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

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Tenure security for Indonesia's urban poor

*A socio-legal study on land, decentralisation,
and the rule of law in Bandung*

Gustaaf Reerink

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Tenure Security for Indonesia's Urban Poor

*A socio-legal study on land, decentralisation,
and the rule of law in Bandung*

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Contents

LIST OF MAPS, TABLES, AND APPENDICES	IX
ACKNOWLEDGEMENTS	XI
ABBREVIATIONS AND ACRONYMS	XIII
1 INTRODUCTION	1
1.1 Urban poverty and informality	1
1.2 Tenure security, land registration, and alternative approaches	3
1.3 The need for a rule of law environment	8
1.4 Urban poverty, tenure security, and the rule of law in Indonesia	10
1.5 Research questions	15
1.6 Framework of analysis	15
1.7 Methodologies	17
1.8 Limitations of research	21
1.9 Outline	22
2 MIGRANTS FLOWS, REGULATORY FAILURE A short history of the kampongs of Bandung	25
2.1 Introduction	25
2.2 Autonomous villages in an expanding colonial town	26
2.3 Refugee settlements in an occupied city	32
2.4 Migrant settlements in a decolonising city	34
2.5 Migrant settlements in a metropolitan city	40
2.6 Bandung's kampongs today: a 'challenge of slums'?	48
2.7 Conclusion	53
3 STATE RIGHTS AND INDIVIDUAL OBLIGATIONS A general overview of Indonesian land law	57
3.1 Introduction	57
3.2 Guided Democracy: land law in a state of revolution	58
3.3 The New Order: land law in a 'developmentalist' state	63
3.4 Post-New Order: land law in a decentralised 'Rechtsstaat'?	68
3.4.1 General reforms	68
3.4.2 Regional autonomy	74
3.4.3 Land law reform	82
3.4.4 Access to justice and legal empowerment	85
3.5 Conclusion	87

4	AN 'IDEAL' BEYOND REACH Law and practice of land registration	89
4.1	Introduction	89
4.2	The system of land registration in Indonesia	90
4.3	Sporadic registration and its limits	95
4.4	Systematic registration: set-up of land registration programmes	99
4.5	Reach of land registration programmes	102
4.6	Land registration, tenure security, and the rule of law	104
4.7	Recent reforms related to land registration	112
4.8	Conclusion	117
5	WHEN MONEY RULES OVER VOICE Law and practice of spatial planning	121
5.1	Introduction	121
5.2	Spatial planning under the late New Order	122
5.3	Legal reforms related to spatial planning	128
5.4	Practice of spatial planning in Post-New Order Bandung	131
5.5	Spatial planning, tenure security, and the rule of law	145
5.6	More recent reforms related to spatial planning	153
5.7	Conclusion	156
6	NOT JUST COMPENSATION Law and practice of land clearance by the state	159
6.1	Introduction	159
6.2	Land clearance by the state under the late New Order	159
6.3	Practice of land clearance by the state in Post-New Order Bandung	167
6.4	Land clearance by the state, tenure security, and the rule of law	177
6.5	Recent reforms related to land clearance by the state	181
6.6	Conclusion	185
7	DEALING WITH THE URBAN POOR Law and practice of commercial land clearance	187
7.1	Introduction	187
7.2	Commercial land clearance under the late New Order	188
7.3	Legal reforms related to commercial land clearance	193
7.4	Practice of commercial land clearance in Post-New Order Bandung	196
7.4.1	The Paskal Hyper Square project	197
7.4.2	Land clearance in Kebonjeruk	199
7.4.3	Land clearance in Ciroyom, second zone	202
7.4.4	Land clearance in Ciroyom, third zone	205
7.5	Commercial land clearance, tenure security, and the rule of law	206
7.6	Conclusion	210

8	INVESTING IN KAMPONGS: RISKY BUSINESS? Perceived tenure security and housing consolidation	213
8.1	Introduction	213
8.2	Tenure status and perceived tenure security	214
8.2.1	Perceived legitimacy of tenure	215
8.2.2	Perceived possibility of involuntary removal	216
8.2.3	Perceived possibility to receive compensation entitled to	217
8.3	Changed perceptions of tenure security since the end of the New Order	218
8.4	Housing consolidation	219
8.5	Conclusion	221
9	CONCLUSION	223
9.1	Introduction	223
9.2	Land tenure security of low-income kampong dwellers	223
9.3	Rule of law development at the local level	226
9.4	Indonesia's current approaches to attaining land tenure security	229
9.5	Policy suggestions	230
9.5.1	Toward a rights-based approach	230
9.5.2	Legal and institutional reforms	232
9.5.3	Legal empowerment	239
9.6	Contribution to policy theory	239
9.7	Suggestions for further research	241
	APPENDIX I	243
	APPENDIX II	244
	APPENDIX III	245
	REFERENCES	247
	SAMENVATTING Dutch summary	257
	RINGKASAN Indonesian Summary	269
	CURRICULUM VITAE	281

List of maps, tables, and appendices

MAPS

Map 1	Bandung Municipality with survey locations indicated	24
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TABLES

Table 4.1	Semi-formal landholders: why do you not have a land certificate?	98
Table 4.2	Output sporadic registration in Bandung Municipality	99
Table 4.3	Output LAP in Bandung Municipality	100
Table 4.4	Possession of building permit per land tenure category	108
Table 4.5	Why do you not have a building permit?	109
Table 4.6	Number of building permits issued by Bandung's Municipal Building Service	109
Table 4.7	Estimation on derivative registration in case of future land transfers	110
Table 5.1	Selected overview of revenues of Bandung's municipal government	147
Table 5.2	Overview of expenditure of Bandung's Municipal Council and Secretariat	148
Table 5.3	Overview of expenditure of Bandung's municipal government on civil society organisations	151
Table 8.1	Do the authorities agree that you reside on this land?	216
Table 8.2	Why do you believe the authorities agree with you residing on this land?	216
Table 8.3	Is there a possibility of involuntary removal within the next 5 years?	217
Table 8.4	In case of involuntary removal, would you receive the compensation entitled to according to law?	217
Table 8.5	How has the possibility of involuntary removal changed since end of New Order?	218
Table 8.6	How has the possibility to receive proper compensation changed since end of the New Order?	218
Table 8.7	Household income and housing consolidation	219
Table 8.8	Regression of tenure category, perceived possibility of involuntary removal, household income on housing consolidation	220

APPENDICES

Appendix I	Autonomous Villages in Bandung Municipality 1906-1942	243
Appendix II	Socio-Economic Characteristics of Kampongs in Bandung Municipality	244
Appendix III	Physical Characteristics of Kampongs in Bandung Municipality	245

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Abbreviations and Acronyms

ADB	Asia Development Bank
AMS	<i>Angkatan Muda Siliwangi</i> , Siliwangi Youth Force
AusAID	Australian Agency for International Development
BAPPENAS	<i>Badan Perencanaan Pembangunan Nasional</i> , National Development Planning Agency
BAL	Basic Agrarian Law
BPK	<i>Badan Pemeriksa Keuangan</i> , Supreme Audit Board
BIGS	Bandung Institute of Governance Studies
BPN	<i>Badan Pertanahan Nasional</i> , National Land Agency
CESCR	UN Committee on Economic, Social and Cultural Rights
DPD	<i>Dewan Perwakilan Daerah</i> , Representative Council of the Regions
DPKLTs	<i>Dewan Pemerhati Kehutanan dan Lingkungan Tatar Sunda</i> , Monitoring Body for the Upgrading of Sundanese Forestry and Environment
DPR	<i>Dewan Perwakilan Rakyat</i> , People's Representative Council (National Parliament)
DPRD	<i>Dewan Perwakilan Rakyat Daerah</i> , Provincial Assembly / District/Municipal Council
FKPKP	<i>Forum Komunikasi Peduli Korban Pasupati</i> , Communication Forum for those Concerned with the Victims of Pasupati
Fordamasta	<i>Forum Masyarakat Kelurahan Taman Sari</i> , Public Forum of City Quarter Taman Sari
GASIBU	<i>Gabungan Anak Siliwangi Barisan Utama</i> , Grouping of Sons of Siliwangi Elite Troops
GIBAS	<i>Gabungan Inisiatif Barisan Anak Siliwangi</i> , Joint Initiative of the Sons of Siliwangi
Golkar	<i>Golongan karya</i> , Party of functional groups
GPI	<i>Gerakan Pemuda Islam</i> , Islamic Youth Movement
GR	Government Regulation
GTZ	' <i>Deutsche Gesellschaft für Technische Zusammenarbeit</i> ', German Society for Technical Cooperation
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
Inpres	<i>Instruksi Presiden</i> , Presidential Instruction
ITB	<i>Institut Teknologi Bandung</i> , Bandung Institute of Technology
J4P	World Bank-sponsored Justice for the Poor programme

Keppres	<i>Keputusan presiden</i> , presidential decision (until 2004)
KIP	Kampong Improvement Project
KKN	<i>Korupsi, kolusi dan nepotisme</i> , generally applied acronym to refer to corruption, collusion, and nepotism
KMBB	<i>Koalisi Masyarakat Bandung Bermartabat</i> , 'Bandung Bermartabat' People's Coalition
KPA	<i>Konsortium Pembaruan Agraria</i> , Consortium for Agrarian Renewal
KSU Amanah	<i>Kooperasi Serba Usaha Amanah</i> , Business Cooperation Amanah
LAP	Land Administration Project
LBH	<i>Lembaga Bantuan Hukum</i> , Legal Aid Institute
LEAD	UNDP-sponsored Legal Empowerment and Assistance for the Disadvantaged programme
LIS	Land Information System
LMPDP	Land Management and Policy Development Project
M2PT	<i>Majelis Musyawarah Pembangunan Kelurahan Taman Sari</i> , Discussion Assembly for the Development of City Quarter Taman Sari
MA	<i>Mahkamah Agung</i> , Supreme Court
MCLE	Mediation and Community Legal Empowerment Program
MPR	<i>Majelis Permusyawaratan Rakyat</i> , People's Consultative Assembly, consisting of Representative Council of the Regions and People's Representative Council
NGO	Non-Governmental Organisation
NLA	National Land Agency
PAN	<i>Partai Amanat Nasional</i> , National Awakening Party
Pasupati	<i>(Jalan layang) Pasteur Surapati</i> , flyover in Bandung
PD	<i>Partai Demokrat</i> , Democratic Party
PDI-P	<i>Partai Demokrat Indonesia – Perjuangan</i> , Indonesian Democratic Party of Struggle
Perda	<i>Peraturan daerah</i> , regional regulation / bylaw
Permen	<i>Peraturan menteri</i> , ministerial regulation
Permendagri	<i>Peraturan menteri dalam negeri</i> , regulation of the Minister of Home Affairs
Perpres	<i>Peraturan presiden</i> , presidential regulation (from 2004)
PKB	<i>Partai Kebangkitan Bangsa</i> , National Awakening Party
PKBB	<i>Partai Keadilan Bulan Bintang</i> , Justice Moon and Star Party
PKI	<i>Partai Komunis Indonesia</i> , Indonesian Communist Party
PKS	<i>Partai Keadilan Sejahtera</i> , Justice and Prosperity Party
PNPM (Mandiri)	<i>Program Nasional Pemberdayaan Masyarakat</i> , National Community Empowerment Programme
POLRI	<i>Polisi Republik Indonesia</i> , Indonesian National Police

PP	<i>Peraturan Pemerintah, Government Regulation / Pemuda Pancasila, Pancasila Youngsters</i>
PPAN	<i>Program Pembaruan Agraria Nasional, National Agrarian Renewal Programme</i>
PPP	<i>Partai Persatuan Pembangunan, United Development Party; Public-Private Partnership</i>
PRODA	<i>Proyek Operasi Daerah Agraria, Regional Land Registration Project</i>
PRONA	<i>Proyek Operasi Nasional Agraria, National Land Registration Project</i>
PT KAI	<i>PT Kereta Api Indonesia, Indonesian Railway Company</i>
RALs	<i>Regional Autonomy Laws (1999 and 2004)</i>
REPELITA	<i>Rencana Pembangunan Lima Tahun, Five-Year Development Plan (designed during the New Order)</i>
Sawarung	<i>Sarasehan Warga Bandung, a Bandung citizens' forum</i>
SML	<i>Spatial Management Law (1992 and 2007)</i>
SSN	<i>Social Safety Net</i>
TAP MPR	<i>Ketetapan Majelis Permusyawaratan Rakyat, People's Consultative Assembly Directive</i>
TNI	<i>Tentara Nasional Indonesia, Indonesian National Armed Forces</i>
UNDP	<i>United Nations Development Programme</i>
UN-HABITAT	<i>United Nations Human Settlements Programme</i>
UNISBA	<i>Universitas Islam Bandung, Islamic University of Bandung</i>
UPC	<i>Urban Poor Consortium</i>
UPP	<i>Urban Poverty Project</i>
USAID	<i>United States Agency for International Development</i>
UUPA	<i>Undang-Undang Pokok-Pokok Agraria, Basic Agrarian Law (BAL)</i>
WALHI	<i>Wahana Lingkungan Hidup Indonesia, Indonesian Environmental Forum</i>

This book describes and analyzes the extent to which Indonesia's urban poor applying different tenure arrangements enjoy tenure security. Tenure security can be defined in short as protection of landholders against involuntary removal from the land on which they reside, unless through due process of law and payment of proper compensation. Assessing the levels of tenure security these different tenure arrangements provide, it reviews the socio-economic benefits of current approaches to attaining tenure security, particularly land registration. On the basis of these findings, it formulates policy suggestions, and contributes to the current international development debate on tenure security as well as to theory formation.

This introductory chapter comprises three parts. The following sections, which form the first part, critically discuss the current stage of the debate on tenure security. This part shows that with an increasing number of the developing world's urban poor living in slums, there is now general agreement among scholars and practitioners about the importance of providing them with tenure security. Generally, two approaches to attaining tenure security can be discerned: a 'functional' approach, which is dominant but also vehemently criticised, and a relatively new 'rights-based' approach. It is argued that both approaches ignore the importance of a rule of law environment in attaining tenure security. The second part of this chapter briefly discusses the issues of slums and urban poverty, land tenure security, and the rule of law in the Indonesian context. It shows that these issues are highly relevant for Indonesia, and that recent reforms have made the country a fascinating case for research concerning tenure security for low-income 'kampong' dwellers. The last part of the Introduction formulates the research questions, framework of analysis, methodology, limitations, and outline of this study.

1.1 URBAN POVERTY AND INFORMALITY

In 2003, the United Nations Human Settlements Programme (UN-HABITAT) published the first global report on slums, from which a dismal picture emerged of urban growth and increasing poverty and inequality in developing countries. The report estimated that in 2001 some 924 million people – about 32 per cent of the global urban population – lived in slums, and this number was predicted to increase rapidly if adequate action is not taken (UN-HABITAT 2003a:2). No definition of the term 'slum' has as yet been agreed upon, but generally such settlements have distinct socio-eco-

conomic, physical and legal characteristics.¹ From a socio-economic point of view, slums may be associated with capability and income poverty. Residents have low educational attainment levels. Commonly working in the informal sector, they have no secure jobs and low and unstable incomes. Poverty also affects the cohesion of the community, which in turn presents an obstacle to residents' capacity to organise themselves. Physically, slums lack adequate access to basic services, such as safe water, sanitation, and electricity. Housing is of sub-standard quality and overcrowded. In legal terms, slums may be classified as informal, irregular, or extra-legal settlements, as dwellers apply land tenure arrangements that either have no legal basis or actually contravene state law. The settlements can be informal with regard to both the occupation and the use of land. Dwellers have no legal title. Some may buy or rent land informally, often on the basis of customary arrangements. Others may squat. Also, the residents of slums often fail to comply with spatial planning laws, building regulations or other legislation pertaining to the use of land.² The above three characteristics of slums are interdependent. Slums are thus manifestations of a vicious circle of urban poverty.

Informal land tenure is often associated with tenure insecurity. As the urban poor lack formal tenure they can lose their land easily – in theory at least. This threat can be 'external' or 'internal' and involve the state or private parties. Von Benda-Beckmann notes that "the state in most Third World states has become a property monster" (Von Benda-Beckmann 2003:189). The state may acquire the urban poor's land in the public interest, for instance for infrastructure purposes. Or the state may evict the urban poor simply because they occupy land that is owned or managed by the state or private parties. Finally, eviction may occur on grounds of spatial planning law – residents may occupy land earmarked for other purposes by zoning provisions, may violate building regulations, or may lack the permits needed to reside on the land. Eviction by commercial developers and the more well-to-do can also constitute an external risk. Slums are often located in strategic locations – the inner-city, for instance – which means that the land is commercially valuable. This may prompt attempts at commercial land clearance or, put negatively, so-called 'market eviction'. The socio-economic position of the urban poor makes their situation even more challenging. Many lack insight into the value of the land, have poor negotiations skills, and are in difficult situations financially. Whatever the case, disproportionately powerful commercial parties are well-placed, often in collaboration with public authority, to pressure the urban poor into vacating land. Finally, the urban poor often face an internal risk of eviction.

1 The term 'slum' is commonly applied in the international development debate. Gilbert argues that its use carries the imminent danger of reinforcing negative connotations regarding these settlements (Gilbert 2007). As will be illustrated in Chapter 5 and discussed in Chapter 9, this argument appears to hold true. Please also refer to footnote 14.

2 Compare UN-HABITAT 2003b:10-2.

Neighbours and other members of the community may encroach on their land. Family members, particularly males, may take an undue share of inherited property. All of the above situations can and often do lead to disputes over rights and compensation, in turn resulting in further difficulties.

An important question is how to break out of this poverty circle. While it is generally acknowledged in the international development debate that breaking the cycle requires multiple strategies, there is renewed attention for approaches that centre on the issue of tenure security – which we define simply as protection of landholders against involuntary removal from the land on which they reside, unless through due process of law and payment of proper compensation.³ This renewed attention owes much to the work of Hernando de Soto, who argued on the basis of research in slums in Peru that the poor are actually rich in assets, but because of informality cannot use them as collateral for capital accumulation (De Soto 1989,2000). To illustrate the importance of tenure security in approaches to alleviating urban poverty, the UN Millennium Development Goals contain a specific target on slums, i.e. Millennium Development Goal 7, Target 11, which aims to significantly improve the lives of at least 100 million slum dwellers by the year 2020 (UN-HABITAT 2003c). The proportion of slum households with secure tenure is one of the indicators for measuring progress towards this target (Indicator 32).

1.2 TENURE SECURITY, LAND REGISTRATION, AND ALTERNATIVE APPROACHES

The dominant approach to the provision of tenure security to the urban poor, referred to as the ‘functional approach’, emphasizes the impact of tenure formalisation on specific ‘development’ objectives – particularly economic growth, poverty reduction, and slum upgrading. With respect to these objectives, proponents consider the legalisation of what de Soto calls ‘extra-legal’ land tenure, by registering the land, to be of major importance (Durand-Lasserve & Selod 2007:14-5). Registration not only affords landholders legal protection against involuntary removal, by the state or private parties, from the land on which they reside, but also has several other major socio-economic benefits. These include an increased willingness on

3 Turner was the first to highlight the relationship between poverty and insecure tenure, as early as 40 years ago. See: Turner 1968. This book avoids applying the definitions of tenure security that are commonly used in the debate, as such definitions tend to concentrate on a single dimension of the concept; usually legal or perceived security. Instead, we introduce the neutral definition cited above; which allows us to elaborate on all three types of tenure security (namely legal, de facto, and perceived security), as will be discussed below.

the part of the urban poor to invest in their land and consolidate their housing, and an enabled land market, because titles allow trading and improved access to credit from banks, with land serving as collateral (World Bank 2003a:40-51).⁴

While the land registration approach currently dominates policy, there has been little research into the effects of registration, particularly in urban areas (Payne, *et al.* 2007:4-5). What little research has been conducted contests the benefits of this approach.⁵ The basic criticism is that the rationale for land registration is oversimplified, as tenure status is assessed in black and white terms – namely legal versus extra-legal – and tenure status is equated with tenure security. Titled land is considered to offer legal protection against involuntary removal, while ‘extra-legal’ tenure is considered insecure by definition. Proponents of the registration approach thus disregard the continuum of tenure categories, with varying degrees of legality, that exist in many slums (Payne 2001:416-8; Gilbert 2002:7-9; Varley 2002:449-55). More importantly, ‘extra-legal’ tenure can offer significant actual protection against involuntary removal (Payne 2002b:301; Payne, *et al.* 2007:8). The extent to which such security exists will depend on the political commitments or administrative practices in place in the particular slum, and will often also be related to variables such as length of occupation, size of the settlement, level and unity of community organisation, and the level of support that landholders can get from civil society groups (Payne 1997:8/31; Durand-Lasserve & Royston 2002a:6-7; Durand-Lasserve & Selod 2007:4).

The possibility of actual protection arising from ‘extra-legal’ tenure calls into question the economic benefits of land registration. Also, housing consolidation and investment in land may depend on perceptions of tenure security, regardless of whether such security is based on legal or actual protection against involuntary removal (Varley 1987; Gilbert 2002:6-7; Payne 2002b:301). At the least, it is clear that the relationship between the legal status of land and investment is not straightforward. There is even evidence that people invest in their housing precisely because they lack formal tenure and aim to create actual protection against involuntary removal (Razzaz 1993:350-1; Payne, *et al.* 2007:14). Some argue that land registration does not in fact facilitate land markets, as property in many slums is already traded according to some form of de facto registration system, based heavily on official systems (Payne 2001:416-8; Gilbert 2002:7-9; Varley 2002:449-55). As a rule, access to credit is the main argument for interna-

4 In his second book, “The Mystery of Capital”, which was published in 2000, de Soto goes one step further in claiming that property ownership is the reason “why capitalism triumphs in the West and fails everywhere else” (De Soto 2000).

5 For specific criticism of de Soto’s work, please refer to the following reviews: Payne 2001; Woodruff 2001; Fernandes 2002; Gilbert 2002; Payne 2002a; Benda-Beckmann 2003; Otto 2009.

tional donors and/or governments to engage in land registration programmes, though empirical evidence generally shows that registration fails to generate any significant improvement in access to formal credit. Banks tend to remain reluctant to give loans to slum residents, due to the high transaction costs and the risks assumed in respect to people on low and unstable incomes. The reverse holds equally true – the urban poor are suspicious of banks. In any event, alternatives to formal credit from banks do exist, for instance informal credit or micro-credit facilities (Payne 2001:421-2; Fernandes 2002; Gilbert 2002:9-14; Payne 2002a:11; Durand-Lasserve & Selod 2007:25; Payne, *et al.* 2007:17-21).

It has even been argued that land registration may have detrimental effects. It tends to override weaker claims on land, commonly held by weaker members of society; thus exacerbating inequality (Von Benda-Beckmann 2003:188-9). So some warn against the ‘downward raiding’ process of residents with already secure tenure arrangements buying land and property from newly ‘entitled’ owners. Such sales may not always be voluntary. Tenants and sub-tenants, usually among the poorest residents, may be forced out by rent increases as newly ‘entitled’ owners seek to capitalise on their freshly acquired capital assets. Moreover, as the value of the registered land increases, so may the costs of residing there, such as through increases in land taxes. For governments this often forms an important argument for engaging in land registration programmes (Payne 2001:423-5; UN-HABITAT 2003b:40). Land registration can lead to many other forms of what is referred to as ‘market eviction’ (Krueckeberg & Paulsen 2002:235). It may also be accompanied by a surge in the number of land disputes (Jansen & Roquas 1998).

The above points partly explain why “demand [for land registration] is not reported as often [in tenure literature] as the need to obtain and maintain popular support for titling programmes” (Payne, *et al.* 2007:31). In any case, such programmes entail significant cost, are time-consuming, and impose a heavy burden on land administration agencies that are often already overstretched (Durand-Lasserve & Royston 2002a:10-14; UN-HABITAT 2003b; Durand-Lasserve & Selod 2007:8; Payne, *et al.* 2007:23-4/26-8).

As a result of the aforementioned criticism of the land registration approach, we can witness increased attention for alternative approaches that generally combine protective administrative or legal measures against evictions with the provision of basic services and credit facilities. This allows communities to consolidate their settlements, save money, and improve their tenure status incrementally. It also prevents dwellers to suffer from market pressure or to fall victim to market eviction (Payne 2001:427-8; Durand-Lasserve & Royston 2002a:14-5). The next step in tenure upgrading often involves decentralisation of land management and community participation (McAuslan 2002:30-1; Durand-Lasserve & Royston 2002b:249-1).

Proponents of alternative approaches do not reject land registration altogether. It is often acknowledged that under many ‘informal’ arrange-

ments, tenure security can deteriorate easily (Durand-Lasserve & Royston 2002a:6; Payne 2002b:305-6). Tenure security does however not necessarily require (immediate) land registration, and, if it is done, can focus on local specific, tailor made registration arrangements (Durand-Lasserve & Royston 2002a:10-2; Payne 2002a:1-22; UN-HABITAT 2003b). Whether or not land registration plays a role in these approaches, they should always be part of an integrated package of measures which are not restricted to land policies (Krueckeberg & Paulsen 2002:233-4; Durand-Lasserve & Royston 2002b:251-2; Payne 2002b:300).

Even the World Bank, once among the fiercest supporters of the neo-liberal market-driven approach to (urban) development, has acknowledged in its landmark policy research report 'Land Policy for Growth and Poverty Reduction' that formal individual titles are not always necessary or sufficient for high levels of tenure security (World Bank 2003a:39). It argues that in situations where institutions which enforce formal land rights are absent, or do not enjoy broad legitimacy, it is better to chose a gradual approach and build on existing systems of land tenure, such as local institutions (World Bank 2003a:33).⁶

Alternative approaches to land registration as a means to ensure secure tenure often draw support from international human rights law (Durand-Lasserve & Selod 2007:14). The most important right in this respect is the right to adequate housing, which is for instance acknowledged in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁷ According to the UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors state compliance with the treaty, one of the seven criteria for determining whether housing is adequate is that of legal security of tenure. Regardless of the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

6 It is not clear whether the World Bank here refers to state or also non-state institutions. In view of the World Bank's shift in land policy, it can be assumed that it involves both kinds.

7 International Covenant on Economic, Social and Cultural Rights (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. Other treaties that deal with the right to adequate housing include the International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5 (c)); the Convention on the Elimination of Discrimination against Women (Art. 14 (h)), and; the Convention of the Rights of the Child (Art. 27(3)). In addition, a great variety of international resolutions, declarations, recommendations and regional human rights instruments also deal with housing rights. For an overview, see: COHRE 2000; UN-HABITAT 2002; UN-HABITAT 2003e; UN-HABITAT 2005. The right to adequate housing was first recognised by the Universal Declaration of Human Rights (Art. 25(1)), which although a declaration, is now considered part of customary international law (Leckie 1995:39).

Forced eviction is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The CESCR considers that instances of forced eviction are *prima facie* incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.⁸

The Second United Nations Conference on Human Settlements (Habitat II) in 1996 in Istanbul made an important contribution to the recognition of the right to adequate housing. The conference resulted in the formulation of the Istanbul Declaration and the Habitat Agenda, which constitute a framework where human settlements development is linked to the realisation of human rights in general and the right to adequate housing in particular. The 2001 Declaration on Cities and Other Human Settlements in the New Millennium reaffirms that the Istanbul Declaration and the Habitat Agenda will remain the basic framework for sustainable human settlements development in the years to come.⁹

In practice, few governments are willing to pursue alternative approaches to land registration as a means to ensure secure tenure.¹⁰ Some progress is being made, however. At least, most governments, and also parts of the private sector, have now committed themselves to socio-economic (second generation) human rights standards, including the right to adequate housing, which should guarantee secure land tenure. Governments recognise these rights in their legal systems, by ratification/accession of treaties, constitutional amendments, and other legal reforms. The implementation of this legislation at the national and local levels proves to be a gradual process, in which some countries have made more progress than others (Durand-Lasserve & Royston 2002b:247-9). Judicial review of the constitutionality of primary legislation can play a catalysing role in this process, as recent developments in South Africa show (Chenwi 2008). In any event, it appears that an increasing number of governments are reluctant to evict landholders. In many countries this development coincides with a democratisation process (Durand-Lasserve & Royston 2002b:247-9).

8 General Comment by the UN Committee on Economic, Social and Cultural Rights No. 4 on the right to adequate housing (adopted at the Sixth session, 1991); General Comment by the UN Committee on Economic, Social and Cultural Rights No. 7 on Forced Evictions (adopted at the Sixteenth session, 1997); General Comment by the UN Committee on Economic, Social and Cultural Rights No. 3 on the Nature of States Parties Obligations (adopted at the 5th session, 1990).

9 On these agreements, see: McAuslan 2002:23-6.

10 For some examples of countries that have embarked on rights-based strategies, see: Durand-Lasserve, *et al.* 2002:5-7.

1.3 THE NEED FOR A RULE OF LAW ENVIRONMENT

The previous sections have shown that there are different approaches to the enhancement of tenure security. However, the success of these approaches depends on the enforceability of property and/or human rights. This requires more than just the recognition of such rights; it requires a rule of law environment, in which the urban poor are protected against arbitrary behaviour by the state or private parties. As the World Bank acknowledges, “examples abound of cases where legislation mandating strong formal protection of property rights was of limited value as it could not be enforced at the local level, where the institutional capacity to do so was lacking. Having a legally defined right will be of limited value if, in case of violation of this right, access to the courts is difficult, the case will not be heard for a long time or will not be resolved without paying bribes, or court orders in relation to a specific piece of land cannot be enforced” (World Bank 2003a:33). Surprisingly, this issue has received little (explicit) attention in tenure literature. As was stated in a strategic paper of the United States Agency for International Development (USAID), “the enforceability of legal rights is the crucial unarticulated premise for most economic reasoning on the impact of property rights and formality” (Bruce, *et al.* 2007a:53).¹¹

The rule of law may be ignored in tenure literature, but it is currently at the centre of the international development debate, being proposed as a solution to all kinds of troubles. Likewise, international donor organisations have persuaded governments of developing countries to initiate a great variety of rule of law reform initiatives. Carothers categorizes these initiatives into three types. The first type focuses on revising the constitution, laws, and regulations. These pieces of legislation often lie (partly) in the economic domain. The second type of reform initiative seeks to strengthen law-related institutions, particularly the courts, but also parliaments and local governments. Employees are trained, their salaries are increased, ethics codes are formulated, and it is also common for alternative institutions of dispute settlement to be established. The third type of initiative has the deeper goal of increasing government’s compliance with law. Genuine judicial independence is a key step in attaining this goal (Carothers 2006:7-8).

A process that often seeks to contribute to the substantive formation of the rule of law at local levels is decentralisation. It has, for instance, been associated with democratic lawmaking, popular participation, and accountability of public officials to citizens. There are four basic types of decentralisation: deconcentration, delegation, devolution, and privatisation. These types, however, cannot always be easily distinguished in practice. Devolution is the most encompassing form, and can be defined as the

11 While the World Bank and USAID refer to the enforceability of property rights, this issue is of course of just as much relevance in relation to the right to adequate housing.

“strengthening [...] of sub-national units of government, the activities of which are substantially outside the direct control of the central government” (Rondinelli, *et al.* 1983:12-31; Herbert 2008). These units can be strengthened by the transfer of tasks, authorities, political power, and/or resources (Frerks & Otto 1996). This is why it is also common to refer to administrative, political (or democratic) and fiscal decentralisation.

Certain types of decentralisation in the land sector can support tenure security. As Durand-Lasserve concludes on the basis of a number of case studies, “the decentralization of responsibility for land management would seem to be a *sine qua non* for the implementation of tenure security policies: first, so that the problem of irregular settlements is handled by local authorities and, second, so that the populations concerned can be involved in the process” (Durand-Lasserve & Royston 2002b:250-1). However, the most far-reaching type of decentralisation – that is, devolution of tasks, authorities, political power and resources – may not always be the best option. For instance, as the World Bank notes in its report ‘Land Policy for Growth and Poverty Reduction’, “[w]hile low transaction costs and broad access to land administration are extremely important, this can be achieved by deconcentrating a central government agency rather than by establishing decentralized units with independent decision-making power, which may lead to the absence of a national framework and of uniformity in the provision of land administration services” (World Bank 2003a:78).

In practice, the effects of legal and institutional reforms, including decentralisation, have often been disappointing. Rewriting laws may be relatively easy. Yet far-reaching reforms of institutions towards compliance are slow – if successful at all. It requires the reorganisation of legal institutions, the retraining of its employees, even the transformation of society at large. Obviously this is not an easy process. As Carothers notes, the obstacles are not only technical or financial, but also political and social (Carothers 2006:3-4). The deeper goal of increasing government’s compliance with law thus requires true commitment from the country’s political leadership. It is not a technocratic process, as some tend to assume.

The above mentioned sobering results have led scholars and practitioners to focus their attention away from the state-centred reforms of changing laws and strengthening legal institutions, towards bottom-up approaches in which the needs and preferences of the poor are central. Golub, for instance, has argued that the ‘rule of law orthodoxy’ “pays little heed to the reality that the legal problems and solutions of the poor typically reside outside the conventional ‘justice sector’, pertaining instead to administrative law, non-judicial dispute resolution, civil society efforts, and a host of other forums and processes” (Golub 2005:298). He therefore pleads for a legal empowerment approach, which the United Nations Development Programme (UNDP) defines as “activities aimed at strengthening people’s

capacities to seek out and demand justice remedies” (UNDP 2005:136).¹² These activities include legal aid and counsel, legal awareness programmes, and other activities that aim at overcoming legal obstacles. Related development activities are any activities that complement legal services, but themselves are not inherently law-oriented in nature, including community organizing, group formation, political mobilisation, and use of media. Civil society organisations can play a major role in such activities, and prove particularly successful when forging partnerships with the state (Golub 2006:161-5).¹³ Legal empowerment activities are often part of broader bottom-up programmes that aim to improve access to justice. These programmes also include the common activities of legal and institutional reforms, yet in contrast with ‘the rule of law orthodoxy,’ all focus on taking away the barriers of poor and disadvantaged groups to justice. Legal empowerment can however have a wider scope than access to justice in that it can also enable people to participate in public decision-making processes (UNDP 2005:136).

1.4 URBAN POVERTY, TENURE SECURITY, AND THE RULE OF LAW IN INDONESIA

The previously discussed topics of urban poverty, land tenure security, and the rule of law are highly relevant for Indonesia. According to UN-HABITAT, currently 23.1 per cent of Indonesia’s urban population, or a massive

12 Golub himself less aptly defines legal empowerment as “the use of legal services, often in combination with related development activities, to increase disadvantaged populations’ control over their lives” (Golub 2006:161). There are many other definitions of legal empowerment, which all lack clarity. For example, and for comparison, according to the Asian Development Bank (ADB) legal empowerment “involves the explicit or implicit use of the law through training, counselling, litigation, representation in administrative procedures, advocacy before bureaucratic agencies, or other interventions. These activities may also be combined with initiatives that are not inherently law-oriented, such as community organizing or livelihood development” (Golub & McQuay 2000:8). According to the World Bank, “legal empowerment promotes safety, and access to justice and helps poor people solve problems and overcome administrative barriers (Palacio 2006:15). Finally, according to USAID legal empowerment occurs “when the poor, their supporters, or governments – employing legal and other means – create rights, capacities, and/or opportunities for the poor that give them new power to use law and legal tools to escape poverty and marginalization” (Bruce, *et al.* 2007b:29). An important discussion in legal empowerment literature is whether legal empowerment includes the supply side of justice. This book follows Golub’s interpretation of the concept. He argues that legal empowerment only focuses on the demand side (but in a broad sense, also in for instance public decision-making processes), whereas complementary rule of law programmes must address the supply side.

13 The legal empowerment approach promoted by Golub should not be confused with the efforts of the High Commission for Legal Empowerment of the Poor (CLEP) based on the ideas of de Soto, which seek to empower the poor by the provision of property rights. Golub’s approach obviously has a broader scope.

20.9 million people, reside in 'slums', the catch-all term used in the international development debate. In the Indonesian context the term also refers to kampongs (*kampung*), the country's typical low-income settlements that can be found in any contemporary Indonesian city (UN-HABITAT 2003d:80).¹⁴ It is likely that the present living conditions will worsen unless radical measures are taken. The country's urban population continues to grow. Today the proportion of people living in cities exceeds 50 per cent and is expected to reach 60 per cent by 2025. The urban population is estimated to increase by 70 per cent over the next 25 years, from 108 million to 187 million (Sarosa 2006:158-60). This would mainly be the result of poor people from the countryside migrating to the city.

Over the past several decades, the Indonesian government has tried to improve the living conditions in kampongs by addressing their socio-economic, physical, and legal characteristics. In order to strengthen the tenure security of the urban poor, the Indonesian government has initiated various land registration programmes since 1981, providing hundreds of thousands of certificates at low cost. However, at the same time Soeharto's authoritarian New Order regime (1966-1998) showed little reluctance in clearing kampongs for the sake of economic development, without offering proper compensation to their residents. The regime also actively supported private developers to undertake similar practices. The prevalence of such actions illustrates the weak rule of law with which Indonesia contended during those years.

After the fall of Soeharto in 1998, Indonesia initiated ambitious political and legal reforms. Reforms included four amendments to the Indonesian Constitution, which *inter alia* acknowledges the right to adequate housing.¹⁵ The right to adequate housing has been strengthened further by the accession and ratification of several human rights treaties, which – although applicable through Parliament-enacted laws – take precedence over any Indonesian law, including the Constitution. One of the most impor-

14 See also Davis 2006:24. Aside from carrying the imminent danger of reinforcing negative connotations (see footnote 1), the use of the term 'slum' to refer to kampongs is inaccurate. As will be discussed in further detail in Chapter 2, kampongs generally have some, but not all characteristics of settlements qualified as slums. It should also be noted that the concept 'kampung' has different meanings, depending on the area in Indonesia where it is used, and by whom it is used (Krausse 1975:31-5). In West-Java, the area of study of this book, the word means low-income urban or rural settlement (Silas 1983:214). But it is quite possible to also find middle class inhabitants in some kampongs.

15 With the Second Amendment to the Constitution in 2000, the Universal Declaration of Human Rights was fully incorporated. In his discussion of the amendments, Lindsey calls this "perhaps the most radical change to the original philosophy of the Constitution" (Lindsey 2004:301). Art. 28H(1) of the Amended 1945 Constitution refers to the right to adequate housing.

tant treaties ratified by Indonesia is the ICESCR in 2006.¹⁶ Following these steps, in the same year the Indonesian government formulated a five-year National Strategy for Poverty Reduction (*Strategi Nasional Penanggulangan Kemiskinan* or SNPK), which, in line with UN Millennium Development Goals, takes an integrated, rights-based approach. This strategy forms the basis for the formulation of further policies and programmes.

The most important legislative initiative following the amendments to the Constitution was the enactment of the two 1999 Regional Autonomy Laws (1999 RALs), which were later revised by the 2004 Regional Autonomy Laws (2004 RALs).¹⁷ These laws devolved tasks, authorities, political power and resources from Jakarta to the level of the Province (*Propinsi*), and notably also to the level of the Districts (*Kabupaten*)/Municipalities (*Kota*). The Districts and Municipalities in particular now have a large say in a number of important sectors, including the land sector. Finally, various pieces of land (related) law have been enacted, including the 2007 Spatial Management Law, the 2006 Presidential Decision on Land Clearance for Development in the Public Interest, and the 1999 Regulation of the Head of the National Land Agency (NLA) on Site Permits.¹⁸ These – to follow Carothers' categorisation – first type reform initiatives were to contribute to the process of (local) rule of law formation, and in turn may contribute to a better enforceability of rights to land.

Aside from legal and institutional reforms, international donor organisations, in collaboration with the Indonesian government, have set up access to justice initiatives that include legal empowerment components,

16 Law No. 11/2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights (*UU No. 11/2005 tentang Pengesahan International Covenant on Economic, Social and Cultural Rights (Kovenan Internasional tentang Hak-Hak Ekonomi, Sosial dan Budaya)*). The treaty came into effect on 23 May 2006. Indonesia has signed/acceded/ratified several other human rights treaties that deal with the right to adequate housing.

17 No. 22/1999 on Regional Government (*UU No. 22/1999 tentang Pemerintahan Daerah*); Law No. 25/1999 on the Fiscal Balance between the Central Government and the Regions (*UU No. 25/1999 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah*); Law No. 32/2004 on Regional Government (*UU No. 32/2004 tentang Pemerintahan Daerah*); Law No. 33/2004 on the Fiscal Balance between the Central Government and the Regions (*UU No. 33/2004 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah*).

18 Law No. 24/1992 on Spatial Management (*UU No. 24/1992 tentang Penataan Ruang*) was replaced by Law No. 26/2007 (*UU No. 26/2007 tentang Penataan Ruang*); Presidential Decision No. 55/1993 on Land Clearance for Development in the Public Interest (*Kepres No. 55/1993 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum*) was replaced by Presidential Regulation No. 36/2005, which was again revised by Presidential Regulation No. 65/2006; Regulation of the Head of the NLA No. 2/1993 on the Procedure to Obtain a Site Permit and the Right to Land for a Company for Capital Investment (*Permen Negara Agraria / Kepala BPN No. 2/1993 tentang Tata Cara Memperoleh Izin Lokasi dan Hak atas Tanah bagi Perusahaan dalam Rangka Penanaman Modal*) was replaced by Regulation of the Head of the NLA No. 2/1999 on Site Permits (*Permen Negara Agraria / Kepala BPN No. 2/1999 tentang Izin Lokasi*).

albeit still on a limited and experimental scale. The World Bank initiated the programme Justice for the Poor (J4P) in 2002, which includes activities concerning mediation, legal aid, legal training, and the strengthening of equitable non-state justice systems at the local level. In collaboration with Indonesia's National Planning Agency (*Badan Perencanaan Pembangunan Nasional* or BAPPENAS) the UNDP initiated the project Legal Empowerment and Assistance for the Disadvantaged (LEAD) in 2007. Activities concentrate on support to legal services, legal capacity development, legal and human rights awareness, and related development activities. The fact that these initiatives are supported by the Indonesian government at least suggests that there is some commitment within the country's higher policy circles to address the needs of disadvantaged groups like the urban poor.

The previously discussed developments render Indonesia as a fascinating case for taking a closer look at the issue of tenure security of low-income kampong dwellers; all the more because little research has been conducted on this issue. Leiden University does have a long research tradition on Indonesian land law. A major role was played by Cornelis van Vollenhoven, who produced a substantial research effort on adat law (the traditional, unwritten, and customary law of Indonesia) thus establishing the so-called adat law school ('Adatrechtschool').¹⁹ The purpose of this research was practical-ethical, namely to strengthen the legal position of the Indonesian population and to promote a fair administration of justice. Partly for that reason, much attention was paid to the empirical study of law and solutions to conceptual and methodological problems. Later, some of Van Vollenhoven's students became highly influential jurists in independent Indonesia, including Soepomo, who drafted the 1945 and 1949 Constitution of the Indonesian Republic and made a major contribution to a reinterpretation of adat law. The independence of Indonesia resulted inevitably in a decline of research on Indonesian land law in the Netherlands. An annotated translation of the 1960 Basic Agrarian Law was published by K.L. Tan at the Documentation Bureau of Overseas Law at Leiden. In 1978 this bureau was transformed into a research centre, the NORZOAC, directed until 1981 by F. von Benda-Beckmann.²⁰ Research on Indonesian land issues resurfaced later, this time as part of a legal anthropology project, focusing on legal pluralism (by F. And C.E. von Benda-Beckmann, H. Slaats and K. Portier, the latter two from the Institute of Folk Law at Nijmegen University) (Griffiths 1992:90-99).²¹ However, as these researchers focused prima-

19 Van Vollenhoven was a professor of public law of the Dutch Indies and of *adat* law in the Faculty of Law at Leiden University from 1901 until 1933. On Van Vollenhoven, see: Holleman 1981.

20 NORZOAC is short for 'Nederlandse Onderzoekscentrum voor het Recht in Zuid-Oost Azië en in het Caraïbisch gebied' (Nederlandse Research Centre for Law in Southeast Asia and the Caribbean).

21 A new researcher in this tradition is L. Bakker, who was involved in the INDIRA project as a PhD researcher.

rily on traditional adat law, they seldom addressed the issue of land law in an urban context. From 1983 onwards, the research at Leiden, where the NORZOAC was transformed into the Van Vollenhoven Institute, directed by J.M. Otto, has refocused towards comparative law, governance, and development.²²

In recent years, much research has been undertaken on the effects of decentralisation in Indonesia, particularly by political scientists, anthropologists, and historians. In the first years after the end of the New Order, several edited volumes were published, in particular by American, Australian, Dutch, and Indonesian researchers, with case studies from several of the country's regions.²³ As far as this research was linked to the issue of land, it usually focussed on the recent revival of adat law and reoccupation of plantation land, outside the cities.²⁴

The research this book is based on was part of the INDIRA-project (Indonesian-Netherlands studies of Decentralisation of the Indonesian 'Rechtsstaat' (*Negara Hukum*, Rule of Law) and its impact on *Agraria*), which focused on decentralisation and rule of law formation at the local level in the field of land.²⁵ The project was funded by the Netherlands Royal Academy of Sciences (KNAW) and started in 2003 as a joint research effort of the Van Vollenhoven Institute at Leiden University and the Institute of Folk Law at Nijmegen (currently Radboud) University in collaboration with the Indonesian Parahyangan Catholic University (Bandung), Andalas University (Padang), and Gadjah Mada University (Yogyakarta). Six Indonesian and three Dutch PhD reseachers participated in the project, focusing on different urban and rural areas in Indonesia.²⁶

22 Since then, Indonesia-focussed socio-legal research has concentrated on spatial planning (by Niessen), courts (by Pompe and Bedner), and environmental law (in the framework of the INSELA project by Arnscheidt, McCarthy, Nicholson, Takdir Rahmadi, Asep Warlan Yusuf, Niessen, and Bedner). In recent years there has been renewed attention for non-state legal orders and their interrelation with state law and authority. Similar research is conducted at Australian universities, although this is generally of a more legal character.

23 See for instance: Holtzappel, *et al.* 2002; Sakai 2002; Aspinall & Fealy 2003; Schulte Nordholt & Klinken 2007.

24 See particularly: Davidson & Henley 2007.

25 The study builds on explorative research, conducted in 1989/1990 as part of a joint research project by Ateng Syafrudin and Jan Michiel Otto, which resulted in several publications (see Otto & Syafrudin 1990; Otto 1991) and a research archive, consisting of among other things microfiches and key documents of Bandung's colonial town administration; PhD research, conducted in the mid-1990s by Nicole Niessen, and; the urban part of the INDIRA research proposal.

26 These PhD reseachers were: Laurens Bakker, Saldi Isra, Tristam Moeliono, Sandra Moniaga, Myrna Safitri, the late Djaka Soehendera, Sulastriono, Kurnia Warman.

1.5 RESEARCH QUESTIONS

In view of the above, the four main questions of this research are:

- 1) *To what extent do urban poor in Indonesia with different tenure arrangements enjoy tenure security, particularly in the context of post-New Order reforms, including decentralisation, towards the rule of law?*
- 2) *In view of the levels of tenure security these different tenure arrangements provide, what are, given Indonesia's contemporary rule of law environment, the socio-economic benefits of current approaches to attaining tenure security, particularly those in which land registration plays a pivotal role?*
- 3) *On the basis of these findings, what policy suggestions can be made to enhance tenure security of the urban poor?*
- 4) *What do these findings contribute theoretically to the international development debate on tenure security?*

1.6 FRAMEWORK OF ANALYSIS

To avoid the pitfalls of past research on tenure security, this study acknowledges that there is a continuum of legality with respect to tenure arrangements, and seeks to avoid the dichotomy of legal versus extra-legal tenure. However, in order to compare different tenure arrangements, a distinction is made between three analytical categories, based on the status of each of these arrangements according to state law. These categories are: formal tenure, semi-formal tenure, and informal tenure. Formal tenure is based on formal rights recognized by the 1960 Basic Agrarian Law (*Undang-Undang Pokok Agraria* or UUPA, hereafter the BAL). The second tenure category, semi-formal tenure, is based on colonial adat ownership rights (*hak milik adat*), of which the legal conversion to BAL-recognised primary rights has not yet been validated, but which can be validated on the basis of documentation and other evidence. In theory, this type of tenure can thus be turned easily into formal tenure. The last tenure category, informal tenure, involves tenure that is not recognised by the law in any form whatsoever. It is thus impossible to change informal tenure to formal tenure, unless the state grants new rights. Informal tenure is often the result of squatting.

