatau Steel, Indocement Tunggal Prakarsa, and Purna Bhakti Pertiwi Foundation fully divested (CMNP 2008, p. 88).

CMNP agreed to the deal once the government promised to raise toll rates (on an unspecified future date).[13]

The government's unwillingness to adjust rates had been part of the broader reform-oriented campaign of extirpating elements of KKN from entities connected with the New Order.[14] For example, in 1999 President Habibie's minister of public works announced an indefinite freeze on toll rates.[15] Attempting to distance himself from association with the New Order, Habibie did not want to be seen rewarding Jasa Marga or companies of Soeharto's children at the expense of the politically important yet financially strained and car-dependent urban middle class.

Fortunately for toll-road operators, as the heat of anti-Soeharto sentiments cooled, Habibie's successor, the late Abdurrahman Wahid, was more amenable to raising rates. Wahid, popularly known as Gus Dur, was impeached, however, before a May 2001 regulation he had signed on the matter could take effect.[16] His vice president-turned-successor, Megawati Soekarnoputeri, in an effort to preserve her populist image, had taken a stance that echoed Habibie's position.

As tariffs remained unchanged, the already low rates on the country's routes became some of the lowest in the world.[17] At about Rp. 191 per kilometer in 2002, they were well below the Rp. 320 per kilometer that a World Bank-funded study had concluded consumers were able to pay.[18]

As revenues shrank, conditions on the toll roads deteriorated as operators refused to invest sufficient sums into maintenance (and other

[13] "CMNP Setujui Bagi Hasil 55:45," *Kompas*, December 4, 2002. On the deal, CMNP wrote, "The reduced profit sharing portion eliminated the stigma of corruption, collusion, and nepotism (KKN) which the Company had borne since its founding" (CMNP 2003, p. 42).

[14] The following is a classic example. In Chapter 2 (note 85), it was noted that Tutut boasted that the sultan of Brunei would financially support CMNP's construction of Jakarta's inner tollway system. As reported in an independent audit, in April 1988, these two parties signed a US$70 million interest-free loan agreement (with a seven-year grace period). When repayments either fell behind or had not even begun, the sultan, in December 1998, transferred the debt to the Brunei Investment Agency, which then demanded the outstanding installments be paid. CMNP's management, now *sans* Tutut, signed a sworn affidavit that the company had never requested the loan (information about which "has never been disclosed to the public"), had never agreed to the loan, and that it "never received nor recorded the above loan in its books." In 1999, an agreement was reached where CMNP was relieved of all the loan's debt obligations, which were transferred to Tutut's CLP (Prasetio *et al.* 1999, pp. 31–32). We revisit a similar case of Tutut's misuse of a construction loan in Chapter 5.

[15] Reported in Hutabarat (2002).

[16] Government Regulation no. 40 of 2001. It allowed rate hikes once every three years with the increase tied to inflation but capped at 25 percent.

[17] Tasman Economics/ACIL Tasman 2003, p. 75.

[18] Ibid., p. 128. See also "Kenaikan Tarif Tol Jangan Untuk Investasi Baru," *Bisnis Indonesia*, May 24, 2002.

improvements). The SOE lobbied the government for a tariff increase. "Imagine. Tariffs on Jasa Marga's toll roads were last raised in 1992," its executive director, Syarifuddin Alambai, complained in 2001. "I don't think there is one service or thing in this country that hasn't experienced a price hike in nine years."[19]

Consumer advocate groups, blossoming in the comparative freedom of the early post-Soeharto state, took umbrage with Alambai's reasoning. The lack of a toll hike, they pointed out, did not keep Jasa Marga from turning a widely reported profit of Rp. 147 billion (US$16.7 million) in 2000.[20] Moreover, the company's debt woes stemmed from not just low tariffs but from the KKN inherent in the sector. For example, the State Auditing Body had reported on the SOE's illegal payments to contractors for work that was completed years prior and on its improper compensation of contractors for foreign exchange losses. Together these payments were costing the state (i.e., Jasa Marga) over Rp. 160 billion (US$16.8 million). Why should road users, the consumer advocates asked, be forced to pay for these losses, which were a result of extensive corruption in the sector?[21]

Consumer groups had a point, but there were toll-road operators other than Jasa Marga, and they presented the Megawati government with an ultimatum in March 2003: If an adjustment of somewhere between 25 and 65 percent (depending on the specific turnpike) was not put into effect by the end of April, they would cease operations and barricade their routes.[22] The Ministry of Regional Infrastructure and Settlements (formerly Public Works) backed the operators. On two occasions Minister Soenarno submitted proposals for increases, only to be rebuffed by Megawati. Rankled, he speculated that if rates were not raised, the government might be forced to subsidize Jasa Marga and CMNP Rp. 350 million (about US$40,000) per day to prevent their collapse. Alambai added that it needed to be remembered it was the government that had "forced" (*memaksa*) his company and CMNP to build these roads in the first place. To secure the rate hike, Alambai now embraced CMNP as a brother-in-arms.[23] With a new Jasa Marga–CMNP

19 Wawa 2001; Herwanto 2003, p. 86. Alambai forgot to mention the raises on routes where Jasa Marga was a minority partner, like CMNP's Cawang–Tomang–Pluit link.

20 For example, "Jasa Marga Usulkan Tarif Tol Naik 30–40 Persen," *Kompas*, July 3, 2001. See also Hutabarat (2002).

21 Emmanuelle 2001. I return to Jasa Marga's finances in Chapter 5.

22 "Operator Jalan Tol Ancam Hentikan Operasi," *Kompas*, March 6, 2003.

23 "Menkimpraswil Soenarno: Tarif Tol Tak Naik, Pemerintah Subsidi Rp. 350 Juta per Hari," *Kompas*, March 19, 2003. Alambai meant the Cawang–Tanjung Priok–Pluit link to stimulate (*menghidupkan*) northern Jakarta's economy.

revenue-sharing agreement concluded, Megawati had little choice in the matter. In June 2003, she allowed a 25 percent increase.

A false start

The increase was further motivated by the desire of Megawati's government to attract private investment into the sector. There had been no significant investment there since the onset of the financial crisis. The president also had political motives. A strong economy would boost her candidacy in the upcoming 2004 presidential elections (or, at least, attempts to revive the economy would show that she was a "doer"). Accordingly, in March 2002, even prior to the toll hike, she revoked Soeharto's Presidential Decree 39 of 1997 that had halted large-scale infrastructure projects.[24] She was also trying to revive the power generation sector.[25]

Other conditions augured well for Megawati's plan. One was the apparent return of political stability. By 2002, the country had passed through the most turbulent phase of its democratic transition. Megawati would complete her term – unlike her two post-Soeharto predecessors, Habibie and Gus Dur. The economy, buoyed by strong consumer demand, was already showing signs of recovery.[26] With modest growth rates of 4.5 percent in 2002 and 4.8 percent in 2003 and with the termination of the six-year IMF program in late 2003, the World Bank declared an end to the financial crisis.[27] "Indonesia is turning a corner, from crisis management towards growth," the Bank's mid-2004 report stated. "For the first time, after the crisis, Indonesia is able to focus on longer-term development policies. Reversing the trend of deteriorating infrastructure is one of the top priorities."[28]

But there were hurdles to such a reversal, including those in the toll-road sector. For one, there was no sound regulatory framework adequately protecting long-term private capital interests. Consider Gus Dur's aforementioned regulation on toll hikes. While favorable to operators, it was a government regulation that only required the president's signature. Easy to amend or annul, it lacked the force of a law passed by parliament (*undang-undang*).[29] For "best practice"

[24] Presidential Decision no. 15 of 2002. [25] Shari 2003.
[26] Basri 2004, pp. 43–45; for an opposing view, see McLeod (2011, pp. 10–11).
[27] Some criticized key ministers in Megawati's cabinet for moving too cautiously on approving stimulus packages (O'Rourke and Milne 2010, p. 31).
[28] World Bank 2004, p. 1. See also Shirashi (2006, pp. 42–45).
[29] As president, Gus Dur was too weak to have a law passed quickly by parliament. His National Awakening Party (PKB) held only 11 percent of the seats in parliament, and he alienated coalition partners by firing some of their ministers.

reformers, legislating a clear and predictable toll rate adjustment mechanism is a critical step in enhancing certainty. Establishment by law of an independent regulatory agency (IRA) is the next step. Here it would mean forming an authority distinct from Jasa Marga. That, in theory, would help level the playing field between private and public sectors. Capital holders are disinclined to invest in sectors where their competitors also act as their regulators. The Indonesian Toll-Road Operators Association (ATI), Jasa Marga, the World Bank and its sister organization, the Asian Development Bank (ADB), all supported these reforms.[30] Such a framework, they believed, would enhance the credibility, capacity, and willingness of Indonesian governments to commit to pro-private-sector or at least cost-recovery policies.

Without this legislation, foreign investors were not investing, despite expressions of interest.[31] Domestic concessionaires also held back. However, this did not stop Megawati from putting the cart before the horse by trying to kickstart the toll-road sector, including that of the then not-yet-named "Trans-Java" project.[32] But implementation of policy was no longer as easy and straightforward as under the New Order; her government had little command over private or public capital.

Megawati's plan called for annulling the licenses of a number of private concessionaires and handing them over to Jasa Marga. This, it was hoped, would precipitate construction. She did move quickly. Two licenses – for the Cikampek–Purwakarta–Padalarang (known by the acronym, Cipularang) route in West Java, and for the Surabaya–Mojokerto route in East Java – were nullified within a month of her assuming the presidency from Gus Dur.[33] A third revocation – for the Semarang–Solo link of Central Java – followed subsequently.

It is hard to ascertain why these three concessions were targeted, but they did appear vulnerable or weak politically. Consider PT Citra Ganesha Marga Nusantara (CGMN), the holder of the Cipularang license. Of its two main private investors, one was foreign, the other Tutut's CMNP. In other words, both were on the outside looking

[30] Interview, Fatchur Rochman, head of ATI, Jakarta, July 12, 2012; Jasa Marga 2000, p. 104; the World Bank funded an international "best practice" study about establishing an independent regulatory toll-road authority (it was conducted by the Australian firm Tasman Economics/ACIL Tasman; the two firms were merging when the report was being written); Johnson and Lubis 1997, pp. 13, 74–75.

[31] "Investasi Jalan Tol Sulit Masuk hingga 2004," *Kompas*, October 19, 2001.

[32] On the name, see Chapter 2, note 176. Based on a 2001 report (see note below 37), the project at the time was referred to as "JARNS" – Java Arterial Road Network Study.

[33] Jasa Marga 2006, pp. 57, 61.

in.[34] The same could be said of the other two concessionaires. As was noted in Chapter 2, Marga Nujyasumo Agung's (MNA) main investor was PT Moeladi, an obscure Jakarta-based contracting firm with ties to Pertamina. Meanwhile, the businessman Go Swie Kie was the lead investor of the consortium called PT Karsa Semesta Indah (KSI) for the Semarang–Solo license. But having accumulated debts of almost Rp. 4 trillion as a result of overexpansion and the Asian financial crisis, the Go family sold its majority stake to one of its original minority partners, PT Arcadia Chandra, shortly before the license was revoked. Arcadia Chandra was not a conglomerate with political clout, despite a former public works minister on its board.[35]

By contrast, Megawati's administration let the concessions of bigger players remain. This included the former First Family's Hanurata company, which held the Kertosono–Mojokerto franchise; Aburizal Bakrie's Kanci–Pejagan concession; and that of former rockstar and business partner of Tommy Soeharto, Setiawan Djody, and his Pandaan–Malang toll-road franchise.

One should ask whether Jasa Marga was eager to gain possession of these new licenses? Toeing the government line, company officials publicly expressed confidence in their ability to finance these routes' construction.[36] Privately, they held doubts, especially over the routes' financial viability. A consultancy report, commissioned by the Department of Regional Infrastructure and Settlements, entitled "Java Arterial Road Network Study" (otherwise known as JARNS), was released in October 2001. Best-case scenario traffic projections, according to the study, did not warrant upgrading the Semarang–Solo route to a four-lane dual carriageway toll road. Widening to seven meters was deemed sufficient for the next twenty-year period. A (less conclusive) evaluation of the Surabaya–Mojokerto link could not verify the need to toll this route in the short or medium term.[37]

[34] By then Trafalgar had been bought by Kvaerner of Norway. CGMN's former president director insists he was eager to build and tried to take on more rupiah-denominated debt, but he was told the "politics was wrong." By this he meant CMNP's ownership share (Telephone interview, Charles Hardeman, September 27, 2011).

[35] This made the family the country's sixth largest debtor ("Tak Masalah Kepala BPPN Jalan Sendiri," *Kompas*, April 6, 2000). Rachmadi Bambang Sumadhijo served under President Habibie (see arcadiachandra.com; last accessed March 14, 2014). A seasoned foreign investor (and consultant) suggested that a powerful partner in KSI might have prevented the annulment (Interview, Scott Younger, Glendale Partners, Jakarta, June 19, 2008). Subsequently, Younger became director of PT Nusantara Infrastructure, owned by the Rajawali Group and which controls four toll-road concessions (two in the Jakarta area, and another two in Makassar).

[36] "'Tinjau Izin Konsesi Jalan Tol Jasa Marga,'" *Bisnis Indonesia*, March, 1, 2003.

[37] Carl Bro. International 2001, pp.6-10–6-12, 6-23.

On the Cipularang turnpike, the JARNS report was bullish.[38] But Jasa Marga officials fretted due to their corporation's debts. An already troublesome 1.6:1 debt-to-equity ratio in 2001 grew to 2.1:1 the following year.[39] The several poorly performing toll roads (even prior to the financial crisis) on the SOE's books (Medan, Semarang, and the then recently opened Palimanan–Kanci route outside Cirebon) fueled their pessimism. The lack of sectoral reforms company officials had been seeking was another sticking point. As was noted above, they wanted to be stripped of their regulatory function. If released from this authority, they believed their company could unleash its commercial energies and not be forced to build loss-making toll roads or to act as the legal guarantor of government debt in the event of project failure.[40] Jasa Marga officials also desired an automatic tariff adjustment mechanism. Although Megawati had permitted a 25 percent raise in June 2003, they did not want to beg the government each time they felt a toll hike was warranted. Therefore, when it came to building the second phase of the Cipularang, officials demurred.[41] Only after the sought-after reforms were forthcoming did they acquiesce (to be discussed below, Megawati signed the new Road Act in October 2004, just days before her term expired).

Construction began in April 2004 and Jasa Marga set a target date of mid-2006. Megawati had other ideas. She sped up the construction schedule, demanding the remaining 45 km be ready for the opening of the 50th anniversary celebrations of the historic Bandung Non-Aligned Asia-Africa Conference in April 2005, a year earlier. To meet the accelerated target, Regional Infrastructure and Settlement officials appointed separate contractors to work nine small sections simultaneously.[42] This was precisely the kind of interference that Jasa Marga's leadership hoped to avoid by jettisoning its regulatory mission. It believed the presidential speed-up, especially given the route's hilly terrain, would be disastrous – one more project where politics undermined technical wisdom.[43]

Having finally "corralled" Jasa Marga, Megawati's administration similarly struggled with the country's courts. After its license's annulment,

38 Ibid., pp. 7–13–14. 39 Jasa Marga 2006, p. vii.

40 Tasman Economics/ACIL Tasman 2003, p. 30; and Sunito 2005. At the time Sunito was Jasa Marga's Director of Operations and Commerce.

41 Phase I (14 km from Cikampek to Purwakarta) was opened in August 2003 by Jasa Marga, although it was mostly built by CGMN.

42 Her administration also mobilized finance. Five state banks and one private bank (BCA) financed the Rp. 1.56 trillion project ("Mulai Dibangun, Jalan Tol Cipularang II Tahap Kedua," *Kompas*, April 12, 2004).

43 Conference delegates did use it, although it was not opened for public use until June. However, the rush led to shortcuts and land-shifts caused gaping holes in the road in November and again in January 2006. Landslides returned in January 2014.

Marga Nujyasumo Agung (MNA) countered and sued the government. The lack of explicit schedules or timetables in the awards distributed prior to the 1995–96 tenders (see Chapter 2) advantaged the concessionaire.[44] In a 2003 verdict the Supreme Court agreed, ordering the ministry to rescind the nullification. The court even rejected an appeal from the government for a judicial review (*peninjauan kembali*). In April 2005, the Public Works Ministry (as it was renamed again) formally reinstated MNA's concession.[45]

The legal wrangling behind the Karsa Semesta Indah (KSI) case was more extensive. Like MNA before it, KSI sued but waited until 2006. What caused KSI to delay? Jasa Marga did not want the concession; so, as the sector's regulator, it was slow to execute the decision. The matter then got caught in the slowdown caused by the transition of authority from Jasa Marga to the new toll-road regulatory body. The latter was established in early 2005, but it was plagued by a staffing shortage for some time.[46] In court, lawyers for KSI charged that because their client's license was revoked summarily, the company had no opportunity to defend itself properly. They also questioned why KSI was (one of only several) chosen for cancellation. But KSI lost its case at the State Administrative Court in Jakarta. On appeal at the Supreme Court in 2008, it succeeded. In 2009, the government appealed in turn – and won.[47]

Three separate informants with intimate knowledge of the cases attributed the different outcomes to money: MNA out-bribed the government in the courts, KSI did not. One informant, a former Jasa Marga commissioner, reasoned that the Mojokerto–Surabaya route was the more profitable of the two routes, which explained MNA's eagerness to retain its concession. Although not proud of the way the courts operated, he held that the government's priority was to build the tollway; who held the franchises was of secondary concern.[48] If this source is taken on his word, how was the government to proceed? The mantra of the "best practice" literature is to codify in law a transparent and credible regulatory framework that induces competition as the first critical step in the promotion of private sector participation, especially in infrastructure PPP projects. This is precisely what the government had been pursuing.

[44] BPJT's first head said they were one-page documents more accurately described as an "award" than a contract (Interview, Hisnu Pawenang, Jakarta, May 20, 2009).

[45] Jasa Marga 2005, p. 27.

[46] The formation of the regulatory agency is discussed below.

[47] For the verdict (Number 11 PK/TUN/2009), see the Supreme Court's website: putusan.mahkamahagung.go.id.

[48] Confidential interview, Jakarta, July 11, 2007. The second informant was connected to KSI (Jakarta, June 26, 2012); the third was a BPJT board member (Jakarta, July 12, 2012).

Liberalizing reforms

Yudhoyono and especially Jusuf Kalla, the politico-businessman who spent a great deal of his (first) vice presidency liaising with big and particularly *pribumi* business interests, are credited with reviving Indonesia's moribund infrastructure sector.[49] This was true with toll roads and the Trans-Java project. In retrospect, the Yudhoyono-Kalla team would have accomplished far less if not for certain steps taken by its predecessors. By 2000, under Gus Dur, the Ministry of Regional Infrastructure and Settlements (the former Ministry of Public Works) had completed a draft of a new law on roads. It provided for an automatic mechanism to raise toll rates periodically. The draft also sought to strip Jasa Marga of its regulatory function.[50]

Megawati played her part too, although belatedly. In 2004, the last year of her term, ministerial-level meetings were held to discuss concrete proposals on financing the end-to-end expressway across Java. It was the reporting on these strategy sessions that gave rise to the widespread use in the Indonesian press of the label "Trans-Java."[51] Finally, in October 2004, two days before her term was set to expire, Megawati legislatively cleared the decks, so to speak, by signing into law such key bills as on state defense, on corruption, on national planning, and for the purposes of this study, on roads (Law 38 of 2004).[52] Without this law, Yudhoyono and Kalla would have spent their term struggling to pass a road bill through a newly elected parliament, rather than struggling to implement it. Megawati presented her successors a useful gift, particularly to Kalla whose conglomerate held stakes in three toll-road concessions. (Accusations of payback are covered in Chapter 5.)

The Road Act was part of a broad campaign of statutory liberalization in vital sectors that the IMF, the World Bank, and the ABD demanded in exchange for loans to help cushion the shock of the financial crisis. The other resulting laws included those focusing on telecommunications (no. 36 of 1999), oil and gas (no. 22 of 2001), electricity (no. 20 of 2002), water (no. 7 of 2004), forests (no. 19 of 2004), and, later, railways (no. 23 of 2007). Taken together, these statutes were intended to signal policy continuity and credible commitment to market-based competition. This

[49] Shiraishi 2006, p. 45; Business Monitor International (Q4) 2006, p. 28.

[50] Interview, Nurdin Manurung, former head of BPJT and Public Works official, Jakarta, November 22, 2011. See also "Tarif Tol Dirancang Naik secara Periodik," *Bisnis Indonesia* January 8, 2001.

[51] On the name, see Chapter 2, note 176. "Investor Nasional Mampu Bangun Jalan Tol 700 km," *Bisnis Indonesia*, April 13, 2004.

[52] Passing a slew of bills at the end of one's term is common in Indonesia (Stockmann 2005).

was deemed important by the IFIs because of both the weakness of the rule of law in Indonesia and the vicissitudes of democratic elections, where a change in government could induce changes in policy.

Non-governmental organizations (NGOs) and civil society groups charged that these laws were mostly about privatization and thus violated the well-known peoples' economy clause of the 1945 Constitution (33[3]) mandating state control over vital resources. These groups brought a number of cases in front of the new Constitutional Court in order to get a ruling on the constitutionality of these laws. The Court upheld the oil and natural gas bill (in 2003)[53] and the forestry and water laws (both in 2005) but controversially annulled the electricity act (in 2004)[54]. There it argued that industry regulation did not constitute sufficient state control.[55]

Although some civil society groups voiced displeasure with the 2004 Road Act, they did not bring a case against it. Not only does there exist widespread social understanding that private interests have long been integral to the sector (see Chapter 2), but it would have also been difficult to argue that the law's most controversial element, the automatic rate adjustment mechanism, directly hurts the poor.

Still, several of the law's provisions did signal the sector's liberalization. It granted, for instance, the private sector the authority to operate directly (but not own) concessions (art. 50[4]). This clause put an end to forced (commercial) cooperation with the state (i.e. Jasa Marga). It also meant that Indonesia would continue the New Order's use of a standard BOT model.[56]

The tendering process was also targeted for liberalization. Auctions have long been conceived as a means to inject market forces or competition into a field characterized by natural monopoly properties and long-term contracting problems.[57] Accordingly, the new law states that bidding should be transparent and open (art. 51[1]). Beyond this vague declaration, government regulations would be needed to establish detailed

[53] It did force minor amendments to the law. The law's controversy began when it became known that USAID lent US$25 million toward its writing, in tandem with the World Bank and the ADB (O'Rourke and Milne 2010, pp. 86–87). The law ended Pertamina's role as regulator and established an IRA called the Upstream Oil and Gas Regulatory Authority (Badan Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi, or BPMigas).

[54] Having rejected a new government version in 2006 that resembled the 2002 law, parliament finally passed Law 30 of 2009 on electricity that some deemed more "state-centric" (O'Rourke and Milne 2010, pp. 152–53, 158).

[55] Most of this is drawn from Butt and Lindsey (2008).

[56] See Chapter 4. The government owns the road (45[1]), and the rights to operate it are transferred back to the government at the end of a concession period.

[57] Demsetz 1968. See Williamson (1976) for a critique.

procedural guidelines.[58] To ensure proper competition, one rule stipulated that at least three bidders had to qualify in order for an auction to proceed.[59] Another rule allowed initial toll tariffs to be determined via the bidding process.[60]

The 2004 law also loosened the policy behind the provision of alternative routes. Globally, this issue has proven controversial. Exemplary was the experience in Mexico, home to one of the more infamous privatization debacles. When tolls were raised dramatically to make up for the shortfall in traffic in the 1990s, motorists opted to use free parallel roads that were mandated by Mexican law. A subsequent bailout of private firms amounted to billions of dollars.[61] In Chile, motorists chose a free mountain pass rather than pay to use a new tunnel, prompting the World Bank to recommend "as much as possible, avoid concessioning roads for which there are alternative freeways nearby."[62] In Hungary, diversion onto parallel free roads leading to missed traffic targets on toll roads has become common.[63]

In Indonesia, the original road act (no. 13 of 1980) categorized a toll road as "an alternative to an existing highway" (art. 15). This stipulation was a manifestation of the country's early quasi-socialist roots, especially under Soekarno and similar to many other post-colonial countries. In the end, the new 2004 Road Act continued to deem a toll road as an alternative to an already existing free road (art. 44[1]). But there was now an important proviso: Under certain conditions (*dalam keadaan tertentu*) exceptions may be permitted (art. 44[2]). This insertion opened the possibility of creating "captive" motorists, although that has not happened yet.[64]

While this act lacked the controversy of laws in other sectors, its automatic toll rate adjustment mechanism did attract public attention and debate. Consonant with the mandate of creating good governance – imbued with transparency, predictability, and accountability – drafters sought to depoliticize rate hikes by taking the decision out of the hands of a single individual – in this case, the president's. The new rule-based formula legislated an automatic raise every two years, with the increase matching official inflation rates (art. 48[3]).

58 Neither word was defined in the article's elucidation. It was deemed sufficiently clear (*cukup jelas*).

59 Government Regulation no. 67 of 2005. This was later contested and amended (see Chapter 5).

60 Minister of Public Works Decree no. 374 of 2005.

61 Gómez-Ibañez 1996.

62 Gómez-Lobo and Hinojosa 2000. The quote was taken from "Summary Findings" (n.p.).

63 Brenck *et al.* 2005, p. 93.

64 Cases might include port access roads, tunnels, and bridges or to holiday resorts (where road access is expensive to build) (Tasman Economics/ACIL Tasman 2003, pp. 67–68).

With this, decisions on toll hikes would now bypass Indonesia's notorious obstructionist bureaucracy. A 1997 ADB study described, in stark contrast to the new automatic mechanism, the byzantine rate adjustment process under Soeharto accordingly:

> [S]tarting with the investor submitting the proposal to Jasa Marga for review, it is then passed to the Ministry of Public Works. Here it is reviewed in detail again by the Subdirectorate Jalan Tol for conformance with BKOK guidelines.[65] The proposal is then submitted to the Minister of Public Works for approval. It then is passed up to the Cabinet Secretariat for review, and if approved, will be submitted to the President for decision.[66]

In discussions on the new formula, the government and the parliamentary committee on transportation and public works easily reached agreement on indexing rate increases to inflation. More difficult was agreeing to the pace of the rate hikes. ATI lobbied for annual increases, arguing that smaller bumps would be perceived by motorists as less burdensome. Some within the government sought a hike every three years. Parliament split the difference and settled on every two years.[67]

Nevertheless, the outcome was advantageous to potential investors and current operators, even compared with Gus Dur's favorable 2001 regulation. First, the certainty of the adjustment was enhanced by making it automatic rather than dependent on a presidential decision. Second, there was no cap on the raise. Finally, the mechanism was rooted in a law, not a flimsier government regulation.

The new measure did draw some criticism from civil society groups. The Indonesian Consumer Society, for instance, pointed out that the tariff mechanism did not take traffic flows into account, whereby an uptick in volume could ostensibly offset the need for an automatic hike. It further noted the absence of considerations of performance standards, opening the possibility that raises could reward poor service or maintenance.[68] It also recommended increases be tied to a more robust indicator, such as a comprehensive consumer price index (CPI), as is the policy in Malaysia (and many other countries). This figure is typically lower than the inflation rate. The 2003 "best practice" study also recommended using a CPI

65 *Subdirektorat Jalan Tol* is the Toll Road Sub-directorate, otherwise known as Bina Marga. BKOK stands for *Besar Keuntungan Biaya Operasi Kendaraan*, or savings of the tollway user as compared with that of a non-toll road.

66 Johnson and Lubis 1997, p. 9.

67 Interviews, Fatchur Rochman, head of ATI, Jakarta, July 12, 2012; Nurdin Manurung, former BPJT head, Jakarta, November 22, 2011.

68 This point becomes important, and it is revisited in Chapter 5.

index.[69] Lastly, the consumer rights organization queried the validity or objectivity of government-published inflation rates. Under the New Order, it was widely believed that such statistics were manipulated for political or other nefarious purposes. It was not clear whether this practice had been eliminated from the post-Soeharto state. On the manipulation of statistics, ATI's head expressed similar reservations.[70]

Criticism of the automatic adjustment measure, and in particular its inflexibility, also arose from less expected circles. The World Bank-funded 2003 study noted that congestion or even seasonal pricing was not possible under such a restrictive scheme.[71] One private investor in the sector wanted more say on the size of the increase; he feared large hikes could potentially drive (no pun intended) motorists away, hurting his bottom line. Another investor thought that merely keeping pace with inflation was no cause for celebration.[72]

Undeterred, in August 2005 officials put the new policy into effect, raising rates between 15 and 16 percent. Although Indonesia typically gets low marks for the implementation and enforcement of laws on its books, such has not been the case regarding toll hikes. Tariffs have been raised rather consistently in line with the specifications of the new act, a fact to which Indonesian motorists can attest.[73]

Independent regulatory agency

Other parts of the 2004 Road Act concerned reregulation of the sector more than liberalization per se. The standardization of toll-road contracts or agreements, for example, was an explicit attempt to level the playing field among investors and eradicate the favoritism once intrinsic to the sector.[74]

Another regulatory measure (art. 45) removed Jasa Marga's regulatory authority through the establishment of a new toll-road regulatory agency

69 Tasman Economics/ACIL Tasman 2003, p. 71, Table 5. Countries employing CPI included Argentina, Australia, Brazil, Chile, Italy, Japan, Mexico, the Philippines, South Africa, and Spain.

70 "Persoalannya pada Iklim Investasi," *Jawa Pos*, June 27, 2007; Interview, Fatchur Rochman, ATI head, Jakarta, July 12, 2012.

71 Tasman Economics/ACIL Tasman 2003, p. 127.

72 Confidential interview, Jakarta, June 26, 2011; Confidential interview, Jakarta, July 7, 2010.

73 I discuss some exceptions in Chapter 4. Inflation rates, and thus toll hikes, are calculated regionally.

74 Art. 51 (3,4). The old contracts (or awards) were referred to as PKP (*Perjanjian Kuasa Penyelenggaraan*, Implementing Authority Agreements). The new ones are known as PPJT (*Perjanjian Pengusahaan Jalan Tol*, Tollway Operational Agreements).

(Badan Pengatur Jalan Tol, or BPJT). While it brought twenty-six years of tradition to a close, there was considerable pressure, as noted above, on the Indonesian government from IFIs and Jasa Marga to form such an agency. Generally speaking, the emergence of such bodies in Indonesia – such as the Oil and Gas Regulatory Agency created in 2002 and the Telecommunications Regulatory Agency established in 2003 – fits with the aim of the post-Washington Consensus to create autonomous apolitical state institutions staffed by technocrats and run according to rational rule-based procedures.[75] The hope is that these regulatory bodies can guard against political interference and industry capture, helping to prevent the market failures characteristic of the 1997–98 financial crisis. Regulatory agencies are also seen as an alternative mechanism to judiciaries that cannot be relied upon to enforce contracts and private property rights impartially.[76]

For regulatory scholars, precisely what powers to grant an IRA is perhaps the most difficult decision to make regarding state regulation.[77] According to the new road law, BPJT's responsibilities are as follows:

1) recommending an initial tariff and subsequent readjustments to the government and/or minister, as well as overseeing transfer procedures once the concession expires and recommending how it will be managed subsequently;
2) preparing operational procedures for toll-road management, investment, and land acquisition;
3) observing the operation of toll-road concessionaires, evaluating their performance, and supervising toll-road-related services (art. 45 [6]).[78]

The significance of tariffs in this sector warrants a brief discussion on BPJT's first task. Under the New Order, the president decided both toll hikes and initial tariffs. The latter were usually set when construction was nearing completion, making preconstruction cost-benefit analyses almost impossible. The resulting uncertainty forced foreign investors to cling to the president's children in the hopes that their father would not depress his children's capital investments. As we saw in Chapter 2, rates on CMNP-operated routes were decidedly higher than those of Jasa Marga's.

A move toward determining initial tariffs at the bidding stage was made under the New Order for the 1995–96 tenders, with bids containing tariff proposals. In line with best practice, this step, it is believed, helps to reduce the risk private investors assume. However, at the time these proposals were not legally binding.[79] Now that the 2004 law bestowed

[75] BPJT was modeled on BPMigas (Tasman Economics/ACIL Tasman 2003, p. 143).
[76] Levy and Spiller 1994; Gómez-Ibáñez 2006. [77] Clarke 2000, p. 109.
[78] Author's own translations. [79] Johnson and Lubis 1997, pp.77–78.

this task upon BPJT (and after approval of the public works minister), they were binding. Therefore, while according to the 2004 law the new IRA formally recommends the initial tariff, in practice it is determined during the bidding process. The bidder with the lowest initial tariff bid wins the auction; BPJT decides on the length of the concession.[80]

Certain duties not assigned to the agency were also notable. While it was responsible for preparing operational procedures for land procurement, the task of assembling land lay with Public Works and particularly with local governments.[81] Nor was BPJT charged with high-level planning of the road network. In theory, this would enable it to focus on legal and financial matters, promoting dialogue among stakeholders in the process.[82] Regulatory scholars consider such dialogue important in boosting the informal accountability of the regulatory process.[83]

For pro-market reformers, the agency's establishment by a parliamentary law, rather than a government regulation, was critical. It would, in theory, enhance its authority and legitimacy.[84] Subsequent implementing regulations and technical ministerial directives revealed the government's truer intent – to domesticate the new body so it could act neither independently from the government nor powerfully within government.

Take the original composition of BPJT's board, which was specified in a subsequent Public Works ministerial decree (no. 295 of 2005). In part it reflected "best practice" standards with representatives from the government bureaucracy (three), from a related expert or professional association (one), and from the academic community or civil society (one). The latter fulfilled the participation element of good governance promotion. Reformers sought a more expansive board, however, to include representatives from such as ministries and departments as Finance, Law, and the National Land Agency.[85] These were the government bodies, they reasoned, that BPJT would need to forge close working relationships with in order to be effective. They also wanted an academic *and* a civil society actor, not

[80] This was confirmed in Public Works Decree no. 374 of 2005. In the industry, a standard alternative is for the regulatory agency to fix the initial rate and to select the bidder with the shortest concession proposal. In practice, BPJT has had a considerable role in determining the initial tariff. Some licenses failed at auction and thus have been directly negotiated between BPJT and the subsequent interested party. In other cases, initial tariffs have been the subject of renegotiations. I discuss examples in Chapters 4 and 5.

[81] I return to this below and again in Chapter 4.

[82] Tasman Economics/ACIL Tasman 2003, p. 64.

[83] Stern and Holder 1999.

[84] Tasman Economics/ACIL Tasman 2003, pp. 19.

[85] For BPJT, the absence of a Finance Ministry official was most frustrating. I return to tensions with the ministry below. Subsequent changes were made to the composition of BPJT's board, adding a Finance Ministry official among others. But a (former) board member complained that this representative was not authorized to make decisions on his own (Interview, Rudy Karsaman, former BPJT board member, Jakarta, July 12, 2012).

one or the other.[86] When I asked a former official of Directorate General of Highways (Bina Marga) why BPJT's board was limited to five members, he responded brusquely, "We thought five was enough."[87]

A second step in curtailing the agency's authority was the selection of its first head. Given the impulses behind the establishment of IRAs, they are typically headed by a technocrat with a doctorate, preferably from a globally recognized university and possessing demonstrable pro-market allegiances. In this case, the choice of Hisnu Pawenang as BPJT's first head was telling. Pawenang was neither a market reformer nor a post-graduate degree holder. An obscure career bureaucrat from Bina Marga, he expressed surprise at being asked to head the agency.[88] His appointment also flew in the face of the (repeated) recommendation of the 2003 consultancy report to keep Public Works officials, *especially* those from Bina Marga, out of key positions in the new agency to prevent the perpetuation of the status quo and old thinking.[89]

The placement of BPJT under the authority of the public works minister was even more telling – it ensured BPJT's emasculation. In contrast, the head of the then new Upstream Oil and Gas Regulatory Agency (BPMigas) reported directly to the president. Best practice once called for full independence of regulatory agencies to guard against executive or legislative interference. Of late, however, consonant with broader efforts to rid development practice of one-size-fits-all prescriptions, reformers have championed a range of alternatives to suit local conditions, especially where the rule of law is weak.[90] Proponents maintain that interim second-best solutions have the advantage of biding time for countries to discover the institutional framework that best suits their local context, for allowing new regulatory institutions to learn and gain expertise, and for allowing the regulated the opportunity to get accustomed to the new system gradually.[91] In Indonesia's case, the 2003 "best practice" study recommended that BPJT be subject to the authority of the public works minister.[92] This general change in approach, along with this specific recommendation, aligned well with the interests of many within the Indonesian government.

We can view the placement of the IRA under the public works minister cynically, with the idea that it was done to curtail the board's autonomy and its power. Now each of its decisions would have to be approved by the

[86] Ibid. [87] Confidential interview, Jakarta, July 12, 2012.
[88] Interview, Hisnu Pawenang, Jakarta, April 28, 2009.
[89] Tasman Economics/ACIL Tasman 2003, pp. 45, 58, 145. [90] Rodrik 2007.
[91] Stern 1997, pp. 73–74; Estache and Wren-Lewis 2009, p. 756.
[92] Tasman Economics/ACIL Tasman 2003, p. 16.

minister. In practice, this would result in a weakened BPJT in its dealings with concessionaires and with other ministries. A less suspicious vantage point maintains that it was done for BPJT's good. A former senior public works advisor was insistent that it was reasonable to fear that a new body like BPJT, if fully independent, would be devoured by the pack of wolves that was Indonesia's contractors and construction companies.[93] Whichever perspective one prefers, the results were the same – a limp agency with minimal statutory and real authority. That funding for BPJT would come from the state budget, rather than from taxes on tolls, on gasoline sales, or fees from concession contracts, sealed the agency's dependency.[94] When the same former Bina Marga official was asked what concessions the government made regarding the new body's formation, he quipped, "We allowed it to form, didn't we?"[95]

With regulation, if "clout is what counts," BPJT was designed to strike out.[96] Ironically, for proponents of regulation, one positive outcome was that capture by industry was unlikely because the IRA might not be worth the work or resources.

A final provision of the 2004 Road Act had the power to undermine many of the "best practice" standards found in the law. A small clause (art. 66 [3]) tucked in prior to the law's concluding section states that concessions based on the previous 1980 law were considered valid and thus could not be voided. In other words, interests associated with the New Order triumphed.[97] With this one article, such figures as Jusuf Kalla and Aburizal Bakrie could now legally retain their licenses and thereby flummox the plans and aspirations of reformers. That is exactly what happened from the start. When Pawenang became head of BPJT in June 2005, his first order of business was to annul the franchises of recalcitrant concessionaires to break the sector's logjam – until ministry lawyers

93 Interview, Sumaryanto Widayatin, Jakarta, July 10, 2007.

94 Government Regulation no. 15 of 2005, art. 85. The Tasman Economics/ACIL Tasman report (2003, p. 16) recommended administrative fees applied to concessions agreements as a source of funding. Budgetary autonomy has been crucial in the Constitutional Court's success (Mietzner 2010).

95 Confidential interview, Jakarta, July 12, 2012.

96 Braithwaite 1984, p. 376, cited in Clarke 2000, p. 113.

97 A former head of legal counsel for Jasa Marga, Anhar Rivai, agreed with the measure. He said the state simply could not revoke all concessions with a stroke of the pen (Interview, Jakarta, September 23, 2010). The same former Bina Marga official insisted that the government intended to mean those concessions that were operational (Confidential interview, Jakarta, July 12, 2012). But the word "operational" is absent from the clause, leaving the meaning of *konsesi* (concession) open to multiple interpretations. In the law's elucidation, the clause's explanatory note sidesteps the issue by describing the clause as "sufficiently clear" (*cukup jelas*).

reminded him of this clause.[98] Although uncertainty is a tested feature of megaprojects,[99] this final twist in the road law would ensure one thing – a slowdown of efforts to jump-start the Trans-Java Expressway. Here, power and vested interests ran right over "best practice" efforts.

Land problems

With the regulatory framework laid out, at least on paper, Yudhoyono's administration turned to issues bedeviling implementation. Notable was land acquisition. "Acquiring the land for these projects is the biggest challenge," his vice president was quoted as saying. "We must resolve this as soon as possible."[100] How would a democratic yet weakened central government go about assembling the public right of way in a fair and equitable manner? Only with this conundrum resolved could it confront the predicament of financing.

To demonstrate his commitment to resolving the country's infrastructure woes, Yudhoyono did more than simply host the 2005 Infrastructure Summit. Shortly after the gala, his administration issued the implementing regulation (no. 15 of 2005) for the 2004 Road Act. In Indonesia's legal system, these detailed regulations facilitate the implementation of higher-level, vaguely worded statutes. Without the regulations, the statutes exist but cannot be implemented, and these regulations can take years to be issued, if they ever are. It took six years, for example, to implement the regulation on the right of the public to participate in the drafting process of detailed spatial planning, as stipulated in Law 24 of 1992 on Spatial Management.[101] Concerning the corpus of post-Soeharto legislation on liberalizing Indonesia's infrastructure, the World Bank years later noted that "most of the key laws that were passed still do not have implementing regulations."[102] In this light, the speed at which the road law's implementing regulation was issued – six months following the law's passage – was impressive. It reflected the Yudhoyono administration's urgency in constructing the Trans-Java Expressway, eager to unleash its putative multiplier effect properties.

Despite the summit's hoopla and the swift issuance of the implementing regulation, the summit led nowhere. More than a year afterwards only five projects were successfully tendered; more damningly, not a single project

98 Interview, Hisnu Pawenang, Jakarta, May 20, 2009.
99 Flyvbjerg *et al.* 2003.
100 "VP Orders Jasa Marga to Build 1,000 Km of Turnpikes in 3 Years," *The Jakarta Post*, March 31, 2006.
101 Reerink 2011, pp. 125–26; Moeliono 2011, Chapter 4.
102 The World Bank 2004, p. 5.

was operational more than five years later.[103] Having been burnt once, the administration lowered its aspirations and, in November 2006, held a follow-up forum that featured ten "top priority" projects. Investor response remained tepid.[104]

To make matters worse, in the midst of Yudhoyono's attempts to attract private investment in the toll-road sector, in 2005 a consortium of foreign investors sold their 53.9 percent stake in the Tangerang–Merak Expressway.[105] Evidently, the 25 percent toll hike Megawati implemented in June 2003 – the link's first since their becoming stakeholders in 1996 – was an insufficient appeasement. The investors also lacked faith in the ability of the 2004 Road Act and its automatic rate adjustment mechanism to overcome other weaknesses in the country's regulatory framework.[106] The departure of the foreign consortium only six months after the 2005 Summit was a big setback and an embarrassment.

Around this time, there emerged a specific problem decisive in highway building yet underemphasized in the NIE literature on private investment in infrastructure in developing countries. Following the summit, news leaked that during the event investors informed officials of their reluctance to invest until the country's "land problem" was resolved.[107] To which land problem were they referring?

At the time (mostly domestic) investors were aware of the egregious human rights violations associated with efforts by the Jakarta municipal government to clear land in order to build a double rail track and to widen a drainage canal in East Jakarta. Thugs and quasi-official security forces under the pay of the municipality had severely beaten residents and occupiers of the land. Reports of rape surfaced, while the police displayed an uncanny knack for arriving after the attacks.[108] Potential investors sought to avoid a repeat performance. A business daily captured their sentiments: "The land problem haunts toll-road investors."[109]

To be fair, this kind of violence over land clearance was restricted to specific parts of Jakarta; there were no comparable incidents stemming

[103] Business Monitor International (Q4) 2011, p. 10. [104] Lindblad and Thee 2007.

[105] On the foreign investors, see Chapter 2, note 153. Their share was bought by PT Astratel Nusantara (30 percent) – part of the massive Astra Group – Citigroup Financial Products Inc. (19.9 percent), and others for Rp. 255.3 billion ("Jalan Tol: Investor Mundur Akibat Ketidakpasitan," *Kompas*, July 14, 2005). As of late 1998, Tommy's Humpuss had likely divested from MMS (Hutabarat 2002).

