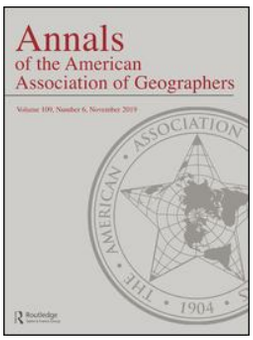

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# Risk and the Dialectic of State Informality: Property Rights in Flood Prone Jakarta

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This article examines the implications of perceptions of an emergent crisis of flood risk for property rights in Jakarta. Jakarta faces devastating future floods due to climate change and other anthropogenic impacts, and the city has experienced severe flood events in recent years. State actors have responded with an aggressive infrastructural agenda that has led to evictions of numerous low-income communities. This has spurred a series of court cases, in which plaintiffs have argued that the evictions violated Indonesian law and specifically violated legal protections of autochthonous land claims. Based on an analysis of court and policy documents and interviews with key actors, this article finds that Jakarta's crisis of flood risk has intensified what we refer to as the dialectic of state informality and has brought this dynamic to the center of urban politics. This dialectic is defined by contestation between two deeply antagonistic frameworks of planning action. On one hand, state actors and institutions assert their right to unilaterally define what is legitimate and just, and indeed to violate their own laws and regulations where they see fit, as necessary to address societal risk. On the other, communities and advocates argue that this assertion of state power has led to the systematic delegitimation and stigmatization of communities that do not accord with state developmental visions. This critique paradoxically positions informalized communities as proponents of the reassertion of the rule of law in the practice of urban planning. *Key Words: flooding, hazard risk, informality, urban planning, urban politics.*

> *Saya ingin 10 juta orang hidup, bila dua ribu orang menentang saya dan membahayakan 10 juta orang, saya bunuh di depan anda.*
>
> [I want 10 million people to live. If 2,000 people oppose me and endanger 10 million people, then I will kill them in front of you.]
>
> —Jakarta Vice Governor Basuki Tjahaja Purnama (Demarjati 2015)

Urban planning plays a central role in state legitimation. States present planning as a means to "future-proof" cities, a necessary imposition of state discipline to navigate change, avoid chaos, and negotiate a treacherous and competitive global economy (Roy 2009). Yet as Beck (2007) persuasively argued, the increasing public consciousness of unpredictable risk has highlighted the contradictions inherent in state planning. The question of risk positions the state as an arbiter of knowledge about hazards and their mitigation, a contradictory position given the systemic and technological roots of natural, economic, and political hazards in the economic and social relations that underpin state power. The specters of terrorism, epidemic, climate change, and economic meltdown that animate much political discourse implicate planning and policy themselves—around issues of economic management, energy use, international relations, spatial planning, and other issues—in the production of these purportedly existential risks. The link between risk mitigation and state legitimacy, Beck (2007) argued, leads to the development of a "risk contract" between state and society, an explicit commitment by state actors to manage risk in the public interest:

> Such a state-sanctioned risk contract … recognizes the systemic origin of hazardous side effects while at the same time involving individuals in their compensation and prevention. Where this national risk project is blatantly and systematically violated, the consensus which has sustained modernization at least in principle is open to challenge. … (7)

What happens, though, when the presumptions of universal citizenship and the uniform application of law that necessarily must underpin such a risk contract are not present? What happens when urban politics are shaped by a divide between those who

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the state defines as outside the law or in violation of state norms, who are characterized as "informal," and those whose claims to space and rights are deemed legitimate? What happens if the state itself, as Roy (2009) argued, is an "informalized" entity, producing categories of informality through law, regulation, and discourse and allocating both the "goods" of development and the "bads" of hazard impacts not through the consistent application of the law but through the parceling out of exceptions? What politics of risk mitigation emerges in such contexts?

This article examines the implications of hazard risk for urban politics in contexts where informality is central to state–society relations. It seeks to intervene both in theories of informality and in theories of the politics of risk by pointing out the integral relationship between the dynamics that each set of theories seeks to explain. Focusing on political controversies over displacement for flood mitigation efforts in coastal megacities, we argue that the question of hazard risk pulls the state's production of informality to the very center of urban politics. Coastal megacities everywhere, including megacities in the Global South, face projections of dramatic increases in flooding due to anthropogenic changes, including climate change–related risks of sea-level rise and increased intensity of extreme weather events, and risks associated with watershed degradation and land subsidence due to groundwater extraction (Hanson et al. 2011). We argue that, as state actors seek to justify new assertions of power to address growing flood risk, they increasingly claim the unilateral right to shape urban space according to their own assessment of the public interest. In doing so, they frequently seek to delegitimize and expunge existing users of urban space and consequently to define new categories of informality. Yet such moves to transcend the limitations of their power might also lead state actors to violate existing laws and regulations, thus deepening the informalization of the state itself. Hence, the allocation of the goods and bads of flood risk hazard impacts comes to be increasingly tied up in ongoing societal debates about the terms of informality. We analyze Jakarta as a case study of this relationship between risk and informality, focusing on debates about ongoing evictions of *kampung*[1] communities for major flood mitigation efforts.

In building this argument, we draw on Roy's influential argument that informality is in fact produced by the state and that the state itself is an informalized entity. We offer a sympathetic modification of Roy's (2009) argument that urban processes emerge through "an idiom of planning whose key feature in informality" (81). To argue that informalized planning constitutes an idiom of urbanization is, to paraphrase Roy's definition, to argue that this informality is a widely accepted mode of action, a "characteristic style" of producing urban space. What the cases of Jakarta and other coastal megacities reveal is that if any such acceptance of state informality existed previously, it has begun to evaporate in the heat of the politics of blame and retribution that has attended discourses of existential risk. Urban politics in Jakarta has increasingly been defined not through the idiom of informality, which implies a relatively static condition, but rather through an increasingly polarized legal, institutional, and political contest of perspectives. We argue instead that urbanization in much of the Global South is defined by a *dialectic of state informality*. This dialectic is constituted by the political and legal back-and-forth between two deeply antagonistic frameworks of planning action that are perpetually locked in a political and legal struggle for primacy. On the one hand, some state actors and institutions have asserted unilateral powers to define what is legitimate and just in the production of urban space, and to violate the state's own laws and regulations where they see fit, as a necessary condition to define and pursue a "public interest" and to address societal crises. In dialectical opposition to this stance is a critique of state informality, which is framed by residents of informalized settlements in their negotiations with the state and by their allies among nongovernmental organizations (NGOs), social movement organizations, academics, and sometimes elements of the state itself. This critique argues for the state's recognition of the rights of a majority that has suffered from systematic illegitimization and stigmatization at the hands of state policy. In some instances, informalized communities and their allies somewhat paradoxically emerge as proponents of the reassertion of the rule of law in circumstances where their property rights have been violated.