Making a distinction between different tenure categories, this study then assesses the extent to which each category provides security and entails socio-economic benefits. In an attempt to alleviate some of the confusion and weaknesses that have previously beset the international development debate on tenure security, a specific distinction is made between legal, de facto, and perceived tenure security. Following our previously mentioned definition of tenure security, legal tenure security can be defined as the *legal* protection of landholders against involuntary removal from the land on which they reside, unless through due process of law and payment of proper compensation. De facto tenure security means the *actual* protection against involuntary removal, irrespective of the legal status of land

tenure. Finally, perceived tenure security means a sense of being secure, experienced by landholders. An indicator of perceived tenure security is the assumed legitimacy of tenure – that is, whether landholders think the authorities agree with them residing on the land they occupy. The assessment of the socio-economic benefits of the different tenure categories concentrates on housing consolidation.

The prevalence of tenure security is further analysed from a rule of law perspective. The rule of law concept has been interpreted in many different ways, and to mean many different things (Clark 1999:28-44). The concept applied in the current study is a thick one, based on a definition of elements, which are categorised into procedural elements, substantive elements, and control mechanisms.²⁷ With respect to its procedural elements, law should not only be an instrument of government action; rather, state actions should also be subject to law. Moreover, law should be general, clear, publicly promulgated, and relatively stable over time. Public consent should determine the content of laws and policies. Democracy and participation are key elements in this respect. Apart from these procedural elements, and perhaps more importantly, tenure security also requires substantive elements of the rule of law. All law and its interpretation should be subordinated to fundamental principles of justice and moral principles. Human rights (with regard to tenure security for the urban poor, particularly fundamental rights and social welfare rights) should be protected by the state. Finally, as part of the control mechanisms, there should be an independent, impartial and accessible judiciary and other guardian institutions, such as an ombudsman and a human rights commission. Obviously, these elements should indeed benefit the urban poor. In this book, each of the chapters will deal with these rule of law elements within the context of the specific topic addressed.

The prevalence of tenure security from a rule of law perspective is analysed against the background of Post-New Order reforms. To understand the effects of these reforms, a comparison is made between the period before they were initiated and the period after. The first period is limited to the last phase of the New Order, or what will be called in this book the late New Order, which historians like Ricklefs have delimited by the years 1989-1998 (Ricklefs 2001:387). The second period is roughly limited to the first phase of the Post-New Order, which in this book ends in August 2008 – the month when, in Bandung (the city where fieldwork was conducted for this study; to be discussed in Section 1.7 below), the first direct mayoral elections were held and the fieldwork was completed. Each period thus covers a time span of about 10 years; an extensive enough duration to draw several significant conclu-

27 This interpretation was developed by Bedner, who drew inspiration from Tamanaha 2004 and, to a lesser extent, Peerenboom 2004. See Termorshuizen-Artz & Bedner 2004; Bedner 2010.

sions regarding the effects of Post-New Order reforms on rule of law formation and tenure security.²⁸

1.7 METHODOLOGIES

The research underlying this book is based on an interdisciplinary approach that is common in a discipline that has come to be known as socio-legal studies (Banakar & Travers 2005). It involves legal doctrinal analysis as much as empirical research, which consists of both qualitative and quantitative methods. This study thus follows an academic tradition that was established more than a century ago by Cornelis van Vollenhoven.

The first eight months of my assignment – which followed my studies in law, and in Indonesian language and culture, at Leiden University – were spent on taking courses in sociological field research methodology, doing doctrinal legal analysis of Indonesian key legislation, reading available literature on the topic of this study, and the practical preparation of my fieldwork. Literature consisted of three types: i) international literature on the central topics of this study, including tenure security, decentralisation, and rule of law formation in developing countries; ii) Indonesia-specific literature, particularly on the effects of decentralisation; and iii) literature on methodology and fieldwork. On the basis of this material I drafted a research proposal, which was also used to apply for a research permit from the Indonesian government.

As an initial fieldwork location I selected Bandung, capital of West-Java Province and with about 2.3 million inhabitants Indonesia's third largest city, located approximately 180 kilometres Southeast of Jakarta. Bandung is confronted with a process of rapid urbanisation. This results in a growing commoditisation of and, potentially, disputes over kampong land. Such processes not only occur in Bandung, but also in other large Indonesian cities like Jakarta, Surabaya, Medan, Semarang and Makassar. In this sense Bandung is representative for a major part of 'urban Indonesia' – like any of the other cities mentioned, except perhaps for the national capital Jakarta, where developments are likely even more extreme. It was ultimately for practical reasons that I decided to conduct research in Bandung. The Van Vollenhoven Institute has a long relationship with various individual scholars and academic institutions in this city, including the Faculties of Law of Padjadjaran University and Parahyangan Catholic University. My choice for Bandung proved fortunate. During my fieldwork, there were indeed many land cases occurring, the most relevant of which were studied in-depth and are presented in this book.

28 In addition, the book discusses relevant legislative developments that took place between August 2008 and August 2011.

My first fieldwork in Bandung consisted of mostly qualitative research. During the initial two months I interviewed various members of NGOs, and collected clippings about relevant topics from national and regional newspapers. On the basis of these activities I soon found out about a land dispute related to the construction of the Pasupati flyover, one of the biggest infrastructure projects in the city's history, for which the land of hundreds of kampong dwellers in a City Quarter (*Kelurahan*) called Taman Sari, which is located in the northern part of central Bandung, was cleared. Through my engagement with a local NGO, I made contact with a community worker from Taman Sari. He introduced me to other community members, who assisted me in finding a house in the kampong. I resided in this kampong in Taman Sari from September 2004 to February 2005. The residents of the kampong were not used to foreign researchers. Each time I showed my face, children used to yell "white guy entering the kampong" (*bule masuk kampung*) at me, referring to the title of a popular soap series on the Indonesian channel Indosiar. Yet the residents proved friendly and open to me, thus allowing me to conduct participant observation. Two community workers were key informants, but 'ordinary' residents also provided valuable information. As will be discussed in the next section, some issues remained sensitive though.

Besides conducting participant observation I continued collecting newspaper clippings and interviewing people, now mostly officials and politicians, both in Bandung and Jakarta. In total I interviewed some 60 people in this period. I also started to collect regional legislation and policy documents. Mohammad Ira Fitriana, a former law student from Padjadjaran University, assisted me in these activities. I also shared information with Tristram Moeliono. Towards the end of my fieldwork I realised that some of the research questions could best be studied by quantitative research. I thus developed a questionnaire, which I used for a pilot-study survey among 20 households in my kampong.

In February 2005 I returned to Leiden to analyse my first set of fieldwork data, conduct further reading and legal analysis, and prepare for my next fieldwork trip, for which I also improved my questionnaire.

My second fieldwork from September-December 2005 proved to be the most productive, but also the most challenging. During my first trip I had established contact with a community worker, who had introduced me to the informal leader of a kampong in City Quarter Cibangkong, which is located in the southern part of Central Bandung. As soon as I arrived in Bandung I chose to settle here because it has a character and location very different from the kampong in Taman Sari. Although the residents of this kampong were not used to foreign researchers, they again proved cooperative. The informal leader, several community workers, and a local official were key informants, but again 'ordinary' residents also provided valuable information.

Most time during this fieldwork trip was spent on the organisation of a survey that covered representative kampongs situated in seven widely

dispersed City Quarters.²⁹ As Map 1 (see p. 24) shows, some of these settlements were centrally located, while others were situated towards the outskirts of the city. Each of the selected kampongs had developed incrementally over a period of several decades, and housed several thousand low-income inhabitants and their offspring, most of whom had been living there for various decades. All kampongs had similar levels of infrastructure, and most residents had access to the same types of public utilities. Furthermore, all kampongs were composed of recognised Neighbourhoods (*Rukun Warga* or RW), and Blocks (*Rukun Tetangga* or RT) within these Neighbourhoods. As a result, the majority of dwellers were registered residents and held identity cards (*Kartu Tanda Penduduk* or KTP) that specified their address, allowing them for instance to vote. Finally, the different categories of formal, semi-formal, and informal land tenure were represented in all researched kampongs.

Prior to the survey, a pilot study among 30 households was conducted in one of the kampongs (Taman Sari) to test whether participants understood the questions and whether adaptations to the survey were needed. Following the outcome of this pilot study, some final modifications were made to the survey.

The survey sample consisted of a total 420 households across three land tenure categories: formal tenure (100 households), semi-formal tenure (95 households), and informal tenure (145 households). In addition, a smaller group of leaseholders (80 households) were surveyed. The surveys were also distributed approximately equally across the seven selected kampongs, so that about 60 low-income households were surveyed in each kampung. Within each kampung, to obtain representative data several Neighbourhoods were randomly selected, and several Blocks were then randomly selected within each Neighbourhood. Within each Block, survey participants were selected to ensure representation across tenure categories. This was achieved with the assistance of Neighbourhood Heads (*Pak RW*) and Heads of the Neighbourhood Blocks (*Pak RT*), who were able to advise into which tenure category residents fell. Survey participants were either heads of household or their spouse.

The surveyors were a group of five anthropologists and undergraduate anthropology students from Padjadjaran University in Bandung under the supervision of Dede Tresna Wiyanti, a researcher from the Research Centre for Natural Resources and Environment (*Pusat Penelitian Sumber Daya Alam dan Lingkungan* or PPSDAL) of that same university.³⁰ All surveyors were

29 The survey covered the following Sub-Districts and Neighbourhoods: Babakan Surabaya (Neighbourhood 4, 5, 7, 14, 15), Cibangkong (Neighbourhood 5, 9, 11, 12), Ciro-yom (Neighbourhood 1, 3, 4, 5), Kebon Lega (Neighbourhood 1, 2, 3, 5), Kebon Pisang (Neighbourhood 5, 6, 9, 10, 11,12), Lebak Gede (Neighbourhood 1, 3, 4, 7), Taman Sari (Neighbourhood 7, 13, 15, 16, 18).

30 The five anthropology students and anthropologists were: Ade Sudrajat, Yadi Suryadi, Ivan Rahadian, Deni Kurniawan, Helmi Suryanegara.

experienced in survey research, and received additional training for this particular project. They approached the potential respondents individually, explained the purpose of the research and asked whether the person would be willing to participate.³¹ In order to minimise the risk that participants would associate surveyors with the authorities, it was explained that the survey was performed for academic purposes only, and that participation was anonymous. We estimate that more than 95 per cent of people who were approached were willing to participate in the survey.

Survey questions were developed based on the previously discussed tenure literature, as well as participant observation in City Quarters Taman Sari and Cibangkong, and interviews with NGO workers, government officials, and researchers in Bandung. To confirm the accuracy of information provided by participants regarding their tenure category, the survey contained several questions related to land documentation (including the year such documents were issued, the issuing authorities, the involvement of any witnesses, and the period of document validity), and questions about the length of occupation and formal status of the land. Survey participants were also asked to show their land documentation to the surveyors, to verify whether it corresponded with the given answers. The surveys of any participants who gave totally inconsistent answers – only a small number – were excluded from analysis.

Apart from the survey, I conducted oral history research in my previous kampong in Taman Sari. In this research I was assisted Denny Riezki Pratama and Anindya Praharsacitta, anthropology students from Padjadjaran University, who were recommended to me by Dr Selly Riawanti, a lecturer from that same university and (at that time) the head of the research department of the NGO Akatiga. In total some 20 older residents were interviewed. Finally, I continued collecting newspaper clippings and interviewed about 10 officials, politicians, NGO-workers and other key informants.

Towards the end of my fieldwork I fell ill of dengue fever, for which I was hospitalized for a week. Fortunately my assistants were able to finish most of the work in my absence. When I returned to the Netherlands two of my assistants continued to collect data, Ivan Rahadian by interviewing residents in City Quarter Ciroyom on a land clearance case and Mohammad Ira Fitriani by collecting regional legislation and policy documents.

The last years were used to analyze my fieldwork data and to write this book. I paid short visits to Bandung in July 2007 and July/August 2008, which allowed me to interview 30 other people, mostly NGO-workers and academics. In terms of data collection, this fieldwork has thus resulted in thousands of newspaper clippings, hundreds of laws and policy documents, survey data based on 420 respondents, and 140 interview transcripts. About 10 people assisted me during the fieldwork.

31 As a token of gratitude for taking the time to participate in the survey, participants received a t-shirt.

1.8 LIMITATIONS OF RESEARCH

Doing socio-legal fieldwork in Indonesia has become easier since the end of the New Order, but it is still challenging. As noted before, it requires a research permit from the Indonesian government. This permit allows one to obtain another research permit from the Municipality, which in turn allows one to obtain permits from the Sub-District (*Camat*) or City-Quarter Head (*Lurah*), and these permits are often required to obtain permission from the Neighbourhood Head and/or the Head of the Neighbourhood Block, for instance to organise a survey. The procedure for obtaining these permits is time-consuming and often frustrating.

Even after I had obtained all required permits, not all people were willing to assist me. Particularly lower officials and members of the Municipal Council (*Dewan Perwakilan Rakyat Daerah* or DPRD) proved reluctant to speak openly about some of the issues that are central to this study. Land has been a sensitive topic since the 1960s, when the Indonesian government initiated an ambitious land reform programme that partly formed the root of the civil conflicts, violence, and atrocities of 1965-1966. Concentrating then on urban poverty and 'slums', which particularly in the eyes of municipal officials are embarrassing issues, this research was even more sensitive. Along the way, it turned out that these topics were related to various dubious if not unlawful practices, which may explain why it was sometimes hard for people to talk to me or provide reliable information.

It proved particularly difficult to do research on tenure security as related to internal disputes in kampongs, such as disputes over ownership, inheritance, and land borders. On the basis of our survey we obtained an insight into the existence of some of these disputes. We followed up the survey by interviewing kampung dwellers who had indicated during the survey that they were involved in an internal dispute, but these people remained quite unresponsive. I thus decided not to use the material on internal disputes in this book. Despite these challenges, the fieldwork proved rewarding.

The current study focusses on the effects of land registration on housing consolidation. It does not look at specific economic effects, such as enabled land markets and on access to credit. I did collect data from kampung dwellers regarding their willingness to sell their land and dwellings and the type of party they would sell to. I also collected data from kampung dwellers regarding access to credit, the use of such credit, and if not, the reasons not to use it. However, the data were only partial; in order to fully understand the effects of land registration on enabled land markets and on access to credit, data from recent buyers of land and dwellings and from banks would be needed too. Recent buyers of land and dwellings could not be found. Banks proved reluctant to provide information. I therefore decided not to address these topics in this study.

I realise that, in order to be able to generalise, it would have been worth to conduct additional fieldwork in cities other than Bandung. However,

considering the time constraints and the sensitivity of the research, I had to choose between collecting rather superficial data from several locations or studying the topic in depth at one research location. I chose to do the latter, because I believe doing in-dept research is the only way to fully understand the complexity of the topic that is central to this study. In addition, it should be noted that the research on legal tenure security consists predominantly of an analysis of national legislation, which is applicable in any city in Indonesia. Finally, I have collected clippings about land cases in other cities, giving some room to generalise.

1.9 OUTLINE

The outline of this book follows the previously discussed research questions. The next two chapters sketch the context of the topic of this book, both from a bottom-up and top-down perspective, focusing first on society and then on law. Chapter 2 focuses on the settlements that this study is all about – kampongs in Bandung. The first part forms an historical overview of the formation of kampongs and the local, national, and international factors underlying this process. It describes the main policies towards kampongs adopted by the Indonesian government, civil society groups and international organisations, and assesses their impact. In closing, it analyses the contemporary social-economic, physical, and legal characteristics and dynamics of kampongs, allowing us to assess to which extent kampongs actually qualify as ‘slums’.

Chapter 3 gives a general overview of land law in the context of Indonesia’s changing rule of law environment. It starts with the period of Guided Democracy (1957-1965), when the foundation of Indonesian national land law was laid, and then deals with the New Order (1965-1998). The last part discusses Post-New Order political and legal reforms. This analysis forms the basis for detailed legal and empirical analyses in the following chapters.

Having thus established the context, Chapter 4 turns to the core subject of this book, i.e. tenure security for Indonesia’s urban poor, by taking a close look at land registration and legal tenure security. It first discusses the background, aim, and set-up of land registration. The chapter then assesses how in practice, kampong dwellers in Bandung are actually try to register their land on an individual basis (‘sporadic registration’). In this way the chapter evaluates the need for ‘systematic registration’ through large-scale land registration programmes. This is followed by a discussion of such programmes in general, and particularly the Land Administration Project (LAP), a land registration programme initiated by the World Bank and the Indonesian government in 1994. It discusses the activities that have been carried out under the programme and studies to what extent it has reached the urban poor. Finally, and most importantly, the chapter assesses to what extent the urban poor enjoy legal tenure security, and to what extent land registration contributes to this.

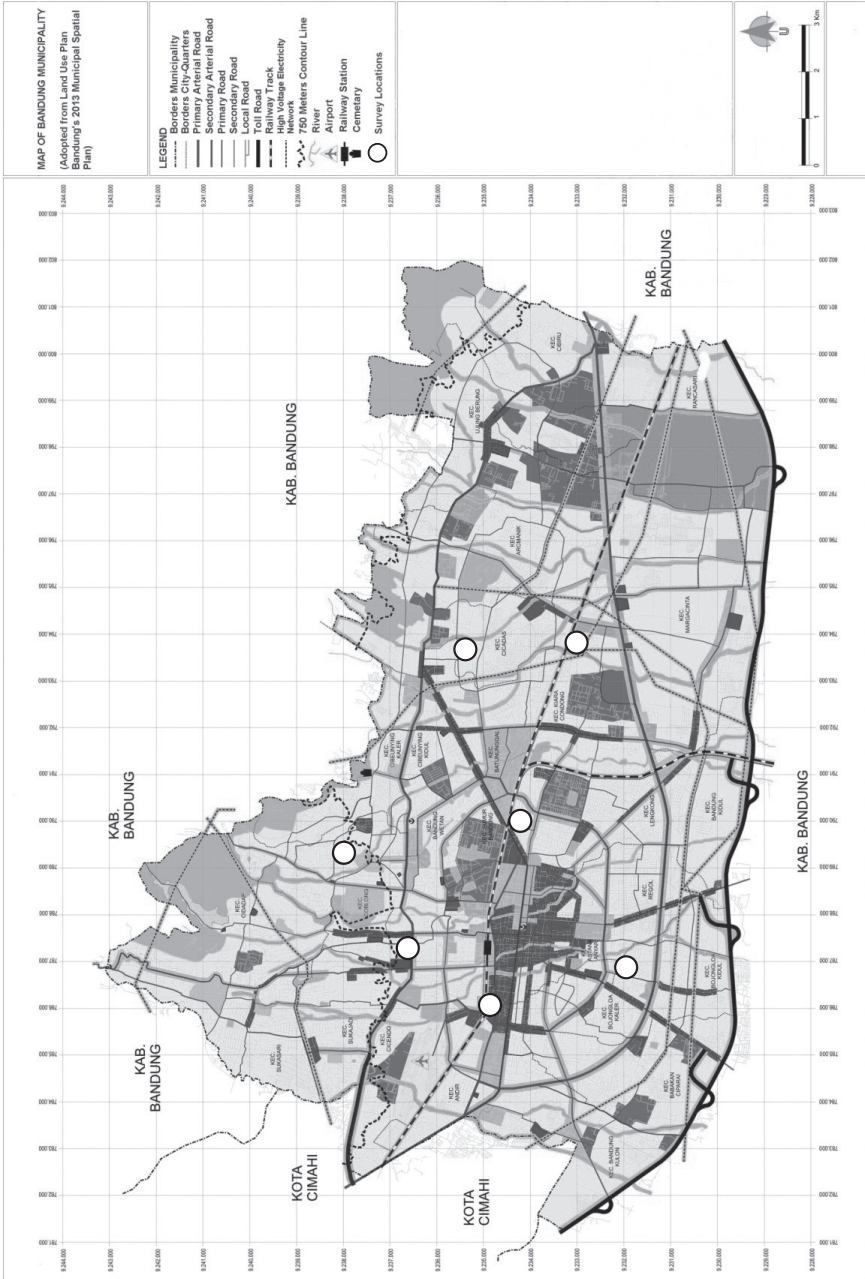
Chapter 5 turns to the issue of spatial planning and legal tenure security. It first discusses spatial planning law and practice in the late New Order. The chapter then pays attention to Post-New Order reforms related to spatial planning law. Thereafter, it takes a closer look at spatial planning practices in Post-New Order Bandung, by analyzing the preparation process of the General Spatial Plan in 2004 and its premature revision in 2006. In closing, it discusses to what extent the 2007 spatial management law might overcome some of the noted problems in Bandung.

Chapters 6 and 7 finally deal with the important issue of land clearance. Chapter 6 pays attention to land clearance by the state. It discusses legal instruments which the state can use to acquire land. This is followed by a general description of land clearance practices and entailing resistance in the late New Order. This chapter also discusses the abovementioned land clearance case in Bandung, the Pasupati case. Furthermore, it evaluates the case in the light of past reforms and draws general conclusions on land clearance by the state in Post-New Order Indonesia. The final section discusses the potential effect of recent legal reforms.

Chapter 7 pays attention to land clearance by commercial developers. It gives a broad overview of the various pieces of legislation that formed the legal basis for commercial land clearance during the New Order. A central concept in this chapter is the site permit (*izin lokasi*), which developers need before they can start acquiring land. The chapter then takes a close look at the practice of land clearance. This is followed by a short overview of the Post-New Order reform of commercial land clearance related legislation. The chapter also discusses the contemporary practice of commercial land clearance in Bandung, by taking a closer look at a particular land clearance case, the Paskal Hyper Square-case. In closing, it evaluates this case and draws general conclusions on commercial land clearance in Post-New Order Indonesia.

Chapter 8 focuses on perceived tenure security and its economic benefits. It first assesses the perceived tenure security of landholders with different tenure arrangements, both in relation to the risk of involuntary removal and, if this occurs, the chance to receive proper compensation. This is followed by an analysis of the changed perceptions of tenure security since the end of the New Order. In closing, the chapter looks at the correlations between tenure status, perceived tenure security, and housing consolidation.

The Conclusion (Chapter 9) summarises the main findings of the previous chapters and analyses them from a broader rule of law perspective. This allows us to look beyond the effects of the reforms on tenure security for the urban poor. It tells us something about the current state of the Indonesian 'Rechtsstaat' (*Negara Hukum*), the country's equivalent of 'rule of law'. In addition, it allows us to come up with policy suggestions and contributions to theory formation to further the current international development debate on tenure security. In closing, suggestions for further research are made.



Map 1. Bandung Municipality with survey locations indicated

*Bandung, Bandung, Bandung nelah Kota Kembang
Bandung, Bandung, sasakaal Sangkuriang
di lingkungan gunung, heurin ku tangtung, puseur kota nu mulya Parahiangan
Bandung, Bandung, pada muru di jarugjugan¹*

2.1 INTRODUCTION

“In the colonial period, Taman Sari was so different. You would not recognise the place!” Ibu Darsum gives me a meaningful look. She is not happy about the current condition of her kampong, Gang Bongkaran, located in City Quarter (*Kelurahan*) Taman Sari in the north of Bandung. Like so many older people, she speaks about the past with full appreciation and nostalgia, as if everything has deteriorated ever since she was born.

We sit in front of her house over a cup of tea. Her house is neither impressive in size, nor in quality, but by far the best in the neighbourhood. It even has a small flower garden in front. People in the kampong insisted that I should talk to her. She could take the edge off my curiosity about the history of Gang Bongkaran and adjacent kampongs in Taman Sari. At 84, she is one of the oldest residents in the neighbourhood. More importantly, no one has been residing in Gang Bongkaran as long as she: Ibu Darsum was born, raised and grew old here.

Indeed, kampongs in Taman Sari must have looked very different before the war. At present, housing thousands of low-income families, the settlements make a dilapidated impression. Most people live in one of the many small houses built alongside the Cikapundung River. They can be reached by alleys, some of which are so narrow that they are called *gang senggol*, bump alleys.

As discussed in Chapter 1, kampongs are Indonesia’s typical low-income settlements that in the international development debate are qualified as ‘slums’. There is however much more to say about these settlements and about the challenges that come with them. And more should be said in order to understand the possible role of development strategies that centre

1 Lyrics of a Sundanese song by Mang Koko Koswara, which in English could be translated as: Bandung, Bandung, Bandung is called a city of development; Bandung, Bandung, the legend of Sangkuriang; surrounded by mountains, densely inhabited, the capital of beautiful Parahyangan; Bandung, Bandung, has become the destination of everyone (own translation).

on the issue of tenure security. This chapter therefore gives an historical overview of the local, national and international factors underlying the formation of kampongs in Bandung. It assesses the impact of the main development policies towards kampongs adopted by subsequent colonial and Indonesian governments, international organisations, and civil society groups. The last part of the chapter analyses the contemporary social-economic, physical, and legal characteristics and dynamics of kampongs, and thus assesses to what extent they qualify as slums. By way of illustration, special reference will be made to kampongs in Taman Sari.

The structure of this chapter is mainly chronological and subdivided into the five periods discussed, which also form major eras of Indonesia's political history: late colonial times, the Japanese occupation and Revolution, the Old Order, the New Order, and the Post-New Order. It ends with some concluding remarks.

2.2 AUTONOMOUS VILLAGES IN AN EXPANDING COLONIAL TOWN

From the late 19th century to the end of colonial rule, Bandung developed from a small settlement of about 10,000 inhabitants into a modern European colonial city with a population of 200,000. Just as in other cities in the Dutch Indies, Bandung's development was in large part the result of a new era in colonial policy, the liberal period, which led to legal reforms and in turn a radical increase of commercial activity (Voskuil 1996:31). From 1854 private planters could lease land from the colonial government, and from 1870 this became commercially attractive.² The physical environmental conditions in the Priangan region around Bandung proved suitable for the cultivation of tea, coffee and quinine. Tea planters in particular were commercially successful, and spent their money in Bandung – or, as it was also called because of its fashionable reputation, 'Parijs van Java' (Paris of Java). The city also functioned as a transshipment point for their plantation products.

Soon Bandung started to attract people from outside the region, particularly from 1884, when the city was opened up by railway connections (Kunto 1984:161-2). From 1916 onwards the colonial government even developed plans to make Bandung the capital of the Dutch Indies. Due to financial and other reasons the plans never eventuated, but a number of government agencies were moved to the city (Van Roosmalen 2008:49-51). The plans also contributed to the city government's success in attracting new European residents. Another important reason why Dutchmen (in the

2 From 1870 holders could take out a mortgage, because the state no longer granted them a lease right ('pacht') with a maximum of 20 years, but a long lease right ('erfpacht') with a maximum of 75 years. This attracted many foreign private investors.

1920s and 1930s, mainly pensioners) chose to settle in Bandung was its pleasant climate (Voskuil 1996:34-5).

Rural-urban migration of the indigenous population also contributed to Bandung's expansion. Land in the Priangan region around Bandung was rapidly changing from an attribute of the community bound by genealogical or territorial ties into a private commodity. At the turn of the 20th century, the region was already known for its large-scale landownership. Over time the size of the land holdings further increased and more land was alienated to (absentee) landowners, such as members of the *menak* (noble) families, well-to-do villagers, merchants and *hadji*. This resulted in a concentration of land ownership on the one hand, and a group of landless people on the other hand (Van Dijk 1981:363-373). Combined with a growing population pressure on land and a decline of employment opportunities in rural areas, especially from the 1920s, this led to many peasants moving to the city (Jellinek 1991:4). With an expansion of economic activities and growing labour demand, Bandung proved an attractive destination.

The expanding city engulfed many *desa* (indigenous rural villages), which soon lost their rural character and developed into urban kampongs with an almost entirely residential nature (Flieringa 1930:36). As part of colonial legal dualism, these kampongs were allowed a high degree of autonomy ('*desa-autonomie*' or village autonomy), which means that the population could apply its own customary or *adat* law, administration, and administration of justice, also in relation to land. Village autonomy was said to respond to the divergent economic and social needs of the colony's different population groups.³ In the early 20th century, 17 such autonomous villages existed within Bandung's borders. By 1942, after the extension of the boundaries of Bandung Municipality, the number of villages had increased to 43.⁴

One of the villages, then called Soekadjadi, was Taman Sari. On first sight this area appeared strictly European. Located in the valley of Bandung's major Cikapundung river and enclosed between the Lembangweg and Van Houten Parkweg (currently Cihampelas Street and Taman Sari Street), it was covered with the private back gardens, orchards with cacao trees, and fishponds of the predominantly European, middle class population residing in these main streets. At the eastern side of the river (now RW 20 or Neighbourhood 20), alongside the Van Houten Parkweg, there was a European graveyard. This area as well as the area alongside the Cikapundung River was municipal land.

3 Art. 71 of the 1854 Constitution acknowledged the autonomy of indigenous villages, and general standards were laid down in the 1906 Indigenous Village Ordinance ('Inlandse Gemeente Ordonnantie'). The subsequent 1925 Constitution ('Indische Staatsregeling') acknowledged this autonomy on the basis of Art. 128(3).

4 See Appendix I (p. 243) for an overview of these villages.

Behind a façade of European property and infrastructure, the village was hidden. The area around Gang Bongkaran (now RW 15, a small alley or actually a fire lane) off the Lembangweg, formed one of the village's settlements. An informant remembers that in the early 1930s around this alley there was a handful of houses, owned by Dutch residents and by some indigenous who had bought the land from its former Dutch owners. A bit further north there was another settlement, called Garunggang Timur (later called Liang Maung, now RW 07 or Cimaung), consisting of another handful of houses.

Taman Sari initially retained a rural character. The plots were generally big. In Garunggang Timur a single resident held most of the land, but every household at least presided over a sawah or orchard, often with cacao trees. There were fishponds too. This land was so-called *tanah garapan*: land that on the basis of *adat* law had come into the residents' possession through cultivation. The houses were constructed in a traditional manner, with raised floors, walls made of wood and bamboo mats (*bilik kayu*), and a bamboo roof. Paths consisted of sand or pebbles. Parts of the area were swampy and muddy. The Cikapundung River was so clean that it was used for drinking water. Contemporary names of kampongs in Taman Sari still reveal the rural character of the area. For instance the word Maung, which forms part of the name of the settlement Liang Maung or Cimaung, means 'wildcat' in Sundanese, the regional language. This animal was just one of the wild species that were said to live in the area. According to several informants the area retained its rural character until the late 1930s. In the Explanatory Memorandum of the draft Town Planning Ordinance, which will be discussed below, Cikapundung Valley was referred to as "one of the few examples of natural scenery having been converted into scenes of natural beauty" (Toelichting 1938; Wertheim 1958:33).⁵

It should be noted that Taman Sari is located in the northern part of Bandung. The city was ethnically and to some extent also socio-economically divided, the railway track forming a clear borderline. The northern, cooler part was mostly reserved for well-to-do European citizens, who lived in 'old Indies' brick houses with large yards. Although the Europeans formed only 12 per cent of the population, they occupied more than half of the urban land (Wertheim 1956:180). The northern part was thus relatively spacious. Similarly, the indigenous residents of Taman Sari were relatively well off and the area had a small population. They were mostly cultivators and market gardeners, but some had made a fortune in trade.

Conditions were very different in the many kampongs in the southern part of Bandung. As a result of strong population growth and the allocation of land for the development of urban infrastructure and European districts, the majority of the indigenous population was packed into these

5 This extended version of the Explanatory Memorandum was not enacted as the official elucidation of the Ordinance (Niessen 1999:229).

settlements (Voskuil 1996:39-40).⁶ The indigenous formed 77 per cent of Bandung's population, but occupied only 40 per cent of the land (Wertheim 1956:180). Many were pushed out of the city centre to the city's outskirts. Just as in Taman Sari, however, kampongs in the south retained a rural character, both in terms of construction of buildings and infrastructure, and from a social-economic perspective (Wertheim 1956:175-6). In combination with the densely populated environment, the very basic nature of the infrastructure constituted a risk for public health.

Bandung's urban government increasingly felt the need to improve conditions in the kampongs. Within the framework of the 1903 Decentralisation Act, in 1906 Bandung had become a Town ('Gemeente') with relatively strong powers.⁷ Yet, village autonomy severely restricted the town government's scope to interfere in the kampongs. Besides, for a long time there remained uncertainty about the extent of the town government's authority over the kampongs. The colonial government had already informed the town governments in 1907 that regulations concerning matters with a citywide scope were applicable to these settlements, but there seems to have been misunderstanding about this matter until the end of the 1930s (Stadsgemeente Bandoeng 1938:19-20).

In order to enable the town government to exert influence within the kampongs, the Town Council ('Gemeenteraad') in 1917 expressed its wish to annul village autonomy.⁸ Legally this only became possible after a constitutional amendment in 1918, which allowed for the abolishment of villages or limitation of their authorities within the borders of a town by ordinance.⁹ The central government supported the unification of government

6 It should be noted that these settlements did not consist of indigenous residents only. Surveys in kampongs in Bandung and other major cities in Java reveal that the kampung population also consisted of Chinese, Eurasian, and European people (Colombijn 2010:117-23). Colombijn goes as far as to argue that the defining social characteristic of kampongs was class and not ethnicity (Colombijn 2008:161).

7 The Decentralisation Act ('Decentralisatiewet') was a response to the increasingly complicated tasks of the expanding administration, but also to the demands of the urban elite for self-government (Wertheim 1958:viii). It was implemented by other legislation. On the basis of the 1904 Decentralisation Decision ('Decentralisatiebesluit'), the Governor-General promulgated separate Creation Ordinances ('Instellingsordonnanties') to create Towns, including Bandung in 1906. After the 1903 Decentralisation Act had been replaced by the 1922 Government Reform Act, the 1926 Municipality Ordinance ('Stadsgemeente-Ordonnantie') turned Towns already existing on the basis of the Creation Ordinances into Municipalities ('Stadgemeenten'), leading to refinement of the structure of urban government (Niessen 1999:51).

8 This development occurred in the era of Ethical Policy, when the colonial government set increasing store by the fate of the indigenous population. Still, village autonomy was one of the few 'native' issues that received the council's attention. See Otto, who on the basis of an analysis of the council's minutes describes the lively discussions in Bandung's Municipal Council about this issue (Otto 1991).

9 A fourth section was added to Art. 71 of the 1854 Constitution of the Dutch Indies. This later became Art. 128(6) of the 1925 Constitution ('Indische Staatsregeling').

in the cities, but did not want to cover all the financial costs leading to annulment of village autonomy, which in view of the improvement activities that had to be undertaken in kampongs would be considerable. The financial hurdle remained a matter of discussion between the Municipality and the central government until the end of colonial rule, the latter never offering to pay more than half the costs involved in this measure (Stadsgeemeente Bandoeng 1938:1-28).¹⁰ As long as the kampongs remained autonomous the central government did not allow municipal governments to interfere in these settlements.

Despite this attitude of the central government, Bandung's town government did take several measures to improve conditions in kampongs. In 1919 it started a housing programme, for which it established a Town Housing Authority ('Gemeentelijk Woningbedrijf'). Each year hundreds of houses were built for low-income residents, who could either rent the house or acquire it on the basis of a hire purchase system. However, the town government could not provide houses for the entire population (Gemeente Bandoeng 1929:42-8). In practice only the lower middle-class groups benefited from the programme, since the dwellings built under the programme remained too expensive for the masses residing in kampongs. In any event, the programme was only of limited scale (Toelichting 1938:34-5; Wertheim 1958:21-2). Private real estate firms never showed any interest to participate in such housing programmes, unless they were forced to (Toelichting 1938:74; Wertheim 1958:61).¹¹ For most low-income people, particularly indigenous, kampongs thus remained the only settlement option.

In 1926, in the same year Bandung became a Municipality, the government reserved the southern part of the city for the indigenous population (Gemeente Bandoeng 1929:37-9). It would thus be protected against the allocation of more land for urban infrastructure and European districts. This measure, however, sharpened ethnic divisions (Voskuil 1996:39-40).

Meanwhile the central government remained opposed to urban government interference in the kampongs, without prior abolishment of the kampongs' autonomy. Nevertheless, Bandung's municipal government did not await a change of policy to take measures. In 1927 it officially started kampong improvement ('kampongverbetering'), improving roads, constructing drainage and sewerage facilities, providing lighting equipment, and building hydrants and public baths (Gemeente Bandoeng 1929:36).

10 Village autonomy was annulled in some other cities, mostly after the Decentralisation Act of 1903 was replaced by the 1922 Government Reform Act ('Wet op de Bestuurshervorming') (Niessen 1999:47); for example in Malang and Surabaya in 1930. However, this measure only applied to villages whose residents felt that village ties no longer existed (Stadsgeemeente Bandoeng 1938:17-9).

11 From the mid-1920s onwards, a Public Housing Company ('N.V. Volkshuisvesting'), which was a joint venture between the central government and a Municipality for the development of public housing, was established in many cities, but not in Bandung. However, within ten years the concept of housing companies came under attack, as most operated at a loss (Cobban 1993:892-5).

In 1929 the central government officially departed from the idea that the villages could only be improved if their autonomy was abolished (Van de Wetering 1939:3).¹² Consequently, the central government started providing funding to the Municipality for improvement activities (Stadsge-meente Bandoeng 1938:1-28).¹³ The municipal governments could now officially interfere in all interests and issues related to these villages, such as housing and hygiene; especially in villages located in or near the crowded city-centre. It should be noted that this change in policy was driven not only by concerns over hygiene and welfare, but also by underlying political motives. It was feared that poor living conditions would draw the urban poor into the arms of the nationalists, who wanted to overthrow the colonial government (Van Roosmalen 2004:194).¹⁴

Kampong dwellers appeared to accept and sometimes responded positively to the colonial administration's interventions in their settlements (Colombijn 2008). The effects of kampong improvement were however limited. Only a few of the problems could be tackled, specifically drainage and path construction. The activities were limited in scope and progress was slow (Toelichting 1938:32-3; Wertheim 1958:20). In some cases, kampong improvement only led to social upgrading in the sense that lower class residents were forced out by the more well-to-do (Wertheim 1956:179). Bandung's municipal government also tried to limit the construction of new primitive dwellings, but as a result the shortage of kampong housing increased, with several families being forced to share one house. Living conditions, in turn, further deteriorated (Toelichting 1938:33; Wertheim 1958:21). By the end of the colonial period, it was acknowledged that the government had failed to manage the kampong issue (Toelichting 1938:33; Wertheim 1958:20).

This is not entirely surprising. Village autonomy remained, resulting in both the central and municipal governments being unable to exert their powers in all matters within their territories. And, as acknowledged by one government adviser on decentralisation, it remained hard to determine the extent of the municipal government's authority to interfere in the kam-

12 The Municipalities were invited to start improvement activities by Art. 70 of the 1926 Municipality Ordinance ('Stadsge-meente Ordonnantie'). This ordinance – contrary to the earlier-mentioned Art. 128(3) of the 1925 Constitution on village autonomy – stated that the Municipal Council had the competence to regulate and administer the Municipality's household.

13 The activities were formalised in 1934 by the Kampong Improvement Ordinance ('Kampong Verbeeteringsordonnantie'). Notably, Van de Wetering criticised the Municipality of Bandung for not fulfilling its moral obligation to spend as much on kampong improvement as it received from the Central Government for that purpose (Van de Wetering 1939:7).

14 See also the reference to the political consequences of kampong conditions in the Explanatory Memorandum of the draft Town Planning Ordinance's (Toelichting 1938:32; Wertheim 1958:19). For a further discussion of the colonial administration's kampong improvement policy, see Van Roosmalen 2008:97-108.

pongs.¹⁵ Bandung's municipal government had great difficulties in enforcing regulations that were applicable, such as the 1929/1931 enacted building code, because existing settlements developed continuously (Gemeente Bandoeng 1929:41). In addition, enforcement often remained limited for financial reasons (Kampongverbeteringscommissie 1939:42).

By the end of the colonial period, the failure to manage the kampong issue led to an acknowledgement of the need to formulate central directives for town planning. The objective was to develop an integrated town planning approach, within which the government would acknowledge the singular status of kampongs as native neighbourhoods, and would therefore make an exception for kampongs with respect to the type of state regulation, but not with respect to the actual level of state regulation. As formulated in the Explanatory Memorandum of the Town Planning Ordinance, the kampong would form "a unity with the rest of the Municipality, however, just like other neighbourhoods, with its own identity that requires individual treatment" (own translation) (Toelichting 1938:95).

2.3 REFUGE SETTLEMENTS IN AN OCCUPIED CITY

The Japanese occupation from 1942 to 1945 marked a new period of kampong development in Bandung. During the occupation, the living conditions in the West-Javanese countryside quickly deteriorated. Jobs on plantations disappeared, farmers were forced to deliver large quantities of rice to the occupying forces, rural people were 'recruited' for forced labour (becoming *romusha*), and there was significant inflation (Smail 1964:12). These difficult conditions resulted in an influx of refugees to the cities: in just three years Bandung's indigenous population almost doubled, from about 200,000 to some 400,000 (Van Bruinessen 1989:3). The Japanese administration tried to force people back to the countryside, but this was only partly successful (Wertheim 1956:185). Detailed data are absent, but it is clear that a large proportion of the refugees settled in existing kampongs or created new settlements. The Japanese administration allowed and even encouraged people to squat on private land (Colombijn 2010:207).

After the Japanese surrender and the struggle for independence, warfare in West-Java between the Dutch and the Republican Army would result in new flows of refugees, but this time in the opposite direction. As soon as Allied troops arrived in Bandung in 1946, the city was effectively divided into two parts, separated by the railway track, with the north being guarded by British troops and the south by the Indonesian Republican Army. In March 1946, after four months of turmoil and following an ulti-

15 Such was acknowledged in 1938 by Levelt, the government adviser on decentralisation, in response to questions from a member of the Dutch Indies People's Council ('Volk-sraad') during a session on the abolishment of the autonomy of a number of villages in Malang (Handelingen 1937-1938:207-11).

matum by the British, who wanted to put an end to the division, the Republican Army evacuated the Indonesian population to the countryside south of Bandung and destroyed large parts of the city by arson.¹⁶ By the end of the month, an estimated half a million people had moved out of the city. For a year and a half the southern part of Bandung remained a dead city, with people visiting the area only occasionally. Only the northern part of Bandung remained populated, generally by Europeans and Chinese (Smail 1964:148-152).

Developments similar to those described above also occurred in Taman Sari. During the Japanese occupation the population grew considerably; although, as we will see, not as significantly as in later years. New houses were constructed, as well as a mosque. After the Japanese surrender, most of the Indonesian residents of Taman Sari fled to the countryside, to nearby places such as Tasikmalaya and Sumedang. Their houses were occupied by Dutch military. The Dutch, Indo-European, and Chinese populations generally stayed. Indonesian residents only returned in 1949-1950, after the Dutch had granted independence to the Indonesian Republic.

In the turbulent years of Japanese occupation and the struggle for independence, state interference in kampongs remained limited. The Japanese did introduce the *tonarigumi* system in 1943, consisting of neighbourhood associations aimed at controlling the Indonesian population. These associations formed the predecessors of the neighbourhood associations that exist in Indonesia to the present day, under the names *Rukun Warga* (RW) and *Rukun Tetangga* (RT). After the Japanese surrender, as part of an urban housing policy, the central colonial government took several emergency measures to tackle the housing crisis, including rent control, allocation of extant housing, and reconstruction of damaged urban quarters (Colombijn 2010:311). During the period of conflict migration, the unlawful occupation of government land had become common. In response, the central colonial government promulgated an ordinance in 1948, making such occupation a criminal offence.¹⁷ In the same year the government laid the foundation for future interference in kampongs, by finally enacting the first Town Planning Ordinance for Municipalities on Java. The Municipalities had to design a town plan, detail plans, and a municipal building code (Niessen 1999:223-6).¹⁸ However, the Ordinance was not applicable to Bandung.¹⁹

16 This event is known as *Bandung Lautan Api*: Bandung a Sea of Fire.

17 'Ordonnantie onrechtmatige occupatie van gronden'.

18 'Stadsverordeningsordonnantie Stadsgemeenten Java'. An implementing regulation, the Town Planning Regulation (*Stadsvormingsverordening*), followed in 1949. For a discussion of the rationale, drafting process, enactment, and content of the Ordinance and the Explanatory Memorandum, see Van Roosmalen 2008:145-52; 179.

19 See Decision 3 of the Lieutenant Governor-General of Indonesia dated 3 October 1948, concerning the Assignment of cities which fulfil the requirements of Art. 51(1) of the Town Planning Ordinance ('Aanwijzing van steden, welke voldoen aan het bepaalde in het eerste lid van artikel 51 van de Stadsvormingsordonnantie') (Niessen 1999:225).

2.4 MIGRANT SETTLEMENTS IN A DECOLONISING CITY

The transfer of sovereignty to the Indonesian Republic in 1949 marked the beginning of a period of decolonisation. The decolonisation effort, however, was far from easy. The first years of independence were as tumultuous as the years before. It was a period of struggle, uncertainty and quick transformation, particularly for the population of West-Java. During these years, Bandung experienced the most significant population growth in its history. With the population increasing from about 200,000 to over 1,000,000 inhabitants, it was the fastest growing of all major Indonesian cities (Hugo 1981:81).

The first group of migrants after independence were civil evacuees and soldiers who had left Bandung in 1946 (Hugo 1981:84). Informants gave testimony of the difficulties they confronted when returning to their homes in Taman Sari. Some learnt that other Indonesians had occupied their houses and land. Others found their houses partly demolished by the residents who had not left Taman Sari. The cacao trees in the orchards had been cut down and the fishponds were empty.

Soon, conflict migrants followed suit. They came to Bandung to escape the rebellion in the West-Java countryside by the *Darul Islam*, a movement that wished to establish an Islamic state. The uprising was particularly violent in East Priangan, near Tasikmalaya and Garut. Each year hundreds of civilians were killed and thousands of houses burnt down. In 1951, more than one hundred thousand people were evacuated from the area. Between 1955 and 1962, a yearly average of 250,000 people fled their homes (Van Dijk 1981:104-6). Since the cities were relatively safe, most evacuees sought refuge there, not least in Bandung. The atrocities only ended in 1962, when the last prominent leaders of the *Darul Islam* movement were arrested.

In the same period Bandung also started to experience labour migration. The city became the seat of the provincial government and it resumed its role as a centre for education. The industrial sector focused on processing agricultural products and textiles. The Asia-Africa conference in 1955 created new job opportunities, including for lower-skilled people. However, these demands for labour fell short of the number of people moving to Bandung (Hugo 1981:84-5).

By the late 1950s, net migration into Bandung had become negligible, and in the early 1960s it even became slightly negative (Van Bruinessen 1989:4). The number of migrants moving to Bandung dropped considerably and many people moved back to their home villages as the West-Javanese countryside became safer again. However a great number of people stayed on in Bandung, including some who may have originally considered returning to their village of origin; not least because job prospects in the countryside were even worse than those in the city.

The above developments coincided with the exodus of the Dutch population. The nationalisation of Dutch enterprises in 1957/8 forced these residents to leave the country. The first Europeans to leave managed to sell their property, although at below market value; while those who initially

remained, would later also be forced to leave. Their houses were occupied by government and military officials, and were often on-sold to well-to-do Chinese. Large plots of land, especially in the north, became vacant.

Some of the migrants from the West-Java countryside moved to one of the many existing kampongs, while others created new kampongs by squatting on land that had become vacant as a result of the departure of the European population. Other migrants occupied municipal land alongside railway tracks and riversides, and also in graveyards. The vast flow of evacuees was disorganised, as many poor villagers attempted to escape the violence between the Darul Islam and the Republican Army. Many could not find a job, or were employed in the informal sector.²⁰ They could not, therefore, afford formal access to land and housing; of which there was an increasing shortage anyway. In 1959 the ratio of people to houses in Bandung was 12:1 (Hugo 1981:85). Refugees thus had no other choice but to build their own houses, often without permission from the Municipality.