[106] Widianto 2005. Traffic levels were also far below forecast. Promised projects like the Krakatau Steel industrial zone never materialized.

[107] "Investor Menuntut Bukti, Bukan Lagi Janji," *Kompas*, January 19, 2005; Kusmalawati 2011, p. 52. The high interest rates for project financing were another problem (Business Monitor International [Q4] 2011, p. 8).

[108] Human Rights Watch 2006. [109] Adlin 2005.

from compulsory purchases related to the Trans-Java Expressway.[110] Nor were investors overly concerned about public protests halting construction. They were wary of spiraling costs and, as importantly, delays due to drawn-out negotiations between land owners and local government land committees. A staff member of a private concessionaire explained that without knowledge of final land costs or without a firm date of completion, his consortium was having difficulties in scheduling payments and devising budgets.[111]

In response to investor concerns, in May 2005 Yudhoyono promulgated perhaps the most contentious decree of his first term: no. 36 of 2005 on land acquisition for the implementation of development in the public interest.[112] It was revealing that the regulation came in the form of a presidential decree. In so doing, Yudhoyono bypassed parliamentary input and consent to speed up the process. He did not want the matter getting drawn into the already prolonged debate over land reform and the contention over new drafts of the country's controversial 1960 Basic Agrarian Act in which land rights and tenure security figured prominently. In this case, precedent aided Yudhoyono. In 1993, Soeharto had signed a presidential decision (no. 55) on the same topic; Yudhoyono's decree borrowed the title of Soeharto's edict, word for word.

This "copying" did not make Yudhoyono's decree the center of a firestorm of debate, although, in hindsight, it may have foreshadowed problems to come. Instead, controversy stemmed from the fact that Indonesia's first directly elected president issued a decree that, on paper, appeared more draconian than its New Order counterpart.[113] Yudhoyono's decree was perceived as spurning the civil society and good governance groups that had backed his campaign and that had lent him valuable support during his administration's early trials and missteps. One reason for the decree's severity was, unlike under the New Order, his administration could not rely on the army – or other arms of the security apparatus – to clear the land if local resistance proved stiff. Under Soeharto resistance was rare because the consequences were known.[114] The state's Body for the Coordination of National Security and Stability

[110] Nor were there comparable incidents in other major cities like Bandung or Surabaya regarding clearings for infrastructure projects (Reerink 2011; Peters 2013).

[111] Confidential interview, Jakarta, July 7, 2010.

[112] A member of the drafting team acknowledged the role of investors at the 2005 Infrastructure Summit and the pressure applied by Kalla to finish the decree (Interview, Arie S. Hutagalung, Jakarta, June 28, 2012).

[113] I return to this 1993 decree in the following chapter.

[114] This pertains less so for the late New Order period. Occasional acts of resistance lent cases notoriety, notably the 1980s Kedung Ombo dam protests in Central Java (Lucas 1992, pp. 79–92).

had played a prominent role in what often amounted to land grabs.[115] Such seizures conducted in the nation's capital in the 1970s resembled "military operations."[116] A human rights report recorded that when "the local bureaucracy can't get agreement from landholders, they use intimidation, physical violence, threats of arrest, and, in the last resort, terror squads."[117]

Under Soeharto, land was taken forcibly for dams, plantations, factories, and – because of bureaucratic corruption – tourism, golf courses, shopping malls, and luxury housing estates.[118] Normally inadequate or below market value compensation was paid. In newly democratic Indonesia, in an attempt to improve its sullied image and to avoid being accused of committing human right abuses, the army has drastically reduced its public role, including as enforcer of land acquisition.[119]

However, Yudhoyono's 2005 decree did not rectify the democratic deficiencies of Soeharto's edict. The composition of the important local government land purchasing committees, for example, would remain fully staffed by government officials (art. 6). In other respects, the new decree was more severe than that of its predecessor. The New Order regulation had defined the public interest as "the interest of all levels of society," from which for-profit private sector projects were excluded.[120] Yudhoyono's edict restricted "public interest" to "the interest of a significant portion of society" (art. 1[5]).[121] This favored for-profit private sector projects. So did the increase (from fourteen to twenty-one) of the number of types of projects eligible for eminent domain.[122] Significantly, the 1993 version listed just two ways for landowners to release their rights over their land to the government in the public interest – by relinquishing (*pelepasan*) or transferring (*penyerahan*) them (art. 2[2]). Yudhoyono's added a third – nullifying (*pencabutan*) such rights at the president's discretion (arts. 2[1b], 3[2], and 18[4]).[123]

Both decrees relied on a process of deliberation (*musyarawah*), especially regarding the level of compensation. But while the Soeharto decree lacked time limits, Yudhoyono's capped negotiations between land

[115] Lucas 1997, pp. 229–60. [116] Abeyasekere 1987, p. 227.
[117] Cited in Lucas 1997, p. 239. [118] Lucas 1997.
[119] Exceptions do occur when the army (or another military branch) owns the land in question. For one case resulting in deaths, see Kontras (2007).
[120] The original: *Kepentingan seluruh lapisan masyarakat* (art. 1[3]).
[121] The original: *Kepentingan sebagaian besar masyarakat*.
[122] However, the 1993 decree had an out-clause, allowing for a public interest designation at the president's discretion (art. 5[2]).
[123] This is a legal process predicated on an important land law (no. 20 of 1961) that is mentioned below and discussed further in the next chapter.

owners and local government committees at ninety days.[124] The 2005 regulation also detailed a procedure that involved the courts more than the 1993 decree did. If negotiations were not resolved within the specified time limit, the government committees could deposit their offer at a district court and thereby legally complete the transaction (art. 10[2]). Claimants could challenge neither the decision to invoke eminent domain nor the level of compensation, although they could object about compensation to the local government executive (district head or mayor), who would decide on the matter. Meanwhile, the money would remain at, or be consigned to, the district court for an indefinite period.[125]

This consignment procedure raised a number of concerns among land rights activists. First, it seemed to have run roughshod over due process and the peoples' rights to land which the 2005 decree claimed to respect as stated in its preamble. Second, it misapplied the consignment procedure. Based on an earlier land law (no. 20 of 1961), consignment was meant to be used only if the landowner could not be found, or if there were multiple claimants to the land in question, such as in communal rights cases prevalent in the country's outer islands.[126] The Yudhoyono administration pointed to a similar consignment procedure in Malaysia to justify its approach, ignoring the awkward fact that Malaysia practices common law, while Indonesia's legal system is rooted in the civil law tradition. Nevertheless, officials cited how there the government takes possession of the land in question during court proceedings in order to start the project. The court only decides on the final level of compensation.[127] In all, there was an impression as if Yudhoyono's government was trying to replace the coercion of the army with the equally undemocratic threat of legal action to get its way.

This decree's promulgation was met by vehement criticism. Activist organizations rebuked it through the press and published critical reports. One illustrative headline read: "New land regulation will inflict misery." Demonstrations were held at the presidential palace in Jakarta and at government agencies in Semarang, Solo, and Yogyakarta.[128] Critics drew troubling parallels to the New Order, doubted the neutrality of the courts, feared the seizure of peoples' lands by foreign investors, and

[124] Given the coercion intrinsic to the process, an explicit time cap was probably unnecessary under Soeharto.
[125] This is taken from the Dutch "consignee" process (*konsinyasi* in Indonesian).
[126] For a critical discussion, see Hutagalung (2005, pp. 166–67).
[127] Atmanto *et al.* 2007; Damardono 2009.
[128] Down to Earth 2005. See also "Jalan Tol Semarang-Solo Ancaman bagi Petani," *Kompas* (Central Java edition), June 25, 2005; "Ribuan Petani Demo Tolak Perpres No 36/ 2005," *indosiar.com*, July 6, 2005 (last accessed March 3, 2014).

queried the meaning of the "public interest" as defined by Yudhoyono's decree.[129] Toll roads and other development projects, they charged, were about making money.

Concern extended beyond activist circles. The former vice head of the National Land Bureau (Badan Pertanahan Nasional, or BPN) and a leading authority on land law, Professor Maria S.W. Sumardjono, charged that the decree violated several existing and higher laws. Because the land question ultimately was a human rights issue, she insisted on parliamentary approval. In that way, a public debate could be generated, as was happening around the revision of the 1960 Basic Agrarian Act. Of course, this was precisely what the Yudhoyono administration hoped to avoid.[130]

While attempting to assuage the concerns of investors, Yudhoyono could no longer ignore the rising public anger. The outcry over his decree twice forced the postponement of a follow-up forum to the 2005 Infrastructure Summit.[131] Therefore, in June 2006 he issued a brief, presidential decree (no. 65 of 2006) amending his 2005 version. An attempt at compromise, it slashed the number of types of public interest projects to seven, although tollways remained, as did the restrictive definition of the public interest. The number of days allowed for deliberation was increased to 120, but the limited recourse to appeal was left unchanged. Unaltered too was the composition of the land acquisition committees; they remained staffed by local government officials, obviously comprising any independence or neutrality as assessors or mediators.[132] The president's administration did expunge, however, all references to the nullification of land rights at the president's discretion. In all, the maneuver to promulgate the 2006 decree was politically expedient. While it did not resolve the government's difficulty in acquiring land, it did not cause the outcry that its 2005 counterpart did.[133]

Ministerial squabbles

Alongside its eminent domain decrees, Yudhoyono's administration published other key regulations in 2005 and 2006, hoping to form enough of a

[129] See, for example, the joint NGO press release (in English) republished in *Down to Earth* (2005).
[130] Sumardjono 2005a, 2005b, and 2005c. On the increasing public debate and input on the legislative drafting process in parliament, see Rosser *et al.* (2005).
[131] First scheduled for February 2006, then June, it was finally held in November.
[132] HRW 2006, p. 40.
[133] To reassure civil society, in early 2007, the president reasserted agrarian reform as a top priority, initiating a National Agrarian Renewal Program (Reerink 2011, p. 113).

legal regulatory foundation to attract new investment in infrastructure projects like the Trans-Java Expressway. These included the establishment of the National Committee for the Acceleration of Infrastructure Provision headed by the coordinating minister for economic affairs and the announcement of a Comprehensive Infrastructure Policy Package, an Investment Climate Improvement Policy Package, and a Financial Sector Policy Package. The ADB also agreed to lend US$26.5 million to assist the preparation of PPPs.[134] Bowing to pressure from ATI, the government lowered the performance bond (or deposit) of investors from 5 to 1 percent of the total investment value. This change would considerably ease the requirements for toll-road investors to secure loans from the banks.[135]

Perhaps more importantly, government funds for toll-road development were finally forthcoming, a critical element in PPPs. It was something that World Bank staffers in Jakarta criticized the Indonesian government for not providing earlier. The head of its infrastructure division, for instance, found it exasperating that the government was passing too much risk onto the private sector.[136] Notably, although the Megawati administration (2001–04) had been imploring concessionaires to build their turnpikes, as was discussed, her administration never allocated funds for private investors to use in support of megaprojects, for example, to aid land acquisition. In toll-road PPPs, public contribution commonly pays for the right of way as an incentive for private investors to finance the road's construction.[137]

In mid-2006, Yudhoyono's administration finally allocated Rp. 2 trillion (US$217 million) from its budget to ensure government financial guarantees as permitted by the Ministry of Finance.[138] The funds were earmarked for land purchases, although at the time it was estimated that as much as Rp. 5 trillion might be needed to assemble all the land needed for the Trans-Java Expressway. In January 2007, a specialized Government Investment Board within the Finance Ministry was set up to oversee the management of the revolving funds;[139] the funds were (oddly) referred to as

[134] Manning and Roesad 2006; Kusmalawati 2011, p. 40.
[135] Interview, Fatchur Rochman, Jakarta, July 12, 2012. See also Pusat Komunikasi Publik (2006).
[136] Interview, Hangjoo Hahm, Lead Infrastructure Specialist, World Bank, Jakarta, July 17, 2008.
[137] Kuranami *et al.* 1999, pp. II-21–22.
[138] It had allocated Rp. 3 trillion, which the Finance Ministry slashed to Rp. 2 trillion (Rahadiana and Aprianto 2007).
[139] As revolving funds, certain portions of the money would be available in subsequent years, as, unlike regular earmarks, unused portions at the end of the financial year would not have to be returned to the State Treasury. I return to this point in Chapter 4.

General Service Board (Badan Layanan Umum, or BLU). Soon the first installment (Rp. 590 billion; US$65 million) was declared ready for BPJT to manage.[140]

The cumulative effect of these developments was the signing of loan pledges between banks and concessionaires. In late 2006, observers had highlighted the wariness of banks regarding toll-road projects.[141] But in January 2007, a Rp. 1.5 trillion (US$163 million) agreement was finalized between Marga Nujyasumo Agung and a syndicate of state banks led by the Indonesian National Bank (BNI) and the Indonesian Peoples' Bank (BRI).[142] With this, the road forward was open. Within eight months, more than a dozen banks pledged credit worth some Rp. 24 trillion (US$2.6 billion) to about ten concession holders.[143]

The loan pledges were significant, although a peculiarity emerged in the agreements – all but two of the creditor banks were state-owned. Foreign lenders and private domestic bankers had expressed concerns over Indonesia's poor investment climate and the long-term nature of these projects.[144] Were state banks not facing similar constraints? Why the sudden pledge of such volumes of credit? In part, the answer lies in the collective effects of the government's steps highlighted above. The other part came in the form of political pressure applied by then Vice President Kalla, who was tasked with reviving stalled infrastructure projects but whose company also held toll-road concessions. On a number of occasions Kalla lambasted the banks' conservatism, accusing them of buying quantities of high-interest bearing central bank market securities, known as SBIs, rather than lending for development purposes.[145] In an interview he remarked, "Just look, projects are starting to move. The banks are competing with each other to fund the construction of toll roads. [Q: *Did they all get reprimanded?*] No way. They were just pointed in the right direction."[146] Heavy-handed or not, Kalla's tactics alarmed local economists, who feared that state banks had adopted cautious

140 Pusat Komunikasi Publik 2007.
141 PT Data Consult 2006, p. 20. See also "Bank Belum Berani Membiayai Pembangunan Jalan Tol," *Kompas*, September 14, 2005.
142 BNI was the lead lender at 50 percent, BRI 40 percent. The loan was for ten years at 16 percent interest with expectations it might be lowered to 13 or 14 percent (Rahdiana 2007a).
143 Kong and Ramayandi (2008, p. 9) note the growth of investment spending broadly in 2007.
144 Interviews, Eugene Galbraith, president of the Bank of Central Asia, Jakarta, June 11, 2008; Robert Clarke, managing partner of Allen Arthurs Robinson, Singapore, July 26, 2010.
145 Achmad and Perkasa 2007; Ilwan 2007.
146 "Interview: Jusuf Kalla: 'I push the buttons so everything will run,'" *Tempo* (English Edition), May 14, 2007, pp. 28–31 (quotes from p. 28).

lending practices for good measure and were now being forced to assume heavy risks in areas outside their comfort zones.[147] Illustrative was BRI's strong track record with small-to-medium businesses.[148] In any case pledging to lend money is one thing, dispersing it another. Little of the latter happened.[149] One stumbling block to emerge was inter-ministerial dissension that surfaced over the distribution of these BLU funds. Without them, local government committees could not negotiate in good faith with targeted landowners. Of course, this meant projects stalled and loans went undisbursed.

In late 2006 and early 2007, a public spat over the use of the BLU funds erupted between Kalla and the minister of public works on the one side, and the minister of finance, Sri Mulyani Indrawati, on the other. (The Finance Ministry recently had been given increased powers over budgetary issues.)[150] The head of BPJT, Hisnu Pawenang, was caught in the crossfire. Indrawati doubted the professionalism of the concession holders, was bothered by their lack of experience and even wondered at their true identities.[151] She insisted that funds could only be disbursed with greater assurances of accountability, perhaps with a special purpose vehicle or a holding company.[152] Pawenang suggested that the idea was worth exploring. His boss, the minister of public works, Djoko Kirmanto, and Kirmanto's superior, Kalla, disagreed. They demanded the immediate dispersal of the funds.[153] The special purpose vehicle never materialized, and the squabble caused a slow-down in disbursement. In 2007, just one-third of the funds had been distributed.[154] The disagreement also helped the careful Pawenang to lose his job.

As BPJT's inaugural head, Pawenang had presided over a troublesome period and was only allowed to serve two-and-a-half years of a four-year term.[155] Nevertheless, he can take credit for a number of achievements. Sections of two tollways were opened, six other tollways began construction, and another nineteen toll-road agreements were signed, of which

[147] Setiawan *et al.* 2007. On the bank's conservatism, see Sato (2005, p. 93).
[148] Patten *et al.* 2001.
[149] In these situations, banks typically agree to turnkey contracts, where the disbursement of funds is tied to construction progress.
[150] *As per* the Finance Ministry Law (no. 17 of 2003). On this, see Booth (2005).
[151] I commented on the difficulty of identifying the "real" concessionaires in Chapter 2.
[152] Rahadiana and Aprianto 2007.
[153] "Dana Pembebasan Lahan Tol Diminta Dicairkan," *Suara Merdeka*, December 26, 2006.
[154] "BPJT Ajukan Tambahan Dana BLU," *Kompas*, January 16, 2008.
[155] Pawenang was replaced by Nurdin Manurung, a fellow career Bina Marga bureaucrat.

fifteen led to loan arrangements with banks.[156] Pawenang managed the initial distribution of the BLU funds and, importantly, exited with his reputation intact. No corruption scandals tainted the agency under his abbreviated watch.[157]

The vice president had apparently grown frustrated with the mild-mannered Pawenang, whom Kalla may have felt treated recalcitrant concessionaires too softly. Kalla wanted someone more decisive, who "got things done," and who would demand action from wayward license holders. He wanted someone in the self-styled image of himself – the irony being that Kalla himself was one of the recalcitrant investors.

But there were deeper reasons for the devilishly slow land acquisition for road projects including the Trans-Java Expressway. However one views the above Kalla–Indrawati spat – for example, as emblematic of the sparring between a rent-seeking vested interest approach to policymaking (Kalla) and good governance reformism (Indrawati) – disagreements between financial and line ministries is common. It happens in countries with superior track-records of infrastructure investment to Indonesia.[158]

Ultimately, these issues, while important, were not the main culprits behind the lack of impact of Yudhoyono's 2005 and 2006 eminent domain decrees on the ground. Instead, the broader legal, governance, and political contexts of compulsory land acquisition, the relevant decrees, and the state's relatively weak power of eminent domain must be probed. As one may surmise, the problems, addressed in the next chapter, are multiple and complex.

156 Pusat Komunikasi Publik 2008.
157 By contrast, in less than a year after its establishment, the head of the successor oil and gas regulatory agency to BP Migas, named Satuan Kerja Khusus Migas, had been implicated in a corruption scandal ("Suap SKK Migas, KPK Masih Lakukan Penggeledahan," *Tempo.co*, August 16, 2013; last accessed March 9, 2014).
158 Irwin 2007, pp. 45, 105.

4 Big push thwarted

During Yudhoyono's first term, business reports and the Indonesian press were fond of criticizing the country's toll-road system by comparing the low density of toll roads with more impressive cases in Asia. The following was exemplary: "Indonesia. . .has only 2.4 km of toll road per 1 million people. In China the ratio is already 4,740 km per 1 million people, in Malaysia 55 km per 1 million and in Japan 192 km per 1 million people."[1] The president in part had himself to blame for the unflattering comparisons. Prior to the 2005 Infrastructure Summit, during an Asian Pacific Economic Cooperation meeting in Chile, he announced a five-year target of building 1,600 km of toll roads.[2] To place the plan's absurdity in its proper context, during twenty years under the quasi-command economy of the New Order, from 1978 to 1998, 515 km were completed.[3] In hindsight, the former general probably wished he had reined in his wild optimism of being the country's first directly elected president. As it became increasingly clear he would fall well short of his target, it was "readjusted" by more than half. When that still seemed unlikely, the goal was shifted from construction to land acquisition. Even that proved unobtainable. During his first five-year term, only 125 km of tollways were built. Despite the efforts of some, the former general's poor record on toll-road building was luckily (for him) not turned into an election issue.[4]

As this chapter underscores, the Yudhoyono administration was not alone in realizing the failure of its 2005 Infrastructure Summit; the Indonesian Toll-Road Operators Association (ATI) did too. Recognizing that the 2004 Road Act by itself was unable to overcome

1 PT Data Consult 2006. See also Dewanto *et al.* (2004), Harijono (2007), Atmanto and Anthony (2007), and Triana (2008).

2 Dewanto *et al.* 2004.

3 354 km were operated by Jasa Marga, another 161 by private operators (PT Data Consult 2005).

4 Rizal Ramli, a former minister and notorious Yudhoyono critic, singled out the Trans-Java project's failure ("Kinerja Ekonomi Tak Sesuai Harapan," *Bisnis Indonesia*, June 19, 2008).

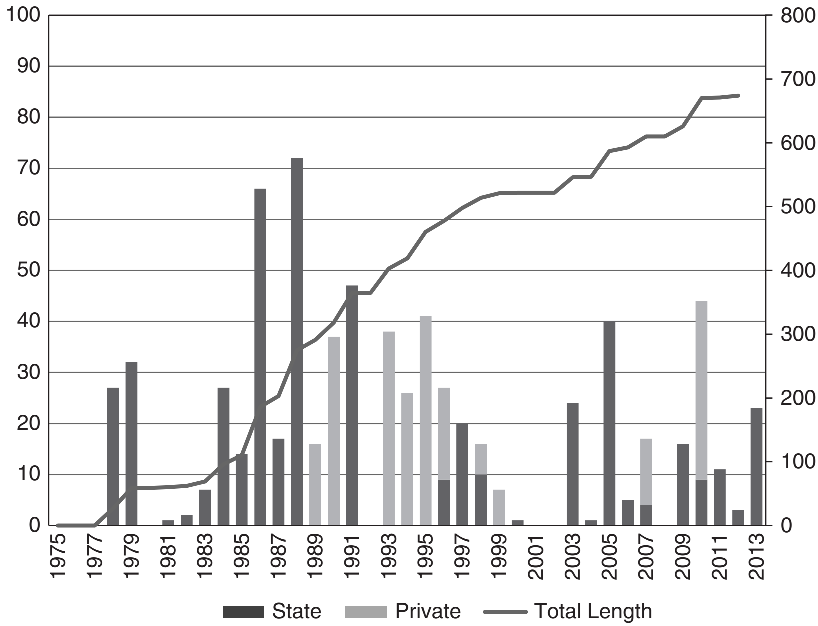


Figure 4.1 Length of toll roads (in km) per annum and accumulatively.

regulatory lapses (and other problems) in the sector, ATI began intensive lobbying for more sectoral-wide reforms. However, it faced concerted opposition from the Finance Ministry, which sought to hold to a course of strict fiscal responsibility.[5] Less tangible but more formidable obstacles also grew out of the country's twin processes of decentralization and democratization. Local officials were now in charge of compulsory land acquisitions, and their incentive structures were at odds with those of the central government. The latter and ATI wanted the land purchased quickly. Local officials, without any ownership stakes, had little motivation to realize this outcome. Meanwhile, without the prospect of army-led coercion, emboldened landowners made negotiations and the rest of the process frustrating. They questioned the "public interest" categorization of privately owned toll roads. This chapter also argues that Yudhoyono, through his newly formed electoral vehicle (the Democrat Party), did not

[5] The Fiscal Law (no. 17 of 2003) mandated that the Finance Ministry keep a tight watch on fiscal deficits (which should not surpass 2 percent of GDP) (Aswichayono *et al.* 2008, p. 357).

have the clout at the district level to ensure efficient land acquisition. Moreover, some investors exploited a loophole in the eminent domain policy by not applying for the acquisition funds the state had finally made available. The low disbursement rate of these funds has been strikingly consistent since their 2007 introduction.

As BPJT, Public Works, and other central government officials proved powerless on the ground, they sought legislation to recentralize land acquisition. Due to competing interests inside and outside the government, this proved laborious. During the intervening delay, renegotiations between government authorities and concessionaires led in some cases to agreements on higher initial tariffs. In 2012, parliament finally passed a law on compulsory land acquisition in the public interest that recentralized the process, but the government was slow to produce the act's implementing regulations. Adding further delay to implementation and perhaps eroding the law's eventual effectiveness was confusion whether the old or new rules could be applied to existing land cases. Meanwhile, the sector's outstanding lethargy was "blownback" by individual parliamentarians, searching for means to increase name recognition on account of the country's new open-list ballot electoral system (following the 2009 elections). Riding a wave of electoral-inspired populism, they have threatened to revise the automatic tariff adjustment mechanism as a means to "punish" toll-road operators, not only over the slow pace of construction but also over worsening traffic conditions on the capital's tollways. In all, developments conspired to thwart Yudhoyono's dream of a big push in the sector.

Disruptive events: warnings from the "east"

As much as policies and institutional frameworks, unexpected incidents can impact investment levels. Untoward contingencies are common enough, so to anticipate this, experts advocate flexible contracts and wide allocation of risks and responsibilities, with infrastructure contracts usually containing force majeure clauses. Under force majeure, when the unavoidable occurs – wars, revolutions, strikes, riots, financial meltdowns, and natural disasters (and other "acts of God") – parties are relieved of their contractual obligations. Although conventional, these clauses are often sticking points in negotiations because interpretations over the precise meaning of force majeure – and thus when it can be invoked – can differ.

Another "incident-related" issue specific to expressways is unexpectedly low traffic. Some scholars see traffic forecasting as at best a pseudo-science pervaded by false optimism.[6] Underperformance can afflict a specific turnpike or infect an entire system. Infamously, depressed traffic across Mexico in the 1990s necessitated a government bailout of private concessionaires of nearly US$8 billion dollars.[7] PPP toll-road projects in east and central Europe have not fared much better. In Hungary, traffic on a major toll road that opened in 1996 was 50 percent below forecast. In nearby Poland, it was estimated that about three-fourths of the freight trucks were bypassing the tolled stretch of a highway that opened in 2004.[8] Anxious to induce private investment in less-than-propitious environments, many governments throw in traffic guarantees during negotiations. In the 1990s, the Spanish government was subsidizing nearly half of the total cost of investment for a number of new concessionaires because of low projected traffic volumes.[9] The "best practice" literature instructs that governments must undertake greater quantitative risk analysis before offering such guarantees.[10]

In the midst of efforts by Indonesian policymakers to reform and also rejuvenate the toll-road sector, two events in Indonesia's second city of Surabaya – one approximating a natural disaster, the other a lower-than-forecasted traffic outcome – jolted the industry. The first incident began innocuously enough. A deep underground drilling failure in May 2006 in Sidoarjo, an industrial suburb, caused a torrent of mud to rush to the surface.[11] The drilling company, PT Lapindo Brantas, was unable to staunch the flow. No one could have predicted the scale of the catastrophe. Weeks turned into months, months into years; the gushing continues to this day.[12] A sea of mud inundated some 6.5 square km of surrounding villages, farmland, and factories with perhaps as many as 85,000 people losing their homes.[13] It also forced the closure of the Surabaya–Gempol tollway (at Porong). After three years, Jasa Marga submitted a bill of Rp. 82 billion (US$8.6 million) for lost revenue to the government.[14] Despite a presidential order (no. 13 of 2006) mandating Lapindo Brantas to pay recovery and cleanup costs, and despite Jasa Marga's pleas, the government refused to subsidize the construction of

[6] Flyvberg *et al.* 2003; Ascher 1993.
[7] Tasman Economics/ACIL Tasman 2000, p. 67. Traffic forecasts were conducted by firms associated with license holders.
[8] Brenck *et al.* 2005, pp. 93, 96. [9] Acerete *et al.* 2010. [10] Irwin 2007.
[11] This was the conclusion reached by a team comprised of foreign and domestic scientists (Davies *et al.* 2008). The company claimed it was caused by an earthquake in Yogyakarta; a parliamentary investigatory team agreed with the company's "findings."
[12] The mud has been collected in great pools and diverted into the sea.
[13] McMichael 2009, p. 73–74; Schiller, Lucas, and Sulistiyanto 2008, pp. 54, 76.
[14] Jasa Marga (Q1) 2012, pp. 104–05.

Figure 4.2 A neighborhood swallowed by the Lapindo mud flow outside Sidoarjo (2007).

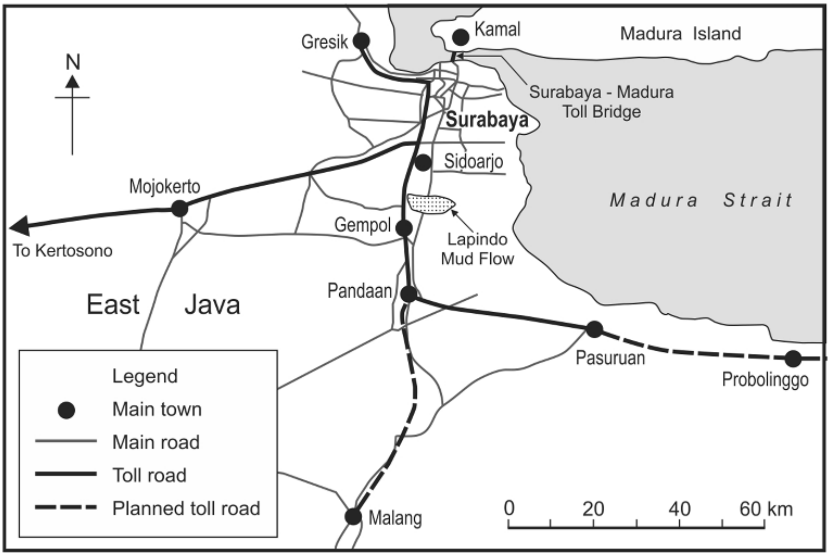
the 12-km alternative route it insisted Jasa Marga had to build.[15] Instead, it was decided that users of the bypass, via increased tariffs, would compensate Jasa Marga for its losses.[16]

The mudflow disaster also affected upstream sections of the Trans-Java Expressway. The license-holder of the Gempol–Pandaan route worried more about depressed traffic in the future than interrupted construction schedules and sold its license to Jasa Marga in 2011.[17]

15 Delays have beset the new Porong–Gempol construction. Its latest scheduled opening was late 2013 but, as of July 2014, had yet to be completed. Costs have nearly doubled earlier estimates of Rp. 800 billion ("Tol Porong Makin Jauh dari Lapindo," *IndoPos*, November 7, 2011 [idcitramarga.com; last accessed March 28, 2014]; Sari 2013b).

16 Between the parliament's clearing of Lapindo Brantas from responsibility and Bakrie's influence in the administration, Jasa Marga officials did not believe taking legal action against the company was a viable option. Interview, Dedi Krisnariawan Sunoto, head of Jasa Marga's Toll-Road Development Division, Jakarta, June 25, 2012.

17 Jasa Marga paid Rp. 463.3 billion for a 52 percent share of the PT Margabumi Adhikaraya consortium (on the latter, see Chapter 2).



Map 4.1 Greater Surabaya Toll Roads

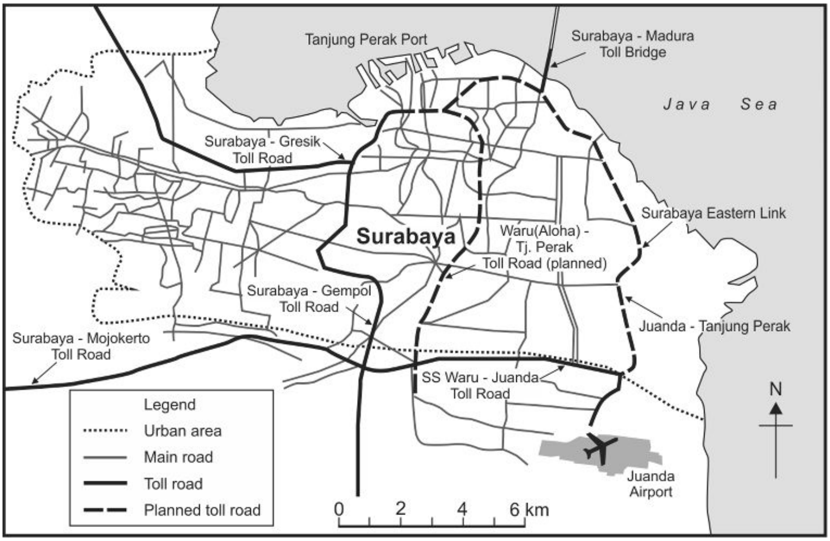
The Pandaan-Malang franchise – vacated since mid-2007 for a non-mudflow-related matter – has drawn minimal investor interest.[18]

The second "incident" took place only a dozen kilometers from the epicenter of the mudflow. Back in 1996, CMNP won the rights to the Surabaya Eastern Ring Road, a 30-km turnpike designed to link the city's port, Tanjung Perak, to its international airport and onward via Waru to the city's center.[19] In hindsight, one can see that company executives might have wished Tutut had not been the quintessential insider that she was. In April 2008, after years of delay, giddy government officials officiated the opening of the ring road's initial section, Waru–Juanda.[20] It was Surabaya's first expressway to open in more than a decade. Almost immediately, however, enthusiasm turned to dismay. Whatever the cause,

18 The state had (finally) decided to finance this route's construction in April 2013, only to decide subsequently to offer it to investors (again) in 2014 ("2014, BPJT Lelang 3 Ruas Tol Rp. 9,4T," *Investor Daily*, December 13, 2013).

19 Mentioned in Chapter 2, CMNP had held 85 per cent and Jasa Marga 15 percent of the consortium (PT Citra Margatama Surabaya). In 2007, CMNP upped its share to 94.7 percent (Jasa Marga [Q1] 2012, p. 50).

20 In 2002, CMNP scrapped plans to build the other two sections. It is not immediately clear what happened to these sections' concessionary rights (Jasa Marga 2005, p. 28).



Map 4.2 Surabaya Toll Roads

traffic was remarkably light.[21] One midday in June, I could count only a handful of cars travelling in both directions. That month, CMNP's president director, Daddy Hariadi, was relieved of his duties after a 30 percent drop in the company's share price.[22] As the problem persisted, BPJT rejected calls from CMNP for special compensation.[23] BPJT's attitude rankled company executives and other operators and license holders. For them, it confirmed the government's profound underappreciation of the risks they faced and unwillingness to bear them together.[24] The IRA countered that revenue risk is inherent to the industry. In toll-road contracts, the government does not provide such a subsidy as a guaranteed revenue floor, nor does it cap earnings on high-use roads. BPJT believed this to be fair, as the sector provided risks and rewards.[25] Two years after Waru–Juanda's inauspicious start, its first toll hike was due and daily traffic had improved from 12,500 to 21,500 vehicles. This was still

[21] CMNP (2009, p. 45) blamed the problem on poor local accessibility and on an incomplete regional network.
[22] CMNP 2008, p. 8.
[23] "Tidak Ada Kompensasi bagi CMNP," *Bisnis Indonesia*, December 22, 2008.
[24] Interview, Didik Hari Wilopo, Design and Operation Division head, PT Kresna Kusuma Dyandra Marga, Jakarta, April 28, 2009. This company then held the East Bekasi–Cawang–Kampung Melayu license in Jakarta.
[25] Interview, Nurdin Manurung, then head of BPJT, Jakarta, July 22, 2008.

less than half of the initial target of 53,000.[26] CMNP reportedly suffered a net loss of Rp. 69.85 billion (US$7.4 million) on the turnpike in this period.[27]

The Lapindo disaster and the Waru–Juanda debacle should not be seen as regionally isolated incidents. Rather, they were expensive lessons for the industry nationally (and internationally for foreign investors). Investment risk in Indonesia's infrastructure extends beyond weak regulations, a nebulous rule of law, and political interference or instability. The adverse impact of these incidents continues to haunt the industry.

Business association lobbying

One way for toll-road operators in Indonesia to mitigate such risk has been through collective action, unlike under Soeharto when there was little need for an industry association because of Tutut's and Tommy's predominance. After Soeharto was pushed from power, operators not only lost their channel to the president, they were also tainted by association with the former First Family. In response, in mid-1998, the six private toll-road operators formed the Indonesian Toll-Road Operators Association (ATI). Choosing a head epitomized their predicament. Representatives from Tutut's CMNP or Tommy's MMS were now seen as liabilities. Directors from PT Margabumi Matraraya (Surabaya) and PT Bosowa Marga Nusantara (Makassar) were considered too marginal. In the end, Fatchur Rochman, a minority partner of the Jakarta-based firm Bangun Tjipta Sarana, emerged to lead ATI.[28]

With the worst of the financial crisis largely over, in 2000, ATI began lobbying the parliamentary commission on transport and public works for a new law on toll roads with an automatic tariff adjustment mechanism and for Jasa Marga to be relieved of its regulatory duties.[29] (In hindsight, Rochman wishes ATI had also lobbied for a new law on eminent domain, covered in more detail later in this chapter, as he did not foresee the difficulties of land acquisition in a decentralized, post-Soeharto Indonesia.)[30] While ATI did not get a bill specifically on toll roads, as we saw in Chapter 3, a formula-based tariff mechanism and a new regulatory agency were contained in the 2004 Road Act. ATI's quasi-success (after all,

[26] CMNP 2009, p. 53; CMNP 2010, p. 83.
[27] "Tarif Tol Waru-Juanda Naik Rp 500; Berikutnya Tarif Tol Cikamepak dan Sedyatmo naik akhir June," *Investor Daily*, June 4, 2010.
[28] On the firm's involvement in the toll-road sector, see Chapter 2.
[29] "Afiliasi 3 Peserta Tender JORR Asal Malaysia Diteliti," *Bisnis Indonesia*, August 22, 2001.
[30] Interview, Fatchur Rochman, head of ATI, Jakarta, July 12, 2012.

Public Works did insert these changes in its own 2000 draft law) led it to believe that its hard work was finished. Nothing was further from the truth.

One informant close to ATI characterized its early years as more informal than associational.[31] Regular dues were not collected, and meetings were conducted at Bangun Tjipta's headquarters in western Jakarta.[32] The failure of the 2005 Summit convinced ATI that sustained pressure on government, and not only on parliament, was necessary to improve and expand Indonesia's toll-road network. An automatic toll adjustment mechanism turned out not to be the panacea the association and others had hoped. More investor-friendly policies were needed. However, it was precisely the question of expansion that exposed ATI's shortcomings. As a private sector organization, it could not include the giant Jasa Marga. Moreover, the association's membership and influence have been restricted because it has represented current operators and not the many potential ones.[33]

To bolster its power, in 2007 ATI began collaborating with the Communication Forum of Toll-Road Agreement Signatories (FKPPPJT), an informal and little-known group of concessionaires. Usually represented by a concessionaire's director, ATI and FKPPPJT members gathered typically once every two weeks. When the situation warranted – for example, following the Waru–Juanda debacle – they met more frequently. Regular email exchanges also enhanced communication. Representatives from the two groups met with officials from BPJT, Public Works, and with members of the vice president's staff (and sometimes with the vice president himself). Both groups held Djoko Kirmanto, the public works minister, in high esteem. They considered him an ardent supporter, and golf outings with the minister were regular. In high-level meetings, Kirmanto often shielded them from the sharp criticisms from Sri Mulyani Indrawati, Indonesia's finance minister from 2005–10.[34]

FKPPPJT made no public statements. In recognition of ATI's comparative longevity and to avoid "offending" Rochman, it was understood that the two groups should speak publically with a single voice – that of Rochman.[35] At one time, the two formed a relatively formidable lobby group. A noteworthy success concerned policies on land acquisition.

[31] Confidential interview, Jakarta, June 29, 2008.
[32] Meetings are still held there and money is still collected only when the need arises, like the hiring of lawyers to draft or analyze regulations (Interview, Fatchur Rochman, ATI head, Jakarta, July 12, 2012).
[33] Prior to the summit, one hardly finds quotes from Rochman in the Indonesian press. Since, he has been quoted regularly.
[34] Confidential interview, FKPPPJT member, Jakarta, April 28, 2009.
[35] Apparently, ATI lacks an institutional mechanism to change its head.

As noted in Chapter 3, in 2007 Yudhoyono's government allocated special revolving funds (BLU) to help expedite the process. That seemed good news for license holders, as government financial support would accelerate projects. It was also timely because land prices were rising. Land costs typically accounted for 20 to 25 percent of total outlay for a concessionaire, but delays were pushing the figure to 30 to 40 percent.[36] Positively, franchisees now did not have to wait for the land of an entire section to be acquired; they could purchase from the government a single segment upon clearance.

Unfortunately, administering the BLU funds proved complicated. They came with strings attached, as per a 2007 Public Works ministerial decree.[37] The Finance Ministry insisted that the money had to be returned, meaning it was a loan, not a governmental expenditure.[38] In fact, interest was charged at the standard insured rate on government-guaranteed deposits plus 1 percent.[39] ATI–FKPPPJT countered that the reimbursement policy clashed with international practice, or at least with policy in neighboring countries like Malaysia and successful cases like China. There governments paid the full costs of assembling land as an incentive for the private sector to fund construction. Rochman and Hariadi (of CMNP) were aghast at the high interest rates charged on the loan. A Finance Ministry representative retorted that the government considered the money an investment and thus it had the right to apply interest.[40] ATI–FKPPPJT was successful, however, at pressuring Kalla's office to request for a lowering of the rate.[41]

Guidelines on the use of the BLU funds also proved cumbersome. In name they revolved. Unlike monies from the state budget, which were returned at the end of the year, unused funds were rolled into the following year's fund. In this case, the Finance Ministry requested their return. Kirmanto and the BPJT chief who replaced Pawenang, Nurdin Manurung, complained that this was ridiculous, since the agency would be applying again for the same funds.[42] The use of the funds also necessitated a contractual agreement between BPJT and the concessionaire, which required approval of the latter's lenders. Multiple lenders per

36 PT Data Consult 2010, p. 74.

37 No. 4 of 2007, its title was: "On procedures for the use of revolving funds of General Service Body-Toll Road Regulatory Agency for toll-road land acquisition."

38 Art. 1(12). Concessionaires had two years to return the funds.

39 Art. 8(a). The Indonesia Deposit Insurance Corporation was formed in 2005 as response to the banking failures of the financial crisis. The rate, which varies monthly, in January 2007 was 9.5 percent; in late 2011, 7.25 percent.

40 "Investor tolak kembalikan dan land capping," *Bisnis Indonesia*, June 18, 2008.

41 Rahadiana and Aprianto 2007.

42 Sati 2007b. Manurung, like Pawenang, was a career Bina Marga bureaucrat.

concession meant a fair number of signatures were required, which was no easy task. In a word, the process was laborious.

Kirmanto admitted the policy sent mixed signals.[43] ATI–FKPPPJT saw it as punitive. It had the effect of repelling, not attracting, new investment. They lobbied Kirmanto for a new approach and convinced him that, although his ministry's name was on the 2007 decree, its contents had been dictated by the Finance Ministry.[44]

BPJT, Kirmanto, and ATI–FKPPPJT devised a plan that became known as "land capping." When land purchase costs rose beyond a certain cutoff point, the government, not the concessionaires, would pay the extra costs. By August 2007, the National Committee for the Acceleration of Infrastructure Provision and the Finance Ministry agreed to the measure. The cutoff point was not specified, however.[45]

As a risk sharing mechanism, the increased cost certainty that land capping provided buoyed ATI–FKPPPJT. Enhancing the financial soundness, or internal rate of return, of the toll-road agreement, land capping would boost investors' leverage in negotiations with banks. If land capping was formalized as policy, leverage would be further enhanced.

Their efforts bore fruit. Land capping figured prominently in a 2008 Public Works ministerial decree (no. 12), although ATI-FKPPPJT would have preferred a higher-standing governmental regulation.[46] The decree was the outcome of a number of compromises. The land cap computation was a win for the Finance Ministry. It contended that not all turnpikes were created equal; distances varied, as did the price of land. So, variable acquisition costs needed to be taken into account. Illustratively, land costs for a 34-km route along Java's north coast (Kanci–Pejagan) was estimated at Rp. 122 billion, but were six times higher for a 22-km toll road in suburban Jakarta (Depok–Antasari).