The circumstances surrounding the quote at the beginning of this section, from then–Jakarta Vice Governor and soon to be Governor Basuki Tjahja Purnama, highlight the tensions inherent in this

dialectic of state informality and the ways in which the question of flood risk has intensified this dynamic. The quote was uttered at a meeting at the Jakarta Governor's office on 24 July 2015, with representatives of the NGO Ciliwung Merdeka over the question of the displacement of *kampung* residents for flood mitigation initiatives. The statement asserts the state's right to go to extremes in violating the law and prevailing social norms–indeed, to murder its own citizens–to ensure the protection of all citizens from risk. Although this particular promise/threat was not intended to be literal, it was during Governor Basuki's term that the state engaged in evictions that at best stretched legal interpretations of the state's rights with respect to land and property to their limits. As detailed in the pages that follow, *kampung* residents countered by contesting the state's evictions through legal and discursive challenges to state arguments regarding their property rights and political organization intended to assert greater electoral influence.

This article explores this contest of perspectives through an examination of recent court cases and political negotiations in Jakarta. It will focus on four cases heard before the Jakarta Administrative Court, the Central Jakarta District Court, and Indonesia's Constitutional Court that emerged from the evictions of the communities of Bukit Duri and Kampung Pulo and the political mobilizations that occurred in the aftermath of these cases.[2] The cases asked whether the evictions had violated Indonesian law with respect to property rights and human rights. They resulted in a mixture of verdicts that in Indonesia's civil law system set an ambiguous precedent for the state's treatment of *kampung* communities. In response, community representatives and advocacy groups tacked toward a political strategy, seeking to reshape the political culture around questions of property rights by negotiating "political contracts" with gubernatorial candidates. We draw on court documents, government reports, media and academic accounts, and interviews with eighteen individuals knowledgeable about the court proceedings and their political impacts. Interviewees included three officials and judges representing courts (the Jakarta Administrative Court and the Constitutional Court), seven representatives of NGOs and think tanks, three government officials, and five academics specializing in property rights law and urban development.

## Flood Risk and the Informalized State: The Jakarta Case

The Jakarta Metropolitan Region is a paradigmatic case of a coastal megacity facing significant flood risk that is altering dynamics of urban politics. It is, according to many analyses, one of the cities at greatest risk from devastating future floods (Hanson et al. 2011; Swiss Re 2014). Some 40 percent of the city lies below the high-tide mark, and sea levels are rising due both to climate change and rapid land subsidence, caused by groundwater extraction and soil compaction from urban development (Brinkman and Hartman 2008; Ward et al. 2011; Abidin et al. 2015). Yet the most immediate threats come not from coastal inundation but from pluvial (riverine) flooding. Expansion of this massive conurbation of 29 million residents into the watershed, an increase in the frequency of high-intensity rainfall events, and the constriction of the thirteen rivers that run through the city due to siltation, urban development, and waste have all contributed to recent floods (Japan International Cooperation Agency 2014). Dramatic flooding in 2007, which caused about eighty deaths and the displacement of about a half-million people, was a galvanizing event, drawing attention to the largely anthropogenic causes of increased flood risk.

The government of Indonesia and the municipal government of Jakarta have responded to public concern over flooding with an aggressive infrastructural agenda that has led to large-scale displacement. According to Jakarta Legal Aid, flood mitigation efforts (e.g., the widening of water channels and the development of green space) were the rationale for 52 of the 113 evictions that they recorded in 2015, evictions that affected 8,145 households (Batubara, Kooy, and Zwarteveen 2018). This article focuses specifically on the Ciliwung River Normalization Project, which was largely implemented under Governor Joko Widodo (in office from October 2012–October 2014) and Governor Purnama (November 2014–May 2017). This project, which involved widening and concretizing the banks of the Ciliwung, led to the eviction of thousands of households (Sagala, Syahbid, and Wibisono 2018). These evictions have resulted in a series of lawsuits claiming that they disregarded legally recognized autochthonous claims to property that have deep historical roots in Indonesia's postcolonial political economy

and that they violated legal protections against summary eviction.

Debates over evictions for flood mitigation efforts have consequently drawn attention to a foundational dynamic in postcolonial Indonesian urban politics—the state's role in systematically informalizing and destabilizing non-title-based property claims of *kampung* communities. Recent research has demonstrated that a similar dynamic plays out in many postcolonial contexts, and scholars have consequently sought to reframe the idea of informality not as a stable category defined by law and regulation but rather as a construct that emerges through political, legal, and discursive contestation and negotiation between the state and other social actors (Bayat 2000; Roy 2005; Yiftachel 2009). This argument is crystallized most succinctly in Roy's (2005) assertion that the state, in projecting its right to unilaterally define the presumptive "rules of the game" while parceling out exceptions based on political criteria, itself becomes an informalized entity. Ghertner (2010, 2014) and Bhan (2009) both built on Roy's argument by elucidating how low-income communities have been informalized through bureaucratic and legal practices. Both argued that Indian cities have witnessed a delegitimation and criminalization of spaces of the poor with economic liberalization as bureaucrats and the courts have applied aesthetic criteria in determining the legitimacy of uses of urban space. Ghertner (2014) argued that a "world class aesthetic" has driven state assessments of what is formal and that "a distinct observational grid used for making normative assessments of urban space … has been codified through law in Indian cities, making aesthetic judgments … increasingly central to the delineation of state policy and practice" (281). Yet other authors have argued that the terms of community legitimacy and land tenure are mediated in part through negotiations and contestations with bureaucracies over access to and payment for services and infrastructures, including water (Ranganathan 2014).

The Jakarta case supports these assertions and reveals how the issue of flood risk has sharpened the politics of state informalization and illegalization of the poor. In Jakarta, relatively few settlements conform to the standard perception of what constitutes informality; that is, the illegal occupation of land owned by a private holder or the state. Rather, by many estimates more than half of the land in Jakarta is unregistered, with much of this held under autochthonous claims that date from the Dutch colonial era (United Nations General Assembly 2013).[3] Yet these autochthonous claims have increasingly been delegitimized by state and bureaucratic practices that have muddied their legal standing and by the increasing application of aesthetic criteria to define the difference between planned and unplanned spaces.

In the context of these dualisms between freehold and customary or autochthonous claims, registered and unregistered land, planned and unplanned spaces, the Indonesian state has over the decades adopted an increasingly instrumental perspective on property rights. Under the authoritarian "New Order" regime of President Suharto (1965–1998), and particularly during the property boom that took hold in the Jakarta Metropolitan Region beginning in the mid-1980s, the state's ability to exploit rent gaps by bringing unregistered land to market emerged as a central element of the political economy of state power (Leaf 1996; Winarso and Firman 2002; Kooy 2014). Specifically, the state's aggressive use of *izin lokasi* (location permits), which provided corporate developers exclusive rights to acquire and develop state land and land held under autochthonous claims, emerged as a way to distribute political patronage. Between 1985 and 1998, *izin lokasi* were issued for more than 80,000 hectares of land in the Jakarta Metropolitan Region, with most allocated to firms with close ties to the Suharto family (Winarso and Firman 2002). Both the issuance of *izin lokasi* and state compulsory land acquisition for infrastructure were also used as means to enact state agendas of urban development that served to legitimate the strong developmental hand of the New Order regime.