According to several informants, the Indonesian Communist Party (*Partai Komunis Indonesia* or PKI), which was increasingly influential as an opposition party, supported unlawful occupation of vacant land. This strategy fitted into the party's political objective to organise a strong power base among lower-income groups.²¹ The party forged alliances with particular worker groups, which could become strategically important in times of revolution. For instance, the party established strong links with workers in the state railway company, through the Railway Workers Union (*Serikat Buruh Kereta Api* or SBKA); particularly in Bandung, where the company's head office was located.²² The Railway Workers Union's actions included the occupation of railway company land, and once unionists began to occupy their employer's land, other workers followed.²³

20 Hugo refers to a report of the national labour agency which presents the results of a survey, finding that only 62.7 per cent of males of twelve years and older were formally employed (Hugo 1981:85).

21 In terms of political support, the strategy proved successful. By the end of 1950 the Party had built up a strong and organised base among urban workers and other non-peasant groups. In later years the party tried to gain support from the peasant population, including by organising a campaign for land reforms in the countryside, as well as drafting and backing bills on that matter, and subsequently by initiating the unilateral action movement (*aksi sepihak*) that was responsible for the unlawful occupation of agricultural land (Mortimer 1972).

22 There were two unions at the time. The other Union was the Railway Workers Association (*Persatuan Buruh Kereta Api* or PBKA), which was backed by the Indonesian Socialist Party (*Partai Sosialis Indonesia* or PSI) and Nasution's Alliance of Supporters for Freedom of Indonesia (*Ikatan Pendukung Kemerdekaan Indonesia* or IPKI).

23 I have found no accounts of the occupation of land with support of the PKI in any of the literature on the history of Bandung, except a general reference in a book by Siregar, who states: "In the city, the illegal occupation of land continued and, to a limited extent, it was even encouraged by left-wing political factions" (Siregar 1990:113). Despite this paucity of written accounts, several informants confirmed that the practice occurred.

In spite of the large numbers of squatters, the process of land occupation was incremental, which is typical for countries in Asia and Africa, and is unlike the large-scale invasion practices common in South-American countries. The land was developed without authorisation, usually via a similar series of steps. Typically, the process would begin with a small number of squatters occupying the land, to check for a response by the owner or caretaker of the land (which could be a government agency or a private party). If no eviction occurred, other people would join the squatters. Often, people required approval from a community leader before they could move onto the land. It is likely that this form of social screening also contributed to the slow rate of growth of these settlements, which may have been a prerequisite for survival of the community, as an inundation of people would likely have led to resource scarcity and ensuing disputes (Wibowo 1983:4-5).

In 1964 an estimated minimum of 11,000 houses were *rumah liar* (Hugo 1981:85).²⁴ This is probably a serious underestimation. By that year, hundreds of thousands of people had already migrated to Bandung, and the city had reached a population of over a million.

What were the developments in Taman Sari in the first years after the transfer of sovereignty? Taman Sari also proved an attractive destination for migrants. According to several informants, many of the families of current residents settled in this period, coming from places like Cipendeuy, Malangbong, Garut, Tasikmalaya, and Subang. Initially they were rather separate communities according to their place of origin. Liang Maung, for instance, consisted of three separate areas: Kidul, Sisi Gawir, and Mesjid, with migrants from three different places. Many of these migrants stayed, even after the Priangan countryside had become safe again. With the inflow of new migrants in later years, the three communities gradually mixed and unified.

Taman Sari drew many migrants because there was so much land available. Here too, the Dutch residents were leaving. Generally, their houses became occupied by Indonesian military personnel during the late 1950s. A single Indo-European family also chose to remain in their residence. However, few of the original residents retained control over their land, which allowed newcomers to occupy the land easily. Many newcomers would first rent a house or room and then occupy land, subdivide it, and build their own house. It seems that some bought the land from the Dutch, while others had the land donated to them; for instance because they had been employees of the owners. Most former orchards or sawahs that had become empty or uncultivated, or were on absentee land, were simply occupied without obtaining permission from the European or Indonesian title holder.

24 Unfortunately Hugo gives no reference for this statement. Considering the cautiousness of this estimation, it would not be surprising if it were derived from documents from the municipal government.

An informant recalls that one of the European residents strictly guarded his land and threatened newcomers with the gun if they attempted to occupy it. Others had greater consideration for the refugees, who were generally in poor condition. Some newcomers occupied land alongside the Cikapundung River.²⁵ The Municipality, which managed the riverside land, was not as strict as some private owners. Newcomers therefore settled here first. If someone (later) claimed a right to the land, migrants sometimes agreed to buy or lease it. These claimants were not always rightful owners, however.

Informants gave no account of any involvement of the PKI in the occupation of land in Taman Sari. Such involvement seems unlikely, given that a small number of newcomers took control over larger plots of land – a practice that the party strongly opposed. Some informants explained that certain people occupying the land had close connections with the municipal government or the army. Early occupants enclosed plots, subdivided them, and leased them out to newcomers. Some of these newcomers bought the land. In Liang Maung a kampong head, who was the leader of the area, played a central role in the allocation of former European land to newcomers.²⁶

Taman Sari also proved attractive because it was located close to labour opportunities. Most migrants found employment in the informal sector, for instance as petty-traders. Migrants from each region developed their own specialisations. Their modest incomes and dependence on customers urged many of them to settle near markets.

With the first flow of migrants, Taman Sari finally started to develop from a rural into an urban residential area. Sawahs and orchards steadily transformed into a residential area. Initially the houses were temporary or semi-permanent constructions made of wood and bamboo, and many empty plots remained available around them. Yet the basic structure of the area was already taking form: a labyrinth of small alleys giving access to more or less permanent constructions.

From Taman Sari we return to the national level to discuss further relevant developments. Despite the 1948 enactment of legislation against unlawful occupation and town planning legislation, which remained in force after independence, the new Indonesian government also failed to effectively regulate kampongs. In the first busy years after independence, the government was occupied with other matters; and at this point it also had no financial resources to interfere.

25 In later years, when the settlement became denser, newcomers reclaimed land by narrowing the Cikapundung River. The European graveyard that had been cleared in the 1950s was used only as orchard land and a playfield; until around 1980, when the Islamic University of Bandung (Unisba) was founded. It is likely that newcomers were reluctant to reside on a place of burial (Van Bruinessen 1988:40).

26 One of the informants remembers that he was called Pak Apung, an acronym of *kepala kampung* (head of the kampong). His real name was Pak Karta and he headed the area until 1960.

This changed in later years. In the early 1950s, the Department of Labour initiated a housing programme in Bandung. Similarly to other municipalities, Bandung's municipal government established a Co-operative Housing Association (*Jajasan Kas Pembangunan*) in 1953, which financed housing through central government funding and the savings of individual members. The municipal administration also spent part of its own budget on housing. However, the effects of these activities on the city's housing market were marginal, and in any event they mostly benefited civil servants, rather than the masses in the kampongs. At the same time, kampong improvement activities remained limited. Under these circumstances, Indonesia's central government began to place an emphasis on self-help housing policy, which also gained prominence within international development circles. However, this policy was not properly implemented in Indonesia – except of course by kampong dwellers themselves (Colombijn 2010:336-52).²⁷ In an effort to curb rural-urban migration; which, as discussed above, was the major cause of the expansion of kampongs and the deterioration in living conditions, on 1 March 1954 the municipal government declared Bandung a 'closed city'. Each newcomer required a so-called settlement certificate ('vestigingsbewijs or VB').²⁸ The regulation remained in force until 1964, but the main effect was that migrants were discouraged from registering as permanent residents (Hugo 1981:85). Land reforms in the countryside, meant to provide access to land to poor tenants and landless labourers, were just as unsuccessful at halting the migration. Alarmed by the growing practice of squatting, in 1954 the Mayors of the twelve provincial cities in Indonesia, including Bandung, initiated a joint effort to tackle this problem, demolishing squatters' houses with the help of the police and the army. During four months in the first half of 1955, as many as 657 houses were demolished in Bandung. These actions however soon met with strong resistance, forcing the municipal administration to reconsider its stance on squatting (Colombijn 2010:215-24).

Meanwhile, the autonomous legal status of the kampongs was maintained. Only after the European population had departed and the rural-urban migration of low-income Indonesians to Bandung was reaching a peak, with its associated occupation of abandoned and municipal land, did the central government attempt to end this colonial-era legal dualism. In the 1950s there were increasingly strong calls to abolish village autonomy. Opposition was directed towards the 1906 Indigenous Village Ordinance

27 The central government funding came from the People's Housing Department (*Djawatan Peroemahan Rakjat*, later spelt as *Djawatan Perumahan Rakjat*), which was established in 1951.

28 The municipal government also had a political rationale for this policy; it could check whether any *Darul Islam* members were among the newcomers (personal communication of a retired senior municipal official, 20 July 2006).

and the 1907 Regulation on the Election of Village Heads.²⁹ On the basis of the latter ordinance, only the original residents of the villages were allowed to vote for the election of village heads. Since the villages had become very heterogeneous, this was considered unfair. In the early 1960s, the National Council (which had replaced the National Parliament in 1957) finally issued a statement that the dualist administrative structure had been abolished, and stopped providing funds for the election of the village heads. Formally the ordinances were never abolished.³⁰

As noted in Chapter 1, in 1960 the Indonesian government enacted the Basic Agrarian Law (BAL), which was meant to unify land law.³¹ Most *adat* rights were intended to be integrated into a unified system of land law. This required the surveying of the land, after which the land was to be registered and certified by the administration. However, as will be discussed in further detail in Chapter 4, for various reasons few kampong dwellers registered their land.

By this time many people, both within and outside the larger Indonesian cities, continued to occupy state land or land that was privately owned by third parties. In response to this situation, in 1961 the government enacted another law, which stipulated that every person residing on land without permission from the title holder would be considered an unlawful occupant and could be evicted at the discretion of the regional head (i.e. the Mayor).³² Unlike the 1948 ordinance, the law not only involved a prohibition to occupy state land, but also private land. Private right holders could already base an eviction claim on private law, but this new law made eviction easier, because enforcement authorities could be called in without a prior court order. Moreover, the law might prevent the practice of unlawful occupation, because such an action now formed a criminal offence. The General Elucidation to the Law explains that the government understands the reasons behind unlawful occupation, given the shortage of land for the people, but considers that in the interest of the state's development, the use of land should be regulated in an organised manner.³³

The abolishment of village autonomy was an important symbolic step, but because this measure was not accompanied by a consistent set of applied policies to improve living conditions in kampongs, it had little consequences in practice. A similar situation occurred with the enactment of

29 'Inlandse Gemeenteordonnantie'; 'Reglement op de verkiezing, de schorsing en het ontslag van hoofden van inlandsche gemeenten op Java en Madoera'.

30 Personal communication of a retired senior official, 20 July 2006. See also: Otto 1991:214.

31 The full name of the law is: Law No. 5/1960 on the Basic Provisions of Agrarian Principles (*UU No. 5/1960 tentang Peraturan Dasar Pokok-Pokok Agraria*).

32 Law No. 51/1960 on the Prohibition to Use Land Without Permission from the Right Holder or his Deputy (*UU No. 51/1960 tentang Larangan Pemakaian Tanah Tanpa Izin yang Berhak atau Kuasanya*). The Military Command had enacted similar regulations in as early as 1957. The law will be discussed in further detail in Chapter 6.

33 General Elucidation, under 1 Law No. 51/1960.

land legislation. While this legislation changed the legal position of kampong dwellers and turned many kampongs into informal settlements, housing residents with weak or no legal claims to the land, again the regulatory changes were not enforced. Residents therefore continued to have no reason to fear immediate interference by the municipal government. To illustrate this point, only one informant in Taman Sari could give an account of an eviction case in that period for reason of unlawful occupation and this seemed to have been a rare and ad-hoc affair. Other informants revealed that some newcomers in Taman Sari not only asked and obtained permission to settle in the area from the informal kampong leader, but also personally from local officials. This may even have been common practice, a practice that continued in later years, as we will see in Chapter 4. Obviously, this does not mean that it was lawful to settle in Taman Sari.

Political-economic conditions prompted the government's *laissez-faire* attitude. As an official of the City Quarter Office explained, the vast flow of migrants to Bandung forced the municipal government to allow them to settle in the area, even though it was not their land and in most part was not reserved for residential purposes. Besides, the political influence, at the municipal level, of the PKI and other parties supporting the urban poor should not be underestimated. Through the late 1950s and in the early 1960s, two out of six of Bandung's Aldermen were members of the PKI. The party also received support from at least one member of the judiciary. As a consequence, if formal landholders whose land had been occupied went to court, they often lost the case. The few efforts of the administration to evict people led to protests.³⁴

2.5 MIGRANT SETTLEMENTS IN A METROPOLITAN CITY

After Soeharto had established his New Order regime in 1966, Indonesia experienced extraordinary economic growth. The focus of the regime's economic policy on industrialisation resulted in increasing employment opportunities in the cities.³⁵ Being the target of domestic and foreign investments, Bandung was one of them. These developments effectively reduced poverty, but also resulted in new flows of rural migrants coming to the city in search of jobs. Generally, urban incomes were higher than rural incomes; for instance in 1980 they were up to 1.5 times higher (Keban 1993:88). Other catalysts for migration included the development of modern transportation and better communication networks.

34 Personal communication of a retired senior municipal official, Bandung, 20 July 2006.

35 The regime also focussed on agricultural development, by initiating intensification programmes, but these programmes led to a labour surplus rather than an increasing labour demand in rural areas. Economic disparities between urban and rural areas increased.

Most migrants came from the West-Java countryside. Just like in other cities in Indonesia, with the exception of Jakarta and some other coastal cities, intra-provincial migration remained the most common mode of population movement to Bandung.³⁶ This was mainly due to significant ethnolinguistic and socio-cultural differences between Indonesian Provinces (Wibowo 1983:25-6).

Some migrants found employment in the formal sector. From the 1970s, the garment industry attracted many poor agricultural labourers to Bandung. Mainly women worked in this industry (Keban 1993:93). The sizable military and civilian bureaucracy, as well as institutions of higher education, created employment opportunities for low-skilled workers (Van Bruinessen 1988:40).

One should not overestimate the importance of the formal sector in terms of job opportunities for migrants, who were generally low-educated and ill-skilled. Moreover, throughout the years, labour-intensive workshops were replaced by modern capital-intensive factories, which only employed a fraction of the former labour force. Other employment in the formal sector was hard to find without a proper network of *koneksi* (Van Bruinessen 1988:46). This explains why 66 per cent of the migrants surveyed in Bandung in 1986 were employed in the informal sector (Keban 1993:99).³⁷ Even in this period of economic growth, many other migrants were unemployed, which was not reflected in official figures. Labour demand in the formal sector was not increasing as fast as the number of migrants moving to Bandung, and the absorption capacity of the informal sector proved also insufficient to provide the jobs needed.³⁸

In this period too, most migrants settled in kampongs. Most importantly, because of their socio-economic position, they had no access to formal land and housing. In addition, being employed predominantly in the informal sector, migrants preferred to settle in centrally-located kampongs, for that is where they could find employment. In any case, living at the outskirts of the city was usually not an option, since travel expenses would be too high in relation to their modest incomes. Rural migrants were also likely

36 This picture also emerges from the research by Van Bruinessen in a kampung called Sukapakir, which he conducted in 1983-4. He observed that in the 1950s many of the residents of this settlement came from Tasikmalaya, Garut and the southern parts of Bandung District, while in the 1960s and the early 1970s many came from the north coast, further away from Bandung, such as Indramayu, Cirebon, Brebes and Tegal. At the mid-1970s people from Majalengka dominated the migration flows (Van Bruinessen 1988:42).

37 See also: Hugo, who estimated that between half and two thirds of the West Javanese resident urban workforce worked in the informal sector (Hugo 1981:41).

38 Van Bruinessen claims that 10 per cent of the residents in kampung Sukapakir were long-time unemployed. 80 per cent worked in the informal sector, in which there was no regular employment. Lifetime mobility between different kinds of employment and intergenerational mobility was also limited (Van Bruinessen 1989:27-32).

attracted by the settlements' way of life; which retained rural features as villages turned into urban settlements and the inflow of new migrants from the countryside continued.³⁹

Migrants tended to cluster on the basis of origin, near relatives or someone from their village who could assist them in getting a house and a job. A survey organised in 1973 revealed that three quarters of migrants were initially housed with family or friends (Hugo 1981:204-5). This concentration of ethnic, regional and kinship groups was part of the chain migration process occurring in Bandung and many other cities in Indonesia (Hugo 1981:88). This is not to say that kampongs were homogeneous. Several groups would cluster in the same settlement (Van Bruinessen 1988:38). Group members often assisted migrants in housing construction, which was generally an incremental process. Benjamin et al., who conducted research in nine kampongs in Bandung in the mid-1980s, estimated that such assistance from members of the group resulted in the initial capital requirements being reduced by as much as 50 per cent of total construction costs. Kampong dwellers could live in housing well beyond their actual budget (Benjamin & Ali Arifin 1985:94). Since group members often also supported migrants in finding a job, regional specialisations emerged.⁴⁰ So migrants from each different place of origin developed their own distinct profession.

Several surveys in the 1970s and 1980s, including some conducted in Bandung, as well as our own informants suggest that the buildings changed in that period; towards dwellings of a more permanent character, especially in older kampongs (Benjamin & Ali Arifin 1985:100-1). By the mid-1980s, all but the poorest kampongs in Bandung consisted mostly of permanent housing. In the older kampongs, as many as 75 per cent of the dwellings were permanent (Benjamin & Ali Arifin 1985:106).

Notably, housing consolidation occurred despite the informality of the kampongs in terms of land tenure and land use. By 1971, the number of illegal houses in Bandung was conservatively estimated at 60,000 (Hugo 1981:86).

39 The rural character of kampongs can for instance be illustrated by the fact that in these settlements social control and security were still relatively strong. Yet, the traditional culture of *gotong royong* (mutual help), whereby residents provide services to the community without any financial reward (for instance helping each other with the construction of a house), was already disappearing at that time.

40 Van Bruinessen notes that residents of Sukapakir who originated from Tegal-Brebes Districts on the north coast and Purwokerto further south, mostly worked as itinerant vendors of *mie baso* (noodles with meatballs). Other residents originating from Majalengka worked as vendors of *baso tahu* (fish balls with bean curd in spicy sauce). A third group, originating from one village in Indramayu, made an income as beggars. The fourth group that could be distinguished on the basis of their origin and occupation, were people from Kebumen, who worked in a big modern factory (Van Bruinessen 1989:19-20).

Bandung's migration rate remained high, but in general slowed down from the 1970s. An increasing proportion of migrants were circular migrants, who returned to their village of origin after a relatively short time. In addition, the number of migrants settling in the Districts around Bandung Municipality grew, especially from the 1980s. Lastly, more people were now commuting daily between their village of origin and the city. Growing transportation opportunities in West-Java enhanced these developments (Keban 1993:102-3). From the 1970s onwards, physical accessibility greatly improved as a result of road extensions and increases in the numbers of vehicles, including vehicles for public transportation. This enabled people living in isolated rural areas to travel to the city easily and at relatively low cost (Keban 1993:91). Overpopulation in Bandung was another reason for the slower pace of population growth during the 1970s. It had become difficult to find an affordable place to live in the increasingly dense city. Partly for that reason, many non-circular migrants returned to their villages to retire. Declining living conditions in the urban kampongs also made the countryside more attractive (Van Bruinessen 1989:22-3). A survey on migration intentions in Bandung conducted in 1986 revealed that 58 per cent of the migrants intended to leave the city, while 26 per cent was undecided (Keban 1993:99).

Despite these developments, Bandung's kampung population continued to grow. This was not only the result of migration; the numerous poor families were also generally large. As soon as the older generation had passed away, the land and house would be subdivided. This is how the plots of some landlords became increasingly small. Depending on their financial position, some heirs rented the new space to fellow-residents, while others sold the land.

Taman Sari was one of the areas that attracted migrants from this new wave. Residents commonly returned to their village of origin for the Feast of Ramadan, and afterwards took relatives or other villagers with them home. Migrants who moved to Taman Sari unaccompanied often had relatives or friends living there. The origins of migrants who settled in Taman Sari changed over the years. Initially, most were from West-Java. In contrast to other kampung areas, in later years many migrants came from Middle and East-Java, and later again even from Sumatra and other outlying islands. In Cimaung (currently RW 07) many residents originate from villages around Cipendeuy, Malangbong and Garut, where they had already been members of the same community. They followed as relatives or former neighbours of the refugees who had settled in the 1950s. Later migrants from other parts of West-Java, like Kuningan, and Middle and East-Java moved to Cimaung. Part of that neighbourhood is called *kampung Jawa* (Javanese kampung), because its residents are mostly of Javanese origin. The first migrants from this second wave arrived in the 1970s, and relatives soon followed.

Throughout the years the location of Taman Sari became of great economic value, not only because of the proximity of the city-centre and good

transportation facilities, but also because its surroundings transformed. In the 1970s a number of new universities and schools were built around Taman Sari, like the Islamic University of Bandung (*Universitas Islam Bandung* or UNISBA), built on the land of the former European graveyard; Pasundan University (*Universitas Pasundan* or UNPAS); and Bandung Law School (*Sekolah Tinggi Hukum Bandung* or STHB). From the end of the 1980s, Cihampelas Street developed into the famous 'jeans street', with shops offering cheap clothing.

Many newcomers found employment in and around these new educational and commercial centres. Some ran their own stand (*warung*) at the market or just on the sidewalk, others worked as itinerant vendors, pedicab (*becak*) drivers, craftsmen, or offered small services. Here too, regional specialisations emerged. So almost all of the male Javanese residents of Cimaung worked as meatball soup traders (*tukang bakso*) and the females went door to door with traditional medicines (*tukang jamu gendong*). Especially from the 1970s, as a result of upward social mobility, some residents of Taman Sari worked as state officials or employees in the (formal) private sector. Because of the proximity of schools and universities, many students settled in Taman Sari. For many residents, renting out rooms to students became one of the major sources of income. This changed the physical structure of the kampong, for they built one or two extra floors on top of their houses.

As the 1973 survey earlier referred to revealed, the first migrants of the new wave usually stayed in a relative's or friend's house until they had found employment and a place to live, both often nearby. Later residents occupied the last plots of non-residential land in Taman Sari. In the meantime, prices of land and buildings continued to rise, so many of the later migrants would initially rent a house.

As a result of the continuing influx of low-income migrants, Taman Sari became dense and dilapidated.⁴¹ In 1975, the area had 404 residents and 79 houses per hectare. The settlement's infrastructure was in bad shape or non-existent (Departemen Pekerjaan Umum dan Tenaga Listrik 1975:130-1). There were social problems too. The population had become increasingly heterogeneous, and as a result of circular migration the percentage of temporal residents increased. Crime was rife within the kampongs. The community feeling that had been very strong until the end of the 1960s was lost to a large extent.

41 Compared to other kampong areas, it appears that the area was still in relatively good shape though. In a 1975 report by the Department of Public Works, the problems in Taman Sari were put into perspective by comparing the situation in this City Quarter with that in two other City Quarters, Pajajaran and Jamika. Unemployment rates were relatively low in Taman Sari and because dwellers had relatively good jobs, they were well aware of environmental issues. The physical circumstances were also better than in the other City Quarters (Departemen Pekerjaan Umum dan Tenaga Listrik 1975:129-130).

In the first years after the Soeharto regime became established, the regime did little to address the above problems. For instance, state expenditure on housing was modest; not only because of the government's limited resources, but also because the informal housing sector, as mentioned before, proved to have great absorptive qualities (Goldblum 1987:150). However, following the beginning of the oil boom, a policy shift occurred. In 1974, the Indonesian government implemented a national housing policy, leading to the establishment of the National Housing Cooperation (*Perusahaan Umum Pembangunan Perumahan Nasional* or Perum Perumnas), which was to build houses at low cost; and a state bank (*Bank Tabungan Negara* or BTN), which provided credit for public and private housing (Goldblum 1987:154). As well, the government introduced the 1-3-6 rule, requiring (private) developers to build 6 units of 'simple' housing and 3 units of mid-standard housing for every unit of 'luxury' housing. In the following years, the National Housing Cooperation built 400,000 and the private sector another 800,000 housing units.

On first consideration, the housing programme seemed impressive; but it was of too small a scale, and in any case mostly benefited mid-income groups. The 1-3-6 rule was formulated vaguely and was easy to circumvent. In addition, its implementation was rarely monitored (Hoek-Smit 2002:30). Bandung Municipality's 1992 General Town Plan acknowledged that there was general shortage of housing, particularly for lower income groups (Pemerintah Kotamadya Daerah Tingkat II Bandung 1991:2-9). This indicated that new forms of housing only partially substituted for self-help housing in kampongs (Goldblum 1987:159-160).

In view of these circumstances, the Indonesian government decided to take a pragmatic approach. Just as the colonial Municipality had done 40 years before, it attempted to improve the living conditions of kampong dwellers in the country's major cities, this time through the so-called Kampong Improvement Programme (KIP). This programme initially focussed on the improvement of infrastructure and housing conditions. The first project was set up by the Jakarta Municipality in 1969, and later copied to other cities. From 1974, when the government implemented its second five-year development plan (*Rencana Pembangunan Lima Tahun* or REPELITA II), the programmes became part of a national development policy. The Indonesian government made the KIP part of integrated urban projects, in which the KIP's emphasis on micro-level facilities was complemented by citywide services and systems (Suselo & Taylor 1995:13). The government also broadened the KIP's scope, implementing it in two hundred cities and expanding the range of interventions, such as in the field of nutrition, health and education (Goldblum 1987:154-6). The KIP covered over 85,000 hectares of "slum areas", assisting more than 36 million people at nearly 2,000 locations in a wide variety of towns and cities (UN-Desa 2002).

Kampong dwellers in Bandung were among the first to benefit from the KIP. From 1972, kampongs had already been the target of the Bandung Water Supply (BAWS) programme, which focussed on water supply, sani-

tation, and waste management. In 1975, the Department of Public Works selected five kampongs as priority areas for the KIP, Taman Sari being one of them.⁴² The settlement was chosen because “a large share of unauthorized housing located on government property alongside the riverbanks could be found here. Its central location, unauthorized status, and the frequent flooding of some areas all indicate[d] that a portion of the residents [had to] be resettled and those areas which remained for residential use [...] be upgraded” (Department of Public Works and Electric Power 1975:9).⁴³ In 1976 the Bandung Urban Development and Sanitation (BUDS) Project was initiated, of which the KIP would form part. In the same year, the Indonesian government started a pilot project in two kampongs in Bandung (and one in Surabaya) with assistance from the United Nations Environmental Programme and the United Nations Children's Fund. This project took an integrated approach, not only focusing on physical improvement, but also on the amelioration of social and economic conditions. In 1979 Bandung signed another loan for a KIP with the ADB which was meant to upgrade a total area of 385 hectares of kampongs in the city (Suyono 1983:174). These activities now became part of the Bandung Urban Development Project (BUDP), which was followed by the Bandung Urban Development Project II in 1985 and the Metropolitan Bandung Urban Development Project (MBUDP) in 1996.

Not all kampongs could benefit from the KIP. As the project formed an integrated part of town planning policy, it primarily targeted kampongs located in residential zones and whose population consisted of low-income groups. Subsequently, kampongs were selected not only on the basis of criteria such as age, state of dilapidation, density, population growth rate, income of population, and physical condition of the settlement, but also concordance of the location with the General Town Plan. Because of the final criterion, most squatter settlements should have been excluded from the KIP (Goldblum 1987:161-2 and 170-1). However, on the basis of our own observations we can safely conclude that these criteria were not strictly applied in Bandung.⁴⁴

Generally, the KIP had at least two unwanted side effects. First, the value of the houses and the land increased considerably – by an estimated 243 percent in ten years. The KIP was partly focused on the improvement of access and drainage of land, and these factors are among the two most important determinants of the market price of land. Second, the social dif-

42 Other selected City Quarters were Babakan Surabaya, Cikutra, Maleber and Warung Muncang.

43 All selected kampongs had high population densities, but otherwise they differed greatly. The programme would therefore focus on different aspects in each kampung (Department of Public Works and Electric Power 1975:9-11).

44 Bandung's 1991 General Town Plan partly explains this practice, by noting that previous Plans had not indicated in detail which regions could benefit from the KIP (General Town Plan, chapter 2, p. 8).

ferentiation increased as well, both within rehabilitated kampongs and between rehabilitated and non-rehabilitated kampongs (Goldblum 1987:159).

Despite the above unforeseen side effects of the KIP, Bandung's municipal government intensified the programme in the 1990s on the basis of the so-called Tribina concept, which pursue an integrated approach and gave a greater role to its beneficiaries in its implementation. Taman Sari was again one of the City Quarters that benefited from the programme. The municipal government chose a bottom-up approach, supporting community demands both technically and financially. Improvement activities became part of a larger community-based development programme, and focused on housing and environment, which were expected in turn to have a beneficial effect on public health, employment, and productivity (Pemerintah Kotamadya Daerah Tingkat II Bandung 1993:4-26).

Bandung's municipal government also experimented with new approaches, such as land consolidation and urban renewal, by replacing kampong housing with low-income tenement buildings (Pemerintah Kotamadya Daerah Tingkat II Bandung 1991:5-21).⁴⁵ The experiment, facilitated by the Department of Public Works and implemented in a kampong in City Quarter Arjuna, was however put on hold as a result of the 1998 financial crisis; and never finished.

In later years the Indonesian government paid increasing attention to the socio-economic conditions in kampongs. It did not take measures to target poverty directly, but provided 'social services' in the fields of education and health. In the early 1970s, the government had started promoting the expansion of public health centres (*Pusat Kesehatan Masyarakat* or Puskesmas) and sub-centres (*Pos Pelayanan Terpadu* or Posyandu). In 1994, the government adopted the Health Cards (*Kartu Sehat*) programme, which aimed to enable the poorest families in the community to receive free medical treatment at community health centres and public hospitals.

From the late 1980s, the Indonesian government began to support the activities of microfinance institutions, and initiated various microfinance programmes. Many of these activities were implemented on behalf of the government by banks and other financial institutions. The commercial Indonesian People's Bank (*Bank Rakyat Indonesia* or BRI) implemented some of the most significant programmes, such as the Village Credit Programme (*Kredit Umum Pedesaan* or KUPEDDES) and the Urban Savings Programme (*Simpanan Masyarakat Kota* or SIMASKOT). Secondary micro-banks, known as the People's Credit Banks (*Bank Perkreditan Rakyat* or BPR), were established in later years and implemented similar programmes. In 1990 the

45 Such buildings were also constructed in Jakarta and Palembang (Kuswartojo 2005:34). This new approach was in line with Presidential Instruction No. 5/1990 on the Upgrading of Slum Housing that is Located on State Land (*Instruksi Presiden No. 5/1990 tentang Peremajaan Pemukiman Kumuh yang Berada di Atas Tanah Negara*).

Indonesian government established a state-owned pawnshop company, *Perum Pegadaian*, which formed an important source of liquidity for low-income households with savings in movable assets. During the 1990s the government also implemented various other microfinance programmes, such as the Family Welfare Income Generation Effort (*Usaha Peningkatan Pendapatan Keluarga Sejahtera* or UPPKS) in 1996. This programme was managed by the National Family Planning Coordination Board, and provided women belonging to low-income households with guidance, entrepreneurship and credit (Holloh 2001:15-38).⁴⁶

With all these efforts aimed at the physical and social-economic development of kampongs, what then happened to their legal status? The initiators of the KIP expected that once the kampong's infrastructure had been improved, residents themselves would take the initiative to improve their tenure status; but there has never been any evidence to support this hypothesis.⁴⁷ The government thus initiated various land registration programmes. In 1981 the government instituted the National Land Registration Project (*Proyek Operasi Nasional Agraria* or PRONA), a project that was to accelerate land registration by providing land titles to the urban poor at low cost. Bandung's municipal government also initiated and financed a Regional Land Registration Project (*Proyek Operasi Daerah Agraria* or PRO-DA). Moreover, the World Bank initiated the Land Administration Project (LAP) in 1994, registering land of the urban poor at low cost in Java and in urban areas. These programmes will be discussed in further detail in Chapter 4.

2.6 BANDUNG'S KAMPONGS TODAY: A 'CHALLENGE OF SLUMS'?

Indonesia's 1997 economic crisis had severe consequences for Bandung's kampong dwellers and for the government programmes supporting them. The number of urban poor increased substantially as real wages fell and unemployment increased. At the same time, government (supported) pro-

46 Not all microfinance activities were government-related. Some banks also initiated their own microfinance activities. Other institutions, such as cooperatives and NGOs, followed suit, albeit on a relatively limited scale. The most important cooperatives are some of the previously mentioned People's Credit Banks and savings and credit cooperatives. Examples of such NGOs are the national *Yayasan Bina Swadaya* and West-Java *Yayasan Dharma Bhakti Parasahabat* (YDBP). Finally, international development organisations initiated microfinance programmes aimed at developing sustainable microfinance systems in cooperation with banks, NGOs and self-help groups, such as the Project Linking Banks and Self-Help Groups Project of Bank Indonesia and the German Society for Technical Cooperation ('Deutsche Gesellschaft für Technische Zusammenarbeit' or GTZ), and the Micro Credit Project of the ADB, which were launched in 1989 and 1996 respectively.

47 See for instance Taylor 1987, who in his evaluation of the Jakarta KIP could not draw any conclusions on that matter.

grammes on housing and human settlements came to a standstill. The National Housing Cooperation nearly went bankrupt, but was bailed out by the government. The private housing sector had to recover from their over-investment and loan failures (UN-Desa 2002).

Under these circumstances, poverty became the government's primary concern. So in mid-1998 the government initiated several programmes as part of a larger emergency programme for poverty reduction, the Social Safety Net (*Jaringan Pengaman Sosial* or JPS, henceforth SSN). The programmes covered various needs, including food security, employment, crucial social services – particularly health and education –, and community empowerment (Hatmadji & Mursitama 2003:269).

From 2001 the Indonesian government took an unprecedented series of further poverty reduction measures, which also benefited kampongs and their dwellers. These measures addressed the socio-economic, physical and legal conditions of kampongs.

The measures addressing the socio-economic conditions followed the five-year poverty reduction strategy that the government had formulated in 2000 and were based on three pillars: focusing on promoting social security for the poor, supporting their empowerment, and facilitating their economic opportunities. These and other measures also addressed the physical and legal conditions in kampongs.

As part of the effort to promote social security, some of the programmes of the SSN became regular development programmes. So the SSN programme in the field of food security was succeeded by the Rice for Poor Families (*Beras untuk Keluarga Miskin* or Raskin) Programme. When in 2005 the Indonesian government again reduced fuel subsidies, it reallocated most of the released funds to four programmes in the fields of education, health, direct unconditional cash transfers and, less relevant here, village infrastructure. Finally, in 2007 the Indonesian government initiated the Hopeful Families Programme (*Program Keluarga Harapan* or PKH), which is a conditional cash transfer system meant to ease the burden of poor households and to break the vicious circle of poverty between generations.

Empowerment activities and activities facilitating economic opportunities included the Urban Poverty Alleviation Programme/Urban Poverty Project (*Program Penanggulangan Kemiskinan di Perkotaan* or P2KP, henceforth the UPP), which the Indonesian government had already initiated in 1999. It is based on the so-called Tridaya approach, pursuing community-based development in the social, economic, and physical fields, with the aim of empowering urban communities to overcome poverty. Self-help has thus become part of government policy. The programme provides funding for sustainable economic activities demanded by the people themselves. It also supports individual urban poor with credit, which they have to pay off within two years with interest at commercial rates. Last, it funds development of community-selected basic infrastructure and related employment-generating activities. In order to guarantee that communities participate in the UPP, the Indonesian government established Community Self-Reliance

Bodies (*Badan Keswadayaan Masyarakat* or BKM) in each targeted City Quarter. Bandung was among the cities where the programme was first implemented. In 2006, the UPP integrated into the National Community Empowerment Programme (*Program Nasional Pemberdayaan Masyarakat* or PNPM), which is designed to accelerate the handling of poverty in urban and rural areas by empowering the people's economy, and which again consists of several components. In 2007, the programme was renamed PNPM Mandiri.

At least 16 structural poverty reduction programmes, part of which are (also) implemented in cities, have a microfinance component (ProFI 2005:4). Meanwhile, existing microfinance activities outside the banking sector, such as by NGOs, continue to expand. For instance, since 2002 Yayasan Bina Swadaya has followed the Nobel Prize winning Bangladeshi ASA microfinance model, targeting low-income factory workers and micro-entrepreneurs in urban settings. In 2008, several credit programmes conducted by ministries and other government institutions were unified into the People's Business Credit (*Kredit Usaha Rakyat*) programme. The objective is to accelerate the development of primary sectors and employment of small businesses, to improve accessibility to credit and financial institutions, and to reduce poverty. Six banks implement this programme.

Activities focusing on the physical conditions of kampongs are mostly integrated into the above UPP. As well, there have been some housing construction activities outside this programme. In 2002, the newly established Department of Settlements and Rural Infrastructure (*Departemen Pemukiman dan Prasarana Wilayah* or Kimpraswil) introduced a new National Housing and Settlement Policy and Strategy (*Kebijakan dan Strategi Nasional Perumahan dan Permukiman* or KSNPP). A year later the President initiated the human settlement development activities in the form of the One Million Houses (*Satu Juta Rumah*) Development Programme (UN-Desa 2002). However, so far construction activities have focussed mostly on relieving internally displaced persons and disaster victims and rehabilitating facilities in conflict areas.

Activities addressing the legal conditions in kampongs consist of the Land Management and Policy Development Project (LMPDP), which was initiated in 2004 to succeed the LAP, and PRONA.

All of the above programmes are initiated by the central government. However, as a result of regional autonomy, municipal governments have an increased responsibility in poverty reduction. Bandung's municipal government has actively assumed this responsibility, although the scope of activities is limited. In 2006, it initiated the 'Bring me...' programmes (*Bawaku...*), such as 'Bring me Prosperity, Health, Brightness' (*Bawaku Makmur, Bawaku Sehat, Bawaku Cerdas*), aimed at improving the socio-economic position of low-income households. In 2007 it initiated the Housing Operation (*Bedah Rumah*) programme, which is to renovate houses in slum areas. Each City Quarter receives Rp. 45 million for the renovation of about nine houses.

Aside from these government activities, kampong communities are still to some extent self-reliant – although the feeling of ‘community’ is not particularly strong. In Taman Sari residents have initiated social-economic activities, for instance in the field of family planning, microfinance, social security, and religion. They also clean the river, improve roads and other infrastructure, and organise waste management. Most of these initiatives are cash-based. Each month, the neighbourhood heads collect money from the people.⁴⁸ Some kampongs in Taman Sari also receive contributions for these activities from Bio Farma, a nearby pharmaceutical company.

Having given an historical overview of the local, national and international factors underlying the formation of kampongs in Bandung, and having assessed the impact of the main development policies towards kampongs adopted by the Indonesian government, international organisations, and civil society groups, the question rises what are the contemporary socio-economic, physical and legal characteristics of kampongs in Bandung. Our survey provides some data on the socio-economic and physical features of these settlements. Appendix II (see p. 244) presents data on the socio-economic characteristics of the kampongs, more specifically on education levels of dwellers, the sectors they work in, and their income. The survey reveals that generally, contemporary kampongs in Bandung are low-income settlements. A large proportion of the kampong population is low-educated, the majority works in the informal sector and, according to international standards in particular, poverty is rife in all kampongs. On average, 40 per cent of male household heads have only received primary school education (not always completed). As many as 63 per cent work in the informal sector. 65 per cent live under the poverty line of \$1 US per day, as set in the UN Millennium Development Goals. In Taman Sari, the percentage of low-educated male household heads is slightly higher than average, namely 43 per cent. However, at the same time a relatively high percentage of this category of respondents (19 per cent) have enjoyed higher education. This does not mean that a proportional quantity of people in Taman Sari works in the formal sector. Just as in most other City Quarters, a majority of male family heads is employed informally, namely 63 per cent. A high percentage of this category of respondents works as petty traders, as is the case in Ciroyom; probably because big market places are near at hand in both these City Quarters. On the basis of several income calculations, we can see that households and their individual members in Taman Sari are poor, but still relatively well off when compared to households in kampongs in the other City Quarters.

Appendix III (see p. 245) presents data on the physical characteristics of the kampongs. Dwellings are generally small, particularly if measured as

48 Interviews with neighbourhood heads (about 25) in the kampongs where survey research was conducted reveal that almost every kampong community organises these kinds of activities and finances them in a similar way.

average house size per person, but they are also reasonably consolidated. There is relatively good infrastructure and access to public utilities. So on average, 39 per cent of the dwellings are less than 36 m². 86 per cent of the dwellings have roof consisting of tiles, 92 per cent of the dwellings have brick walls, and 75 per cent of the dwellings have a roof consisting of tiles. 17 per cent of the households have piped water and 98 per cent have electricity. Compared to other kampong City Quarters, the percentage of very small (less than 18 m²) and large dwellings (more than 70 m²) is considerable in Taman Sari. Here, the average house size per person is the biggest of all City Quarters. Furthermore, the houses are even more consolidated. (Only) 79 per cent of the dwellings have roofs consisting of tiles, but 95 per cent of the dwellings have brick walls. Access to public utilities is relatively good in Taman Sari. About 35 per cent of households have piped water, which is a high percentage compared to other City Quarters, such as Kebon Lega, where as little as 7 per cent of households have this facility.

Kampongs in Bandung still have a predominantly informal status in terms of land tenure and land use, but as will be discussed in further detail in Chapter 4, there are various degrees of legality among and within these settlements. Many kampongs are not consistent with spatial planning laws, whether with respect to zoning, sub-division, or building regulations. Almost none of the households hold the required permits to reside on the land. Many dwellers are informal landholders, most of whom reside on state land. However, at the same time a considerable share of the population has a land certificate or owns land on the basis of a customary land right. Many others lease land from the Municipality.

In view of the physical and legal characteristics of kampongs in Taman Sari and other City Quarters in Bandung, it would be inaccurate to qualify these settlements as slums on the basis of international standards. Nonetheless, the Indonesian government does so – on the basis of its own standards. On the basis of a survey conducted in 1999, the Department of Public Works concluded that 121 out of the 139 City Quarters in Bandung consist of ‘slum settlements’. 44 of these City Quarters consist of slum settlements that are non-legal, because they are not consistent with spatial planning law or because dwellers reside on state land. Taman Sari is qualified as a City Quarter consisting of ‘slum, non-legal settlements’ (Departemen Pekerjaan Umum 1999:1-32-50).⁴⁹

While the conclusions of the Department of Public Works can be debated, it is clear that conditions in kampongs in Bandung remain adverse. There is also little chance that this will change in the near future. Currently,

49 Interestingly, Bandung’s municipal government had earlier conducted similar research and identified only 54 City Quarters that consisted of ‘slum settlements’, Taman Sari again being one of them. In its latest Spatial Plan the municipal government identifies 62 slum-like areas, apparently mistakenly referring to the same report of the Department of Public Works, which only states that these 62 areas were initially selected for closer research.

Bandung is a metropolitan city of 2.3 million inhabitants.⁵⁰ With 13,346 people per km², it is one of the densest cities in Indonesia (BPS Kota Bandung 2005:35). Kampongs are not attracting as many newcomers as in earlier years, partly because of increasing circular migration and a growing number of people commuting between their village and Bandung. Still, low-income migrants keep flowing into kampongs, which also remain populous with newborns. Bandung's annual population growth rate is currently about 2.5 per cent, meaning that each year the population increases by more than 50,000 people (Pemerintah Kota Bandung 2004a:12).

The reduction of (urban) poverty continues to be a policy priority of the Indonesian government. As noted in Chapter 1, in 2005 it adopted a five-year National Strategy for Poverty Reduction (*Strategi Nasional Penanggulangan Kemiskinan* or SNPK) which, in line with the UN Millennium Development Goals, takes an integrated, rights-based approach.⁵¹ It thus formulates ten basic rights that should be fulfilled, including the right to adequate housing and (notably, mentioned separately) the right to secure land tenure (BAPPENAS 2005:137-8; 140-1). The Strategy has been included in the 2004-2009 National Mid-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN 2004-2009).

2.7 CONCLUSION

This chapter has described the history of Bandung's kampongs, government measures aimed at improving the conditions in these settlements, and contemporary characteristics of kampongs in view of international standards on slums. It thus aims to clarify the local settings of development strategies that centre on the issue of tenure security.

Notably, since the late 19th century Bandung transformed from a small town into a metropolis of 2.3 million inhabitants. Kampongs developed in parallel. During the heyday of the colonial period the expanding city engulfed rural villages, which turned into urban settlements with a residential nature, thus becoming the city's first kampongs. During the Japanese occupation kampongs served as refuge settlements for those fleeing the hardships of West-Java's countryside. A few years later, these and other dwellers again had to leave Bandung, because of warfare between the Indonesian Republican Army and the Allied, later Dutch troops. They returned after independence, accompanied by vast flows of new refugees,

50 This number represents the population size of the City of Bandung alone. The population size of Bandung Metropolitan, including Bandung District, which encloses the city, is estimated at up to five million inhabitants.

51 Notably, the Indonesian government does not follow the distinction of rights or use the related concepts that can be found in international human rights law: instead of explicitly referring to tenure security as part of the right to adequate housing, the National Strategy for Poverty Reduction refers to legal certainty regarding rights to land.

who fled the violent clash between the Darul Islam and the Republican Army. Coinciding with the exodus of the European population, they settled in existing kampongs or created new ones by occupying vacant land. In later years, and particularly during the early years of the New Order period, kampongs continued to grow as a result of labour migration. Under these circumstances, living conditions in kampongs quickly deteriorated.

Subsequent governments have tried to improve the living conditions in kampongs through a variety of measures, first addressing their physical, then their socio-economic, and later also their legal characteristics. So Bandung's colonial government introduced a housing programme, allocated the southern part of the city for the Indonesian population, and later initiated kampong improvement activities. These measures were limited in scope, not least because of 'village autonomy', which gave kampongs a legally autonomous status and which, despite calls for its annulment, was maintained; thereby severely restricting the government's opportunity to exert influence in the kampongs. During the struggle for Independence the Dutch Indies colonial government promulgated an ordinance that made the unlawful occupation of government land a criminal offence. It also enacted the first Town Planning Ordinance for Municipalities on Java, which laid the foundation for future town planning, also in relation to kampongs. In the early 1950s, the Department of Labour of the Indonesian Republic initiated a housing programme, the municipal government declared Bandung a close city and initiated a joint effort to tackle the problem of squatting. A few years later, 'village autonomy' was abolished. In 1960 the Indonesian government enacted the BAL, which was meant to unify land law. Customary land owners had to register their land, otherwise their rights would no longer be recognised. The government also enacted a law in 1961 enabling the state and private landholders to easily evict unlawful occupants. In practice, however, eviction only occurred on a limited scale in Bandung. To the contrary, practices of unlawful occupation were tolerated and even approved by the administration and judiciary, perhaps under the influence of the PKI and other parties supporting the urban poor. From the 1970s, the New Order regime formulated and implemented a social housing policy. It also started the KIP, which was initially focused on physical improvements only, but later also on socio-economic issues. From the 1980s the regime initiated land registration programmes like PRONA, PRODA, and the LAP. Following the 1997 economic crisis, the Indonesian government took an unprecedented series of new measures, first as part of an emergency programme and later as part of a structural poverty reduction strategy, in which several of the previous strategies are integrated.

Despite the above measures, our survey data reveal that contemporary kampongs in Bandung are low-income settlements, in the sense that they house dwellers who are generally low-educated, work in the informal sector, and have low incomes. Although on first sight they give the impression of a slum, most settlements do have reasonably consolidated housing,

access to public utilities, and relatively good infrastructure. Besides, while they still have a predominantly informal status in terms of land tenure and land use, there are various degrees of legality among and within these settlements. On the basis of international standards it would therefore be inaccurate to qualify these settlements as slums – as the Indonesian government does. Still, conditions in kampongs remain adverse. The Indonesian government is continuing its efforts in addressing (urban) poverty, in which the provision of tenure security can be identified as one of the government's priorities.