A two-track method was devised to determine a cutoff above which the government would absorb extra costs: (1) above 10 percent of the estimate indicated in the concessionaire's toll-road agreement; or (2) above 2 percent of the total investment value of the turnpike (art. 4[3]). Because the government, not the concessionaires, was authorized to apply whichever option that produced the higher value (or cutoff), ATI–FKPPPJT considered this a setback.[47]

43 "PU Lobi Depkeu Soal Land Capping Jalan Tol," *Bisnis Indonesia*, June 20, 2008.
44 Hence the importance of not having a Finance Ministry official on BPJT's board (see Chapter 3).
45 Supriyanto 2007.
46 Its title was: On procedures of government support of land acquisition for toll-road construction financed by companies.
47 Confidential interview, FKPPPJT member, Jakarta, April 28, 2009.

The two groups did influence a change in the distribution of the BLU funds. The government had prioritized funds for routes along Java's north coast. ATI–FKPPPJT charged that this was discriminatory. They maintained that who receives what amount and when should be guided by a broader set of criteria, including one's state of readiness. This was adopted in Article 5.

Other elements reflected policy preferences of the Finance Ministry. Notable were the reiteration that BLU funds were loans to be repaid (art. 7 [3,4]) and the insertion of a new policy known as "clawback" (art. 9). (As with land capping, it too was referred to in English.) In exchange for offering what amounted to a government guarantee on land acquisition, the ministry demanded a form of revenue sharing for BLU recipients. If the rate of return exceeded a specified amount, the concessionaire had to return the land capping funds. ATI–FKPPPJT vociferously opposed clawback, but it was non-negotiable.[48] The two industry groups wanted the percentage activating clawback at 7 percent; Indrawati countered with two. Kirmanto failed to split the difference, so 2 percent became law (art. 9[2]).

Clawback or similar trigger clauses are not unique to Indonesia, but contexts in which they are instituted vary. Starting in 2000, Argentina began inserting them into new concessions. This was because franchises had been highly profitable with rates of return between 26 and 38 percent.[49] In the case of the Trans-Java Expressway, there was no guarantee or even indication that its turnpikes' rates of return would match these figures. In Chile, concessions lacked such cost-sharing agreements.[50]

Undaunted, ATI–FKPPPJT continued their lobbying; Kirmanto and BPJT relented on two main points. First, clawback would not apply to the first ten Trans-Java concessionaires who signed contracts between 2007 and the first half of 2008.[51] Second, these license holders would not have to submit land acquisition deposits. In return, BPJT would hold concessionaires strictly accountable to the work schedules in their contracts; delays could result in revocation.[52]

In all, in support of land capping for twenty-eight turnpikes, the 2008 Public Works decree specified that the government would allocate Rp. 4.89 trillion (US$515 million) from 2008 through 2010 (art. 4 [5]). This was a sizable commitment signaling the government's resolve in reviving

48 "Investor Wajib Ganti Dana Land Capping," *Bisnis Indonesia*, July 4, 2008.
49 Engel, Fischer, and Galetovic 2003, pp. 135–36. 50 Ibid., p. 143.
51 "Bagi Hasil Tol Tidak Berlaku Surut," *Bisnis Indonesia*, July 24, 2008. These loan agreements were covered in Chapter 3.
52 "Cederai PPJT, Kontrak Diputus; Investor Tak Perlu Setor Jaminan Pembebasan Tahan," *Bisnis Indonesia*, September 19, 2008.

the sector. However, the BLU funds' slow rate of dispersal was a sticking point. It stood at about 32 percent in 2007 and an improved but still low 53 percent the following year.[53] Masking larger concerns, these uninspiring figures highlighted the shortsightedness of the debate at the time. Allocating land expenditure funds and determining who would pay for them and how was important. The critical issues of the speed of the acquisitions and who was in charge of them were overlooked, however. Neither Public Works or BPJT nor the National Land Agency (BPN) had much influence over how fast (or slow) things moved on the ground. Thanks to Indonesia's post-Soeharto decentralization, land acquisition in the public interest was largely in the hands of regional officials. Something was amiss at the local level, greatly slowing these purchases.

Indeed, in June 2008, Kirmanto informed the parliamentary committee on transportation and infrastructure that only 7 percent of the land needed for the Trans-Java Expressway had been purchased.[54] By February 2009, the pace had quickened, but with completion of land purchases at 15 percent, it became strikingly clear that the government would miss by a huge margin its 2009 target of 100 percent. (Only about 30 percent of the targeted parcels would in fact be in hand by then.)[55] Where did the impediments lie? Did the president's 2005 and 2006 decrees not establish a strong enough legal groundwork? Funds were available. Why did capital holders eventually feel compelled to demand a new parliamentary statute on the matter in hopes of breaking the impasse? A raft of technical and legal issues slowed compulsory purchasing, but the politics of land acquisition proved as formidable, if not more so.

Land acquisition: legal and historical barriers

The nebulousness of tenure security in Indonesia is widespread and well known. Only some 30 percent of all non-forested land parcels nationwide have formal titles.[56] While this condition is pervasive in the country's outer islands, the figure for Java is likely higher, given the completion of several large-scale World Bank-funded titling campaigns.[57] This state of affairs is certainly rooted in the Dutch-led assault on the islands' natural

[53] "Dana PembebasanTahan Rp.2 triliun; Konstruksi Jalan Tol Pejagan-Pemalang Tahun Ini," *Bisnis Indonesia*, March 4, 2009.

[54] Mudzakir 2008. [55] Mudzakir 2010.

[56] Most of BPN's literature cites this figure, although when pressed, a BPN researcher could not recall the study upon which it was determined nor attest to the figure's accuracy (Confidential interview, Jakarta, July 23, 2012).

[57] These figures do not seem to exist publicly. The same official phoned another BPN staffer and was told it was 44 percent for Central Java as of December 2011.

resources and its colonial order generally. The many legal traditions related to land, from European and Islamic to local or customary (*adat*), further complicate matters. However, ultimate responsibility lies with the post-colonial state. Acquiring legal title has been expensive, confusing, and time-consuming. Land officials have benefitted from extracting rent from citizens bold enough to brave the maze. In the end, the state, especially under Soeharto, did not want to create an efficient land-titling system, for the simple reason that it was easier to throw people off of non-titled land in the name of development, the public interest, or other veiled private interests. It remains important, however, to understand from where the Indonesian state statutorily obtains its eminent domain powers.

Ironically, those powers derive from the country's controversial 1960 Basic Agrarian Law (BAL), an act noted for its nationalist verve and socialist veneer.[58] A driving impetus behind its passage was to unify manifold legal traditions by "subsuming all Dutch-derived land rights, and most *adat* rights, into a series of new statutory rights."[59] The BAL, however, reflected tensions inherent in the socialist tradition. The act was the legal manifestation of clause 33(3) of the 1945 Indonesian Constitution that championed a democratic economy where all of the country's resources and production contributed to the prosperity of the Indonesian people (art. 2). Thus, the BAL was intended as a populist document. Article 6 maintains that land must have a social function, and Article 11(2) provides special protection for society's vulnerable groups. However, the BAL also allows the state a great say on the distribution of society's economic resources. To support the democratic economy ideal, Article 2 famously gives the state the right to control, but not own, all land in the country.[60] Less famously, but in support of eminent domain powers, the state can terminate land ownership with ownership rights reverting to the state (art. 27). This includes compulsory revocation (*pencabutan*) in the public interest. Nevertheless, to provide people assurance about their land rights, expropriation requires appropriate compensation and compliance with specific regulations (art. 18).[61]

The procedure for compulsory titular revocation was established in a subsequent law (no. 20 of 1961) with authority placed in the president's hands. In a twist characteristic of land law in Indonesia (and other former colonies) – the messy melding of formalist, universalist norms with local customs – the 1961 statute does allow for forced revocation if the deliberative process (*musyawarah*) fails (General Elucidation, point 2).

[58] Lucas and Warren 2003, pp. 94–95. [59] Fitzpatrick 2008, p. 225.
[60] *Hak menguasai dari negara*. [61] Harsono 2005, pp. 132, 476–77.

The BAL was hardly allowed to serve its function, as Soeharto assumed power by 1966, facilitated considerably by the army-led mass killings of suspected communists. Capitalist-oriented and foreign investment-dependent, especially in its early years, Soeharto's regime relished the state's power of control that the BAL afforded but less appreciated the law's populist and socialist bent. So the BAL never got rolling. The regime marginalized the law at first by enacting a series of sectoral laws that emasculated its authority. Notoriously, one of the New Order's initial pieces of legislation, Law 5 of 1967 on forestry, placed the country's forests – roughly 70 percent of Indonesia's land mass – out of reach of the BAL and into the hands of the Forestry Ministry. There, licenses to fell forests were sold to international (and domestic) capital. Thus, almost immediately, the BAL's scope was dramatically restricted from the foundational law for all land to jurisdiction over only some 30 percent.

Second, the New Order purposively failed to issue the dozens of implementing regulations necessary to have made the BAL fully operational. In its stead, the regime produced hundreds of subordinate ministerial letters and administrative fiats on matters pertaining to land.[62] Most of these were issued by BPN, an institution over which the president had direct authority. On land acquisition for development, however, Interior Ministry regulations permitted the regime to do what it wished with land during most of the 1970s and 1980s. This included allowing the private sector to apply for procedures that were reserved for public interest projects.[63] In all, one land law expert summed up by saying that under the New Order, the BAL, as well as the 1961 law on compulsory revocation, "was put in the fridge."[64] With coercion paramount under the New Order, resorting to the 1961 law was superfluous because genuine deliberation was not practiced. In the end, voluntary acquisition as a legal category became compulsory in practice.

In 1993, protections of people's land rights received a boost when Soeharto issued a decree on the matter, formally revoking the Interior Ministry regulations of the 1970s and 1980s. The decree was part and parcel of a short-lived period (roughly 1989–94) of political liberalization initiated by Soeharto, which saw a surge in the number of land conflict cases.[65] Notably, private parties were denied the use of public interest land expropriation procedures.[66] The types of compensation were also

[62] Estimates of their number run from 600 to 2,000 (Kusmalawati 2011, p. 50; Zaman 2002).
[63] Three key minister of home affairs decrees were no. 15 of 1975, no. 2 of 1976, and no. 2 of 1985.
[64] Cited in Kusmalawati 2011, p. 51.
[65] Aspinall 2005, pp. 116–25.
[66] Instead they were to engage in direct negotiations with the targeted residents.

expanded to include cash, replacement land, relocation, a combination of these three, and others agreed upon by involved parties.[67]

Despite this opening, the 1993 decree ensured the gravity of authority remained in the state's hands. Presidential prerogative was one way to keep control: Soeharto held discretionary powers to tab any project in the public interest (art. 5[2]). Another was staffing the nine-member, local land purchasing team entirely with government officials (art. 7[7]).

Yudhoyono's approach followed the New Order tradition (see Chapter 3). Presidential decrees, not parliamentary laws, only paid lip-service to deliberation. For instance, Yudhoyono's eminent domain edicts failed to provide for just compensation. They also lacked clear provisions on determining immaterial value tied to land, on restoring livelihoods and income, and on safeguarding the independence of assessors and the neutrality of mediators. Government officials again monopolized the composition of land purchasing committees. As before, these committees determined compensation based on the real value of the land and the land's sales value as a tax object (*Nilai Jual Obyek Pajak*, or NJOP).[68] NJOP rates are notorious for being assessed well below market price, which in part explains the inadequacy of state-offered compensation.

Unlike under Soeharto, however, Yudhoyono's decrees failed to become the blunt instruments of state power to expropriate land in the public interest, as toll-road investors and some in his administration, like Vice President Kalla, had hoped they would become. Here, the problem was twofold, with each corresponding to the wayward use of a statutory right of the state to enforce its will. First, Yudhoyono refused to resort to the presidential power of expropriation (*pencabutan*) of peoples' land rights that his 2005 decree (and the 1961 law) permitted.[69] Publicly, officials couched the president's unwillingness in administrative terms, noting the logistical impracticality of a sitting president signing the thousands of revocation letters personally.[70] Privately, Yudhoyono's hesitancy was more political, that he, as a democratically elected president, loathed to be seen revoking such rights with the stroke of a pen. To do so today in

[67] Art. 13. In reality, the only viable option most of the time was cash. Guidelines on relocation were never released (Zaman 2002, p. 260).

[68] Presidential Decision no. 55 of 1993, art. 15; Presidential Regulation no. 36 of 2005, art. 15(1).

[69] As we saw in Chapter 3, this authority was made explicit in the 2005 decree but excised from the 2006 version. Nevertheless, the 1961 law, upon which this power rests, at the time remained in effect and thus the power was legal.

[70] Winoto 2011, p. 21. At the time, Winoto was the head of BPN.

Indonesia would be considered too drastic, too suggestive of the authoritarian practices of yesteryear.[71]

With the central government wary of deploying its compulsory powers, it was left with little recourse but to assemble land in the public interest through the voluntary surrender of people's land rights. To reiterate, the release (*pelepasan*) or surrender (*penyerahan*) of one's rights is considered legally voluntary if deliberation is pursued and the resulting compensation is deemed fair by both parties. Under Soeharto, compensation was anything but. That is why in Indonesia compensation has been known by the popular phrase "*ganti rugi*," or literally replacement for damages. As mentioned in Chapter 3, if deliberation reaches an impasse, the 2005 decree (and left unchanged by the 2006 amendments) detailed a consignment procedure where the state deposits the money with a district court. The court determines the final price, and the state can consider the rights to the land as nullified.

Of course, the broader institutional and political context had changed dramatically. For the majority of Yudhoyono's time in office, although he had legal domain over the nullification of rights, local government officials, under the auspices of decentralization, were in charge of enforcing the state's policy on the ground. This had great implications for the speed – or lack thereof – of land acquisition in the public interest.

Consider consignment, typically only pursued if local officials initiated it. From mid-2006 to early 2012, out of thousands of cases of tollway rights of way, there were only a handful of instances where consignment was applied.[72] Why were there not more instances reaching the courts? Did not Yudhoyono's Decree 65 of 2006 cap negotiations at 120 days? In all, local officials were exceptionally reluctant to implement the consignment procedure. The number of cases could have been far higher if local officials had so desired, but they did not. If questioning why, the short answer is found in the new politics of a more democratic and decentralized local Indonesia.

Political barriers

The politics behind land acquisition, in particular tensions between central and local officials, have been an equal if not greater impediment than the legal barriers. If the interests and incentives of the central and local

[71] So why include this authority in the 2005 decree in the first place? A member of the drafting team said Kalla demanded it, especially given the complaints that surfaced during the 2005 Infrastructure Summit. Interview, Arie S. Hutagalung, Jakarta, June 28, 2012.

[72] The period stretches from the start of the 2006 decree to the passing of new land acquisition law (see below).

government had been better aligned, land assembly in the public interest would have progressed more rapidly. Insufficient attention has been paid to this political disjunction, one that came with the democratization and decentralization in the post-Soeharto era.

Crippling state fragmentation has frustrated the implementation of eminent domain powers in Indonesia. One notable fault line has been across ministries, where pervasive silo-complex quashed inter-ministerial cooperation.[73] Tussles between the Public Works and Finance Ministries on toll-road development discussed in the previous chapter were exemplary. Another fault line has involved the mismatch of incentive structures between central and local officials. A perverse logic beset this relationship and compulsory land acquisition.[74]

To rectify the excessive centralism of the New Order, post-Soeharto lawmakers enacted two statutes in 1999 that sought to alter central–local government relations radically. Both took effect in January 2001. One law rebalanced fiscal relations; the other devolved a range of administrative and political powers to the districts and cities, including land matters. Illustratively, many BPN staffers were redesignated as local civil servants.[75] Law 25 of 1999 on decentralization gave regional governments the power to generate local tax revenue through land management, including the issuance of land and building permits (arts. 7–8).

Contrary to the spirit and letter of the regional autonomy laws, the central government almost immediately began to undermine the authority of local administrations over land. It delayed the promulgation of implementing regulations and then passed subordinate regulations bolstering BPN's authority at the expense of local governments' authority. For example, President Wahid signed a presidential decree (no. 10 of 2001) stating that prior land-related legislation will remain in effect until all the implementing regulations on land as a result of the regional autonomy laws had been completed.[76] Recentralization via this kind of soft law continued forth, including a 2006 presidential decree signed by Yudhoyono (no. 10) giving a number of functions in land administration and registration to BPN.

Still, the district and city-level governments gained in importance. By extension, the land purchasing committee (*Panitia Pengadaan Tanah*, or P2T) retained its authority too.[77] This produced conflicting incentive

[73] Datta *et al*. 2011.
[74] This analysis mostly pertains from 2007 (when the first loan agreements were signed) to mid-2012 (when the implementing regulation of the 2012 land acquisition law was passed [see below]).
[75] Thorburn 2004. [76] Reerink 2011, pp. 74–79.
[77] This was codified in Presidential Decision no. 34 of 2003 on National Policy in the Land Sector.

structures between local officials staffing and heading the P2T and central government officials.

Some of the problems facing P2T had been technical. The face of government in negotiations with empowered but frazzled citizens, P2T ultimately set the state's price (although based on valuations by purportedly independent assessors). However, the P2T was an *ad hoc* committee; members were structural bureaucrats who had to perform this duty on top of regular responsibilities. Poorly compensated and with hundreds of thousands of dollars passing through their hands, P2T officials conducted procurement duties cautiously, fearing charges of corruption.[78]

Structurally, the core of the matter was the following:[79] On the one hand, central officials remained in charge of national roads, including tollways and thus had incentives to have land deals concluded as expeditiously as possible to commence construction. Incentives can be of the "public good" kind, including a belief in the benefits of expressways, lower transportation costs, and thus lower manufacturing costs, more jobs, higher economic growth, and others. Other incentives are more private – for example, prestige for Yudhoyono and his desire to leave a legacy.[80] This ratcheted up pressure on Public Works and other ministries to produce tangible and verifiable outputs. Public Works could share in the president's glory if successful, and its high-ranking bureaucrats (including from BPJT) can receive handsome bonuses for project completion. Upon retirement, they might also avail themselves to choice consultancy positions with private firms.[81] There is also illicit gain to be had amidst the auction of toll-road licenses, the awarding of construction contracts, and the allowance of license holders to retain franchises despite contractual violations.[82]

On the other hand, these nationally controlled roads are designed to pass through jurisdictions largely controlled by local officials whose incentive structures differ appreciably. They share less in the prestige and do not receive performance bonuses for completing national projects.[83] Underpaid

78 On the anti-corruption effect on procurement more generally in Indonesia, see Sherlock (2010a, pp. 4, 30) and Blöndal *et al.* (2009, p. 11).

79 As we will see below, in 2012 the central government recentralized the process.

80 Datta *et al.* 2011, p. 19; Tampubolon 2012.

81 Following his BPJT headship, Pawenang joined a construction consulting company, PT Virama Karya. A former Jasa Marga head, Syaffrudin Alambai joined the board of a toll-road concessionaire (see Chapter 5), as did Rachmadi Bambang Sumadhijo, Habibie's public works minister (see Chapter 3). Another head of Jasa Marga, Frans Sunito, later became president director of a consortium with the rights to a new inner ring road in Jakarta (see Chapter 6).

82 Some of these issues are broached in Chapter 5.

83 Maintenance of existing local roads, however, is critical in local campaigns (Kuncoro *et al.* 2012).

and overworked, local officials were tasked with the thankless job of dealing directly with angry citizens being forced to move.

Local officials did seek to exploit a lack of clarity in the regional government law (no. 22 of 1999) to their advantage. Article 119 placed authority over certain development projects in the hands of local officials, including ports, airports, plantations, and "highways" (*jalan bebas hambatan*).[84] When it was realized that local officials were interpreting the term highways to mean tollways (*jalan tol*), and dreaming of ways to use them as a means to raise local revenue either by constructing new ones or by raising taxes on existing routes, panicked central officials, in August 2000, distributed a circular reiterating that highways are not tollways.[85] The central government and the World Bank[86] imagined a nightmarish helter-skelter construction of tollways across the country by fiscally stressed local governments, as happened in China. There, connivance among local officials and private investors has been rife, leading to serious concerns over the expanding network's efficiency.[87] Jasa Marga officials also were not looking forward to studying a stack of (poorly planned) proposals submitted by local governments.[88] The central government made sure there was no confusion on the matter: Article 2 of the 2004 Road Act stipulated that toll roads were national roads, the dominion of the central government. With tollway authority concentrated among national officials, unorganized local officials would get little short-term benefit, whether financial or political.

Statutory control over toll roads by the central government is a clear example of the continuation of New Order-type governance. So has been the condescending attitude of national officials toward local counterparts. According to one well-informed observer, central authorities seem to be "trapped in a Soeharto-era time-warp, refusing to believe that their powers to plan and implement projects have been severely curtailed by the decentralisation legislation."[89] Illustrative were statements made by Kalla, who had a penchant for publicly berating local officials for foot-dragging on land acquisition.[90] Public Works Minister Kirmanto also condescendingly lectured them to understand that tollway development "is a task of government, not just a means from which to profit."[91]

[84] This authority was further reiterated by a corresponding government regulation (no. 25 of 2000) on decentralization, where authorization to build freeways was clearly granted (art. 3[14, 3]).

[85] Refianti 2002. [86] World Bank 2002, p. 11. [87] Lin 2013. [88] Pakpahan 2001.

[89] Booth 2005, p. 217.

[90] "Tol Terkendala Lahan," *Kompas*, February 20, 2006; "Kalla Tells Local Bosses to Get into Fast Land on Expressway Projects," *The Jakarta Post*, June 14, 2006; Oktaveri 2008.

[91] "Daerah Perlu Tahu Bisnis Jalan Tol; Konstruksi Pengganti Porong–Gempol Mulai Agustus," *Bisnis Indonesia*, May 5, 2009. (The original: "Pembangunan jalan tol tugas pemerintah, bukan sekadar untuk cari keuntungan.")

Moreover, local officials found bothersome the high-profile "road shows" of ministers designed to investigate up close the nature of the holdups.[92]

The central government's sense of superiority manifested itself in its unwillingness to share tollway development responsibilities. The 2003 consultancy report (discussed in Chapter 3) helping to establish the guidelines for BPJT perceived correctly the potential disruptions that central-local tensions could cause. It had recommended, for instance, forming a local government liaison division within BPJT or placing a BPJT official in local government.[93] Neither recommendation was implemented. Not surprisingly, communication between central and local government officials has been poor; there were times when months passed without word from national officials about whether BLU funds would be available, so leaving local officials confused and embarrassed.[94] The 2003 report further recognized the lack of a sense of local government ownership as a looming cause for concern. In response, it suggested that local government officials participate in the auction process and sign tripartite contracts with concessionaires.[95] These, too, were not instituted. Ignored also was the suggestion that some local roads could be reclassified as national roads for the purposes of contract management in order to increase local government equity in the projects.[96] Of the different categories of recommendations contained in this "best practice" study, the central government most visibly failed in the implementation of those pertaining to local government. Given the seriousness national officials have shown the slow pace of land acquisition to be, it is fair to say they reaped what they had sown.

The attitude of Jasa Marga toward local government ownership and participation in toll-road projects has been much the same. Despite public pronouncements to the contrary,[97] the company has been loath to enter into arrangements with multiple stakeholders, especially district governments. Consider its Semarang–Solo license. In 2007, with the Central Java provincial government, it formed a joint-venture company, PT Trans Marga Jateng. Recall from Chapter 3 that Jasa Marga officials were unhappy about being forced to build this financially questionable route.

92 For example, see "Pembebasan Lahan Tol Semarang–Solo Selesai Maret," *Suara Merdeka*, January 21, 2008.
93 Tasman Economics/ACIL Tasman 2003, pp. 13, 105–06, 116.
94 "Proses Ganti Rugi Jalan Tol Terhenti," *Suara Merdeka*, October 9, 2009; "Lahan Tol Cikapa Terbengkalai," *Poskota*, October 27, 2011.
95 Tasman Economics/ACIL Tasman 2003, p. 13.
96 Ibid., pp. 14, 105–06. This would pertain only for the duration of the concession.
97 "Jasa Marga Dapat Proyek Jalan Tol Rp. 6,16 triliun," *Bisnis Indonesia*, December 27, 2004.

As a result, they were only too happy to have their provincial partner pledge 40 percent of the capital outlay. However, they looked on with dismay as the provincial government decided to distribute some of its ownership shares to district governments to ease its own financial contributions. Jasa Marga officials were thus inundated with demands, mostly of the rent-seeking variety, of district executives (*bupati*) to serve as commissioners in the toll-road consortium. Fortunately for Jasa Marga, these ownership arrangements fell through and the entire minority share reverted to the provincial government.[98]

A pressing question, however, remains unanswered: With the mismatch of incentives between national and local officials, from where did the latter obtain their rent? Although difficult to document, apparently the answer was in the purchasing of land parcels (mostly through proxies) that would later be required for the expressway. The years-long delays in these projects gave local bureaucrats (and local politicians) ample opportunity to acquire foreknowledge of the route's details. The formal issuance of the location permit by the governor's office has been a key mechanism in this process.[99] Local bureaucrats have admitted that these purchases were a public secret. The head of BPN and Indonesia's trade minister also publicly acknowledged the problem.[100]

Indeed, local officials sometimes used drawn-out negotiations with project-affected landowners to extract rent from the central government (and also from investors). Typically, the longer the negotiations drag on, the higher goes the price of the land. Prioritizing a short-term rent-seeking approach, local officials considered that the road would be built eventually, bringing with it tangible benefits to their area. However, a delay of a few months or a year would not affect their strategies markedly. They were determined to get their cut.

Such speculative activities worried the central government, but it could do little to stop them. With local officials in charge of land acquisition, the central government, via Bina Marga of Public Works, did form parallel committees, called TPT (*Tim Pengadaan Tanah*, or Land Purchasing Team). These teams were designed to supervise and coordinate activities

98 On the Semarang-Solo turnpike, see Chapter 6. This viewpoint is based on an interview with Dedi Krisnariawan Sunoto, Jasa Marga's director of development, Jakarta, June 25, 2012. Exceptions include Jasa Marga's partnership with the Pasuruan district government on the Gempol-Pasuruan link. The latter was a shareholder prior to Jasa Marga's 2009 purchase of its majority share. In Bali, the Bandung district government, among the country's richest, is a minority partner (8 percent) of the 10-km Nusa Dua–Ngurah Rai–Benoa turnpike that opened to much fanfare in September 2013.

99 Presidential Decree no. 36 of 2005, art. 4.

100 Confidential interview, staff at Regional Development Office (Bappeda), Malang, July 14, 2008; Simanjuntak 2008; Pilling 2011.

among P2T councils. From a technical perspective, full-time members of TPTs helped to overcome the constraints of the part-time work of their P2T counterparts. However, TPTs were really to keep watch on the latter, to ensure they did not deviate widely from national regulations or from compensation instructions. Statutorily, though, TPTs had minimal authority – watchdogs without bite.[101]

Local officials have generally considered the meandering pace of land taking the central government's problem, not theirs. National officials are after all statutorily (and financially) in charge of these projects; their attitude and actions only have confirmed the suppositions of their local counterparts. Returning to the paltry number of consignment cases noted above, this logic also explains the lack of enthusiasm among local officials to embark on this time-consuming and cumbersome procedure. That there were not more cases was by design. In all, toll-road development was a golden but ultimately wasted opportunity to strengthen relations between central and local government officials.

Exogenous obstacles

Three further – exogenous – obstacles to efficient land acquisition might absolve local officials from some of the blame they have received. First, relatively poor land-owning citizens have been not easy to ignore. As mentioned above, eminent domain powers under Soeharto rested fundamentally not on state law but state power. But in the post-Soeharto era, the costs of non-compliance have decreased as overt coercion has lessened. New amendments to the country's constitution also now guarantee a range of rights, including adequate housing, for which Yudhoyono's decrees failed to provide. The public is now even more suspicious that private interests lurk behind the public interest rhetoric of the government on tollway development, and people distrust the notoriously corrupt BPN.[102] So it is no surprise some landowners have been unwilling to sell their property easily for what the president called "the good of the nation."[103]

Second, the hesitance of license holders to provide land monies forced local officials in some cases to suspend purchases. BLU funds were designed to overcome investor reluctance. Failing this, land assembly

[101] In cases where the TPT was in charge, rather than technically supervising a P2T, it did have bite. We visit two such cases, one in Chapter 5 and another in Chapter 6.

[102] Thorburn 2004, p. 34; "Editorial: Land Control," *The Jakarta Post*, April 27, 2011; Reerink 2011, pp. 96–97; O'Rourke and Milne 2011, p. 132.

[103] "Presiden: Spekulan Tanah Hambat Pembangunan," *Kompas*, April 28, 2008.

would stall indefinitely. The tardiness of their availability (early 2007) was only part of the problem. A procedural loop hole in their allocation – the concessionaire had to apply to BPJT for the funds to be used – allowed reluctant concessionaires to abstain from committing to their projects financially. Consider the critical Trans-Java sections of the north coast – the long Cikampek–Palimanan turnpike (116 km) and the three segments (168 km cumulatively) between Cirebon and Semarang. Uncertainties over the ownership of these licenses were paramount in causing investor hesitancy. (These cases will receive extensive coverage in Chapter 5, but their outlines pertain here.) The 2006 sale of 55 percent ownership of the Cikampek–Palimanan franchise to a Malaysian entity, PLUS Expressways, stirred a nest of controversy. It took more than three years for the legal questions raised by the sale to be resolved before the Malaysian investors felt comfortable enough to pay for the land. Landowners along the three Cirebon-to-Semarang routes have faced more serious uncertainty regarding the fate of their land. In 2007, financially distressed investors sold to their concessions to a subsidiary of Aburizal Bakrie's conglomerate. By design the sale was meant to obfuscate ownership. Bakrie's toll-road unit would manage the three routes until they were operational, at which Bakrie could exercise an option to buy. Until then, who was really in charge, and who would request the BLU funds, was anybody's guess. In fact, the request never materialized. In December 2012, Bakrie finally agreed to sell his toll-road interests to the media tycoon Hary Tanoesoedibjo. Meanwhile, the percentages of land acquired at the time of the sale were deplorable: Pejagan–Pemalang: 29 percent, Pemalang–Batang: 2 percent, and Batang–Semarang: less than 4 percent.[104] Even the most insufferable central government official would not dare apportion the blame for this mess to local official obduracy.

Finally, given how centralized Indonesian political parties have been, a hefty proportion of the blame resides in Jakarta. Much had been made of the meteoric rise of the Democrat Party (PD). With Yudhoyono's presidential victories in 2004 and in 2009, and with the 2009 legislative election turning it into the largest party in parliament (with 26 percent of the seats, up from 11 percent in 2004), PD has been the most successful post-Soeharto party without roots in the New Order (notwithstanding its poor showing in the 2014 parliamentary elections). At the local level, however, where considerable power now resides due to decentralization, the party has fared less well. While PD rode the force of

[104] Mudzakir 2012. On Bakrie's Ciawi–Sukabumi route, payments to landowners were delayed months, causing great hardship (Kusmalawati 2011).

Yudhoyono's personality to national prominence, this surge did not translate into large gains at the local level.[105] There, party history and the depth of organizational structure and societal embeddedness trumped personality.[106]

Consider the jurisdictions through which the greenfield links of the Trans-Java Expressway will pass. From 2004 to 2012, only one PD gubernatorial candidate won office in West, Central, and East Java provinces.[107] Of greater significance was the near absence of *bupati* or mayors from PD. This mattered considerably for land acquisition. Legally, the *bupati* or mayor form the P2T, and the district or municipal secretary (a jurisdiction's highest-ranking bureaucrat) is often named its head.[108] The latter has tremendous influence on the pace of the committee's work. Between 2005 and 2012, of the thirty-one *bupati* (or mayoral) elections held in twenty districts or municipalities on Java relevant to this discussion,[109] only one was won by PD. Remarkably, in only one case did the PD faction in the local parliament support a member of a winning coalition.[110] The majority of electoral winners came from the established parties, with the Indonesian Democratic Party of Struggle (PDI-P) winning thirteen and Golkar six.[111] The premise here is largely counterfactual. If PD's political machinery had been better equipped to place more of its functionaries in local positions of power, the president would have commanded greater leverage over them to accelerate land acquisition. Even those in coalition with PD in the national parliament like Golkar never seemed to encourage their local office holders to keep compulsory acquisition moving at a reasonable pace.

105 Majuni and Liddle 2007; Honna 2012, pp. 481–82.
106 On the social embeddedness of Indonesian parties compared to those in Thailand or the Philippines, see Ufen (2008). On PD's poor organization and lack of embededness, see Mietzner (2013, p. 94).
107 Soekarwo won the 2007 East Java governor's race by a razor-thin margin. As of mid-2013, PD had lost the last four gubernatorial races on Java (Banten, Jakarta, West Java, and Central Java).
108 Presidential Decree no. 36 of 2005, art. 6(1).
109 This includes districts/municipalities from Purwakarta (in the west) to Surabaya (but not beyond) and excludes those from Solo to Kertosono. This section was far behind schedule (see Chapter 6). Also, local elections are held once every five years but are based on a local schedule. Thus, some jurisdictions held more than one election over this period of time.
110 A PD candidate (H. Sukawi Sutarip) won the 2005 Semarang mayoral race, and the party was a part of a coalition for the 2011 Pekalongan mayoral election won by H. Amat Antono. Both places are urban and the expressway hardly passes through these jurisdictions.
111 These Java-based figures roughly tally with national results (Horowitz 2013, p. 174, note 22).

Renegotiations and reevaluations

The slow pace of land purchases befuddled central government officials and other stakeholders, including toll-road franchisees. But they differed over how to speed it up. ATI–FKPPPJT hoped a new law would provide a breakthrough. Although government officials agreed, they also began to realize that recalcitrant investors played equally obstinate roles in the process.

By 2008 and 2009, the frustrations of national officials with wayward investors had become palatable. Fueling this exasperation was the failure of recently purchased licenses to force progress on the ground (see above). Provided with the political cover by Kalla to turn up the heat, statements of Kirmanto and Manurung critical of specific investors began surfacing in the press.[112] BPJT sent warning letters to several concessionaires. The agency was being too cautious, one close informant suggested; it had sufficient legal grounds for revocation in some instances, but possible "improprieties" were preventing BPJT from taking such action.[113] BPJT's head was wary of summarily revoking licenses because it would likely lead to significant time and money for court cases with uncertain outcomes.[114]

Officials' potshots did not sit well with investors. Publicly, they blamed delays on what they saw as the government's meager support of the sector and on its feeble power of eminent domain.[115] Privately, as delays lengthened, they lobbied for price adjustments.[116] So began what for many scholars are the scourge of PPP projects – renegotiations. In Latin America and the Caribbean, Guasch found that more than 50 percent of concessions granted from 1985 to 2000 in the transportation sector experienced renegotiations.[117] In September 2008, Kirmanto responded positively to ATI's demand that contractual amendments reflect price increases.

For a long two years, from mid-2008 to mid-2010, remarkably little progress was made, however. While ATI continued to push government for new approaches and policies, and a number of concessionaires submitted proposals for contractual changes, the government continued to waver between threats of revocation and promises of initial tariff hikes. In

[112] Suhendra 2008; "'Ada Investor Tidak Paham bisnis tol'; 10 Proyek Dikategorikan Bermasalah," *Bisnis Indonesia*, January 13, 2009; "Investor Tol Harus Pahami Risiko," *Kompas*, May 15, 2009.

[113] Interview, Sumaryanto Widayatin, former Jasa Marga commissioner, Jakarta, May 19, 2009.

[114] Interview, Nurdin Manurung, Jakarta, July 22, 2008. [115] Muhanda 2009b.

[116] "Pengusaha Jangan minta Eskalasi," *Bisnis Indonesia*, July 7, 2008.

[117] Guasch 2004, pp. 12–13.

the meantime, land costs were rising on average 10 percent per year.[118] Finally, and mercifully, to break the standoff, in May 2010 Kirmanto initiated a formal review of twenty-four current licenses, half of which were Trans-Java Expressway turnpikes. Formally, the government stated that loopholes in these contracts were providing concessionaires with too much protection.[119]

Reevaluation was intended to determine the commercial viability of the franchises. For the government, this meant an internal rate of return of 4 percent above the average interest on bank loans, which at the time was almost 14 percent. For the purpose of reevaluation, licenses were grouped into three categories: (1) investors who had not yet signed contracts; (2) those who had signed but had not yet fulfilled their financial obligations; and (3) those who had fulfilled these obligations and whose land acquisition was ongoing.

Reevaluation was a bittersweet victory for Manurung. For some time he had been pushing Kirmanto to enact it. As head of BPJT, he held that too many license holders were prioritizing rent over construction and therefore the ownership question needed straightening. Unfortunately for Manurung, the reevaluation also cost him his job. In July, he was replaced by Ahmad Ghani Gazali, who was now the third career Bina Mina bureaucrat to lead BPJT. The authors of the 2003 "best practice" consultancy report that had warned against this trend could only shake their heads in disbelief.[120]

The dismissal of Manurung was probably a concession Kirmanto granted to ATI–FKPPPJT, which greeted the reevaluation process with dismay and who saw Manurung as its principal architect. Manurung was also left vulnerable once his backer, Kalla, had been replaced by Boediono as Yudhoyono's vice president in late 2009. ATI's chief, Rochman, complained, and reasonably so, that the criteria by which the license holders were being reevaluated was opaque and that the process was redundant since they had already been evaluated prior to the signing of the initial contracts.[121] One FKPPPJT member called it a show of strength by the government.[122] By the end of 2010, fourteen of the twenty-four concessionaires had passed the reevaluation; shortly thereafter, the remaining ten were asked to increase their equity (either by upping existing shareholder amounts or by adding new partners purchasing equity).

118 Muhanda 2010.
119 "Pemerintah Sinyalir Ada Investor Tol yang Main-Main" *Antara*, June 25, 2010 (antarasumbar.com; last accessed April 29, 2013).
120 Telephone Interview, David Grieg, director of infrastructure at ACIL Tasman, and an author of the 2003 report, January 13, 2012.
121 "ATI Ragukan Hasil Evaluasi 24 Proyek Tol," *Bisnis Indonesia*, October 22, 2010.
122 Confidential interview, FKPPPJT member, Jakarta, September 22, 2010.

Meanwhile, hoping that stricter conditions would impose greater discipline on the concessionaires, the government was forcing all concessionaires to sign amended contracts, otherwise their licenses would be revoked.[123] A disgruntled ATI countered with its own set of amendments.[124] Its pro-investor alternatives, although mostly sound – for example, the government has to guarantee the competency of a toll road; if the lack of connectivity or other transportation options impact the performance of a toll road, the terms of the contract had to be revisited – were rejected by the government. As before, in 2007 and 2008, Kirmanto and the license-holders collaborated in their attempts to gain leverage over the Finance Ministry; but by 2010, the public works minister was less in the mood to work cooperatively, especially as costs escalated. The reevaluation had revealed that total investment costs of the twenty-four toll roads had risen nearly 40 percent to Rp. 111.75 trillion (US$12.6 billion) from estimates in the original contracts.[125] It was inevitable that this spike in costs would be passed on to motorists in the form of higher initial tariffs.

By the end of 2011, all contracts were resigned except two. Jasa Marga had resigned seven out of its eight contracts, Bakrie Toll Road three out of four.[126] This put the government in a bind. Revocation of the two remaining unsigned contracts would incur the wrath of the two investors who together held another ten. It was a risk and a step the government dared not take.

A new law of the land

ATI was not alone in doubting the effectiveness of the reevaluation. Parliamentarians had their doubts too.[127] These complaints, and the reason for its late start (May 2010), sprang from the same source – the absence of a statutory solution to compulsory land purchases in the public interest. BPJT and Public Works were waiting for parliament to enact a new eminent domain law before they initiated reevaluations. Given the delays in the drafting of the law, these officials felt pressure to do something.[128]

123 "April, 24 Proyek Tol Berjalan Lagi," *Investor Daily*, January 26, 2011.
124 Compare amendments in Mudzakir (2011) to those reported in "Pemerintah Enggan Beri Jaminan," *Bisnis Indonesia*, May 19, 2011.
125 "24 Tol Mangkrak Lolos Evaluasi," *Media Indonesia*, December 23, 2010.
126 Jasa Marga refused to sign for its Semarang–Solo route (see Chapter 6); Bakrie's toll unit refused to sign for its Batang–Semarang license (see Chapter 5).
127 "Evaluasi Proyek Tol tidak Efektif,"*Media Indonesia*, November 23, 2010.
128 Interview, Nurdin Manurung, former BPJT head, Jakarta, November 22, 2011.

Legislative drafting in Indonesia is notoriously slow. There are cases (for example, the 2011 law on an independent Financial Service Authority) where a half-dozen years passed before promised laws were enacted.[129] Accordingly, the two-year delay between the original target (early 2010) and the enactment of a new law on eminent domain (January 2012) should be understood in this context. Still, the bill was considered urgent by all and looking at reasons for its delay is instructive.

Calls from private sector associations for a new law on eminent domain were longstanding. As noted in Chapter 3, Yudhoyono heeded their concerns but did so by signing presidential decrees. Over time, as their impotence became evident, the president's people had decided that he should exploit his second electoral mandate to push for a statutory solution.

As high-level inter-ministerial meetings on the measure intensified in 2009, predictably, private sector associations welcomed the developments.[130] Equally predictably, activists decried it: The law would legitimize violations of people's rights to land. Worse, these rights would be sold to private and foreign interests. Activists were further angered that the administration sought to isolate the problem of land acquisition in the public interest from the broader, although deadlocked, legislative efforts on land reform. This was one more betrayal of the president's promise to pursue genuine agrarian reform.[131]

The drafting of the bill on eminent domain hit a number of snags. To start, the involvement of many ministries (including Public Works, Finance, Interior, SOEs, Agriculture, Transportation, Forestry, and the Environment) made the process cumbersome. Add other governmental bodies (including the National Planning Agency, the Coordinating Board for Investment, and BPN) and compromise would seem both necessary and difficult. A sticking point arose between two competing forms of governance reform being championed in Indonesia – having a one-stop business licensing center to facilitate investment *and* enacting decentralization. The conflict resulted in intense talks over which government agency would assume responsibility for compulsory land acquisition. If local governments continued as the executors, it was feared the litany of problems might persist.

Anxious to ease some of the difficulties, the ADB funded a government-linked think tank to collect input from investors and to fly in international land law experts (not civil society actors) as a means to strengthen the

[129] Sato 2005, pp. 110–11; McLeod 2011, p. 7.

[130] In addition to ATI, these included the Indonesian Chamber of Commerce, the Indonesian Association of Businessmen, and the Indonesian Contractors Association.

[131] Perkasa 2011. Draft bills have been stalled in parliament, while the issue remains hotly debated among advocacy groups (and investors).

government's eminent domain powers.[132] Without the ADB's aid, it was unlikely that the draft bill would have been submitted to parliament by December 2010. Parliament subsequently formed a special inter-commission committee (*panitia khusus* or "*pansus*") to review the government's draft law. The *pansus* received input from government agencies, local experts, business and trade associations, and civil society organizations on almost 300 points of debate.[133]

Law 2 of 2012 came into being in January of that year. Despite the numerical dominance of members of Yudhoyono's six-party ruling coalition,[134] the statute was a product of compromise that emerged forged through strenuous, heated debate between the executive branch and the *pansus*. Once again, committee solidarity trumped party loyalty in parliament.[135] Before we analyze the final act, it is useful to review the government's draft version, for it provides a clearer picture of government intentions.