This instrumental orientation toward land markets and property rights regimes has set the template for the Indonesian state's approach to flood mitigation. The legacy of the Suharto-era authoritarian developmental state instilled in both the bureaucracy and the legal system an ideology that sees the cultivation of categories of formality–informality and legitimacy–illegitimacy as essential to state agendas of development. At the same time, it also embedded a legacy of a political power structure in which property developers, many still holding substantial land permits, continue to exercise political influence. In the postauthoritarian era, the emergent threat of flooding has led elements in the bureaucracy, political leadership, and courts to deploy narratives of flood risk as a rationale for further strengthening the

hand of the state and further enabling property development through the informalization of property rights of *kampungs* and the extension of state land claims. As we shall see, however, this era has also produced a reformist agenda and more pluralistic political system that has provided communities threatened with displacement a legal and political basis to contest informalization.

An interpretation of these contemporary property rights debates requires some understanding of the historical foundations of Indonesia's property rights regime. Leaf (1993) traced the origins of the dualisms that mark Indonesia's property rights system to reforms in the late Dutch colonial period. These reforms were intended to temper the extremes of exploitation that were occurring with the forced tenancy of Indonesian farmers in the late nineteenth century, when Indonesia became an important source of export crops for industrial raw material. In 1870, the *Wet Agraria*, or Agrarian Law, legally recognized the claims of communities residing on or using land owned by the state or freehold owners. Many of these communities predated the colonial era. The law required that these residents pay a tax on state-owned land or tribute on privately owned land. Autochthonous claims have broadly come to be known as *hak girik*, for the name of the tax letter issued on state lands, and *hak garapan*, for claims on freehold lands. The law further formulated numerous categories of claims, including *Verponding Indonesia* claims on state land in urbanized and nonagricultural areas. In sum, the late colonial reforms left postcolonial urban Indonesia with a dualized property right system, in which all land is held under state or freehold claims and most land is also subject to another layer of autochthonous claims, demonstrable through the production of a variety of forms of documentation, including tax receipts and colonial-era documentation.[4]

The task of reforming Indonesia's land management system was not fully taken up until the passage of the Basic Agrarian Law (BAL) of 1960, which remains the defining land law today. Framed during a period of postcolonial nationalism and socialism, the law defines its task as the unification of the country's land management system under the benevolent guidance of the state. Yet the law takes a somewhat contradictory stance toward customary (*adat*) and other autochthonous claims:

> On the one hand, the BAL claims, in Article 5, that Indonesian land law was based on *adat*. … On the other hand, the Law itself established a new range of statutory rights that overrode *adat* law and left *adat* with very little autonomous authority. … Most notably, the BAL established as the "fullest" and "strongest" right the "right of ownership" (*hak milik*) which is capable of being registered, transferred and mortgaged. (Butt 2014, 10)

Ultimately, the BAL's aim of unification is to occur through the eradication of autochthonous land rights. The law creates *Badan Pertanahan Nasional* (BPN), or the National Land Agency, tasked with administering land rights and registering and titling land held under *girik* and *garapan* claims.

With respect to the interim period before land registration is complete, the BAL contains numerous statements of state hegemony in the area of land rights that have since been used to weaken autochthonous claims and subordinate them to state interests. Under the BAL, *adat* land law has standing only to the extent that it is consistent with national unity and national interest, and all land is "under the control" of the state, a phrasing that has since been subject to considerable legal debate (Fitzpatrick 2007). The law also argues that the state is the ultimate custodian of all lands, "as a representative of the Indonesian people," and that the state must ensure that land uses conform to social needs (Reerink 2011, 60). Under Law 51 of 1960, the state also has the right to summarily evict and criminally prosecute those who occupy land without the owner's consent (Bedner 2016). As we will see, this law has been used as a central rationale for evicting communities that do not hold *hak milik* title-based claims, and the questions of what constitutes ownership (especially state ownership) and what constitutes consent have emerged as central points of legal contention in cases of eviction.

The BAL and other early postcolonial property rights legislation set the context for the delegitimization of autochthonous land claims, a shift that occurred as state bureaucracies increasingly saw these claims as premodern relics that presented obstacles to developmental agendas. This delegitimization has taken on a particular character in urban and urbanizing settings. Fitzpatrick (2007) argued that the dualist definition of *adat* versus titled land in the BAL has exacerbated the illegalization of autochthonous land claims, because it has obfuscated the reality that much land held under such claims is no longer governed by customary institutions but instead has

been subject to individualization through processes of urban growth, migration, and the breakdown of communal institutions through bureaucratization. Indeed, Leaf (1993) argued that autochthonous claims were already largely individualized in Jakarta at the time the *Wet Agraria* was passed, because the communal institutions that had governed land claims had largely disintegrated with the impositions of colonial rule and the integration of places into commodified systems of labor, production, and trade. In the absence of these communal institutions, households have relied on tax certificates or other documentation of their claims and have turned to lower level state bureaucrats to record land sales and inheritance. The national government has made little effort to systematically record customary claims or transactions of customary land, yet higher level bureaucrats frequently point to irregularities in documentation practices of lower level bureaucrats (particularly at the *kelurahan* or village level) as evidence of the illegality of autochthonous claims. Meanwhile, the costs of applying for a certificate of land title remain high, and issues of corruption in the BPN create significant obstacles that have prevented many from doing so. Yet bureaucrats and the courts have increasingly held the view that the failure to apply for *hak milik* certification invalidates customary claims (Thorburn 2004).

The gradual erosion of the legal standing of autochthonous claims and of the valence of the *kampung* as an urban space largely took place under an authoritarian regime whose interests were served well by the corresponding strengthening of the state's hand. Suharto's New Order government sought to consolidate power through two means: the formation of a technocratic bureaucracy that pursued economic growth through export-oriented industry, agriculture and natural resource exploitation and the use of state regulations and concessions to cultivate an economic oligarchy that was allied with the regime (Robison and Hadiz 2004). The regime's economic policy focused on parceling out natural resource concessions (oil and gas, mines, forests) to politically connected companies, a privatization push that "directly contradicted both the overall spirit and many premises of the Basic Agrarian Law" (Thorburn 2004, 37). It was during the period of rapid industrialization and urban expansion beginning in the mid-1980s, when urban land emerged as a valuable commodity, that the BPN deployed the mechanism of *izin lokasi* as a tool to distribute patronage to many of these same oligarchs. Under Suharto, Reerink (2011) argued, "Development became a legal norm, which the bureaucracy and the courts used to subjugate formal procedures that were actually meant to protect landholders" (66).