As discussed in Chapter 1, there are questions whether strategies centred on tenure security in which land registration plays a dominant role can indeed contribute to poverty alleviation in settlements like in Taman Sari. Alternative approaches that combine the provision of basic services and credit facilities – for which in Indonesia, programmes have already been initiated decades ago – with protective administrative or legal measures against evictions may be just as or even more successful. In any event, the success of these approaches depends on the enforceability of property and/or human rights. This requires a rule of law environment, in which the urban poor are protected against arbitrary behaviour by the state or private parties. In order to be able to answer the main questions addressed in this book, the next chapter therefore first provides a general overview of Indonesian land law in the context of the country's changing rule of law environment.

3.1 INTRODUCTION

As discussed in Chapter 2, as part of colonial legal dualism, from the early years of colonial rule until 1960, the Indonesian population residing in the autonomous villages that had been engulfed by the expanding city could apply their own customary or *adat* law, administration, and administration of justice. This *adat* law was supposedly of a traditional, customary, unwritten, and often communal character.¹ It could also be applied in relation to land, which in the autonomous villages qualified as ‘indigenous land’. Land outside the autonomous villages was qualified as ‘European land’, which was subject to the provisions of the Civil Code of the Dutch East Indies (‘*Burgerlijk Wetboek voor Nederlandsch-Indië*’).

The Indonesian government believed that the dualist system, meant to serve colonial interests, had failed in creating legal tenure security. Immediately after the transfer of sovereignty, it therefore started to draft a bill on land, water, and airspace. Article 33(3) of the 1945 Constitution formed the point of departure of this effort. It states that land, water, and the natural resources contained therein shall be under the authority of the state and be used to the greatest benefit of the people.² Article 33(5) stipulates that the provisions of this article (including Sub-clause 3) must be implemented by act of parliament (*undang-undang*).

In 1960, after twelve years of preparations (Tan 1977:1), the Indonesian government finally enacted the law implementing Article 33(3) of the 1945 Constitution: the Basic Agrarian Law. The word ‘basic’ (*dasar*) indicates that the BAL lays the foundation for a system of agrarian law; its general principles should be implemented by other laws and regulations.³ The word ‘agraria’ does not imply that the law is about agriculture or agricultural land, but it is a term from colonial times that refers to land, water, and air-

1 *Adat* is Arabic for custom. For Indonesia, *adat* law was defined during the colonial era as all customs with legal consequences, without implying that the latter and other *adat* can be strictly (and easily) divided (Snouck Hurgronje 1893:16). Although Snouck Hurgronje introduced the term (Slaats 2000:49), *adat* law became well known by the contributions of Van Vollenhoven.

2 In Indonesian this section reads: *Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat*. The Elucidation to Art. 33 explained that land, water and the natural resources must be under the power of the state because they form the basis for the people’s welfare.

3 Compare Explanatory Memorandum, General Elucidation, pt. I BAL.

space.⁴ To this day, the BAL provides the general framework of Indonesian land law.

As discussed in Chapter 1, the success of approaches to the enhancement of tenure security depends on enforceability of property and/or human rights. This requires a rule of law environment, in which urban poor are protected against arbitrary behaviour by the state or private parties. In order to be able to answer the main questions addressed in this book, this chapter therefore gives a general overview of Indonesian land law in the context of Indonesia's changing rule of law environment. It thus forms the point of departure for a more detailed legal and empirical review in later chapters.

Following the three political periods it addresses, this chapter comprises five sections. The next section focuses on the implementation of land law during Guided Democracy (*Demokrasi Terpimpin*, 1957-1965), Section 3.3 on the implementation of land law during the New Order (*Orde Baru*, 1965-1998), and Section 3.4 on the implementation of land law during the Post-New Order (since 1998), after which the chapter concludes.

3.2 GUIDED DEMOCRACY: LAND LAW IN A STATE OF REVOLUTION

A general overview of Indonesian land law requires first a few words on the 1945 Constitution, on which the BAL is based, and Guided Democracy, the prevailing political ideology during the period in which the BAL was enacted and was first implemented.

Promulgated on 18 August 1945, the day after the proclamation of independence, the 1945 Constitution was Indonesia's first constitution. It was a vague and ambivalent document. The Constitution consisted of no more than 37 articles – which made it the world's shortest constitution. In addition, it was based on two contradictory notions of state ordering, namely that of a 'Rechtsstaat' (in Indonesian: *negara hukum*) and of a so-called 'integralist state'.⁵ The exact meaning of the 'integralist state' concept is unclear, but at least it represents a strong state, in which there can be no dualism between the state and the people, as they form an organic unity (Mulya Lubis 1999:173). Formally, the latter notion was dropped. So the General Elucidation to the 1945 Constitution indicated that Indonesia

4 Compare Art. 5 BAL.

5 This ambivalence was the result of a controversy between several members of the Constitutional Committee: Yamin and Hatta, who were supporters of a 'Rechtsstaat' notion, and Soepomo and Soekarno, who had a preference for the notion of an 'integralist state'. For a discussion of the historical background of this controversy, please refer to Bourchier 1999. There were also supporters in the committee for an Islamic state, an issue that does however not deserve much attention in the context of this book.

formed a 'Rechtsstaat', not a 'Machtsstaat'.⁶ However, the 1945 Constitution gave no definition of the 'Rechtsstaat' concept.⁷ Worse, various provisions were more in line with the notion of the 'integralist state', for instance those on the position of the executive branch, which was clearly dominant.⁸ Reference to human rights was limited.⁹

When in 1949 the Dutch government finally granted independence to the Republic of the United States of Indonesia, the 1945 Constitution was replaced by the Federal Constitution (*Konstitusi Republik Indonesia Serikat*). In 1950, the Federal Constitution was again replaced by the Provisional Constitution (*Undang-Undang Dasar Sementara*), in which the influence of European ideas on democracy was apparent (Lindsey 1999b:15). The enactment of the Constitution indeed marked the beginning of a period of constitutional democracy. In 1955 the first parliamentary elections were organised. As Lev concluded, there was a balance between state and society and there were limits on public authority in these years (Lev 2007:239).

The period of constitutional democracy was short-lived though. In 1957, growing political unrest in the regions (such as the *Darul Islam* rebellion in West-Java, discussed in Chapter 2), among political parties as well as between the political parties/civilian government and the army formed a reason – or an excuse – for President Soekarno to declare martial law. This step marked the beginning of 'Guided Democracy', which was followed by three major political decisions. First, the imposition of a mutual cooperation (*gotong royong*) cabinet of the major parties that was advised by a council of functional groups (youth, workers, peasants, religions, regions, etc.), strengthening the position of the President, limiting the influence of political parties, and allowing for military participation. Second, the introduction of the 'Middle Way of the Army' (later called the *dwifungsi* or dual-function of the armed forces), on the basis of which the army would not only have a role in national defence, but also a socio-political role. Two years later, in 1959, the transition to Guided Democracy was completed, when President Soekarno reintroduced the 1945 Constitution by decree (Lev 2007:239-40).

According to President Soekarno, the new form of government was meant to revive the spirit of the revolution, support social justice, and retool the state apparatus in the name of the ongoing revolution (Ricklefs 2001:323). These aims formed an excuse to sweep away legalism. Soekarno

6 In Indonesian, the General Elucidation reads "*Indonesia ialah negara yang berdasar atas hukum (rechtsstaat), tidak berdasarkan atas kekuasaan belaka (machtsstaat).*"

7 The 1945 Constitution did refer to separate elements of the Indonesian 'Rechtsstaat', such as regarding the independence of the judiciary. So according to the Elucidation to Art. 24-25, "Judicial authority is an independent authority, in the sense that it is beyond the influence of government." It is not clear what is meant by independent authority, which allowed for various interpretations of the 'Rechtsstaat' notion.

8 See for instance Art. 5, 12, and 22 of the 1945 Constitution.

9 See Art. 27, 28, 29, 31, 34 of the 1945 Constitution.

had a disregard for lawyers, which he considered to be instrumental in maintaining vested interests. What the country needed, was revolutionary law (*hukum revolusi*), he believed.

Under these circumstances, the legal system gradually collapsed. Although the colonial criminal code created enough room to silence opposition, Soekarno issued directives on political activity in 1963, stipulating that almost any political activity required the permission of the authorities, and on anti-subversion, which set a maximum gaol term of seven years for a wide range of activities that might be considered subversive, while denying suspects normal procedural protections.¹⁰ With the enactment of laws in 1964 and 1965 that empowered the President to interfere in judicial matters, even the separation of powers fell victim of Soekarno's revolutionary ideas.¹¹ Besides, corruption started to affect the courts required impartiality and limited their access. It was the beginning of a phenomenon that, as will be discussed in Section 3.3 below, would become widespread in later years, also outside the judiciary (Lev 2007:240-1).

Under Guided Democracy the Indonesian government undertook a few major substantive law reforms. These reforms aimed at ending the colonial and feudal system and instead imposing a national and socialist economic order. The natural resources sector, including land, was an important target of the reforms. In 1960, the reforms resulted in the enactment of the BAL.

Enacted in the period of Guided Democracy, the BAL is a product of its time. It is based on anti-colonial, nationalist, and socialist principles.¹² The BAL is as full of aspirations and symbolic meaning as a number of its key provisions are vague and ambivalent. The BAL stresses that land has a social function (*fungsi sosial*) and that particularly vulnerable groups should be protected.¹³ It therefore grants the state a strong authority in land matters. This authority finds its basis in the state's right of control (*hak menguasai dari negara*), which extends to all land, water, and airspace, including the natural resources contained therein.¹⁴ This right allows the state to 'hold the land in custody' as the representative of the Indonesian people (Gauta-

10 Presidential Directive No. 5/1963 on Political Activities (*Penetapan Presiden No. 5/1963 tentang Kegiatan Politik*); Presidential Directive No. 11/1963 on the Eradication of Anti-Subversive Activities (*Penetapan Presiden No. 11/1963 tentang Pemberantasan Kegiatan Subversi*).

11 Law No. 19/1964 on the Basic Principles of Judicial Power (*UU No. 19/1964 tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakim*) and Law No. 13/1965 on Justice in the Sphere of the General Courts and the Supreme Court (*UU No. 13/1965 tentang Pengadilan dalam Lingkungan Peradilan Umum dan Mahkamah Agung*).

12 Art. 5 BAL. For a general overview of the principles of the BAL please refer to: Harsono 2005:162-75.

13 Art. 6 and 11 BAL.

14 Art. 2 BAL.

ma & Harsono 1972). As long as the state has not granted any rights on state land, it holds a direct right of control over the land.¹⁵

Land matters are in principle under the authority of the central government. Within the framework of co-governance ('medebewind'), it can transfer the authority to exercise the state's right of control over land to the Provinces and the Districts/Municipalities. For these regional governments land can become a source of income.¹⁶ Besides, the central government can grant a (state) management right (*hak pengelolaan*) to authority bodies, state companies, and regional companies.¹⁷ This right is not explicitly acknowledged by the BAL, but is referred to in the General Elucidation.¹⁸ It is further elaborated by Ministerial Regulations.¹⁹

The state's right of control allows the state to grant individual land rights (*hak-hak perorangan*), to limit these rights, or to revoke them. If the state grants individual land rights, it still holds an indirect right of control over the land. Rights the state can grant, comprise four primary rights: an ownership right (*hak milik*), long-lease right (*hak guna usaha*), construction right (*hak guna bangunan*), and usage right (*hak pakai*). Someone holding an ownership right can grant a lease right (*hak sewa*), which forms a secondary right.²⁰ These rights resemble the rights that could be held on European land during the colonial period, but are not the same.²¹ For instance, the BAL makes no distinction between real rights (rights *in rem*) and relative rights (rights *in personam*), which are indeed unknown in the *adat* law on which the BAL is claimed to be based (Tan 1977:36-7).

15 In this context a distinction is often made between a broad conception and a narrow conception of the state right of control. For a narrow definition see for instance Art. 1(3) of GR No. 24/1997 on Land Registration (*PP No. 24/1997 tentang Pendaftaran Tanah*) (Harsono 2005:476-7).

16 Art. 2 BAL and Elucidation in conjunction with Art. 33(3) of the 1945 Constitution. It should be noted, however, that the state cannot lease out land, since it is not the owner of the land (Elucidation Art. 44 and 45 BAL).

17 The institution holding a management right can in turn grant individual land rights to third parties. Third parties can obtain an ownership right, construction right, or usage right to the land. State land should not be confused with land to which government institutions hold a usage right. Instead of a direct right to avail, it then holds a private land right. Such land forms an asset of the state, which falls under the responsibility of the Minister of Finance (Harsono 2005:271-80).

18 Section II, under 2 BAL.

19 See Minister of Home Affairs No. 5/1974 on Provisions on the Disposal and Provision of Rights for the Needs of Companies (*Permen Dalam Negeri No. 5/1974 tentang Ketentuan-Ketentuan mengenai Penyediaan dan Pemberian Hak untuk Keperluan Perusahaan*); Regulation of the Minister of Home Affairs No. 1/1977 on the Procedure for the Request and Settlement of Granting Rights on Land Plots with Management Rights and their Registration (*Permen Dalam Negeri No. 1/1977 tentang Tatacara Permohonan dan Penyelesaian Pemberian Hak atas Bagian-Bagian Tanah Hak Pengelolaan serta Pendaftaran*).

20 Other secondary rights that can be granted are the right to reclaim land (*hak membuka tanah*) and the right to collect forest products (*hak memungut-hasil-hutan*) (Art. 16 BAL).

21 See also Elucidation Art. 16 BAL.

In order to secure individual interests, private rights are part of a 'truly Indonesian' unified system of land rights, of which, as will be further discussed in Chapter 4, the primary rights must be registered in a legal registry.²² The BAL thus tries to bring an end to colonial dualism in land law.

While it is the objective of the BAL to create a unified system of land rights, it maintains one *adat* law figure: the community's right of avail (*hak ulayat* and its equivalents).²³ The legislator's wish to come to a unified system is obvious though: the community's right of avail is only acknowledged if apparently still existing and not contrary to the national interest and interests of the state, on the basis of the unity of the people, and if not contrary to higher state legislation (Haverfield 1999:51-4).²⁴

The state can limit the exercise of land rights (and claims) on the basis of spatial planning, as will be discussed in further detail in Chapter 5. The central government is responsible for national planning, on the basis of which the regional governments can undertake regional planning, which is formalised by the enactment of bylaws. According to the BAL, such bylaws only become valid after the approval, with regard to Provinces, by the President, with regard to Districts/Municipalities, by the Governors (*Gubernur*), and with regard to Sub-Districts, by the District-Heads/Mayors (*Bupati/Walikota*).²⁵

The state can revoke land rights if individuals (and families) hold too much land (land reform), or, as will be discussed in further detail in Chapter 6, if such revocation is in the public interest (*kepentingan umum*). In addition, land rights become forfeited if land qualifies as neglected land (*tanah terlantar*). In all cases, right holders are entitled to compensation.²⁶ As discussed in Chapter 2 and will also be discussed in further detail in Chapter 6, the state can also clear land if it is occupied without permission from the title holder.

In the first years after the enactment of the BAL, only few provisions of the law were implemented by other laws and lower regulations. Implementing legislation that was enacted included a government regulation in lieu of law on land reform, a government regulation on land registration, which will be discussed in further detail in Chapter 4, a law on the use of land without permission from the title holder and a law on the revocation of land rights, which will be discussed in further detail in Chapter 6.

22 See Art. 23, 32, and 38, in conjunction with Art. 19 BAL.

23 For a discussion of the conception of *adat* law as a universal principle and specific *adat* rights acknowledged by the BAL, see Harsono 2005:176-218.

24 Art. 3 BAL. See also General Elucidation II (3), which notably explains that an *ulayat* community cannot simply refuse that the state develops its land to realise large projects for the purpose of increasing food production or transmigration. Indeed, on the basis of Art. 33(3) of the 1945 Constitution, the state has the right and the duty to exploit land to the greatest benefit of the people.

25 Art. 14 and Elucidation and General Elucidation, Sub II, under 8 BAL.

26 Art. 10; Art. 17 in conjunction with Art. 7; Art. 18 BAL.

Guided democracy did not lead to stability. In fact, the tensions between the Indonesian Communist Party (*Partai Komunis Indonesia* or PKI), the military, and religious organisations only grew stronger. The unlawful occupation of land with the support of the PKI, discussed in Chapter 2, contributed to these tensions. State initiated land reforms, in later years, were equally controversial. When in 1965 lower ranked military allegedly affiliated to the PKI staged a coup against the army's supreme command, General Soeharto, the highest in rank to survive the coup, seized the opportunity to stage a counter-coup, eliminating the PKI and eventually removing Soekarno from office. The accompanying massacre of an estimated 500,000-1,500,000 alleged communists have in part been connected to the land reforms in previous years (Cribb 1990).

3.3 THE NEW ORDER: LAND LAW IN A 'DEVELOPMENTALIST' STATE

When in 1966 General Soeharto became the new President of the Indonesian Republic, there were strong hopes that the Indonesian 'Rechtsstaat' would be restored. Rhetorically, the Soeharto regime was indeed strongly committed to the rule of law.

The proclaimed goal of Soeharto and his so-called New Order regime was to build a modern, prosperous nation. He therefore adopted a 'developmentalist' approach to stimulate economic growth, focusing on state-led industrialisation, intensification of agriculture, and large scale exploitation of natural resources. So in 1967 and 1968, two laws were enacted on foreign and domestic investment respectively.²⁷ Economic objectives at the broadest level were enunciated by the Broad Outlines of Government Policy (*Garis-Garis Besar Haluan Negara* or GBHN) and the Five-Years Development Plans (*Rencana Pembangunan Lima Tahun* or REPELITA). The National Development Planning Agency (*Badan Perencanaan Pembangunan Nasional* or BAPPENAS) and the Regional Development Planning Agencies (*Badan Perencanaan Pembangunan Daerah* or BAPPEDA) at the provincial and district/municipal level would play a pivotal role in planning.²⁸

27 Law No. 1/1967 concerning Foreign Investment (*UU No. 1/1967 Penanaman Modal Asing*) and Law No. 6/1968 on Domestic Investment (*UU No. 6/1968 tentang Penanaman Modal Dalam Negeri*). These laws were slightly revised by Law No. 11/1970 on the Revision and Extension of Law No. 1/1967 on Foreign Investment (*UU No. 11/1970 tentang Perubahan dan Tambahan UU No. 1/1967 tentang Penanaman Modal Asing*) and Law No. 12/1970 on the Revision and Extension of Law No. 12/1967 on Domestic Investment (*UU No. 12/1970 tentang Perubahan dan Tambahan UU No. 6/1968 tentang Penanaman Modal Dalam Negeri*) respectively.

28 For a (critical) assessment of the New Order 'developmentalist' approach, see Robison 1986:174-5; Hill 2000; Rosser 2002.

Economic growth required political stability. After having purged the country of alleged communists, Soeharto thus built a centralist regime of authoritarian rule with strong military backing. Centralism was confirmed by the enactment of the 1974 Decentralisation Law, which left the regions very limited authority.²⁹ The judiciary remained far from independent, also after the enactment of a revised law on judicial power in 1970, which in fact created new room for executive interference.³⁰ Political activity was further curtailed, culminating in the enactment of five laws on political organisation in 1985, prescribing all non-governmental organisations to be formally based on the *Pancasila*, thus creating a so-called ‘*Pancasila*-democracy’, referring to the five principles forming Indonesia’s state ideology.³¹ As a result, the New Order was in fact just “a continuation of the model of guided democracy (by the executive) but without Soekarno’s ‘left-wing rhetoric’” (Lindsey 1999a:8). The 1945 Constitution proved a proper basis for this ‘integralist’ type of rule (Lindsey 1999b:17-8).³²

29 Law No. 5/1974 on the Principles of Government in the Regions (*UU No. 5/1974 tentang Pokok-Pokok Pemerintahan di Daerah*). For a discussion of this law and previously decentralisation laws, see Niessen 1999:41-88.

30 Law No. 14/1970 on the Basic Provisions for Judicial Power (*UU No. 14/1970 tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman*). Law No. 2/1986 and 6/1986, which replaced Law 14/1970, were of the same kind (Mulya Lubis 1999:174-5). It should be acknowledged that the law created the authority of the Supreme Court to review legislation below the rank of acts of parliament against higher legislation, however only if in relation to an appeal case (Art. 26 Law No. 14/1970). This authority was later confirmed by Art. 11(4) People’s Consultative Assembly Directive No. III/MPR/1978 on the Position and Working Relation of the Highest State Bodies with/or between High State Bodies (*TAP MPR No. III/MPR/1987 tentang Kedudukan dan Hubungan Tata-Kerja Lembaga Tertinggi Negara dengan/atau antar Lembaga-Lembaga Tinggi Negara*). See also Art. 31 Law No. 14/1985 on the Supreme Court (*UU No. 14/1985 tentang Mahkamah Agung*). From 1993, a request for review no longer had to be related to an appeal case, but could be initiated separately following a complaint or a request. See Regulation of the Supreme Court No. 1/1993 on the Right to Substantive Review (*Peraturan Mahkamah Agung No. 1/1993 tentang Hak Uji Materiil*) in conjunction with Art. 79 Law No. 14/1985.

31 Law No. 1/1985 on the Revision of Law No. 15/1969 on the Election of Members of the Consultative Assembly/Representative Councils as Earlier Revised by Law No. 5/1975 and Law No. 2/1980 (*UU No. 1/1985 tentang Perubahan atas UU No. 15/1969 tentang Pemilihan Anggota-Anggota Badan Permusyawaratan/Perwakilan Rakyat Sebagaimana Telah Diubah Dengan UU No. 5/1975 dan UU No. 2/1980*); Law No. 2/1985 on the Revision of Law No. 16/1969 on the Organisation and Mode of Operation of the People’s Consultative Assembly, the People’s Representative Council, and the Regional People’s Representative Councils as Earlier Revised by Law No. 5/1975 (*UU No. 2/1985 tentang Perubahan atas UU No. 16/1969 tentang Susunan dan Kedudukan MPR, DPR, dan DPRD Sebagaimana Telah Diubah dengan UU No. 5/1975*); Law No. 3/1985 on the Revision of Law No. 3/1975 on Political Parties and the Functional Groups (*UU No. 3/1985 tentang Perubahan atas UU No. 3/1975 tentang Partai Politik dan Golongan Karya*); Law No. 5/1985 on Referendum (*UU No. 5/1985 tentang Referendum*); Law No. 8/1985 on Civil Organisations (*UU No. 8/1985 tentang Organisasi Kemasyarakatan*).

32 For a further discussion on the collapse of the Indonesian ‘*Rechtsstaat*’ under the New Order, see Lev 2000a.

Meanwhile, the problem of 'corruption, collusion and nepotism' (*korupsi, kolusi dan nepotisme* or KKN) became epidemic in all branches and at all levels of government. From 1967 various half-hearted efforts were made to fight corruption through the establishment of anti-corruption institutions, but as a result of, *inter alia*, opposition from other state institutions and a lack of supporting legislation, they were little successful (Assegaf 2002:134-6). According to Lev, the opportunity of self-enrichment made available to supporters was actually the glue that kept the New Order structure together (Lev 2007:244).

While constitutional law provided the stability required for economic development, the New Order regime created a new framework of substantive laws and regulations that were to facilitate such development. Existing legislation was not always annulled, but often marginalised and reinterpreted.

Land law was also reformed to facilitate economic development, leading to significant legal inconsistencies. The socialist oriented BAL was maintained. As the law grants the state a broad authority in land matters, it was basically a suitable instrument to implement New Order 'developmentalist' policies. However, the BAL's reference to Indonesian socialism was reformulated as the strive for "a just and prosperous society in accordance with the Pancasila" (Harsono 2005:166-7). Furthermore, the BAL's scope was strongly limited by the enactment of various sectoral laws, such as the 1967 laws on forestry and mining and, as will be further discussed in Chapter 5, the 1992 law on spatial management, which also regulates spatial planning (including land use planning, which is an integrated part of spatial planning, which again forms an integrated part of spatial management).³³

Various prominent legal scholars argue that, despite the enactment of the above laws, the BAL, being an 'umbrella law', remains the highest law in hierarchy in the field of *agraria*.³⁴ This point of view is however untenable: the Indonesian legal system has never formally acknowledged the distinction between 'umbrella laws' and 'ordinary laws'.³⁵ In addition, with the enactment of various sectoral laws, the BAL can be considered itself a sectoral law, no longer applicable to tenure and use of natural resources, but only to tenure of non-forest land, which covers only 30 per cent of Indonesia's total land area (Wallace 2008:195).

33 Law No. 5/1967 on the Principles of Forestry (*UU No. 5/1967 tentang Pokok-Pokok Kehutanan*) and No. 11/1967 on the Principles of Mining (*UU No. 11/1967 tentang Pokok-Pokok Pertambangan*); Law No. 24/1992 on Spatial Management (*UU No. 24/1992 tentang Penataan Ruang*).

34 See for instance to Gautama 1993 [1960]; *Parlindungan* 1998:21-38; Harsono 2005:174-5; Sumardjono 2005.

35 Compare Explanatory Memorandum, General Elucidation, pt. I BAL, in which it is confirmed that formally there is no difference between the BAL and other acts of parliament.

As far as the BAL still played a role, much of its required implementing legislation was never enacted during the New Order. In 1994, Parlindungan estimated that the enactment of more than 40 laws and regulations were still awaited.³⁶ At the same time the body of detailed, subordinate legislation and 'soft law' grew, consisting of thousands of regulations, administrative standards, and announcements (Wallace 2008:201). Most of this material was produced by the National Land Agency (*Badan Pertanahan Nasional* or BPN, hereafter NLA), currently a non-departmental body residing under and directly responsible to the President, which holds authority over land matters. This legislation and 'soft law' reflected the New Order regime's extreme 'integralist' interpretation of key concepts of the BAL, such as the social function of land, the state's right of control, and public interest.³⁷ Examples of such legislation, which will be discussed in further detail in Chapters 6 and 7 respectively, are the Regulation of the Minister of Home Affairs and the Presidential Decision on land clearance for development in the public interest and the Regulations of the Minister of Home Affairs and later the NLA on site permits (*izin lokasi*), permits that allow developers to initiate commercial land clearance.

As will be discussed in detail in Chapters 4, 5, 6, and 7, the combination of i) a 'developmentalist', centralist-authoritarian, and corrupt New Order state, ii) a (marginalised) BAL granting a strong role to that state, and iii) a lack of implementing legislation that, as far as it was in place, reflected an extreme 'integralist' interpretation of key-concepts of the BAL resulted in the central government retaining strong discretionary powers in the land sector that could easily be and indeed were commonly abused in the name of 'development' (*pembangunan*), affecting the tenure security of ordinary landholders. In short, it proved hard for particularly the urban poor to register their land, the New Order government showed little concern for the interests of these people in spatial planning, security forces evicted landholders from their land against little or no compensation, and they assisted commercial developers to equally do so. As Fitzpatrick noted, development became a legal norm, which the bureaucracy and the courts used to subjugate formal procedures that were actually meant to protect landholders (Fitzpatrick 1997:199).

The above practices, and repressive politics and corruption in general, increasingly affected the regime's legitimacy. Combined with the rise of an educated middle class, Soeharto faced increasing criticism from students, opposition parties, NGOs, and even the military. As a response, he endorsed a policy of 'openness' (*keterbukaan*) in 1989. While never imple-

36 'Prof Dr AP Parlindungan: Lebih dari 40 Produk Hukum Perintah UUPA Belum Dibuat', *Kompas*, 12 August 1994.

37 See also Sumardjono in 'Penyempurnaan UUPA dan Sinkronisasi Kebijakan', *Kompas*, 24 September 2003.

mented to the full, for several years after 1989 the regime allowed for more dissent and somewhat loosened press restrictions.

The period of political openness was accompanied by two major legal reform measures. In 1991 the regime established Administrative District Courts (*Pengadilan Tata Usaha Negara* or PTUN) in District capitals / Municipalities and Administrative Courts of Appeal (*Pengadilan Tinggi Tata Usaha Negara* or PTTUN) in provincial capitals. The jurisdiction, powers of review, and remedial powers of the Administrative Courts were limited. They could only review government institutions' written decisions with legal effect that were individual, concrete, and final.³⁸ Furthermore there were only three grounds for review i) contravention of laws and regulations; ii) misuse of power, and; iii) arbitrariness.³⁹ A litigated decision in principle maintained its validity, but plaintiffs could demand its suspension.⁴⁰ The courts did not have the remedial power to revoke a decision, but they could *order* revocation of the decision.⁴¹ Finally, they could award damages, but such damages were limited to Rp. 5 million.⁴²

Two year later, in 1993, the Jakarta-based National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia* or Komnas HAM) was founded. It is to monitor compliance with human rights, to investigate violations, as well as to give (non-binding) opinions, judgements and advice to government bodies on the implementation of human rights.⁴³

Developments looked promising, but the period of political openness was short-lived. As soon as President Soeharto managed to reconsolidate his power, repression was re-imposed. Such was marked by the revocation of the press licences of the magazines *Tempo*, *Editor*, and *Detik* in 1994 (Aspinall 2005:47-8). Nonetheless, both the Administrative Courts and particularly the National Human Rights Commission continued in putting the executive branch under considerable scrutiny, not least in land cases (Lev 2007:244-6).

38 Art. 47 in conjunction with Art. 1(4) in conjunction with Art. 1(3) Law No. 5/1986 on Administrative Justice (*UU No. 5/1986 tentang Peradilan Tata Usaha Negara*).

39 Art. 53(2) Law No. 5/1986. The law did not allow the courts to review decisions for contravening general principles of proper administration. The minutes of parliamentary debates on the law show that the initial idea was to grant the courts the authority to review decisions on the basis of these principles, but that for political reasons, the government did not want to refer to them explicitly in the law. In practice, the courts have invoked this ground for review from the start. The Supreme Court has accepted this practice (Bedner 2009:215-6).

40 Art. 67 Law No. 5/1986.

41 Art. 116 Law No. 5/1986.

42 Art. 97(10) Law No. 5/1986 in conjunction with Art. 3 GR No. 43/1991 on Compensation and its Implementation in the Context of Administrative Justice (*PP No. 43/1991 tentang Ganti Rugi dan Tata Cara Pelaksanaan pada Peradilan Tata Usaha Negara*). For additional compensation, the plaintiff had to start a separate procedure at a General Court.

43 Art. 4, under c Presidential Decision No. 50/1993 on the National Human Rights Commission (*Keppres No. 50/1993 tentang Komisi Nasional Hak Asasi Manusia*).

3.4 POST-NEW ORDER: LAND LAW IN A DECENTRALISED 'RECHTSSTAAT'?

The 1997 monetary and economic crises created the right circumstances for students and other opposition groups to finally bring down Soeharto in May 1998.⁴⁴ Soeharto's resignation cleared the way for *reformasi* (reform). The IMF, which the Indonesian government had addressed for assistance in October 1997, and other donors added to the pressure. The People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR), People's Representative Council (*Dewan Perwakilan Rakyat* or DPR) as well as Soeharto's successor, President Habibie, responded by initiating an ambitious reform programme, also in relation to land. What follows is an overview of these reforms, starting with the general reforms, then regional autonomy, and finally land law reform. The reforms are only discussed as far as they may, in one way or the other, change practices in the land sector.

3.4.1 General reforms⁴⁵

The general reforms addressed the three main characteristics of New Order rule: 'developmentalism', authoritarian rule, and corruption. Indonesia's reorientation of its development policy was ambivalent though. The first priority of the new government was to overcome the economic crisis. The International Monetary Fund (IMF) and World Bank offered financial assistance and imposed reforms, many of which were informed by neo-liberal economic policy. Between 1997 and 2000, the Indonesian government signed 16 Letters of Intent to the IMF, which formed the basis for a series of structural adjustment measures (Hadiz & Robison 2005:225-6). Pressured by emerging people's power, the People's Consultative Assembly however at the same time enacted various directives for reforms toward a 'people's economy' (*ekonomi kerakyatan*).⁴⁶ A broad base of small and medium-scale enterprises was to form the main pillar of national economic development.⁴⁷

44 For an analysis of the role of the various oppositional forces in this historic event, see Aspinall 2005.

45 For a further discussion of these reforms, see Lindsey 2001; Lindsey 2002; Lindsey 2004; Stockmann 2004; Lev 2007; Lindsey & Santosa 2008.

46 See People's Consultative Assembly Directive No. X/MPR/98 on the Reform Principles for Development in the Framework of the Recovery and Normalisation of National Life (*TAP MPR No. X/MPR/1998 tentang Pokok-pokok Reformasi Pembangunan dalam Rangka Penyelamatan dan Normalisasi Kehidupan Nasional*) and People's Consultative Assembly Directive No. XVI/MPR/98 on Political Economy within Economic Democracy (*TAP MPR No. XVI/MPR/1998 tentang Politik Ekonomi dalam Rangka Demokrasi Ekonomi*). Directive No. X/MPR/98 eventually led to the enactment of a new law on development planning, Law No. 25/2004 on the National Development Planning System (*UU No. 25/2004 tentang Sistem Perencanaan Pembangunan Nasional*).

47 See Preamble, under: Consideration (b) and Art. 7 People's Consultative Assembly Directive No. XVI/MPR/98.

Indonesia's reorientation of its development policy was translated into the National Policy Guidelines and entailing development plans. The 2000-2004 National Development Programme (*Program Pembangunan Nasional* or PROPENAS), which succeeded REPELITA VI), gave priority to the development of a people's economy. According to the document, such an economy should combine economic growth with social values, including equity, quality of life, and environmental protection. Poverty alleviation and the provision of basic needs as well as the development of micro, small, and middle-size companies and cooperatives formed other policy objectives. A final objective relevant to mention here formed the development of infrastructure to further economic growth. From New Order experience, we know that these objectives can heavily collide in Indonesia. However, the Plan did not give notice of such risk, let alone mention any preventive measures.

General reforms also focussed on the dismantling of the authoritarian state. To that aim, the People's Consultative Assembly enacted several directives.⁴⁸ More importantly, as noted in Chapter 1, between 1999 and 2002 it amended the 1945 Constitution four times.⁴⁹ The document is now three times longer than it used to be. Although still containing some imperfections, it now clearly reflects rule of law ideology, creating a separation of powers, establishing democracy, and acknowledging human rights. The People's Representative Council and the central government supported the constitutional amendments by implementing legislation and programmes. What follows is an overview of the most important constitutional reforms.

First, the (discretionary) power of the executive branch was limited. The position of the armed forces (*Angkatan Bersenjata Republik Indonesia* or ABRI) weakened. It was split up into the Indonesian National Army (*Tentara Nasional Indonesia* or TNI) and the Police of the Indonesian Republic

48 See for instance People's Consultative Assembly Directive No. III/MPR/1998 on General Elections (*TAP MPR No. III/MPR/1998 tentang Pemilihan Umum*, later revised and extended by Directive No. XIV/MPR/1998); People's Consultative Assembly Directive No. XV/MPR/1998 on the Organisation of Regional Autonomy, Regulation, Division and Use of National Natural Resources in a Just Manner, and the Financial Relation between the Centre and Regions within the Framework of the Unitary Republic State of Indonesia (*TAP MPR No. XV/MPR/1998 tentang Penyelenggaraan Otonomi Daerah, Pengaturan, Pembagian, dan Pemanfaatan Sumber Daya Nasional yang Berkeadilan, serta Perimbangan Keuangan Pusat dan Daerah dalam Kerangka Negara Kesatuan Republik Indonesia*); People's Consultative Assembly Directive No. XVII/MPR/1998 on Human Rights (*TAP MPR No. XVII/MPR/1998 tentang Hak Asasi Manusia*); People's Consultative Assembly Directive No. VIII/MPR/1998 on the Revocation of People's Consultative Assembly Directive Np. IV/MPR/1983 on Referenda (*TAP MPR No. VIII/MPR/1998 tentang Pencabutan TAP MPR No. IV/MPR/1983 tentang Referendum*).

49 The 1945 Constitution was amended on the following dates: First Amendment, 19 October 1999; Second Amendment, 18 August 2000; Third Amendment, 9 November 2001; Fourth Amendment, 10 August 2002.

(*Polisi Republik Indonesia* or POLRI).⁵⁰ Moreover, the security apparatus' *dwifungsi* came to an end, which means the army and police no longer hold seats in the People's Consultative Assembly, People's Representative Council, Provincial Assemblies, or District/Municipal Councils (on both regional levels called the *Dewan Perwakilan Rakyat Daerah* or DPRD).

Second, a mechanism for the review of the constitutionality of legislation was established, potentially enhancing the legal framework's consistency. A Constitutional Court (*Mahkamah Konstitusi*) was founded, which reviews the constitutionality of acts of parliament against the Amended 1945 Constitution.⁵¹ However, this review mechanism only applies to legislation passed after the First Constitutional Amendment, i.e. after 19 October 1999. The Supreme Court's (*Mahkamah Agung*) authority to review legislation below the rank of acts of parliament was reinforced in the Constitution. However, legislation below the rank of acts of parliament can no longer be reviewed against higher legislation, but only against acts of parliament.⁵²

Third, democracy was strengthened. Not only members of the People's Representative Council and of the newly established Representative Council of the Regions (*Dewan Perwakilan Daerah* or DPD), which now together form the People's Consultative Assembly, and of the Provincial Assemblies and District/Municipal Councils are now directly elected, but also the President, provincial Governors, and District-Heads/Mayors.⁵³ Four of the five New Order laws on political organisation were revised, as a result of which there is no longer a limit on the number of political parties and on political activities.⁵⁴ Soekarno's heavily criticized anti-subversion law was

50 See Presidential Instruction No. 2/1999 on Policy Steps in the Framework of the Separation of the Police from the Armed Forces of the Republic of Indonesia (*Inpres No 2/1999 tentang Langkah-Langkah Kebijakan dalam Rangka Pemisahan Kepolisian Negara Republik Indonesia dari Angkatan Bersenjata Republik Indonesia*); Art. 30 Amended 1945 Constitution.

51 Art. 24C Amended 1945 Constitution; Law No. 24/2003 on the Constitutional Court (*UU No. 24/2003 tentang Mahkamah Konstitusi*).

52 Art. 24A Amended 1945 Constitution; Art. 11(2), under b Law No. 4/2004 on Judicial Power (*UU No. 4/2005 tentang Kekuasaan Kehakiman*); Art. I Law No. 5/2004 on the Revision of Law No. 14/1985 on the Supreme Court (*UU No. 5/2004 tentang Perubahan atas UU No. 14/1985 tentang Mahkamah Agung*) (revising Art. 31 Law No. 14/1985). The aforementioned Regulation of the Supreme Court No. 1/1993 on the Right to Substantive Review was replaced by Regulation No. 1/1999, which was again replaced by Regulation No. 1/2004.

53 See Art. 2(1), 6A, 18(3-4), 19(1), 22C(1), and 22E Amended 1945 Constitution.

54 See Art. 85 Law No. 3/1999 on General Elections (*UU No. 3/1999 tentang Pemilihan Umum*), revised by Law No. 12/2003 (*UU No. 12/2003 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD*), which was again revised by Law No. 10/2008; Art. 47 Law No. 4/1999 on the Legislature (*UU No. 4/1999 tentang Susunan dan Kedudukan MPR, DPR dan DPRD*), revised by Law No. 22/2003; Art. 21 Law No. 2/1999 on Political Parties (*UU No. 2/1999 tentang Partai Politik*), revised by Law No. 31/2002, which was again revised by Law No. 2/2008; Law No. 6/1999 on Referenda (*UU No. 6/1999 tentang Pencabutan UU No. 5/1985 tentang Referendum*), and, the law which has not yet been revised, Law No. 8/1985 on Societal Organisations (*UU No. 8/1985 tentang Organisasi Kemasyarakatan*).

repealed.⁵⁵ There is more room for public participation,⁵⁶ for instance in law-making.⁵⁶ Democracy was also strengthened by the enactment of the 1999 and 2004 Regional Autonomy Laws, discussed in Section 3.4.2 below.

Fourth, controlling mechanisms were improved. Existing courts became more independent from the executive. A new appointment procedure was introduced for members of the Supreme Court, in which the Judicial Commission (*Komisi Yudisial*) plays a central role.⁵⁷ The Supreme Court now not only has substantive but also administrative-financial control over the courts.⁵⁸ Judges of the General and Administrative Courts are appointed by the President at the proposal of the Chief Justice of the Supreme Court.⁵⁹ The jurisdiction of the judiciary broadened. Specialised courts were established, such as a Corruption Court, discussed below, and a Human Rights Court, which has jurisdiction in cases of gross human rights violations.⁶⁰ Review powers and remedial powers of the judiciary, particularly of the Administrative Courts, broadened too. Several general principles of proper administration now explicitly form criteria for review by these courts and the mechanism ensuring the implementation of their judgements was strengthened.⁶¹

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- 55 Law No. 26/1999 on the Annulment of the Law on the Eradication of Anti-subversive Activities (*UU No. 26/1999 tentang Pencabutan UU No. 11/PNPS/Tahun 1963 tentang Pemberantasan Kegiatan Subversi*).
- 56 Art. 53 Law 10/2004 on Lawmaking (*UU No. 10/2004 tentang Pembentukan Peraturan Perundang-Undangan*).
- 57 See Art. 24A(2-4) and 24B(1) Amended 1945 Constitution; Law No. 22/2004 on the Judicial Commission (*UU No. 22/2004 tentang Komisi Yudisial*). Notably, in August 2006 the Constitutional Court stripped the Judicial Commission of its oversight role by ruling that the law establishing the body did not clearly state what it would monitor.
- 58 Art. I Law No. 35/1999 on the Revision of Law No. 14/1970 on the Basic Provisions for Judicial Power (*UU No. 35/1999 tentang Perubahan atas UU No. 14/1970 tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman*) (revising Art. 11 Law No. 14/1970); Art. 13 Law No. 4/2004.
- 59 Art. I Law No. 8/2004 on the Revision of Law No. 2/1986 on General Jurisdiction (*UU No. 8/2004 tentang Perubahan atas UU No. 2/1986 tentang Peradilan Umum*) (revising Art. 16 Law No. 2/1986); Art. I Law No. 9/2004 on the Revision of Law No. 5/1986 on Administrative Justice (*UU 9/2004 tentang Perubahan atas UU No. 5/1986 tentang Peradilan Tata Usaha Negara*) (revising Art. 16 Law No. 5/1986).
- 60 Art. 4 Law No. 26/2000 on the Human Rights Court (*UU No. 26/2000 tentang Pengadilan Hak Asasi Manusia*).
- 61 Art. I Law No. 9/2004 (revising Art. 53(2) under b and 116(4-5) Law No. 5/1986). Regarding the general principles of proper administration, the Elucidation to Art. 53(2) under b Law No. 5/1986 refers to principles mentioned in Law No. 28/1999 on the Organisation of a State Clean and Free of Corruption, Collusion and Nepotism (*UU No. 28/1999 tentang Penyelenggaraan Negara yang Bersih dan Bebas dari Korupsi, Kolusi dan Nepotisme*). These principles are: the principles of legal certainty, proportionality, disciplined state management, transparency, professionalism, and accountability. Bedner has noted that the latter four principles were unknown in the Administrative Courts' practice and seem hard to apply in the context of the Administrative Courts. In addition, Law No. 28/1999 does not refer to the previous grounds of review of misuse of power and arbitrariness. However, a quick review of recent rulings of Administrative Courts indicates that the grounds are still applied (Bedner 2009:216-7).

The Indonesian judiciary itself appeared aware that there was a need for major reforms. In October 2003 the Indonesian Supreme Court announced a comprehensive reform plan for the structure and the management of the judiciary. The reform plan is set down in five reports that are collectively referred to as the Supreme Court Blueprints, which have been designed by partnership between state institutions and civil society. The Blueprints focus on the following themes: i) the Supreme Court, ii) the Judicial Commission, iii) court personnel management, iv) court financial management, v) permanent education of judges, vi) the Commercial Court, vii) the Anti-Corruption Court, viii) the Human Rights Court, and, ix) the needs assessment. In 2004, the Supreme Court established a Judicial Reform Committee, consisting of the leadership of the Supreme Court as well as civil society representatives, which has the task to implement the Blueprints.

Alternative institutions of dispute settlement were founded, such as the National Ombudsman Commission (*Komisi Ombudsman Nasional* or KON).⁶² Upon complaints by citizens, the Commission has the authority to ask for clarification on, to monitor, or to investigate acts of government institutions, including judicial institutions.⁶³ The position and mandate of the National Human Rights Commission was strengthened. It now has equal status to other state institutions. Besides, the Commission receives funding from the National Budget instead of the Budget of the Cabinet Secretariat, making it accountable to the People's Representative Council instead of the Cabinet and thus less susceptible to political interference by the latter. Aside from existing functions, the law expands the Commission's functions in relation to protecting and promoting human rights (Herbert 2008:460-1).⁶⁴ It also has the authority to investigate gross human rights violations.⁶⁵

Fifth, as noted in Chapter 1, Indonesia has now formally committed itself to first as well as second generation human rights, including the right to adequate housing. Various international treaties were ratified, including the International Covenant on Social, Economic, and Cultural Rights (ICESCR), the most important treaty to recognise the right to adequate housing. Furthermore, the Amended 1945 Constitution includes a bill of rights, which is based on the Universal Declaration of Human Rights.⁶⁶ It also contains a provision on the right to an adequate standard of living and the (derived) right to adequate housing.⁶⁷ The provision states *inter alia* that

62 Presidential Decision No. 44/2000 on the National Ombudsman Commission (*Keppres No. 44/2000 tentang Komisi Ombudsman Nasional*).

63 Art. 2 Presidential Decision No. 44/2000.

64 Law No. 39/1999 on Human Rights (*UU No. 39/1999 tentang Hak Asasi Manusia*), in particular Art. 75-99.

65 Art. 18 Law No. 26/2000.

66 Art. 28A-J Amended 1945 Constitution.

67 Art. 28H(1) Amended 1945 Constitution.

every person has a right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment.⁶⁸ Finally, implementing legislation supporting human rights has been enacted.⁶⁹ The establishment of the above specialised Human Right Court and the strengthening of the position of the National Human Rights Commission potentially contribute to the realisation of these rights.

The general reforms also dealt with the problem of KKN. In 1998 the People's Consultative Assembly enacted anti-corruption Directive No. XI/MPR/1998.⁷⁰ This was followed by the enactment of two anti-KKN laws in 1999.⁷¹ It led to, *inter alia*, the creation of an Audit Commission on Wealth of State Officials (*Komisi Pemeriksa Kekayaan Penyelenggara Negara* or KPKPN). The Commission has the task and authority to carry out audits of the wealth of state officials, receive reports from the public on corruption and gather evidence.⁷² Furthermore, an anti-money laundering law was enacted, which led to the establishment of an Anti-Money Laundering Agency (*Pusat Pelaporan dan Analisis Transaksi Keuangan* or PPATK).⁷³ It assists the Office of the Chief Prosecutor, the National Police and the Corruption Eradication Commission (to be discussed below) in corruption matters by obtaining financial transaction reports. In 2002 another anti-KKN law was enacted, which established in addition to the existing prosecution service and court structure a Corruption Eradication Commission (*Komisi Pemberantasan Tindak Pidana Korupsi* or KPK) and a specialised Corruption Court (*Pengadilan Khusus Tindak Pidana Korupsi* or Tipikor).⁷⁴ The Corruption Eradication Commission supervises and coordinates the handling of corruption cases, including their investigation and prosecution. The Corruption Court

68 In Indonesian the section reads: *Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan.*

69 See for instance Law No. 40/1999 on the Press (*UU No. 40/1999 tentang Pers*), which supports the freedom of press.

70 People's Consultative Assembly Directive No. XI/MPR/1998 on the Organisation of a State Clean and Free of Corruption, Collusion and Nepotism (*TAP MPR No. XI/MPR/1998 tentang Penyelenggaraan Negara Yang Bersih dan Bebas Korupsi, Kolusi, dan Nepotisme*).

71 Law No. 28/1999; Law No. 31/1999 on the Eradication of Corruption Offences (*UU No. 31/1999 tentang Pemberantasan Tindak Pidana Korupsi*). Law No. 31/1999 was revised by Law No. 20/2001 on the Revision of Law No. 31/1999 on the Eradication of Corruption Offences (*UU No. 20/2001 tentang Pemberantasan Tindak Pidana Korupsi*). See also Assegaf 2002.