The draft bill's provisions demonstrated the central government's resolve in strengthening its eminent domain powers to reassure investors that land would be assembled for public-interest infrastructure projects.[136] Departing from past practice, the government argued that any definition of "public interest" would be objectionable to some and too restrictive.[137] Instead, a list of eligible categories was intended to establish the broad contours of its meaning. As in the past, there was no burden on the state to satisfy "conditions" or prove that a project qualifies as in the public interest. The number of such categories – seventeen – likened to the 2005 decree, with a notable difference. Similar to Soeharto's 1993 edict, Yudhoyono's administration inserted the power of presidential discretion to tab projects in the public interest. Given Indonesia's new democracy, the move appeared heavy-handed, although such power is consonant with international standards.[138]

132 Business Monitor International 2011 (Q4), p. 9. See the academic paper attached to the draft bill.
133 See the committee's website: dpr.go.id/id/pansus/48/RUU-Pengadaan-Tanah-untuk-Pembangunan (last accessed March 19, 2014).
134 Parties that comprised the coalition – PD, Golkar, PKS, PAN, PKB, PPP – held twenty-three out of the thirty-one seats on the committee, a percentage that approximated the coalition's strength in parliament. PKS and Golkar were known as occasional opponents to government policy.
135 Sukma 2009; Sherlock 2010b; Mietzner 2013, pp. 159–64.
136 Although it is typical to provide the clauses' numbers in legal analysis, I have omitted them in discussion of the draft bill because they do change in the final bill, where I note them below.
137 Interview, Kurnia Toha, head of BPN drafting team (and legal bureau), Jakarta, July 10, 2012. See also the Academic Paper attached to the draft law p. 24, Table 1 (point 6).
138 Keith *et al.* 2009, 11.

Unlike past presidential decrees, this draft bill guaranteed (*menjamin*) the provision of land in the public interest by the central and/or regional government. Responsibility for the purchases was given to BPN – in other words, the central government once more. Meanwhile, incentives for the private sector included money for land procurement from central and/or regional government budgets and tax incentives for bodies in need of land in the public interest. Restrictions included prohibitions on the conversion of productive agricultural land, allowing land to lay fallow, causing ruin to nature reserves, and closing off public access.

Although there were no references to the 1961 law on compulsory revocation, protections for people's land rights were attenuated. The public could legally demand consultation on the project's location. However, what this meant was left vague, and the team tasked with investigating objections (again) comprised of government officials. The issuance of the site permit had to be publicly announced, but this was merely in line with the 2008 Information Act. The site permit was valid for a lengthy period – two years, with a possible two-year extension.[139]

As for determining compensation, continuities with Yudhoyono's 2005 edict were striking. There would be an assessor – without explicit mention of his independence – who would inform the land committee of its initial price that would then form the basis of deliberations (*musyarawah*). This price would be frozen at the time of the issuance of the site permit, which was supposed to prevent landowners from tying up negotiations long enough that land prices increase. Also similar were forms of compensation and the allowance for compensation that was only appropriate (*layak*) but not necessarily just (*adil*).

An omission regarding the process of compensation was also notable. In the 2005 edict, deliberations were capped at 90 days, though extendable to 120 in the 2006 version. In this draft bill, there were no references to such caps. This did not mean, however, that the government was willing to countenance indefinite negotiations. Without a cap, the government legally could bring "deliberations" to an end summarily.

Finally, the courts would play a role that favored government interests. The draft law did allow for appeals over the level of compensation. However, objections had to be submitted within fourteen days (and the district court had to reach a verdict within thirty days). The district court's decision was considered final, with no further recourse for appeal. In sum, the government sought a swift process. Because assessors did not have to factor into their calculations the unrealistically low NJOP price – with

[139] On the importance of the site permit, see Moeliono (2011, Chapter 7).

state compensation now more closely approximate to market prices – officials might have believed that the need to appeal had been reduced.

Increasing compensation rates was a big step forward; even Rochman, the head of ATI, supported the measure.[140] But did the government go far enough? Nowhere was the equivalence principle – that compulsory acquisition should leave the landowner in a position no worse than before – invoked. By law, a replacement house and/or land could be of lesser value. Neither was mention made of restoration of livelihood or compensation for future losses. These absences are striking because the ADB-funded government-linked think tank was paid to review international best practice of eminent domain, where these concepts and principles feature prominently in the literature. Apparently, the law's academic researchers studied selectively, focusing more on the means to strengthen the powers of the state than on ways to improve the lot of the affected. If landowners continue to reject the government's now presumably more reasonable offer, then the court's second role – as consigners – would come into effect. Once the government deposits money at the court, one's rights are voided and the state can take the land. This was a clearer articulation of the process than Yudhoyono's 2005 decree had stipulated.

The final bill

As the *pansus* did not overturn the bill in its entirety, continuities are identifiable. These included the guarantee of land in the public interest (art. 4), the long list of categories eligible (eighteen) for eminent domain (art. 10), the consignment process (arts. 42 and 43), and tax incentive eligibility (art. 44). Members of the *pansus* were largely responsible for added and altered provisions that were intended to better protect citizens against government power. Pro-market investor reports typically refer to such changes as "watering down" a bill.[141] The best reflection of the law as a product of compromise is found in Clause 9, which recognizes (*memperhatikan*) the balance of interests between development and society.

For committee members, the omission of a definition of the public interest was egregious. A difficult debate between the *pansus* and government drafters of the law ensued. In the end, the definition read, "Public interest is the interests of the nation, the state, and the society that must be realized by government and be utilized to the largest extent possible for

[140] Interview, Jakarta, July 12, 2012.
[141] For example, see Business Monitor International 2011 (Q4), pp. 30–31.

the prosperity of the people."[142] This version is appreciably longer than its predecessors, but by including the phrase "to the largest extent possible," it more closely resembled the 2005 decree's definition – in the interests of the majority of society – than Soeharto's 1993 more inclusive version – in the interests of all levels of society.

Regarding the crucial list of eligible categories, there was one meaningful change. The *pansus* succeeded in removing the power of presidential prerogative. Public consultation stipulations, meanwhile, were bolstered appreciably. An academic was added to the previously all-government team assigned to investigate site objections to help balance the committee (art. 21[3]). Furthermore, the duration of a location permit's validity was shortened from four to three years (two years, with a one-year extension) (art. 24).

The compensation process was amended to better support citizens' interests. Evaluators were now obligated to consider immaterial values, something missing in the government's draft and past practice (art. 33[f]). Immaterial value is a vast and potentially slippery notion, but the Act's explanatory addendum defines it as "non-physical damage that can be equated (*disetarakan*) with a monetary value, for example, damages due to the loss of business or work, moving costs, costs associated with changing professions, and value for residual property." This explanation moves land acquisition in the public interest in Indonesia closer, on paper at least, to international standards (in contrast to the government's draft bill).

The *pansus* extended the appeals process. Now a ruling from the Supreme Court, not a district court, was considered final (art. 38). Even with this lengthened process, the government believed that a framework ensuring compulsory land purchases within a maximum of 583 days satisfied both investors' interests and safeguarded citizens' rights.[143] This assumed that at each stage of appeal the courts would deliver verdicts within the deadline. It was a leap of faith.

Ensuring that land rights are null only upon the actual receipt of compensation was now explicit (unlike the draft bill) (art. 5).[144] This stipulation was supposed to prevent a repeat of what transpired on the Ciawai–Sukabumi link in West Java owned by Bakrie Toll Road. In 2009,

142 Art. 1(6). The original reads: "Kepentingan Umum adalah kepentingan bangsa, Negara, dan masyarakat yang harus diwujudkan oleh pemerintah dan digunakan sebesar-besarnya untuk kemakmuran rakyat." The head of BPN's drafting team claims to have written it (see note 137 above).

143 This figure is confirmed in Presidential Regulation no. 71 of 2012 ("Pembebasan Lahan Tak Mungkin Lebih dari 583 Hari," *Female.kompas.com*, August 10, 2012; last accessed March 20, 2014).

144 Or with the court's decision in the consignment process.

after agreements were reached, payments were delayed, in some cases for months, causing people who had taken out loans to buy (or rent) new residence to incur significant debt.[145] All told, legislators hoped that compensation for land acquisition in the public interest would not only be appropriate, but also just (*adil*), as the law clearly stipulates (art. 9[2]).

Three final changes made to the draft bill demand attention. First was the removal of the category of the private sector land acquisition in the public interest.[146] A member of the *pansus* suggested that the inclusion had obfuscated the meaning of public interest. He noted that private sector needs could be adequately regulated under relevant spatial planning laws and regulations.[147] A BPN official maintained that the *pansus* deleted the category at the behest of business lobbies worried about the restrictions on private sector activities.[148] Either way, the private sector removal led to an alteration in the bill's title, from Land Acquisition for Development to the narrower Land Acquisition for Development in the Public Interest.[149]

A second change concerned institutional supervision – the tabbing of BPN by the government. The body was not named explicitly in the draft bill, however, as the *pansus* was not convinced that BPN was capable of handling the daunting workload. BPN was primarily designed for land registration, and the demand for land by many ministries is great.[150] Accordingly, the body that would conduct land purchases in the public interest was changed from "a land matter-related institution" (*Lembaga Pertanahan*) to "government" (*Pemerintah*) (art. 6). This allows for the (future) possibility of establishing a new government body specifically for land acquisition issues.[151] In the meantime, the then BPN head, Joyo Winoto, said his agency was up to the task, although he did admit that the transition from P2Ts to BPN might be messy and lengthy.[152]

Lastly, the first controversy to arise over the new statute concerned a change to one of its final provisions. According to the draft bill, for land purchases already underway, prior regulations *could* be applied. Of course,

145 Kusmalawati 2011, pp. 68–73.
146 Private sectors interests in PPPs, or more specifically in cooperation (*bekerja sama*) with government institutions, of course, remained (art. 12[1]).
147 Interview, Nusyirwan Soejono, committee member, Jakarta, July 13, 2012.
148 Confidential interview, Jakarta, July 10, 2012.
149 *Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum*.
150 See note 147 above.
151 This has not happened, but the establishment of a special land acquisition unit within BPN was planned for 2014 ("Pembebasan Lahan Tol Diharapkan Lebih Cepat," *Investor Daily*, October 16, 2013 (indii.co.id; last accessed March 24, 2014).
152 "Pengadaan Tanah Bisa Lanjut tanpa RTRW baru," *Media Indonesia*, December 19, 2011.

this implied that they *did not have to be*, affording the government flexibility in each case. The *pansus* argued this was unfair, that it would create uncertainty and lead to arbitrary government decision-making.[153] So, the word "can" (*dapat*) was eliminated from the clause in the law (number 58 [a]). Now prior laws and regulations had to be applied.

ATI's Rochman appreciated the law's many pro-PPP and pro-investor provisions and those that bolstered the government's eminent domain powers. He even welcomed such measures as the inclusion of immaterial values to improve the compensation process. Rochman was willing to trade a rise in land costs for certainty of acquisition. This last clause about the applicability of old or new rules troubled him, however. Because the many toll-road projects underway have to use the older ineffective regulations, he believed further delays were likely.[154] Winoto disagreed. He thought the clause allowed for retroactive use and promised that the forthcoming implementing regulation would clarify under what conditions retroactive use may be applicable.[155] As drafts of the implementing regulation circulated among stakeholders for several months, land purchases in the field slowed to a halt – the opposite of what the law sought to accomplish.[156]

In August 2012, Yudhoyono finally signed the anticipated presidential regulation (no. 71), confirming BPN's role as executor of involuntary land acquisition in the public interest (art. 1[16]). This regulation also stipulated that the president's 2005 and 2006 eminent domain decrees would apply to outstanding procurement cases (art. 123),[157] leaving Rochman feeling exasperated.[158] Meanwhile, for all of its hype (and lengthy sixty-eight pages), the regulation still failed to clarify important matters, including the percentage at which land acquisition on a specific turnpike for consignment purposes could be considered complete. The regulation also made little mention of provisions on sanctions for noncompliance. How these omissions (and others) would impact land purchases on the ground was anyone's guess, although it was safe to assume they would lead to more delays. (As of July 2014, no second regulation on these matters had yet been announced.)

153 See note 137 above.
154 Interview, Jakarta, July 12, 2012. See also "UU Tanah Tak Bisa Percepat 24 proyek Tol Mangkrak," *Investor Daily*, December 21, 2011.
155 "UU Pengadaan Tanah Bisa Berlaku Surut," *Investor Daily*, February 15, 2012. Soon thereafter Winoto was forced to resign over allegations he secured land illegally for a government sports complex near Bogor (Winarto 2012).
156 "Pembebasan Lahan Tol Macet," *Kompas*, April 13, 2012.
157 That is, until December 31, 2014 when all cases, regardless of starting date, would use the new law (art. 123[3]).
158 Nugroho 2013.

The new law would have been moot if a coalition of civil society organizations had their way.[159] A few months after the law's promulgation, it submitted an appeal for judicial review at the Constitutional Court. The coalition argued that the law violated key parts of the BAL and the Constitution's economic democracy clause. More specifically, its appeal highlighted that Article 9 failed to clarify sufficiently what was meant by "the interests of development" and the "interests of society," and thus it was impossible to know how the two should be balanced.[160] In addition, toll roads were singled out as not in the public interest "because not each person can use them without adequate means and access." Their legal brief continued: "In the operation of toll roads, the role of the State is replaced by business interests. The State in fact allows public roads to deteriorate and lapse into a chaotic state (*semrawut*) so that road users with adequate means opt for the toll road."[161] In a February 2013 decision, the Court rejected the plaintiffs' claims in their entirety, so dealing a blow to civil society and its efforts at comprehensive land reform. The Court reasoned that any further clarification of key terms, if needed, could be satisfied by lower-level government regulations.[162] To which a dejected plaintiff responded, if the government never puts in place those regulations, then what?[163]

Pushback: threats to automaticity

Some toll-road investors welcomed the new eminent domain bill, believing it would provide the spark to accelerate land acquisition.[164] Other investors thought the law's provisions were worthless without proper implementation.[165] Uniting both camps, however, was concern over happenings in parliament; a campaign to revise the 2004 Road Act had been gaining momentum. In particular, lawmakers had been trying to

159 The coalition, named People's Coalition against the Seizing of the People's Land (Koalisi Rakyat Anti Perampasan Tanah Rakyat), comprised the following organizations: Serikat Petani Indonesia (SPI), Indonesian Human Rights Committee For Social Justice (IHCS),Yayasan Bina Desa Sadajiwa (Bina Desa), Konsorsium Pembaruan Agraria (KPA), Koalisi Rakyat untuk Keadilan Perikanan (KIARA), Wahana Lingkungan Hidup Indonesia (WALHI), Aliansi Petani Indonesia (API), Perkumpulan Sawit Watch, Koalisi Rakyat untuk Hak Atas Air (KruHA), Jaringan Advokasi Tambang (JATAM), and Solidaritas Perempuan. The coalition's press release is available at sentesa.or.id (last accessed May 26, 2014).

160 Constitutional Court, Decision Number 50/PUU-X/2012, p. 28.

161 Ibid., p. 34.

162 Ibid., p. 144.

163 "MK: UU Pengadaan Tanah Konstitusional," *hukumonline.com*, February 13, 2013 (last accessed March 24, 2014).

164 Interview, Oslan Muhammad Isa, PLUS representative, November 25, 2011.

165 Interview, Eugene Galbraith, BCA president director, Jakarta, July 11, 2012.

amend the automatic toll-rate adjustment every two years, the investors' holy grail of post-Soeharto reform in the sector.[166]

There have been political determinants explaining parliament's interest in revisiting the policy. Three-quarters of all members of the 2009–14 parliament were first-timers, meaning they had not been involved with the law's passage.[167] Moreover, their parliament was operating under the lame-duck presidency of Yudhoyono's second term. As jockeying for the 2014 elections started, driving impetus was to be seen as populist, giving the president less leverage over coalition partners. With Indonesia's open list electoral system, local constituents could more effectively demand (vertical) accountability from parliamentarians. In turn, candidates have scrambled for name recognition.[168] What better way to accomplish this than to repeal or amend an unpopular measure like tollway rate increases?

As mentioned in Chapter 3, increases had been implemented with regularity. Some lawmakers were alarmed, but the slow construction of the Trans-Java Expressway silenced these concerns.[169] This changed with the introduction of tariff hikes (for fourteen routes) in 2011. Suddenly a torrent of condemnations from lawmakers poured forth. Publicly, they decried the absence of ties between toll increases and service standards; they demanded only concessionaires with good track records should be rewarded. Rochman (of ATI) reminded lawmakers that the automatic raise was codified in law and in legally binding contracts.[170] The widespread reporting of Jasa Marga's record profits, however, lessened the sting of Rochman's rebuke. In response, Jasa Marga insisted (without much proof) that most of its profits were earned independently of rate hikes.[171] Undaunted, some lawmakers suggested that the frequency of hikes should be increased to every five years.

BPJT and Public Works officials recognized that this time opposition had a qualitatively different feel. Authorities conducted publicized fact-finding missions and threatened not to raise rates on a number of roads until certain service standards were met.[172] In the end, however, the expressways due for tariff hike received them (with the majority of

[166] Revisions to the law are on parliament's docket, but difficult negotiations with the government are ongoing (Sukma *et al.* 2013).

[167] Blöndal *et al.* 2009, p. 27. [168] Datta *et al.* 2011, pp. 32–34.

[169] Muhanda 2009a. [170] Dinisari 2011a.

[171] "Operator Klaim Naiknya Tarif Tol Tak Dongkrak Pendapatan," *Kontan*, September 6, 2011 (en.citramarga.com; last accessed April 4, 2014). On Jasa Mara's profits, see Chapter 5.

[172] "BPJT Inspeksi Tiga Ruas Tol," *Koran Tempo*, September 21, 2011 (id.citramarga.com; last accessed March 24, 2014).

increases from 11 to 13 percent).[173] Delaying scheduled raises, however, has begun to occur with increasing frequency. In early 2012, Kirmanto postponed for two months a rate hike due for a road operated by Jasa Marga. Another managed by Bakrie Toll Road fared worse: It was postponed for nearly two years.[174] Perhaps this was payback for these two companies for having refused to sign all of their revised contracts.

Privately, lawmakers (and some technical support staff for the legislative commission on transportation) claimed problems extended beyond the tying of price hikes to performance standards. Institutional reform, they believed, was also needed, notably fixing BPJT. Dissatisfied with its performance, they thought the agency was weak and hiding behind the public works minister.[175] As a high-ranking Jasa Marga official put it, "we wanted a tiger (*harimau*), instead we have a cat (*kucing*)."[176] There have been no indications, however, that Public Works wants a stronger and more independent BPJT. Nevertheless, concerned lawmakers have demanded greater clarification of responsibilities and authorities among BPJT, Public Works, and the operators.[177]

Other factors fed this controversy. One was a frustration over the glacial pace of construction. One lawmaker said, "We gave them [operators] a very advantageous law. They were even rewarded with a quickly produced implementing regulation. This was what they have done with these advantages?"[178] Another factor has been the very public nature of the problem. Some parliamentarians repeated the refrain that these were not their personally held views, but those of the people (*masyarakat*). To what people were they referring? Perhaps it was their constituents, but Indonesia's toll roads are confined to a handful of locales. They are only widespread in Jakarta (less so in Surabaya). Therefore, by "the people," lawmakers by-and-large meant those in Jakarta who use tollways regularly, including themselves. Parliamentarians live in or spend significant time in Jakarta. They *all* are users of its tollways. So, while the use, production, and dissemination of policy knowledge in parliament is substandard,[179]

[173] "Tarif Tol Dinaikkan 5% – 25%," *Bisnis Indonesia*, October 5, 2011 (id.citramarga.com; last accessed March 24, 2014).

[174] Both were under the pretext of not meeting minimal service standards (Andriani 2012b; Sari 2013a). We return to Bakrie's case in Chapter 5.

[175] In terms of Indonesia's bureaucracy, BPJT's head, currently Echelon II, would have to be upgraded to Echelon I, or equivalent with director-generals of ministries. Before BPMigas was disbanded, its head was Echelon I.

[176] Interview, Dedi Krisnariawan Sunoto, head of Jasa Marga's Toll Road Development Division, Jakarta, June 25, 2012.

[177] Interview, Taufan Tiro, member of Committee V and the Special Committee on the Eminent Domain Bill, Jakarta, November 23, 2011.

[178] Ibid. [179] Sherlock 2010a.

knowledge of conditions on expressways is public and personal. As captured consumers, lawmakers and government ministers experience frustration at long lines at toll booths and at poor road conditions, just like ordinary motorists in Jakarta. In a high-profile incident, in March 2012, Dahlan Iskan, the then SOE minister, was exasperated by the long wait at a Jasa Marga-operated toll plaza in central Jakarta. He got out of his car and took over the booth, allowing more than one hundred cars to pass for free.[180] A headline on an online English-language political newsletter on Indonesia, feeling Iskan's pain, captured his sentiments: "Jasa Marga: Profit Soars, Service Sucks."[181] Shortly thereafter, Jasa Marga admitted its slow response to repair potholes on some of its major roads in the greater Jakarta region. For the year 2014, officials had promised to raise their company's service standards, although in April BPJT cited seven of its roads for being substandard.[182]

These factors have helped transform a local problem, that of Jakarta, into a "national" issue. It also has contributed to the easy targeting of toll-road operators and of the rates they charge. This begs an important question: Who, in fact, are "they"? Operators and (as new toll roads come on-stream) soon-to-be operators are a diverse group and we should warn against painting them with the same brush. However, who they are matters immensely in determining the future direction of progress and reform in the sector, and it is the subject of the next chapter.

[180] "Begini Aksi 'Koboi' Dahlan Iskan di Jalan Tol," *Tempo.com*, March 20, 2012 (last accessed March 24, 2014). Some believe this incident may have been staged to increase Dahlan's profile as a presidential candidate. I thank Jeremy Gross for alerting me to this.

[181] "Jasa Marga: Profit Soars, Service Sucks," *Indonesia Today*, March 26, 2013 (yosefardi.com; last accessed May 25, 2013).

[182] Sujatmiko 2013; "Jasa Marga Janji Tingkatkan Pelayanan," *Pos Kota*, January 2, 2014 (id.citramarga.com; last accessed March 24, 2014); Mustafa 2014.

5 Ownership

Chapters 3 and 4 might suggest that sluggish land acquisition has been the key factor in the underperformance of the toll-road sector in post-Soeharto Indonesia, but this is only half of the story. Concessionaires' reluctance to invest in their own projects is the other half. Indeed, their prevarications became increasingly exposed as both of Yudhoyono's administrations made land acquisition monies available. The range of investor recalcitrance has been wide, however. This chapter brings this intra-sectoral variation to light. A focus on firm-level incentive structures, without losing sight of broad power relations, reveals positive and negative rent-seeking examples. Even *within* negative cases, variation has been considerable.

Indonesia's weakened central state has been unable to command private sector capital to build its turnpikes, although toll roads are considered to be in the public interest. (Yudhoyono's controversial eminent domain decrees made sure of this.) As a result, rent-seeking has continued to pervade the sector. This chapter presents the politics behind two prominent cases of license-flipping. In one case, because of the route's proximity to the capital region, investors held perhaps the most lucrative Trans-Java Expressway license. Partners, including a super-rich businessman, Edwin Soeryadjaya, and Indonesia's then vice president, Jusuf Kalla, sold their controlling stake to a Malaysian entity in 2006. Although the sale contravened Indonesian law, Kalla's office ensured the specific regulation was changed retroactively. Nevertheless, because of the Malaysian entity's commitment to the project, in early 2013 construction commenced (from west to east) and compulsory land purchases were finally completed a year or so later (on the route's most eastern section). The same cannot be said of the second case. In 2007, former Coordinating Minister of Economic Affairs Aburizal Bakrie, a renowned rentier and once Indonesia's richest man, in 2007 acquired the franchises for three turnpikes from financially distressed concessionaires. However, then Bakrie, without a committed foreign (or even domestic) partner, sat on the licenses for almost six years. Land purchases stalled. For government authorities and development practitioners who have championed the Trans-Java Expressway as a project worth more than the sum of its parts, and for landowners along these routes who were suffering with uncertainty for years, it has been exasperating. So too was BPJT's inability to do anything about Bakrie's stall tactics. Mercifully, in late 2012, under mounting debt pressures, he sold certain licenses (but not all) to another Indonesian conglomerate. These two cases show that firm-level incentives matter in explaining variation in rent-seeking outcomes and that particularistic bargaining and the inefficiency they produce have trumped ATI's efforts (described in the previous chapter) to advance sector-wide gains.

Kalla's and Bakrie's stratagems had much to do with cutting Jasa Marga, as a representative of state capital, out of their rent-seeking deals. Continuing with the theme of ownership, this chapter then turns to Jasa Marga, the sector's leader. It argues that there was nothing predetermined or predestined about the company's eventual success or even its survival. Mired in debt, it was a prime target of pro-market reformers seeking its dismantlement and the selling of its prized assets to attract more, especially foreign, private sector participation. This chapter details how government and parliamentary efforts to hand Jasa Marga the valuable license to finish the postponed Jakarta Outer Ring Road (JORR) project rescued the company. The post-Soeharto story of Jasa Marga is largely an example of positive rent-seeking. As the company earns nearly all of its revenues from tollways, it builds new ones rather efficiently (although the same cannot be said of its management of these roads). This chapter ends with a brief discussion of why financing alternatives for the Trans-Java Expressway, especially the bundling of licenses into one large special purpose vehicle, have failed to take root. It shows how history, power, and vested interests have trumped "best practice" solutions.

Cikampek–Palimanan

The 116-km Cikampek–Palimanan section in West Java is the Trans-Java Expressway's longest, viable turnpike. As mentioned in Chapter 2, this license initially comprised three discrete concessions (from west to east): (1) a 52-km Sadang–Subang route owned by the obscure garment company Concord Benefit Enterprise, Ltd.; (2) a 37-km Subang–Dawuan section controlled by a former executive in Tutut's CMNP, Djoko Ramiadji; and (3) a 24-km Dawuan–Palimanan route owned by erstwhile Salim executive Johannes Kotjo (see Map 2.2). The government had awarded these licenses in April 1996. With the dramatic political and economic changes wrought by the financial crisis, these three primary investors lost their franchises. We look at each of the three concessions in turn.

The fate of Ramiadj (and his Bhaskara Lokabuana consortium) fits the profile of members of the New Order oligarchy. Following Soeharto's May 1998 resignation, civil society groups pressured authorities to pursue cases of KKN linked to Soeharto, his children, and cronies. Officials opened scores of investigations. Despite a change at the top, the New Order state apparatus had in fact remained more or less intact, and investigating authorities soon gave up on most of their cases. Most infamously, attempts to hold Soeharto to account for his financial misdeeds in amassing munificent wealth through his foundations failed miserably.

Ramiadji's legal misfortunes were rooted in his control (with Tutut) of the S and E1 sections of JORR, which ran from Pondok Pinang to Kampung Rambutan (see Map 2.1). In 1996, Ramiadji and Tutut had asked directors of the road's contractor PT Hutama Karya to issue nearly US$200 million worth of debt instruments for the ostensible purpose of covering operational costs. Two Hutama Karya executives hid the purchase from their board of commissioners, and the money was not used for its stated purpose. From early 1999, when authorities first opened the Ramiadji case, to when they shuttered it for good in 2005, investigations stopped and started several times.[1] Shifts in presidential power, and the ability (or inability) of Ramiadji's mother, the cosmetic tycoon, Mooryati Soedibyo, to influence the investigations, resulted in these openings and closings.[2]

With Ramiadji's legal situation uncertain, at some indeterminate point his Subang–Dawuan license fell into the hands of Henry Pribadi, also an oligarchic insider. Head of the large Nawa Pandu (Napan) Group of companies, Pribadi was a close business associate of Liem Sioe Liong and founder of one of the country's first private television stations (Surya Citra Televisi, or SCTV) in 1990.[3] In the early 1990s, Pribadi was also listed as financial director of Tutut's CMNP, linking him to Ramiadji.[4] By 1999, the Napan Group was listed among the country's top debtors.[5] Favorable restructuring deals with the Indonesian Banking Restructuring

[1] One Hutama Karya director served two years in jail for his role in the scam, the other one year.

[2] For details of Ramiadji's case, see "Mengharap Tak Buka-Tutup," *Tempo*, February 6, 2005, p. 58; and Pradityo and Rahadiana (2007). These stoppages in investigations, which were widely believed to be "for sale," are known in Indonesian as SP3 (*surat penghentian penyidikan perkara*).

[3] Williams 1997.

[4] Public Works 1992, n.p. By late 1994, he no longer was listed as a company director (CMNP 1994, p. 32). It is not clear what happened to the minority shares possibly held by Probosetudjo and Winata.

[5] "Indonesia's Napan Group Bad Debts Reach US$405.4MLN," *Asia Pulse* (*Antara*), December 23, 1999.

Agency (IBRA) allowed Pribadi to weather the crisis, however. His gaining of the Subang–Dawuan franchise was testimony to this.[6]

Regarding the Sadang–Subang license, the second concession, Concord Benefit Enterprises won its rights on behalf of shadow investors (see Chapter 2). This minor garment company had ridden the highs of the country's bull market, pre-crisis export promotion of textiles, but it succumbed to the financial crisis and in 2000 declared bankruptcy.[7] Its toll-road concession passed to Bukaka Teknik Utama, the holding company of Jusuf Kalla.[8] At the time, Kalla was serving as the coordinating minister for the people's welfare in President Megawati's multiparty cabinet.[9] Bukaka held two other tollway licenses. The 1995–96 tenders had given it rights to one turnpike in West Java (Ciawi–Sukabumi) and another in East Java (Pasuruan–Probolinggo).

The third franchise, Dawuan–Palimanan, was awarded to Van der Horst Ltd., controlled by Johannes Kotjo. Like Pribadi, Kotjo was a former executive in Liem Sioe Liong's Salim Group. Heavily reliant on government infrastructure projects, Kotjo's Singapore-based Van der Horst was placed under judicial management in January 1999 when infrastructure spending in Indonesia dried up.[10]

As prices tumbled, Kotjo divested personal shares in his various companies. He also sought to repel attempts of his business rival, Edwin Soeryadjaya, from acquiring some of his assets.[11] These included Van der Horst; L&M Group Investment Ltd., a sizable engineering company; and Interra Resources, an oil and gas production firm with exploitation rights in Burma and Thailand.[12] Soeryadjaya, the second son of William Soeryadjaya, the founder of Indonesia's massive Astra Group, prevailed. By subsequently

[6] Pribadi did lose control of two chemical companies, although he did not resign from SCTV's board until 2005 when he sold his 25 percent stake ("'SCTV' Shakes up Board of Commissioners," *The Jakarta Post*, July 27, 2005). On accusations of the favoritism (and leniency) of the IBRA debt restructuring deals, see Dewanto and Tanjung (2001) and Brown (2006, pp. 40–41). Pribadi currently runs his business empire via PT Citrabumi Sacna.

[7] The company reorganized as PT Kushendy Asribusana, an apparel importer.

[8] Bukaka was the first alternate bidder as a result of the 1995–96 tenders (Danto 2004).

[9] Megawati has headed the Indonesian Democratic Party of Struggle (PDI-P).

[10] "L&M Executives Join New VDHI management," *Bisnis Indonesia*, October 14, 2000. By May 1998, Soeharto's son, Bambang, had resigned from the board.

[11] Animosity in part stemmed from a 1999 Singaporean court case that resulted in Kotjo having to pay Edwin about US$7.5 million in damages over a botched share financing deal (Atmanto and Fitriyah 2001). Through these purchases, Edwin reestablished his family's name in Singapore's corporate world, having withdrawn due to the 1992 collapse of a major bank under the stewardship of Edwin's older brother Edward. As a result, the family had lost majority control of PT Astra International, the main entity of the Astra Group (Schwarz 1994, pp. 150–51).

[12] On these deals, see Lim 2003.

merging Van der Horst with Interra, Interra now held the Dawuan–Palimanan license. Interra was then placed under one of Soeryadjaya's Jakarta-based private equity firms, Saratoga Investama Sedaya.[13] First concession in hand, Soeryadjaya caught the toll-road bug. An Astra International subsidiary (Astratel Nusantara) has bought into four more:

1) In July 2005, it purchased 30 percent of the Tangerang-Merak turnpike, once controlled by Tommy Soeharto, from a consortium of foreign investors for Rp. 76.6 billion.[14]
2) In September 2008, it gained, as part of a consortium, a license for a section of the Jakarta Outer Ring Road (JORR) II.[15]
3) In March 2012, it acquired 95 percent of the 41-km Kertosono–Mojokerto turnpike in East Java once controlled by a Soeharto foundation.[16]
4) In January 2014, it agreed to purchase a 25 percent stake in another JORR II turnpike.[17]

Negative rent outcome

With large-scale infrastructure projects greenlighted in March 2002 by Megawati's presidential decree, government attention turned to the stalled Trans-Java project. As we saw in Chapter 3, Megawati's administration had tried revoking certain licenses to allow the roads to be built by Jasa Marga. Her government pursued a similar approach with respect to the three concessions discussed above. In October 2002, under the legal pretext that the government had not yet authorized their operating permits, Soenarno, the minister of regional infrastructure and settlements, proposed retendering the franchises.[18] Jasa Marga craved these

[13] Today, Edwin's fortune is largely derived from his control of PT Adaro, Indonesia's second largest coal producer.
[14] In December 2008, it increased its share to 62.62 percent. The rights of the concessionaire, still named Marga Mandala Sakti, were then extended to forty years, in exchange for Rp. 3 trillion worth of new investment in the infamously dilapidated expressway. Reconstruction finished in 2012.
[15] At first a majority owner in 2008, it reduced its ownership, in 2011, to 30 percent in the consortium PT Marga Trans Nusantara. The license is for the 11-km Kunciran–Serpong turnpike west of Jakarta once valued at Rp. 5 trillion.
[16] The foundation was called Our Hope and the concessionaire was Marga Hanurata Instrinsic (MHI) (Chapter 2). Before the Rp. 750 billion sale, an investor (Natpac Graha Arthamas) had entered into an ownership agreement with MHI.
[17] The majority investor is PT Bumi Serpong Damai, a subsidiary of the massive Sinar Mas Group (headed by Eka Tjipta Widjaja). The section in question is Serpong-Balaraja, 31 km (Sukma 2014).
[18] "Investasi 296 Kilometer Jalan Tol Ditender Ulang," *Kompas*, April 23, 2003. Recall from Chapter 3 that Public Works was renamed twice under Abdurrahman Wahid.

concessions. Their proximity to Jakarta made them potentially the most profitable of the Trans-Java's greenfield links. Instead of simply taking them from the current concessionaires, the government allowed for a semblance of due process. It granted the concessionaires time to demonstrate financial competence, including the submission of a sizable deposit. As months passed and the concessionaires did not respond, the SOE urged Soenarno to nullify the concessions. In May 2003, authorities announced that they were scheduling a retender for August.[19]

For market reformers, the auction was a prime opportunity to inject fresh capital and renewed vigor into the megaproject, as well as to bring market-based competition to bear on a project, and on a sector notoriously bare of such "efficiency-inducing" pressures. Plans hit a snag, however. Preparations for the country's first-ever direct presidential elections, whose initial round was in July 2004, consumed parliamentarians and slowed their legislative output, never impressive under normal circumstances. Key bills on the army, on corruption, and on roads were caught in the slowdown. Preferring a new road law to act as a legal foundation for the tender, ministry officials postponed the auction to February 2005. This delay would push it into the next president's administration, whether headed by Megawati or her successor.

Meanwhile, the government was leading Jasa Marga to believe that it would be handed the three franchises (making a sham of the tender). In September 2004, Minister Soenarno was quoted as saying, "In principle, we've already agreed, it's just that President Megawati has not had the time to legalize the work plan."[20]

The auction never did happen, and there was a surprising outcome. In October 2004, at the end of Megawati's term and during the same month in which the road law was passed, a different deal was struck: The three concessions were merged into one license, with each principal investor – Kalla (Bukaka Teknik Utama), Pribadi (Bhaskara Lokabuna), and Soeryadjaya (Saratagoa Utama Sedaya) – retaining his toll-road stakes within the newly named PT Lintas Marga Sedaya (LMS). LMS included Jasa Marga's minority share.

What had convinced Jasa Marga to drop its pursuit of these three prized franchises when they seemed almost in its grasp? We have no evidence to substantiate what kind or degree of pressure was placed on the company. Nonetheless, it does appear that, in exchange for withdrawing its interest,

[19] Danto 2004; "Tender ulang jalan tol Cikampek-Cirebon Agustus," *Bisnis Indonesia*, May 26, 2004.

[20] "Menkimpraswil Setujui Rencana Pembangunan Tol Cikampek – Cirebon," *investorindonesia.com*, September 22, 2004 (wisma46.com; last accessed May 4, 2013).

the SOE was given a majority share in four other, though less, lucrative licenses. News of Jasa Marga's new franchises was leaked in December 2004.[21] Three of them were Trans-Java licenses – the recently revoked Semarang–Solo and Surabaya–Mojokerto concessions, and Gempol–Pasuruan (East Java).[22] The deal nearly unraveled when the government lost its Supreme Court appeal in March 2005 over the Surabaya–Mojokerto franchise (see Chapter 3). In part to help substitute for the loss of a fourth concession, the duration of Jasa Marga's other three new licenses were extended to forty-five years.[23] In the world of PPPs and toll roads, this is exceptionally long – and valuable.

Well-placed sources decried the deal in private, stressing the actors' obvious disregard for the law.[24] This is especially so for the consolidation of the three Cikampek–Palimanan concessions, a maneuver beyond the bounds of the then new road law. Who pushed for the deal?

These same sources maintain that the role played by the SOE's executive director at the time, Syarifuddin Alambai, was instrumental. Yet behind him stood Megawati's husband, (the late) Taufik Kiemas, a high-powered dealmaker. Hailing from South Sumatra, Alambai was one of many officials from Kiemas's home province whom the "First Gentlemen" had placed in strategic government agencies.[25]

Serving in Megawati's cabinet, Kalla also played a role. His Bukaka stood to lose millions in potential revenue if its concession was lost. Kalla's election as vice president on the Yudhoyono ticket only strengthened his hand. In February 2005, just a few weeks before the road law's implementing regulation was passed (which would have made consolidation even less likely), Kalla had the new public works minister, Djoko Kirmanto, issue a ministerial decree finalizing the merger.[26] Soeryadjaya was of course also appreciative of these developments; he and his business

[21] "Jasa Marga Dapat Proyek Jalan Tol Rp. 6,16 triliun," *Bisnis Indonesia*, December 27, 2004 (bumn.go.id; last accessed March 21, 2014). That feasibility studies of each of these routes had been completed made their realization more likely.

[22] The fourth was Bogor's orbital road, a non-Trans-Java toll road south of Jakarta.

[23] The original duration of two of these licenses was for 18.5 years, with a third for 22 years. Jasa Marga would hold a 60 percent stake in the Semarang–Solo and Gempol–Pasuruan links, and 55 percent of Bogor's ring road. Its minority partners included the regional governments through which these routes would pass.

[24] Confidential interviews, former senior advisor to the Public Works Ministry, Jakarta, July 10, 2007; former BPJT board member, Jakarta, April 29, 2009.

[25] Elegant 2002; Guerrin 2002. In Alambai's case, he replaced Jasa Marga's executive director, Wiyogo Adiwasito, in mid-2001, before Adiwasito's term was up (Hengki 2003, p. 164).

[26] By then, the ministry's name had been changed once again to its traditional moniker. At this time, BPJT was not yet operational.

partners became major contributors to Yudhoyono's next presidential campaign (in 2009).[27]

LMS's private sector investors, collectively named PT Bhaskara Utama Sedaya (BUS), held an 85 percent stake. Jasa Marga's share dropped from roughly 33 percent to 15 percent. It took more than a year and half for LMS to sign a toll-road contract with the toll-road agency BPJT largely because the newly established body (first operational in mid-2005) was understaffed and overwhelmed by a backlog of cases.[28]

The July 2006 contract sought to signal LMS's legal commitment to the project. BPJT granted LMS a year to secure financing. The consortium balked at committing its financial resources, however. It failed to deposit its large performance bond of 5 percent of the total value of the project (this was due two weeks following the contract's signing).[29] Then LMS missed a deadline to surrender its (much smaller) land acquisition deposit. BPJT sent the partnership multiple warning letters about its non-compliance. For some scholars, BPJT's approach might be seen as an instance of a responsive or flexible approach to regulation. This is where attempts at persuasion are made before punishment is meted out.[30] For others, it signaled corruption. For reasons not made public, instead of revoking the contract, BPJT continued to countenance LMS's stall tactics.[31] For LMS, it saw no need to pay fees it deemed inconsistent with international standards.[32] There a firm does not commit financially to an infrastructure project until the first drawdown on its loan is made.[33]

As it turned out, the consortium's private investors were not interested in international standards. They were more attracted to the New Order tradition of license-trading or flipping. In November 2006, less than five months after finalizing its contract with BPJT, LMS agreed to sell 55 percent of its share to PLUS Expressways Berhad. PLUS's majority owner was United Engineers Bhd., a wholly-owned subsidiary of Khazanah Malaysia Berhad, the holding investment firm of the Malaysian government. PLUS had overseen the 1994 completion of Malaysia's 966-km North–South Expressway.

LMS's private investors (i.e., BUS) encountered two subsequent "speed bumps" in its rent-seeking plans. The first involved state law, the

27 O'Rourke and Milne 2010, p. 44.
28 Interview, Hisnu Pawenang, former head of BPJT, Jakarta, April 28, 2009.
29 Recall from Chapter 3 that this was later lowered to 1 percent in mid-2007.
30 Braithwaite 2006.
31 Confidential interview, former senior advisor to the Public Works Ministry, Jakarta, July 10, 2007.
32 Interview, Eugene Galbraith, president commissioner of BCA, Jakarta July 13, 2007. BCA would become one of LMS's principal lenders on the project.
33 Delmon 2011, pp. 60.

second Jasa Marga. As part of a broader campaign to create a system of good governance, both public and corporate, Yudhoyono's administration sought to end license-flipping, especially with regard to infrastructure, where keeping costs down could boost economic productivity. His Presidential Decree 67 of 2005 on Government Cooperation with Corporations in the Provision of Infrastructure was illustrative of this effort.[34] (It also showed a growing concentration of power in the presidency.) Among other things, the decree prohibited the selling of shares by an investor before a project was commercially viable (art. 23[1g]). In other words, it put the sale to PLUS in doubt.

In response, Kalla's office presented the finance minister, Sri Mulyani Indrawati, with revisions to Decree 67 to allow the LMS–PLUS deal. For months Indrawati did nothing, implicitly rejecting the amendments. Indrawati was known as a clean, bright, and hard-nosed technocrat with little patience for the collusion and cronyism characteristic of government–business relations in Indonesia. In an April 2007 meeting, Kalla and Indrawati exchanged heated words over the decree.[35]

To circumvent Indrawati's authority, Kalla requested Kirmanto to issue a ministerial decision permitting the sale. The vice president felt this was sufficient to override a presidential decree. BPJT's new head, Hisnu Pawenang, fell in line with Kalla and Kirmanto, leaving critics to question the independence of this regulatory agency. Pawenang argued that Yudhoyono's 2005 decree only applied to projects signed subsequent to a 1998 presidential decree (no. 7) on Public–Private Sector Cooperation in Infrastructure Provision. Since the original Cikampek–Palimanan concessions were awarded prior to 1998, Pawenang continued, Yudhoyono's decree did not apply.[36] Pawenang's reasoning overlooked two facts, not lost on Indrawati's office: The newly merged concession that created LMS was signed in July 2006 (subsequent to the president's 2005 decree), and the 2005 decree's penultimate clause (art. 30) revoked the 1998 edict.

With financial support from PLUS and political backing by the Public Works Ministry and the vice president, LMS proceeded to fulfill its contractual obligations. After the heated April 2007 meeting, and after submitting its now 1 percent performance bond to BPJT, LMS signed a loan agreement with a syndicate of banks, led by the state-owned

[34] This was a key regulation in the government's promotion of PPP projects (Kusmalawati 2011, p. 39; O'Rourke and Milne 2010, p. 91).
[35] Arvian 2007.
[36] "Pemerintah Akan Menprivatisasi Tol Cikampek-Palimanan," Department of Information and Communications, May 24, 2007 (depkominfo.go.id; last accessed July 2, 2012).