The postauthoritarian period has seen significant legislative efforts to redress some of the excesses of summary eviction and corruption in land development that occurred under Suharto. Reforms have sought to clarify the standing of autochthonous claims and strengthen the rule of law in state spatial planning and land acquisition. Law No. 2/2012 on Land Acquisition for Development in the Public Interest stipulates that projects involving land acquisition must be consistent with spatial plans, and public agencies must undertake consultation with communities concerning the terms of compensation for displacement (Hutagalung 2015). The law also specifies categories of residents who are eligible for compensation, including holders of unregistered claims, and stipulates a process for determining compensation. Indonesia has also ratified the International Covenant on Economic, Social, and Cultural Rights (Law No. 05/2005), which proscribes summary eviction (Lembaga Bantuan Hukum Jakarta [LBH] 2017; Rujak 2017).

The heated debates surrounding evictions related to flood mitigation have brought the divergent perspectives on property rights into sharp contrast. The viewpoint shaped by the bureaucratic and legal erosion of autochthonous claims remains predominant, although not entirely hegemonic, among bureaucrats and judges and is also influential among some academics. During interviews, representatives of government agencies and the courts were quick to reaffirm the legal standing of customary land claims in theory. Yet they noted several reasons for their view that many actually existing claims of *kampung* residents were invalid. First, some respondents argued that communities with customary claims should have registered their lands by now and that their failure to do so casts doubt on their legitimacy and legal status (although Indonesian law does not stipulate a deadline for registration). Second, several pointed to irregular bureaucratic practices at the *kelurahan* level, which have not always conformed to contemporary perspectives on what is appropriate and legal. Indeed, documentation of *girik* and *garapan* claims often contains numerous notations stretching over decades recording land transactions and inheritances.

In the view of many bureaucrats, these notations contravene the National Land Agency's exclusive right to register land transactions. One representative of a government agency argued, seemingly without irony, that the government's own policy in the early decades of the republic of relying on poorly trained *kelurahan* officials to record land transactions and inheritance was responsible for the illegality of most contemporary claims. Third, some respondents questioned whether it was possible for any *adat* claims to exist in Jakarta, because *adat* institutions no longer existed in the city.

State responses to the threat of flooding have also unfolded as the latest chapter in a continuing state effort to expand both the definition of state land and the legal rights of the state with respect to land held under ambiguous claims. State land claims have experienced periods of significant expansion in postcolonial Jakarta, notably in 1958, when the state expropriated large parcels of land held by Dutch landlords, leaving the state with an inheritance of communities holding predominantly *hak garapan* claims (Leaf 1993). More recently, new water management regulations promulgated in Law. No. 7/2004 stipulated that lands within 15 m of rivers are under state management.[5] The new regulations did not specify how the existing claims of *kampung* residents in these densely populated areas would be addressed. Furthermore, the question of what constitutes state ownership of land has become increasingly contested, because discussed in the analysis of the court cases in the next section. According to the interpretation of some legal scholars and lawyers, the BAL constrains state rights over land, because it states that the state only has the power to control land in the public interest. In recent years, however, the state has claimed the right in many cases to summarily evict communities that do not hold *hak milik* titles on the basis that their lack of clear evidence of land ownership means that the land reverts to state ownership. This consequently allows the state to use Law No. 51/1960 to justify eviction of residents who use land without the consent of the owner.

In sum, the politics of the production of informality in Jakarta has been shaped by a particular set of historical contradictions. The Indonesian state's efforts to delegitimize and informalize property claims that are based in foundational postindependence legislation have set up a series of contestations over contradictions in policy and the sanctity of the rule of law. The state's authoritarian-era presumption of a mode of developmentalism that assumes the state's prerogative to override the rule of law and violate citizen rights has set the stage for postauthoritarian discursive and legal battles over the appropriate uses of state authority. These political battles have been drawn along class lines, as they have been linked to a corporate-driven modernization of urban space. The contentious politics surrounding the allocation of the costs and benefits of flood mitigation have dramatically raised the stakes of these contestations.

## The Flood Threat and Its Political Response

How do we understand the politics that has arisen from flood risk mitigation efforts in Jakarta? How has this politics been shaped by Indonesia's path-dependent dynamic of state-produced informality? How have agendas of risk mitigation in turn affected debates over informality? The emerging literature on the politics of urban hazard risk has produced two important concepts that are relevant to an effort to answer these questions. The first is Klein's (2007) concept of disaster capitalism, the idea that governments and corporations use catastrophic events, including "slate-cleaning" disasters like floods, to dispossess existing settlements and economies and to introduce privatized modes of development into economic management, infrastructure, and reconstruction (see also Adams, Van Hattum, and English 2009). The second is Alvarez and Cardenas's (2019) idea of resiliency revanchism, the use of discourses of hazard risk to rationalize evictions by drawing on historically entrenched stigmas associated with the poor to argue that they are complicit in the crisis of risk. Both agendas are notably present in Jakarta but have been contested in the realms of law, politics, and popular discourse. These contestations have focused on what we refer to as a critique of state informality and have had two central elements. First, critics have questioned the contradictory property rights claims of the state, which has on the one hand permitted land to corporate developers under questionable legal and political circumstances, while on the other summarily evicting communities seemingly in contravention of their legally established rights (Chairunnisa and Huda 2016; LBH 2017). Second, critics have pointed to the state's own

complicity in flooding through its uneven application of planning and regulation. Although these critiques emerged primarily from community residents and their supporters in NGOs, they have also enjoyed some support from elements of the local and national government, the courts, and academia.

The 2007 floods galvanized political debates around questions of who was responsible for flooding and who should benefit and who should pay the costs of flood mitigation efforts. The floods drew public attention to the numerous anthropogenic drivers of flood risk in Jakarta, including climate change, land conversion, microclimate effects, land subsidence, and the concentration of vulnerable communities in low-lying areas. Much subsequent debate focused on land subsidence due to groundwater extraction in North Jakarta, much of which is already below the high-tide mark (Abidin et al. 2015). The debates about these drivers have drawn attention to numerous issues of governance and rule of law with respect to property rights and urban development: the failure of spatial planning to significantly constrain illegal land conversion of critical watershed areas, lack of enforcement of proscriptions on groundwater extraction, and the constriction of waterways not only by riverine *kampungs* but also by state and private landowners (Padawangi and Douglass 2015). Indeed, Batubara, Kooy, and Zwarteveen (2018) argued convincingly that the power of private-sector actors in producing urban space has transformed the watershed in ways that have directly contributed to the current crisis of flooding. In the aftermath of the 2007 floods, the relationship between the state and private sector–led urban transformation came under increasing public scrutiny.