72 Art. 10-9 Law No. 28/1999 in conjunction with Presidential Decision No. 81/1999 on the Establishment of an Assets Auditing Commission (*Keppres No. 81/1999 tentang Pembentukan Komisi Pemeriksa Kekayaan Penyelenggara Negara*). See also Sherlock 2002.

73 Law No. 15/2002 on Money Laundering Offences (*UU No. 15/2002 tentang Tindak Pidana Pencucian Uang*). The Law was amended by Law No. 23/2003.

74 Law No. 30/2002 on the Corruption Eradication Commission (*UU No. 30/2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi*). The Law in part forms an implementation of Art. 43 Law No. 31/1999. See also Assegaf 2002.

has exclusive competence in corruption cases.⁷⁵ Notably, in the first years after their establishment, the above institutions were located in Jakarta only.⁷⁶

3.4.2 Regional autonomy⁷⁷

The 1999 Regional Autonomy Laws

One of the most significant reform initiatives of the Post-New Order period, deserving separate attention, was the enactment of two 1999 regional autonomy laws (hereafter the 1999 RALs), which came into effect on 1 January 2001.⁷⁸ Contrary to the previous 1974 Decentralisation Law, the 1999 RALs led to substantial administrative and political (or democratic) decentralisation from the central government to the Provinces and particularly the Districts/Municipalities as well as new fiscal relations between these government levels.

Administrative decentralisation involved the devolution of government authorities. To the Districts/Municipalities, Law No. 22/1999 devolved (obligatory) authorities in eleven important sectors, including land.⁷⁹ To the Provinces, on the contrary, few authorities were devolved and deconcentrated, namely: (1) authorities for issues that cross border between two or more districts/municipalities; (2) authorities not yet, or not able to be handled by the districts/municipalities; (3) authorities transferred from the central government by means of deconcentration.⁸⁰ Besides, the central government could assign certain tasks to regions (and villages) as part of

75 Notably, in August 2006 the Constitutional Court ruled that the Corruption Court was unconstitutional. In order to prevent the Corruption Court would lose its competence in favour of the General Courts, the People's Representative Council had to enact a new law by 19 December 2009. The law, Law No. 46/2009 on the Corruption Court (*UU No. 46/2009 tentang Pengadilan Tindak Pidana Korupsi*), was enacted on 29 October 2009. It replaces Art. 53-62 of Law No. 30/2002.

76 On 17 December 2010, the Chief Justice of the Supreme Court established Corruption Courts in Bandung, Semarang and Surabaya (see Decree of the Chief Justice of the Supreme Court No. 191/KMA/SK/XII/2010). On 7 February 2011, he established 14 other Corruption Courts in Medan, Padang, Pekanbaru, Palembang, Tanjung Karang, Serang, Yogyakarta, Banjarmasin, Pontianak, Samarinda, Makassar, Mataram, Kupang and Jayapura (see Decree of the Chief Justice of the Supreme Court No. 022/KMA/SK/II/2011).

77 For a further discussion of the regional autonomy laws, see Bell 2001; Rifai 2002; Fane 2003; Ryaas Rasyid 2003; Schmitt 2008.

78 The 1999 RALs consist of Law No. 22/1999 on Regional Governance (*UU No. 22/1999 tentang Pemerintahan Daerah*) and Law No. 25/1999 on the Financial Balance between the Central Government and the Regions (*UU No. 25/1999 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah*). The laws found their constitutional basis in Art. 18, 18A, and 18B of the 1945 Amended Constitution.

79 Art. 11 Law No. 22/1999.

80 Art. 9 Law No. 22/1999.

co-governance.⁸¹ Notably, the Provinces and Districts/Municipalities became independent and no longer had a hierarchal relationship to each other.⁸²

Although involving a far-reaching form of decentralisation, the 1999 RALs did not render the central government powerless. It retained authority over foreign policy, defence and security, the administration of justice, monetary and fiscal affairs, religion and 'other sectors'. In 'other sectors' the authority to develop policy for planning and control was included.⁸³ Otherwise, its role concentrated on supporting and supervising the regions. The central government provided guidelines, guidance, training, direction, and supervision.⁸⁴ It could thus intervene if the regions failed to meet certain standards, for instance if a regional government did not enforce prevailing legislation or if it enacted a bylaw that contravened the public interest or higher legislation.⁸⁵ However, bylaws no longer had to be approved by the Governor or the Minister of Home Affairs prior to their enactment; they could be annulled afterwards.⁸⁶

The transfer of authority to the regions not only involved administrative decentralisation, but also empowered the Provincial Assemblies and District/Municipal Councils, thus leading to political or democratic decentralisation. Their legislative and budgetary powers were reinforced, and their control over the executive branch strengthened. The representative bodies got the authority to elect the regional heads (Governors and Districts-Heads/Mayors).⁸⁷

Decentralisation had to be accompanied with the transfer of means and the authority to the regions to gain their own revenues.⁸⁸ Law No. 25/1999 therefore set out new fiscal relations between the central government and the regional governments. In relation to devolved authorities the regional governments have at their disposal several regional revenue sources, namely the Balance Fund (*Dana Perimbangan*), Regionally Generated Revenues (*Pendapatan Asli Daerah* or PAD), Regional Loans (*Pinjaman Daerah*), and Other Legal Revenues (*Lain-lain Penerimaan yang Sah*).⁸⁹ These sources

81 Art. 13 Law No. 22/1999.

82 Art. 4(2) Law No. 22/1999. For this reason, the regions were no longer called Province Region Level I and District/Municipality Region Level II, but simply Province and District/Municipality (Art. 121 Law No. 22/1999).

83 Art. 7(2) Law No. 22/1999.

84 Art. 112 and Elucidation Law No. 22/1999.

85 Art. 7 GR No. 25/2000; Art. 114 Law No. 22/1999.

86 Law No. 22/1999 required that the provisions on support and supervision were implemented by government regulation. This requirement was met by the enactment of GR No. 20/2001 on Support and Supervision of the Implementation of Regional Governance (*PP No. 20/2001 tentang Pembinaan dan Pengawasan atas Penyelenggaraan Pemerintahan Daerah*).

87 Art. 18-9 Law No. 22/1999.

88 Art. 8; General Elucidation, under 8 Law No. 22/1999.

89 Art. 3 Law No. 25/1999.

are all part of the Regional Budget (*Anggaran Pendapatan dan Belanja Daerah* or APBD).⁹⁰

Several of the regional revenues are land related. The Balance Fund is particularly important, as it defines land as a source of revenues. It includes the Revenues Sharing Fund (*Dana Bagi Hasil*).⁹¹ This fund comprises revenues from Land and Building Tax (*Pajak Bumi dan Bangunan* or PBB) as well as Land and Building Right Retribution (*Bea Perolehan Hak atas Tanah dan Bangunan* or BPHTB), of which the Districts/Municipalities receive a major share.⁹² In many Districts/Municipalities, Regionally Generated Revenues include revenues from licensing, such as land use permits (*izin peruntukan penggunaan tanah* or IPPT), building permits (*izin mendirikan bangunan* or IMB), and permits for the use of municipal land and/or buildings (*izin pemakaian tanah dan/atau bangunan* or IPTB). Moreover, since the Districts/Municipalities now also have the authority to grant site permits for commercial land clearance, as will be discussed below, the revenue base of the licensing system has broadened.

Various scholars have noted that Law No. 25/1999 did not lead to fiscal decentralisation. The central government continued to control all major tax bases and thus the majority of revenues of the regional governments. Besides, it still held the authority over development spending (Fane 2003:161). Silver et al. suggest that the regional government's financial reliance on the central government even increased (Silver, et al. 2001:347). At the same time, however, the regional governments got more fiscal discretion, since most revenues were no longer earmarked. Besides, there was more room to create regional taxes, although the central government could annul bylaws on this matter.

It should be noted that the 1999 RALs were enacted under exceptional circumstances. There were rising demands in various Provinces, particularly in those possessing much of Indonesia's natural resources, for region-

90 Art. 2(1) Law No. 25/1999.

91 Art. 7-8 Law No. 25/1999.

92 Provinces receive 16.2 per cent of Land and Building Tax revenues, districts/municipalities 64.8 per cent, while 9 per cent is reserved to cover the cost of collection. Another 10 per cent goes to the central government, of which 65 per cent is equally distributed among all districts/municipalities, while 35 per cent is distributed as incentives to districts/municipalities of which realized contributions in the previous year exceeded estimated revenues from certain sectors. Provinces receive 16 per cent of the Land and Building Right Retribution revenues, districts/municipalities 64 per cent, while 20 per cent goes to the central government. See Art. 2, 4, 5 GR No. 104/2000 on the Balancing Fund (*PP No. 104/2000 tentang Dana Perimbangan*), as revised by GR No. 84/2001 on the Revision of GR No. 104/2000 (*PP No. 84/2001 tentang Perubahan PP No. 104/2000*) in conjunction with Art. 6(2-4) Law No. 25/1999). See also GR No. 16/2000 on the Distribution of Land and Building Tax Revenues between the Central Government and the Regions (*PP No. 16/2000 tentang Pembagian Hasil Penerimaan Pajak Bumi dan Bangunan antara Pemerintah Pusat dan Daerah*); Law No. 20/2000 on the Revision of Law No. 21/1997 on Land and Building Right Retribution (*UU No. 20/2000 tentang Perubahan atas UU No. 21/1997 tentang Bea Perolehan Hak atas Tanah dan Bangunan*).

al autonomy. Such demands coincided with severe pressure from international donors to implement decentralisation. This gave the ruling party Golkar reason to support the initiative, for it could draw regional electorates. The team within the Department of Home Affairs responsible for the initiative (the so-called Team of Seven – *Tim Tujuh*), consisting of key Golkar figures, included US-trained political scientists who could mediate international decentralisation policy with local agendas (McCarthy 2005:157).

Considering the exceptional circumstances under which the 1999 RALs were enacted and the widespread confusion it created within the state apparatus as to who should do what, it is no surprise that shortly after they had been enacted, they met with growing calls for revision. There was however no agreement as to whether this revision should lead to further decentralisation or to recentralisation. In 2000 and 2002, the People's Consultative Assembly passed directives calling for a prompt revision of the laws toward further decentralisation.⁹³ This was also required by the Second Amendment of the 1945 Constitution of August 2000 regarding the direct elections of the regional heads. At the same time national departments and agencies, which under the laws had lost so many of their authorities to the regions, lobbied for recentralisation. Voices for recentralisation gained influence when in 2001 Megawati Sukarnoputri was elected President. She had strong reservations about regional autonomy, believing it endangered the Indonesian unitary state her father had created (Barr, *et al.* 2006:51).

The resistance against regional autonomy was nowhere as strong and nowhere as successful as in the land sector.⁹⁴ Initially it seemed that in this sector, in accordance with Law No. 22/1999, the Districts/Municipalities would obtain exclusive authority, particularly at the expense of the NLA.⁹⁵ As early as in December 1999, the newly elected President Abdurrahman Wahid promulgated Presidential Decision No. 154/1999 on the basis of which the role of the NLA was marginalised by putting it under the

93 People's Consultative Assembly Directive No. IV/MPR/2000 on Recommendations on the Policy and Implementation of Regional Autonomy (*TAP MPR No. IV/MPR/2000 tentang Rekomendasi Kebijakan dan Penyelenggaraan Otonomi Daerah*); People's Consultative Assembly Directive No. VI/MPR/2002 on Recommendations on the Reporting of the Implementation of People's Consultative Assembly Directives by the President, Supreme Advisory Council, People's Representative Council, Supreme Audit Board, and Supreme Court to the People's Consultative Assembly's Annual Session of the Year 2002 (*TAP MPR No. VI/MPR/2002 tentang Rekomendasi atas Laporan Pelaksanaan Putusan MPR Republik Indonesia oleh Presiden, DPA, DPR, BPK, MA pada Sidang Tahunan MPR Republik Indonesia Tahun 2002*).

94 See also Thorburn 2004.

95 Art. 11(2) Law No. 22/1999.

leadership of the Minister of Home Affairs. The Minister was instructed to bring the tasks and functions of the NLA in accordance with the RALs.⁹⁶

The new balance of power in the land sector was affirmed by Government Regulation No. 25/2000, which divided the authorities between the central government and the Provinces.⁹⁷ In relation to the land sector, it referred to a number of matters over which the central government would keep authority, matters that basically remained limited to the formulation of standards and guidelines.⁹⁸ The central government also retained some authority in relation to spatial planning. It determined national spatial planning on the basis of spatial planning of the Provinces and Districts/Municipalities.⁹⁹ The provinces only retained (limited) authority in the field of spatial management. They determined spatial management in agreement with the Districts/Municipalities. The provinces also supervised the implementation of spatial management.¹⁰⁰

The Districts/Municipalities held all remaining authorities over land matters, but it would take years before these authorities were specified.¹⁰¹ The reason for the delay was pure political. Fearing to lose its powers, the NLA started to lobby for a revision of the above legislation – in part successfully.¹⁰² This resulted in a legal limbo, particularly because of the enactment and promulgation of contradictory legislation, as we shall see below.

One month after the 1999 RALs came into effect, President Wahid promulgated Presidential Decision No. 10/2001, which stated that pre-existing legislation pertaining to land matters would remain in force until all implementing legislation of Government Regulation No. 25/2000 had been promulgated. Meanwhile the districts/municipalities had been invited, on

96 Art. I-II Presidential Decision No. 154/1999 on the Revision of Presidential Decision No. 26/1988 on the National Land Agency (*Keppres No. 154/1999 tentang Perubahan atas Keppres No. 26/1988 tentang Badan Pertanahan Nasional*).

97 GR No. 25/2000 on Authorities of the Government and the Authorities of the Provinces as Autonomous Regions (*PP No. 25/2000 tentang Kewenangan Pemerintah dan Kewenangan Propinsi sebagai Daerah Otonom*).

98 The central government retained the authority to determine: i) the requirements for the issuance of land rights; ii) the requirements for land reform; iii) the standards for land administration; iv) the guidelines regarding the costs for land related services; v) the Basic Framework for a National Cadastre and the surveying policy for Order I and II of this Framework (Art. 2(3), under 14 GR No. 25/2000). See also Art. 3 of the implementing Presidential Decision No. 95/2000 on the National Land Agency (*Keppres No. 95/2000 tentang Badan Pertanahan Nasional*), which granted the NLA no more than a (coordinating) role in the development of land law and policy.

99 Art. 2(3), under 13 GR No. 25/2000.

100 Art. 3(12) GR No. 25/2000.

101 GR No. 25/2000 prescribed these authorities to be specified within six months after the enactment of the RALs, a period during which the regional governments could not employ their authorities, nor enact bylaws regarding the implementation of these authorities (Art. 9 and Elucidation GR No. 25/2000).

102 For instance, several critical articles regarding decentralisation in the sector of land were published on the NLA's website. See for example Anshari 2004.

the basis of Presidential Decision No. 5/2001, to formulate their authorities in a 'positive' list, to be acknowledged by the central government.¹⁰³ Both decisions contradicted the 1999 RALs, which devolved full authority over land matters to the Districts/Municipalities and certainly did not require the acknowledgement of this authority (World Bank 2003b:12; 2003c:11).

The Association of Local Governments (APEKSI) called upon the Minister of Home Affairs and Regional Autonomy to withdraw Presidential Decision No. 10/2001, but to no avail (Rieger, *et al.* 2001:21). In fact, President Wahid promulgated Presidential Decision No. 62/2001, which assured the authority of the NLA in the regions until all legislation pertaining to land had been enacted. The enactment of this legislation should take no more than two years.¹⁰⁴ This step was motivated by the argument that the Districts/Municipalities were not yet ready to hold these authorities. It is clear, however, that this presidential decision again conflicted with the 1999 RALs (World Bank 2003c10-1).¹⁰⁵

In August 2003 the Districts/Municipalities' authorities over land matters were finally specified. On the basis of Presidential Decision No. 34/2003, which also implemented People's Consultative Assembly Directive No. IX/MPR/2001 to be discussed below, the number of functions was limited to nine in total, which were mostly related to spatial planning and land clearance.¹⁰⁶ The Presidential Decision again contradicted the 1999

103 See Presidential Decision No. 5/2001 on the Acknowledgement of the Authorities of Districts/Municipalities (*Keppres No. 5/2001 tentang Pelaksanaan Pengakuan Kewenangan Kabupaten/Kota*). It is said that most districts/municipalities complied, but some included authorities that belonged to the central government, while others left out some of the obligatory authorities of Art. 11 Law No. 22/1999.

104 Art. I, under 6 Presidential Decision No. 62/2001 on the Revision of Presidential Decision No. 166/2000 on the Position, Tasks, Functions, Authorities, Organisation, and Mode of Operation of Non-Departmental State Bodies as Revised Several Times, Lastly by Presidential Decision No. 42/2001 (*Keppres No. 62/2001 tentang Perubahan atas Keppres No. 166/2000 tentang Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi, dan Tata Kerja Lembaga Pemerintah Non Departemen sebagaimana Telah Beberapa Kali Diubah Terakhir dengan Keppres No. 42/2001*).

105 The Decision was part of a series of Presidential Decisions regarding the tasks and structure of Non-Departmental Institutions (*Lembaga Pemerintah Non Departemen* or LPND). See Presidential Decision No. 166/2000; 173/2000; 178/2000; 17/2001; 42/2001; 60/2001; 62/2001; 103/2001. See also Presidential Decision No. 110/2001 on the Unit Organisation and Tasks of Echolon I Non Departmental Institutions (*Keppres No. 110/2001 tentang Unit Organisasi dan Tugas Eselon I Lembaga Pemerintah Non Departemen*), which was revised by Presidential Decisions Nos. 3/2002; 4/2002; 12/2005, and; 52/2005.

106 See Art. 2 Presidential Decision No. 34/2003 on the National Policy in the Sector of Land (*Keppres No. 34/2003 tentang Kebijakan Nasional di Bidang Pertanahan*). The implementation of these authorities are further explained by Decision of the Head of NLA No. 2/2003 on the Norms and Standards concerning the Mechanism for the Organisation of the Authorities of the Government in the Sector of Land that are Implemented by the Districts/Municipalities (*Keputusan Kepala BPN No. 2/2003 tentang Norma dan Standar Mekanisme Ketatalaksanaan Kewenangan Pemerintah di Bidang Pertanahan yang Dilaksanakan oleh Pemerintah Kabupaten/Kota*).

RALs. Moreover, Districts/Municipalities already held most of the authorities mentioned in the presidential decision on the basis of sectoral legislation. Despite the contradictory status of the decision, it appears that most Districts/Municipalities accepted the revision.

The 2004 Regional Autonomy Laws

In 2004 the 1999 RALs were replaced altogether by Law No. 32/2004 and 33/2004 (henceforth 2004 RALs), which came into effect on 15 October 2004.¹⁰⁷ Considering the contradictory forces behind the idea of regional autonomy, it is no surprise that the 2004 RALs are rather ambivalent, leading to both administrative recentralisation and political decentralisation.

From an administrative perspective, the 2004 RALs involve two main revisions. First, in nearly all government matters the Districts/Municipalities have to share their authorities with the Provinces, including the – what is now called – mandatory authority over land matters.¹⁰⁸ Second, the 2004 RALs factually recreate a hierarchal order between the different regional administrative levels. It is stated that the relationship between the central government, the Provinces, and the Districts/Municipalities as well as between the different regional administrative levels are interrelated, interdependent, and synergic (or mutually supporting).¹⁰⁹ The hierarchal relationship is thus not re-imposed explicitly. However, since the provincial Governors may at the same time hold the deconcentrated central government authority to *inter alia* coordinate and to monitor and supervise the districts/municipalities, this is certainly the case in practice (Isra 2007).¹¹⁰ So prior to their enactment, provincial and district/municipal bylaws regarding the regional budget, taxes and revenues, as well as spatial planning should be evaluated by the relevant Ministers and the Governor respectively.¹¹¹

From a political perspective, the 2004 RALs involve two other important revisions. The regional heads are elected directly by citizens, who thus now have influence on the governance process.¹¹² Besides, the central government can unilaterally suspend Governors or District-Heads/Mayors if

107 Law No. 32/2004 on Regional Governance (*UU No. 32/2004 tentang Pemerintahan Daerah*); Law No. 33/2004 on the Financial Balance between the Central Government and Regional Governance (*UU No. 33/2004 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Pemerintahan Daerah*). Since its enactment, Law No. 32/2004 has been amended by Law No. 8/2005 and Law No. 12/2008 respectively. The amendments are not relevant to be discussed in the context of this book.

108 Art. 13-14 Law No. 32/2004.

109 Art. 11(2) Law No. 32/2004. See also General Elucidation, which speaks of a harmonious relationship between the different administrative levels.

110 Art. 217, under c in conjunction with Art. 10(5), under b Law No. 32/2004.

111 Art. 189 in conjunction with Art. 185-6 Law No. 32/2004.

112 Art. 56-67 Law No. 32/2004.

they have been sentenced to more than five years imprisonment, or for corruption, terrorist acts, subversion, and/or threatening state security.¹¹³ The Provincial Assemblies and District/Municipal Councils are thus stripped of two of the basic authorities that they previously held.

From a fiscal perspective, the 2004 RALs involve few revisions. Basically Law No. 33/2004 confirms the fiscal relations between the central government and the regions that were created by Law No. 25/1999. At the same time it diminishes the risk of a 'fiscal gap' between the authorities assigned to the regions and the revenues available to implement these authorities (Schmitt 2008:185). The regions receive practically the same share of land related revenues as before.

The 2004 RALs led to the enactment of a new series of legislation regarding the divisions of authority in the land sector, but this was a slow process. It took another two years before the tasks and structure of the NLA were finally specified. In 2006, the successor of Megawati Soekarnoputri, President Susilo Bambang Yudhoyono promulgated Presidential Decision No. 10/2006, on the basis of which the NLA no longer falls under the leadership of the Minister of Home Affairs but has a separate Head again.¹¹⁴ More importantly, the decision leads to recentralisation in the land sector. The NLA holds tasks in the land sector on the national, regional, and sectoral level. Furthermore it holds a non-limitative number of 21 functions, mostly related to land administration, but also the implementation of spatial planning, the implementation of land law reform, and the handling of land disputes.¹¹⁵ Not surprisingly, the presidential decision has been strongly criticised by representative organisations of regional governments and regional assemblies/councils for limiting their authorities in the field of land and for contradicting the 2004 RALs, arguments that indeed hold true.¹¹⁶ This time it was the Association of Provincial Governments (APPSI) that called upon the Minister of Home Affairs to withdraw the presidential decision, but again to no avail.

Only in 2007, Government Regulation No. 25/2000 discussed above was replaced by Government Regulation No. 38/2007.¹¹⁷ According to *Kompas* daily, one of the reasons for the delay was a disagreement between the

113 Art. 30-1 Law No. 32/2004.

114 Presidential Decision No. 10/2006 on the National Land Agency (*Perpres No. 10/2006 tentang Badan Pertanahan Nasional*). The Decision annuls the Decisions mentioned in footnote 105 on the tasks and structure of Non-Departmental Institutions as far as related to the NLA (Art. 55).

115 Art. 2-3 Presidential Decision No. 10/2006.

116 See 'Badan Pertanahan Nasional Tak Mampu Benahi Birokrasi', *Kompas*, 17 May 2006; 'Pertanahan, Kewenangan yang Masih Diperebutkan', *Kompas*, 16 June 2006; 'Pemerintah Daerah Minta Hak Mengatur Investasi', *Hukum Online*, 29 June 2006.

117 GR No. 38/2007 on the Division of Government Affairs between the Government, Provincial Governments, and District / Municipal Governments (*PP No. 38/2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintahan Daerah Propinsi, dan Pemerintahan Daerah Kabupaten/Kota*).

NLA and the Ministry of Home Affairs about the transfer of authority over land matters. The NLA wanted to base the division of authorities in the land sector on the BAL, while the Ministry of Home Affairs referred to the 2004 RALs.¹¹⁸ The Ministry of Home Affairs appears to have won the argument: Government Regulation No. 38/2007 confirms what is stipulated in the 2004 RALs, namely that the regions hold the mandatory authority over land matters.¹¹⁹ However, the attachment to the Government Regulation limits the regions' functions in the land sector to the same nine functions referred to in Presidential Decision No. 34/2003, which as discussed above are mostly related to spatial planning and land clearance. Meanwhile, Presidential Decision No. 10/2006 on the National Land Agency has not been revoked.

In sum, while the 1999 RALs promised to be a groundbreaking initiative of administrative, political, and perhaps even some type of fiscal decentralisation, they also resulted in much confusion, particularly in the land sector. Implementing legislation involving the division of authorities strongly limited administrative decentralisation, not least in relation to land matters. The 2004 RALs led to administrative recentralisation, also in the land sector. Contradictory implementing legislation has resulted in a somewhat inconsistent framework regarding the division of authorities over land between the central government, the Provinces, and the Districts/Municipalities. That being said, the 1999 RALs have indeed led to political decentralisation, to which the 2004 RALs further contributed, and both the 1999 and 2004 RALs have created new fiscal relations between Jakarta and the regions.

3.4.3 *Land law reform*

Indonesia's constitutional reforms, such as those related to human rights, suggested that much of its land law should be revised. This was confirmed by Law No. 22/1999, which stated that all existing sectoral laws, including the BAL, should be adjusted to the RALs.¹²⁰ Obviously this would not be easy. As discussed above, the BAL is in principle centralist in nature. However, in view of the intensive lobbying for land law reform, in the first years of the Post-New Order, by NGOs such as the Consortium for Agrarian Reform (*Konsortium Pembaruan Agraria* or KPA) and influential academics, such reform initially only seemed a matter of time.

A prelude to structural land law reform was supposed to be People's Consultative Assembly Directive No. IX/MPR/2001, which was promul-

118 See 'Pertanahan, Kewenangan yang Masih Diperebutkan', *Kompas*, 16 June 2006.

119 Art. 7 GR No. 38/2007.

120 Art. 133 Law No. 22/1999.

gated in November 2001.¹²¹ It recognized that management of land and natural resources had caused environmental deterioration, an imbalance in the structure of control, ownership, use and exploitation of those resources, and given rise to conflict. The directive also acknowledged that existing legislation was overlapping and contradictory.¹²² This situation required legal reforms, based on twelve principles, including supremacy of the law, decentralisation, democracy and participation, prosperity and justice for the people, as well as the recognition of human rights.¹²³ Legal reforms should focus on the revision of laws and regulations, land reform regarding both agricultural and urban land, collection of data regarding land through inventory and registration, dispute settlement, institutional strengthening and strengthening of authority, and the creation of funds for such reforms.¹²⁴ Notably, the directive does not refer to the BAL in any way whatsoever.

It should be noted that the legal status of People's Consultative Assembly Directive No. IX/MPR/2001 was weak. On the basis of the Third Amendment to the 1945 Constitution, which was passed on the same day as the Directive, the People's Consultative Assembly no longer has the right to enact directives that are binding to other state organs. Furthermore, in 2004 the legal status of People's Consultative Assembly Directive No. IX/MPR/2001 became uncertain, since on the basis of Law No. 10/2004, People's Consultative Assembly Directives no longer make part of the hierarchy of legislation.¹²⁵ According to the People's Consultative Assembly, the Directive however remains valid until the legislation it calls for has been enacted (Bedner & Van Huis 2008:187).¹²⁶

After two years, the NLA was assigned the task, on the basis of Presidential Decision No. 34/2003 discussed above, to draft several bills in the land sector, including a bill revising the BAL.¹²⁷ It should have completed

121 People's Consultative Assembly Directive No. IX/MPR/2001 on the Renewal of Agraria and Natural Resources Management (*Ketetapan MPR RI No. IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumberdaya Alam*). For a description of the process that led to the promulgation of the directive as well as criticism on the directive, see Lucas & Warren 2003.

122 Preamble, under c-d People's Consultative Assembly's Directive No. IX/MPR/2001.

123 Art. 5 People's Consultative Assembly Directive No. IX/MPR/2001.

124 Art. 6(1) People's Consultative Assembly Directive No. IX/MPR/2001.

125 Art. 7 Law No. 10/2004 on Lawmaking (*UU No. 10/2004 tentang Pembentukan Peraturan Perundang-Undangan*).

126 Art. 4(11) People's Consultative Assembly Directive No. I/MPR/2003 on the Review of the Material and Legal Status of Directives of the Temporal People's Consultative Assembly and the People's Consultative Assembly of the Indonesian Republic of the Year 1960 to the Year 2002 (*Ketetapan MPR RI No. I/MPR/2003 tentang Peninjauan Terhadap Materi dan Status Hukum Ketetapan Majelis Permusyawaratan Rakyat Sementara dan Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Tahun 1960 sampai dengan Tahun 2002*).

127 Art. 1, under a Presidential Decision No. 34/2003.

this task before 1 August 2004.¹²⁸ Although the content of the Presidential Decision was not fully to the liking of the NGOs that had lobbied for the People's Consultative Assembly Directive, the legal status of the Presidential Decision is indisputably stronger than that of People's Consultative Assembly Directive No. IX/MPR/2001.¹²⁹

By the end of 2004, the NLA presented a bill, drafted by Vice-Head of the NLA and Gadjah Mada University Professor Maria Soemardjono, which would replace the BAL altogether. The bill met with strong criticism from academics such as Trisakti University Professor Boedi Harsono, who in the 1950s was involved in the drafting of the BAL, and agrarian and environmental NGOs such as KPA. Referring to the fact that the drafting of the BAL had taken twelve years, Boedi Harsono found the bill a product of hasty work.¹³⁰ He agreed that the BAL contained some weaknesses, but this did not mean it should be replaced altogether. NGOs found the bill too much state and investor oriented. It did not recognise the community right of avail, confirmed sectoralism in the field of *agraria*, created room for the monopolisation of control over land and natural resources, and the envisaged simplification of the system of land rights would only add to existing confusion.¹³¹ Trisakti University and NGOs both presented alternative bills revising certain parts of the BAL, but basically keeping it intact.¹³²

The disagreement between the NLA, academics, and NGOs over the direction of the BAL's revision resulted in a deadlock. NGOs tried to convince the People's Representative Council to reject the bill of the NLA.¹³³ They were successful in this effort. The bill of the NLA did not receive a majority vote. Next, the NLA proposed an alternative bill, which consisted of an amendment to the BAL. This bill met the same fate as its predecessor.

Meanwhile little other land law has been reformed. As will be discussed in Chapter 5, a bill revising the 1992 Spatial Management Law was enacted in 2007. Otherwise, land law reform remained limited to the promulgation of lower legislation related to participation and transparency in

128 Art. 4 Presidential Decision No. 34/2003.

129 NGOs that had lobbied for the promulgation of People's Consultative Assembly Directive No. IX/MPR/2001 were concerned that the Presidential Decision did not implement the People's Consultative Assembly Directive as intended. The development of a land information and management system was believed to lead to an extension of the survey and registration of land through the World Bank supported Land Administration Project (LAP), discussed in further detail in Chapter 4 (Lucas & Warren 2003:1233).

130 'Meski Masuk Prolegnas, RUU SDA Belum Tentu Selesai Tahun Ini', *Hukum Online*, 23 March 2005.

131 'KPA: RUU Sumber Daya Agraria Dinilai Memiliki Empat Kelemahan', *Hukum Online*, 24 March 2005.

132 'Tiga Lembaga Ajukan Draf Revisi UU Pokok Agraria', *Hukum Online*, 13 October 2004; 'Jalan (Tak) Panjang Membahas RUU Sumberdaya Agraria', *Hukum Online*, 18 November 2004.

133 'Meski Masuk Prolegnas, RUU SDA Belum Tentu Selesai Tahun Ini', *Hukum Online*, 23 March 2005; Soal Agraria, Seharusnya Fokus pada Amanat MPR, *Kompas*, 30 May 2005.

spatial management, land clearance for development in the public interest, site permits for commercial land clearance, which, as will be discussed in Chapter 5-7, does not reflect the ambitious land law reform programme formulated in People's Consultative Assembly Directive No. IX/MPR/2001 or even comply with the Amended 1945 Constitution and the ratified ICESCR.

3.4.4 *Access to justice and legal empowerment*

The national reforms discussed above were closely related to various programmes supported by international donor organisations. GTZ for instance played a supporting role in the implementation of regional autonomy by the Department of Home Affairs. Since 1998, strengthening the rule of law has been a major point of interest for various international donor organisations, such as the Australian Agency for International Development (AusAID), the Netherlands Directorate-General for International Cooperation (DGIS), USAID, the World Bank, and the UNDP. While the former three have intensively collaborated with the judiciary, the latter two have set up access to justice initiatives that include legal empowerment components.

The World Bank launched in collaboration with BAPPENAS the Justice for the Poor (J4P) programme in 2002. Aside from research activities and building partnerships, a great variety of operational activities are undertaken under World Bank's J4P programme. First, it includes the Mediation and Community Legal Empowerment (MCLE) programme, which has the objective to empower communities to handle a variety of disputes and legal problems. The programme is implemented in Aceh and the Moluccas.¹³⁴ Second, under J4P, the Revitalisation of Legal Aid (RLA) pilot programme is being implemented. It has the objectives to establish a legal aid network for the poor in Indonesia, increase the capacity of community organisations to provide mediation, legal aid and education via village paralegals and mediators, and strengthen national and local government policies regarding legal aid for communities in Indonesia. The RLA programme has been operating since 2005 in Lampung, West Java and West Nusa Tenggara. The third programme operating under J4P is the Women's Legal Empowerment (WLE) programme. It has the objectives to increase women's knowledge and awareness of the law, particularly in relation to women's rights, increase the capacity of legal institutions to deliver training and provide effective services, increase the role and capacity of paralegals who work directly with the community, and increase policy advocacy

134 The MCLE programme is a component of the Support for Poor & Disadvantaged Areas (SPADA) programme, which facilitates local governments to accelerate development through increasing local social and economic capacity and strengthening governance and planning processes.

to realise women's rights. A WLE pilot programme was carried out from April 2005 to December 2008 in Brebes, Cianjur and West Nusa Tenggara. Since then, the programme expanded to East Nusa Tenggara, West Kalimantan, North Maluku, Jakarta, and Aceh. The Strengthening Access to Non-State Justice programme is another programme that is part of J4P. Its objective is to strengthen best practice informal dispute resolution in West Sumatra and West Nusa Tenggara. The fifth programme under J4P to mention is the Local Government Regulation programme. Its goal is to increase the quality of local government regulations and strengthen drafting processes and harmonization, specifically focused on public service delivery regulations. Strengthening Access to Justice in Aceh is the sixth programme under J4P. The objective of the programme is to support poor Acehnese communities to obtain fair and effective dispute resolution, through a time-efficient, unbiased and humane procedure.¹³⁵

As noted in Chapter 1, in collaboration with BAPPENAS, UNPD initiated the Legal Empowerment and Assistance for the Disadvantaged (LEAD) programme in 2007. The programme include five steps: i) establishing a grant-making facility focused on civil society empowerment, ii) the provision of civil society support and capacity development, iii) ensuring legal and human rights empowerment at the grassroots level; iv) fostering a human rights-based approach with regard to grantee activity development and implementation; and v) constructively engaging state authorities. Grant activities seek to strengthen public awareness and legal empowerment, with an emphasis on, inter alia, land and natural resources and local governance issues, and assist the legal services community to provide free legal assistance to the most vulnerable and marginalised. Further, the programme facilitates community participation, and oversight of local government policies and service provision. The programme was initiated as a pilot project in North Maluku, Central Sulawesi, and Southeast Sulawesi.¹³⁶

Both the World Bank and the UNDP have been involved in the development of a comprehensive National Strategy on Access to Justice (*Strategi Nasional Akses terhadap Keadilan* or SNATK) for inclusion in the 2010-2014 National Medium Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN 2010-2014). In this framework, BAPPENAS initiated in collaboration with the UNDP, the World Bank, and the Van Vollenhoven Institute the joint programme Building Demand for Legal and Judicial Reform 2007- 2010: Strengthening Access to Justice in 2008. As part of the programme, case studies have been conducted in various regions in Indonesia focusing on various themes, including land. These findings have

135 This description was derived from the J4P page at www.worldbank.org.

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

been translated into policy advice through policy-dialogues that bring together the most important stakeholders.¹³⁷

3.5 CONCLUSION

This chapter gave a general overview of Indonesian land law in the context of Indonesia's changing rule of law environment. It forms a first effort to assess to what extent kampong dwellers in Bandung are protected against arbitrary behaviour by the state or private parties, which is a prerequisite for tenure security.

The general framework of Indonesian land law is formed on the basis of article 33(3) of the 1945 Constitution by the 1960 BAL, which was enacted during Guided Democracy, when the Indonesian 'Rechtsstaat' was under severe pressure and Soekarno was promoting Indonesian socialism, including 'revolutionary law'. As any law, the BAL is a product of its time. In order to protect vulnerable groups, it stresses that land has a 'social function'. To realise this function, the law grants the state a strong authority in land matters in the form of a state's right of control. It allows the state to grant individual land rights to landholders, to limit these rights, or to revoke them. The BAL required the enactment of implementing legislation, which only partly occurred though.

Guided Democracy was followed by the New Order period in 1965, marked by stability and economic growth. The Soeharto regime adopted a 'developmentalist' approach of state-led industrialisation, intensification of agriculture, and large-scale exploitation of natural resources. To implement this policy, it built a centralist regime of authoritarian rule with strong military backing. Throughout the years, the New Order was increasingly marked by KKN. While authoritarian interpretations of constitutional law provided the stability required for economic development, the New Order regime created a new framework of substantive laws and regulations that were to facilitate such development. Existing legislation was not always annulled, but often marginalised and reinterpreted. Land law was also reformed to facilitate economic development, leading to significant legal inconsistencies. The socialist oriented BAL was maintained. As the law grants the state a broad authority in land matters, it was basically a suitable instrument to implement New Order 'developmentalist' policies. The BAL's importance was however strongly reduced by the enactment of other legislation. Furthermore, little legislation implementing the BAL was enacted. What little implementing legislation was enacted reflected the New Order regime's 'integralist' interpretation of key concepts of the BAL. The combination of these conditions resulted in the central government

137 This description was derived from the Van Vollenhoven Institute's Access to Justice page at www.law.leiden.edu.

retaining strong discretionary powers in the land sector, which could easily be and indeed were abused in the name of 'development', affecting the tenure security of ordinary landholders.

The fall of Soeharto in 1998 marked the beginning of an ambitious political and legal reform programme, leading to a reformulation of Indonesia's development policy, a dismantling of the authoritarian state, and various measures against KKN. The 1945 Constitution was amended four times and implementing legislation was revised or enacted, thus strengthening the Indonesian 'Rechtsstaat', including more democracy, a clearer separation of powers, and better human rights protection. The right to adequate housing is now explicitly acknowledged in the Amended 1945 Constitution and through the ratification of major international human rights treaties. One of the most important initiatives following these constitutional reforms was the enactment of the 1999 RALs, revised by the 2004 RALs, which resulted in the devolution of tasks, authorities, political power, and resources from the central government to the districts/municipalities. Implementing legislation has however led to much confusion and has severely limited the scope of regional autonomy in the land sector. Land law has only been revised to a limited extent, despite calls for fundamental reform. It thus still contains clear trails of Guided Democracy and New Order ideology.

It follows from the above that compared to the New Order period, kampong dwellers in Bandung now seem more protected against arbitrary behaviour by the state or private parties. At least on paper, the rule of law environment in which land law is embedded, has improved significantly. The effect of this improvement may however be limited by the fact that land law itself has not yet been reformed. In order to assess this affect, the following chapters therefore take a closer look at the law and practice of four specific areas that are relevant in relation to the issue of tenure security: land registration (Chapter 4), spatial planning (Chapter 5), land clearance by the state (Chapter 6) and land clearance by commercial developers (Chapter 7).

4.1 INTRODUCTION

As noted in Chapters 1 and 2, three categories of land tenure are generally found in urban kampongs: formal tenure, semi-formal tenure, and informal tenure. Following the aim of the Basic Agrarian Law (BAL) to unify the system of land law, the latter two tenure categories are to be formalized through the registration of land, which is intended to enhance legal tenure security. In order to promote this, the Indonesian government has initiated large-scale land registration programmes. The first programme dates back to 1981, and several have followed. With the support of the World Bank and AusAID, the Indonesian government started the Land Administration Project (LAP) in 1994. The project takes a *de Soto*-like approach of providing land titles to low-income landholders at low cost, as well as institutional reforms. The LAP and other programmes have resulted in the registration of millions of land parcels, particularly in cities.

While impressive in scale, little is known about the contribution of land registration (through titling programmes) to enhancing legal tenure security for the urban poor. To fill this knowledge gap, this chapter presents an analysis of the law and practice of land registration in kampongs in Bandung.

The chapter is divided into eight sections. The next section gives a short overview of the legal system of land registration in Indonesia. This is followed by Section 4.3, which assesses whether the urban poor are actually able to do sporadic registration, by which this chapter assesses *ex-ante* the feasibility of land registration programmes. Section 4.4 discusses these programmes in general, and the LAP in Bandung in particular, describing the activities carried out. The following section studies the extent to which the urban poor actually have had a chance to participate in the LAP. Most importantly, Section 4.6 assesses the extent to which registration of land through programmes such as the LAP contributes to legal tenure security of participants – by providing them with legally valid titles that allow them to reside on the land and which can stand the test of time. In closing, this

1 An earlier version of this chapter was published as Reerink, G.O. (2009), 'Land Registration Programs for Indonesia's Low-Income Slum Dwellers, Need, Reach, and Effect in the Kampongs of Bandung', In: J.M. Ubink, W.A. Assies & A. Hoekema (ed.), *Legalising Land Rights, Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*, Leiden: Leiden University Press, p. 527-48.

Chapter discusses some recent legal and institutional reforms in relation to land registration, after which it concludes.

4.2 THE SYSTEM OF LAND REGISTRATION IN INDONESIA

The BAL's provisions on land registration are implemented by Government Regulation No. 24/1997 and various lower regulations.² On the basis of this legal framework, both semi-formal and informal tenure can be integrated into the unified system of land rights, thus becoming formal tenure, be it in different ways. Semi-formal tenure can be formalised by the legal conversion of colonial land rights, while informal tenure can be formalized by the state granting rights to individuals and legal bodies over land to which it has a right of control (state land).³ Indonesian land law does not acknowledge the concept of adverse possession (also known as 'squatters' rights'), which means that obtaining a right to another person's land by continuous tenure for a certain period of time is impossible (Harsono 2005:156-8).

Upon registration, landholders receive a land certificate. According to Harsono, only then is the legal conversion of colonial land rights into one of the statutory rights mentioned in the BAL actually validated (Harsono 2005:324). Implementing legislation can determine criminal sanctions for right holders on failure to register, but these have never been formulated.⁴ There is a time limit for the registration of former European rights; all of those should have been registered before 1980. If not, the land reverts back to the domain of the state.⁵ No such time limit applies to the registration of colonial adat ownership rights.

As discussed in Section 3, authorities in the field of land administration, including land registration, were never devolved to the regions. These authorities are therefore still assigned to the National Land Agency (*Badan*

2 GR No. 24/1997 on land registration (*PP No. 24/1997 tentang Pendaftaran Tanah*). The government regulation replaced GR No. 10/1961 on Land Registration (*PP No. 10/1961 tentang Pendaftaran Tanah*). See also Art. 65 GR No. 24/1997.

3 Art. 22(2), 31, 37, 41 Law No. 5/1960 in conjunction with Regulation of Department of Home Affairs No. 6/1972, GR No. 24/1997 and, Regulation of the Department of Home Affairs No. 5/1973.

4 Art. 52(2) in conjunction with Art. 19 Law No. 5/1960.

5 Art. 1 Presidential Decision No. 32/1979 on the General Policy in the Framework of Granting New Rights on Land that was Previously Subject to Converted Western Rights (*Keppres No.32/1979 tentang Pokok Kebijaksanaan dalam Rangka Pemberian Hak Baru atas Tanah Asal Konversi Hak-Hak Barat*) in conjunction with Art. 55(1) Law No. 5/1960. See also Art. 3(1) Decision of the Minister of Home Affairs No. 3/1979 on Provisions regarding the Request and Granting of New Rights on Land that was Previously Subject to a Converted European Right (*Keppmendagri No. 3/1979 tentang Ketentuan-Ketentuan mengenai Permohonan dan Pemberian Hak Baru atas Tanah Asal Konversi Hak-Hak Barat*).

Pertanahan Nasional or BPN, hereafter the NLA).⁶ The NLA is a non-departmental state body under the direct responsibility of the President. It has branch offices at the provincial and district/municipal level – the so-called Land Offices (*Kantor Pertanahan*) (Harsono 2005:122-4). Land Deed Officials (*Pejabat Pembuat Akte Tanah* or PPAT), who can be Sub-District Heads (*Camat*) or public notaries (*notaris*), assist the NLA with the registration of land by drawing up land deeds.⁷ These deeds form the major source of information for maintaining the land register.⁸

The initial registration of land rights, also called adjudication (*adjudikasi*), is a major task of the NLA. Such registration can be organized 'sporadically' or 'systematically'. Sporadic registration is the individual or joint registration of one or several land plots at the initiative of (a) right holder(s).⁹ Systematic registration means that several plots in the same area (a Village or City Quarter) are registered at the same time, at the initiative of the government. This form of registration is organized by a special Adjudication Committee (*Panitia Ajudikasi*).¹⁰ The Indonesian government gives priority to systematic registration in the cities.¹¹

For the initial registration of semi-formal rights (registration of 'old' rights), several land documents, such as colonial land tax documentation, can form (supportive) evidence.¹² In principle, these documents should relate to the person claiming the land right, not previous landholders. Otherwise, that person should have other documents proving the historical chain of ownership. In case the evidence is incomplete, witnesses or the person claiming the right can give testimony.¹³ If someone wishes to register a semi-formal right but cannot present proper evidence, the 1997 Government Regulation allows him to register the right if the land has been in his possession (or the possession of possible predecessors) for 20 years or more, in good faith and in openness, as confirmed by a reliable witness; and if no one objects after the announcement that the right is to be registered (Harsono 2005:495-8).¹⁴

6 Art. 19 Law No. 5/1960 in conjunction with Presidential Decision No. 26/1988 on the NLA (*Keppres No. 26/1988 tentang BPN*). On land registration, see Art. 6(1) GR No. 24/1997.

7 Art. 6(2) GR No. 24/1997 in conjunction with GR No. 37/1998.

8 General Elucidation GR No. 24/1997.

9 Art. 1(10) and (11); General Elucidation GR No. 24/1997.

10 Art. 8 GR No. 24/1997 in conjunction with Art. 48-54 Ministerial Regulation No. 3/1997.

11 General Elucidation GR No. 24/1997; General Elucidation, Pt. IV Law No. 5/1960.

12 Examples of other documents that can form (supportive) evidence are: a counterpart original of a notary deed concerning a European ownership right; a private contract concerning the transfer of land that is witnessed by an *adat* leader / a village head / a neighbourhood head, which is created before the 1997 Government Regulation has been enacted; a deed drawn up by a Land Deed Official, which has not yet been registered; a letter from the Land and Building Tax Department clarifying the history of the land, and; other written evidence regarding the land.

13 Art. 24(1) (including Elucidation) GR No. 24/1997.

14 Art. 24(2) GR No. 24/1997. Evidence means documents mentioned in Art. 24(1).

The initial registration of rights that have been granted by the state on state land (registration of 'new' rights) is much easier. It only requires the right holder to prove his right with a decision of an NLA official who is competent to grant a land right (Harsono 2005:325).¹⁵

Registration of new rights may be easy, but obtaining such rights is generally not. As discussed in Chapter 2, over the years much state land has been squatted and kampongs have developed. Part of this land is former European land, of which the rights have not been registered before 1980. Kampong dwellers occupying such state land in principle have a priority right over third parties to request a new land right.¹⁶ For kampong dwellers occupying land that is not state land, obtaining a new land right is more complicated. The existing land right should become forfeited first, after which the land reverts back to the domain of the state and the state can grant a new land right. As discussed in Chapter 3, land rights become forfeited if land qualifies as neglected land. Such is the case if the land is deliberately not used in accordance with its physical condition or with the form and goal of the right to which it is subject or not well taken care of. Rights that can become forfeited include state management rights, private rights as well as legal claims to hold the land that have not yet become rights. It is the Head of the NLA who, for instance after a reporting by citizens, decides whether land qualifies as neglected land.¹⁷

Whether concerning old or new rights, in both cases initial registration involves costs. These consist of variable costs for the surveying of the land, and Rp. 25,000 for the registration itself.¹⁸ Poor people are exempted from registration costs.¹⁹ People qualify as poor if their income is below Regional Minimum Wage (*Upah Minimum Regional* or UMR) as defined by the dis-

15 Art. 23 GR No. 24/1997 in conjunction with Regulation of the Department of Home Affairs No. 6/1972 and Regulation of the Department of Home Affairs No. 5/1973.