Mandiri Bank and the country's largest private bank, Bank of Central Asia (BCA). The turnkey arrangement amounted to Rp. 5 trillion, or roughly 70 percent of the project's then estimated value of Rp. 7 trillion. (By this time it had become standard for banks to agree to lend 70 percent of a license's investment value.) After a three-and-a-half-year grace period, the loan would mature in twelve years (about one-third of the concession's duration).[37]

Concerns grew over the conspicuousness of LMS's rent-seeking, however. The deal had precipitated tension between the Finance Ministry and the vice president and Public Works. Executives at PLUS were also becoming increasingly nervous about being drawn into Jakarta's high-stakes factional infighting. They worried that their hefty investment rested upon a legal framework featuring a controversial ministerial decision possibly in violation of a presidential decree.[38]

Still, Kalla and the other private investors were determined to maximize their rent by cutting Jasa Marga as representative of state capital out of the deal. Kalla insisted that it sell its 15 percent share in LMS to BUS before the PLUS deal could be consummated. (Despite Kalla's denial, the decision for Jasa Marga to sell was made reportedly in the vice president's office in May 2007.)[39] Including future revenue, the firm's potential loss due to the forced dumping of shares ranged from Rp. 100 billion to Rp. 272 billion.[40] This brazen strong-arming raised eyebrows among local economists and officials in the SOE Ministry, who demanded an explanation.[41]

Kalla succeeded in forcing revisions to Yudhoyono's 2005 decree. In 2008, although these changes were pending, Yudhoyono finalized the deal. In the end, PLUS paid some Rp 1.3 trillion (US$140.5 million) for a 55 percent stake in LMS without Jasa Marga. In the meantime, having come under heavy criticism for the deal, officials at LMS denied allegations that they were acting as a broker (*calo*) with no intentions of building the Cikampek–Palimanan turnpike.[42] Its chief director,

[37] Its president director, Eugene Galbraith, suggested that PLUS's track record was a significant factor in explaining his bank's involvement (and also the length of the turnpike) (Interview, Jakarta, June 11, 2008). Bank Mandiri committed Rp. 1.6 trillion (32 percent), BCA, Rp. 1.2 trillion (24 percent), and eight more banks the remainder (PT Data Consult 2010, p. 70).

[38] "Pengalihan Konsesi Proyek Jalan Tol," *Koran Tempo*, May 21, 2007 (koran.tempo.co; last accessed March 18, 2014); Interview, Oslan Mohamed Isa, PLUS representative, Jakarta, July 7, 2010; Arivan 2007.

[39] Rahadiana and Kamil 2007.

[40] Sati and Adlin 2007; Rahadiana *et al.* 2007.

[41] Haikal 2007. It is not clear if one was ever forthcoming.

[42] Rahadiana and Yuliawati 2007; '"Lintas Marga Tak Jual Proyek Tol Cikampek-Palimanan," *Bisnis Indonesia*, June 15, 2007.

Sandiaga Salahuddin Uno (popularly known as Sandy) insisted that the infusion of capital from PLUS would be used for construction. But when this construction would begin, Sandy could not answer. At the time less than 15 percent of the land needed for the road had been purchased.

This case shows the analytical usefulness of paying attention to firm-level incentives in determining whether negative or positive rent-seeking might transpire in the infrastructure sector. The project's inefficiency is reflected in the drastic (and largely artificial) rise in its costs. In 2011, officials reevaluated the turnpike's cost at Rp. 12.6 trillion, an almost 80 percent increase from the Rp. 7 trillion initial valuation. Some of these costs have already been passed on to consumers, as the new starting tariff was raised by more than 40 percent.[43] Meanwhile, seven long years after the original bundling of the three concessions, to appease the government, the turnpike's construction ceremonially commenced in December 2011.[44] (Actual construction did not begin until early 2013; see below.)

In terms of firm-level incentives, we can examine Edwin Soeryadjaya's Saratoga Utama Sedaya, the private equities firm part of his multibillion-dollar Saratoga Capital Group of companies (Saratoga Investama, Saratoga Equity Partners, *et al.*) established in 1998. It was reported that Soeryadjaya (and his family) owned two-thirds of Saratoga Capital at the time of the LMS-PLUS deal in 2007.[45] The remaining third belonged to Soeryadjaya's younger and boyish-looking business associate, Sandy Uno.[46] Saratoga Capital is a big player in the Indonesian venture capital industry that took off in the wake of the 1997–98 financial crisis.[47] The crisis created opportunities for investors to purchase distressed companies at a discount and then reorganize and resell them for a quick profit.[48] In an

43 I do not have the original initial tariff, but in mid-2007, starting tariffs for greenfield links of the Trans-Java were between Rp. 500 and 550 per km. For this reason, I used 525 as an estimate with the latest reported initial tariff of Rp. 753 per kilometer for the Cikampek–Palimanan toll to compute a 43.4 percent rise ("Tol Cikampek–Palimanan Mulai Konstruksi Bulan Ini," *Bisnis Indonesia*, February 3, 2013).

44 Dinisari 2011c.

45 Apparently this remains the case ("IPO to Watch: Saratoga?" *Indonesia Today*, January 9, 2013 (yosefardi.com; last accessed February 13, 2013).

46 With a US MBA in hand and having graced the cover of several Indonesian business magazines, Uno is seen as the new face of corporate Indonesia. But he is also a throwback in the sense of being the *pribumi* face of Chinese business interests. Sandy has sat on the board of other Soeryadjaya-led firms like Interra Resources and PT Adaro (Indonesia). In 2005–08 he chaired the politically influential Indonesian Young Entrepreneurs Association (HIMPI) and subsequently made an unsuccessful bid for the chair of the country's peak business association (Kadin). Both organizations are renowned pro-*pribumi* rent-seeking vehicles (Robison and Hadiz 2004, p. 132).

47 It is considered among Indonesia's "big four" private equity firms, along with Ancora, Northstar, and Quvat (Wijaksana and Doebele 2011, pp. 48–53).

48 Brown 2006, pp. 24, 40, 102–03.

interview given five months after LMS's sale to PLUS, Uno explained his firm's business strategy: "We buy companies, improve their internal workings (*kinerjanya*), and after they've been beautified (*setelah cantik*), we sell to other capitalists. That's where we get the increase in value. As I see it, these types of investment firms are transformations of the conglomerates of the past. Liem Sioe Liong used to invest in everything. It's just that he never sold anything."[49] While Saratoga has successes and failures to its name, its approach to the Cikampek–Palimanan license fits its business profile.[50] In fact, in this case, there was nothing to reorganize or restructure. The majority share of the concession was simply sold.

Then there was Kalla. His Bukaka Teknik Utama had trouble bouncing back after the financial crisis.[51] By August 2006, only a month after LMS had signed its contract with BPJT, authorities suspended Bukaka from the stock exchange because of debt troubles.[52] Bundling the three licenses to sell the majority share was an easy way for the company to maximize its rent while putting as little of its own equity into the project. Bukaka drew heavily on the potency of its political resource, Vice President Kalla.

Proponents of the deal might argue that the PLUS arrangement helped to provide Indonesia with sorely needed foreign investment and insist that the long delay in construction was because of lethargic land acquisition and not the sale to PLUS. In 2011, Uno stated, "Cikampek–Palimanan already has syndicated credit worth Rp. 5 trillion, but in the five years since its signing not a single rupiah has been drawndown because we don't have the land."[53] This viewpoint has some validity. There were two difficult land cases along the route. A state-owned forestry enterprise refused to give up a small track of forestland, and an Islamic boarding school (*pesantren*) outside Cirebon refused to have the expressway divide its property. But these obstacles were surmountable.[54]

Instead, the lengthy delay (and thus the considerable cost overruns) was a byproduct of the sale to PLUS. PLUS balked at committing its financial resources until two inter-related matters were resolved. It wanted the

49 "Jangan Jadi Pedagang Politik," *wartaekonomi.com*, March 22, 2007; (last accessed August 17, 2007).

50 Wijaksana and Doebele 2011, p. 53.

51 Pandiangan 1999–2000, pp. 88–91.

52 Syahrul and Yuliawati 2006. Bukaka has since made sort of a comeback ("Bukaka Siap Gandeng BUMD Sulbar Bangun PLTA," *Antara*, November 28, 2010 (Antara-sulawesi selatan.com; last accessed March 25, 2014).

53 Asworo 2011.

54 "Lahan hutan untuk jalan tol 367 ha,"*Bisnis Indonesia*, April 7, 2009; "Pembangunan Jalan Tol Lewat Pesantren Ditolak," *Kompas*, June 16, 2008. A deal was reached with the forestry SOE (Perum Perhutani) but not with the school (where large demonstrations were held). The expressway was rerouted to skirt its grounds, leading to a slight increase in costs.

sale's legal uncertainties with respect to the anti-flipping 2005 decree clarified. This necessitated revising the decree, which ultimately took more than two years (November 2007 to January 2010).[55] In the meantime, officials decided that land purchases for the Cikampek–Palimanan link would halt.[56]

Second, while the government wanted the concessionaire to build the road in stages (as each section was cleared), PLUS insisted on the route's complete acquisition before beginning construction. If it agreed to the government's request, a PLUS official explained, the clock on the interest of its large loan would begin to tick. His firm demanded certainty that the road could be built in its entirety. "We don't want the road ending in a jungle," he suggested.[57]

Bakrie

In addition to the original Cikampek–Palimanan concessions, in 1996 the government announced that one of Indonesia's largest *pribumi* business firms, PT Bakrie & Brothers, had secured concessionary rights to a turnpike (Kanci–Pejagan) that would transverse the West and Central Java provincial border (see Map 5.1). As with other members of the New Order's oligarchy, however, massive debt as a result of the financial crisis nearly ruined Bakrie's business empire. A subsidiary, PT Bakrie Finance, was declared bankrupt and restructuring deals stripped the conglomerate of its prized Nusa Nasional Bank (although Indonesia's central bank had supplied the bank with hundreds of millions of dollars in liquidity assistance).[58] The same political resources that enabled Bakrie's bank to receive these enormous sums also helped his companies survive the crisis and thrive in its aftermath. Notably, political connections facilitated the below-market value purchase of lucrative coal mines in East and South Kalimantan that formerly belonged to foreign mining firms (which had to let them go under Indonesia's mining laws).[59] Many in government

[55] Decree no. 13 of 2010 of the same name. To help cover up the fact it was changing the law to accommodate this one project, the government went to great lengths to explain that a number of problems necessitated the decree change. One in particular was allowing exceptions to the rule that auctions with less than three bidders would be nullified. The 2009 presidential election also contributed to the delay.

[56] "Tol Cikampek–Palimanan Terhambat Perpres 67/2005," *Harian Seputar Indonesia*, March 22, 2007 (seputar-indonesia.com/edisicetak; last accessed February 24, 2008).

[57] Confidential interview, Jakarta, November 25, 2011.

[58] Latul (2008). On these deals more broadly, see Pepinsky (2009, Chapter 4).

[59] The companies were PT Arutmin Indonesia (formerly of BHP Biliton Ltd.) and PT Kaltim Prima Coal (formerly of British Petroleum and Rio Tinto) (Hicks 2008). Regional officials fought to keep ownership in local hands (Morishita 2008, 93–94).

believed that this *pribumi* conglomerate deserved to be saved. One report noted, "Those who predicted Bakrie's demise were right by [the financial] numbers but wrong on politics."[60]

Reportedly in return for his financial support of Yudhoyono's 2004 campaign, Bakrie was made coordinating minister for economic affairs.[61] He lasted about a year before being unceremoniously demoted to the position of coordinating minister of people's welfare due to allegations of corruption and ineffectiveness.[62] Still, in 2007 and early 2008, record commodity prices propelled Minister Bakrie to the top of the list of Indonesia's wealthiest.

A similar story unfolded as the global downturn caused by the 2008 US subprime housing crisis nearly wiped out his assets.[63] Politicized deals (and the accusations that they amounted to a state bailout) helped to rescue his fortunes. In October 2008, for instance, as share prices of Bakrie's companies went into free fall, the government permitted a controversial suspension of his firms' trading (against the advice of Finance Minister Indrawati).[64] The month-long closure gave Bakrie valuable time to arrange refinancing, keeping anxious creditors at bay. Meanwhile, tensions within Yudhoyono's cabinet – between the old guard, patronage-driven forces of Bakrie and the clean and accountable ways of Indrawati, the reformer – spilled into the public realm.[65]

Infusions of cash – this time from private equity firms with connections to Yudhoyono – kept Bakrie's companies afloat. They allowed him to retain substantial control, especially of his flagship, PT Bumi Resources.[66] Although accusations surfaced that these purchases facilitated the hiding of assets from creditors, they helped fuel another Bakrie rebound.[67] By mid-2009, his companies' stocks accounted for an

[60] Mertens *et al.* 1999. [61] Latul 2008; Simamora 2008; Crouch 2010, p. 217.

[62] "Aburizal Bakrie: No More Waltz?" *Indonesia Today*, November 5, 2005 (yosefardi.com; last accessed January 6, 2007).

[63] The market value of his companies plunged from US$5.4 billion in 2007 to US$850 million a year later (Ellis 2008).

[64] The government justified the measure for fear of wider meltdown ("Siapa Peduli Bakrie," *Tempo*, November 23, 2008, p. 21).

[65] "Our Correspondent" 2008a.

[66] Shares of the SOE Ministry were transferred to Northstar Pacific Partners. Northstar was founded by the young businessman Patrick Walujo, reportedly a member Yudhoyono's campaign teams. Another purchaser of Bakrie's debt was Ancora Capital Management (Asia), founded and headed by the banker Gita Wirjawan, who in 2009 Yudhoyono appointed chair of Indonesia's Investment Coordinating Board. In 2010, Yudhoyono tabbed him as trade minister. The Ancora Foundation provided Yudhoyono's son with a scholarship to attend Harvard's Kennedy School of Government (O'Rourke and Milne 2010, pp. 36, 163). A third firm may have been a Bakrie front (Webb and Azharyline 2009).

[67] "Our Correspondent" 2009b.

estimated 40 percent of the exchange's capitalization.[68] Later that year, on the heels of a controversial decision by the Capital Markets Regulatory Agency to relax its rules on material transactions, the Bakrie Group purchased a significant stake in a massive mine on the island of Sumbawa in eastern Indonesia without the need for minority shareholder approval. A loan of billions of US dollars from a Chinese sovereign wealth fund aided the conglomerate's acquisitions.[69]

Having regained his economic might, Bakrie set about reconsolidating his political clout. He achieved this in late 2009 by securing Golkar's chairmanship. Now backed by parliament's second largest party, he and his underlings relentlessly pursued Indrawati over a botched (and exorbitant) government takeover of a troubled bank, whose owners purportedly were substantial funders of Yudhoyono and his party's 2009 electoral campaigns. With little political support and a tarnished image, Minister Indrawati resigned her post in May 2010.[70]

Yudhoyono's government allegedly bestowed another favor upon Bakrie: the protection of his oil and gas firm, Energi Mega Persada (the parent company of Lapindo Brantas), from prosecution for its role in the Lapindo mud disaster. The Bakrie Group has paid (albeit slowly) hundreds of millions of dollars in victim compensation and cleanup operations, without admitting culpability.[71] Despite these entanglements and despite consistently poor electability ratings, "Indonesia's Teflon Tycoon" stubbornly remained Golkar's candidate for the July 2014 presidential election after the 2014 legislative elections that were held in April.[72]

Positive rent gone bad

Having escaped Megawati's revocation efforts, Bakrie's investment company sat on its toll-road concession for years. With BPJT up and running under Yudhoyono, it was left to the new agency to conclude a new toll-road contract with Bakrie's consortium, now named PT Semesta Marga Raya (SMR), for the Kanci-Pejagan turnpike.[73]

68 "Our Correspondent" 2009a. 69 O'Rourke and Milne 2010, p. 147.

70 Patunru and von Luebke 2010, p. 11.

71 In late 2008, the reported paid figure was Rp. 4 trillion and Rp. 9 trillion by mid-2012 ("Our Correspondent" 2008b; "Pembayaran Lapindo Diklaim Beres Tahun Ini," *Suara Merdeka*, June 27, 2012).

72 "Indonesia's Teflon Tycoon," *Economist*, January 14, 2010 (economist.com; last accessed April 4, 2014). On his obsession to become president, see Mietzner (2013, p. 99).

73 To recall, at one time the consortium comprised Bakrie Investindo (80 percent), PT Arthayasa Karya Bina Caraka (12 percent), and Jasa Marga (8 percent). From the time that SMR was established in October 2005 to January 2010 when the turnpike opened, its

Despite being understaffed, BPJT's hard work began to bear fruit. In May 2006, a month prior to inking a contract with LMS, it entered into a similar agreement with SMR. Unlike LMS, SMR secured financing (Rp. 1.38 trillion; US$152 million) from two state banks within the one-year requirement, although the loan did draw a fair amount of derision because of the recent Lapindo tragedy.[74] A second controversy subsequently emerged. Word leaked about discrepancies in company deeds that SMR submitted to BPJT and those to its creditors.[75] The infraction led the banks to cancel their agreement with the license holder. Although empowered to do so, BJPT opted not to nullify its contract with SMR. BPJT's chief Pawenang argued that this step was too drastic in light of what could have been administrative error. He gave the consortium another year to secure financing.[76] Given Bakrie's position in the cabinet, Pawenang's decision was not surprising, nor was SMR's reaching another deal with the same two state banks.

Around the same time that SMR's possibly fraudulent deeds were revealed, concessionaires for the three routes that ran from Pejagan (Cirebon) to Semarang in Central Java neared default.[77] After BPJT announced its intention to revoke the concessions, officials at Jasa Marga approached the three concessionaires about buying their licenses. Public Works Minister Kirmanto and the vice president facilitated an arrangement whereby the SOE would become a majority ownership of each concession. A government department announced the memorandum of understanding (MoU).[78]

In July 2007, on the day that these agreements were to be signed, representatives of the three concessionaires disappeared. Minutes before midnight on the day their licenses were to expire, they, along with Bakrie's son, Anindya, emerged from an exclusive Jakarta hotel with their own

ownership structure underwent a number of changes that in the end left BTR in near complete possession of the concession (Bakrieland Development 2010, p. 29). It is not immediately clear what happened to the shares of the minority partners.

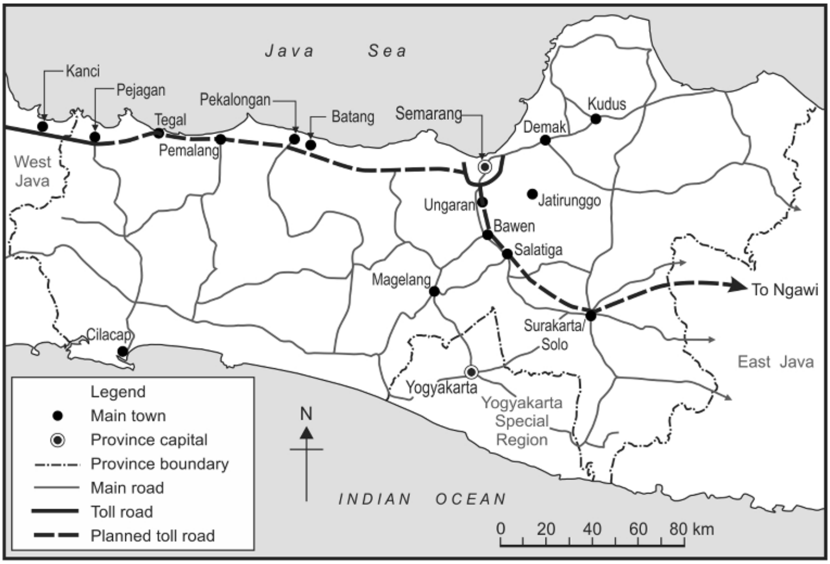
74 BNI (65 percent) and BRI (35 percent) agreed to a loan of ten years maturity (with a three-year grace period) at 14 percent interest ("Kredit Jalan Tol Harus Hati-hati," *Kompas*, March 10, 2007; "Conflicts of Interest," *The Jakarta Post*, March 13, 2007).

75 The former Jasa Marga director, Syafruddin Alambai, had joined SMR's board of commissioners but had a falling out with the company. He alerted BPJT, the banks, and the Public Works Ministry of the discrepancies. He claimed it was done to obfuscate responsibility if SMR were to default on its loan (Rahadiana and Sugiharto 2007).

76 Interview, Hisnu Pawewang, former BPJT head, May, 20, 2009.

77 To recall, the sections were: (1) Pejagan-Pemalang (held by PT Pejagan–Pemalang Toll Road); (2) Pemalang–Batang (controlled by PT Pemalang-Batang Toll Road); and (3) Batang–Semarang (owned by PT Marga Setiapuritama).

78 "Jasa Marga Jadi Holding Untuk Tiga Ruas Tol," *swaraskjm.blogspot.com*, July 20, 2007 (last accessed May 2, 2014).



Map 5.1 Central Java Toll Roads

MOUs in hand.[79] Buoyed by Bakrie's involvement in the scheme, Credit Suisse First Boston pledged some Rp. 6.3 trillion (US$720 million) in loans for the three distressed consortia.[80] The parties agreed to complicated ownership structures. A subsidiary of PT Bakrieland Development, Bakrie Toll Road (BTR), would manage (*mengelola*), but not outright own, the three partnerships. In the short term, this meant BTR would place its personnel on the boards of the three consortia.[81] What this meant in the long term was less clear. BTR held a 65 percent option in each concession that it could exercise once the roads were operational, but the terms under which options would be exercised were opaque.[82]

[79] The facilitation of Kalla's office in the earlier Jasa Marga deal would put it in an advantageous position to pass relevant information to Bakrie's camp.
[80] Arvian *et al.* 2007. Credit Suisse First Boston had been a financial arranger of Bakrie's coal interests ("Indonesia – Bumi buys KPC," *Project Finance International*, Issue 276, October 29, 2003).
[81] Harya M. Hidayat, president director of BTR, was placed on the boards of the three consortia.
[82] In 2009, ownership right options for twenty-four months were signed, and with this began byzantine changes in ownership of three concessions (Bakrieland Development 2011, pp. 104–06). As with SMR's submission of different deeds, this might have been done to obfuscate responsibility if loans were to default.

BPJT's Pawenang was not pleased by the sudden turn of events, especially because he learned about them in the press.[83] Although he was powerless to stop the deals, at the time they augured well for the Trans-Java project.[84] Backed by Credit Suisse First Boston, BTR was sufficiently endowed, and it was working hard to complete its 35-km Kanci–Pejagan section. When Yudhoyono presided over this turnpike's opening in January 2010, it became the first new Trans-Java Expressway segment to be completed, the first finished toll road from the 1995–96 auctions, and the first of the president's second term. It was also constructed at a reasonable cost.[85]

Finalizing the Kanci–Pejagan and owning the three adjacent routes (to the east) appeared to be part of a grand integrated development plan of Bakrieland Development. Tollways would lay the groundwork for the building of housing estates, industrial parks, hospitals, golf courses, and tertiary educational institutions along the 200-km Cirebon–Semarang corridor.[86] For their part, company officials found the toll roads a nuisance to build and manage and doubted their commercial viability.[87] Given the Kanci–Pejagan's low traffic counts, these officials may have been right.[88]

However, soon it became clear that BTR was not paying for land purchases along the routes of its newly purchased licenses (despite the multiple warning letters sent by BPJT). Bakrieland's dream of grandeur was fizzling out. Why would BTR build one section speedily only to drag its feet on the other three? With land acquisition stalled on the Cikampek–Palimanan segment (to the west), BTR officials had to know that recouping costs for the Kanci–Pejagan's construction would be unlikely. It was no secret that Jasa Marga had been losing money on the adjacent Palimanan–Kanci route (to the west) since its opening in 1998 (see Map 5.1).

The waxing and waning of Bakrie's fortunes provides some clues. In mid-2007, when the deal with the three concessionaires was reached, commodity prices (and Bakrie's bank accounts) were soaring. The global downturn beginning in 2008 erased most of these gains, however, leaving Bakrie exposed. Still, a perspective that focuses on Bakrie overexpansion

[83] Interview, Jakarta, May 20, 2009. [84] See my premature analysis in Davidson 2010.
[85] According to the company, its price tag was Rp. 2.2 trillion (Bakrieland 2010, p. 91). Based on the value of the bank loan (Rp. 1.38 billion), I calculate costs to be about 11 percent above the contractual estimate (about Rp. 1.97 trillion).
[86] Muhanda 2008. This applies also to other BTR tollways, including Ciawi–Sukabumi (south of Bogor) (Kusmalawati 2011, pp. 80–81).
[87] Cited in Kusmalawati 2011, p. 80.
[88] SMR's 2010 revenue only reached about 42 percent of its target of Rp. 200 billion. Revenue improved some 7 percent the following year (Bakrieland Development 2010, p. 249; Bakrieland Development 2011, p. 106).

does not explain the complicated and opaque ownership structures that resulted from the original concession agreements. These arrangements may have been to mask Bakrie's intention to use these assets to boost BTR's valuation in order to raise more funds for other business opportunities, rather than build the three toll roads.[89] Overexpansion also sheds little light on why BTR completed the Kanci–Pejagan road. As Bakrie's fortunes tumbled throughout 2008, the Kanci–Pejagan construction, which could have been halted, continued. It is widely believed that Bakrie finished the turnpike as a favor to Yudhoyono for not pursuing prosecution of his firm for its role in the Lapindo affair.[90]

Having sat on his newly acquired toll-road licenses for five-and-a-half years, Bakrie finally unloaded them in late 2012 to help cover massive debts. BTR sold the Kanci-Pejagan turnpike and three more concessions (Ciawi–Sukabumi, Pejagan–Pemalang, and Pasuruan–Probolinggo) to a subsidiary of the media mogul Hary Tanosoedibjo's PT Media Nusantara Citra (MNC) Group.[91] The transaction price was not reported, but analysts valued the assets at around Rp. 3 trillion (US$309 million).[92] There was speculation that they were sold at a discount. Shortly after the sale, Tanosoedibjo purchased a sizable chunk of shares in Bakrie's London-listed Bumi Plc from a Jakarta-based investment firm run by a friend of Bakrie. The timing of the purchase helped to fend off a takeover bid by Nathaniel Rothschild, a co-founder of Bumi Plc.[93]

89 Plans to sell over Rp. 1 trillion worth of bonds were announced in September 2010, but the transaction was later cancelled (Muslim 2010a).

90 The road's shoddy quality quickly became legendary ("Jalan Tol Pejagan Minim Markah Jalan," *Kompas*, August 12, 2010; Mawardi 2012). Complaints also arose over its expensive tariff. The Jakarta–Cikampek tollway is more than double the length but half the price.

91 Tanosoedibjo was the vice-presidential candidate of the former general Wiranto's Hanura Party. MNC owns three television stations (RCTI, MNC TV, and Global TV); the subsidiary in question is PT MNC Infrastrukur Utama. BTR did not sell its rights to the Batang–Semarang (on why, see below) and Cimanggis–Cibitung (part of JORR II) turnpikes, however. The latter's license was transferred to PT Bakrie Indo Infrastructure, as BTR was purchased by a mysterious entity named Karya Prima Investama ("Bakrie Tak Menjual Ruas Tol Cimanggis–Cibitung," *Kompas.com*, June 4, 2013 [property.kompas.com, last accessed January 22, 2014]).

92 This figure, however, was for the Kanci–Pejagan turnpike and five (not four) concessions. The sale also included two resorts, one on Bali and one near Sukabumi (Berahmana 2013; "Transaksi Penjualan Bakrie Toll Road Kelar," *Kontan*, May 16, 2013 [id.citramarga.com; last accessed March 22, 2014]). Some Indonesian news sources report Rp. 2 trillion. Strangely, Bakrieland Development's 2013 Annual Report mentions the sale of the resorts but not that of the toll-road licenses.

93 Bumi Plc was formed in 2010 in part of PT Bumi Resources's debt-restructuring deals. The latter at the time owned 29.2 percent of Bumi Plc. The investment firm, Recapital Group, is run by Rosan Roeslani. A co-founder of Recapital is Sandy Uno (Cahyafitri 2013). Tanoesoedibjo continued to buy Bakrie assets, this time a minority stake in his

With its new toll-road licenses in hand, Tanosoedibjo's MNC applied for the BLU funds to acquire land along the Pejagan–Pemalang route in May 2013. In response, Achmad Gani Ghazali, BPJT's new head, suggested he would consider granting the long-overdue tariff hike for the Kanci–Pejagan link, which he agreed to in December 2013.[94] It appeared that the specter of involuntary acquisition that has hung over landowners along the Pejagan–Pemalang segment for more than seven years was coming to an end. In fact, in late July 2014, shortly after MNC completed a complicated ownership deal with PT Waskita Karya, a SOE construction firm, where the latter agreed to build the Rp. 4.08 trillion (about US$354.5 million) project and the former would possess a buyback option once the section was operational, Kirmanto officiated the groundbreaking ceremony.[95]

The same cannot be said for the hundreds of landowners along the Pemalang–Batang and Batang–Semarang routes (see Map 5.1). It is not immediately clear why the former was not included in the sale to MNC. The Batang–Semarang franchise was not because BTR had already withdrawn from the consortium. According to the original license holder, PT Marga Setiapuritama, BTR had paid only one of its six promised installments as of 2011 (as agreed upon their 2007 arrangement).[96] As Marga Setiapuritama became increasingly vocal over BTR's noncompliance, in April 2012 BTR quit the consortium, leaving the original investors with the license for a project that they could not afford to build. Jasa Marga expressed interest in purchasing the concession, but the deal collapsed over its insistence on becoming the majority owner.[97]

business media company (PT Visi Media) valued at US$500 million ("Bakrie & Harry Tanoe: ANTV-MNCN Deal?" *Indonesia Today*, June 19, 2013 [yosefardi.com; last accessed September 4, 2013]).

94 MNC claims to have spent Rp. 80 billion on upgrading the turnpike's quality (Mola 2013b; Sari 2013c). MNC had wanted to start construction when total land acquisition reached 75 percent (as of late 2013 it stood at 30 percent). According to BPJT, the contract stipulated that construction must commence once land purchases surpassed 75 percent for the first two (out of four) sections. ("Investor Pejagan-Pemalang Terancam Default," *Investor Daily*, November 15, 2013 [id.citramarga.com; last accessed March 24, 2014]; "Dua Proyek Tol Trans-Jawa Dikonstruksi Tahun Ini," *Investor Daily*, Apri 17, 2014 [id.citramarga.com; last accessed May 14, 2014]). Finally, the 10 percent tariff raise for the Kanci–Pejagan turnpike covered 2012–13, meaning the raise due for 2010–11 was forfeited.

95 About 97 percent of the land had been purchased ("Waskita Akuisisi Tol Pejagan-Pemalang Rp 300 Miliar," *Investor Daily*, July 19, 2014 (id.citramarga.com; last accessed July 31, 2014).

96 Dabu 2011.

97 Interview, Dedi Krisnariawan Sunoto, head of Toll-Road Commercial Operations, Jasa Marga, Jakarta, June 25, 2012. See also "Jasa Marga Siap Akuisisi Tol Batang–Semarang," *Investor Daily*, December 21, 2011.

Unexpectedly, in March 2013 news surfaced that Marga Setiapuritama had signed a loan agreement with an unnamed bank, following which it applied for BLU funds in May. Months later land acquisition along this route still remained under 5 percent.[98] However much uncertainty continues to cloud the Batang–Semarang link, one thing was clear: The increase in its valuation, revalued at Rp. 7.2 trillion – nearly double of its original estimate – will be passed onto motorists when (or if) this section is completed.

Jasa Marga

Acquisitions or fire sales by Bakrie make headlines in Indonesia. The last-minute ripping of the three Cirebon–Semarang concessions from the hands of Jasa Marga, in 2007, was no exception. Moreover, when the press learned that Bakrie was also negotiating to acquire two more licenses from his then buddy's Bukaka (Ciawi–Sukabumi in West Java and Pasuruan–Probolinggo in East Java), the press sardonically crowned him the country's new toll-road king.[99] The characterization, however cynical, missed its mark. With these deals in place, BTR might have been the main shareholder of seven concessions totaling some 325 km, but only 35 km (Kanci–Pejagan) were in operation.[100]

Indeed, not Bakrie but Jasa Marga was, and continues to be, the sector's leader. It is an enviable position for a corporation described by a consultant in 1978 as an entity "without future prospect."[101] As of June 2014, it held majority stakes in seventeen toll-road consortia whose routes were in operation (even if partially). The combined length of their routes (inclusive of minority-owned ones, most prominently JIRR) in operation totaled about 566.5 km, or some 75 percent of Indonesia's operating expressways. One new opening (Gempol–Pandaan) and partial openings of another four majority-owned turnpikes are expected to add approximately 42 km to the company's network by early 2015.

Today it is easy to take Jasa Marga's dominant market position in the sector for granted, but we should not. The early post-Soeharto era was a difficult period for the company. Revenues were down, debt was up, and

[98] There has been no further news regarding its lending arrangement (Mola 2013a; Mola 2013c; "Pembebasan Lahan 7 Trans Jawa 78%," *Investor Daily*, October 2, 2013).
[99] Yandhrie *et al.* 2007. Calling Bakrie the "king" (*raja*) was a deliberate ploy to contrast the role of Tutut as "queen" (*ratu*) of the sector under the New Order.
[100] At the time they were: (1) Kanci–Pejagan, (2) Pejagan–Pemalang, (3) Pemalang-Batang, (4) Batang–Semarang, (5) Pasuruan–Probolinggo, (6) Ciawi–Sukabumi, and (7) Cimanggis–Cibitung (part of JORR II).
[101] JICA 1978b, p. 68.

market reformers were determined to sell its assets to private hands. How the firm has managed to survive and thrive, even among increasing competition, is revealing of the changes and continuities of Indonesia's new political economy.

We can begin with the transformation of the company's image. It was once portrayed as a prototypical New Order SOE where rent-seeking and politics pervaded decision-making, which led to suffocating inefficiencies. With Soeharto's resignation, the company's leadership began a revisionist campaign to overturn this widely held perception. Jasa Marga has striven to paint itself as a hapless victim of New Order intrigue and rapacity, with its capable and professional leadership having fought valiantly against the corrupt state's interference in the corporation's affairs. The truth likely resides somewhere between these caricatures.

Evidence can be marshaled in support of both views. Take the Jagorawi. As we saw in Chapter 2, Soeharto kept tariffs low to placate the politically influential middle class of the greater Jakarta region. This policy, Jasa Marga officials might rightly complain, suppressed revenue and prevented an expansion of the country's tollway system. Nevertheless, Jasa Marga did not build the Jagorawi; the SOE was established immediately prior to the route's opening. Expansion plans were made, but they were foiled by an economic downturn in the early-to-mid-1980s. The victim here was not Jasa Marga but Indonesia's poor. They could have benefitted from increased state revenues from higher toll rates to fund better schools, healthcare, and other social services. Instead, subsidies accrued to Jakarta's car-owning middle class.[102]

Under the New Order Jasa Marga was a *state*-owned enterprise. It was tasked with serving the interests of that state. It was foolish to expect otherwise, whether this "service" came in the form of suppressed tariffs for political purposes or in directives in the 1980s to construct money-losing expressways in Medan and Semarang to spark economic development.

This is forgotten history, however. In the popular imagination, the crux of the New Order state–Jasa Marga relationship centers on the cronyistic relationship that emerged, in the 1990s, between Jasa Marga and Tutut's CMNP. This is where Jasa Marga's narrative of victimhood gains credence. Recall from Chapter 2 the unfavorable contractual provisions imposed upon the company. These included the guaranteeing of CMNP's foreign debt and the "injustice" of the 3:1 revenue split in

[102] Subsidies or state monies were spent on the poor, but more could have been done in such matters as education. While Soeharto's Presidential Instruction program built thousands of primary schools in remote areas, their maintenance was deplorable (Booth 2000).

favor of CMNP for JIRR. There was also Soeharto's dual tariff policy favoring his daughter's toll roads. Following Soeharto's fall, an independent audit calculated that Jasa Marga had lost Rp. 5.2 trillion (about US$106 million) in capital inefficiency from 1995 to 1999, with half this figure the result of the SOE's imbalanced relationship with CMNP.[103]

The figure speaks volumes, but the conclusion needs tempering. As renegotiations heated up between Jasa Marga and CMNP in the early post-Soeharto state, the disingenuousness of the discourse of the "unjust revenue split" was readily apparent.[104] Jasa Marga's leadership eagerly fed journalists "facts" that fit its case. Journalists obliged, as attacking Tutut made for good copy.[105] Jasa Marga's minority ownership of CMNP, at nearly 18 percent, was conveniently overlooked in the debate. So, the SOE had been receiving about 43 percent, not 25 percent, of the revenue from Indonesia's most profitable tollway.

How profitable was it? Just prior to the 1997–98 financial crisis, an industry publication based in New York lauded this PPP project as a "runaway success."[106] By 1995, at roughly 300,000 vehicles per day, JIRR's traffic was almost seven times the forecast of five years earlier.[107] Revenue nearly tripled from 1992 to 1995, reaching Rp. 153.8 billion (or about US$211,000 per day).[108] To be sure, tariffs on CMNP's routes were higher than those on Jasa Marga's roads. However, as a substantial minority owner, the SOE also profited from price hikes on Tutut's Jakarta turnpikes. These subtleties and more were lost amidst the diatribes.

Jasa Marga post-Soeharto

Soeharto's fall ushered in a difficult period for the company. Lower traffic during the financial crisis led to a 7 percent drop in revenues from 1997 to

[103] Wawa 2001. [104] Negotiations were covered in Chapter 3.

[105] In Chapter 3, it was noted that Tutut had resigned from the board and sold the majority of her shares (which were possibly bought by Hary Tanosoedibjo). Recently there has been plenty of speculation (and some evidence) that Tutut has reemerged as a major investor in CMNP. Since 2007, her daughter, Danty Indriastuty Purnamasari, has been a company commissioner and in July 2013 was named chief executive officer. Shadik Wahono, a close confidante, has been president director since 2008 ("Conflicts at Citra Marga Nusaphala," *Indonesia Today*, July 17, 2013 (yosefardi.com; last accessed August 4, 2013). In September 2013, a mysterious entity named Merah Putih International Ltd., registered in the British Virgin Islands, purchased about a quarter of CMNP's shares (Hasniawati 2013).

[106] Orr 1996, n.p.

[107] CMNP 1996, p. 15; "Sukses Tutut Berkat Tol," November 14, 1995, retrieved from apakabar@access.digex.net Listserv (library.ohiou.edu/indopubs; last accessed March 19, 2014).

[108] CMNP 1996, p. 17.

1998. This precipitated a plunge in net income by nearly a third to Rp. 166 billion because of crushing debt.[109] Meanwhile, the reform efforts of post-Soeharto governments to hold perpetrators of KKN accountable for their actions added to the company's woes. For Jasa Marga, because it was "counter party to all concession contracts signed for the purposes of toll road development or management,"[110] this meant the cancellation, the postponement, or the re-reviewing of over forty projects. Indeed, Jasa Marga had more contracts cancelled than any other SOE.[111] It was an indignity that company executives did not relish.[112]

In the early post-Soeharto years, Jasa Marga's legal predicament as a limited liability company – meaning investors had recourse to its "balance sheet in the event of commercial dispute and court-mandated judgment," and not the government's – cost the firm dearly.[113] From 2000 to 2002, it booked some Rp. 91 billion (about US$9.6 million) in losses over the cancellation of five major contracts alone.[114] This is one reason why the 2003 "best practice" report wanted to restructure the SOE. It recommended forming an investment company to ease its debt burden by removing and disposing "of the liabilities and contingent liabilities currently on Jasa Marga's balance sheet that have arisen from default authorisation agreements."[115] The government ignored the recommendation.

The government's policy of holding tariffs steady also restricted Jasa Marga's finances. From 1998 to 2002, as the economy slowly recovered and traffic levels increased, Jasa Marga's revenue grew about 57 percent. But net profits still declined roughly 11 percent over the same period because of the company's debt.[116] The SOE was paying a steep price as Soeharto's rent-seeking, patronage-based economic governance system underwent fundamental change. The financial outlook for Jasa Marga's future remained bleak.

The firm's fortunes soon took a turn for the better, however, and as usual, politics played its part. Illustrative was how the company gained possession of the coveted 69-km Jakarta Outer Ring Road (JORR) project. As we saw in Chapter 2, Tutut largely controlled JORR (her business partner Djoko Ramiadji and Jasa Marga were the next

109 Jasa Marga 2000, p. 17.
110 Tasman Economics/ACIL Tasman 2003, p. 25.
111 Rosser 2003, p. 245, Table 11.1. Dikun (2003, p. 167) reports a higher figure of sixty-four.
112 Interview, Sumaryanto Widayatin, then a Jasa Marga commissioner, Jakarta, July 10, 2007.
113 Tasman Economics/ACIL Tasman 2003, p. 25.
114 Jasa Marga 2005, pp. 26–30.
115 Tasman Economics/ACIL Tasman (2003), pp. 5, 15. As of 2001, According to the report, Jasa Marga's "total equity was significantly less than its outstanding long-term liabilities and half of its total non-current liabilities." (2003, p. 37, emphasis in original).
116 Herwanto 2003, p. 83.

two largest stakeholders). When the onset of the 1997–98 crisis led to the project's abandonment, only two segments had been completed: Cakung–Cikunir (E2, 9 km) and Pondok Pinang–Kampung Rambutan/ Taman Mini (S, 14 km) (see Map 2.1).

In 2000, when the government revisited the project, it first had to nullify the licenses of the three indebted companies (CMSP, MNB, and CBMP).[117] It did so by transferring their assets to the Indonesian Banking Restructuring Agency (IBRA).[118] The sum transferred (Rp. 1.07 trillion) equaled the project's invested capital, not the companies' accumulative debt of more than Rp. 2.5 trillion.[119] What happened to the missing Rp. 1.43 trillion (US$150.5 million) remains a mystery.[120]

IBRA injected the capital into a new company, called PT Jalantol Lingkar Jakarta (JLJ). IBRA held a 90 percent stake in JLJ, with Jasa Marga controlling the remainder. Having been tasked to find a strategic partner to fund the ring road's construction, JLJ then entered into an agreement with Malaysian conglomerate DRB-Hicom.[121] The deal gave the new investor 47 percent of the roughly Rp. 4.8 trillion (US$505 million) project.[122] The Malaysian government's equity stake in DRB-Hicom's consortium amounted to about 40 percent.[123]

But Indonesia's now-empowered parliamentarians objected to the partnership because JLJ and DRB-Hicom had apparently been brought together by Tutut's people in order to profit behind the scenes from the project. Sometime between mid-1999 and early 2000, JORR's three original consortia signed a MoU with DRB-Hicom.[124] Parliamentarians

117 To recall from Chapter 2, the fourth company, Jalan Lingkar Barat Satu that held the rights to the W1 turnpike, had not begun construction and thus did not incur any debt. It thereby retained its license.

118 A due diligence report conducted by the local office of the accounting firm Ernest and Young convinced the government that the three consortia had committed enough civil and criminal infractions to justify cancelling the concessions.

119 PT Data Consult 2003.

120 Interview, Anhar Rivai, former head of legal counsel for Jasa Marga, Jakarta, September 23, 2010. A Jasa Marga report (2005, p. 71) notes that the remaining money "would remain as liability" of the three JORR debtors.

121 In 2000, Diversified Resources Berhad (DRB) merged with four other companies, including Heavy Industries Corporation (HICOM) Holdings Berhad.

122 "BPPN Novasi Tiga Debitur JORR, Konsorsium Malaysia Terus Jalan," *hukumonline.com* March 1, 2001 (last accessed March 19, 2014).

123 Minority investors included Prospect Prime, Roadbuilder (Holdings), and Ranhill Corporation. The Indonesian press had difficulty in identifying exactly who comprised DRB-Hicom and a number of different names appeared. Subsequent reports appeared on the dense linkages among them and their ties to the Malaysian government (for example, "Afiliasi 3 Peserta Tender JORR Asal Malaysia Diteliti," *Bisnis Indonesia*, August 22, 2001).

124 Wiranto *et al.* 2001.

demanded its cancellation if DRB-Hicom's partnership with JLJ was to proceed. For lawmakers, the opaque negotiations and inexplicable twists and turns indicated that the infamous KKN of the sector under Soeharto was continuing unabated. Parliamentarians were also concerned that foreigners would control a large stake of a road encircling the nation's capital; they preferred entrusting JORR to Jasa Marga. Profits from this ring road should accrue to the state. Failing this, they preferred reauctioning the concessions.[125] Unconvinced of Jasa Marga's financial capacity to execute the project alone, the government sought a compromise. It decided on a retender with DRB-Hicom named the preferred bidder; it had the right to match the lowest bid.[126]

Controversies over the right-to-match brewed in the run-up to the January 2002 auction.[127] Charges were made that the policy was unfair, costly, and against national interests.