A brief analysis of the government's most prominent flood mitigation initiative, the National Capital Integrated Coastal Development Plan (NCICD), serves to highlight the dissonance between public awareness of the drivers of flooding and the policy response (Government of Indonesia 2014). This ambitious proposal posits a solution based on the development of a massive offshore seawall 40 km in length. A total of 1,250 hectares of land would be reclaimed along the seawall in the shape of a giant garuda, a bird fabled in Hindu mythology. The land forming the garuda's body and wings would be auctioned to developers to finance the project and would become the site of a new town of 1.5 million people. The spectacular architectural renderings of this massive island cityscape, viewed from a bird's-eye perspective through cloud-dappled skies against an azure ocean background, have formed the backdrop for debates about the state's role in planning for flood mitigation. Yet the project has been subject to substantial public critique, focused in part on irregularities in the planning process, including allegations that a prominent developer had bribed a Jakarta legislator to facilitate the planning approvals (Wijaya 2016). The debate over these irregularities and the high social and environmental cost and questionable effectiveness of the NCICD project shaped the deep public suspicion that is part of the context of the Ciliwung River Normalization Project.

The contestations around these emerging flood mitigation agendas coincided with a watershed moment in Jakarta's politics that was marked by the arrival in office of Governor Purnama. Purnama had been vice governor to Governor Joko Widodo, who had struck a populist pose in the run-up to his election to the governorship. Since assuming office in late 2012, Governor Widodo had aggressively backed the NCICD plan and other flood management initiatives but, seeking to consolidate his "man of the people" image, had struck a conciliatory tone on questions of eviction. While campaigning, he had met with residents of the eviction-threatened Bukit Duri and publicly endorsed the community's proposals for in situ redevelopment (Rulistia 2012). With support from NGOs, Bukit Duri had developed a proposal for a project called *kampung susun* (vertical *kampung*), an in situ redevelopment that would increase density and move houses back 15 m from the river as required by law. Within two years, however, Governor Widodo was elected president of Indonesia, and Purnama assumed office in November 2014. Governor Purnama promised a different approach to governing, in which an activist state would take a strong hand in addressing critical problems like flooding.

The Purnama administration sought in the Bukit Duri and Kampung Pulo evictions to test the limits of the property rights protections of *kampung* residents. Following bureaucratic procedures, the East Jakarta Public Order Agency delivered a series of eviction notices to Kampung Pulo, with the third and final notice on 6 August 2015 (Kusumawati 2018; "Bukit Duri Evictees Win Legal Battle against

Eviction" 2018). On 13 August, the residents filed a lawsuit at Jakarta Administrative Court contesting the eviction notices, but bulldozers arrived before the case could be heard. In the ensuing week about 3,400 residents were evicted. On 12 January 2016, portions of Bukit Duri were also evicted. On 10 May of the same year, ninety-three Bukit Duri residents responded by joining a class action lawsuit, along with Kampung Pulo and other affected communities, which sought compensation on the basis that the evictions had been illegal. While the plaintiffs in that case were still awaiting a decision, however, the Jakarta administration carried out a second wave of evictions in Bukit Duri on 28 September 2016.

The evictions of Bukit Duri, Kampung Pulo, and other communities featured prominently in debates in the run-up to the gubernatorial elections of 2017, which initially shaped up to be a referendum on Basuki's strong state agenda. In media accounts and on social media, prominent backers of Purnama in politics and entertainment placed blame for the flooding on *kampung* dwellers, who they argued had illegally occupied state land (Tambun 2016). Civil society advocates, on the other hand, produced reports documenting the social impact of evictions and the legal violations that had taken place in their conduct (LBH 2016). Ultimately, however, Governor Basuki's fate was determined by a different controversy, over statements about Islam that were deemed by some to be blasphemous. In an electoral atmosphere charged by communalism, Governor Basuki lost and shortly thereafter was found guilty of blasphemy and inciting public disorder and sentenced to two years in prison.

The 2017 election therefore produced no clear mandate on Purnama's mode of governance or on his assertion of the state's prerogative in defining property rights as suited the state's development aims. Although the election therefore marked an inflection point in what this study has referred to as the dialectic of state informality, the tone that emerged from this inflection and its implications for state–community relations were ambiguous. The period immediately before and after the election, however, saw a number of important legal and political developments in debates over property rights. The remainder of this article examines how these debates unfolded in two realms—in the courts and in negotiations over political contracts between community groups and political candidates.

## The Court Cases

The courts have played an equivocal role in the contest of interpretations between state and community actors over Indonesia's property rights legacy and consequently in the state's relationship to informality. This mixed legacy reflects tensions within the Indonesian state more broadly, as a reform agenda seeks to slough off New Order legacies of corruption and cronyism that are deeply imbricated in the courts and the bureaucracy after more than three decades of authoritarian rule. As noted earlier, the courts under Suharto had largely functioned to forward state-sponsored agendas of private sector–led urban development, and their record of consistently finding against urban communities contesting eviction has carried over into the postauthoritarian era.

During the authoritarian era, and arguably in the postauthoritarian era as well, this inclination in favor of state and corporate land claims has reflected both a deference to state developmental ideologies and widespread corruption reaching to the highest levels of the judiciary (Butt and Lindsay 2011). Postauthoritarian reforms have, however, made some progress in increasing the autonomy and transparency of the courts. Reforms intending to increase the accountability and independence of the judiciary strengthened the role of the Judicial Commission (*Komisi Yudisial*) in appointing judges and fortified procedures for reviewing the courts (Reerink 2011). The Corruption Eradication Commission (*Komisi Pemberantasan Tindak Pidana Korupsi*) was formed in 2002, with powers to investigate and prosecute cases of corruption. The Constitutional Court was formed in 2004 to review the constitutionality of legislation and gained a reputation in its early years for independence through a series of decisions favoring *adat* claims over state-granted forest and natural resource concessions (Butt 2014).

Obstacles remain both to the autonomy of the courts and to the impact of their jurisprudence. Corruption also continues to be an issue. Moreover, the rule of law remains tenuous, and there have been prominent instances of local government agencies simply ignoring court rulings. Being a civil law system, Indonesian courts do not have a system of precedent, so that decisions on property rights or other issues do not necessarily come into clear focus as a body of case law. Nevertheless, the court cases launched in the aftermath of the Bukit Duri and Kampung Pulo evictions have represented a