16 Art. 5 Presidential Decision No. 32/1979 in conjunction with Regulation of the Minister of Home Affairs No. 3/1979 on the Provisions for the Request and Granting of New Rights on Land that was Previously Subject to Converted Western Rights (*Permendagri No. 3/1979 tentang Ketentuan-Ketentuan mengenai Permohonan dan Pemberian Hak Baru atas Tanah Asal Konversi Hak-Hak Barat*).

17 Art. 3, 8, 9, 14 GR No. 36/1998 on the Regulation and Exploitation of Neglected Land (*PP No. 36/1998 tentang Penertiban dan Pendayagunaan Tanah Terlantar*) in conjunction with Art. 27(a, under 3), 34(e), and 40(e) BAL. GR No. 36/1998 is implemented by Decision of the Head of the NLA No. 24/2002 on the Implementing Provisions of GR 36/1998 (*Keputusan Kepala BPN No. 24/2002 tentang Ketentuan Pelaksanaan PP No. 36/1998*).

18 See Art. 4 and Art. 5 in conjunction with Annex GR No. 46/2002 on the Tariffs on Non-Tax State Revenues Applicable to the NLA (*PP No. 46/2002 tentang Tarif atas Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada BPN*).

19 Art. 21(1) GR No. 46/2002. Compare Art. 19(4) Law No. 5/1960 and Art. 61(2) of GR No. 24/1997. Contrary to the provision in the BAL, the one in GR No. 24/1997 states that people who cannot afford registration can be exempted from *part of or all* the costs for registration.

trict/municipal government as evidenced by a written statement from the RW (RT) Heads that is approved by the City-Quarter Head.²⁰

A landholder who obtains a new right on state land not only has to pay registration fees, but also Entry Money (*Uang Pemasukan*) and tax in the form of a Fee for Acquisition of Rights to Land and Buildings (*Bea Perolehan Hak atas Tanah dan Bangunan* or BPHTB). The amount of Entry Money depends on the agricultural or non-agricultural status of the land, the land's Sale Value as a Tax Object (*Nilai Jual Obyek Pajak* or NJOP) on the basis of which the Land and Building Tax (*Pajak Bumi dan Bangunan* or PBB) is calculated, and the type of right that is granted. To obtain an ownership right on residential land, a new formal landholder pays 2 per cent of the estimated value minus an exemption base.²¹ People who are in a weak economic position get a 50 per cent reduction.²² People qualify as being in a weak economic position if their income is below Regional Minimum Wage as defined by the municipal government as evidenced by a written statement from the RW (RT) Heads that is approved by the City-Quarter Head.²³ The tax rate is at 5 per cent over the market value of the property, or if this value is unknown or lower than the estimated value determined for Land and Building Tax, 5 per cent of that estimated value, minus a tax exemption base.²⁴ A new formal landholder is exempted from this tax if the value of the property is less than Rp. 60,000,000 or if the district/municipal government has determined a lower tax exemption base, less than that amount.²⁵

In order to keep the system of land registration reliable, a formal landholder should report any change in the legal status of registered land to the NLA.²⁶ This is called derivative registration. Most transfers of land rights can in principle only be registered if proved by a land deed drawn up by a Land Deed Official (Harsono 2005:508-9).²⁷ The registration procedure of

20 See Art. 1(3) Decision of the Head of the NLA No. 1/2003 on the Technical Implementation of Art. 21 GR No. 46/2002 (*Keputusan Kepala BPN No. 2/2003 tentang Teknis Pelaksanaan Pasal 21 PP 46/2002*).

21 The exemption base is defined by the Department of Finance for each region (Art. 1(13) GR No. 46/2002).

22 Art. 15-21 GR No. 46/2002.

23 Art. 4(3) Decision of the Head of the NLA No. 1/2003.

24 Art. 5 and 8 Law No. 21/1997 on the Costs for Obtaining a Right to Land and Buildings (*UU No. 21/1997 tentang Bea Perolehan Hak atas Tanah dan Bangunan*); Art. 2(2), under b, and Art. 6 Law No. 20/2000 on the Revision of Law No. 21/1997 (*UU No. 20/2000 tentang Perubahan UU No. 21/1997*). The exemption base is defined by the Department of Finance for each region (Art. 1(13) GR No. 46/2002).

25 GR No. 113/2000 on the Definition of the Value of an Acquired Tax Object Not Subject to Costs for Obtaining a Right to Land and Buildings (*PP No. 113/2000 tentang Penentuan Besarnya Nilai Perolehan Objek Pajak Tidak Kena Pajak Bea Perolehan Hak atas Tanah dan Bangunan*) in conjunction with Art. 7 Law No. 20/2000.

26 Art. 36 GR No. 24/1997 in conjunction with Art. 94 Ministerial Regulation No. 3/1997.

27 Art. 37 GR No. 24/1997. Failure to draw up a land deed in case of any legal change in the status of the land thus does not necessarily mean that this change is void, but the new right holder will meet difficulties to register it (Harsono 2005:515-6).

land rights transferred by inheritance is somewhat different. In cases where registered land is inherited, the heir is required to provide the NLA with the land certificate, a death certificate of the former formal landholder, and written evidence that he or she is the heir of that formal landholder.²⁸ Significantly, the Law sets no time limit for the provision of this documentation.

As with initial registration, derivative registration involves costs; consisting of registration costs and tax. Again as with initial registration, these costs are Rp. 25,000; but in this case low-income people are not exempted.²⁹ However, if an heir registers as the new right holder within six months of the former right holder passing away, they are exempted from registration costs.³⁰ Just as in case of the initial registration of new rights, a person who obtains land and/or buildings is also required to pay 5 per cent tax over the market value of the property, or if this value is unknown or lower than the estimated value determined for Land and Building Tax, 5 per cent of that estimated value, minus a tax exemption base.³¹ Someone obtaining property through inheritance or bestowal from a first degree relative pays only half the amount of tax of someone who has obtained such property by other means.³² The tax exemption base is determined by the district/municipal government and may not be higher than Rp. 60,000,000 or, in cases where the land is inherited or bestowed to a first degree relative, Rp. 300,000,000.³³ Until the person obtaining the property has paid this tax, notaries and the NLA are not allowed to cooperate in the transfer of the land right.³⁴

In case of sale, an alienator is required to pay 5 per cent income tax on the revenues from the transfer of the rights on land/buildings, or again, if this amount is smaller than the estimated value determined for Land and Building Tax, 5 per cent of that estimated value. An alienator of property that cost less than Rp. 60,000,000 is exempted from this tax, unless his or her income exceeds the tax exemption base.³⁵ Until the alienator has paid this tax, the NLA is not allowed to cooperate in the transfer of the land right.³⁶

28 Art. 42(1) GR No. 24/1997. Art. 111 Ministerial Regulation No. 3/1997 defines which documents can prove that he or she is the heir of the right holder.

29 Art. 5 in accordance with Annex GR No. 46/2002.

30 Art. 61(3) GR No. 24/1997.

31 Art. 5 and 8 Law No. 21/1997; Art. 2(2), under a, and Art. 6 Law No. 20/2000.

32 Art. 2 GR No. 111/2000 on the Cost Assessment for Obtaining a Right to Land and Buildings by Inheritance or Bestowal (*PP No. 111/2000 tentang Pengenaan Bea Perolehan Hak atas Tanah dan Bangunan Karena Waris dan Hibah Wasiat*) in conjunction with Art. 3 Law No. 20/2000.

33 GR No. 113/2000 in conjunction with Art. 7 Law No. 20/2000.

34 Art. 24 Law No. 20/2000; Art. 5 GR No. 111/2000.

35 Art. 5 GR No. 48/1994; Art. 8(3) GR No. 27/1996.

36 Art. 7 GR No. 48/1994; Art. 39 GR No. 24/1997.

4.3 SPORADIC REGISTRATION AND ITS LIMITS

On paper, the integration of semi-formal and informal tenure into a unified system of land rights seems simple. In practice, however, it proves hard for semi-formal and informal landholders to (obtain a right and) register their land, as will be discussed below.

Government Regulation No. 24/1997 replaced Government Regulation No. 10/1961 to make the land registration process more efficient (World Bank 1994:6).³⁷ For instance, evidence requirements for registration were made less stringent.³⁸ Nevertheless, semi-formal landholders still have difficulty meeting these requirements. This is especially the case in cities such as Bandung. In urban areas, land is often purchased instead of inherited, and evidence of such transactions usually consists of private contracts (*surat zegel, perjanjian jual-beli*) or sales receipts (*kwitansi jual-beli*). These documents do not meet the evidence requirements for registration (Smeru 2002:17). Documents that meet evidence requirements – such as notary deeds of sale (*akte jual beli*) – are generally far more expensive, so it is difficult or practically impossible for low-income dwellers to obtain them. Frequent purchase of land also makes it hard for landholders to prove that the land they live on has been inhabited for at least twenty years (by themselves and possible previous landholders), which otherwise would allow them to register land on the basis of testimonial evidence.

In an interview with *Republika* daily, the Head of Bandung's Municipal Land Office argued that land mostly remains unregistered because people have no legal basis for occupying the land, and thus cannot meet the evidence requirements to obtain a certificate.³⁹ This statement suggests that although the state could choose to grant or transfer rights to these people, there is no political will to do so. In contrast, usage rights or management rights are often granted to public entities, which leads to the state no longer holding a direct right of control over the land.⁴⁰ The municipal government claims to have the authority to exercise a direct right over 51 per cent of the city's land. It could transfer the right to this land to dwellers upon request, for a price decided by a Municipal Committee and agreed to by the Mayor and the Municipal Council.⁴¹ However, in practice this only occurs on a limited scale. One reason for the reluctance to transfer rights may be the fact that by not doing so, the Municipality is able to continue issuing

37 The 1961 Government Regulation was replaced by the 1997 Government Regulation following the systematic review and drafting of land laws and regulations under the LAP.

38 For an overview of all revisions, see the General Elucidation of GR No. 24/1997.

39 'BPN: 30 Persen Lahan di Kota Bandung Belum Bersertifikat', *Republika*, 28 November 2005.

40 Informal landholders hold priority rights to obtain new rights on much of this land, but they appear to be unaware of this and the state simply ignores that such landholders have these rights.

41 Art. 3-7 Bylaw of Bandung Municipality No. 24/2001.

permits to reside on the land (*izin pemakaian tanah*) to an increasing number of residents (thus often legalising informal tenure), which generates significant revenues while at the same time keeping the land 'available' for future development projects. Depending on the Municipality's General Spatial Plan, permits are granted for one, five, or ten years.⁴² Still, an estimated 15 per cent of the municipal land is used without a permit.⁴³ Qualification of land as neglected land and redistribution of such land also seldom occur in Bandung, although a lot of squatted land would qualify.⁴⁴ Even if this were to occur, few kampong dwellers would probably be capable of registering their land, due to the costs involved.

High costs and unwieldiness of the registration process (in terms of complexity and tardiness) form other obstacles to sporadic registration. Costs are high despite the availability of special financial arrangements exempting low-income groups from registration costs and reducing the amount of Entry Money and tax due. Despite their low incomes, most landholders are not eligible for these arrangements. As discussed above, landholders are only eligible if their income is below Regional Minimum Wage. In Bandung, the 2005 monthly Regional Minimum Wage was Rp. 642,590, which is considerably less than the average monthly income of semi-formal landholders or even informal landholders in kampongs in Bandung.⁴⁵ Even if landholders are eligible for the special financial arrangements, the remaining costs are still too high for them to register their land.

High costs and also unwieldiness of the registration process are however mostly the result of a weak performance (and even maladministration) of the state institutions involved. The NLA in particular has a bad reputation in this respect; it is generally considered one of Indonesia's worst performing public bodies. As the World Bank notes, the NLA "has been characterised as over-centralised, secretive and unresponsive to landholders and the land registration process itself "is complex, paper-intensive

42 There are questions as to whether the municipal government is entitled to do this. The BAL proscribes the state from leasing out land, since it is not the owner of the land (Explanatory Memorandum Art. 44 and 45 BAL). There is no reason to suggest that the situation would be different for Bandung's municipal government. Perhaps for this reason, the municipal government does not grant a lease right (*hak sewa*), but a so-called Land Use Permit (*Ijin Pemakaian Tanah*), which is not to be confused with the Land Use Permit discussed below.

43 Data derived from internal document of the Housing Service of Bandung Municipality; document on file with the author.

44 A good example of such land in Bandung is land on which the Indonesian Railway Company (*PT Kereta Api Indonesia* or PT KAI) has a management right. It manages a total of 269,900 ha in the whole of Java. Only 1,140.75 ha or 0.42 per cent is leased out to people (personal communication of senior manager of the Indonesian Railway Company, Bandung, 19 January 2005). Most of the land that has not been leased out is simply neglected, which explains why so many people can squat. See also the case study discussed in Chapter 7.

45 Decision of the Governor of West Jawa No. 561/Kep.1132-Bangsos/2004.

and manual" (World Bank 2003b:45). Corruption forms another serious problem. The NLA "has been used by prevailing political and bureaucratic establishment for personal and political gains" (World Bank 2003b:45). It is common for landholders who wish to register their land to have to pay bribes. These revenues are a welcome addition to the modest salaries of NLA officials. Not surprisingly, the World Bank claims that "registration fees are excessive, among the highest in the world" (World Bank 2003b:45). Maladministration of the NLA also affects the accuracy of the land register, a matter that we will discuss below.

Landholders also appear to have negative perceptions about the NLA. A 2007 survey of the Corruption Eradication Commission among 3,611 respondents from Jakarta, Bogor, Depok, Tangerang and Bekasi revealed that among 30 national public bodies, the NLA was considered one of the two bodies with the least integrity (the other being the Department of Justice). In particular the services related to land registration, namely surveying and certification, were qualified as very poor.⁴⁶

The results of our survey among kampung dwellers in Bandung affirm the conclusions of the World Bank and the Corruption Eradication Commission. In our survey, formal landholders who had obtained a land certificate in the past 10 years through sporadic registration were asked about the costs and duration of the procedure. On average the respondents paid almost Rp. 1,600,000, which for most kampung dwellers in Bandung is more than a monthly income.⁴⁷ The duration of the procedure varied between one and twelve months. However on average it was relatively short; at a little more than three months.⁴⁸

Our survey also showed that semi-formal landholders held negative perceptions regarding the costs, complexity, and duration of registration, and would often not even try to obtain a certificate (Table 4.1). When asked why they had not yet registered their land, the foremost reason provided was prohibitive costs: 63.2 per cent of respondents were of the opinion that land registration is too expensive. A further 23.1 per cent of respondents believed the procedure demanded a lot of time and trouble, arguing that they did not know how to obtain a certificate, that the procedure was complex and would take too long, or that they did not have the energy to get it done. Only 3.2 per cent of respondents believed that a land certificate was

46 'Survey KPK: BPN dan Dephukham, Instansi Pemerintah dengan Pelayanan Terburuk', *Hukum Online*, 30 March 2008.

47 $n = 15$. The actual estimated costs were on average Rp. 1,597,333.

48 $n = 38$. The actual estimated duration was on average 3.18 months. Notably, the results of our survey are rather positive compared to those of a comparative research undertaken as part of an evaluation of the LAP and conducted by the Indonesian research institute Smeru (to be discussed in further detail below). In this research, respondents who had performed sporadic registration in Bandung stated that certificates cost between Rp. 2 and 3 million and took years to obtain (Smeru 2002:25).

useless. One of these respondents explained that he had not obtained a land certificate because he believed that the land evidence he held, in his case a colonial tax document, was more reliable.

Table 4.1 *Semi-formal landholders: why do you not have a land certificate?*

Reason	%
Land registration is too expensive	63.2 %
Land registration is unwieldy	23.1 %
Trying to obtain a land certificate	4.2 %
Impossible to obtain a land certificate	3.2 %
A land certificate is useless	3.2 %
Other reasons	3.2 %

Note: $n = 95$

We asked those respondents who believed that land registration was too costly to make an estimation of costs, and to say whether they thought these costs formed an official charge or involved bribes. On average they estimated that the costs of land registration would be almost 2,000,000.⁴⁹ Notably, almost one-third of the respondents believed that these costs would involve bribes.⁵⁰ Compared with the actual amount spent by formal landholders who had obtained a land certificate in the past 10 years, it seems that semi-formal landholders were generally well-informed about the costs of land registration, which allowed them to make a rational decision as to whether to register their land.

Together, the many barriers to sporadic registration faced by kampong dwellers include: the stringent evidence requirements for the registration of semi-formal rights (which do not reflect the complex land relations, particularly in urban kampongs); a lack of political will to grant 'new' or transfer existing rights of public entities; prohibitively high costs; and an unwieldy registration process, related to poor administrative performance. Given these barriers, and the associated negative perceptions held by landholders about registration, it is clear that kampong dwellers are generally reluctant to undertake sporadic registration, which explains the low output of sporadic registration in Bandung Municipality (Table 4.2).⁵¹

49 $n = 63$. The actual estimated costs were on average Rp. 1,943,333.

50 $n = 64$. The precise percentage of respondents believing that the estimated costs of land registration involved bribes was 31.3 per cent.

51 Arguably, the output of sporadic registration may have decreased as a result of systematic registration under the LAP.

Table 4.2 Output sporadic registration in Bandung Municipality

Year	Registration of 'old' rights in number of parcels	Registration of 'new' rights on state land in number of parcels	Total number of parcels
1998	2,071	517	2,588
1999	182	557	739
2000	84	478	562
2001	32	301	333
2002	62	346	408
Total	2,431	2,199	4,630

Source: Internal document of the Land Office in Bandung Municipality (Titled: '*Laporan Bidang Pengukuran dan Pendaftaran Tanah*')

Indeed, we can see that it is actually the legal system itself that generates 'extra-legal' tenure. Systematic registration through land registration programmes could be of assistance, if it could remove the barriers currently obstructing sporadic registration. The following sections will take a closer look at the structure of such programmes, their reach, and their effect.

4.4 SYSTEMATIC REGISTRATION: SET-UP OF LAND REGISTRATION PROGRAMMES

As a response to the slow process of land registration, at a relatively early stage Indonesia initiated large-scale titling programmes. In 1981 the Indonesian government initiated the National Land Registration Project (*Proyek Operasi Nasional Agraria* or PRONA), which aimed to increase legal tenure security for economically weak landholders through mass-registration and the resolution of land disputes.⁵² In some regions, Regional Land Registration Projects (*Proyek Operasi Daerah Agraria* or PRODA) were launched; similar programmes that are financed by the regional governments. Around 1988, the land registration efforts were intensified. The number of registered parcels grew to about 1 million per year. However, since the total number of parcels continued to grow even faster, the Indonesian government was never able to catch up (World Bank 1994:3-4). Therefore, the need was felt for a more ambitious approach.

As discussed in Chapter 1, international donors' renewed enthusiasm for the land registration approach, in which De Soto played a catalytic role, also struck Indonesia. In 1994, the Indonesian government and the World

52 PRONA finds its legal basis in the Third Five-Year Plan (*Rencana Pembangunan Lima Tahun* or Repelita III), as elaborated by Decision of the Minister of Home Affairs No. 189/1981. Beside PRONA and PRODA, the Indonesian government also initiated a village-by-village titling programme, which was based on GR No. 10/1961, the PP10 programme.

Bank started the LAP, which as part of a broader policy approach was to accelerate land registration through systematic as well as sporadic registration (World Bank 1994:10-2). In total, 1.2 million land parcels in Districts and Municipalities across Java would be registered systematically, benefiting about 4 million people, including about 100,000 families estimated to be below the low-income line (World Bank 1994:i-ii).⁵³ Another goal of the project was to improve the institutional framework for land administration, which included a systematic review and drafting of land laws and regulations, and the training of NLA staff. Finally, the project was to support the Indonesian government to develop long-term land management policies, through the organisation of seminars and workshops (World Bank 1994:12-3). The total costs of the project were budgeted at US\$ 140.1 million (World Bank 1994:15).⁵⁴

The LAP particularly focussed on West-Java. This Province had the lowest coverage of land registration in Java at the time the project was initiated, namely 13 per cent of all parcels. In Bandung, 60.18 per cent of all parcels had been registered (World Bank 1994:36-7). 68 per cent of the planned 1.2 million certificates would therefore be issued in two Municipalities and four Districts in West-Java, including 101,500 ownership right (*hak milik*) certificates in Bandung (World Bank 1994:10/44). Although all eligible parcels were expected to be registered under the project, to date this has not been the case in Bandung (World Bank 1994:14). Still, an impressive number of parcels has been registered – even more than planned; namely 132,863 parcels, as Table 4.3 shows.

Table 4.3 Output LAP in Bandung Municipality

Year	Number of Sub-Districts	Number of City Quarters	Number of parcels
1996/1997	7	29	30,792
1997/1998	6	29	39,042
1998/1999	10	35	37,098
1999/2000	12	30	22,839
2000/2001	2	2	3,092
Total	37	125	132,863

Source: Internal document of the Land Office in Bandung Municipality (Titled: 'Daftar: Rekapitulasi Pelaksanaan Proyek Administrasi Pertanahan di Kota Bandung Tahun 1996/1997 S/D Tahun 2000/2001')

53 Aside from this, the project supported sporadic registration in eight areas in Java and Sumatra (World Bank 1994:10).

54 To compare, in 2003 the Indonesian government allocated Rp. 300 million or about US\$ 30,000 for the issuance of 2,600 land titles through PRONA. See 'Pemerintah Terbitkan Sertifikat Prona', *Pikiran Rakyat*, 6 February 2003.

The NLA estimated that in 2005 about 600,000 land parcels in Bandung Municipality had been registered. Still 30 per cent or 5,019 hectares of all land remain unregistered, despite the fact that many landholders meet the registration requirements.⁵⁵

The successor of the LAP, the Land Management and Policy Development Project (LMPDP), which is also an initiative of the Indonesian government and the World Bank, is now well under way. It is even more ambitious than the LAP, with a stronger focus on land registration and institutional development (World Bank 2004:8). Its goal is to issue 2.5 million certificates in areas of high poverty and high economic potential, by systematic registration throughout Indonesia (World Bank 2004:3). In the LMPDP project appraisal, the World Bank re-recognises the need of a land policy "as an integral element of a broader policy dialogue rather than as a string of narrowly oriented technical interventions" (World Bank 2004:13). To that aim, it wishes not only to perform systematic land registration, increase coherence and consistency of land administration and management related laws and regulations and promote institutional development, but also develop a Land Information System (LIS) and provide training and capacity building to all local governments (World Bank 2004:3).

Aside from impressive results in numbers of registered (and to be registered) parcels, relatively low costs, and short duration of the registration procedures, the question remains whether the LAP and other land registration programmes have reached low-income groups and contributed to their legal tenure security. So far, the LAP has been the subject of three key studies, which will be referred to throughout the remainder of this chapter. The first study was a World Bank-ordered evaluation undertaken by Hardjono (1999), in collaboration with a number of local NGOs, which had a qualitative character, using methods like Focus Group Discussions and in-depth interviews with members of communities, and was conducted in nine urban, peri-urban, and rural City Quarters and Villages, including a City Quarter in Bandung. The second study was also a World Bank-assigned evaluation, this time conducted by the Indonesian research institute Smeru (2002). This study was also quantitative in nature, involving a comparative survey among LAP and non-LAP participants in various Villages and City Quarters in 14 Districts and Municipalities, including a total of 110 respondents from two City Quarters in Bandung. The third study was a PhD research project undertaken by Soehendera (2005), who conducted qualitative research in a kampong in Central Jakarta's City-Quarter Rawa. From the studies, one key point was that Smeru evaluated the LAP positively in relation to the registration process itself, the economic and social impacts of the project, and the wider socio-economic effects. The current research does not fully support these conclusions, as will be discussed in the following sections.

55 'BPN: 30 Persen Lahan di Kota Bandung Belum Bersertifikat', *Republika*, 28 November 2005.

4.5 REACH OF LAND REGISTRATION PROGRAMMES

Hardjono concluded that “there was [...] at least a very conscious effort to ensure that the poor were not overlooked”, and Smeru stated with regard to the LAP that “there has been a clear bias towards locations in which most households are not well off” (Hardjono 1999:4; Smeru 2002:13). In the current research, however, the assessment of whether the LAP and similar programmes have reached low-income groups leads to a mixed picture: some of the earlier discussed general obstacles hindering sporadic registration have been overcome, but not all.

Further analysis of the Smeru study reveals that many kampongs could not participate in the LAP because of the location selection criteria. Locations were selected where lower-income households formed the majority of households, no more than 30 per cent of land parcels were registered through sporadic registration or other land registration programmes, and rapid urbanisation was occurring. At the same time, locations where land registration was expected to be difficult were avoided. So locations were selected where many land transactions took place through Land Deed Officials (officials of the Sub-District Office or public notaries), where parcels without certificates were concentrated instead of widely dispersed and where basic village maps were available. In some areas other requirements applied as well, such as the absence of major land disputes. Areas involving conflicts over state land, especially, were avoided (Smeru 2002:13). However, these conditions often characterise the poorest kampongs, which means that these titling programmes often did not target settlements where most members of the programmes’ target group reside.

Even when the programme has extended to kampongs, stringent evidence requirements regarding the registration of semi-formal rights, as well as the lack of political will to grant new rights, have remained an obstacle for landholders (particularly for the poorest, for reasons discussed above) when it came to registering their land through a programme like the LAP. Hardjono concludes that landholders who could not benefit from the LAP included those with inadequate proof of claims, and occupants of state land (Hardjono 1999:7-9).⁵⁶ The current study reaches an additional conclusion: that a landholder’s lack of evidence is often connected to a lack of financial means to obtain the correct documents. Documents that meet evidence requirements are expensive, and particularly for semi-formal landholders with low-incomes this may be a reason why they have never obtained them. Similarly, informal landholders – to whom new rights could be granted – often squat land precisely because they lack financial means.

56 Hadjono does however refer to one case in Semarang, where squatters of state land that was managed by PT KAI were granted new rights. She suspected that political motives influenced this decision, which was taken shortly before the 1997 General Elections (Hardjono 1999:17).

Obstacles produced by the costs and unwieldiness of the registration process (in terms of complexity and tardiness) were in large part overcome by land registration programmes. As part of the survey, formal landholders who had obtained a land certificate in the past 10 years through systematic registration (through LAP or another land registration programme) were asked about the costs of land registration and the duration of the procedure. On average they spent Rp. 78,000, which is only 5 per cent of the costs spent by formal landholders who obtained their land certificate through sporadic registration.⁵⁷ Moreover, the average duration of the systematic registration procedure was shorter than sporadic registration, namely 2.2 months.⁵⁸

Although these costs seem reasonable, they exceeded the official charge and still prevented many low-income dwellers from registering their land through a programme like the LAP.⁵⁹ According to Hardjono, costs were greatly dependent upon what participants needed from local officials in terms of documentation and legalisation (Hardjono 1999:14). To remind the reader, it is likely that semi-formal landholders with the lowest incomes in particular would be required to obtain new documents in order to meet evidence requirements; and that this is the group for which such a request would form the biggest financial burden. Soehendera argues that costs resulting from officials asking for bribes for their services, as well as middlemen (*calo*) having to be paid, prevented dwellers in kampong Rawa from participating in the programme. As a result of past experiences, residents also had negative cost-related perceptions regarding the registration process, particularly in relation to the NLA. Those who did participate were depending on informal networks and patron-client relationships to get their land registered through the programme (Soehendera 2005). In the location described by Hardjono where landholders occupying state land could participate in the LAP, they decided not to do so, because of the tax that has to be paid upon registration of new rights (Hardjono 1999:9, 40).

57 *n* = 33. The costs mentioned in the current research are significantly higher than the average costs calculated by Smeru, which calculated on the basis of 85 formal landholders in the cities Bandung, Depok, South-Jakarta, Semarang, Palembang and Medan that these costs were Rp. 40,978 (Smeru 2002:18-21). These results suggest that either registration through the LAP is cheaper in other cities than in Bandung, or that registration through other programmes is more expensive than through the LAP.

58 *n* = 44. Smeru calculated a similar average duration of the LAP registration process (Smeru 2002:21).

59 Smeru draws the same conclusion, and notes particularly that the costs of documentation needed to meet evidence requirements were considerable (Smeru 2002:18-21). Under the LAP, the costs in urban areas were Rp. 11,500 – and since 1999/2000, registration has actually been free of charge. Landholders who receive a new right are also exempted from the requirement to pay Entry Money (Art. 20 Law No. 20/2000 in conjunction with Art. 1(a), under 1 and 3, and 2(a) and (c) Decision of the Minister of Finance No. 561/KMK.03/2004). They may have to pay the Fee for Acquisition of Rights to Land and Buildings. However, those with a low income can then request a tax reduction of as much as 76 per cent.

Still, according to Smeru, 94.7 per cent of those who did participate in the LAP said that the costs in terms of money, time, and effort were small in comparison to the benefits of a land certificate (Smeru 2002:25). Hardjono even argued that middle and upper income groups would be willing to pay “somewhat more” to get their land registered through the LAP (Hardjono 1999:40-1).

Obstacles similar to those discussed above suggest that in Bandung also, land registration programmes like the LAP do potentially not reach most kampong dwellers with the lowest incomes. The average monthly income of formal landholders who have obtained certificates through a systematic titling programme is lower than those who have obtained certificates through sporadic registration, namely around Rp. 1,600,000 compared with Rp. 1,800,000.⁶⁰ Yet their income is still much higher than that of semi-formal or informal landholders residing in the same kampongs, which is around Rp. 1,400,000 and Rp. 1,260,000 respectively.⁶¹ It is unlikely that this difference in income can be explained merely by the economic effects that registration is said to have; rather, this difference casts doubt as to whether land registration programmes, in their current form, do reach the landholders they are meant to target.

4.6 LAND REGISTRATION, TENURE SECURITY, AND THE RULE OF LAW

The last question this chapter addresses is whether land registration in general, and land registration programmes in particular, have actually contributed to legal tenure security for kampong dwellers. Our research shows that this contribution remains limited.

To be able to assess the effects of land registration programmes on the legal tenure security of semi-formal and informal landholders, we first need to consider their position before they register their land. Our research shows that even before such registration, their tenure security is surprisingly strong, in the sense that they enjoy a high degree of administrative recognition. First, most landholders, even most informal landholders, have been living on the land for decades, which means that the state has for a long time condoned non-formal land tenure. Secondly, as discussed in Chapter 2, the state has improved the infrastructure in kampongs and provided kampong dwellers with basic services, such as water, electricity, and identity cards, which again demonstrates administrative recognition. Third, and this is the most important point in this context, most semi-formal and even informal landholders hold state issued, land-related documentation. Semi-formal landholders hold colonial tax assessment notices and other documentation issued – often recently – by the state, which they

60 *n* = 38; *n* = 44.

61 *n* = 95; *n* = 145.

could use for registration. But also informal landholders have such documentation, often consisting of multiple-purpose letters (*surat serba guna*), clarification letters (*surat keterangan*), or declaration letters (*surat pernyataan*) stating that they reside on the land, usually issued by officials of the City Quarter office. In fact, these officials do not have the legal authority to provide such documentation.⁶² However, an interviewed City Quarter Head explained that according to administrative practice they do have this authority. It is common for people to come to the offices and ask for such documentation.⁶³ Officials are reluctant to deny such a request, probably also because they can earn some pocket money with it. Almost all landholders, including semi-formal and informal landholders, have Land and Building Tax documentation. Contrary to the colonial period, any individual or legal body holding a land right, benefiting from the land, and/or owning, controlling or profiting from the building(s) on it, is now subject to Land and Building Tax.⁶⁴ So Land and Building Tax is levied on informal landholders. Notably, to avoid any misunderstanding, it is indicated on the tax assessment (*Surat Pemberitahuan Pajak Terhutang* or SPPT) that it does not form evidence for any land right. Still, Land and Building Tax documentation, which is based on data from the fiscal registry, provides relatively accurate information on the size of plots and the dwellings on it and the person(s) having an interest in the property.⁶⁵

To what extent, then, do formal landholders still enjoy more legal tenure security than semi-formal or informal landholders? The difference is limited, particularly in the long run, for at least three reasons. The first reason for the limited effect of current land registration programmes on legal tenure security is related to the public law requirements regarding residential land.⁶⁶ Specifically, residence is not legalised through land registration alone. Various permits are also required in order to reside legally on land,

62 The authorities of the City Quarter Offices are formulated in Bylaw of Bandung Municipality No. 8/2001; Decision of Mayor of Bandung No. 329/2001; Decision of Mayor of Bandung No. 335/2001.

63 Personal communication of City Quarter Head, Bandung, 3 January 2005.

64 Art. 4(1) Law No 12/1985 on Land and Building Tax (*UU No. 12/1985 tentang Pajak Bumi dan Bangunan*). The decision to organise tax assessment not on the basis of the legal status of the land (and buildings) but their actual use rested on financial considerations (Suharno 2003:25). Despite the limited share of Land and Building Tax within the total of the state's tax proceeds (Suharno 2003:12), organising tax assessment on the basis of the legal status of the land (and buildings) would have had serious consequences for the state's budget, since only an estimated 20,000,000 parcels are registered, while 84,700,000 parcels are object of Land and Building Tax. At least, these considerations prevent the state from reorganising the tax assessment. According to a senior official of the NLA in Jakarta, only if all land is registered, the system could be changed (personal communication, 20 August 2004).

65 The tax department uses state of the art equipment (i.e. satellite photos) to acquire data for the fiscal registry, as a result of which the assessment has improved both from a qualitative and quantitative perspective (Suharno 2003:vii).

66 This is a common issue, also outside Indonesia. See Otto 2009:188.

namely a land use permit (*izin peruntukan penggunaan tanah* or IPPT), a building permit (*izin mendirikan bangunan* or IMB), and a building use permit (*izin penggunaan bangunan*).⁶⁷

It is a difficult process to obtain the required permits, in terms of duration, costs, and the administrative burden; with several Municipal Services involved. The regulations are unclear about the duration to obtain a permit, with the exception of the Building Permit, which in case of a house with no more than two stories should take no longer than nineteen days to receive if all procedural requirements are fulfilled.⁶⁸ The costs of obtaining the permits generally depend on the function, location and size of the plot and building, plus costs of surveying and mapping.⁶⁹ However, respondents informed us that the process often also requires payment of substantial bribes, due to, *inter alia*, the involvement of middlemen and disreputable persons (*oknum*), as well as deviations from prescribed procedures.⁷⁰ It is for this reason that not only the NLA but also Municipal Services are commonly referred to as the 'wet sector' (*sektor basah*). In addition, it is not uncommon for the institutions to set additional non-financial requirements (Niessen 1999:260-1). The negative reputation of the institutions involved

67 The Land Use Permit consists of a Planning Permit and/or a Planning Recommendation, which are both granted by the Municipal Town Planning Service (*Dinas Tata Kota*) (Art. 2 Bandung Municipality Bylaw No. 4/2002). The permit forms an administrative requirement for the granting of a Building Permit (Art 3). The Permit also forms a requirement for the granting of a Permit for the Use of Land and/or Buildings (*Izin Pemakaian Tanah dan atau Bangunan* or IPTB) (Art. 4(1)). The request for the Permit and Recommendation should come with additional documentation, including land documentation (Art. 6). Permits will only be granted if the land use is in accordance with zoning provisions of the Municipal General Spatial Plan and the land is not subject to conflict (Art. 7). The Land Use Permit is valid for one year and can be extended for another year. Within that term a request for a Building Permit should be submitted to the Municipal Building Service (*Dinas Bangunan*) (Art. 4(2)). A Building Permit is required for any building activity from the Municipal Building Service (Art. 4 Bylaw of the Bandung Municipality No. 14/1998). A permit request should again come with additional documentation, including proof of land ownership and, as noted before, a Land Use Permit. It is not indicated whether proof of land ownership means a land title or can also include alternative documentation. The Building Permit will only be granted if the building plan meets zoning, sub-division, and building provisions as set out in the municipal building regulation itself and spatial planning regulations (the Municipal General Spatial Plan, Detailed Spatial Plan and the Technical Plan). The Mayor may temporarily allow kampung dwellers to use land for residence until zoning provisions regarding that area have been enacted. A Building Use Permit should be obtained from the Municipal Building Service before a new building can be used (Art. 28(2)). A request for such a permit will only be granted if the building requirements as determined in the Building Permit are fulfilled (Art. 28(1), 39 and 40).

68 Art. 18 Bandung Municipality Bylaw No. 14/1998.

69 See Art. 9-20 Bandung Municipality Bylaw No. 4/2002; Bandung Municipality Bylaw No. 24/1998.

70 This is also confirmed by a joint research of the Municipal Research and Development Office and a consultancy firm (Pemerintah Kota Bandung 2004).

in licensing seems to be due both to the complexity of the procedures, and to the repressive powers of the institutions. Based on fieldwork in Bandung in the mid-1990s, Niessen concluded that "the process is notorious for its tardiness, expense, and unpredictability" (Niessen 1999:267-8). These factors still form an obstacle for people to apply for a permit, particularly for low-income (and low-educated) kampong dwellers, all the more because they have strong negative perceptions regarding these procedures.⁷¹

Zoning, sub-division, and building requirements, as set out in the spatial planning and building regulations, form another obstacle for kampong dwellers to obtain the required permits. For instance, many kampongs are located alongside a river or railway track. These locations are designated as protected areas, where no building is allowed.⁷² Zoning provisions have been enacted, and, legally speaking, the Mayor cannot temporarily allow residence in these areas. Furthermore, in most kampongs 80-90 per cent of the land is covered by buildings, and this percentage exceeds the allowable limit.⁷³ Finally, an average kampong house does not meet building standards, including standards regarding facilities.⁷⁴ Therefore many dwellers in these kampongs, including those who have obtained a land certificate through a land registration programme, will never be able to fully legalise their tenure.

Municipal building and spatial planning regulations set severe sanctions for not meeting permit requirements. The Mayor of Bandung Municipality can command closure, clearance or demolition of a building or prohibit its use.⁷⁵ Despite the threat of such severe sanctions, it may not come as a surprise that very few kampong dwellers have such permits.⁷⁶ We asked

71 See also the research report mentioned in the previous footnote.

72 According to the Building Regulation, building is forbidden at less than 4 metres from a road and 5 metres, or in a densely built area, 4 metres from a canal (Art. 351 in conjunction with Art. 346 and 348 of Bandung Municipality Bylaw No. 14/1998). From a river, residential buildings should be positioned at more than 10-30 metres, depending on its depth (Art. 358 in conjunction with Art. 355). According to Municipal Spatial Plan the distance should be at least 3 metres (Art. 70 in conjunction with Art. 36(3) Bandung Municipality Bylaw No. 3/2004). However, the Plan refers to municipal bylaws such as the Building Regulation. No building is allowed at less than 10 metres from a railway track (Art. 36(3)).

73 The building rate should be no more than 80 per cent (Art. 46 Bandung Municipality Bylaw No. 14/1998 in conjunction with Table 5, Annex 1 Bandung Municipality Bylaw No. 2/2004).

74 For that matter, the Public Order Regulation determines fines of up to Rp 1,000,000 and/or administrative sanctions against those who do not maintain their buildings (Art. 49 Bandung Municipality Bylaw No. 3/2005) or do not have such facilities as sewerage (Art. 49(1 sub i and l)). The regulation does not form a direct threat in terms of tenure security, in the sense that dwellers cannot be evicted for that reason.

75 Art. 31, 36, 256, 352 Bandung Municipality Bylaw No. 14/1998; 116 Bandung Municipality Bylaw No. 2/2004.

76 See also, Niessen 1999:269-70.

respondents from all tenure categories whether they have a Building Permit (see Table 4.4). The overall majority of respondents answered that they did not. The more formal the land tenure status, the higher was the percentage of landholders with a building permit. However, although, a higher proportion of formal than informal landholders had building permits, the percentage of formal landholders without a building permit was still very high (82.8 per cent). This percentage was slightly higher for landholders who had obtained their certificate through systematic registration, namely 84.1 per cent. Thus, despite land registration, the overall majority of formal landholders still did not meet the legal requirements to reside on the land.

Table 4.4 Possession of building permit per land tenure category

	Formal tenure			Semi-formal tenure ^d	Informal tenure ^e
	Sporadic registration ^a	Systematic registration ^b	Total ^c		
Building permit	16.2 %	13.6 %	14.1 %	2.2 %	1.9 %
Equivalent of building permit	5.4 %	2.3 %	3.0 %	1.1 %	0.6 %
No building permit	78.4 %	84.1 %	82.8 %	96.8 %	97.5 %

Note: ^a n = 37 ^b n = 44, ^c n = 99, ^d n = 94, ^e n = 161

We asked respondents without building permits, from all tenure categories, why they had not obtained a permit (see Table 4.5). Most believed that there was no need for one. A considerable share of these people was not even aware that they were under the obligation to obtain a permit. Others argued that no one in the neighbourhood had a permit, that their buildings were modest or located in an alley, that their buildings had been constructed years ago, or that they held other documentation allowing them to build the land. The second most important reason for not having a permit was that they considered the permit procedure to demand a lot of time and trouble. Respondents argued that they did not know how to obtain a permit, that the procedure was complex, or that they did not have the energy to get it done. Relatively few respondents argued that they did not have a permit because of the high costs of the procedure. Depending on tenure status, a proportion of respondents (relatively more for informal than for formal status) argued that they did not have a building permit because they could not meet permit requirements.

Table 4.5 Why do you not have a building permit?

	Formal tenure			Semi-formal tenure ^d	Informal tenure ^e
	Sporadic registration ^a	Systematic registration ^b	Total ^c		
No need of permit	50 %	61.5 %	59 %	60.4 %	48.4 %
Permit procedure is unwieldy	25 %	25.6 %	26.5 %	24.2 %	19.7 %
Permit procedure is too expensive	25 %	10.3 %	13.3 %	8.8 %	3.2 %
Do not meet requirements	-	2,6 %	1.9 %	6.6 %	28.7 %

Note: ^a n = 28, ^b n = 39, ^c n = 83, ^d n = 91, ^e n = 157

The Municipality seems to be aware of the dimension and causes of the problem. An interviewed senior official of the Municipal Building Service estimated that about 35 or 40 per cent of all buildings in Bandung are constructed without a permit. Bandung's municipal government now tries to make people aware of their obligations. It implements an Integrated Legal Information (*Penyuluhan Hukum Terpadu* or Lukumdu) programme at the city quarter level, where applicable laws are being 'socialised'.⁷⁷ However, to date the programme has had limited effect.⁷⁸ Although the number of building permits issued annually by the Municipal Building Service is slowly increasing, in recent years the number of permits issued has remained about 3,000 building permits per year, as Table 4.6 shows; far fewer than the number required for a city of 2.3 million people.

Table 4.6 Number of building permits issued by Bandung's Municipal Building Service

Year	Number of permits
1998/1999	2,295
1999/2000	2,187
2000	2,830
2001	2,859
2002	3,195
2003	3,409

Source: Internal document from Bandung's Municipal Building Service

77 Personal communication of a senior official of Bandung's Municipal Building Department, January 2005.

78 It may be for this reason that Head of Bandung' Municipal Building Service Ubad Bachtiar, in an interview with the daily *Pikiran Rakyat*, speculated about a more repressive approach to increase the percentage of building owners meeting permit requirements. He suggested that a building permit should become a requirement for the provision of electricity (See 'Jadikan IMB Syarat Pasang Listrik', *Pikiran Rakyat*, 4 January 2005). The idea was never taken up though.

The effect of land registration on legal tenure security is also limited due to the fact that a significant proportion of Bandung's kampong dwellers who have a land certificate may not perform derivative registration of their land. We asked formal landholders whether they would undertake such registration, in case of future land transfers. As shown in Table 4.7 below, only 73.7 per cent of formal landholders who obtained their land certificate through sporadic registration claimed they would perform derivative registration. Of the formal landholders who obtained their land certificate through systematic registration, even fewer said they would do so; just 52.4 per cent. If we take these two groups together and include formal landholders whose land has already been registered by earlier formal landholders, the percentage of future derivative registration is 60.8 per cent. A significant proportion of landholders (7.9 per cent, 26.2 per cent, and 16.5 per cent respectively; Table 4.7) would let a buyer of the land decide whether to do derivative registration or not.⁷⁹

Table 4.7. Estimation on derivative registration in case of future land transfers

	Formal landholders by sporadic registration ^a	Formal landholders by systematic registration ^b	Formal landholders total ^c
Derivative registration	73.7 %	52.4 %	60.8 %
Derivative registration if buyer wants to	7.9 %	26.2 %	16.5 %
No derivative registration	18.4 %	21.4 %	22.7 %

Note: ^a n = 38, ^b n = 44, ^c n = 97

Hardjono, who also conducted research on this issue, argued that the proportion of formal landholders who perform derivative registration is low for several reasons, including because they do not understand its importance; Sub-District and City Quarter Offices are willing to provide alternative land related documentation; derivative registration involves substantial administrative costs and tax levies; and the procedure demands time and trouble (Hardjono 1999:38-40). The expenses for derivative registration (which likely also consist of bribes) form an obstacle in particular for formal landholders who have obtained their land certificate through systematic registration, because on average these formal landholders have lower incomes than formal landholders who have obtained their land certificates through sporadic registration.

79 It should be noted that some respondents may have given a politically correct answer to the question whether or not to perform derivative registration. In addition, in practice derivative registration may prove more difficult than expected. The percentage of kampong dwellers who will actually perform derivative registration may thus be lower.

The low percentage of formal landholders who choose to perform derivative registration “just in case” of future land transfers may not come as a surprise, but it is no less concerning. The lack of such registration will mean that, despite initial land registration, in the future many formal landholders will again lack proper documentation to prove that they have a right on the land; which will affect their legal tenure security. Worse, the low percentage of derivative registration also means that the register loses its accuracy. This affects not only formal landholders who do not perform derivative registration, but any formal landholder; as general trust in the land register depends on its actual and perceived accuracy.

The third reason for the limited effect of current land registration programmes on legal tenure security is related to the fact that the land administration system offers only partial protection. Again this is a result of a combination of weaknesses in the legal framework, and maladministration. The BAL creates a negative registration system combined with elements of a positive system, which means that a land certificate is not conclusive, but only forms (strong) evidence regarding a land right. A third party can dispute the right of a formal landholder during the five years after the certificate has been issued.⁸⁰ In order to protect right holders against such claims, Indonesian land law recognises the concept of forfeiture of rights, which serves as an alternative for the concept of adverse possession (Harsono 2005:478-82).

The legal framework thus has some weaknesses, but the main problems derive from maladministration. According to many observers, the NLA has a notorious reputation as a result of incompetence – both from a technical and from an organisational perspective – and corruption.⁸¹ It is said to be common for NLA officials to issue more than one certificate for the same plot of land. Indonesians even have specific names for such certificates, such as *sertifikat ganda* (double certificate) or *sertifikat aspal* (original, but false certificate).⁸² In 2003, a former Head of the Land Office in Bandung Municipality was arrested for issuing a certificate to a third party for another person’s land plot.⁸³ Aside from the failure of formal landholders to carry out derivative registration of their land, the issuing of double certificates further affects the reliability of the land register.

As part of the evaluation of the LAP, the World Bank concluded that the institutional development component of the project “was less than successful” (World Bank 2004:14). It is therefore reasonable to expect that problems of incompetence and corruption are not just problems of the past. Ironically, land registration programmes may even enlarge these problems,

80 Art. 32 GR No. 24/1997 (and Elucidation) in conjunction with Art. 19(2c), 23(2), 32(2) and 38(2) BAL.

81 See also Zevenbergen 2002:143-4/150-1.

82 See also Bedner 2001:167.

83 See: ‘Mantan Kepala BPN Kota Bandung Ditahan Polisi’, *Kompas*, 15 January 2003. It is not clear whether the official has been convicted.

because the administration is not accustomed to mass registration of land, which may hence impose an excessive burden (Payne 2001:425).