In the end, the polemics were overblown; there was no auction winner. The government disqualified the four bidders – two Malaysian firms (including DRB-Hicom),[128] an Italian company (Torno Internazionale Spa), and a Jakarta municipal government-led consortium[129] – ostensibly for not proving the financial means to fulfill the stringent requirement of paying IBRA Rp. 1.2 trillion in cash within six months of the tender.[130] With the auction's failure, Jasa Marga was waiting in the wings.

In sum, when the retender was first announced in mid-2001, Indonesia's toll-road corporation was slated to own 4 percent of the megaproject. A year later, it was to control 90 percent. This was what SOE Minister Laksamana Sukardi and Minister of Settlement and Regional Infrastructure Soenarno wanted – to keep JORR and its potential revenues in state hands. However, these two ministers were serving more powerful political masters. They were members of the new cabinet, as of August 2001, of President Megawati, whose husband, Taufik Kiemas, had significant input on dealmaking and policymaking. Kiemas's influence may also help to explain why the tender, originally scheduled for August 2001, was postponed until January 2002. It was

125 Ibid.
126 "*Right to Match* JORR Jalan Pintas Buat CMNP," *hukumonline.com*, May 1, 2001 (last accessed March 25, 2014).
127 It was not clear why only 60 percent of JORR's ownership was on offer. As was stated above, Jalan Lingkar Barat Satu had retained its W1 concession. The north section was not included for unexplained reasons. So, this left three not-yet-built segments (W2, E2, and E3) and the two completed ones (S and E1) for a total of 52 km.
128 One Malaysian bidder, MTD Capital Sdn. Bhd., pulled out just prior to the auction.
129 The bidder was the Jakarta Infrastructure Consortium, whose leading investor was PT Jakarta Propertindo (we return to the significance of this in Chapter 6).
130 PT Data Consult 2002.

alleged, but never proven, that Kiemas had received kickbacks for the awarding of government contracts, including those related to JORR.[131] In 2011, these allegations resurfaced when two Australian newspapers published a Wikileaks report on the quashing by Yudhoyono early in his first term of a criminal investigation into Kiemas's business dealings. Yudhoyono's office denied the allegations and attacked the report's veracity and credibility.[132]

Now in control of JORR, Jasa Marga's string of good fortune continued. In 2003, as noted in Chapter 3, it reached a formal agreement with CMNP to increase its own share of JIRR to 45 percent. Subsequently, Megawati implemented a 25 percent toll hike. The year 2004 brought the new road act with its automatic rate adjustment mechanism. By scrapping Jasa Marga's regulatory functions, the government freed the company from being the ultimate guarantor of government liabilities in the sector.

The state did get some things in return. Notably, it turned the routes the SOE had been operating in perpetuity into concessions. Upon their expiry, ownership would revert to the state. At first blush, this was a setback for the company. It meant the future loss of a steady stream of revenue. Worse, it signaled the possible dismantling of Jasa Marga. Without toll-road concessions, the corporation would have practically no assets and no reason to exist.

In other respects, concessioning benefitted Jasa Marga. Its disintegration was unlikely. Too many vested interests would be at stake to let this happen. Concessioning also clarified the ambiguity of the SOE's control of its assets. With its ownership on now firmer legal grounds, the company gained greater control over its routes. For example, in the past the government had appointed contractors on Jasa Marga-operated tollways, leaving the firm without the authority to sanction (let alone fire) contractors over poor performance. The firm had to absorb the resulting inefficiencies. Now it could appoint its own contractors. Concessioning also made it more difficult for the government to demand the building of unprofitable routes, as it had done in the past.[133]

Finally, concessioning put to rest the 2003 consultancy report's suggestion to retender Jasa Marga's licenses. The study had argued that the auction would attract private investment into the sector, along with management or operational innovations and other efficiencies.[134] Instead

[131] Guerin 2002; Elegant 2002. [132] Septian *et al.* 2011; Dorling 2011.
[133] Tasman Economics/ACIL Tasman, 2003, pp. 91–96, 130.
[134] Ibid., p. 121. The report also recommended that the licenses of profitable existing toll roads be bundled with greenfield projects as a means to attract private investment. This "integrated and cross-subsidized" approach has been used in France, Italy, Colombia, Australia, Brazil, and the UK (Ibid., p. 100).

of Jasa Marga losing its profitable tollways, concessioning clarified and strengthened the company's legal ownership of these routes. In fact, the concessions' duration was made for forty years, longer than global and Indonesian averages (see Table 5.1). Globally, BOT toll-road projects average between twenty-five to thirty years; the consultancy report recommended less than thirty; and other private sector licenses in Indonesia ranged from thirty to thirty-five years.[135] Jasa Marga's literature proudly describes its concessions as "Asia's longest."[136]

Despite hiccups – for example, the forcing out of Jasa Marga from the Cikampek–Palimanan concession (noted above) and the temporary closure from landslides of the Cipularang turnpike months after its 2005 opening (see Chapter 3, note 43) – the years 2001 to 2006 were good to Jasa Marga. The company's annual net profits reflected its success on the ground, tripling during this period to Rp. 462 billion (about US$48.6 million).[137] However, it was the company's partial privatization in 2007 that would leave the most indelible impact on the corporation.

Partial privatization

Since the 1980s, privatization has been a chief pillar of what has been termed the Washington Consensus (as noted in Chapter 1). Governments in developing economies have privatized public assets with the same vigor as their counterparts in advanced economies have. Proponents maintain that state divestiture imposes market-based incentive structures on management, improving efficiency, profitability, and service delivery. Opponents counter that privatization leads to job layoffs and the acquisition of productive assets at knockdown prices by the politically connected – or worse, by foreign multinationals. Privatization also means higher costs for the poor for essentials like water and electricity because of the monopoly positions these service suppliers often hold.

Since the 1997–98 crisis, privatization has figured prominently in discussions of Indonesia's political economy. Its pace and extent have disappointed market liberals, who have highlighted obstructionist elements in the bureaucracy, the parliament, and the business class.[138] In 1999, the government reached only two-thirds of its IMF-negotiated privatization target of US$1.5 billion.[139] At the time, the money was desperately needed to shore up the state budget. Over time, privatization has gingerly moved forward, as opposition remains stiff and the process politicized.

[135] Ibid., p.7. [136] Jasa Marga 2011 (Q3), p. 40.
[137] Hewanto, 2003, p. 83; Jasa Marga, 2007, p. 23. [138] McLeod 2002 and 2005a.
[139] Rosser 2002, pp. 186–87.

Table 5.1 *Jasa Marga ownership (as of June 2014)*

Toll-road concession	Length in operation (km)	Year opened	Expiration of concession	% of Jasa Marga ownership	Name of consortium (where ownership is < 100%)
(1) Jakarta–Bogor–Ciawai (Jagorawi)	59	1978–79	2045	100%	n/a
(2) Semarang	25	1983–98	2045	100%	n/a
(3) W. Jakarta–Tangerang	33	1984	2045	100%	n/a
(4) Prof. Dr. Ir. Sedyatmo	14	1984	2045	100%	n/a
(5) Surabaya–Gempol	49	1986	2045	100%	n/a
(6) Belawan–Medan–Tanjung Morawa (Belmera)	43	1986	2044	100%	n/a
(7) Cawang–Tomang–Cengkareng	24	1987–89	2045	45%	with CMNP
(8) Jakarta–Cikampek	83	1986–88	2045	100%	n/a
(9) Padalarang–Cileunyi (Padaleunyi)	64	1990	2045	100%	n/a
(10) Jakarta Outer Ring Road	43	1991	2045 (excluding Section S)	99% (Section W1 23%)	PT Jalantol Lingkarluar Jakarta
(11) JORR W2 North	5.7	(2.2 km scheduled for 2014)	2045	65%	PT Marga Lingkar Jakarta
(12) Palimanan–Kanci	26	1998	2045	100%	n/a
(13) Ulujami–Pondok Aren	6	2001	2045	99%	PT Jalantol Lingkarluar Jakarta
(14) Cikampek–Purwakarta–Padalarang (Cipularang)	59	2003–05	2045	100%	(n/a)
(15) Nusa Dua–Ngurah Rai–Benoa (Mandara) (Bali)	10	2013	2057	55%	PT Jasa Marga Bali Tol
(16) Bogor Outer Ring Road	3.8 (of 11)	2009-(section II, 2 km, scheduled for 2014)	2054	55%	PT Marga Sarana Jabar

Table 5.1 (*cont.*)

Toll-road concession	Length in operation (km)	Year opened	Expiration of concession	% of Jasa Marga ownership	Name of consortium (where ownership is < 100%)
(17) Surabaya–Mojokerto	2.3 (of 36)	2011-(section II, 18.5 km, scheduled for 2015)	2049	55%	PT Marga Nujyasumo Agung
(18) Semarang–Solo	23 (of 76)	2011-(section I, 14 km, scheduled for late 2014)	2055	60%	PT Trans Marga Jateng
(19) Gempol–Pasuruan	(34)		2058	96.4%	PT Trans Marga Jatim Pasuruan
(20) Cengkareng–Kunciran (JORR II)	(14)		(35 years; starting year TBD)	76.1%	PT Marga Kunciran Cengkareng
(21) Kunciran–Serpong (JORR II)	(11)		(35 years; starting year TBD)	60%	PT Marga Trans Nusantara
(22) Cinere–Jagorwai (JORR II)	3.7 (of 14.6)	2012-(section II, 5.5, scheduled for 2014)	2047	21.2%	PT Trans Lingkar Kita Jaya
(23) Gempol–Pandaan	(13.6)	(scheduled for mid-2014)	2047	66.8%	PT Jasamarga Pandaan Tol

Source: Jasa Marga Annual Report 2013, pp. 35, 45–46; various sources
Note: Lengths may not match earlier reported figures due to later additions like access roads (and whether they are included in reported figures).

Most privatizations have been partial. These include PT Adhi Karya and PT Wijaya Karya in the construction sector, BNI and Bank Tabungan Negara in the banking sector, PT Indosat in the telecommunications sector, and PT Krakatau Steel and Garuda, the national airline.

It seemed inevitable that Jasa Marga would join this list. Initial privatization efforts were underway prior to the crisis, which the crisis then scuttled.[140] Plans thereafter were revisited, although a target date of 2006 was missed. In early 2007, debate intensified, but only over the extent to which Jasa Marga would be privatized. Officials sought to balance the need to raise cash to accelerate toll-road development against maintaining a steady stream of revenue generation over the long term. Some argued for complete privatization by floating the company's shares on the stock exchange. Consistent with their modus operandi at the time, officials in the SOE Ministry preferred a limited initial public offering (IPO). At the time of this writing, the ministry continues to argue that what matters is not full privatization per se but improved corporate governance. The rationale for the partial privatization approach (popular in Latin America among banks and manufacturers) is that "the market value of the privately held shares would serve as an indirect register of the efficiency of asset management in these mixed companies."[141]

Vice President Kalla was the leading proponent of Jasa Marga selling all of its assets, especially its valuable ones like JORR and Jagorawi. In so doing, the corporation would shed its role as an operator and focus on road building exclusively. Kalla cited the apparently successful case of China where thousands of kilometers of highways were being added to the country's network each year.[142] Supporters of Kalla's plan suggested that Rp. 15–20 trillion could be generated from such a sale. The proceeds then could be used to support debt borrowings of twice that.[143] Critics worried that Jasa Marga's choice assets would be sold to powerful insiders with vested interests.[144] Banks had already shown a willingness to lend for tollway construction, so why strip the company of its assets?

The views of the SOE Ministry and Jasa Marga's leadership prevailed. In late 2007, 30 percent of Jasa Marga's shares were offered to the public with the expectation of raising between two and three trillion *rupiah* in capital. Proceeds from the sale would be used mainly to support the loans

[140] BA *et al.* 1994.
[141] Glade 1989, p. 680. For an opposing view, see McLeod (2005b, p. 142).
[142] For one example, see Hermawan (2007). [143] Rahadiana 2007b.
[144] Sati 2007a; "Komoditas Politik Paling Laku," *detik.com*, March 8, 2007 (news.detik.com; last accessed March 6, 2014).

for the construction of Jasa Marga's three then-newly obtained toll roads: Bogor's ring road, Semarang–Solo, and Gempol–Pasuruan. The IPO exceeded expectations and raised Rp. 3.4 trillion (US$374 million).[145] Kalla was not impressed. It was still far too little and the pace of expansion far too slow.

Of late, Jasa Marga's financial performance has been impressive. In just five years (from 2006 to 2010) annual revenues nearly doubled, while net income almost tripled.[146] This allowed the company to meet interest payments on its debt more easily.[147] Meanwhile, at the close of 2013, the company's share price was trading at two-and-a-half to three times its IPO price. Over this same period, it slightly more than doubled the composite index of the Indonesia Stock Exchange, which itself gained some 85 percent. Lastly, the percentage of foreign-held shares in Jasa Marga rose from 9 to 13.3 percent, indicating the company's increasing credit worthiness among international investors.[148]

These numbers, coupled with the company's expansion plans, would lead one to conclude that partial privatization has been a success. That said, there is reason to question the kudos the company has received from financial analysts of late.[149] The firm's rosy numbers might have more to do with broader factors like the health of the Indonesian economy, captured by the strong trend in vehicle ownership, than anything Jasa Marga itself did.[150] In 2012, domestic sales surpassed the one million mark, which was already up some 84 percent from a sales record set in 2008.[151] A more direct impact on Jasa Marga's fortunes has been biennial tariff raises. From 2009 to 2010, for example, the company's revenues rose 18.6 percent on only 4 percent traffic growth.[152] The 14.6 percent difference between these two figures is close to the tariff increase of 11 to 13 percent on its roads in 2009. This suggests that rate hikes – more than any improvement in management efficiency – have accounted for the lion's share of the company's unprecedented growth

145 Jasa Marga 2009, p. 11. 146 Jasa Marga 2007, p. viii; Jasa Marga 2010, p. 14.

147 This is reflected in the increase of the firm's interest coverage ratio from 1.57 in 2006 to 2.6 in 2010 (Business Monitor International [Q4] 2011, p. 91; Jasa Marga 2009, p. 26).

148 Jasa Marga 2013, pp. 58–59, 63. The stock's share price is updated regularly at jasamarga.com.

149 Among many, see Muslim (2010b) and "Pendapatan Jasa Marga Rp.1 Triliun," *Seputar Indonesia*, April 25, 2012. This includes interviews with financial analysts (Doni Kuswantoro, Pefindo, Jakarta, September 22, 2010; Maria Renata, MandiriSekuitas, Jakarta, July 9, 2012).

150 On the problem of isolating effects attributed to privatization, see Parinduri and Riyanto (2012, p. 448).

151 Jasa Marga 2013 (Q1), p. 19. 152 For traffic figures, see jasamarga.com.

in revenue and profits.[153] In 2010, net profits surpassed Rp. 1 trillion (US$112.4 million), a new milestone. They climbed to Rp. 1.18 trillion in 2011 and Rp.1.54 trillion in 2012 (although they dipped to Rp. 1.24 trillion in 2013, despite revenue breaking the Rp. 10 trillion barrier for the first time).[154] Given these record profits, the frustration at what many perceive as Jasa Marga's poor service record, especially on its Jakarta routes (as noted at the end of Chapter 4), is understandable.

Nor is Jasa Marga's popularity among investors necessarily a true indicator of partial privatization success. The company's 2010 bond offering was four times oversubscribed.[155] To bondholders, Jasa Marga is a blue chip company with a reliable long-term revenue structure. But these "facts" are not new. Investors have flocked to the company's debt instruments since they were first floated in 1983 (as noted in Chapter 2). Since then, the corporation has repaid over Rp. 1 trillion in bond dividends, not defaulting once.[156]

Whether due to partial privatization or not, the company's solid performance raises some difficult questions for the toll-road sector's future, not the least of which is the impact on private sector investment. After all, the latter's increase was a purported goal of Yudhoyono's administrations. Will the revival of Jasa Marga lead to crowding out of private participation? Time should tell. But a more immediate problem has been attempts to *push* private investors out of the sector. A high-profile case returns us to the troubled Cikampek–Palimanan turnpike we investigated above.

Jasa Marga has been lauded for capitalizing on its strong economic fundamentals to embark on an expansion program. Under the able guidance of Frans Suntio, the company's executive director from 2006 to 2011, the quasi-SOE acquired a number of toll-road licenses.[157] For Sunito, the plan was simple: "We are a toll-road developer, no? If there is an opportunity to add toll roads, we'll pursue it."[158]

The aggressiveness of the pursuit, however, has ruffled feathers, feeding a perception of the company as a bully.[159] Illustratively, as the problems

[153] Revenues from non-toll road sources remain minimal, less than 2 percent in 2010. Small "efficiency" gains may have resulted from a reduction in permanent staff of 2.6 percent to 5,303 in 2010. By the end of 2013, the figure was lowered another 8 percent (Jasa Marga 2013, p. 32).

[154] Jasa Marga 2013, p. 54. [155] Avriano 2010. [156] Jasa Marga (Q3) 2011, p. 56.

[157] These included Mojokerto–Surabaya and Gempol–Pandaan of the Trans-Java Expressway, and Cengkareng–Kunciran and Kunciran–Serpong of the JORR II project (see Table 5.1).

[158] Cited in "Jasa Marga Cari Peluang di Proyek Tol Baru," *Transmargajatim.com*, November 24, 2011 (last accessed October 11, 2013).

[159] Confidential interview, private banker involved in the toll-road sector, Jakarta, July 11, 2012.

surrounding the Cikampek–Palimanan road mounted, the route's financial backers – Mandiri Bank and BNI, both SOEs, and the private bank, BCA – appeared undeterred from supporting the project. This was the case, even though they, Lintas Marga Sedaya, and BPJT held renegotiations before an amended toll-road contract could be signed (the 2011 reevaluations were covered in Chapter 4). In these renegotiations, a sticking point emerged over the right (the "step-in" right, as it is known in the industry) to appoint a new operator if LMS were to default on its loans. BPJT had reserved this right in its contracts with toll-road consortia. But in this case the banks successfully usurped the step-in right from BPJT.[160] With the signing of the amended agreement in late 2011, the project's clock began to tick: LMS had six months to reach a final arrangement with the banks ("financial close" as it is known) and another two months to draw down the first installment of its loan.

The April 2012 deadline came and went. LMS was struggling to raise an extra Rp. 1.68 trillion (US$177 million) of capital for its own equity portion of the deal (on account of the 2011 reevaluations).[161] The banks were also not budging from their initial stance that land purchases had to be completed in their entirety before any money was disbursed. By mid-2011, 93 percent of parcels had been acquired and the completion of land seemed at hand. However, more than two years later, the figure has still only reached 97 percent. There seemed to be, in the language of eminent domain powers, a "hold out problem," where landowners who knowingly hold the final and necessary key to the entire project demand unrealistic prices.[162] But the reality on the ground suggested otherwise.

On the outskirts of Cirebon city (see Map 2.2), there was a cluster of about a dozen landowners who were demanding above-government-slot prices for their land parcels. In 2008, the Land Purchasing Team (TPT) had announced, not negotiated, a price of Rp. 400,000 per square meter. This figure may have been near market price at the time. However, as we saw above, it took five to six years for the legal and financial uncertainties regarding this turnpike to be settled, during which TPT officials did not push hard. But once these issues were settled, and construction had begun on the route's western flank, they pushed very hard indeed. Two weeks after sending its second (or third) warning letter, the TPT ordered the houses' demolition, which took place in February 2014. The police had to evict the homeowners forcefully beforehand. The residents (rightly) claimed that the TPT's offer was well below market price, which now hovered between Rp. 900,000 to Rp. 1,000,000 per square meter; they wanted at least Rp. 800,000. The long delay (from 2008 to early 2014) in executing the compulsory acquisition certainly was not the fault of the

[160] Dinisari 2011b. [161] Andriani 2012b. [162] Ulen 1993.

Figure 5.1 The contentious demolition of houses in Palimanan sub-district (on the outskirts of Cirebon) on February 22, 2014 to make way for the Cikampek–Palimanan Turnpike.

residents but that of LMS's and the state's. The head of the Cikampek–Palimanan (Section II) TPT, Eten Rosyadi, was quoted on the day of destruction that if these landowners were dissatisfied with the TPT's price, they could seek redress at the district court, where the TPT had deposited their compensation (recall the consignment procedure from Chapter 4). The residents' pro-bono lawyer resisted this option because he (rightly) felt they would not be given a fair hearing. Regardless, while the state may freeze the price at the time of the site permit's issuance, by denying the landowners the right to appeal prior to their homes' demolition (Presidential Decree no. 36 of 2005, arts. 17–18) and the right to genuine price deliberations (arts. 8–11), the TPT had contravened the existing law.[163] It should also be noted that there was no execution order

[163] Recall from Chapter 4 that the state had to apply Yudhoyono's regulations rather than Law 2 of 2012 to existing cases. Moreover, since the TPT deposited the consignment at the district court in January 2014, the mandated of 120 days of negotiations was violated. Based on an interview with their lawyer, Agus Priyono (Cirebon, February 19, 2014), a group interview with the landowners (Pegagan Village, Palimanan sub-district, February

from the court ordering the demolition. For a long time, officials were reluctant to pursue the consignment process. Now, with the construction of routes underway (and with Yudhoyono's presidency drawing to a close), they coercively exploited the procedure to their advantage.

Therefore, the lingering problem of the Cikampek–Palimanan turnpike was not "hold outs" but the shoring up of LMS's finances. The consortium encountered yet another obstacle, this time in the form of economic nationalism, the rise of which has been precipitous of late, most prominently on display in the country's natural resource sector.[164] In the case of the Cikampek–Palimanan link, political pressure forced Bank Mandiri and BNI to withdraw its financial support sometime after the missed "financial close" deadline of April 2012. Some government officials did not want the state, via its banks, financing a majority Malaysian-owned entity. Moreover, if the consortium fell apart because of this abrupt pull-out, the license likely would fall into Jasa Marga's lap. This was more or less how the company obtained the JORR project (as described above). It was no secret that company officials, having been expelled from LMS some five years prior, yearned for this toll road. Ministers expressed similar views.[165] With the hard work of land acquisition nearly complete, the route seemed vulnerable for "capture" by Jasa Marga.[166]

Soeryadjaya's close ties to Yudhoyono meant that this plan faced stiff opposition. However, Yudhoyono would not be able to run in the 2014 elections, and so LMS would have to hurry to secure a new loan deal before the road could be turned into an election weapon. Wanting this PPP project to stay in private hands, the World Bank provided generous legal and technical support to LMS during this period.[167] The Bank's investment arm, the International Finance Corporation, and its regional bank, ADB, were discussed as possible lenders. But following an extension of the deadline to reach financial closure, other banks stepped in. A pairing of private banks and regional development banks coalesced to sign off on a Rp. 8.82 trillion loan (US$959 million). BCA led the private bank

20, 2014), and a lawyer for the TPT (Solichin, Cirebon, February 21, 2014). For Eten's quote, see "Menolak Dibongkar, Pemilik Lahan Hadang Alat Berat," *Pos Kota*, February 22, 2014 (poskota.com; last accessed February 24, 2014).

164 Schonhardt 2012; Manning and Purnagunawan 2011; Business Monitor International 2012 (Q4), p. 15. It also helps to explain the late 2012 disbandment of BP Migas, which was accused of catering to foreign companies ("Opini: BP Migas Tamat," *Tempo*, November 2011, p. 31).

165 "Rp. 1 Triliun untuk Percepat Proyek Tol Trans Jawa," *Republika*, September, 30, 2011; Handayani *et al.* 2011, p. 91; "Infrastructure Projects Stalemate," *Indonesia Today*, June 19, 2012 (yosefardi.com; last accessed November 12, 2012).

166 "Lintas Marga Enggan Lepas Tol Cikampek–Palimanan," *Bisnis Indonesia*, October 15, 2011.

167 Interview, Oslan Mohamed Isa, Jakarta, November 25, 2011.

faction.[168] The Jakarta Municipal Bank (Bank DKI) coordinated the involvement of a number of regional development banks.[169]

Much to the central government's exasperation, LMS (with its new loan) stuck to its guns by insisting that it will only start construction once the right of way was acquired fully. State officials pointed out that other concessionaires had begun construction with far less than 100 percent right of way. In early 2013, LMS finally relented, and began construction, albeit slowly.[170] It worked deliberately because, as noted above, it still preferred for land acquisition to be completed in its entirety. This was reached in mid-2014. The same surely could not be said of the three north Java coast routes Bakrie once pledged to build. Among negative rent-seeking cases, variation can occur immensely.

Competing alternatives

Discussions on the difficulty of getting individual toll roads built and on reasons behind different rent-seeking outcomes shed light on the final point this chapter addresses: the failure of financing alternatives to take root. Against the disjointed approach of the Trans-Java Expressway, begun in the early-to-mid 1990s when Soeharto divided its control into mini-sections, the principal competing proposal has been to bundle existing concessions into one license in order to create a massive special purpose vehicle.

Popular with the World Bank and among some Indonesian technocrats, consolidation might end reliance on state money and dependence on the short tenor of Indonesian banks' loans and overcome other market inefficiencies in the financing of large-scale infrastructure projects in Indonesia. A single special purpose vehicle worth billions of dollars, it has been argued, would induce international private sector investment and IFI financing.[171] This would in turn:

1) bring the costs of financing down markedly;
2) extend the duration of financing over the length of the concessions;

[168] Others included the Panin Bank and the Commercial Bank of China.

[169] They included those from West Java-Banten, Central Java, East Java, East Kalimantan, and elsewhere (Sulistyowati and Sutisna 2011). The regional banks may have agreed to lend as much as Rp. 2.2 trillion (or 25 percent) ("Untuk Proyek Tol dan Mal, BPD Siapkan Kredit Sindikasi Rp 2,45 Triliun," *Kontan*, May 11, 2012; Mola 2012).

[170] Its first drawdown (of Rp. 1.1 trillion) took place in July 2013.

[171] Hertanto 2006; Interviews, Hangjoo Hahm, lead infrastructure specialist, World Bank, Jakarta, July 17, 2008; Sumaryanto Widayatin, senior advisor to the minister of public works on investment and economic affairs, Jakarta, May 19, 2009.

3) better allocate risk among concessionaires as the appreciable variations of cost and rates of return, among the different turnpikes would converge;
4) ensure the completion of the less commercially promising routes (a case is covered in Chapter 6).

A variation of the plan would be to capitalize the large consortium through the selling of shares on the country's stock market, as is commonly done for BOT projects in China.

Proponents of this alternative admit that technical details would need to be worked out, including how to determine the distribution of shares among current concessionaires. Current license holders detest the idea. One foreign investor suggested that his firm did not come to Indonesia to be a small fish in a big pond.[172] A representative from a domestic concessionaire scoffed that the plan would not allow him to control his own money.[173] Government officials may want a completed Trans-Java Expressway for the sake of development and economic growth, but concessionaires want to profit from their investment. This includes Soeryadjaya, a major financial backer of Yudhoyono. The World Bank believes the two aims are not mutually exclusive. The concessionaires are not convinced.[174]

The idea of bundling intrigues Jasa Marga. If it were to happen, the firm would become the dominant partner of any new consortium, by the virtue of its majority control of the Trans-Java Expressway. Yet, this is precisely what the technocrats, pro-market liberals, and other concessionaires want to avoid. Jasa Marga is seen as a representative of state capital – that is, the embodiment of a dysfunctional status quo. The technocrats and World Bank staffers want to induce the "right kind" of private sector investment, intimating that this means the massive multinationals from the US (such as Halliburton) or the European Union (such as Spain's Ferrovial), and not the Malaysian government.[175] Predictably, consolidation did not find widespread favor within Yudhoyono's government.[176] The moment to implement it was in all likelihood in 2004 with the passage of the Road Act

172 Confidential interview, Jakarta, November 25, 2011.

173 Confidential interview, Jakarta, June 8, 2011.

174 Another "alternative" that gained widespread coverage in late 2013 was to build a second Trans-Java Expressway off Java's north coast to sidestep land acquisition problems. The Public Works Ministry pronounced the idea infeasible, but the "sea" expressway idea persists, as it seems to be a pet project of Dahlan Iskan, the then SOE minister (Triyono 2014).

175 Interviews noted above (note 171). Ironically, while they view Malaysian government-linked companies with caution, at the same time they cite the building of the North-South Expressway under one license as a model.

176 Andriani 2011a.

that could have annulled all outstanding concessions, although it would have been fiercely unpopular among license holders and subject to litigation. The bundling proposal remains just that – an idea. Characteristic of the Indonesian toll-road sector, power, interests, and path-dependent trajectories have triumphed once more. Could Yudhoyono's successor, the irrepressible Joko "Jokowi" Widodo, revisit the bundling plan? Nothing says he cannot, as policy changes as a result of democratic procedures have been equally emblematic of post-Soeharto Indonesia.

6 Local perspectives

In part this book has concentrated on the national level, because national policies and regulations and national and foreign investors are instrumental in determining outcomes for the toll-road sector. However, to better appreciate the reasons for underperformance, we also need to look elsewhere. A political sociology approach is equipped to bring key processes at the local level into view. These processes matter because an inter-regional expressway will pass through a variety of host locations: agricultural fields, villages, small and medium-sized towns, and the outskirts of major cities. The road's construction can impact tens of thousands of citizens directly or indirectly, beneficially or harmfully. It can also shed light on the role of local officials and whether they are helpful or harmful at facilitating national-level plans.

This chapter explores the local context of toll-road development. It begins by examining the trials and tribulations of building the Semarang–Solo turnpike in Central Java. As in other areas, this link's concession was greatly affected by the 1997–98 financial crisis. Yet, as one of the original license holders attempted to resurrect the project, the Megawati administration revoked the license and handed it to Jasa Marga. The firm's management, however, was not receptive to the idea of building a commercially questionable 75-km turnpike that would traverse hilly and demanding terrain.

With the license now in state hands, the governor, Mardiyanto, began an aggressive campaign to prepare local state and society for the turnpike, which he wanted to leave behind as legacy of his administration. The former general became obsessed with the project, but a now democratic local state and society frustrated him at every turn. Provincial council members dragged their feet on allocating monies for the road's construction, as did district assemblies. Mardiyanto was forcing the latter to commit funds for partial ownership shares. His plan proved unrealistic and was scrapped by his successor.

Some concerned local academics and affected landowners also made their opposition public. As for the latter, this chapter presents contrasting cases of land acquisition. One concerns a well-publicized "Not in My Backyard" (NIMBY) movement. It was comprised of middle-class neighbors who recited repeatedly local regulations in support of their resistance. The other case involved the conniving of local officials with land brokers to abscond with compensation monies for an isolated farming community. The region's civil society organizations, weak and fractured, hardly came to the rescue in either case.

The Solo–Semarang case also typifies a problem besetting toll-road development in Indonesia – the slow acquisition of land and the rushed building of turnpikes. As the first 9-km section neared operational status in March 2011, cracks in one of the support bridges emerged, pushing the much-delayed opening back another eight months.

The chapter continues to probe the local level but does so in Indonesia's two major industrial cities, Jakarta and Surabaya, as controversy arose over the building of a distinctly different kind of expressway – an inner-urban turnpike in a dense and traffic-choked metropolis. In each case, a reformist outsider and newly elected local head of government opposed the project, thus pitting their mass-transit priorities against local but powerful pro-toll road forces. In Jakarta, it appears as if the pro-toll road forces will prevail; in Surabaya, at the time of this writing, it is still early days.

Prelude to a quest

PT Karsa Semesta Indah (KSI) took concrete and surprising steps to resume the building of its Semarang–Solo turnpike, even prior to Megawati's 2002 lifting of the freeze on large-scale infrastructure projects. Its steps were surprising because, first, as this book has shown, other concessionaires were content to sit on their franchises and, second, because an exhaustive 2001 study of Java's arterial road network concluded that tolling this hilly road "will not be possible before 2010 and may not be feasible until much later."[1] Still, KSI's ownership structure underwent a major change, and the new majority investor opted to proceed. With the original majority owner, the Angkosubroto family, mired in debt, it sold its share to one of the limited partners, a domestic entity, PT Arcadia Chandra. As the other foreign minority investors dropped out, Arcadia Chandra found a willing counterpart in an obscure Australian firm, Infrastructure

[1] Carl Bro. International 2001, pp. 6–28. It favored the northern route to Surabaya (via Tuban).

Management International (IMI).[2] The two had intended to purchase the Surabaya–Mojokerto concession, but its 2001 cancellation (noted in Chapter 3) scuttled their plans. As a result, Arcadia Chandra proposed to IMI to invest in its Semarang–Solo link, although the route promised to be less profitable than the East Java section. IMI agreed. It was attracted to work with Arcadia Chandra because its owner, Suriana Chandra, was a renowned engineer who had saved the Indonesian government significant sums through his design work on the technically demanding Padalarang–Cileunyi turnpike, completed in 1991 with fifty-two bridges to accommodate West Java's hilly terrain.[3]

For Central Java officials, building the Semarang–Solo link brought intriguing possibilities. Among them was the rent they could garner through minority ownership of the project, which the governor and the *bupati* whose districts would be bisected by the tollway were demanding. With the historic regional autonomy laws in effect since January 2001, this period was the heyday of decentralization. Local officials wanted to benefit from their new found authority. Knowing that local officials held the trump card in the form of compulsory land acquisition, Arcadia Chandra acquiesced to their demands. Officials boasted they could clear the land in a year, although they never specified with whose money.

To put the project on sound financial footing, KSI requested the provincial government to secure a bank guarantee. The latter said it could be accomplished, perhaps with the state-owned Mandiri Bank.[4] The Boediono-led Finance Ministry, however, wished to keep inflation in check and wanted to steer clear of large-scale projects that provided easy cover for corrupt behavior.[5] It denied the request.

KSI considered this a minor setback, but the central government had other plans. It used the rejection as a pretext to annul the license in 2003, as it had done to the Surabaya–Mojokerto concession.[6] Arcadia Chandra's owners concluded the move was politically motivated. With 2004 elections looming, Megawati wanted to be seen revitalizing the country's economy. This was ironic, since this was precisely what Arcadia Chandra was looking to do.

[2] It is not clear if the family fully divested or became a minority partner. For its original minority investors, see Chapter 2 (note 202). The earliest (and a rare) reference to IMI I have found is "Jalan Tol Semarang–Solo Segera Dibangun," *Kompas* (Central Java edition), October 16, 2001.

[3] Askar 1991.

[4] "Jalan Tol Semarang–Solo Segera Mulai Dibangun," *Kompas* (Central Java edition), February 6, 2003.

[5] O'Rourke and Milne 2010, p. 31.

[6] In Chapter 3, I argued that the lack of politically connected investors in these consortiums made them easy targets.

Jasa Marga's then director, Syarifuddin Alambai, reassured Arcadia Chandra that he would not execute the government's revocation. Alambai believed that the minister of housing and regional infrastructure, Soenarno, who had revoked its license, had no legal authority to do so. Alambai was of the view that this power rested with Jasa Marga as the sector's regulator and as the authority who signed the original 1996 concession agreement. He suggested that something would be worked out. After all, Jasa Marga had little interest in financing the turnpike on its own, given its questionable profitability and the company's debt problems. In any case, Jasa Marga lost its regulatory powers in early 2005, and BPJT, placed under the minister of the now renamed Public Works, proceeded with the understanding that the license was cancelled and that Arcadia Chandra was out of the picture.[7]

What did this turn of events mean for officials in Central Java? At first, it created a holding pattern. Throughout 2004, they believed that the license would be retendered with the provincial government obtaining a token share, perhaps 10 percent.[8] Private investors from China, South Korea, and elsewhere expressed mild interest but nothing more.[9]

The status quo was broken in late 2004 or early 2005, when it was learned that Jasa Marga would take possession of the license, thereby eliminating the need for an auction.[10] This news from Jakarta propelled Governor Mardiyanto into action. He began a concerted campaign to mobilize local government resources and society for a swift realization of the Semarang–Solo project. Financial considerations in part drove the retired major general. In March, he signed a letter of intent with Jasa Marga. It was proposed that Jasa Marga would retain at least 51 percent of control. For the provincial government, this meant its share would amount to around Rp. 3.3 trillion (about US$347 million).[11] This was a massive sum that would take deft planning to secure.

[7] Much of the above is drawn from a telephone interview with Dina Chandra, vice president of Arcadia Chandra International and daughter of Suriana Chandra, June 26, 2012.

[8] "Investasi 296 Kilometer Jalan Tol Ditender Ulang," *Kompas* (Central Java edition), April 23, 2003.

[9] "9 Investor Minati Proyek Jalan Tol Semarang–Solo," *Bisnis Indonesia*, February 10, 2004.

[10] "Jasa Marga Segera Bangun Jalan Tol Semarang–Solo," *Solopos*, February 2, 2005.

[11] At the time, the route's price tag ranged from Rp. 6.1 and Rp. 7.6 trillion (see below for a debate over this range). It needs stressing that this was before domestic banks began lending for toll-road development, and the norm of 70:30 equity division had yet to materialize. In hindsight, while these figures were unrealistically high, they did reflect the reality at the time.

A quest

A yearning to leave behind a legacy fueled the governor, perhaps more than the need to mobilize resources. Mardiyanto, who hailed from Solo (also known as Surakarta), had overseen the construction of a grand mosque in Semarang that was completed in 2006, but he thirsted for more. By all accounts, he became obsessed by the idea of bequeathing the Semarang–Solo turnpike to the people of Central Java.[12] Moreover, he opined that East Java had leapfrogged ahead of Central Java economically by building the Tanjung Perak port in Surabaya.[13] Determined not to let this recur in the case of toll roads, Mardiyanto would not allow local obstacles stand in his way.

To demonstrate his seriousness, this former chief of the Central Java (Diponegoro) army command, upon signing the letter of intent with Jasa Marga, had a feasibility study conducted, and submitted a business plan, including a basic design to the SOE. He even formed a local specialized work unit, appropriately named the Team for the Acceleration of the Construction of the Semarang–Solo Toll Road. Officials at Jasa Marga did not reciprocate. They preferred to work at their own pace, guided by their own approach, including designing the link's route. They were also content to wait for the promulgation of the new road law (October 2004) and its implementing regulation (March 2005). The governor began to seethe with frustration.[14]

Undeterred, he turned his attention to resource mobilization. Provincial authorities explored several options, including the selling of provincial government bonds.[15] They also considered inviting private sector investment. It is not clear if any domestic investors came forward, although a Malaysian outfit inquired.[16] That toll roads outside the Jakarta metropolitan area had turned out to be bad businesses was not lost on domestic investors. Mardiyanto cited a potential daily traffic count of over 42,000 in his effort to woo them. However, this figure stretched credulity, even if Jakarta and Surabaya were to be fully connected via the Trans-Java Expressway.[17] Researchers at a local university concluded that a figure of

[12] One article mocked that the expressway symbolically had become the governor's Borobudur ("Masyarakat Akan Jadi Agropolitan," *Wawasan*, August 1, 2005).

[13] "Mardiyanto: Masyarakat Harus Berpikir Jernih," *Kompas* (Central Java edition), December 10, 2005.

[14] Interview, Zaini Bisri, editorial board member at *Suara Merdeka*, Semarang, May 22, 2007.

[15] Burhanudin and Arianti 2005.

[16] "Investor Asal Malaysia Ajukan Tawaran," *Kompas* (Central Java edition), August 16, 2005.

[17] "Gubernur Menjawab: Tahapan Proyek Tol Semarang–Solo," *Wawasan*, March 25, 2005.

18,000 was more realistic.[18] Recall from Chapter 5 that in the first year of the Kanci-Pejagan link its daily traffic count was about 14,000. In 2011, in its silver anniversary, the Surabaya–Gempol expressway averaged less than 19,000 vehicles per day.[19]

Besides the Semarang–Solo's questionable profitability, national firms also may have been aware of KSI's suit against the government, as was mentioned previously. It is not clear if locally many were aware of KSI's attempt to challenge the legality of its license's revocation. Aware or not, Mardiyanto pressed on.

He seized on the idea of public funding as an alternative. The governor advocated that district governments, along with their provincial counterpart, would raise the province's 49 percent share of construction costs from local budgets. On paper, the plan had its benefits. It was in agreement with recommendations made by the World Bank-funded 2003 consultancy report. Through direct ownership, it was hoped that local governments would cooperate and perform duties responsibly and efficiently, especially in the difficult task of acquiring land. The plan also resonated with the spirit of decentralization whose 1999 legislation placed the locus of autonomy at the district level. A financing scheme was devised accordingly: The provincial parliament's share would be 30 percent, and the remaining 19 percent would be sourced from the six district and municipal council budgets in proportion to the length the tollway would pass through each jurisdiction.[20] Illustratively, based on these assumptions, the cost to the Semarang district government, with the longest section of about 46 km (or 65 percent) of the toll road passing through it, would be approximately Rp. 415 billion (US$45.6 million).[21] Even if investment payments were spread over five years or so, this was an awfully heavy burden for a district whose entire budget in 2009 was Rp. 781 billion.[22] It was immediately clear to district bureaucrats, who were not consulted prior to the policy's pronouncement, that the plan was not feasible. Unless, they mused, the salaries of thousands of civil servants were not paid for a few years.[23]

In 2006, apparently grasping at straws and out of ideas, Mardiyanto pushed ahead with his plan but proceeded largely in symbolic fashion, as

[18] "Jalan Tol Giatkan Ekonomi Jateng," *Semarang Post*, January 26, 2005.
[19] See Jasa Marga's website: jasamarga.com/id_/hubungan-investor/volume-lalu-lintas.html.
[20] "Ditawari Investasi Tol," *Jawa Pos* (Semarang edition), December 17, 2005.
[21] This rough estimate is predicated on a total investment cost of Rp. 6.85 trillion (an average of Rp. 6.1 and Rp. 7. 6 trillion). It also assumes no bank equity, which was consistent with the thinking at the time.
[22] See the district's website: semarangkab.bps.go.id (last accessed August 3, 2012).
[23] Interview, Djoko Triwiyanto, former head of the Boyolali Regional Development Agency (Bappeda), Semarang, September 24, 2012.

indicated by the minimal amounts allocated by the local governments. The municipalities of Salatiga and Semarang set aside Rp. 7 billion, while the districts of Semarang and Boyolali budgeted Rp. 10 billion and Rp. 5 billion, respectively.[24]

Mardiyanto suggested that these funds could be applied toward the assembling of the right of way. (Recall from Chapter 3 that the central government's BLU funds would not be available until 2007.) Alternately, these funds could be counted toward the capital shares of the local governments.[25] In either case, he declared the acquisition would start in late 2005 and set a wildly optimistic target date for the tollway's opening for late 2008 – that is, the end of his term.[26]

For many district parliamentarians, Mardiyanto's plan to strengthen their economic autonomy did nothing but stifle it. Privately, they complained there was no dialogue or debate on the matter, only commandments. This was especially the case during the tour of the Acceleration Team, in December 2005, to the district councils.[27] Mardiyanto was a creature of the New Order and, for these local politicians, such visits exemplified his top-down, heavy-handed approach.[28] However, if district assembly members found the governor's belligerence concerning, and if they were worried about their budgets' ability to absorb such large sums, why did they acquiesce? Lest we forget, this was a time not far removed from the early days of decentralization when governors, as popular stories circulated, could not even convince *bupati* to attend a general meeting. At most the latter, as a means to display their new found powers, would send an inappropriately ranked official as his representative.

For starters, district assemblies were not asked to allocate massive sums but only an initial – almost token – allotment. Then by 2005, several developments had strengthened Mardiyanto's leverage beyond his forceful personality. One was his 2003 resounding electoral victory. In 1998, the central government had appointed him as governor, as had been the usual practice during the New Order. This time, following the

24 Working with the same assumptions (note 21 above), Salatiga would owe Rp. 49.6 billion (6 km, including a 4-km access road); Semarang City, Rp. 53.8 billion (6.5 km); Boyolali district Rp. 165 billion (20 km); Karanganyar district Rp. 13.3 billion (1.6 km); and Sukoharjo Rp. 10.8 billion (1.3 km). It was not clear if the latter two districts had allocated money for the project.