**Table 1.** Summary of court case decisions on Ciliwung River Normalization evictions

| Court case and decision | Case | Plaintiff claim | Key findings |
|---|---|---|---|
| Jakarta Administrative Court No.: 205/G/2016/PTUN.Jkt, 5 January 2017 Decision: Found in favor of Bukit Duri residents. | Sought to annul the warning letters delivered to Bukit Duri, thus rendering the eviction illegal. | Plaintiffs argued that these letters violated Law No. 2/2012, that the evictions were undertaken illegally after the end of the project period, and that the eviction letters did not accord with principles of good governance. | Found that Bukit Duri residents had held the land "in good faith" according to the criteria laid out in Presidential Regulation No. 71/2012 and that residents were therefore eligible for compensation. Found that the South Jakarta government had violated the law by not adhering to requirements for public consultation. |
| The High Court Verdict of Jakarta Administrative Court (appeal verdict): No. 95/B/2017/PT.TUN.Jkt Decision: Found against Bukit Duri residents. | Appeal of the decision of the Jakarta Administrative Court. | Same as above. | The court decision was based on the community residents' lack of strata title (*hak milik*). The court further cited the community's occupation of the river bank as a valid justification for the eviction. |
| The first verdict of Central Jakarta Court District No.: 262/Pdt.G/2016/PN.Jkt.Pst. Decision: Found in favor of the plaintiffs and required the Jakarta Municipal Government to pay compensation to those evicted. | A class action lawsuit in which Bukit Duri residents claimed unlawful conduct of state agencies in the conduct of river normalization. | Plaintiffs argued that evictions occurred after the expiration of the mandate, that the evictions violated Law No. 2/2012, and that the defendants had committed a human rights offense in summarily evicting residents. | Found that Bukit Duri residents had substantial proof of valid land claims (e.g., tax receipts). Further found that the defendants had failed to engage the community in consultation and that the summary evictions had violated the plaintiffs' constitutional protections, Law on Human Rights (no. 39/1999), and Law. No. 2/2012. |
| The Constitutional Court Verdict: No.: 96/PUU-XIV/2016 Decision: Found against the plaintiffs. | Evictees from several communities (including Bukit Duri and Kampung Pulo) proposed to the Constitutional Court to annul Law No. 51/1960 regarding prohibition on using land without the owner's consent. | The plaintiffs claimed that Law No. 51/1960 provided the government with justification for the arbitrary use of its power to summarily evict residents and thus was inconsistent with human rights principles. Further argued that the law was originally justified due to concerns over national security and war, conditions that were no longer relevant. | Found that the Indonesian government's application of Law No. 51/1960 was consistent with the Indonesian constitution and that application of the law was consistent with the objective of maintaining the orderly use of land ownership. |

watershed moment in debates about property rights and the legitimacy of claims on land made both by communities and the state.

Table 1 presents a summary of each of the court cases over river normalization evictions. The arguments presented in these cases reveal the tactical efforts of plaintiff communities and their advocates and lawyers to establish the legal rights of residents to due process and to have their land claims legally recognized. Notably, for the initial cases, which were focused on establishing the illegality of the evictions of Bukit Duri and Kampung Pulo, the plaintiffs did not make the question of the property rights a central matter of contention. They instead focused on

administrative errors in the handling of the evictions. It was this choice that led them to pursue the lawsuit initially through the Jakarta Administrative Court. They specifically argued that the conduct of the evictions after the deadline for the implementation of the river normalization program, a deadline established by Jakarta Gubernatorial Regulation No. 163/2012 and Jakarta Gubernatorial Decree No. 2181/2014, was a violation of the law. They further argued that the South Jakarta government had violated stipulations in Law No. 2/2012 regarding consultation with evictees regarding the process of eviction and possible compensation.

The focus on claims of administrative errors was a strategic choice based on previous difficulties in getting the courts to recognize autochthonous claims. The lawyers for the plaintiffs instead used the legality of the community residents' property rights claims, for which they felt they held strong evidence, as a means to bolster their allegations of administrative arbitrariness and malfeasance, by convincing the court of the intention of residents to hold the land in good faith.

In fact, NGOs working with Bukit Duri and Kampung Pulo had conducted extensive research that had established the long history of the communities' existence and the administrative and legal basis for the land claims of community residents. Their research demonstrated from maps and documents that the land had been the site of *kampung* settlements at least since the seventeenth century. The land was purchased in 1661 by a Christian missionary named Cornelius Senen, but the *kampungs* continued to exist with his consent. Residents surveyed by NGOs produced a variety of types of documentation, including land title certificates, colonial-era documents, and *Verponding* claims. Despite what they felt was the strong normative and legal case to be made for state recognition of these claims under the BAL, lawyers for Bukit Duri and Kampung Pulo were aware that it was exceptionally rare for the courts to rule against the state on questions of property rights. Indeed, as elsewhere, the claims of Bukit Duri and Kampung Pulo residents had been subject to the processes of informalization discussed in the previous section, including bureaucratic irregularities in recording sale and inheritance and the expansion of the state's claims to land along river banks with the passage of Law No. 7/2004.

During the first hearings before the Jakarta Administrative Court, Bukit Duri residents testified to their long tenure on the land and their good-faith efforts to remain within the law by regularly paying their utilities and other fees and by registering transactions with *kelurahan* officials. They further testified to Governor Widodo's previous support. The Court found in their favor and granted the demands of the plaintiffs for compensation, although it rejected their request that the government should cease conducting the normalization project. In the appeal verdict before the High Court of the Jakarta Administrative Court, however, the judges adopted a very narrow perspective on the property rights of *kampung* residents. Despite the clear provisions of Law No. 2/2012, which spelled out the rights and compensation rates of households with unregistered claims, the Court found that the evictions were justified because many residents did not have strata title (*hak milik*) and were residing on a riverbank that was state land. In interviews for this research, attorneys and advocates for Bukit Duri expressed perplexity at this decision, which seemed to privilege the principle of strong state control within a unified property rights system over the provisions for compensation of autochthonous claims that had been clearly established in recent legislation.

Property rights claims played a more central role in the class action suit launched by several plaintiff communities at the Central Jakarta District Court that challenged the conduct of the Ciliwung Normalization Project. Plaintiffs argued that the evictions of Bukit Duri and other communities had been in violation of Law 2/2012 and that their summary nature constituted a human rights offense. The court agreed and awarded Bukit Duri compensation. The ongoing negotiations regarding the allocation of this compensation are discussed in the next section.

The most direct assault on the process of informalization of autochthonous claims came in the Constitutional Court case contesting Law No. 51/1960, which was launched by residents of Bukit Duri, Kampung Pulo, and other communities with the backing of Jakarta Legal Aid. In many cases, the evictions have been based on a presumption of state ownership of lands because of provisions in the BAL that lands on which residents cannot prove their ownership rights become state property. The plaintiffs argued that the term *state property* did not imply outright ownership of such land, because the Indonesian Constitution states that all lands in the country are the common property of the Indonesian

people, which the state only had the right to control in the interests of the prosperity of the people. Consequently, they argued, the state does not enjoy unlimited power to give or refuse consent to occupants. The plaintiffs further argued that the BAL protected land held under autochthonous claims and that it provided for protection against summary eviction regardless of the ability of residents to produce a certificate of land title. Eviction therefore constituted an arbitrary revocation of rights.