It is not the land administration system alone that offers only partial protection, but land law in general. As discussed in Chapter 3, all land, regardless of whether it is state or private land, always retains a 'social function'.⁸⁴ This concept is said to be derived from *adat* law, and means that individual rights must be balanced against the interests of the community (General Elucidation, Chapter II, under 4) (Fitzpatrick 1999:76). The state's right of control is a useful tool to maintain the social function of land. The BAL contains several mechanisms so land can be re-used for the benefit of the community, such as forfeiture of rights on neglected land, land reform, and revocation of rights in the public interest.⁸⁵ As discussed above, land qualifies as neglected land if it is deliberately not used in accordance with its physical condition or with the form and goal of the right to which it is subject or if it is not well taken care of. This includes the use of land that is not in accordance with spatial planning regulations, particularly if land is subdivided without permission, and the failure as such to obtain a statutory land right.⁸⁶ This again shows how important it is for kampong dwellers to hold all required permits. However, formal landholders may be saved by the provision holding that land will not be classified as neglected land if they are economically incapable to use the land the way it should be used or if the land is object of a dispute.⁸⁷ Land reform includes annulment of land rights if a right holder has too much land, or if land qualifies as absentee land. Such land can also be redistributed to vulnerable groups. Land reform, however, only applies to agricultural land.⁸⁸ In all cases, the law contains certain safeguards that should protect landholders. It falls outside the scope of this chapter to discuss this issue in more detail, but in view of past experiences it is questionable whether the Indonesian government takes adequate consideration of these safeguards.

4.7 RECENT REFORMS RELATED TO LAND REGISTRATION

In order to overcome some of the legal and administrative shortcomings discussed above, recently, legislation related to land registration has been revised significantly. There is new legislation on topics as various as neglected land, minimum services standards, and registration costs. In

84 Art. 6 BAL.

85 On land clearance for development in the public interest, see: Art. 18 BAL.

86 Art. 3 and 4 GR No. 36/1998 in conjunction with Art. 27(a, under 3), 34(e), and 40(e) BAL.

87 Art. 11 GR No. 36/1998 in conjunction with Art. 27(a, under 3), 34(e), and 40(e) BAL. Notably, this provision does not apply to semi-formal and informal landholders, who are thus not protected.

88 Art. 7, 10, 17 BAL.

addition, the Indonesian government has introduced the Service to the People for Land Registration (*Layanan Rakyat untuk Sertifikasi Tanah* or LARASITA) programme, which has the aim to make the registration system more accessible to low-income groups.

In January 2007, President Susilo Bambang Yudhoyono held a speech in which he announced agrarian reform would again become a government priority. In this framework, the Indonesian government initiated the National Agrarian Renewal Programme (*Program Pembaruan Agraria Nasional* or PAPAN).⁸⁹ The PAPAN is a state land redistribution project, which focuses on agricultural land. However, the renewed attention for agrarian reform may also benefit urban landholders. In order to facilitate land redistribution, Government Regulation No. 36/1998 was replaced by Government Regulation No. 11/2010.⁹⁰ On the basis of the new government regulation land rights still become forfeited if land qualifies as neglected land. Land qualifies as neglected land if it is deliberately not used in accordance with its physical condition or with the form and goal of the right to which it is subject. Such is the case if, *inter alia*, no land right is applied for or if the land is not used in accordance with the requirements set in a site permit (*izin lokasi*), decision to grant a land right or any other permit, decision or letter issued by a competent official.⁹¹ That land is not well taken care of, is no longer a separate criterion to qualify land as neglected land. Land does not qualify as neglected land if the landholder is economically incapable to use the land the way it should be used.⁹² The government regulation explicitly stipulates that land which, as a result of a decision of the NLA that it qualifies as neglected land, reverts to the domain of the state, should be made productive again in the interest of the people and the state in the framework of land reform, strategic state programmes, and other state plans.⁹³

Meanwhile, the Indonesian government initiated the People's Service for Land Registration programme.⁹⁴ In the framework of this programme, mobile land administration services are provided to landholders who wish

89 Notably, a legal basis for the initiative is still awaited. The NLA has completed work on a draft government regulation on agrarian reform, but it has not been enacted.

90 GR No. 11/2010 on the Regulation and Exploitation of Neglected Land (*PP No. 11/2010 tentang Penertiban dan Pendayagunaan Tanah Terlantar*). The government regulation is implemented by Regulation of the Head of the NLA No. 4/2010 on the Procedure for the Regulation of Neglected Land (*Peraturan Kepala BPN No. 4/2010 tentang Tata Cara Penertiban Tanah Terlantar*).

91 Art. 2 and Elucidation GR No. 11/2010.

92 Art. 3 and Elucidation GR No. 11/2010. Notably, this stipulation only applies to land on which formal ownership or construction rights have been established. Hence, semi-formal and informal landholders are not protected in this regulation.

93 Art. 15 GR No. 11/2010.

94 The programme is based on Regulation of the Head of the NLA No. 18/2009 on the NLA People's Service for Land Registration programme (*Peraturan Kepala BPN No. 18/2009 tentang LARASITA Badan Pertanahan Nasional Republic Indonesia*).

to register their land. Landholders are thus no longer required to go to a 'normal' Land Office. In the first period of its implementation, 3,274 land certificates have been issued in Bandung under the programme. It is expected that in the coming period, each year, about 1,500 land certificates will be issued.⁹⁵

Indonesia has also witnessed the enactment of legislation on minimum services standards. In February 2005, the Head of the NLA promulgated Decision No. 1/2005, which formulated standard operational procedures for, *inter alia*, land registration.⁹⁶ The decision was soon replaced by Regulation of the Head of the NLA No. 6/2008.⁹⁷ On the basis of the regulation, the procedure to perform derivative registration should take no longer than five days.⁹⁸ Notably, the Regulation formulated no time limit for initial land registration.

In July 2009, Law No. 25/2009 on Public Services was enacted.⁹⁹ On the basis of this Law, administrative services providers have the obligation to formulate services standards and to provide services in accordance with these standards.¹⁰⁰ The services standards should relate to, *inter alia*, time limits and costs.¹⁰¹ Provisions on costs should be enacted with the agreement of the People's Representative Council, the Provincial Assembly, or the District/Municipal Council.¹⁰²

The public has the right to file complaints about public services to the administrative services provider, the Ombudsman, People's Representative Council, the Provincial Assembly, and/or the District/Municipal Council.¹⁰³ Notably, in order to realise this right, the Ombudsman is required to establish representative offices at the regional level within three

95 'Pemkot Bandung Bisa Bantu Sertifikasi Lahan Masyarakat', *Pikiran Rakyat*, 9 July 2010.

96 Decision of the Head of the NLA No. 1/2005 on the Standard Operation Procedures for Regulation and Service in the Context of the National Land Agency (*Keputusan Kepala BPN No. 1/2005 tentang Standar Prosedur Operasi Pengaturan dan Pelayanan Di Lingkungan Badan Pertanahan Nasional*).

97 Regulation of the Head of the NLA No. 6/2008 on the Simplification and Acceleration of the Standard Operation Procedures for the Regulation and Service of Land for Specific Land Services (*Peraturan Kepala BPN No. 6/2008 tentang Penyederhanaan dan Percepatan Standar Prosedur Operasi Pengaturan dan Pelayanan Pertanahan untuk Jenis Pelayanan Pertanahan Tertentu*).

98 Attachment II-VI Regulation of the Head of the NLA No. 6/2008.

99 Law No. 25/2009 on Public Services (*UU No. 25/2009 tentang Pelayanan Publik*).

100 Art. 15 Law No. 25/2009.

101 Art. 21 Law No. 25/2009.

102 Art. 31(4) Law No. 25/2009.

103 Art. 40 Law No. 25/2009.

years after the enactment of the Law.¹⁰⁴ Following complaints, superiors can impose sanctions.¹⁰⁵ In case a complaint is filed with the service provider, it should be decided upon within sixty days and the party who has filed the complaint should be informed about this decision within two weeks. A decision can involve the awarding of damages.¹⁰⁶ In addition, citizens can lodge an appeal to the Administrative District Court in case a services provider infringes the obligations set in the law and if the services have caused damage.¹⁰⁷ Infringement of these obligations can also lead to the leadership of service providers receiving written warnings, being discharged from office, being imposed a salary cut or being dismissed with dishonour, criminal sanctions and/or fines, depending on the obligations the service providers have failed to meet.¹⁰⁸

All regulations regarding public services should be brought in accordance with the law within two years after its enactment.¹⁰⁹ Implementing government regulations, including a government regulation regarding guidelines for the formulation of services standards, should have been enacted within six months. Following the enactment of the government regulation regarding the formulation of services standards, service providers should have formulated services standards within six months.¹¹⁰

The enactment of the government regulation regarding the formulation of services standards is still awaited. Nonetheless, various government institutions have formulated services standards. This includes the NLA, which enacted Regulation of the Head of the NLA No. 1/2010, 2/2010 and 3/2010.¹¹¹ Regulation No. 3/2010 requires that each land office has a service counter.¹¹² On the basis of Regulation No. 1/2010, initial registration of old rights should take no longer than ninety eight days, granting new ownership rights to non-agricultural land of less than 2,000 m² no longer than

104 Art. 46 Law No. 25/2009. This Article amends Art. 5(2) and 43(1) Law No. 37/2008 on the Ombudsman of the Republic of Indonesia (*UU No. 37/2008 tentang Ombudsman Republik Indonesia*), which gives the Ombudsman (no longer called the National Ombudsman Commission) the *authority* to establish representative offices at the provincial and district/municipal levels. Law No. 37/2008 also provides for the possibility that additional, independent Regional Ombudsman (*Ombudsman Daerah*) offices are established. See General Elucidation Law No. 37/2008.

105 Art. 41 Law No. 25/2009.

106 Art. 50 Law No. 25/2009.

107 Art. 51-2 Law No. 25/2009.

108 Art. 54-8 Law No. 25/2009.

109 Art. 59 Law No. 25/2009.

110 Art. 50 Law No. 25/2009.

111 Regulation of the Head of the NLA No. 1/2010 on Standards for Land Services and Regulation (*Peraturan Kepala BPN No. 1/2010 tentang Standar Pelayanan dan Pengaturan Pertanahan*); Regulation of the Head of the NLA No. 2/2010 on the Handling of People's Complaints (*Peraturan Kepala BPN No. 1/2010 tentang Penanganan Pengaduan Masyarakat*); Regulation of the Head of the NLA No. 3/2010 on Land Services Counters (*Peraturan Kepala BPN No. 1/2010 tentang Loker Pelayanan Pertanahan*).

112 Art. 2 Regulation of the Head of the NLA No. 3/2010.

thirty eight days, and derivative registration no longer than five days. Regulation No. 2/2010 creates a complaint mechanism. Complaints should also be handled within five days.¹¹³ District/municipal governments have also formulated services standards. In Bandung, Bylaw No. 22/2009 was enacted.¹¹⁴ The bylaw confirms that service providers at the municipal level are required to formulate services standards for licensing, relating to, *inter alia*, time limits and costs. In addition, they are required to handle complaints in accordance with existing standards and mechanisms.¹¹⁵ It is unclear whether these standards and mechanism have already been formulated.

In January 2010, Government Regulation No. 13/2010 on Non-Tax State Revenues was enacted.¹¹⁶ The objective of this government regulation is to increase non-fiscal state revenues for the NLA.¹¹⁷ The fees for the surveying of land are now fixed and amount to Rp. 450,000.¹¹⁸ The fees for registration itself have increased by 100 per cent to Rp. 50,000.¹¹⁹ Poor people are however still exempted from registration fees.¹²⁰ In addition, landholders obtaining new rights on state land no longer have to pay Entry Money.

A final initiative that is worth to mention here is the National Strategy on Access to Justice (*Strategi Nasional Akses terhadap Keadilan* or SNATK), which was launched by President Susilo Bambang Yudhoyono in October 2009. As noted in Chapter 3, it aims to create a framework of policies and regulations that are inclusive of poor and marginalised people and afford them access to justice so that they can utilise their resources to overcome poverty. The National Strategy outlines eight themes, including legal and judicial reform, legal aid, local governance, land and natural resources, and poor and disadvantaged groups. Under each theme challenges are identified along with a strategy and action plan identifying the role that relevant governments, civil society organisations, and donor institutions can play. Key policy recommendations include implementing coordinated and comprehensive agrarian reform; developing an integrated and comprehensive legal and policy framework based on social and environmental justice, and widening space for participation of poor and adat customary users of land and other natural resources in law-making; recognising and protecting rights, and harmonising spatial planning and licensing, to ensure that poor

113 Attachment Regulation of the Head of the NLA No. 1/2010.

114 Bylaw of Bandung Municipality No. 22/2009

115 Art. 38 Bylaw of Bandung Municipality No. 22/2009.

116 GR No. 13/2010 on the Tariffs on Non-Tax State Revenues Applicable to the NLA (*PP No. 13/2010 tentang Jenis dan Tarif Penerimaan Negara Bukan Pajak yang Berlaku pada Badan Pertanahan Nasional*).

117 General Elucidation, GR No. 13/2010.

118 Art. 3 in conjunction with Attachment, under I(A(1)) GR No. 13/2010.

119 Art. 17 in conjunction with Attachment, under II(A(1-2)) GR No. 13/2010.

120 Art. 23(2, under a) GR No. 13/2010.

and adat communities can safeguard their rights to land and natural resources; increasing efficiency and professionalism within the bureaucracy; improve the quality of public services and complaint mechanisms, and; encouraging educational institutions to become more active in community education.¹²¹ Further reforms can thus be expected. This is evidenced by the 2010-2014 National Legislative Programme (*Program Legislasi Nasional* or PROLEGNAS 2010-2014), which for instance announces the introduction of bills on land and on land rights.

All in all, the above reforms make it potentially easier for low-income kampung dwellers to register their land. Although the National Agrarian Renewal Programme focuses on agricultural land, at least there appears to be a general political will to grant new rights to informal landholders. Government Regulation No. 11/2010 on the Regulation and Exploitation of Neglected Land also makes it easier for the Indonesian government to do so. As a result of the enactment of Government Regulation No. 13/2010 on Non-Tax State Revenues, obtaining a registered land right generally has become considerably less expensive for informal landholders (but slightly more expensive for semi-formal landholders with an income above the monthly Regional Minimum Wage). The enactment of the legislation on minimum services standards leads to the registration and licensing processes possibly becoming less unwieldy. Although the People's Service for Land Registration programme probably benefits landholders in remote areas in the first place, it may also remove time and distance barriers as well as perceptual barriers to land registration of urban landholders. However, the reforms do not address the other main problem discussed in this chapter, namely that land registration, through land registration programmes or otherwise, contributes little to legal tenure security for kampung dwellers.

4.8 CONCLUSION

The chapter has discussed the law and practice of land registration in kampongs in Bandung. The starting point for land registration is the 1960 BAL, which aims to bring an end to the colonial dualist system by integrating colonial land rights ('old' rights) into a unified system of land rights, and also allows for the granting of 'new' rights on state land; for instance to informal landholders (squatters). In order to increase legal tenure security, the BAL requires primary rights to be registered in a legal register. To facilitate land registration, the Indonesian government financially and/or technically assists low-income landholders.

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

Despite the above facilitation, in practice it is difficult for kampong dwellers in Bandung to register their land. Stringent evidence requirements, a lack of political will to grant new rights to informal landholders, high costs and unwieldiness (in terms of complexity and tardiness) of the registration process as a result of poor administrative performance or even maladministration, along with related negative perceptions of kampong dwellers regarding the registration process, all combine to ensure that sporadic land registration only occurs on a limited scale.

Since 1981 the Indonesian government has initiated several land registration programmes. Over a hundred thousand people have made use of such programmes in Bandung only. Nonetheless, on the basis of income data it appears that in Bandung land registration programmes such as the LAP do often not reach the kampong dwellers with the lowest incomes. This limited reach can be explained by the fact that the LAP is only implemented in locations where registration is relatively easy, which means that locations where many low-income dwellers reside are ignored. As well, some of the same obstacles occurring in case of sporadic land registration remain in place; namely the stringent evidence requirements for initial registration and a lack of political will to grant new rights to informal landholders.

Land registration programmes in Bandung not only have a limited reach, but also contribute little to actual legal tenure security for kampong dwellers. Assessing the tenure security of semi-formal and informal landholders, we can conclude that their security is surprisingly strong, in the sense that they enjoy a high degree of administrative recognition. At the same time, the legal tenure security of formal landholders is limited for at least three reasons. First, few formal landholders have the permits they need to legally reside on their land. Besides a land certificate, people need spatial planning related permits; consisting of a land use permit, building permit, and building use permit. Again, the processes to obtain these permits are costly, complex, and slow. Also, many kampong dwellers are not eligible for such permits, because they do not meet zoning, sub-division, and/or building requirements. However, most people fail to obtain these permits because they are not aware of their need. Second, a number of formal landholders reported that they will not perform derivative registration after a change in the legal status of the land; probably because doing so would incur significant administrative costs and (depending on the value/condition of the property) tax levies. This not only means that future formal landholders will enjoy less legal tenure security, but also that the register loses its accuracy, which affects any formal landholder in Indonesia. Finally, the land administration system and even land law in general are dispossessory in nature, which is again the result of weaknesses in the legal framework and maladministration.

Recently, there have been significant reforms in relation to land registration, consisting of the enactment of new legislation on topics as various as neglected land, minimum services standards, registration costs and

neglected land, and the introduction of the People's Service for Land Registration programme. These reforms are hoped to make it easier for low-income kampong dwellers to register their land. However, the reforms do not address the problem that land registration contributes little to the legal tenure security for kampong dwellers.

Legal tenure security of the urban poor not only depends on these dwellers holding legally valid titles that offer them legal protection against involuntary removal, but also on the content of spatial plans. The participation of the urban poor in the making of these plans is of utmost importance. The next chapter will therefore take a closer look at the role of the public and particularly the urban poor in lawmaking processes, leading to the enactment of Bandung's Municipal General Spatial Plan.

5.1 INTRODUCTION

As discussed in Chapter 3, the Indonesian state can limit the exercise of land rights (and claims) as part of spatial planning. Land use is determined by town plans and spatial plans. These plans form the frame of reference for a licensing system. A landholder is only allowed to build a house if he holds a building permit. Developers are only allowed to initiate land clearance for commercial development if they hold a site permit. A government institution is only allowed to clear land for development in the public interest if the District-Head/Mayor has given permission, which should be in accordance with spatial plans. Spatial planning thus has a potentially significant impact on the legal tenure security of landholders. For that reason it is of utmost importance that landholders can participate in spatial planning, that the government informs them about this process, and that their interests are taken into account.

In view of the above, this chapter discusses the law and practice of spatial planning during the New Order and, after having paid attention to Post-New Order reforms, takes a close look at the practice of spatial planning in Post-New Order Bandung. It assesses to what extent the general public and particularly kampong dwellers now have the opportunity to be actively involved in spatial planning. In doing so, the chapter also looks into the role of the Municipal Council, higher levels of government, and 'civil society' in supporting kampong dwellers' interests. Furthermore, it assesses to what extent spatial planning has become more transparent. In closing, it reviews to what extent the interests of kampong dwellers are taken into consideration in spatial plans.

This chapter is divided into seven sections. The next section discusses the law and practice of spatial planning in the late New Order. This is followed by a description of Post-New Order spatial planning related reforms. Section 5.4 focuses on spatial planning practices in Post-New Order Bandung, by analyzing the lawmaking process of the General Spatial Plan in 2004 and its premature revision in 2006. Next, spatial planning is analysed further from a rule of law perspective. Section 5.6 discusses some recent spatial planning related reforms, after which the chapter concludes.

1 A summary of this chapter was published as Reerink, G.O. (2009), 'When Money Rules over Voice, Regional Autonomy and Spatial Planning in Bandung Benefits the Elite', *Inside Indonesia* (98).

5.2 SPATIAL PLANNING UNDER THE LATE NEW ORDER

Spatial planning is a relatively new phenomenon in Indonesia. As discussed in Chapter 2, the first centrally-formulated Town Planning Ordinance, of which spatial planning was initially a part, was enacted by the colonial government in 1948.² After independence, the colonial legislation was maintained.³ In addition, two competing departments, the Department of Home Affairs and the Department of Public Works, enacted various regulations on town planning. It falls outside the scope of this chapter to discuss these regulations in detail, other than to notice that because of a lack of coordination among the two departments, they were largely contradicting each other.⁴ In addition, this legislation overlapped with a system of land use planning established according to Article 14 of the BAL (Otto & Syafrudin 1990).

The last pieces of town planning legislation that were enacted during the New Order were the Regulation of the Minister of Home Affairs No. 2/1987, and the implementing Decision of the Minister of Home Affairs No. 59/1988.⁵ On the basis of this legislation, urbanised Districts and Municipalities were required to design and enact a General Town Plan (*Rencana Umum Tata Ruang Kota*), Detailed Town Plans (*Rencana Detail Tata Ruang Kota*), and Technical Town Plans (*Rencana Teknik Ruang Kota*).⁶ The General Town Plan covered the whole territory of a Municipality.⁷ It contained general directions on how space should be used, as well as maps. The Detailed Town Plans covered the whole or part of the territory of a Municipality and included zoning provisions.⁸ These provisions were supported by maps of a smaller scale than those accompanying the General

2 The Town Planning Ordinance was implemented by the 1949 Town Planning Regulation.

3 In 1973 the Minister of Home Affairs declared the Town Planning Ordinance applicable to all urban settlements (Circular Letter Pemda 18/2/6, dated 15 May 1973). This was confirmed by Presidential Instruction No. 1/1976 on the Coordination of Tasks in the Field of Agraria with those in the Fields of Forestry, Mining, Transmigration and Public Works (*Inpres No. 1/1976 tentang Koordinasi Tugas Bidang Keagrariaan dengan Bidang Kehutanan, Pertambangan, Transmigrasi dan Pekerjaan Umum*). The Ordinance was finally annulled by the 1992 SML (Art. 31 1992 SML).

4 See on this point and for an overview of the history of town planning in Indonesia, Niessen 1999:220-36.

5 Regulation of the Minister of Home Affairs No. 2/1987 on Guidelines for the Formulation of Town Plans (*Permendagri No. 2/1987 tentang Pedoman Penyusunan Rencana Kota*); Decision of the Minister of Home Affairs No. 59/1988 on the Directives for the Implementation of Regulation of the Minister of Home Affairs No. 2/1987 (*Keputusan Menteri Dalam Negeri No. 59/1988 tentang Petunjuk Pelaksanaan Permendagri No. 2/1987*).

6 Art 1 and Art. 5 Regulation of the Minister of Home Affairs No. 2/1987.

7 The following description also applied to urbanised Districts.

8 Art. 6, under c and 7 Regulation of the Minister of Home Affairs No. 2/1987.

Town Plan.⁹ The Technical Town Plans dealt with infrastructure and buildings.¹⁰

The municipal governments had authority in town planning, including both the design of town plans and their implementation, but they needed to coordinate, integrate, and synchronise with 'related bodies', consisting of deconcentrated Central Government Bodies and Municipal Services.¹¹ Specifically, town planning was carried out by the Regional Development Planning Agencies (*Badan Perencanaan Pembangunan Daerah* or BAPPEDA) at the municipal level.¹² These agencies were entitled to contract consultants to assist in the design of plans.¹³

According to the legislation, town planning was not intended to be just a bureaucratic process. The municipal governments were required to take into account the aspirations of the people. To meet that aim, they were meant to organise discussion meetings and seminars, where representatives of the people could provide input.¹⁴ The Municipal Councils also had a role in communicating such views to the municipal governments, which were meant to use this input to improve drafts.¹⁵ Once designs were ready, they were sent to the Municipal Councils to be enacted by bylaw.¹⁶

The final steps in the decision-making process in town planning were the recommendation and legalisation of town plans by higher administrative levels. In the case of General Town Plans and Detailed Town Plans, the Governor first needed to give a recommendation, at which occasion it was checked whether the development programmes of the municipal governments were integrated with those of neighbouring regions in accordance with the provincial governments' development policies.¹⁷ Thereafter, the Director-General of Regional Development verified whether the procedure for the design of plans had been followed.¹⁸ Finally, the plans had to be legalised. As for the General Town Plans and Detailed Town Plans, this was the authority of the Governor or, if the plans concerned a provincial capital

9 The scale of the maps of the Detailed Town Plan was 1:5,000, while that of the General Town Plan was 1:10,000 for a Municipality with less than 1,000,000 inhabitants, and 1:20,000 for a Municipality with more than 1,000,000 inhabitants (Art. 11 and 7 Regulation of the Minister of Home Affairs No. 2/1987).

10 Art. 10, under b Regulation of the Minister of Home Affairs No. 2/1987.

11 Art. 12-14 and 25 Regulation of the Minister of Home Affairs No. 2/1987.

12 Art. 16 Regulation of the Minister of Home Affairs No. 2/1987.

13 Art. 18, 54, 62, and 82 Decision of the Minister of Home Affairs No. 59/1988.

14 Art. 14 and 25 Regulation of the Minister of Home Affairs No. 2/1987.

15 Art. 34, 44, 52, under a, and 60 Decision of the Minister of Home Affairs No. 59/1988.

16 Art. 26 Regulation of the Minister of Home Affairs No. 2/1987. If the design of plans had been contracted out to consultants, they could inform councillors about the technical aspects of the drafts (Art. 76(3) Decision of the Minister of Home Affairs No. 59/1988).

17 Art. 28 Regulation of the Minister of Home Affairs No. 2/1987; Art. 78(3) Decision of the Minister of Home Affairs No. 59/1988.

18 Art. 79 Decision of the Minister of Home Affairs No. 59/1988.

or a city with a strong population growth and a strategic position in national and regional development, the Minister of Home Affairs. Technical Town Plans were always to be legalised by the Governor.¹⁹

On the basis of the 1974 Decentralisation Law, the plans could be implemented as soon as they had been legalised, or three months after they had been sent to the relevant officials and no decision had been taken. This term could be extended for another three months if the relevant officials informed the municipal governments about the matter within this term.²⁰

Once the bylaw enacting a town plan had been legalised, the public could apply at the Supreme Court for judicial review of the bylaw against higher legislation, although only in relation to a concrete case.²¹ If the Supreme Court ruled that the bylaw contradicted higher legislation, it would be void and no longer applicable.²²

The above shows that the legislation on town planning contained some safeguards that could protect the interests of landholders, but that they were rather weak. The provisions on participation and transparency for instance required municipal governments to “take notice of the aspirations of the people” in town planning, but it did not clarify what consequences this should have. Furthermore, the legislation did not make provision for all interested parties to have input, but only for “representatives of the people”, without clarifying who these could be. Finally, the legislation contained no provisions requiring the plans to be available for inspection by the public once enacted.

In 1992 the first umbrella spatial management law was enacted, Law No. 24/1992 (hereafter the 1992 SML).²³ The aim of the 1992 SML was to manage natural resources in a more coordinated and integrated way. It therefore incorporated town planning into the broader context of spatial management, which involved planning (*perencanaan tata ruang*), utilisation (*pemanfaatan ruang*), and control of use (*pengendalian pemanfaatan ruang*) of land, water, and airspace at all government levels. The SML required the enactment of several implementing regulations. Until these regulations were enacted, older legislation was to remain in force.²⁴

The 1992 SML created a whole new planning framework, including new terminology. At the municipal level, General Spatial Plans (*Rencana Umum Tata Ruang*) were to be enacted (replacing the General Town Plans),

19 Art. 28-9 Regulation of the Minister of Home Affairs No. 2/1987.

20 Art. 69(1-2) Law No. 5/1974.

21 Art. 26 Law No. 14/1970 on the Basic Provisions for Judicial Power; Art. 11(4) People’s Consultative Assembly Directive No. III/MPR/1978 on the Position and Working Relation of the Highest State Bodies with/or between High State Bodies (*TAP MPR No. III/MPR/1987 tentang Kedudukan dan Hubungan Tata-Kerja Lembaga Tertinggi Negara dengan/ atau antar Lembaga-Lembaga Tinggi Negara*); Art. 31 Law No. 14/1985 on the Supreme Court (*UU No. 14/1985 tentang Mahkamah Agung*).

22 Art. 31 and Elucidation Law No. 14/1985.

23 Law No. 24/1992 on Spatial Management (*UU No. 24/1992 tentang Penataan Ruang*).

24 Art. 30 Law No. 24/1992.

which were valid for 10 years. The plans followed the plans of higher administrative levels as guidelines. The General Spatial Plans formed the basis for Elaborated Spatial Plans (*Rencana Rinci Tata Ruang*), consisting of Detailed Spatial Plans and Technical Spatial Plans (replacing the Detailed Town Plans and Technical Town Plans respectively).²⁵ The 1992 SML required the enactment of a government regulation regarding the form and content of the plans, but such a regulation was never enacted.²⁶ Regulation of the Minister of Home Affairs No. 2/1987 thus remained the guiding document in relation to this matter.

The Governor had authority in spatial management within the Province, and the Mayor within the Municipality.²⁷ In order to improve coordination between and among the different administrative levels, a National Coordinating Board for Spatial Planning (*Badan Koordinasi Tata Ruang Nasional*) was established, which was chaired by the Head of the National Development Planning Agency (*Badan Perencanaan Pembangunan Nasional* or BAPPENAS).²⁸

The 1992 SML explicitly granted the public the right to participate in planning, and even required the central government to enact a separate government regulation on this matter.²⁹ This regulation was enacted four years later: Government Regulation No. 69/1996.³⁰ In the drafting process of the General Spatial Plan at the municipal level, the public (consisting of individuals, communities, or legal bodies) could give input regarding the direction of regional development; identify potential issues and problems regarding development; give input on the formulation of spatial planning; provide information, proposals, judgments and opinions on the strategic organisation of spatial use within the Municipality; object to the draft General Spatial Plan; collaborate in research and development; and/or give specialized support.³¹ The public also had a similar right to participate in the drafting process of detailed plans.³² Any form of public participation in the drafting process of spatial plans at the municipal level had to be directed towards the Mayor in written or oral form. Detailed provisions regarding this matter were to be formulated by the Minister of Home Affairs.³³

25 Art 20(3-4), 21(3-4), 22(3 and 5) Law No. 24/1992.

26 Art. 23(1) and (3) Law No. 24/1992.

27 Art. 27(1) and 28(1) and Elucidation Law No. 24/1992.

28 Presidential Decision No. 75/1993 Presidential Decision No. 75/1993 on Co-ordination of the Organisation of National Spatial Planning (*Keppres No. 75/1993 tentang Koordinasi Pengelolaan Tata Ruang Nasional*) in conjunction with Art. 29 Law No. 24/1992.

29 Art. 4 and Art. 12 Law No. 24/1992.

30 GR No. 69/1996 on the Implementation of the Rights and Obligations as well as the Procedure and Form of Public Participation in Spatial Management (*PP No. 69/1996 tentang Pelaksanaan Hak dan Kewajiban serta Bentuk dan Tata Cara Peran Serta Masyarakat dalam Penataan Ruang*). The regulation will be discussed in further detail in the next section.

31 Art. 1(10) and 15 GR No. 69/1996.

32 Art. 18 GR No. 69/1996.

33 Art. 27 GR No. 69/1996.

As will be discussed below, the Minister enacted a regulation regarding this matter only in 1998, six months after Soeharto's fall.

The Municipal Council enacted General Spatial Plans by bylaw. The 1992 SML contained no provisions regarding the enactment of Detailed Spatial Plans, Technical Spatial Plans, or legalisation of plans. Regulation of the Minister of Home Affairs No. 2/1987 thus again remained the guiding document in relation to this matter, which means that these plans were also enacted by bylaw. General Spatial Plans and Detailed Spatial Plans were legalised by the Governor or the Minister of Home Affairs and Technical Plans by the Governor.

Just as in case of a town plan, once the bylaw enacting a spatial plan had been legalised, the public could apply at the Supreme Court for judicial review of the bylaw against higher legislation. This became easier from 1993, when the review no longer had to be related to a concrete case, but could be initiated separately following a complaint or request.³⁴

The 1992 SML granted the public the right to be informed about regional spatial plans, and again required the central government to enact a regulation on this matter.³⁵ This was realised by the same government regulation as discussed before, Government Regulation No. 69/1996. It added to the right of the public to be informed about regional spatial plans, as enshrined in the 1992 SML, the concept of transparency (*mengetahui secara terbuka*), which made the law potentially more significant.³⁶ Likewise, it stated that the government had the duty to make enacted spatial plans publically available in government offices and public places.³⁷

The right to be informed about regional plans formed part of a broader effort to increase the role of the public in spatial management. It was intended that members of the public should be able to obtain information easily and quickly, through the media and public forums, and could take initiatives to support the implementation of their rights. The government was supposed to support such initiatives by increasing public awareness, for instance through providing legal aid and education, as well as promoting transparency in spatial management.³⁸

Spatial plans were also to be evaluated and revised. The criteria and procedures for the evaluation and revision of plans were to be elaborated by government regulation; but this regulation too was never enacted. In any event citizens had a right to participate in planning and to be informed about plans.³⁹

34 See Regulation of the Supreme Court No. 1/1993 on the Right to Substantive Review (*Peraturan Mahkamah Agung No. 1/1993 tentang Hak Uji Materii*) in conjunction with Art. 79 Law No. 14/1985.

35 Art. 4 and 6 Law No. 24/1992.

36 Art. 2, under b Law No. 24/1992.

37 Art. 3(2) GR No. 69/1996.

38 Art. 30 GR No. 69/1996.

39 Art. 13(2-3) and Elucidation Law No. 24/1992.

The above shows that the 1992 SML and Government Regulation No. 69/1996 contained some new safeguards that could protect the interests of landholders, but that these safeguards remained weak – particularly for the urban poor. Government Regulation No. 69/1996 has been criticized, for several reasons. For instance, its provisions suggested that participation was an open process, to be initiated by the people themselves, upon which the government should create a forum or another framework in which people could express themselves. Yet, as Darminto has argued: “low income people tend to be hesitant to be involved in [spatial management], unless it will directly enhance the quality of their lives and their involvement will return tangible outcomes in which they have interests.” He thus concludes that low income people should be more directly and carefully encouraged to participate, and even be assisted in such efforts (Darminto 2003:10-1).⁴⁰

Another point of criticism regards the fact that the government was in no way required to make use of the public input. The government could also not be ‘sanctioned’ if it failed to let the people participate in spatial planning or inform them about plans. As discussed in Chapter 3, the Administrative Courts established in 1991 only had jurisdiction to review government institutions’ written decisions with legal effect when the decisions were concrete, individual, and final. The Administrative Courts could thus not review a bylaw formalising a spatial plan; as the enactment of such bylaw is not considered to be a decision of a concrete or individual nature (Oetomo 1997:8).

Although the law created a mechanism that allowed the public to participate in spatial planning, there was no such participation in practice. As Salim noted, the public was not actively involved in planning processes from the beginning, and often played no role at all. Problems were thus not identified by the public, but by municipal governments, which were guided by the policies of the central and provincial governments. If the public was consulted before the enactment of plans, this typically took place after the plans had already been designed, which left little room for discussion. As a result, the enacted plans did not usually reflect the needs of the public (Salim 2003:21).

The indirect influence of the public, through elected forums, was also limited. The only contribution of the Municipal Councils was in giving decisive consent to the plans (Niessen 1999:232-3). In effect the only ‘outsiders’ who could influence the outcome of plans were the consultants who were commonly contracted to advise on the design of plans. In some cities the Detailed and Technical Plans were actually enacted by decision of the Mayor, which means that contrary to prevailing legislation, the Municipal Councils played no role whatsoever in the determination of such plans (Niessen 1999:256).

40 See also Salim, who stressed the need to empower the people (Salim 2003:23).

The central government appeared to have little interest in spatial planning at the municipal level. Niessen notes that several years after plans had been enacted, they had often still not been legalised (Niessen 1999:254). As discussed before, according to the 1974 Decentralisation Law, plans could then be implemented; however in practice regional governments were reluctant to do so (Niessen 1999:209).

Transparency remained limited, even after plans had been enacted and legalised. According to Niessen, plans were not available for inspection. Officials often used the argument that they wanted to prevent land speculation. Aside from the fact that this argument may have been misleading, it was against the law to withhold from the public the information contained in the plans (Niessen 1999:254-5).

The enactment of the 1992 SML and Government Regulation No. 69/1996 did not significantly improve the situation. Since the legal framework regarding public participation remained unfinished, it was unclear how and in what form such participation should take place (Sumardjono 2005:73-4). Perhaps not surprisingly, plans typically facilitated development that benefited politico-economic elites. These groups could use plans to justify the appropriation of resources to further private interests, which often ran counter to those of the urban poor, who were simply ignored (Schulte Nordholt 1995:193-201).

There was little resistance against the above practices. Even the most critical elements showed little interest in spatial planning. As will be discussed in Chapters 6 and 7, from the early 1970s many rights-oriented NGOs, and from the late 1980s student movements, lent their support to (urban) low-income groups, but only as far as the latter's interests were directly threatened – such as in case of land clearance for development in the public interest. From the late 1980s, environmental NGOs emerged (Cribb 2003:45-6), some of which took a critical stance in spatial planning, but only as far as this related to environmental issues.

5.3 LEGAL REFORMS RELATED TO SPATIAL PLANNING

As discussed in Chapter 3, the fall of Soeharto in May 1998 marked the beginning of an ambitious reform programme. These reforms also extended to spatial management law. The Minister of Home Affairs enacted Regulation No. 8/1998, which contained new provisions regarding spatial management in the regions, and Regulation No. 9/1998, which constituted the

implementing regulation of Government Regulation No. 69/1996 discussed above.⁴¹

The new legislation formulates further standards for public participation in spatial management.⁴² The Mayor is required to inform the public that a plan is being designed.⁴³ This information is to be disseminated for seven days through various media and public forums, which for General Spatial Plans should be organised at the Sub-District level; for Detailed Spatial Plans at the City-Quarter or Village level; and for Technical Spatial Plans at the Neighbourhood or Block level.⁴⁴ During the design process, discussions and seminars should be organised, to which government bodies, specialists, informal leaders, professional and civil organisations, and investors should be invited.⁴⁵ Mayors are under the obligation to take suggestions and opinions from the public and to use this input in the decision-making process.⁴⁶ As soon as the final draft of the design is completed, the Mayors have to announce this to the public.⁴⁷

The role of Municipal Councils in spatial planning diminished. General Spatial Plans and revisions of such plans are to be enacted by bylaw; Detailed Spatial Plans by decision of the Mayor with agreement of the leadership of the Municipal Council; and Technical Spatial Plans by decision of the Mayor.⁴⁸

The new legislation did not require municipal governments to obtain a recommendation from the Governor, nor require them to send General Spatial Plans to the Governor or the Minister of Home Affairs for legalisation. At the same time, it did not explicitly revoke Regulation of the Minister of Home Affairs No. 2/1987, which suggests that municipal governments were still required to take these steps. The 1999 RALs made clear that they only need to forward bylaws or decisions of the Mayor to the central government within fifteen days of their enactment, and that on the basis of the central government's review authority the legislation can be revoked if contrary to the public interest or higher legislation. If the bylaw is annulled, municipal governments can initiate proceedings against this decision at the Supreme Court.⁴⁹

41 Regulation of the Minister of Home Affairs No. 8/1998 on the Organisation of Spatial Management in the Region (*Permendagri No. 8/1998 tentang Penyelenggaraan Penataan Ruang di Daerah*); Regulation of the Minister of Home Affairs No. 9/1998 on the Method of Public Participation in the Spatial Planning Process in the Region (*Permendagri No. 9/1998 tentang Tata Cara Peran Serta Masyarakat dalam Proses Perencanaan Tata Ruang di Daerah*).

42 Art. 31, 35, and 38 Regulation of the Minister of Home Affairs No. 8/1998.

43 Art. 7(1 and 4) Regulation of the Minister of Home Affairs No. 8/1998.

44 Art. 13(4-5) Regulation of the Minister of Home Affairs No. 9/1998.

45 Art. 8(3) Regulation of the Minister of Home Affairs No. 8/1998.

46 Art. 5, under b and c Regulation of the Minister of Home Affairs No. 8/1998.

47 Art 5, under a, 8(4) Regulation of the Minister of Home Affairs No. 8/1998.

48 Art. 44(2) and 47(3) Regulation of the Minister of Home Affairs No. 8/1998.

49 Art. 113-114 Law No. 22/1999.

As discussed in Chapter 3, in 2004 the role of higher administrative levels increased as a result of the revision of the RALs, also in spatial management. The provincial governments now obtained a shared authority with the municipal governments in the fields in which the latter previously held exclusive authority.⁵⁰ The Governor has the task of guiding and supervising the municipal governments, as well as coordinating government matters.⁵¹ It is for this reason that, prior to the enactment of a draft bylaw related to municipal spatial planning, a Mayor must send a copy of the draft to the Governor for evaluation, within three days of having reached agreement with the Municipal Council over the draft. This evaluation should be completed within fifteen days. If the Governor considers the draft bylaw to be not in accordance with the public interest or higher legislation, the municipal government is required to correct it within seven days. If the municipal government fails to do so, the Governor annuls the draft bylaw. If the bylaw is annulled, the municipal government can start proceedings against this decision at the Supreme Court. The Governor forwards the result of his evaluation to the Minister of Home Affairs. This process should be coordinated with the minister dealing with spatial management, *i.e.* the Minister of Public Works.⁵²

As soon as the bylaw has been enacted, the municipal government must forward a copy of the bylaw to the central government within seven days. On the basis of its review authority, the central government can annul the bylaw if it is deemed contrary to the public interest or to higher legislation by presidential regulation, within sixty days of having received a copy of the bylaw. If the bylaw is annulled, municipal governments can start proceedings against this regulation at the Supreme Court.⁵³

Review by the central government is not the only way a bylaw can be annulled. After its enactment, people can also file a request to the Supreme

50 Art 13 and 14 Law No. 32/2004.

51 Art. 38 Law No. 32/2004.

52 Art. 189 in conjunction with Art. 186 Law No. 32/2004. These provisions are implemented by Art. 37-42 GR No. 79/2005 on Guidelines for Guidance and Supervision of the Exercise of Regional Government (*PP No. 79/2005 tentang Pedoman Pembinaan dan Pengawasan Penyelenggaraan Pemerintah Daerah*). According to Art. 42 GR No. 79/2005, Art. 37-39 GR No. 79/2005 should be implemented by ministerial regulation, but this was only done in 2008 (see Section 5.6 below).

53 Art. 145 Law No. 32/2004. Notably, Law No. 32/2004 only requires a Mayor to forward a draft bylaw to the Governor for evaluation, and to the central government; GR No. 79/2005 requires a Mayor also to forward a draft regulation of the Mayor to the Governor for evaluation; decisions of the Mayor are not required to be forwarded. As Detailed Plans and Technical Plans are enacted by decision of the Mayor, they are thus not evaluated by the Governor. The General Elucidation however notes in general terms that in cases where a municipal government is negligent or commits violations, the central government can impose sanctions, including in the form of annulment of decisions of the Mayor. See General Elucidation, under 9.

Court for judicial review of the bylaw against acts of parliament.⁵⁴ Review of the bylaw against other types of higher legislation (government regulations and presidential regulations) is no longer possible.⁵⁵

As soon as a spatial plan has been formalised by bylaw, the Mayor is required to disseminate the plan through the media and to 'socialise' it.⁵⁶ In addition, the public should be able to access the plan in a quick and easy manner, through the press, electronic media, or public forums.⁵⁷

The above shows that spatial management legislation contains further safeguards that could protect the interests of landholders. Most importantly, it lists various obligations of municipal governments in relation to public participation and transparency. However, most obligations are still not clear and enforceable. How many discussions and seminars should be organised during the plan's design process? Government bodies, specialists, informal leaders, professionals and civil organisations are invited to these discussions and seminars on the basis of what selection criteria? How should suggestions and opinions from the public be used in the decision-making process? What are the sanctions if municipal governments fail to meet these and other obligations in relation to public participation and transparency? In addition, the role of the Municipal Councils has diminished, in the sense that technical spatial plans are enacted by decision of the Mayor alone, which means that democratic control has actually weakened. Finally, the provincial and central government's role with respect to guidance and supervision also remains limited, although this role has increased since 2004. Despite these weaknesses, the regulations could still offer some protection to the urban poor in spatial planning, particularly in combination with the general reforms discussed in Chapter 3. The following section takes a close look whether, and if so how, spatial planning practices have changed in Post-New Order Bandung.

5.4 PRACTICE OF SPATIAL PLANNING IN POST-NEW ORDER BANDUNG

Shortly after the fall of Soeharto, plans for democratic reform entered Bandung's political agenda. In 1999 the then Mayor of Bandung, Aa Tarmana, a member of Soeharto's Golkar Party and of military background, formulated Reform Principles for Regional Development (*Pokok-Pokok Reformasi Pembangunan Daerah*), in which he announced that local politics would democratise and involve public participation.⁵⁸ The council elections of

54 Art. 11(2), under b Law No. 4/2004 on Judicial Power; Art. 31 Law No. 5/2004 on the Revision of Law No. 14/1985 on the Supreme Court.

55 Since the enactment of Law No. 10/2004 on lawmaking, municipal bylaws and provincial bylaws have the same hierarchical status.

56 Art. 10 and 5, under e Regulation of the Minister of Home Affairs No. 8/1998.

57 Art. 41(1) Regulation of the Minister of Home Affairs No. 8/1998.

58 Attachment, p. 10, Decision of the Mayor of Bandung No. 103/1999.

May 1999 resulted in a landslide victory for the Indonesian Democratic Party of Struggle (*Partai Demokrat Indonesia-Perjuangan* or PDI-P). Though still the third largest party, Golkar lost its dominant position.⁵⁹ In 2001 the 1999 RALs came into force, which strengthened the position of the Municipal Council vis-a-vis the municipal government. Finally, in the same year the Reform Principles for Regional Development were elaborated in a Regional Development Programme (*Program Pembangunan Daerah* or PRO-PEDA), which explicitly underlined the need to develop a new paradigm in planning, with room for public participation, involvement of stakeholders, and decision-making at the lowest possible level.⁶⁰

Whether the idea of democratisation was indeed taking root, or whether it remained just political rhetoric, was soon tested. Bandung was due for a new General Spatial Plan before 2005, and in October 2001 the municipal government therefore began to design a draft. A technical team, consisting of officials from several Municipal Services, was responsible for this process.⁶¹ However, the draft plan was actually designed by a private consultancy firm, PT Surya Anggita Sarana Konsultan, which had been selected following a public tender (Sari 2003:63-4).

Various NGOs in Bandung advocated for participation in spatial planning. The Discussion Group for the Citizens of Bandung (*Sarasehan Warga Bandung* or Sawarung), a citizens' forum established in July 1999 by 18 community development NGOs, was the most vocal organisation.⁶² It consisted of several working groups, including a group called the Spatial Planning Enclave (*Enclave Tata Ruang*), which consisted of ten representatives from various larger and smaller NGOs in Bandung. These representatives were well related to and sometimes actually members of the city's kampung communities.⁶³

Enclave Tata Ruang noticed that the general public did not know how to voice its discontent with government policy. The organisation therefore launched various initiatives, including a study, a survey, focus group discussions, and workshops to identify problems and needs in spatial plan-

59 The 45 seats of the Municipal Council were divided as follows: PDI-P – 14; PAN – 8; Golkar – 6; Keadilan Bulan Bintang – 5; PPP – 4; Kebangkitan Bangsa – 2; Keadilan dan Persatuan – 1; TNI / POLRI – 5.

60 Attachment, p. 9, Bylaw of Bandung Municipality No. 9/2001 on the Regional Development Programme of Bandung Municipality Year 2000-2004 (*Perda Kota Bandung No. 9/2001 tentang Program Pembangunan Daerah (Propeda) Kota Bandung Tahun 2000-2004*).

61 Decision of the Mayor of Bandung No. 650/Kep.243-Bag.Huk/2001.

62 Aside from developing a mechanism to participate in decision-making processes, the objective of Sawarung was to monitor the implementation of government programmes. These activities required local knowledge, for which the forum established a database network, known as Combine. This network relied on the collection and updating of data concerning local conditions, resources, development needs and problems by the communities themselves.