25 "Daerah Bisa Bebaskan Lahan Tol," *Kompas* (Central Java edition), August 27, 2005.

26 "Pembangunan Tol Semarang–Solo Dimulai Oktober 2005," *Kompas* (Central Java edition), March 15, 2005.

27 On the tour, see "DPRD Salatiga Investasi Rp. 7M untuk Jalan Tol," *Suara Merdeka*, February 27, 2006.

28 Interviews, Faturraham, regional councilor, Salatiga, July 23, 2007; H. Thontowi Jauhari, regional councilor, Boyolali, June 6, 2012.

introduction of regional autonomy, the PDI-P supported candidate was selected by provincial parliamentarians on the first ballot.[29] Direct elections for governors would not be instituted nationally until 2005 and in Central Java, the first gubernatorial election was not until 2008. Mardiyanto's democratic credentials could be doubted because of the indirect mechanism through which he was elected. However, it was hard to ignore his legitimacy. These were the rules and procedures at the time; they were not of Mardiyanto's provenance.

Indonesian law had also boosted the governor's hand. In 2004, the national parliament bolstered gubernatorial powers by revising the 1999 decentralization laws. Megawati's government was a firm believer that the original legislation had emasculated their authority in favor of *bupati*. The new law implicitly reconstituted the hierarchical relationship between the province and district/municipal governments.[30] For example, governors (and ministers) now had more power to scrutinize district/municipal regulations on budgets, revenues, and taxes.[31] In this context, even Mardiyanto's most ardent detractors would have been hard-pressed to deny that, for cross-district projects, the law was clear on the matter – the governor, as coordinator, was in charge.[32] With his new powers, Mardiyanto was not going to let the opportunity to stamp his authority on this project pass him by.

The governor also needed to secure financial backing from the provincial assembly. To manage the province's massive investment, he intended to establish a provincial government-owned company (BUMD). Proclaiming reformist, good governance credentials, Mardiyanto proposed to structure the company as a private firm run by a professional management team. Nevertheless, the horse-trading and alleged bribery that had marred Mardiyanto's indirect election had left some parliamentarians embittered. They simply sought to frustrate his plans, knowing the toll-road idea consumed him.[33] In 2005, the provincial parliament agreed to form a BUMD by the name of PT Sarana Pembangunan Jawa Tengah (SPJT). Mardiyanto's opposition did score a minor victory, as the parliament allotted only 30 percent of the Rp. 500 billion (about US$16 million) requested of them. In the following budget, the remainder was allocated. But SPJT redirected much of this money toward other projects because of delays in the expressway.[34]

[29] On Megawati's and PDI-P's support, see Honna 2006.
[30] The Regional Autonomy Act (Law 22 of 1999, art. 4[2]) had removed the hierarchical relationship between the provincial and district/city governments.
[31] Law 32 of 2004, art. 189. [32] Law 32 of 2004, art. 38.
[33] Interview, Raden Sukoco, provincial councilor, Semarang, May 21, 2007.
[34] "Investasi Tol Akan Beralih ke Blok Cepu," *Kompas* (Central Java edition), May 23, 2006. These included the Cepu oil drilling and expansion of the city's airport.

Pushback

The retired major general's quest to leave behind the Semarang–Solo turnpike as a tangible embodiment of his administration was also garnering opposition from concerned citizens. Like parliamentarians, they sensed that Mardiyanto's ambition was blinding him to the complicated realities on the ground, which, in turn, was leading to worrisome shortcuts taken in the project's preparation.

A powerful example was the project's environmental impact assessment.[35] Lecturers at local universities highlighted its deficiencies, including the "objectivity" of a survey conducted to ascertain public opinion on the project. Respondents to a question on support for the road were overrepresented by government officials (civil servants and police and army officers) at over 20 percent of respondents, so biasing the results. Agriculturalists, the majority of whom would be directly impacted by the acquisition of homes or land, constituted only 6 percent. Worse, the questionnaire failed to tie views on the project to willingness to be relocated.[36] Such tainted results, critics averred, were inevitable since the provincial government had hired (without tender) a state firm (PT Virama Karya) to conduct the assessment. Other concerns were the speed at which the study was conducted (under three months) and the lack of a transportation expert on the assessment team.[37]

Oddly, little was made of what was supposed to be the assessment's main findings: the toll road's environmental impact. In time, views on the threat the project posed to the region's food security did emerge. In Central Java, it was projected that more than 300 hectares of irrigated rice fields would be lost permanently to road construction and another 500 hectares to subsequent development along its route. Estimates of foregone annual rice production hovered around at 13,000 tons. Despite years of declining yields and acreage as land conversion continued apace, Mardiyanto denied there was a problem. He guaranteed the province's rice surplus would not be affected.[38]

The problems of land conversion and acquisition extended beyond Central Java's agricultural heartland. They reached into the suburbs of

[35] Such an assessment is mandated by Law 23 of 1997 on environmental management (arts. 18 and 19).

[36] Arika 2005.

[37] "Tim Amdal Tanpa Ahli Transportasi," *Kompas* (Central Java edition), August, 2, 2005. Other more serious weaknesses will be broached below.

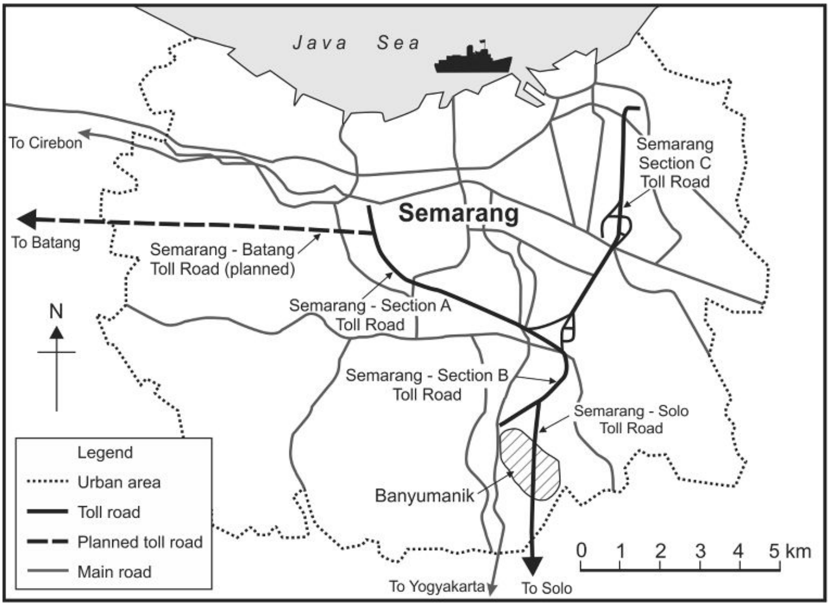
[38] Burhanudin and Arika 2005. While Central Java was producing a surplus of more than a million tons every year, production was down 14 percent from 1999 to 2005. Wet rice acreage was down 10 percent ("Indikator: Lumbung Padi dan Jalan Tol," *Kompas* [Central Java edition], July 20, 2005).

Figure 6.1 The deagrarianization of Central Java (Boyolali district, 2012).

the provincial capital, Semarang. In mid-2005, officials announced that the details of the turnpike's route had been finalized. With this, the residents of the Pedalangan quarter (*kelurahan*) in the Banyumanik sub-district located in southern Semarang City gained knowledge that their homes stood in the tollway's path (more specifically, a toll booth plaza). They expressed dismay but resigned themselves to the fate of their quiet, middle-class neighborhood.

Their attitude changed, however, when they learned that the original route ran some distance from their homes and had only recently been altered by the provincial-level department on roads (Bina Marga). Rumors fueled their ire that the modification was prompted by a desire to avoid a nearby elite housing complex (Graha Estetika). This was home to a number of high ranking officials, including a powerful city bureaucrat.[39] Bina Marga officials denied such allegations. They claimed

[39] Interview, Didik Suhardiyo, FKJT Coordinator, Semarang, May 18, 2007. The official was Soemarmo Hadi Saputro. In 2005, he headed the city's development board, and by 2010, he was elected mayor. In 2012, he was found guilty of corruption and was sentenced to eighteen months in jail.



Map 6.1 Semarang Toll Roads

the new route was more economical than the original – for instance, it reduced by more than half the number of homes in Semarang targeted for demolition.[40] Bina Marga's explanations fell on deaf ears among the lawyers, lecturers, financial planners, and engineers of Pedalangan. Incensed, they formed a NIMBY protest movement.[41]

Two further developments fed their righteousness. One was the above-mentioned climate of concern over the way Mardiyanto seemed to be rushing headlong into the project. The neighbors tapped into and capitalized on this atmosphere of discontent. Another element of the controversy was more concrete. The law, it turned out, appeared to support their case. Fortuitously for these residents, Semarang's municipal assembly, in 2004, had agreed to a spatial planning program that called for the road to pass through the first route.[42] The area designated for this development

[40] From 850 to 330 or so houses ("Jalur Tol Dibelokkan, *Semarang Post*, July 2, 2005).

[41] Despite the newness of the acronym, urban neighborhood resistance groups have a storied history in Indonesia (Colombijn 2011).

[42] In this sense they were lucky because, now that the responsibility of spatial planning had been devolved to the district/city level, only some 20 percent of these governments across the country had completed such plans (Moeliono 2011, p. 212).

Figure 6.2 The "legalistic" graffiti of FKJT (2007). It reads: "The toll road that passes through Tirto Agung ruins the environment and violates regional regulations (!!!) that remain in force. Because of this, we oppose [the toll road]."

project was codified in two regional regulations, one on a detailed urban spatial plan and one at a more general level. Both regulations were in force until 2010.[43] In this light, the residents of Pedalangan began to agitate, especially in the local press that gladly published in sensational style expressions of their outrage over the dubious legality of the new route. Rejecting the new route in principle, they did admit that they would accept the change if it was reflected in a revised municipal spatial plan, knowing the likelihood of this happening was remote. Given the cost and time involved, city councilors were loath to submit to these demands. They blamed the problem on the prior city assembly (1999–2004) that had enacted the zoning bylaws. Some assemblymen thought the courts were the proper institutions to decide on the legality of the route change.[44] However, as in

[43] Specifically, one was Regional Regulation no. 5 of 2004 on Regional Spatial Planning (*Rencana Tata Ruang Wilayah*, or RTRW); and the other was Regional Regulation no. 12 of 2004 on a Detailed Town Plan (*Rencana Detail Tata Ruang Kota*, or RDTRK).
[44] Interview, Agung Budi Margono, Semarang City assemblyman, May 30, 2007.

land acquisition cases, local officials dreaded this option. The head of Bina Marga insisted that the institution which had created the mess – the city assembly – should clean it up.[45] The provincial government believed that the zoning provisions were designed sufficiently broadly and flexible enough to accommodate the minor change in route. Quite remarkably, a heated debate over the legality of the city's spatial regulations was waged for some time.[46]

Concerned homeowners coalesced according to their street address. On Klentengsari Street, residents formed a group called Team Nine. On nearby West Tirto Agung Street, a few neighbors established the generically named Toll-Road Communication Forum (*Forum Komunikasi Jalan Tol*, or FKJT). It was a more vociferous opponent of the route change than Team Nine. Almost immediately, FKJT spearheaded an active letter writing campaign. Anxious not to be seen as anti-toll road or anti-development, the group in its letters advanced methodical legalistic arguments against the route change.[47] Letters were addressed to over two dozen targets, including the president's office, a number of ministers, the head of every major political party, the National Anti-Corruption Commission, and the National Commission on Human Rights. Plainly, FKJT sought to escalate its predicament into a national issue. At this it did not succeed, although the National Commission on Human Rights and the National Ombudsman Commission did acknowledge its concern.[48]

FKJT's campaign created complications for local civil society organizations. For example, the Semarang branch of the Legal Aid Institute office sympathized with the neighbors' plight. It opposed what it saw as the illegal seizure of land for the road predicated on Yudhoyono's controversial 2005 decree. The organization could not afford to spend scarce resources, including political capital, on defending middle-class homeowners, however.[49] As such, FKJT turned to a local university, located near Pedalangan, where a lecturer, Djoko Soejitwarno, was waging a

[45] Interview, Danang Atmodjo, Semarang, May 18, 2007.

[46] It was remarkable given the general indifference of society, and even civil society, toward spatial planning issues despite their importance (Reerink 2011, p. 149).

[47] "Warga Pedalangan Surati Presiden," *Wawasan*, September 23, 2005; "Warga Protes Perubahan Rute," *Suara Merdeka*, October 9, 2005. An example of their letters can be found at the website of the Indonesia's Super-Parliament (MPR): mpr.go.id/surat-pembaca/read/1052 (last accessed March 27, 2014).

[48] "Warga Disarankan Temui DPRD," *Suara Merdeka*, December 8, 2005; "Ombudsman Klarifikasi Gubernur," *Kompas* (Central Java edition), December 5, 2005. On the Ombudsman Commission, see Crouch (2008).

[49] Interview, Siti Rahma Mary Herwaty, Legal Aid Institute staffer, Semarang, May 16, 2007.

personal crusade against the Semarang–Solo turnpike. In his many commentaries and interviews published in local and national newspapers, Soejitwarno raised a host of concerns over the project, including possible markups in construction costs, environmental degradation, and the social costs of dislocation.[50] This transportation expert, who favored the revitalization of the rail network as an answer to Java's logistics bottleneck, gladly gave FKJT a platform to air its views. A seminar critical of the Semarang–Solo project was held at Soegijapranata Catholic University in September 2005 where Soejitwarno was employed. He and FKJT continued to work in collaboration.[51]

Stalemate

Throughout 2006 and into 2007, preparations for the Semarang–Solo segment slowed considerably. The crux of the matter was not rooted in local resistance to Mardiyanto but in Jakarta and its tangle of policies on toll-road development. One problem was understaffing at BPJT. More serious was Jasa Marga's reluctance to commit to the project financially. Reservations of its management over this road were noted above (and in Chapter 3). The company's traffic forecasting models were bleak, especially for the Bawen–Solo section (see Map 6.2). Was not the post-Soeharto era a time when Jasa Marga should have been able to reject government overtures to build another loss-making toll road? As a compromise, it was stipulated in the concession contract that the SOE would be responsible for building the commercially promising first 23 km. After this Jasa Marga would be provided with some type of subsidy if it were requested to construct the Bawen–Solo section before 2018.[52] Still, negotiations that resulted in the compromise were difficult and halted the project's progress.[53] Another cause for the slowdown concerned Yudhoyono's decrees on land acquisition in the public interest. Local officials were unwilling to proceed without firm backing from Jakarta or without its money.

In one sense, the Semarang–Solo link was distinctive. Its hilly terrain made its construction more technically demanding than other new

50 For example see, Setijowarno 2005; and "Pembangunan Tol Trans Jawa Merugikan," *Kompas* (Central Java edition), January 21, 2008.

51 "Warga Minta Patok Dicabut," *Suara Merdeka*, September 15, 2005. In addition to Soejitwarno, FKJT was also helped by the university's legal aid center.

52 Interview, Dedi Krisnariawan Sunoto, head of Toll-Road Commercial Operations, Jasa Marga, Jakarta, June 25, 2012.

53 "Pemprov Setuju Jadwal Ulang Tol Semarang–Solo," *Kompas* (Central Java edition), January 26, 2007.

sections of the Trans-Java Expressway. This facet, especially as it pertained to the finalizing of the route's detailed engineering design, caused further delay, much to Mardiyanto's displeasure. The Public Works Ministry sought to avoid a repeat experience of the Cipularang expressway in West Java where mudslides forced its closure shortly after its opening.

The challenges that the construction of this Central Java link posed also fed into the debate over its cost. Throughout 2005, officials' confusion on the matter fueled widespread speculation that markups were involved. Early on authorities mentioned a price tag of about Rp. 3.63 trillion (US$427 million). But the wide circulation of this figure forced them to clarify that this only concerned construction costs. It excluded, for example, land costs.[54] Press reports on the March 2005 letter of intent mentioned Rp. 7.6 trillion, which only strengthened suspicions about markups.[55] Predictably, officials denied the allegations, although estimates were suddenly lowered to Rp. 6.1 trillion.[56] Months later, they were revised again, upward to Rp. 7 trillion. According to Jasa Marga, this was because of the rise in gasoline prices and in interest rates.[57] All told, officials exacerbated the matter by speculating widely on costs. Had they better communicated to the public that the route's hilly terrain made its construction expensive, they could have better undercut the accusations of markups by some parliamentarians and other critics who were incorrectly applying average construction costs in Indonesia to this case; the Semarang–Solo's construction was anything but average.[58] The route demanded exacting engineering, as its nine bridges (including one nearly a kilometer long) attests.

Back in Pedalangan, FKJT also jumped on the markup bandwagon. It continued to press its own case, publicly in the papers and in the occasional forum and privately with local officials and city council members. What differentiated the approach of the two neighborhood groups soon became apparent. The Klentengsari group (Team Nine) sought to unify neighbors in anticipation of negotiations with the local government purchasing committee to secure satisfactory compensation. The group's aims were straightforward and conventional, in contrast to those of FKJT. Although about two dozen homes along West Tirto Agung Street were

[54] "Konstruksi Tol Semarang–Solo Butuhkan 427 Juta Dolar," *Suara Merdeka*, January 24, 2005.

[55] "Fisik TOl Semarang–Solo Telan Biaya Rp. 5 Trillion," *Suara Merdeka*, March 15, 2005.

[56] "Pemprov Bentuk BUMD untuk Tangani Investasi," *Kompas* (Central Java edition), August 13, 2005.

[57] "Anggaran Tol Membengkak Jadi Rp. 7T," *Semarang Post*, December 8, 2005.

[58] "Idealnya Hanya Rp. 3 Triliun," *Jawa Pos* (Semarang edition), August 15, 2005.

Figure 6.3 Taming the hilly, rugged terrain of the Semarang–Ungaran section of the Semarang–Solo toll road in February 2011 (*Tempo*/Budi Purwanto).

slated for destruction, a few on the street were not, and this explains the difference. It shed light on the vocal and visible campaign FKJT was waging. It knew that in this instance the law was not on its side (as if it mattered in the first instance). The owners of homes directly beyond the targeted area were FKJT's most active members; they fought vigorously for their homes to be demolished in order to receive compensation. They dreaded living in a disfigured neighborhood with an expressway's dizzying noise meters from their doorsteps. In the end, their tenacity bore fruit. By the end of 2009, all homeowners on West Tirto Agung Street received compensation. This outcome confirms recent research on divisive siting of facilities that democratic governments tend to submit to the compensatory demands of high-quality citizen groups capable of sustaining organized resistance.[59] With the leveling of the houses on West Tirto Agung Street, this NIMBY movement, with a twist, came to an end.

In addition to the residents of Pedalangan, the district councils that had allocated funding for the toll road began to fret. The district executive (*bupati*) of Semarang district complained he had not been updated on the

[59] Aldrich 2008.

Figure 6.4 The Banyumanik Toll Plaza in 2011 where the Tirto Agung neighborhood once stood (*Tempo*/Budi Purwanto).

project's status.[60] In 2007, amidst growing frustration, Semarang, Salatiga, and Boyolali councils voided the budget funds pledged.[61] Mardiyanto's critics described these withdrawals as acts of defiance; assemblymen I spoke with were more diplomatic. They maintained it was a normal administrative procedure to return undisbursed monies to the treasury. A spokesperson for SPJT also downplayed these developments, suggesting that the district assemblies' contributions were "voluntary, not an obligation."[62]

However, the waters at SPJT were choppy. Its director brought in from Jakarta to run the BUMD resigned after a few months. Mardiyanto's interference proved intolerable. He was replaced by a former provincial official, that is, someone eminently more pliable.

Nevertheless, for the governor, a day he pined for had arrived. On June 8, 2007, in an elaborate ceremony at the governor's office, he and the executive director of Jasa Marga, Frans Sunito, formally entered into a joint venture named PT Trans Marga Jateng (TMJ). The project, revalued

[60] "Pusat Tidak Serius Garap Tol Semarang–Solo," *Solo Post*, November 27, 2006.
[61] "Dua Daerah Hapus Dana Proyek Tol," *Kompas* (Central Java edition), May 23, 2007.
[62] Confidential interview, staff member of SPJT, Semarang, May 25, 2007.

downward to Rp. 6.83 trillion (US$750.5 million), would be 60 percent controlled by Jasa Marga; SPJT, as representative of the Central Java provincial government, owned the remainder. Jasa Marga pledged to commit Rp. 276 billion as startup capital, SPJT Rp. 184 billion.[63] The latter intended to keep 60 percent of its share (or 24 percent of the total investment) and divide the final 16 percent among the six districts and municipalities along the turnpike's route.

Now that state banks were lending 70 percent of the equity, the financial obligations of the provincial and district governments were drastically lower than earlier estimates.[64] SPJT's share would amount to Rp. 492 billion and that of the district governments Rp. 328 billion. The reduction is striking in the case of the Semarang district. Earlier estimates of Rp. 415 billion were reduced to about Rp. 266 billion, although still a considerable sum for the district.

At the signing, Mardiyanto addressed the public's opposition to the project, to which he retorted it was a vocal minority. Responding to questions over the project's delay, he was more forthright. He cited the difficulties behind the detailed engineering design and the polemic behind SPJT's formation.[65] On the withdrawal of monies by the district parliaments, he later had this to say, "I'm not going to burden the districts and municipalities. If they want to join they can. If they don't they won't. But don't point fingers later when private investors come and invest in the road. This project must happen."[66] The governor was right about the road. It did open (at least the Semarang–Ungaran section; the subsequent section from Ungaran to Bawen is scheduled for completion in late 2014[67]). He was wrong about the private investors. They never came.

Although reportedly beaming with delight at the signing ceremony, this seasoned veteran must have seen the writing on the wall. He knew that the road's construction (let alone its opening!) would not commence until after his term expired in August 2008. He was a lame duck governor who had had enough. In April 2007, when it became apparent that illness would necessitate the replacement of the interior minister, Mohammed

[63] "Pemprov Sudah Setor Rp. 184 Miliar," *Suara Merdeka*, October 22, 2007.
[64] The syndicate comprised Mandiri Bank (Rp. 1.8 trillion), BNI (Rp.1.6 trillion), BRI (Rp. 1.2 trillion), and the Development Bank of Central Java with a token share (Rp. 100. billion) (Bangun 2011).
[65] Priyanto and Prasetyo 2007.
[66] "Pemprov Tak Paksakan Penanaman Modal Tol," *Suara Merdeka*, June 15, 2007
[67] A sizable shift in construction's foundation forced a year-long delay. On a similar problem in the construction of the turnpike's first section, see below.

Mar'uf, the governor sent his close friend President Yudhoyono word that he was available.[68] In August, Mardiyanto officially supplanted Mar'uf.

TMJ's mid-2007 formation gave the turnpike a sheen of inevitability. The availability of BLU funds from Jakarta unquestionably aided matters, leading to negotiations with affected citizens. These negotiations that had dragged on for years gained momentum throughout 2008 and into 2009. There were no consignment cases, but the threat thereof moved the process forward, forcing people to accept lower sums than they anticipated. In Banyumanik, the sub-district most affected in the municipality of Semarang, in April 2008, procurement committee officials offered Rp. 1.2 million per square meter for the highest classification of land parcels. Residents countered with 7.5 million, or nearly ten times the reported tax valuation (NJOP) price of Rp. 800,000. Nearly eight months later, dejected homeowners agreed to a below-market figure of Rp. 1.8 million per square meter.[69]

Progress made by the local government on the ground gave the newly elected governor, Bibit Waluyo, enough confidence to lay ceremoniously the expressway's first construction pile in early 2009. The winner of the province's inaugural direct gubernatorial election in 2008, Waluyo resembled Mardiyanto in a number of ways. He was a Central Java native (from Klaten), a former (lieutenant) general, and was backed by PDI-P. But his attitude toward the Semarang–Solo road differed appreciably. The new governor adopted a more hands-off approach, no doubt made possible by Mardiyanto's struggles in laying the groundwork. Waluyo did something that Mardiyanto would not consider – he publicly thanked his fellow citizens who were affected by the project for their sacrifice.[70] That the toll road's first section would most definitively open under his watch afforded him the luxury of tranquility and graciousness.[71] Waluyo's reticence was also explained by the fact that he would need the help of district (and municipal) parliaments to win reelection in 2013 (although he would not win). He was in no position to antagonize them. As a result, when the new local parliaments convened in 2009, the issue of investing in

[68] Mardiyanto served as his assistant when, in 1997, Yudhoyono was the Armed Forces Chief of Social and Political Affairs.

[69] Land parcels were classified into about seven zones. The lowest category received Rp. 200,000 per square meter ("Negosiasi Lahan Tol Buntu Lagi," *Suara Merdeka*, April 25, 2008; "Akhir Januari, Batas Akhir Pembebasan Lahan Tol," *Suara Merdeka*, January 20, 2009).

[70] "Pengerasan Tol Capai 1 Km," *Suara Merdeka*, December 8, 2009.

[71] Toward the end of his term, however, he was tested by a difficult land case in the village of Ireng Lemah (Bawen sub-district, Semarang district) where the consignment procedure was initiated ("Eksekusi Ricuh, Warga Dievakuasi," *Suara Merdeka*, November 30, 2012).

the road was never raised. For these assembly members, it was as if the matter did not exist.[72] A TMJ board member told me with the banks now lending 70 percent of the equity, the provincial government, or SPJT, opted to be wholly responsible for its 40 percent share (Rp. 820 billion).[73] The decision was politically motivated.

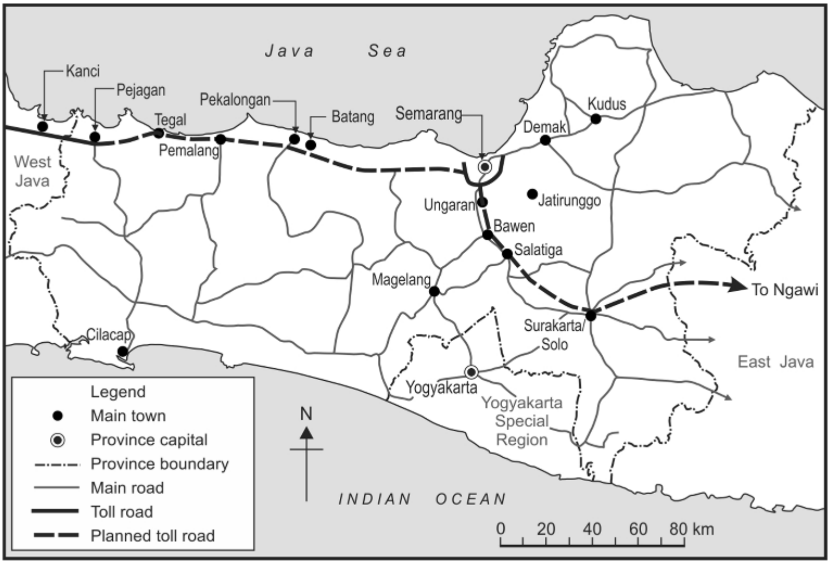
Land corruption

In August 2010, about six months before the first section of the Semarang-Solo turnpike (to Ungaran) was scheduled to open, a group of about 100 farmers arrived at a Mandiri Bank branch on the outskirts of Semarang (in Tembalang). They gathered to withdraw their compensation for the sale of their land in Jatirunggo, a village east of Bawen in Pringapus subdistrict, Semarang district (see Map 6.2). It should have been an innocuous occurrence that would happen countless times with respect to the Trans-Java Expressway. However, when the farmers arrived at the bank, their accounts were empty. Thus began the most notorious land corruption case regarding the Trans-Java Expressway and one that illuminated the workings of speculators; discussions about the latter's role in compulsory land acquisition on Java have been pervasive.

The Semarang–Solo link does not pass through Jatirunggo. But the village was chosen as an area to replace trees felled from a conservation forest elsewhere along the route. Since the land being acquired was technically beyond the realm of the public interest, the provincial-level acquisition team, TPT (Tim Pengadaan Tanah), not the district-level team (P2T), had jurisdiction over these purchases.[74]

Having surveyed the land, Suyoto, the head of the TPT (for Semarang–Solo, Section II), in April 2010 proposed a price of Rp. 50,000 per square meter (US$5.55) for a total of nearly twenty-eight hectares. The offer puzzled the farmers. They had agreed to sell their land to someone else, a land broker by the name of Agus Soekmaniharto, for Rp. 20,000 per square meter. They thought they were getting a good deal since the NJOP price was Rp. 10,000. Now they knew otherwise and demanded Soekmaniharto increase his offer. He did (to Rp. 27,000), although he never entirely fulfilled his promise. In the end, Suyoto reached a deal with the villagers and offered to deposit the money – a total of Rp. 13.2 billion (US$1.47 million) – in banks accounts opened by the TPT on the farmers' behalf. Upon signing the agreement, the farmers had

72 Interview, H. Thontowi Jauhari, Boyolali district council member, Boyolali, June 6, 2012.
73 Interview, Danang Atmodjo, Semarang, June 7, 2012.
74 Differences between TPT and P2T were discussed in Chapter 4.



Map 6.2 Central Java Toll Roads

legally surrendered their rights to the land. In the press, the head villager claimed to have instructed the villagers to cancel their agreements with Soekmaniharto and told Suyoto of the previous arrangements. Suyoto denied having knowledge of what transpired previously.[75] This mattered because subsequently questions in court were raised as to why the state grossly overpaid for these land parcels (by about Rp. 8.1 billion).

Almost immediately, a local NGO named the Indonesian Association of Self-Reliant Communities (Swadaya Masyarakat Serikat Konstituen Indonesia, or Sakti) began advocating on behalf of the farmers. It contacted the local press, who were instrumental in pressuring state prosecutors to investigate the case. Prosecutors did so, although belatedly. The farmers' money was traced to now-empty bank accounts in the name of Soekmaniharto, his financial backer (someone by the name of Hamid Sieger), an obscure cooperative, and a few other individuals, including a police officer from Ungaran and a businessman from Semarang.[76] Soekmaniharto and his accomplice were named material suspects and

[75] "Kasus Raibnya Uang Ganti Rugi Warga DPRD Jateng Bentuk Panja," *Suara Merdeka*, August 14, 2009.

[76] "Anggota Polisi Terima Rp 419 Juta," *Suara Merdeka*, August 19, 2010.

detained, as was Suyoto, the TPT head. When the Jatirunggo head villager was called in for questioning, he fled, as did the bank's branch manager. Both suspects remain at large.

Proceedings began against the trio in Semarang's then new special corruption court, known as Tipikor (Pengadilan Khusus Tindak Pidana Korupsi). They lasted a few weeks, and ended with a ruling, in January 2012, that stupefied Semarang's general public. The court found Suyoto and Sieger guilty and sentenced them to five years in jail.[77] Bizarrely, it acquitted Sukmaniharto. The court ruled that his infractions were civil, not criminal, in nature, and thus beyond the court's mandate.[78] Locally, it was believed that money allowed Sukmaniharto to walk. Furthermore, there was a pervasive sense that the three defendants had backers higher up who were neither investigated nor charged. One name commonly discussed was Murdoko, the then head of the Central Java parliament. A few months after the Tipikor's controversial verdict, Murdoko was named a suspect in an unrelated corruption case.[79] Meanwhile, complaints over the poor quality of Semarang's Tipikor had reached fever pitch, forcing Supreme Court officials from Jakarta to investigate. The judge who presided over the Jatirunggo case and who was also responsible for other questionable decisions was "exiled" to a district court in North Sulawesi.[80]

Comparisons between the FKJT and Jatirunggo cases bring forth several key points. While land brokers sought to exploit the uneducated farmers, they stayed clear of a suburban, middle-class neighborhood. It also was easier placing the farmers in a victims' slot than it was for FKJT, which explains the help the farmers received from an NGO (although only one). The aid they received also somewhat equalized the resources available to the two groups, especially in terms of access to the local press, which proved critical in both cases. The farmers grounded their arguments in straightforward notions of fairness and injustice, unlike the complicated, legalistic terms deployed by FKJT. Meanwhile, members of FKJT spoke on behalf of themselves; Jatirunggo's farmers were often spoken for. But this difference had no appreciable impact on either

[77] On appeal, Suyoto's sentence was reduced to three years, Sieger's to four (Handriana 2012).

[78] "Hakim Pemutus Bebas Harus Diperiksa," *Suara Merdeka*, January 11, 2012. The state prosecutor's office appealed the decision at the Supreme Court, which promptly found Agus Soekmaniharto guilty and sentenced him to four years' imprisonment ("Broker Tanah Jatirunggo Dihukum 4 tahun," *Suaramerdeka.com*, October 18, 2013 [last accessed February 21, 2014]).

[79] In November 2012, the Tipikor of Jakarta found him guilty of a few of the charges laid against him and sentenced him to thirty-six months in jail (Tranggana 2012).

[80] "Lilik Nuraini Dicopot," *Suara Merdeka*, June 27, 2012.

group's ability to stoke widespread protest movements. Grievances did not expand beyond the cases themselves. Whether this was due to Semarang's lethargic civil society or to the particularities of each case (middle-class homeowners in one and a one-time occurrence against isolated farmers in another) was not clear. Allusions made to the Kedung Ombo dam protests of Central Java of the late 1980s and early 1990s that, despite a repressive environment galvanized civil society across Java, were massively overblown.[81] Finally, while the urban middle-class homeowners of FKJT got their money, Jatirunggo's farmers never received theirs. Mandiri Bank has refused to reimburse the farmers' losses.)[82] Having lost the legal rights to their farmland, they will continue to till it until instructed otherwise.[83]

Precedent setting

Officials in Central Java were fond of dating the delay of the Semarang-Solo link to the original awarding of its license in 1996. Therefore, as the opening of its first 9-km section (Semarang–Ungaran) neared, and with countless missed deadlines apparently behind them, they saw it as a reason to celebrate. They organized a bike ride with over 10,000 cyclists who enjoyed a leisurely ride along the scenic route, soaking in Central Java's undulating and verdant countryside.[84] On this festive Sunday, these same officials would have been aghast if they were told that the Semarang–Ungaran section would not be fully operational for another eight months. But this is what happened. Indeed, another setback occurred. Shortly after the bike ride, in March 2011, final operational tests uncovered cracks in one of the bridge's support beams. Seemingly, it was caused by movement in the underlying soil. Acerbic finger-pointing ensued. Bina Marga and the main contractor, the state-owned PT Waskita Karya, became objects of scorn. So did the route's environmental impact assessment as its incompetence was revisited. It turned out the study lacked proper geohydrology tests. Neither did it investigate alternative routes.[85] An exasperated provincial head of Bina Marga pleaded for anyone with expertise to make him or herself known to help solve the problem.[86] One engineer who could have done so but did not was Suriana

81 Burhanudin 2005. On Kedung Ombo, see Chapter 3, note 114.
82 Rofiuddin 2011.
83 "Warga Jatirunggo Ancam Gugat Perdata," *Suara Merdeka*, February 10, 2012.
84 "Ribuan Sepeda 'Nganyari' Jalan Tol," *Suara Merdeka*, February 28, 2011.
85 "Amdal Diduga 'Aspal'," *Kompas* (Central Java edition), March 19, 2011; "Amdal Tol Tak Sentuh Peta Geologi," *Suara Merdeka*, March 31, 2011.
86 Interview, Danang Atmodjo, head of Bina Marga Central Java, Semarang, July 7, 2012.

Chandra, the owner of Arcadia Chandra whose Semarang–Solo license the state had ripped from him years before. Instead, Chandra, who had helped design the even hillier Padalarang–Cileunyi toll road in West Java, was experiencing *schadenfreude*.[87] A second crack was discovered in the Semarang–Ungaran section in October, and more continued to be found even after its official opening in November 2011. The opening was also greeted by complaints over its tariff. At Rp. 600 per kilometer, it was notably higher than the Rp. 300–400 per kilometer estimate of 2005.[88]

After the many exhortations of local officials to avoid a repeat experience of the Cipularang that experienced landslides and cracks shortly after its opening, this is what occurred again. This time, however, the folly began before the tollway's opening. In both cases, the root cause was similar: Due to political pressure, rushed construction did not allow the disturbed soil to settle appropriately. This is a major problem in Indonesia, a foreign toll-road investor related to me. In Indonesia, he said, toll roads are built contrary to international standards. General practice is for land to be purchased rapidly and roads built deliberately. In Indonesia, he vented, the inverse is the norm: Land is cleared too slowly and roads constructed too swiftly.[89]

In addition to technical construction concerns, other obstacles emerged. Prominent was Jasa Marga's insistence on receiving subsidies for the final section of the Semarang–Solo link (Bawen–Solo). As was noted above, this was stipulated in its 2007 concession contract, if it was compelled to build the 54-km section prior to 2018. The central government in principle agreed to uphold the deal, but precisely how it would fulfill its promise was hotly contested throughout 2011 and 2012.

There was precedent both sides could follow. In another case, the central government had opted to subsidize the building of the lengthy 177-km Solo–Kertosono route that crosses the West Java–East Java provincial border. As was mentioned in Chapter 2, this section originally comprised four licenses, which were subsequently merged into two as a linked pair: Solo–Ngawi and Ngawi–Kertosono (see Map 2.2). Among the Trans-Java links between Jakarta and Surabaya, this corridor is the least financially viable. Officials were under no illusions that auctioning the two licenses, together once valued at Rp. 8 trillion, would be easy. Daily traffic was forecasted at 15,000 vehicles, which

[87] See note 7 above.
[88] "Tarif Tol Terlalu Mahal," *Suara Merdeka*, September 15, 2011.
[89] Confidential interview, Jakarta, November 25, 2011.

was less than what was considered a minimum to support the route's financial feasibility.[90]

In early 2007, three consortiums did pass prequalification procedures, including Soerjadjaya's toll-road unit Astratel. In the end, no one submitted a final bid. This convinced officials that subsidies would be needed to induce private sector participation.[91] This realization scuttled the grand plans of the public works minister. Dividing the country along the traditional dichotomy of Java versus the outer islands, Kirmanto pontificated that traffic-dense Java would be the realm of private investors to reap the rewards of their large financial commitments. This arrangement would create the necessary budget space to subsidize toll roads in the outer islands with their low traffic forecasts. The minister had the islands of Sumatra (the greater Medan and Palembang areas and also a Trans-Sumatra Expressway) and Sulawesi (the cities of Makassar and Manado) in mind.[92] Unfortunately for Kirmanto, the traffic densities of Java are not evenly spread. The 2001 JARNS report did not recommend the Solo–Kertosono corridor to be widened to a seven-meter width, let alone to be tolled.[93]

Direct negotiations with interested parties commenced. By mid-2008, an agreement was reached with the Indonesian subsidiary of Thiess Contractors, originally an Australian firm.[94] A company representative thought that the company's over two decades' experience working in Indonesia (in the mining sector) was crucial in securing the agreement.[95] The deal called for the government to pay the land costs of the entire route and construct the first 60 km. In return for building the last 117 km, Thiess would receive a thirty-five year concession covering the entire route, with an initial tariff of Rp. 500 per kilometer. The total costs for

[90] "Tender 2 Ruas Tol Dibuka Lagi," *Kompas*, November 1, 2006.

[91] "Ruas Tol Solo-Kertosono Tidak Akan Ditender Ulang," *Kompas*, July 10, 2007.

[92] Interview, Hisnu Pawenang, former BPJT head, Jakarta, April 28, 2009. One of Indonesia's richest provinces, East Kalimantan, for a number of years has been planning to build a 99-km toll road between its two main cities of Samarinda and Balikpapan. The province had maintained that it would finance the Rp. 4.2 trillion project from its own budget but later backtracked, although discussions with Korean investors failed to bear fruit. In July 2014, it was finally agreed that Rp. 2 trillion would be sourced from the provincial government, and Rp. 1.5 trillion from the central government, of which Rp. 1 trillion would consist of foreign loans, including about Rp. 500 billion from the Chinese government (Subiyanto 2014).

[93] Carl Bro. International 2001, pp. 6–10.

[94] After Thiess became a wholly owned subsidiary of Leighton Holdings of Australia, the latter was purchased by the German firm Hochtief. Thiess, in partnership with the SOE construction firm Waskita Karya, also holds a JORR II license for the 10-km Serpong–Cinere link once valued at Rp. 2.2 trillion.

[95] Interview, Brett McGuire, Jakarta, September 24, 2010. Thiess had built mining-related roads in Indonesia, but this would be its first toll road.

each side, in the end, were forecast to be nearly equivalent.[96] It remains to be seen if Thiess will profit from the quintessentially PPP project. But it was good news for those who believed that the Trans-Java Expressway was a project worth more than the sum of its parts and that its full impact on the economy would only be realized once its sections were complete, especially between Jakarta and Surabaya.

Although movement on the route proceeded slowly following the agreement,[97] the broad contours of a deal were set that Jasa Marga and the government could have followed to break the impasse over the Bawen–Solo dilemma. However, both parties engaged in a war of wills. The SOE and Finance ministries wanted to wean Jasa Marga off from state funds and continued to reject its request for an investment guarantee of Rp. 1.9 trillion (equivalent to the land costs for the Bawen–Solo section).

The government also wanted Jasa Marga to sign its amended Semarang–Solo concession contract, which was overdue by about a year (recall from Chapter 4). So, the government sweetened the pot: an increased initial tariff, an extension of the thirty-five year concession, and, most importantly for Jasa Marga, the right to match for two new tollways in the greater Jakarta area. It worked, as Jasa Marga signed the contract in April 2012. However, as the infeasibility of the right-to-match routes became apparent, company officials again pushed for an investment guarantee. Under mounting political pressure (while well intended, at the time astonishingly unrealistic) to complete the Trans-Java Expressway by 2014, the Finance Ministry, in late 2012, relented and agreed to Jasa Marga's request.

Inner-urban toll-road battles

Which substitute routes in the greater Jakarta area did Jasa Marga have in mind? There was one to the airport, another to the port, and a third (elevated) link in southern Jakarta. This is of interest because of the notoriety of the project Jasa Marga opted to forgo – a second 69-km toll-road system in central Jakarta, valued at Rp. 40 trillion (US$3.5 billion). Internal studies convinced company officials to bypass the 2011 tender.

[96] "Negosiasi Tol Solo–Kertosono Dituntaskan," *Kompas*, May 16, 2008. After the 2011 reevaluation process, the investment value was revised to Rp. 11 trillion. In mid-2013, the central government neared agreement with the Chinese government for a US$300 million loan for its share (Mola 2013d).

[97] For starters, PT Solo Ngawi Jaya's loan arrangement had fallen apart; it first signed a new one with Leighton Finance Ltd. in January 2014. BPJT, which had temporarily declared the consortium in default, expected land acquisition to finish as soon as possible. Construction was set to resume in May 2014 (Nugroho 2014).

Figure 6.5 An elderly woman looks puzzlingly at a marker that indicates her wooden house is slated for destruction to make way for the Semarang–Solo tollway (Boyolali district, 2012).

The project was too short for its expense and land acquisition would be excruciating.[98] Having learned from the inefficiencies that beset past projects like JORR and JORR II, the government insisted on bundling the project's six sections into a single license, despite its record-setting price tag.[99] Although some thirty domestic and foreign entities requested

[98] Interview, Dedi Krisnariawan Sunoto, head of Jasa Marga's Toll-Road Commercial operations, Jakarta, June 25, 2012.