In sum, the Constitutional Court plaintiffs sought to interrogate the legal foundations of the state's definition of what constituted a legitimate claim to land and what they deemed an expansive definition of the extent of state powers over state land. They also sought to call attention to the inequities that had resulted from the weakening of land claims of the poor by presenting quantitative evidence showing that the ownership of assets, including land, was extremely concentrated in contemporary Indonesia and that developments built by corporate landowners that enjoyed the favor of the state were themselves frequently in violation of spatial plans and other laws. The implicit question the plaintiffs sought to raise concerned why office buildings or shopping malls built in contravention of state regulations enjoy the protection of the state, whereas *kampungs* occupied for generations based on legally recognized autochthonous claims are deemed illegal and subject to summary eviction. They argued that allowing the state to summarily evict communities based on an expansive definition of state land would allow for massive evictions of communities that had existed for generations, which could have disastrous consequences.

In making these arguments, lawyers for the plaintiffs evoked previous decisions by the Constitutional Court, which had found against the state in prominent cases involving concessions and contracts (Butt 2014). These decisions had often hinged on the Court's interpretation that the state's constitutionally mandated control of natural resources was constrained by Article 33(3) of the Constitution, which argued that the state's control of resources (including land) must be exercised in the interests of the "greatest prosperity of the people." In cases related to energy, forestry, and mining, the Court had found that the state's privatization of certain natural resources had violated this constitutional principle, because it had "either reduced the 'control' held by the state below a level permitted by the Constitution, or … that the state has not exercised its control for the purpose of the greatest prosperity of the people" (Butt 2014, 7). The lawyers sought to frame their arguments as consistent with these previous decisions and argued that evictions based on Law No. 51/1960 had often far exceeded the constraints imposed by Article 33(3).

The Court, however, found against the plaintiffs, arguing that the state's ability to evict communities served the public interest because it was necessary to maintain orderly land ownership. Even if violations of spatial plans and land use law had become the norm, the Court found, the state had the right to apply such penalties. Finally, the Court found that the state's power of eviction was not absolute and unconstrained under Law No. 51/1960 because the law still allowed evicted communities to take the state to court. The finding thus acceded to the status quo, in which the state can presume the right to define the public interest as it saw fit and therefore to pursue a definition that has for the most part targeted low-income settlements and has disregarded the transgressions of large corporate developments. The decision also limited recourse of evicted communities to a court system that had very rarely sided with communities that were not able to produce *hak milik* land titles. Hence, the decision supported a strong hand for the state in enforcing its claims to land ownership and ultimately served to reinforce the political economy of state developmentalism that has led to the gradual delegitimization of autochthonous claims.

In sum, the court cases have had mixed implications for questions of property rights. On one hand, the finding of the Central Jakarta District Court has indicated that the state overstepped its bounds in these evictions and that the good-faith efforts of the community in occupying the land clearly provided them protection and rights to due process. Requiring compensation from the City of Jakarta also shifted the terms of the debate and raised the possibility of further such penalties in future cases. On the other, the finding of the Constitutional Court validated the state's claims to the right to conduct summary eviction. Moreover, the High Court of the Jakarta Administrative Court's refusal to even consider the validity of non-title-based claims, despite the clear legal and regulatory basis for the protection of the rights of autochthonous claim holders, cast doubt on the possibility that the courts would develop clear jurisprudence reflecting these protections.

In the wake of these decisions, urban poor communities and the NGOs that work with them have come to recognize that the courts are an important but limited venue to contest the state-driven informalization of autochthonous claims. They have subsequently shifted toward bringing this contest into the political realm. Indeed, the issues of land rights and the presumption of strong state powers to evict communities pervaded the political environment in the run-up to the 2017 gubernatorial elections, providing an opportunity for communities and their advocates both to shape this discourse and to gain political support for their claims.

## The Political Contracts

The mechanism through which communities and their advocates sought to assert their claims during the 2017 elections was political contracts—negotiated agreements in which organizations representing community interests promised to deliver community votes in exchange for specific policy commitments from candidates. Contracts had been negotiated in the 2013 gubernatorial elections. In 2017, however, community advocates sought to move beyond the general commitments of principle that had characterized previous contracts, instead making specific demands to which they hoped to hold candidates accountable through political pressure and possibly legal recourse. The contracts, which emerged directly in response to the incomplete success of the court cases related to the river normalization evictions, were intended to shift the debate over the rights of *kampung* dwellers from the courts into the political realm. They sought policy changes that would demonstrate fair and just outcomes for residents and would establish models for future state–community collaboration. They also sought to hold the state accountable to the court rulings in favor of communities unjustly evicted as part of river normalization. The account of the formation of the political contracts that follows is based on interviews with representatives of NGOs that work with *kampung* communities who are knowledgeable about the negotiations.

The circumstances of the 2017 elections for governor made the political contracts a potentially potent tool for NGOs and residents of communities to pursue their objectives. These elections had taken shape in large part as a referendum on Governor Purnama's strong-arm style of rule and on the evictions. This context provided community advocates some leverage with candidates who sought to stake out a contrasting position that emphasized the need for due process and that validated the claims of low-income communities. Advocates focused attention on cultivating a relationship with the ticket of Anies Baswedan and Sandiaga Uno (running for governor and vice governor, respectively). They argued in negotiations with the Baswedan–Uno ticket that contesting Purnama's regime of eviction would not only deliver important blocks of votes in threatened *kampung* communities but would likely engender support across the city among citizens weary of Purnama's bombastic style of rule.

Two major political contracts were negotiated with the Baswedan–Uno ticket, which represented somewhat different political and discursive strategies. The first contract was formally signed on 9 January 2017 between the candidates and an organization called Kelompok Perempuan Untuk Keadilan Social, or the Women's Group for Social Justice, which was aligned with Ciliwung Merdeka, an NGO that had played a central role in organizing Bukit Duri and Kampung Pulo. After the court victory that awarded Bukit Duri evictees compensation, Ciliwung Merdeka had been working closely with residents to use the compensation to implement the *kampung susun* concept. By pooling their resources and developing a resettlement location within Bukit Duri, the *Kampung Susun* project promised to enable residents to remain on site, in a location where they had access to their original sources of livelihood and long-established social connections. At the same time, it provided an opportunity to present an alternative model for participatory in situ redevelopment of riverside communities that also addressed questions of flood mitigation through landscaping measures intended to enable water flow and permeation. The model was intended in part as a pointed response to what community advocates viewed as an excessive reliance on hard infrastructure and developer-driven planning in flood mitigation efforts, which they argued ultimately only deepened the crisis of water management.

Hence, Ciliwung Merdeka and other community advocates framed their political contract as a statement of principles—of a Jakarta that belongs to all citizens—backed up by policies that reflected a commitment to achieving these principles through reforms to planning and governance. The contract

leads with a commitment to enact a moratorium on evictions and to use participatory approaches in future resettlement initiatives. It states that a Baswedan–Uno administration will abide by court decisions regarding the compensation of Bukit Duri evictees and will actively facilitate the issuance of required government permits for the *kampung susun* development. The contract then articulates city-wide policies for economic development and service provision aimed particularly at women.

The second political contract represented thirty-one North Jakarta *kampung* communities that faced immediate eviction threats, many from the government's river normalization plans. It was negotiated by the Urban Poor Consortium (UPC), a national NGO. The UPC had focused its work on community organizing for negotiations for land rights and community improvement in North Jakarta communities that generally have very little documentation of their claims. Given the immediacy of the eviction threat to these communities, the formation of the UPC political contract focused much greater attention on setting out specific policies for which a Baswedan–Uno administration could be held accountable. The contract was framed as a legally binding agreement, although there has been some debate in legal and policy circles as to whether the abrogation of the contract could form the basis for a lawsuit.

UPC developed the contract through a participatory process, seeking broad input both to ensure the effectiveness of the policies it called for and to take advantage of a useful moment in community organizing. They also engaged professional lawyers, planners, and architects to generate ideas and assess the feasibility of their proposals. Once proposed policies had been arrived at through community deliberations, UPC did extensive research to ensure that these proposals were consistent with other government laws and regulations. Signed on 8 April 2017, shortly before Baswedan was to face Purnama in a run-off election, the contract focused on three main areas, which were specified in forty-six separate points (Savirani and Aspinall 2017). First, the community laid out a set of policy and regulatory proposals to certify their land rights. To demonstrate their intention to use the land for community purposes, the contract stipulated that communities should generally receive usage rights, or *hak pakai*, that recognized state ownership but allowed residents to legally occupy the land for a restricted range of uses. Moreover, these rights were in some instances to be granted not to individuals but to cooperatives, as a measure to provide community control over land use, over the cost of land, and over the distribution of profits from land transactions. The contract also stipulated that zoning maps produced for the Jakarta 2030 Spatial Plan be revised so that *kampungs* were not in violation of the spatial plan. It specifically required certain *kampung* areas to be rezoned from green open space classifications to yellow residential classifications. The second set of policies focused on enhancing access to basic services, specifically through the issuance of citizen identity cards to residents. Finally, the contract provided detailed descriptions of infrastructure improvements in each of the communities.

As of this writing, the process of implementing the political contracts remains incomplete, and the outcome of the strategies of communities and civic groups is unclear. The Baswedan–Uno ticket prevailed in the run-off election, and negotiations have since continued. The UPC has been working with the administration to implement city-funded community action plans. Ciliwung Merdeka and residents of Bukit Duri have sought negotiations with the administration to clear regulatory obstacles to the realization of their *kampung susun* proposal but have received some resistance from the mayor of South Jakarta, who has immediate responsibility for implementing the project. In September 2018, to the consternation of Ciliwung Merdeka, the city revealed that it had hired a private consultant based on a US$29 million tender to implement a *Kampung Susun* proposal of its own, which had been developed with no public consultation. Governor Baswedan claimed that he was not responsible for this development and warned subordinates about their lack of communication with residents. In sum, although the 2017 political contracts represent an important moment in state–community negotiations, the experience of implementation has proven that a sustained effort will be required to ensure that they have an impact.

## Conclusion

We have argued in this article that the emerging politics of flooding is taking shape in part through renewed contestations over the questions of what role informal spaces play in growing flood risk and who is culpable for the informalization of the production of urban space. In the case of Jakarta, we have

found that flood risk has pulled these questions to the center of urban politics and that a focus on questions of the definition of informality and the state's role in its production have formed a central node of contestation over state flood mitigation planning.

What do these findings mean for theories of the risk society, and of informality? Our findings reinforce Roy's (2005) observations about the complicity of the state in the production of informality. Yet they also suggest that Roy's characterization of informality as an "idiom of planning" is too static. We have proposed instead that there is a dynamic and dialectic interplay between state efforts to consistently reinvent or transgress the law and regulation to suit objectives of state power and community-based efforts both to contest state definitions of their own informality, and to destabilize state authority by pointing out state complicity in pervasive extralegal and extraregulatory urban spatial production. As Jakarta has faced intensified flood risk, long-simmering questions of state manipulation of the terms of formality and legitimacy have emerged as central questions in debates over the terms of the risk contract referred to by Beck (2007) and over the future of spatial production more generally. State actors have deployed a powerful combination of public interest arguments and legal and discursive delegitimization of autochthonous claims, but communities have countered to some effect, enlisting allies in civil society and electoral politics to defend their claims to land rights and engaging in legal battles in the courts.

Although it would be extreme theoretical overreach to suggest that the dialectic of state informality is approaching any kind of resolution in Jakarta, we do argue that recent contestations over flood risk mitigation constitute an important turning point at which politics is being fundamentally reshaped by discursive, political, and legal battles over the meaning of informality and the historical uses and misuses of the law. These emergent political dynamics might play out in a number of ways. They could lead to a gradual set of reforms in law, regulation, and politics, leading to convergence around a changed status quo regarding property rights, based on a new sociopolitical order. In such a scenario, the state would seek to regain some semblance of control over land by allowing some accommodation of existing claims, either through mass titling or through greater political and legal recognition of autochthonous claims. Or, state actors could push the political system toward an imposition of increasingly authoritarian powers, leading to protracted conflict. What is clear is that the changing dynamics of the dialectic of state informality will have a profound impact on the direction of the politics of flood risk mitigation into the foreseeable future.

Ultimately, we have argued that the challenges associated with growing hazard risk have the potential to foster transformative political change. The emerging literature on the politics of risk in the Global South has highlighted the ways in which states have sought to deploy risk as a lever to extend state power, often by reinforcing neoliberal efforts to reclaim urban space for market-driven urban production. It has also reinforced insights of the political ecology literature about the relationship between socioeconomic, political, legal, and ecological precarity. In introducing the idea of a dialectic of state informality, this article has sought to develop a more dynamic framework for understating the legal, discursive, and political debates that are shaping political change, and for interpreting the ways in which various actors (the courts, elected officials, community groups, NGOs) interact to shape such change. Such a dynamic understanding, we believe, will be increasingly essential in interpreting the political and social turbulence that is certain to define the politics of risk-prone cities for the remainder of the twenty-first century.

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## Notes

1. *Kampung* refers to historically formed residential areas in Indonesian cities composed of small, mason-built homes. Although *kampung* residents often have legally recognized title-based or autochthonous claims, in state parlance they are often framed as

"informal" or "irregular" based on their aesthetic character and unplanned nature.
2. One of the co-authors of this article was the lead lawyer for plaintiffs in two of these cases.
3. According to the Jakarta Land Agency (BPN Jakarta), 1.6 million land plots in Jakarta have not been certified (Nailufar 2018).
4. It is important to note the distinction between customary (*adat* in Indonesian) and autochthonous claims. As discussed later, the historical decline of *adat* institutions in urban areas has led some to view autochthonous claims as increasingly illegitimate, even though the legal status of many such claims is not reliant on their governance through *adat* institutions.
5. The law was subsequently annulled by the Constitutional Court in February 2015, and new regulations state that river boundaries will be defined according to the geomorphological conditions of the river and the needs of communities. This appears to represent a move toward greater consideration of the rights of riverine communities.

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