[99] The project will be built in three stages: (1) Semanan–Sunter–Bekasi Raya (Pulo Gebang); (2) Duri Pulo–Kampung Melayu–Kemayoran; and (3) Ulujami–Tanah Abang and Pasar Minggu–Casablanca (as reported in the press, although these stages are not contiguous).

prequalification applications, only two submitted them. One was a consortium called PT Jakarta Toll-Road Development (JTD), led by two Jakarta-municipality-owned companies (PT Jakarta Properindo and PT Pembangunan Jaya). Minority partners included several construction SOEs and CMNP. When the second bidder bowed out, JTD was left alone to enter into direct negotiations with the government.[100]

The project, of which 85 percent will be elevated, has been a lightning rod for civil society and transportation activists, who insist that the new inner ring road will not alleviate the capital's woeful traffic and that the government should be committed to mass-transit solutions.[101] The then new governor of Jakarta, Joko "Jokowi" Widodo, held similar beliefs.[102] The project served as an early test case for the popular outsider. Upon winning the governorship in September 2012, he declared the controversial project a low priority, and it would be subjected to further review.[103] Such luminaries as the then former Vice President Jusuf Kalla, and Sutiyoso, a former Jakarta governor, backed the professed reformer.[104] Jokowi found himself against formidable foes, however, especially from vested interests within the capital's bureaucratic machinery. To understand the latter's position, recall from Chapter 5 that Jakarta municipal government interests had lost to Jasa Marga in the battle for the ownership of JORR under Megawati's watch. Viewed from this perspective, since the early 1990s the city government has watched helplessly as massive toll-road profits generated on its own turf accrue to others, most notably the Soeharto family (CMNP) and the central government (Jasa Marga).[105]

[100] Sulistyowati and Siregar 2012. The other bidder was PT Nusantara Infrastructure, owner of the port and a short toll road in Makassar, and two toll-road licenses in the Jakarta area (Bintaro–Serpong and JORR W1). Prior to the tender, it was purchased by the Rajawali Group.

[101] "Enam Tol Dalam Kota Dipersoalkan," *Kompas*, September 20, 2006; Cahyadi 2011.

[102] In October, Jokowi presided over groundbreaking ceremonies for an underground mass rapid transit system in Jakarta (Dewi 2013) and a resumption of a much maligned monorail project ("Jakarta Monorail Project Resumes after 5-year Delay," *Today* [Singapore], October 17, 2013).

[103] "Tol Dalam Kota Tak Prioritas," *Seputar Indonesia*, November 8, 2012 (id.citramarga.com; last accessed March 24, 2014).

[104] Not coincidentally, both were contemplating a run in the 2014 presidential election ("Tak Setuju Enam Ruas Tol, Kalla Sepakat dengan Jokowi," *Investor Daily*, November 26, 2012; "6 Ruas Tol DKI Sejak Awal Bukan Prioritas," *Bisnis Indonesia*, January 29, 2013). A known financial supporter of Jokowi's campaign, Kalla eyes control of Jakarta's monorail project ("The Race to Control Jakarta Monorail," *Indonesia Today*, February 13, 2013 [yosefardi.com; last accessed May 21, 2013]).

[105] The municipal government has not always stood by idly. It had frustrated Jasa Marga's attempts to complete the JORR by intervening in land acquisition for the W2 section, which took years to finish. Jokowi's personal intervention helped to resolve this supposed holdout problem.

This latest project was its chance to correct this perceived injustice; municipality-owned companies controlled 78 percent of JTD.[106] Within months, the future president was forced to back down. For one thing, the law was against him as these tollways were taken into account in the city's twenty-year (2010–30) regional spatial plan (RTRW).[107] Although the governor did win a few token concessions, including access for mass transit (mainly buses), civil society lambasted Jokowi's retreat.[108]

Like any aggrieved "local" official, Jokowi then dragged his feet, utilizing the law that in this instance favored his position. A concession contract cannot be signed without the completion of an environmental impact assessment (whose importance was noted above). Moreover, it is the governor's office that controls the assessment process, including its pace. While there were expectations that JTD would sign its contract as early as January 2013, Jokowi delayed signing the assessment for about a year. In fact, even though it was reported in January 2014 that the project was moving forward, Jokowi never did sign the assessment. Apparently, he instructed the city's environmental management agency to authenticate it.[109] It is possible that as he mulled entry into the 2014 presidential campaign (which in March he decided to enter and subsequently won), Jokowi calculated that he could absolve himself of responsibility for this unpopular project by claiming that it was not he who approved its permits.[110]

Remarkably, following on the heels of this controversy in Jakarta, a similar case of politicized toll-road building arose in Surabaya, Indonesia's second city. Similarities between the two cases were striking. In question is the building of an urban toll road in a traffic-choked major industrial city whose proponents have relied (publicly) on an "alleviation of traffic" argument to support their stance, while opponents have highlighted agonizing land acquisition battles and have (rightly) demanded that resources be prioritized for mass-transit solutions. In both cases leading opponents have been mayors (technically, Jokowi was a governor) who were elected on the premise of being reformist outsiders. Jokowi had been the wildly popular mayor of Solo in Central Java who was parachuted into the Jakarta race; Tri Rismaharini was seen as an "outsider" because,

106 Megarani 2013. 107 Suryanis 2013.

108 "Jokowi Dikritik Soal Tol," *Kompas*, January 11, 2013.

109 "PPJT 6 Ruas Tol DKI dan Kualanamu Diteken 2014," tender-indonesia.com, January 16, 2014 (last accessed March 24, 2014). Construction on Stage 1 (sections Semanan–Sunter [20.2 km] and Sunter–Pulo Gebang [9.4 km]) is planned for mid-2014.

110 He also used the intervening time to focus on getting his two mass-transit projects in order (see note 102 above).

although she was a career bureaucrat in the Surabaya municipality, she was not a politician.[111] In fact, when PDI-P asked her to run under its banner, Risma, as she is popularly known, requested not to be made a party functionary. At the time, the local party branch was split over nominations and with input from local big shots like Dahlan Iskan, head of the massive Surabaya-based Jawa Pos media group and then current SOE minister, it settled on Risma as a compromise candidate. PDI-P at the national level, that is, Megawati, agreed to Risma's request. PDI-P Surabaya and East Java probably now rue this specific lapse in judgment.

Almost immediately upon winning the mayorship in 2010, as if to proclaim her reformist credentials and autonomy from vested interests – business, political, or otherwise – Risma came out in opposition to the (much delayed) Waru–Wonokromo–Tanjung Perak toll road.[112] Since then, the powers that be in East Java and Surabaya, including the governor, the provincial and municipal councils, and the province's chamber of commerce (Kadin), have been trying to force her out, since she has remained steadfastly against the 25-km (partially elevated) tollway.[113] By contrast, pro-toll-road forces in Jakarta never went this far in the case of Jokowi; Risma's being a woman likely explains some of this difference. PDI-P in particular has been at its wit's end. When Risma's vice mayor resigned (over an unrelated matter),[114] the party controversially replaced him with an outspoken pro-toll road figure, Wisnu Sakti Buana, a former head of the city council and son of Sutjipto Soejdono, a long-time local PDI-P figure. Not coincidentally, Soejdono's contracting firm has ties to building the Rp. 9.2 trillion (US$ 800 million) project. At the time of

111 On Jokowi's Solo and Rismaharini's Surabaya as positive models of decentralized, urban governance in Indonesia, see Bunnell *et. al.* (2013).

112 Local opposition has been longstanding ("Proyek Jalan Tol di Pusat Kota Harus Dibatalkan," *Kompas*, February 23, 2001; Interview, Johan Silas, professor at Surabaya Institute of Technology and influential urban planner, Surabaya, June 25, 2007).

113 The original license-holder (from perhaps as early as 1992) was – and continues to be – PT Margaraya Jawa Tol, then comprised of PT Tri Daya Esta (95 percent) and Jasa Marga (5 percent). As was noted in Chapter 2 (note 237), Tri Daya Esta was once owned by Bambang Trihatmojo, Soeharto's second son (now it appears to be owned by the tycoon Anton Sugiyono, head of the construction firm PT Duta Graha). Sometime between 2004 and 2006, Margaraya Jawa Tol sold more shares to raise funds, which resulted in a new ownership structure: PT Dharma Surya Mandiri, 41.9 percent; Tri Daya Esta, 36.9 percent; PT Elnusa (an oil and gas firm 40 percent owned by Pertamina), 16.7 percent; Jasa Marga, 2.5 percent; and other minor partners (Jasa Marga 2007, p. 56). Jasa Marga was very interested in becoming a majority shareholder, which seemed imminent throughout 2012 and 2013.

114 Bambang Dwi Hartono, the former two-term mayor of Surabaya, resigned in order to run (unsuccessfully) in the 2013 East Java gubernatorial election.

writing, Megawati has not weighed in decisively on the matter, only instructing the interested parties to quit their squabbling.[115] In a close study of infrastructure politics, it is undeniable that informal institutions, as much as their formal counterparts, play a significant role at local and national levels.

[115] The above two paragraphs are drawn from Setyarso *et al*. (2014) and Supriyanto *et al*. (2014). The matter will likely reemerge following the July 2014 presidential elections, but Risma did score a minor victory when the Surabaya municipal council proposed a 2012–23 city spatial plan without the toll road ("RTRW Surabaya Dipastikan Tanpa Jalan Tol Tengah Kota," *Bisnis Indonesia*, July 13, 2014 [surabaya.bisnis.com; last accessed July 31, 2014].

Conclusion

Infrastructure investment invites controversy. Large projects can acquire a notoriety that even their most irrepressible supporters cannot deny, such as modern highway systems in Germany and Italy and in New York City built by dictators and megalomaniacs; markups in the tens of millions for nuclear reactors in the Philippines; "bridges to nowhere" in Alaska, Japan, and Russia; "white elephant" projects across Africa funded by foreign aid; Boston's "Big Dig," years late and billions over budget; glitzy, prestige transportation projects in Beijing and Singapore; the making of "ghost towns" by the opening of bypass highways; enormous dams that uproot millions and that are "massively beneficial to the well-connected construction and engineering companies (domestic and foreign) that build them, to the international development banks that finance them, and to the army of social, economic, and environmental 'expert' consultants who plan for and evaluate their wider impacts;"[1] and a superb highway system in a US state (West Virginia) that remains among the country's poorest.

This infamy, however real, can also sit askance with the conclusions of economists who, through systematic testing, have demonstrated a positive relationship between economic growth and infrastructure. Contrasting conclusions do persist, but a recent state-of-the-field report finds an "increasing consensus around the notion that infrastructure generally matters for growth and production costs, *although its impact seems higher at lower levels of income*."[2] If this is the case, how are developing countries supposed to go about achieving the goal of improved infrastructure?

For the IFIs, their technocratic strategy revolves around a set of policy guidelines putatively predicated on global success stories (typically from developed economies) that they propose developing countries should adopt and apply. A core feature of this "best practice" approach has been private sector participation. During the latter's heyday in the 1980s

[1] Hall, Hirsch, and Li 2011, p. 138. [2] Estache and Fay 2007, p. 6. Emphasis added.

and 1990s, this pro-market perspective saw the state as a provider for an environment of law and order in which property rights and contracts could be enforced reliably. Since the great market failures of the 1997–98 Asian financial crisis, the strategy has undergone some revision, including attempts to enhance institutional capacity in order to regulate market transactions effectively. This involves the implementation of the so-called second generation of reforms with accountability and transparency – in other words, creating good governance. That said, in infrastructure investment, the "best practice" model continues to lay emphasis on engaging the private sector, inducing competition, and allowing for beyond cost-recovery tariffs.

Although in some respects the "best practice" model is a normative and thus an unobtainable ideal, its active promotion by IFIs makes it relevant for developing countries. As this book has shown in considerable detail, this especially has been the case for Indonesia. Since the 1998 downfall of its longtime authoritarian ruler, Soeharto, the country has embarked on wide-ranging IFI-led reform and "best practice" programs aimed at liberalizing (and also reregulating) its economy. Nearly two decades on and some ten years after the World Bank declared Indonesia to be post-crisis, private sector participation in infrastructure has not fared well. Despite concerted efforts, less than 250 km of expressways, for example, have been built in Indonesia since 1999, equivalent to roughly 17 km per year. Even less of this low figure has been built with private sector capital (see Figure 4.1).

This book questioned the efficacy of promoting private sector participation and best model programs in countries that lack key ingredients for their success. Generally speaking, impediments to the wider liberalization of Indonesia's economy are inter-connected and well known: weak and fragmented state institutions captured by predatory elite interests, ineffective bureaucratic implementation, business–government relations that vacillate from collusive to antagonistic, an incapacitated rule of law, rising economic nationalism, and an uncertain investment climate – in sum, a poor record of economic governance.[3]

These broad factors accurately depict current conditions in Indonesia. This book argued, however, that these obstacles manifest themselves in key sectors. In other words, analytically it has sought greater specification of the factors that are bedeviling private sector participation in infrastructure projects. To do so, I focused on the curiously understudied toll-road sector. Few sectors were as publicly associated with the cronyism of

[3] Aspinall 2013a; Robison and Hadiz 2004; Hamilton-Hart 2007; Lindblad and Thee 2007; Manning and Purnagunawan 2011; Blunt *et al.* 2012; McLeod 2005a.

Soeharto's New Order regime as this one. Nevertheless, post-Soeharto administrations have believed in the completion of an expressway linking Jakarta to Surabaya, the country's two industrial centers, as a key component of sustainable future growth.

This book has not been a conventional transport study. It neither presented an econometric model to assess the efficiency of building the Trans-Java Expressway nor employed an economic geography approach to determine the reaction of firms to the toll road and their subsequent investment and location decisions.[4] This study has suggested that the intensive efforts of state officials to induce private sector participation in Indonesia's expressway sector is principally a political endeavor that can shed critical light on the liberalization of the country's economy and offer a general lessons for reforming the tollway sector in other developing countries.

The Trans-Java Expressway

The building of the Trans-Java Expressway has been riven with inefficiencies in policymaking and implementation. Even this indisputable conclusion requires qualification, however. The trials and tribulations of constructing this extended inter-regional expressway should not be used as a stick with which to beat countries like Indonesia (and others like it) over the head for failing to reform along "best practice" lines or similarly failing to institute strong versions of OECD-style regulatory capitalism. There are "logical limits" to the adoption of "best practice."[5] State officials have struggled in the shifting of economic governance in Indonesia from being predicated on the ruler – Soeharto as the ultimate dispenser of patronage – to being premised on rules and procedures.[6] In the making of megaprojects, cost overruns, delays, and other risks (political, currency, commercial, "acts of God," and so on) are common, even in states with better development and investment track records than Indonesia's.[7] This contextual study has highlighted the considerable complexities that surpass the usual challenges and risks associated with toll-road investment like large-scale immobile capital and long payback periods.

Building a new (or "greenfield") expressway through the densest corridor of the world's most densely populated island, in a country with a porous rule of law and an economy that crashed less than two decades ago, number among the most significant of these obstacles. The division of the Trans-Java Expressway's franchises into mini-concessions in the

[4] Rothenberg 2011. [5] Andrews 2012. [6] MacIntyre 2000; McLeod 2005a.
[7] Flyvbjerg *et al.* 2003; Delmon 2005 and 2011.

1990s under an authoritarian regime did not aid matters. In large part Soeharto distributed these licenses to placate *pribumi* contractors (with ties to the state) as their resentment over the increasing dominance of his children in the sector, and that of Sino-Indonesian conglomerates retained over the economy, brewed. Even in the mid-1990s frenzy of private investment in Indonesia, when foreign investment in tollways was making its first inroads, investors partnered with the palace children (especially Tutut) to protect their property rights. The distribution of these licenses that were devoid of clearly defined responsibilities and obligations made it difficult for a more democratic state to gain control of the concessions subsequently in order to restart construction of the toll roads. This was readily apparent during Megawati's government (the third post-Soeharto administration), during which the financial crisis's impact waned and opportunities for increased public and private infrastructure investment seemed possible again. Officials revoked the licenses of a select number of politically vulnerable private concessionaires in order to transfer them to Jasa Marga, the state toll-road corporation. However, the SOE's management was hesitant to build these routes because of the company's indebtedness. The latter stemmed from state directives to build loss-making turnpikes in Medan, Cirebon, and Semarang (with the aim of sparking economic growth); lost revenue due to the Asian financial crisis-led downturn in traffic volume; and the KKN rampant in the sector. Jasa Marga's board needed a "push" by Megawati's administration to construct only the most commercially promising (Cipularang) route outside Jakarta.

With other revocations held up in the courts, domestic (and foreign) investors, including Jasa Marga, balked at investing without the regulatory reforms they and others had been seeking for some time. These reforms materialized only at the close of Megawati's term with the passing of the 2004 Road Act. The first notable reform was the automatic tariff adjustment mechanism (indexed to inflation every two years), which for investors and market liberals was an advance over the way raises were determined under Soeharto, that is, at the president's discretion. The second was the establishment of an independent regulatory agency, which stripped Jasa Marga of its dual function as developer and regulator. For market reformers, this was an essential step in levelling the playing field for all investors. For Jasa Marga officials, the jettisoning of the SOE's regulatory authority would allow it to unleash the company's commercial energies. Therefore, the passage of the 2004 Road Act, the swift publication of its implementing regulation, and the hosting of the 2005 Infrastructure Summit were supposed to inspire investor confidence. Nevertheless, impediments remained.

One was the stripping of the Toll-Road Regulatory Agency's (BPJT) real authority via ministerial regulations. It was placed under the auspices of a Public Works Ministry that had little interest in allowing the new body to operate either independently or autonomously. Controversially, the Road Act enabled such former New Order political entrepreneurs as Jusuf Kalla and Aburizal Bakrie to retain their licenses, assuring that rent-seeking in the sector would continue. The 2006 sale by Kalla and Soeryadjaya to PLUS Expressways of Malaysia of their controlling interest in the Cikampek-Palimanan franchise – the bundling of which into a single concession was legally dubious – brought this realization home. Meanwhile, wary of the private sector, Megawati never allocated state monies in support of PPP projects – for example, those in aid of land acquisition. World Bank staffers in Jakarta seethed with frustration as they considered state financial support of PPP projects a staple of international best practice. In other words, the Indonesian government, in their view, was passing too much of the risk onto the private sector. Not until 2007 did Yudhoyono's administration make government land acquisition funds (named BLU) available. Apart from inter-ministerial disagreement over how to hold stakeholders accountable in their use, the ability of the BLU funds to speed up the process was constrained by the deep-seated problem of the use of eminent domain powers in Indonesia.

Although multifaceted, the land predicament boils down to one inescapable conclusion: For decades the state has either used the law as a blunt instrument to enforce its way or has resorted to extralegal means. Either way, it has run roughshod over citizens' concerns or rights. With the army currently out of the picture – and paramilitary involvement restricted to exceptional cases – the situation for landowners has improved but only marginally. In Yudhoyono's 2005 eminent domain decree, the bulk of authority remained in state hands, and his administration tried to replace the coercive use of the army with the undemocratic strong-arming of the courts as a means to impose the state's will. Civil society groups mobilized to reject the decree, but the 2006 amendments were hardly less state-heavy. It became evident that the debate over the decrees proved pointless as their impact on the ground was minimal. Here a primary cause stemmed from the mismatch of governance-related incentive structures between central government officials (in charge of toll-road policy) and local functionaries (in charge of land acquisition under decentralization). Cautious of being accused of corruption, alarmed at being the face of government in negotiations with angry citizens, and knowing that in many instances BLU funds were not available because recalcitrant license holders had refused to apply for their use, local officials worked cautiously. Stories also circulated about their purchases of strategic land parcels (through proxies) to drive prices up. This was the means by which they, without any ownership in the turnpikes, would obtain rent. A 2003 World Bank-funded "best practice" consultancy report suggested that if the central government ignored the interests of local officials, they could bring toll-road development to a halt. The report proved prophetic.

Energized by the failure of the 2005 Infrastructure Summit, the Indonesian Toll-Road Operators Association (ATI) lobbied for sector-wide reforms. It convinced Public Works, for example, to distribute the BLU funds to concessionaires who were ready to use them, to lower the interest rates the Finance Ministry was charging for their use, and to limit license holders' exposure to rising land costs (through a policy known as "land capping"). ATI's composition limited its effectiveness, however. Contract signatories outnumbered operators, which forced ATI to ally with an informal grouping of signatories. More substantially, the assocation was powerless over massive delays to key links along northern Java's littoral whose licenses were held by powerful insiders (and non-ATI members) such as Kalla, Soeryadjaya, and Bakrie. With these segments stalled, a swift connection of Jakarta and Surabaya via the Trans-Java Expressway was thwarted. Proponents of the road's development potential would have to wait and see whether its vaunted multiplier effect would bear fruit. The complicated negotiations over recentralizing the compulsory purchase of land in the public interest via parliamentary statute extended the wait. On paper the 2012 law may have improved compensatory procedures for affected citizens, but the National Land Agency (BPN) has yet to instill confidence outside a few officials in Jakarta that it has the capacity to speed up acquisition in a fair, effective, or just manner.

Still, as the Trans-Java Expressway (between Jakarta and Surabaya) inches closer to completion, it provides evidence against suggestions that Indonesia is a failed or thoroughly emasculated state. In early 2013, construction of its longest turnpike, Cikampek–Palimanan, began in earnest (and is targeted to open in 2015), while thankfully Bakrie had sold some of his licenses to another Indonesian firm (owned by the tycoon Hary Tanosoedibjo). Jasa Marga has finished sections of turnpikes in Central and East Java; full completion is anticipated.

For the now freed-from-regulatory-duties, partially privatized Jasa Marga, government interference has eased, allowing the firm more leeway in the selection of routes it finances. Of course, certain kinds of political intervention, like handing the firm the rights in 2002 to the decidedly profitable Jakarta Outer Ring Road that helped to rescue the firm from its debt-laden burdens, have been exceptionally beneficial. However, the space created by a more profit-oriented Jasa Marga has not led to a proportionate rise in private sector participation, as the pro-market literature might suggest. Private investors prefer profits and many of the country's choice routes have been built. (Its most profitable, the Jakarta Inner Ring Road, will revert to the state, not to Jasa Marga, in 2023.) Instead, there has been a proliferation of interest in toll roads by SOEs other than Jasa Marga. The main investors behind Jakarta's latest planned and exorbitantly priced inner ring road are municipality-owned companies. For the planned 2,700-km Trans-Sumatra Highway, in 2013 the central government appointed the construction SOE, Hutama Karya, as the primary contractor, backed by a yet-to-be-determined government guarantee.[8] (Not all sections of this US$1 billion undertaking will be tolled.) Nor were private investors represented in consortiums behind the 10-km toll-road that opened on Bali in 2013, and behind a planned turnpike outside of Medan.[9] Finally, in mid-2014 another SOE construction firm, Waskita Karya, stepped in to build and possibly own the Pejagan-Pemalang section of the Trans-Java Expressway.

Other toll roads have needed substantial subsidies, financed by foreign loans in some instances, to attract private sector participation, even on traffic-dense Java (where traffic densities are, in fact, quite uneven). This pertains to two Central Java routes (Solo–Ngawi and Ngawi–Kertosono), and will be the case in East Java (Pandaan–Malang and Pasuruan–Probolinggo–Banyuwangi) if officials desire the Trans-Java Expressway to be a true end-to-end turnpike one day. For "best practice" proponents, these arrangements epitomize the PPP concept – appropriate risk sharing among key stakeholders, which includes public funding contributions, although the majority of the financing and responsibility for the construction and maintenance of the facility is provided by the private sector. Nevertheless, it is difficult to determine when subsidies reach a point where it is more efficient for the state to build the road if it is capable of doing so and subsequently receive the revenue generated from that road.

Beyond tollways, the government has sought to move on from the failures of the 2005 Infrastructure Summit. With multilateral and bilateral support, in 2009 and 2010 it established two investment and guarantee funds that, among others, aimed to lower the cost of infrastructure financing. At about US$230 million, these funds' capitalization has fallen short

[8] It will be Widodo's administration's prerogative whether to honor this designation (Sari 2014).

[9] For the Bali turnpike consortium, Jasa Marga owns 55 percent, while six other SOE's own another 29 percent (the remaining 16 percent is divided equally between the provincial government and the Bandung district government (see Chapter 4, note 97]). For the 72-km Medan–Kualanaum–Tebing Tinggi route, a Jasa Marga-led consortium with three other SOEs was the only bidder to submit tender papers (Amin 2014).

of expectations.[10] However, this did not deter the government from launching amid much fanfare its Master Plan for the Acceleration and Expansion of Economic Development in Indonesia (MP3EI[11]) in 2011. An ambitious plan of some ninety PPP projects valued at Rp. 536 trillion (nearly US$47 billion), MP3EI was intended to signal the government's commitment to upgrade infrastructure and, importantly, coordinate efforts at the national level as a means to generate growth and improve the economy's global competitiveness. Not surprisingly, lapses in financing and institutional capacities have dogged project implementation; the year 2014 may witness the groundbreaking of a mere three projects.[12] MP3EI has sparked discussions about forming a specialized infrastructure bank that would help overcome weaknesses in Indonesia's capital markets that make, for example, securitizing toll-road assets difficult, in contrast to China. Without "fixing" Indonesia's eminent domain predicament, questions over the need for the bank have been raised. In all, despite the extensive lip service President Yudhoyono paid to infrastructure development as a priority, he had little to show for his efforts after two terms. To leave behind some type of concrete legacy, he had pinned his hopes on at least officiating the groundbreaking ceremony for the 30-km, US$25 billion Sunda Strait Bridge that will connect Sumatra to Java.[13] Instead, this task will be bequeathed to Jokowi, Yudhoyono's successor.

Political sociology of infrastructure development and its lessons

In part, this book was an attempt to put politics back into the study of infrastructure, a topic that has been dominated by econometric or technocratic approaches. The institutionalists contributed by helping us to understand institutions as the political products of conflict and compromise. With conflict contained and compromise locked in, investor confidence over their property right protections is boosted. However, their approach did not go far enough. Plenty of conflict and compromise takes place outside of formal institutional arrangements and therefore exhibit considerable impact on the quantity and quality of a country's physical stock of infrastructure. Put differently, while the institutionalists showed that we needed to move beyond "getting the

[10] Business Monitor International 2012 (Q4), pp. 7–8.
[11] In Indonesian: Masterplan *Percepatan dan Perluasan Pembangunan Ekonomi Indonesia*.
[12] Djauhar 2012; Kusumawardhani 2013. An airport outside Medan opened in March 2014 was retroactively classified as a MP3EI project. Its construction began in 2008, well before the MP3EI was launched (Natahadibrata and Gunawan 2014).
[13] Tampubolon 2012.

prices right" to understand the levels of infrastructure investment, this book has endeavored to demonstrate that we need to move beyond "getting the institutions" right. "Getting the politics right," which includes state–society and center–local relations, especially in large, sprawling democracies, is of equal importance. As such, I emphasized power relations, history, social conflict, and informal institutions, paying them more heed than mainstream accounts of infrastructure investment do.

There has been an upsurge in interest within comparative politics in explaining which informal institutions matter and why. Two leading proponents note: "Good institutional analysis requires rigorous attention to both formal *and* informal rules. Careful attention to informal institutions is critical to understanding the incentives that enable and constrain political behavior."[14] In order to show how political "actors respond to a mix of formal and informal incentives, and [that] in some instances, informal incentives trump the formal ones,"[15] I adopted what I term a political-sociological approach to infrastructure development. To give this framework empirical weight, this study identified three crucial areas where informal institutions have played key roles in the political economy of expressway building in Indonesia.

The first concerned the relationship among societal interests, business associations, and rent-seeking. Consistent with expectations of a sectoral-based association, ATI sought efficiency enhancing reforms. But the mainstream literature less often recognizes that rent-seeking outcomes can vary within a given sector. For starters, there are positive and negative outcomes. The cases of Kalla and Bakrie represent the latter, and Jasa Marga the former. Combining a focus on firm-level incentive structures and that of broader power relations, we saw that Jasa Marga receives almost all of its revenue from tolls, unlike the companies of Bakrie, Kalla, and even Soeryadjaya. This helps to explain why Jasa Marga has proven to be a reasonable builder of turnpikes (although its operational service record for these roads is patchier). While Kalla and Soeryadjaya's sale to PLUS was a main cause of their route's delay, this inefficient outcome pales in comparison to the mess Bakrie's toll-road firm made of its licenses. This difference reflects a second variation – within negative outcomes. After years of delay, construction on the Cikampek–Palimanan turnpike began in early 2013, in part a result of PLUS's determination to earn long-term revenue from its investment. Bakrie's toll-road entity lacked such commitment. After hardly making progress with land

[14] Helmke and Levitsky 2004 p. 726. Emphasis added. [15] Ibid.

purchases, and with BPJT powerless to do much about it, Bakrie first resold his licenses in late 2012. If his toll-road firm was (understandably) waiting for through-traffic from an adjacent section (Cikampek–Palimanan) before investing in its own routes, construction could have started in 2013. Construction of only one of these licenses (Pejagan–Pemalang) first began in mid-2014.

Second, using a political sociology approach, I underscored the importance of extra-parliamentary lawmaking in an expansive account of infrastructure politics. I set the regulation-making within ministries, for example, against that of parliament. Even in Indonesia, the latter is a more rational and publically known rule-bound institution compared to ministries. Out of the spotlight of the press and the reach of nosy reformers, arenas within and among ministries – less constrained by formal rules and less influenced by political parties, civil society, or IFIs – are where hard bargaining among powerful vested interests is often conducted. This frequently results in the reinterpretation or watering down of parliamentary statutes. The behind-the-scenes negotiations that produce decrees may lead to suboptimal outcomes, but it does not mean they matter any less for analysis. To the contrary, it makes their very prominence essential. From the undermining of the authority of BPJT from its inception and tussles with the Finance Ministry over allocation of BLU monies to the questionable handling of recalcitrant investors, the (redundant) reevaluation of concession agreements, and the postponing of putatively automatic tariff hikes, ministerial politics and related decrees matter. In Indonesia, this arena of post-statutory enactment, regulation-making is a critical missing link between studies that seek analytical purchase in the variation of policy outcomes and that of implementation in the field (or lack thereof).

Third, the contested nature of eminent domain is a prominent issue where formal and informal institutions intersect in critical ways. Complicated land tenure laws, infused with locally situated customs and norms, and overlapping governmental jurisdictions make the matter messy and cumbersome. From New York City and Tokyo to China's metropolises, agreeably grounded treatments of infrastructure attest to the contestation intrinsic to the application of eminent domain powers. Because the problem pervades democracies and non-democracies alike, it brings other governance structures, such as central–local government relations, to the fore. As a result of Indonesia's decentralization program, misalignment of incentive structures between central and local officials have greatly hampered land acquisition in the public interest. Running a national-level project through dozens of newly autonomous districts in charge of land acquisition without providing those local officials with legal and tangible incentives was misguided. After years of frustration, instead of providing those incentives, central officials simply recentralized the authority, placing its responsibility in the hands of a body (BPN) that, as currently constituted, is ill-equipped to handle this gargantuan task. Equally ill-equipped to adjudicate competing claims impartially are Indonesia's notorious courts. After years of hesitation, state officials are now increasingly relying on them to enforce eminent domain claims. However, the courts are weaker at enforcing the state's will than the army under the New Order, to the advantage of affected citizens. This has allowed for some – albeit limited – deliberation and negotiation. As long as affected citizens deem compensation to be fair, they continue to express a willingness to release their land rights for a project with developmental benefits, although the Trans-Java Expressway will certainly hasten the deagrarianization of Java.[16] But citizen support does waver when assets are transferred to private entities and when compulsory acquisition requires the demolition of occupied houses. Still, land acquisition can proceed at a reasonable pace provided that officials conform to the law. Whether the courts prove to be effective venues or mechanisms to rein in arbitrary actions of state officials remains to be seen. They have not inspired much confidence thus far.

The focus on the land question leads us to consider the policy implications of this study of infrastructure investment in Indonesia. Unlike in industrialized countries where exceptional comparative studies of regulation take institutional capacity as a given,[17] most studies of developing economies, almost by fiat, recommend enhancing institutional capacities. While parliamentarians and investors may seethe over BPJT's weakness, and negotiations are underway to reform the body, the powers-that-be designed BPJT (in post-enactment fashion) to be that way – subservient to state interests. Indeed, feebleness may hold BPJT's key to survival. Consider the fate of the Upstream Oil and Gas Regulatory Agency (BPMigas), the IRA upon which BPJT was modeled. In late 2012, the country's Constitutional Court controversially declared it unconstitutional, it is widely believed, for acting how an IRA, in theory, is supposed to act, that is, independently and autonomously. (In this case BPMigas was accused of pandering to foreign firms.)[18]

Beyond platitudinous recommendations to shore up institutional capacity, there is also the issue of the timing of reforms. Research has demonstrated the positive effect on private investment when institutional reforms precede privatization.[19] For toll roads, similar steps should occur

[16] On deagrarianization in Southeast Asia, see Rigg (2003, pp. 291–95).

[17] Vogel 1998.

[18] "Opini: BP Migas Tamat," *Tempo*, November 2011, p. 31.

[19] Wallsten 2003.

with respect to compulsory land acquisition. Laws and the agency in charge of land acquisition need to be in place before private (or even public) investment is sought. Indonesia's land predicament has kept foreign investment in its toll-road industry to a minimum. Although the bleak commercial outlook of the Trans-Sumatra Highway – divided into seven main sections – has also kept private interest low, we should expect a smoother land acquisition process for this endeavor than for the Trans-Java Expressway, especially now that the 2012 law on the matter, and its attendant regulations, are in place (not to mention Sumatra's lower population densities).[20]

The timely acquisition of land can be better achieved if state officials are more willing to pay near-market rates. The argument that paying such rates will lead to a prohibitive escalation in costs is understandable but short sighted. Long delays caused by negotiations over well below market rates cause their own interruptions that compound problems down the line. Moreover, foreign investors in the sector have suggested to me that they consider land prices in Java to be reasonable, unlike land costs in their home countries. Paying near-market rates will allow officials to acquire land more quickly, which in turn leads to subsequent efficiencies – for example, the affordability of time to build quality, safe roads. The practice in Indonesia of slow land acquisition and swift road construction must be reversed.

Not divorced from the land dilemma, the interests of central and local government officials need alignment, given the pervasiveness of decentralization programs worldwide. Even for national-level projects, local officials must be given meaningful input into the decision-making process when these projects "trespass" on local terrain. Otherwise, these functionaries can create unwanted headaches when they are expected to act as mindless implementers of national policy. Notwithstanding attendant inefficiencies, China's phenomenal expressway growth in part has been due to the fact that provincial officials have been in charge of the process.[21]

Expectations about private sector participation in infrastructure also need to be tempered. This is especially so in countries where the main ingredients for these programs' success – power of eminent domain, rule of law, strong regulatory authority, and fiscal space – are lacking. Decades of disappointment, featuring high social and fiscal costs, has characterized privatized toll-road programs in Latin America and in Europe, including Spain – the continent's longest and largest user in terms of capital

[20] However, progress is stagnant. Widodo will have to sign the presidential decree that gives the go ahead for land acquisition (and construction).
[21] Lin 2013.

value – and the UK.[22] Tollway construction does not require the sophisticated technological innovation or needs of the telecommunications sector. Thus, foreign or domestic private investment cannot be expected to bring large gains in efficiency. Moreover, the cost-of-funding argument has been proven to be misguided, as the state can collect tolls and thus gain revenue as easily as private entities.[23]

Efforts must also be made to ensure the financial soundness of winning bids. Intent to build rather than sell on the license must be demonstrated, especially among the private sector. Putting a new regulatory regime on paper is insufficient to gauge investor sincerity. While some may see its actions as belligerent, the 70 percent state-owned Jasa Marga has decades of experience in building toll roads and has improved its corporate governance (even if its road maintenance record lags). If it continues to build its routes at a reasonable cost, inducing more private sector participation for the sake of it must be questioned. There must be gains in efficiency, not just distribution.

This point, combined with heavy state bank investment construction in the Trans-Java Expressway, should not lead one to consider that Indonesia is approaching the East Asian developmental state model. The influence of this model – characterized by collaborative government–business relations, dense policy networks, technocratic bureaucracies, control over labor, visionary leadership, and state-led mobilization and direction of resources – has in large part eroded. For some, its fundamentals rested on a peculiar combination of historical contingencies and contextual factors that made its export impractical.[24] For others, the concept became reified, as scholars glossed over missteps, inefficiencies, and tensions within the development state edifice.[25] Neither do many pretend that low-income countries today, many of them vibrant but flawed democracies, have the capacity to build the strong state institutions that underpin the model. This is glaringly the case in Indonesia.

That said, if we lower by some margin our expectations of the model, Indonesia's experience has been and continues to be broadly consistent with Asian economies that exhibit high degrees of state intervention and guidance.[26] The state sector remains robust, and efforts to pare its size have been met with stubborn resistance. The recent upswing in economic nationalism is not wholly restricted to concerns about profits accruing to the state. Rather, profits (and rent) may fill the coffers of private firms, as long as they are Indonesian (and their owners have close working relations with state officials, if they are not state officials themselves). As the case of

[22] Engel *et al.* 2003; Acerete *et al.* 2010. [23] Engel *et al.* 2003. [24] Stubbs 2005.
[25] Boyd and Ngo 2005. [26] I thank Mark Thompson for stressing this point.

the Trans-Java Expressway demonstrates, Indonesia can display a kind of a state-led, if not haphazard, developmentalism by default. The state strives to fill the gaps generated by the lack of private sector interest, although not always successfully.

Ideological differences among Indonesian political parties may lead to policy differences on some issues.[27] However, this has been less so for big-ticket economic or development ideas and policymaking. Illustratively, parties have neither opposed the building of the Trans-Java Expressway nor have devised implementation or financing alternatives (let alone debate the road's merits or costs). Instead, they uniformly have seethed over its interminable delays. Even so, in a democratically flawed Indonesia, without the pressures generated by a domestic or foreign threat, state leaders remain sufficiently motivated to produce a policy regime, and oversee its admittedly checkered implementation, where rents, patronage, profits, and pro-growth prescriptions are woven together, albeit uneasily and inefficiently.[28] Foremost is a glaring inability to discipline the business class that will keep an appreciably firm rule of law at bay.[29] This creates an environment where the structure of power collides with "best practice" reforms, producing outcomes that are neither singular nor predictable. We can garner evidence to support a range of results, from regulatory progress to policy failure, from impressive growth rates compared with global averages to the phenomenon of "jobless growth,"[30] from positive to negative rent-seeking, or from coercive enforcement of state policy to democratic deliberation. The building of the Trans-Java Expressway has been vividly illustrative of these conflicting and complimentary processes and outcomes. This is irrespective of whether the megaproject succeeds in the long term, especially given the social (and environmental) costs it generates and its expense to travel.[31] The expressway in its entirety may or may not be completed, but if it is realized, it is unlikely to be along the lines market reformers or their detractors had envisioned.

[27] Mietzner 2013; Horowitz 2013.
[28] On these points more conceptually, see Bertrand (1998) and Doner, Ritchie, and Slater (2005).
[29] Aspinall 2013b, p. 240. [30] Saich *et al*. 2010, vi–vii.
[31] If average initial tariffs are Rp. 700 per kilometer, the twelve-hour or so drive from Jakarta to Surabaya will cost approximately Rp. 430,400 (US$38) for passenger cars. This excludes fuel costs and vehicular depreciation. Tariffs are considerably higher for freight trucks. In early 2014, a one-way ticket for the hour-and-a-half flight between these two cities could be bought for as low as Rp. 375,000 (about US$32).

Appendix

INTERVIEWS CITED

Descriptions of positions are current as of the date of the interview.

2007

May 16: Siti Rahma Mary Herwaty (Legal Aid Institute staffer, Semarang)

May 18: Didik Suhardiyo (FKJT coordinator, Semarang)

May 18: Danang Atmodjo (Bina Marga head Central Java, Semarang)

May 21: Raden Sukoco (Central Java provincial councilor, Semarang)

May 22: Zaini Bisri (editorial board member at *Suara Merdeka*, Semarang)

May 25: confidential interview (staff member of SPJT, Semarang)

May 30: Agung Budi Margono (Semarang City assemblyman, Semarang)

June 25: Johan Silas (professor of urban planning at the Institute of Technology-Surabaya and influential urban planner, Surabaya)

July 10: Sumaryanto Widayatin (senior advisor to the minister of public works on investment and economic affairs and Jasa Marga commissioner, Jakarta)

July 11: confidential interview (former Jasa Marga commissioner, Jakarta)

July 13: Eugene Galbraith, (president-commissioner of the Bank of Central Asia, Jakarta)

July 23: Faturraham (Salatiga municipal councilor, Salatiga)

2008

June 11: Eugene Gailbraith, (president-commissioner of the Bank of Central Asia, Jakarta)

June 19: Scott Younger (Glendale Partners, Jakarta)
June 19: Winton Sinaga (staff member of Hanurata Marga Intrinsic, Jakarta)
June 29: confidential interview (Jakarta)
July 14: confidential interview (staff member of Regional Development Office, Malang)
July 17: Hangjoo Hahm (lead infrastructure specialist, World Bank, Jakarta)
July 22: Nurdin Manurung (head of BPJT, Jakarta)

2009

April 28: Hisnu Pawenang (former head of BPJT, Jakarta)
April 28: confidential interview (FKPPPJT member, Jakarta)
April 28: Didik Hari Wilopo (Design and Operation Division head, PT Kresna Kusuma Dyandra Marga, Jakarta)
April 29: confidential interview (former BPJT board member, Jakarta)
May 19: Sumaryanto Widayatin (head of Construction and Human Resources, Public Works, Jakarta)
May 20: Hisnu Pawenang (former head of BPJT, Jakarta)

2010

July 7: Oslan Mohamed Isa (PLUS representative, Jakarta)
July 7: Yandhrie Arvian (journalist at *Tempo*, Jakarta)
July 7: confidential interview (Jakarta)
July 26: Robert Clarke (managing partner of Allen Arthurs Robinson, Singapore)
September 20: confidential interview (former company director of Concord Benefits Enterprise, by telephone, [Jakarta])
September 22: Doni Kuswantoro (financial analyst at Pefindo, Jakarta)
September 23: Anhar Rivai (former general counsel of Jasa Marga, Jakarta)
September 24: Brett McGuire (Thiess Indonesia, Jakarta)

2011

March 9: Frank E. Lyon, Jr. (president of Lyon Associates, March 9, 2011, by email)
June 8: confidential interview (staff member of a toll-road firm, Jakarta)

June 26: confidential interview (Jakarta)
July 10: confidential interview (Jakarta)
September 27: Charles Hardeman (former president director of CGMN, by telephone [London])
November 22: Anhar Rivai (former general counsel of Jasa Marga, Jakarta)
November 22: Nurdin Manurung (former head of BPJT, Jakarta)
November 23: Taufan Tiro (parliamentary member of Committee V and the Special Committee on the Eminent Domain Bill, Jakarta)
November 25: Oslan Mohamed Isa (PLUS representative, Jakarta)
November 25 confidential interview (Jakarta)

2012

January 13: David Grieg (director of infrastructure at ACIL Tasman, by telephone [Melbourne])
May 27: Dina Chandra (vice president of Business Development and Acquisitions, Arcadia Chandra International, by telephone [San Francisco])
June 6: H. Thontowi Jauhari (Boyolali regional councilor, Boyolali)
June 7: Danang Atmodjo (Bina Marga head Central Java and TMJ board member, Semarang)
June 25: Dedi Krisnariawan Sunoto (Jasa Marga director of development, Jakarta)
June 28: Arie S. Hutagalung (member of Presidential Decree 36 of 2005 Drafting Team, Jakarta)
July 9: Maria Renata (financial analyst at Mandiri Sekuitas, Jakarta)
July 10: Kurnia Toha (Law Bureau head, BPN, Jakarta)
July 11: confidential interview (private banker involved in the toll-road sector, Jakarta)
July 12: Rudy Karsaman (former BPJT board member, Jakarta)
July 12: confidential interview (Ministry of Public Works official, Jakarta)
July 12: Fatchur Rochman (head of ATI, Jakarta)
July 13: Nusyirwan Soejono (member of Special Parliamentary Committee for Eminent Domain Bill, Jakarta)
July 23: confidential interview (researcher at BPN, Jakarta)
September 24: Djoko Triwiyanto (former head of the Boyolali Regional Development Agency [Bappeda], Semarang)

2014

February 19: Agus Priyono (lawyer, Cirebon)
February 20: group interview with landowners threatened with eviction (Pegagan Village, Palimanan sub-district, Central Java)
February 21: Solichin (lawyer for the Cikampek–Palimanan TPT, Cirebon)

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