63 For example, one of the members was a resident of kampung Cimaung, one of the kampongs in Taman Sari discussed in Chapter 2.

ning (Enclave Tata Ruang 2004b:7-12). It also developed an alternative planning mechanism, called *Mistar* (short for *Model Interaksi Stakeholder Tata Ruang*), which aimed at creating interaction between various stakeholders in spatial planning (Enclave Tata Ruang 2004a). For this purpose, the activists argued, a new body would need to be established within the municipal government.⁶⁴

The municipal government offered little response to these initiatives; and the involvement of the public in spatial planning still remained limited. During the design process the municipal government only once organised a seminar to get input from stakeholders. This seminar, organised in January 2002, consisted of a dialogue and workshop about the General Spatial Plan, in which various NGO activists, academics, members of the Municipal Council, and representatives of the media participated. Notably, there were no clear criteria for the selection of these stakeholders (Sari 2003:69-70).

Between October 2002 and February 2003, the first draft was 'socialised', to enable it to be further improved (Sari 2003:64). During this process the municipal government organised a small seminar; however aside from government representatives only journalists participated, so it was little more than a press conference (Sari 2003:70). The municipal government also organised a survey among the general public; but did not see the need to organise a public forum, as the General Spatial Plan was only a macro plan and, according to the municipal government, the public had been sufficiently represented by stakeholders during the seminar in 2002 (Sari 2003:72).

Despite the provision for participation, the input given by stakeholders was largely ignored. As a senior academic who participated in the 2002 seminar argued: "In the first year the plan would be formulated with representative participation, in the second year the public would be asked to participate. However, in fact this was just token participation."⁶⁵ Separately, two NGO members who participated in the seminar came to a similar conclusion: "public participation was only a formality really."⁶⁶

The drafting process of the General Spatial Plan was more transparent than before, but there were still some deficiencies. This was confirmed by research by Zulkaidi & Sari, who analyzed the transparency in the different stages of the drafting process as regulated by Regulation of the Ministry of Home Affairs No. 2/1987. Aside from organising the seminars and survey, and coordinating the meetings previously mentioned, the municipal government disseminated information through various media, namely local radio, local television, the internet, and local newspapers. The drafting process was sufficiently transparent in terms of the comprehensiveness of

64 Personal communication of several NGO members, Bandung, 10 August 2004.

65 Personal communication of a senior academic, Bandung, 21 July 2008.

66 Personal communication of NGO members, Bandung, 22 July 2008.

the information provided, thus accommodating the opinion of stakeholders, as well as in terms of the procedures followed to organise and target information. However, the process did not meet other essential transparency standards, namely in relation to the way in which information was provided and the variation of the media used to provide the information (Zulkaidi & Sari 2004).⁶⁷

The final draft of the General Spatial Plan was completed in February 2003. It had taken little consideration of the interests of kampung dwellers. The draft proposed the restructuring of 'slum areas' (*kawasan kumuh*) by the construction of tenement buildings, so that the remaining land could be used for commercial purposes.⁶⁸ Bandung's municipal government thus broke with the policy of kampung improvement that, as noted in Chapter 2, had been implemented since the 1970s. Instead, it adopted a policy of drastic urban renewal. The draft risked damaging the economic position of kampung dwellers, most of whom work in the informal sector. Traditional markets that were considered 'disturbing' or lacked infrastructure could be relocated, as could local markets that were no longer in accordance with the General Spatial Plan; the activities of sidewalk vendors would be regulated and curbed and they were to be encouraged to trade without utilizing public space.⁶⁹

A month later the municipal government sent the draft Plan to the Municipal Council, which formed a Special Committee for the General Spatial Plan (*Panitia Khusus Rencana Tata Ruang dan Wilayah* or Pansus) to deliberate over the draft. Public participation was again very limited. The Municipal Council was under time pressure, as elections were being held soon. As the previously quoted senior academic involved in the process noted: "Those who were consulted were technical specialists, not people who would be affected by the General Spatial Plan. Besides, they were only asked to participate in the evaluation of the draft plan after the Special Committee had already decided to support it. Public participation of this kind was only a way to legitimise the decision already taken."⁷⁰

The Municipal Council's final deliberations hardly addressed the substantive issues any further. Councillors primarily focused their attention on the wording of Article 22, under c of the draft General Spatial Plan, which stated tourist and recreational activities that were not in accordance with

67 Notably, the researchers qualify their findings, since they draw from sources within the Regional Development Planning Agency only – sources that could not be crosschecked. Further, it was hard to estimate the fulfilment of some of the standards. Finally, the study only assessed compliance with (minimum) transparency standards and did not look at the quality of such compliance.

68 Art. 14(2), under c of the draft plan.

69 Art 17, under a and j-m and Art 42(3), under d of the draft bylaw. On the implementation of these measures, see also Art. 79, under f-g and Art. 80, under c-e in conjunction with Art. 42 of the draft bylaw.

70 Personal communication of a senior academic involved in the drafting process, Bandung, 22 July 2008.

the “local people’s religious and cultural standards” were to be curbed, limited or prohibited. After objections from religious parties like the United Development Party (*Partai Persatuan Pembangunan* or PPP) and Justice Moon and Star Party (*Partai Keadilan Bulan Bintang* or PKBB), it was decided that the words ‘curb’ and ‘limit’ would be dropped.⁷¹ Otherwise, the Municipal Council proposed no major revisions. On 10 February 2004, just weeks before the Municipal Council elections, the General Spatial Plan was enacted by Bylaw No. 2/2004.⁷²

Soon after the formalisation of the General Spatial Plan, it emerged that the councillors had overlooked a major issue – at least, they claimed to have overlooked it. This concerned Punclut, a 268 ha conservation and water catchment area situated in the scenic hills of North Bandung, which is part of the environmentally significant North Bandung Territory (*Kawasan Bandung Utara* or KBU). Protection of the area is considered of utmost importance to guarantee the city’s water supplies and to prevent flooding downhill.⁷³ Notably, the area is also inhabited by a large kampong community, which has built the land with low-density, semi-permanent housing.

Punclut had already been surrounded by controversy for decades. In the past the provincial government and later the NLA issued site permits to developers, allowing them to clear land for the development of real estate – in which the NLA even assisted a developer by annulling existing land rights.⁷⁴ The issuance of these permits was in violation of Bandung’s 1992 General Town Plan, which did not allow real estate development in Punclut. However, until the enactment of the General Spatial Plan, no development had taken place and existing site permits had expired.⁷⁵

The councillors claimed to have overlooked that the General Spatial Plan contained a map designating part of Punclut in yellow, which signified that low-density real estate development would now be allowed.⁷⁶ A plan for which in previous years land had been cleared could thus finally be realised. Notably, the bylaw that enacted the General Spatial Plan also contained a provision stating explicitly that in the North Bandung Area no new permits would be issued, no access road could be built, and no new infrastructure would be realised, unless it involved infrastructure that was

71 ‘Perda RTRW Kota Bandung Disahkan, Dilarang, Hiburan yang Langgar Norma Agama’, *Pikiran Rakyat*, 11 February 2004.

72 Bylaw of Bandung Municipality No. 2/2004 on the General Spatial Plan of Bandung Municipality (*Perda Kota Bandung No. 2/2004 tentang Rencana Tata Ruang Wilayah (RTRW) Kota Bandung*).

73 Punclut is an acronym for Puncak Ciumbuleuit, or Top of Ciumbuleuit, which is the City Quarter in which Punclut is located.

74 In 1961 the ownership rights had been granted to former military personnel. In 1997 the Head of the NLA annulled this decision, on the basis of which these rights had been granted, because the right holders were said to have failed to meet the requirement of building houses on the land (Decision of the Head of the NLA No. 19-VIII-1997).

75 See also Niessen 1999:274-89; Hardjono 2005.

76 ‘Ada Manipulasi Peta RTRW Kota Bandung’, *Kompas*, 22 June 2004.

'vital for the area'.⁷⁷ It thus seemed that there was no risk that real estate development would expand in Punclut.

Once the 'mistake' had been discovered, councillors of the Special Committee for the General Spatial Plan claimed that Bandung's Regional Development Planning Agency had failed to inform them about the revision. Since the councillors had never changed the map themselves, they had not taken the trouble to check it again. Deliberations instead concentrated on the provisions in the draft bylaw.⁷⁸ There is anecdotal evidence that during the final deliberations over the enactment of the General Spatial Plan, the map had been distributed in black-and-white. As a result, the councillors could not discern that part of the Punclut area was coloured yellow instead of green.

Notably for this case, less than a year before, Uce Salya, a councillor and an undisclosed source of *Pikiran Rakyat* daily, declared that in January 2003 – two months before the draft General Spatial Plan had been sent to the Municipal Council –, several councillors responsible for spatial planning had received money from PT MS, one of the companies that held a site permit in Punclut. Uce Salya acknowledged that he had received Rp. 15 million, but claimed he had returned the money three months later, not to the company – which refused to take it back – but to Ecih Sukaesih, the secretary of the Municipal Council. The councillors as well as the leadership of PT MS rejected the allegations, and reported Uce Salya to the police for libel.⁷⁹ A few days later the dispute took a very different turn. Uce accepted the reading of his fellow committee members that they had never received any money, and apologised for accusing them of any wrongdoing.⁸⁰ The police never seriously investigated the allegations.

The Municipal Council demonstrated little commitment to rectifying the mistake in the General Spatial Plan. The Municipal Council's Chairman decided to postpone the revision of the plan until after the council elections. This decision was fiercely rejected by a few councillors, as the changed maps would remain applicable for quite a long time, without maintaining the area's status quo.⁸¹ The Municipal Council did set up meetings to generate input from the public (including members of NGOs and well-known artists) regarding the future of Punclut. At these occasions

77 Art. 100(2) Bandung Municipality Bylaw No. 2/2004.

78 'Perubahan RTRW Bandung Utara Tidak Diketahui DPRD', *Kompas*, 2 July 2004; 'DPRD Kecolongan, Peta Punclut Telah Diubah, Bappenas Keberatan Pembangunan Punclut', *Pikiran Rakyat*, 2 July 2004.

79 'Pengembang Puncrut Diduga Main Suap', *Kompas*, 23 April 2003; 'Anggota Dewan Bereaksi Keras, Uce Diminta Membuktikan Soal Isu Sogokan Rp 15 Juta', *Pikiran Rakyat*, 24 April 2003; 'Menyusul Pernyataan Uce Salya tentang Uang Suap', *Pikiran Rakyat*, 26 April 2003.

80 'Usulan Dewan Kehormatan Batal', *Pikiran Rakyat*, 1 May 2003.

81 'BEM Mal tak Sesuai RTRW 2004', *Pikiran Rakyat*, 29 July 2004; 'Bappeda Salah Masukkan Peta, DPRD Jabar Teliti Jalur Dago-Lembang', *Pikiran Rakyat*, 14 July 2004.

various objections were conveyed against the plan to develop real estate in the area, but to no avail.⁸²

Similarly to the Municipal Council, the new Mayor of Bandung, Dada Rosada (Golkar), who had been elected by the Municipal Council in September 2003, and the Regional Secretary denied having prior knowledge of the issue.⁸³ The Head of the Regional Development Planning Agency, Tjetje Soebrata, argued that in any event, the development of Punclut was consistent with the General Spatial Plan that West-Java Province had enacted in January 2003. "So why these allegations that the municipal government has manipulated the General Spatial Plan's map," he questioned.⁸⁴

However, the argument that the development of Punclut was consistent with the West Java Province's General Spatial Plan is disputable. It designated the whole North Bandung Territory as a protected area (*kawasan lindung*), specifically a protected forest area (*kawasan hutan yang berfungsi hutan*), which must be preserved permanently. In addition, the plan generally designated water catchment areas (*kawasan resapan air*) as protected areas. These areas in particular were considered important to be preserved, in order to secure the availability of drinking water.⁸⁵ It is hard to perceive how real estate development can be combined with the preservation of Punclut.

Despite this inherent inconsistency, there was little West-Java's provincial government could do. Again, on the basis of the 1999 RALs the implementation of the General Spatial Plan no longer required a recommendation from the Governor. Early July 2004, Governor Danny Setiawan therefore stressed that Punclut formed a conservation area, but noted that if the General Spatial Plan were violated, it was not West-Java's provincial government, but Bandung's municipal government that should act first. "In accordance with Law No. 22/1999, the only role we play is to confirm the acts of the municipal government. After all, under this law, coordination between the central government, the provincial government, and the district/municipal governments has become weak. We'll have to wait and see what the revision of this law leads to."⁸⁶

In fact, the Governor did take several measures to avoid real estate development in Punclut. In June 2004 he sent a circular letter to the Mayor of Bandung and other responsible regional heads, in which he requested

82 'Soal Rencana Pembangunan Punclut, Bimbo Tegur DPRD', *Kompas*, 2 July 2004.

83 'Perubahan RTRW Bandung Utara Tidak Diketahui DPRD', *Kompas*, 2 July 2004.

84 'DPRD Kota Bandung Tidak Setuju Punclut Dibangun', *Kompas*, 26 June 2004.

85 Art. 31 and 33-34 Regulation of West-Java Province No. 2/2003 on the General Spatial Plan of West-Java Province (*Perda Jawa Barat No. 2/2003 tentang Rencana Tata Ruang Wilayah Provinsi Jawa Barat*).

86 'Bappenas: Punclut Tidak Direkomendasikan untuk Dibangun', *Kompas*, 3 July 2004. See also 'DPRD Kecolongan, Peta Punclut Telah Diubah, Bappenas Keberatan Pembangunan Punclut', *Pikiran Rakyat*, 2 July 2004.

them to put a restraint on spatial use in North Bandung Territory.⁸⁷ A month later, he succeeded in persuading the Mayors of Bandung and Cimahi, as well as the District-Heads of Bandung and Sumedang, to sign a Memorandum of Understanding (MoU) in which they agreed to collaborate with the Province and with each other in spatial management and environmental protection.⁸⁸ To that purpose a General Spatial Plan for the Metropolitan Territory Bandung (*Kawasan Metropolitan Bandung* or KMB) was to be designed. The Governor also established the Coordinating Team for Spatial Management of West-Java Province (*Tim Koordinasi Penataan Ruang Daerah Propinsi Jawa Barat* or TKPRD).⁸⁹ Finally, in August 2004 he sent a circular letter to the Mayor of Bandung and other responsible regional heads, in which he called upon them i) not to issue permits until a spatial management policy for the Metropolitan Territory Bandung as well as operational directives for spatial use in North Bandung had been formulated, ii) to review the status of permits that had already been granted in accordance with prevailing legislation, iii) not to extend the permits of developers that undertook development activities not in accordance with formulated conditions, and iv) to implement the circular letter he had sent in June.⁹⁰

The Provincial Assembly supported Governor Danny Setiawan in his measures, which were the first Punclut-related measures a Governor had taken since 1994.⁹¹ However, given that the measures took the form of circular letters and an MoU, they had little binding force. Unfortunately, the Governor was also grappling with a credibility issue, since the provincial government was itself planning to construct a road in the North Bandung Territory.⁹²

As was explained in Section 5.3, the Department of Home Affairs could have annulled Bandung Municipality's General Spatial Plan on the basis of its review authority. However it did not do so, despite the fact that the Head of the Spatial Planning and Land Section of the National Development Planning Agency, Sujana Royat, stated that he would not recommend the development of Punclut. He said that to this purpose, the Agency

87 Circular Letter of the Governor of West-Java No. 650/1704/Bapeda, dated 14 June 2004.

88 Joint Decision of the Governor of West-Java, Head of District Bandung, Head of District Sumedang, Mayor of Bandung, and the Mayor of Cimahi No. 31/2004-23/2004-21/2004-650/Kep.521-Bappeda/2004-23/2004. It took more than a year before the Provincial Assembly officially agreed with the MoU. See also 'Disetujui, MoU Pengelolaan Bandung Metropolitan, RTRW Kota/Kab. di Cekungan Bandung Harus Mangacu ke Provinsi', *Pikiran Rakyat*, 14 September 2005.

89 Decision of the Governor of West-Java No. 120.05/Kep.691-Org/2004. Art. 20 of Regulation of West-Java Province No. 2/2003 required the establishment of this team.

90 Circular Letter of the Governor of West-Java No. 650/2530/PRLH, dated 18 August 2004. See also 'Gubernur Minta Izin di KBU Tidak Diperpanjang', *Kompas*, 5 August 2004.

91 'Soal KBU, Gubernur Harus Didukung', *Pikiran Rakyat*, 1 August 2004; 'Gubernur: Pembangunan Punclut Harus Dihentikan', *Kompas*, 13 January 2005.

92 For a short description of this case, see: Hardjono 2005:218-20.

would take initiatives to improve the legislative framework. "However, for now it is most important that the people show stronger resistance against development activities in Punclut." Notably, Royat did not specify what form such resistance should or could take.⁹³

The objections of the provincial and central governments against real estate development in Punclut did not prevent Mayor Dada Rosada from issuing the required permits for that purpose. Soon after the enactment of the General Spatial Plan, the Mayor announced that some 130 Ha of the area would be developed by private companies, including PT DAM and PT MS.⁹⁴ In October 2004 he issued a Land Use Permit to PT DAM.⁹⁵ A few months later, in January 2005, the Mayor issued two other permits, which allowed the company to clear the land for building and to construct a 2.2 kilometres long access road in Punclut.⁹⁶ More development activities could thus be undertaken than could be justified on the basis of the new Spatial Plan.

The issuing of these permits provoked strong reactions from the Municipal Council, NGOs and the media. Following these protests, Governor Danny Setiawan sent a letter to the Mayor, in which he requested that the activities of PT DAM be stopped, arguing they were not in accordance with Bandung Municipality's General Spatial Plan and higher legislation. The Governor also suggested that to respond to the needs of the people, the Punclut area should be planned "in a wise and transparent way, in coordination with the provincial government, and involving all interested parties".⁹⁷

In February 2005 the Monitoring Body for the Upgrading of Sundanese Forestry and Environment (*Dewan Pemerhati Kehutanan dan Lingkungan Tatar Sunda* or DPKLTS), a local environmental NGO, initiated a procedure at Bandung's Administrative District Court, requesting the annulment of the land use permit that had been issued. The request was rejected by what may be considered an incorrect line of reasoning. Although acknowledging that Bandung Municipality's Bylaw No. 2/2004 did not allow new permits to be granted, the Court concluded that this permit could be granted because the General Spatial Plan of West-Java contained a map signifying Punclut as a protected area outside the protected forest area, and protected areas could involve both natural resources and man-made resources.⁹⁸ Even

93 'DPRD Kecolongan, Peta Punclut Telah Diubah, Bappenas Keberatan Pembangunan Punclut', *Pikiran Rakyat*, 2 July 2004. See also 'Bappenas: Punclut Tidak Direkomendasikan untuk Dibangun', *Kompas*, 3 July 2004.

94 'Walkot Dinilai Kontroversi, DPKLTS Ancam PTUN-kan Jika Punclut Dibangun', *Pikiran Rakyat*, 20 June 2004.

95 Decision of the Mayor of Bandung No. 503.640/2112/DTK/X/1004, dated 11 January 2005.

96 Decision of the Head of the Road-Construction Service of Bandung Municipality No. 593/01-DBM/2005; Decision of the Head of the Road-Construction Service of Bandung Municipality No. 620/06-DBM/2005.

97 Letter of the Governor of West-Java No. 912/424/Bapeda, dated 10 February 2005.

98 Ruling of Bandung's Administrative District Court No. 14/G.TUN/2005/PTUN-BDG, dated 13 September 2005.

if this were the case, the Court should accurately have taken into consideration the National Spatial Plan's stated objectives. These objectives include: i) that protected areas should be managed to prevent their nature functions from being damaged, and to conserve the protective functions that these areas may convey to nearby areas; and ii) that protected areas should be regulated (*pengawasan*) through the prohibition of human activities, except for activities that do not disturb the area's nature functions or change the landscape/ecosystem.⁹⁹

Although the outcome of the court procedure eventually proved favourable to the Mayor, the above responses forced him to act – but not in the way protesters had hoped for. In mid-2005 he announced the revision of the General Spatial Plan, so that the issued permits would be in accordance with spatial planning legislation. According to the Mayor, this step was put through at the pressure of “investors and the people”.¹⁰⁰

The drafting process of the revised General Spatial Plan was again a more or less bureaucratic affair – and as such contrary to existing legislation. Sabrina, who evaluated the drafting process, concluded that no stakeholders other than government representatives were involved (Sabrina 2008:79-83). Further, several academics concluded that the drafting process had not been transparent. “The mindset of the government apparatus is much like that of an investor”, one of them observed.¹⁰¹

The draft bylaw proposed the revision of seven articles, thereby creating more room for commercial development in Bandung. Not surprisingly, the plan legalised existing site permits. In addition, it even allowed for the issuance of new site permits, the construction of a road, and the development of new infrastructure for local needs in the area.¹⁰² In relation to West-Bandung, the development of housing, trade and services would no longer be limited, but restrained. “Green light for developers who will construct shopping malls, shop houses, and apartments”, a journalist commented.¹⁰³ Further, a new provision allowed traditional markets that were considered “not proper” to be regulated, developed, or relocated.¹⁰⁴ Finally, the restructuring of ‘slum areas’ was to be realised *predominantly* by the construction of condominiums.¹⁰⁵ So on the basis of the draft, kampongs qualified as such could be restructured by relocation of residents, followed by the construction of shopping malls.

As participation and transparency remained limited, the draft-plan was forwarded to the Municipal Council by mid-August 2004, just a few

99 Art. 10(1) in conjunction with Art. 41(1), under a; 43(1) GR No. 47/1997 on the National Spatial Plan (*PP No. 47/1997 tentang Rencana Tata Ruang Nasional*).

100 ‘Wali Kota Bandung Ngotot Bangun Punclut’, *Kompas*, 5 September 2005.

101 ‘Revisi Perda RTRW Kota Bandung Tidak Transparan’, *Kompas*, 26 October 2005.

102 Art. 100(2) of the draft bylaw.

103 ‘Drama Paripurna’, *Pikiran Rakyat*, 6 January 2006.

104 Art. 42, under b-d of the draft bylaw.

105 Art. 14(2c), under c of the draft bylaw.

months after the municipal government had announced the revision. There were several reasons to expect that it would not be easy for the municipal government to get the revised plan accepted. Council elections had taken place in April 2004, and by early August 2004 the new Municipal Council was installed, in which the division of seats had changed significantly; not least because the electorate had punished the PDI-P for its alleged involvement in KKN.¹⁰⁶ There were thus many new councillors, some of whom, from their public statements, appeared more critical – at least about development activities in Punclut. They argued that the area should be restored to a conservation area.¹⁰⁷ Interestingly, no objections were raised against the proposed revision on the basis of the potential harm it could cause to the interests of kampung dwellers.

At the same time, NGOs took to the streets to protest against the revision of the General Spatial Plan. As with the councillors, they were not concerned about the consequences of the revision for low-income groups, but for the environment. Environmental NGOs in particular, organised in the 'Bandung Bermartabat' People's Coalition (*Koalisi Masyarakat Bandung Bermartabat* or KMBB, named after the Municipality's development concept), voiced their concerns. They called upon the Municipal Council to create room for public consultation before taking any decision.¹⁰⁸

The protests had some effect. The Municipal Council asked the Provincial Regional Development Planning Agency to evaluate the draft bylaw. In its evaluation, the agency strongly criticised the revision, and advised that at least it should be postponed.¹⁰⁹ The Municipal Council's Special Committee for the Revision of the General Spatial Plan also invited twenty 'stakeholders', consisting of academics, members of NGOs, and representatives of the Punclut community, to provide input.¹¹⁰ At this occasion, NGO members and most academics fiercely rejected the draft plan, in particular because it allowed for development activities in Punclut. Some also criti-

106 The 45 seats of the Municipal Council were divided as follows: PKS – 11, PDI-P – 10, PD – 6, Golkar – 6, PAN – 6, and Persatuan Bintang – 6.

107 'Pembangunan di Punclut Dihentikan Secara Paksa, Pekerja PT DUS Tidak Melakukan Perlawanan', *Pikiran Rakyat*, 31 December 2004; 'Tak Mengindahkan Perintah Wali Kota Bandung, Pembuatan Jalan di Punclut Akan Terus Dilanjutkan', *Pikiran Rakyat*, 7 January 2005; 'Pembangunan di Daerah Punclut Menyalahi Aturan', *Kompas*, 8 January 2005; 'Gubernur, "Pemkot Terkesan Tidak Konsisten Soal Punclut"', Dewan Akan Kirim Nota ke Wali Kota', *Pikiran Rakyat*, 13 January 2005.

108 'Pemprov Akan Tegur Pemkot Jika Perda RTRW tak Sesuai, Gubernur, "Harus Selaras dengan Aturan Lebih Tinggi"', *Pikiran Rakyat*, 21 September 2005.

109 Letter of the West-Java Province Regional Development Planning Agency No. 650/1539/PRLH, dated 21 November 2005.

110 It again remains unclear which criteria the Municipal Council used to select these stakeholders. They included some of the NGOs most critical of the development of real estate in Punclut, including KMBB and DPKLTS. These NGOs were probably selected because they had asked the Municipal Council to be involved.

cised the drafting process. In their view, no attention was paid to the views of the general public (Sabrina 2008:85-95/ Attachment C2).

Despite the above protests and objections, the Municipal Council agreed with the draft bylaw on the revised General Spatial Plan on 30 December 2005. Surprisingly, even the members who had earlier presented themselves as strong critics of the development activities in Punclut, now supported the revision. The former Head of the Legislative Team for the Formulation of a Study on Punclut, Muhammad Iqbal Abdul Karim (National Mandate Party – *Partai Amanat Nasional* or PAN), is a noteworthy example. Acting as the Chairman of the Special Committee for the Revision of the General Spatial Plan, he argued that because of the revision, there would be no need to annul permits that had already been granted, meaning that no compensation would need to be paid and no court cases fought, thus saving on the Regional Budget. “The only negative effect of the revision is the complaints from environmental observers,” he rather cynically argued. Only the Justice and Prosperity Party (*Partai Keadilan Sejahtera* or PKS), a relatively young party with a particularly clean reputation, and a single member of the Democratic Party (*Partai Demokrat* or PD) rejected the revision. During final deliberations, PKS representatives in the Municipal Council even staged a walk out as an act of protest.¹¹¹

After the Municipal Council had agreed with the draft bylaw on the revised General Spatial Plan, it was sent to the Governor of West-Java on 3 January 2006 for evaluation.¹¹² Several members of the Provincial Assembly now began to voice their concerns. Earlier its Chairman, H.A.M. Ruslan, had sent a letter to Governor Danny Setiawan, urging him to annul bylaws related to the North Bandung Territory which contradicted higher legislation.¹¹³ Several councillors now called upon the Governor to act accordingly. “The revision of this recently enacted bylaw is biased towards the interests of developers, not the interests of the people”, a prominent member of the Provincial Assembly commented.¹¹⁴

In order to convince the provincial government to reject the revision, the ‘Bandung Bermartabat’ People’s Coalition and its separate NGOs continued their protests.¹¹⁵ The Indonesian Environmental Forum (*Wahana Lingkungan Hidup Indonesia* or WALHI), a well-known national environmental NGO, sent letters of protest to several high officials, including the Gover-

111 ‘Akhirnya DPRD Sahkan Perubahan Perda RTRW’, *Pikiran Rakyat*, 31 December 2005; ‘Drama Paripurna’, *Pikiran Rakyat*, 6 January 2006.

112 Letter of the Mayor of Bandung No. 101/149-Huk, dated 3 January 2006.

113 Letter without reference, November 2005, on file with the author.

114 ‘Batalkan Revisi Perda RTRW, Gubernur Jabar Mempunyai Hak Represif’, *Kompas*, 4 January 2006; ‘Revisi Perda RTRW Sebaiknya Ditolak’, *Pikiran Rakyat*, 4 January 2006; ‘Revisi RTRW Harus Sesuai Kebijakan Propinsi’, *Pikiran Rakyat*, 17 January 2006.

115 ‘Perda RTRW Hanya untuk Ekonomi Jangka Pendek’, *Kompas*, 3 January 2006; ‘Segera Putuskan Evaluasi Revisi RTRW’, *Pikiran Rakyat*, 12 January 2006.

nor and the Minister of Environment.¹¹⁶ Later several NGOs issued a Red Report on the Mayor of Bandung (*Rapor Merah Wali Kota Bandung*), criticising him for trading the General Spatial Plan in the interests of a particular developer in Puncut, thus setting aside democracy and good governance.¹¹⁷

The NGOs' protests required courage in the face of groups of hoodlums (*preman*), such as the Siliwangi Youth Force (*Angkatan Muda Siliwangi* or AMS), the Pancasila Youngsters (*Pemuda Pancasila* or PP) and the Grouping of Sons of Siliwangi Elite Troups (*Gabungan Anak Siliwangi Barisan Utama* or GASIBU), who responded by organising counter-protests and intimidation campaigns.¹¹⁸ At one of these occasions, they presented a Blue Report, expressing their support for Mayor Dada Rosada.¹¹⁹ NGO staff members also reported that members of these groups made phone calls to activists and visited NGOs' offices, warning that staff would be harmed or even killed unless they ceased their resistance to development in Puncut.¹²⁰ Various sources argue that two members of the Municipal Council who are also affiliated to the Siliwangi Youth Force, Bandung's most powerful hoodlum group, played a central role in the mobilisation of these groups.¹²¹

Governor Danny Setiawan failed to issue a formal response within the required period of fifteen days after the submission of the draft bylaw on the revised General Spatial Plan.¹²² Following the procedure set out in the 2004 RALs, he did coordinate with the Minister of Public Works, sending him a letter (of which a copy was forwarded to the Minister of Home Affairs), which referred to various weaknesses in the draft bylaw, including its inconsistency with higher legislation, and asking him to advise in the matter.¹²³

116 'Perda RTRW Jamin Kepastian Hukum', *Pikiran Rakyat*, 5 January 2006.

117 The NGOs involved in this action included KMBB, West-Java's branch of WALHI, DPKLTS, and several other environmental NGOs. See also 'Buruk, Kinerja Bidang Lingkungan', *Pikiran Rakyat*, 21 January 2006.

118 *Preman* is a term derived from the Dutch term 'vrij man', or free man.

119 'Giliran Ormas-OKP Berikan "Rapor Biru"', *Pikiran Rakyat*, 2 February 2006; 'Dada Tanyakan Obyektivitas "Rapor Merah"', *Kompas*, 2 February 2006.

120 Personal communication of two NGO members, Bandung, 21 July 2008; personal communication of a member of another NGO, Bandung, 21 July 2008; personal communication of a senior journalist, Bandung, 23 July 2008.

121 Personal communication of an NGO member, Bandung, 19 July 2008; personal communication of a senior journalist, Bandung, 23 July 2008; personal communication of a member of the Municipal Council, Bandung, 26 July 2008.

122 'Perda RTRW Masih Dikonsultasikan', *Pikiran Rakyat*, 25 January 2006.

123 The Governor consulted the Department of Public Works by Letter of the Governor of West-Java No. 188.342/220/Huk, dated 20 January 2006, of which a copy was sent to the Department of Home Affairs. The Department of Public Works responded by Letter of the Director-General for Spatial Management of the Department of Public Works No. PR.01.08-DR/14, dated 3 February 2006.

On 3 February 2006, the Department of Public Works responded to the Governor's letter.¹²⁴ The department expressed strong reservations against the bylaw, and concluded that the North Bandung Territory functioned mainly as a protected area and that development should be restrained in order not to harm that function. In addition, the department called for the restoration of the protection function of those parts of the territory which had already had their use changed.

On 20 February 2006, the Department of Home Affairs also sent a response. It was more favourable to the draft bylaw, arguing that apart from one provision, it had no objections.¹²⁵ The Department of Home Affairs wrote that "having studied the Provincial Spatial Plan, which states that Punclut is part of a cultivated area (*kawasan budidaya*), and given the technical difficulties which Bandung's municipal government was facing in retaining Punclut as a protected area, and also insofar as there would be technical guarantees that an effort were made to control spatial use in Punclut, the attempt to limit the size of the protected area [could] be justified." It went even further, advising that the draft be enacted as quickly as possible.

As the fifteen days term for evaluation had long expired, Mayor Dada Rosada could enact the draft bylaw, which indeed was his intention.¹²⁶ On 6 March 2006, he sent a letter to the Municipal Council, of which a copy was sent to the Governor, announcing that "for the benefit of legal certainty and in order to fulfil the aspirations of the majority of the people", he was planning to revise the draft bylaw in accordance with the input given by the Department of Home Affairs and enact it within two days.¹²⁷

The Mayor's announcement was followed by a quick response from Governor Danny Setiawan. On the same day, he finally sent his evaluation to the Mayor of Bandung.¹²⁸ Despite new calls from various members of the Provincial Assembly to take a critical stance, he did not require the municipal government to correct the draft bylaw. Instead, he reminded the municipal government that it contained several weaknesses, and formulated two

124 Letter of the Director-General for Spatial Management of the Department of Public Works No. PR.01.08-DR/14, dated 3 February 2006. On the position of the Director-General, see also 'Pengesahan RTRW Tunggu Gubernur, Secara Substansi Dinilai Tidak Ada Masalah', *Pikiran Rakyat*, 28 February 2006; 'Kawasan Punclut Tak Sesuai Kriteria', *Pikiran Rakyat*, 5 March 2006.

125 Letter of the Director-General for Regional Development of the Department of Home Affairs No. 188.342/172/IV/Bangda, dated 20 February 2006. The article of the draft bylaw that should be dropped was Art. 49(3), which is not relevant to discuss here. See also 'Revisi RTRW Segera Disahkan', *Pikiran Rakyat*, 24 February 2006.

126 See also 'Wali Kota Bandung Bisa Sahkan RTRW', *Pikiran Rakyat*, 21 February 2006.

127 Letter of the Mayor of Bandung Municipality No. 188.34/705-Huk, dated 6 March 2006.

128 Letter of the Governor of West-Java No. 188.342/710/Huk, dated 6 March 2006. See also 'Soal RTRW, Gubernur Beri Catatan', *Pikiran Rakyat*, 1 March 2006; 'Evaluasi RTRW Gubernur Agar Dibahas', *Pikiran Rakyat*, 3 March 2006; 'Gubernur Harus Tegas Sikapi Revisi RTRW', *Pikiran Rakyat*, 6 April 2006.

rather modest conditions before the bylaw could be enacted. He advised that the municipal government should realise that the draft bylaw was still partial; and thus only solved local, short-term problems, while having significant implications for various elements of the urban system. In addition, it contained a provision facilitating the granting of new site permits in Punclut, when it should instead restrain development. The Governor therefore ordered the municipal government to quickly enact a Detailed Spatial Plan, containing detailed provisions regarding zoning and building, which could be used as an instrument for regulation and enforcement. Finally, he reminded the municipal government that if environmental degradation occurred as a result of building activities, sanctions should be imposed upon both the responsible permit granter and the developer.

In accordance with his earlier announcement, Mayor Dada Rosada enacted the draft bylaw, without having made any substantial revisions to it, on 8 March 2006.¹²⁹ For this occasion, a special signing ceremony was organised in Punclut. "This forms part of our policy of transparency", the Mayor explained to the press.¹³⁰ The ceremony was attended by high officials and public figures; and guarded by the Siliwangi Youth Force.

Protests continued after the enactment of the bylaw. The 'Bandung Bermartabat' People's Coalition attempted to get the bylaw annulled by organising new protests, including a street protest in front of the Department of Home Affairs in Jakarta.¹³¹ However the protests did not lead to any concrete results. The central government refused to use its review authority.

5.5 SPATIAL PLANNING, TENURE SECURITY, AND THE RULE OF LAW

Post-New Order spatial planning practices in Bandung show that despite major political and legal reforms, low-income kampong dwellers still rarely participate in spatial planning and are hardly offered the opportunity by Bandung's municipal government to do so. The municipal government now appears more inclined than during the New Order to follow the legally prescribed procedure to ensure participation and transparency in spatial planning. However, to date the procedure has not been followed to the full extent, and involves only token participation: such as seeking input from

129 Bylaw of Bandung Municipality No. 3/2006 on the Revision of Bylaw No. 2/2004 of Bandung Municipality on the General Spatial Plan of Bandung Municipality (*Perda Kota Bandung No. 3/2006 tentang Perubahan atas Perda Kota Bandung No. 2/2004 tentang Rencana Tata Ruang Wilayah (RTRW) Kota Bandung*). The only significant difference compared to the original draft was the reformulated Art. 49(3), as the Department of Home Affairs had requested.

130 'Revisi Perda RTRW Ditandatangani di Punclut', *Pikiran Rakyat*, 9 March 2006.

131 'Pengesahan Perda RTRW Dinilai Cacat Hukum', *Pikiran Rakyat*, 9 March 2006; 'Dada Bantah Penilaian Revisi RTRW Cacat Hukum', *Pikiran Rakyat*, 10 March 2006; 'Besok, Demo di Depdagri menentang Perubahan Kawasan Punclut Bandung', *Kompas*, 26 March 2006; 'Revisi RTRW Kota Bandung Diprotes', *Pikiran Rakyat*, 28 March 2006.

only a small selection of 'stakeholders', whose input may often then be ignored. Also, the municipal government still frequently acts in defiance of higher legislation, including both spatial planning and environmental laws and regulations. The interests of kampong dwellers, particularly as related to tenure security, are also not supported by the Municipal Council, higher levels of government or even civil society. Nor is spatial planning fully transparent, although it is becoming more so. This results in spatial plans that are adverse, particularly for kampong dwellers who reside in kampongs the municipal government qualifies as 'slums'.

Paradoxically, Post-New Order reforms and particularly regional autonomy have contributed to this state of affairs. Administrative decentralisation has resulted in an increased need for funds to finance local government.¹³² In order to generate revenues, Bandung's municipal government introduced a new development policy in 2000 which was summarized by the concept 'Bandung: City of Services'. The policy refers to several economic activities that the municipal government wants to promote, including trade, banking and education, as well as local services.¹³³ As the city is not well endowed with natural resources and has an insignificant manufacturing industry, the services industry is the main sector that can generate these revenues.

The Mayor's newly acquired authority to grant site permits and the new fiscal relationship between Jakarta and the regions prove useful in this respect. Granting permits generates Regionally Generated Revenues in the form of regional retributions. Commercial land development also increases the value of land, which in turn brings in Balance Revenues (*Dana Perimbangan*) derived from Land and Building Tax and from Fees for Acquisition of Rights to Land and Buildings. Finally, such development produces extra Regionally Generated Revenues, through hotel and restaurant, entertainment, parking, and advertising taxes; particularly since the municipal government revised existing bylaws regarding such taxes and introduced new ones.¹³⁴

132 Personal communication of a former senior municipal official, Bandung, 19 August 2008.

133 Attachment, p. 10-1/37, Bylaw of Bandung Municipality No. 5/2000 (*Perda Kota Bandung No. 5/2000 tentang Pola Dasar Pembangunan Daerah Kota Bandung Tahun 2000-2004*); Bylaw of Bandung Municipality No. 9/2001.

134 See Bylaw of Bandung Municipality No. 18/1998 on Hotel and Restaurant Tax, after annulment by the Department of Home Affairs revised by Bylaw No. 2/2003 on Hotel Tax (*Perda Kota Bandung No. 2/2003 tentang Pajak Hotel*) and bylaw of Bandung Municipality 3/2003 on Restaurant Tax (*Perda Kota Bandung No. 3/2003 tentang Pajak Restoran*); Bylaw of Bandung Municipality No. 19/1998 on Entertainment Tax (*Perda Kota Bandung No. 19/1998 tentang Pajak Hiburan*), revised by Bylaw No. 11/2000; Bylaw of Bandung Municipality No. 13/2001 on Parking Taxes (*Perda Kota Bandung No. 13/2001 tentang Pajak Parkir*); Bylaw of Bandung Municipality No. 18/2001 on Advertising Taxes (*Perda Kota Bandung No. 18/2001 tentang Pajak Reklame*) revised in 2003 by Bylaw No. 8/2003).

Table 5.1 Selected overview of revenues of Bandung's municipal government (in millions of Rupiahs)

Year	Regional Taxes	Regional Retributions	Land and Building Tax	Fees for Acquisition of Rights to Land and Buildings
1997 – 1998	31,052	14,739	22,173	-
1998 – 1999	31,887	25,779	23,984	6,904
1999 – 2000	44,771	20,820	26,442	18,352
2000	(39,976) 53,302	(21,984) 29,312	(25,899) 34,532	(25,721) 34,294
2001	66,450	40,447	32,000	28,160
2002	85,000	61,655	34,000	35,660
2003	110,00	58,529	39,000	35,660
2004	123,072	60,403	52,590	45,000
2005	132,250	63,844	53,400	57,600
2006	152,228	71,234	61,420	58,218

Note: Due to an official change in calculation methods, the 2000 budget was based on the results of the last nine months of that fiscal year. Revenues for the full year are estimated by adding 25 per cent (three months) to the nine-month revenues provided in the budget.

A review of Bandung's Regional Budget demonstrates that the Municipality's new development policy has been financially successful (Table 5.1). Between 1997 and 2006, revenues from regional retributions increased by 500 per cent; regional taxes by 600 per cent; Land and Building Tax by 300 per cent; and Fees for Acquisition of Rights to Land and Buildings by a massive 900 per cent.

Political decentralisation and other reforms that were meant to strengthen democracy at the local level also required new revenues for the municipal government to finance political support, for instance for the approval of spatial plans. Such support could be guaranteed by, for example, allocating a generous budget to the Municipal Council, as Table 5.2 shows. Between 1997 and 2006 the funding for the representative body increased by almost 700 per cent.¹³⁵

135 See also Haryadi & Sumindar 2002; Honna 2006:81-2.

Table 5.2 Overview of expenditure of Bandung's Municipal Council and Secretariat (in millions of Rupiahs)

Year	Expenditure
1997 – 1998	3,082
1998 – 1999	3,168
1999 – 2000	5,148
2000	(10,590)
2001	11,091
2002	14,970
2003	15,175
2004	18,590
2005	18,696
2006	20,066

Political support may also be financed by extra-budgetary revenues; which again partly derive from the newly acquired authority to grant site permits. An illustration of this were the 2003 mayoral elections. Despite an increase in the Municipal Council's total expenditure, it did not re-elect the incumbent Mayor Aa Tarmana, but Dada Rosada. A number of informed sources (including a member of council) independently acknowledged that Dada Rosada paid hundreds of millions of rupiahs to each councillor who voted for him. According to these sources, funding for the bribes was provided by developers, in return for 'compensation' in the form of site permits.¹³⁶ With the introduction of direct elections of regional heads in 2004, election costs grew considerably. According to Rinakit, during the 2005 elections, candidates at the district/municipal level spent between Rp 1.8 and Rp 16 billion for their campaigns. Such expenditures are still midget sized compared to those made at the provincial level; winning a governorship would require funds averaging Rp 100 billion (Rinakit 2005:2). In an important Municipality like Bandung and a key Province like West-Java, spending is probably much higher. With strong control mechanisms remaining absent, many donations, generally from the private sector, remain unreported. Once elected, the sponsors will have to be 'repaid' (Mietzner 2011).

Even after strongly supporting a new Mayor's election campaign, developers may not be guaranteed the site permits they seek, since power has become more dispersed following Post-New Order reforms. Currently, spatial planning and permits also require the consent of other members of the Municipal Council, the Governor, the Department of Public Works and the Department of Home Affairs.

136 Personal communication of a senior journalist, Bandung, 23 July 2008; personal communication of a member of the Municipal Council, Bandung, 26 July 2008; personal communication of a political broker close to both candidates, Bandung, 11 August 2008.

A municipal government may achieve its ends by turning the vague, overlapping, and contradictory legal system to its advantage; such as by selectively invoking legislation that supports the government's interests. In this case the municipal government found its justification in the Provincial Spatial Plan, which provided insufficient clarity about the prohibition of development activities in Punclut. This plan, combined with the weakness of the provincial government in providing guidance and supervision, and the leniency of the central government, enabled the municipal government to approve development.

The actions of councillors and administrators are difficult to explain without raising questions of KKN, given that many councillors voiced strong initial opposition to the development. This hypothesis is particularly supported by the allegations of councillor Uce Salya that several members of Bandung's Municipal Council had accepted bribes from one of the developers in Punclut. KKN could also explain the Governor's acceptance of the spatial plan. Notably, shortly after losing the elections, Governor Danny Setiawan was arrested for corruption.¹³⁷ In May 2009 he was convicted, given four years imprisonment, and required to pay a fine of Rp 200 million and to refund Rp 2.8 billion.¹³⁸ Although Setiawan's arrest and conviction were unrelated to Punclut and the revision of Bandung's General Spatial Plan, his conviction indicates the existence of corruption at the level of regional authorities involved in spatial planning.

The general public and civil society made little attempt to prevent the revision of the General Spatial Plan. People seemed disinterested in spatial planning, and appeared not to value its importance. Although NGOs were active in the process, their influence was limited. Some community development NGOs with close relationships to the kampong communities participated in the planning process, but their input was ignored. Environmental NGOs led the protests against the revision of the General Spatial Plan; their primary concern was with environmental interests rather than the interests of the local population of Punclut or kampong dwellers generally.

The NGOs focused on political strategies, which mainly involved organising street protests. They also built coalitions – but notably, only with other NGOs. They did not collaborate with political parties; even though, as noted earlier, several factions in the Municipal Council and Provincial Assembly initially shared their concerns over Punclut. This lack of collaboration suggests that ten years after the fall of Soeharto, NGOs may still be in 'opposition mode' and may lack the pragmatism to collaborate with government groups; this would explain why their protests failed.

When asked why they did not focus more on legal strategies, such as filing a request with the Supreme Court for judicial review, one NGO staff member replied: "We have had bad experiences with this. It is very hard to

137 'KPK Tahan Danny Setiawan', *Kompas*, 10 November 2008.

138 'Divonis 4 tahun penjara, Danny Setiawan Terima', *Kompas*, 30 June 2009.

win the case, and if you do win, it will be hard to get the ruling executed.”¹³⁹ This concern was apparently validated when the single court proceedings that were initiated by an NGO in relation to Punclut were lost on the basis of an incorrect line of reasoning.

The NGOs’ protests were widely covered by the media, but the coverage was decidedly uncritical of the government’s plans. This may be explained at least partly by the positive incentives the municipal government offered to journalists. Bandung’s Regional Budget always reserves funds to support journalists, despite there being no specification in the budget for this to occur.¹⁴⁰ It is, for example, common for journalists to receive Rp. 500,000 at the Feast of Ramadan. Most local journalists appear to see no ethical problem in accepting such contributions. Nor do many local journalists, particularly freelance journalists, appear to see a problem in writing on demand, or being paid to write particular content.¹⁴¹

Fear is another potential reason for journalists – in particular journalists with permanent positions at regional ‘dailies’ – to limit their criticism of government. A journalist of *Pikiran Rakyat* feared that critical writing would be unwelcome with his editor, for whom it was important that the newspaper’s leadership maintained a close relationship with Mayor Dada Rosada. Journalists also feared the threats of being sued for libel or harassed by hoodlum groups. In the Punclut case, several critical journalists confirmed that they did indeed receive threatening phone calls. According to the journalist of *Pikiran Rakyat*, hoodlums advised his editor to replace critical colleagues.¹⁴²

The involvement of hoodlum groups in local politics is not new in Bandung, but their influence is unprecedented. Many of these groups, such as AMS, PP, and the Youth of Military Veterans (*Pemuda Panca Marga* or PPM) were already active during the New Order. They were linked to the municipal government, the military, and the ruling Golkar party. Since the fall of Soeharto, new groups have emerged, including GASIBU, and the militant Joint Initiative of the Sons of Siliwangi (*Gabungan Inisiatif Barisan Anak Siliwangi* or GIBAS), which formed a secession of the AMS and later split into two to create “a group of strictly Sundanese sons” (*Gabungan Inisiatif Barisan Anak Sunda Siliwangi* or GIBASS). Some of these groups are (still)

139 Personal communication of an NGO member, Bandung, 21 July 2008.

140 An item in the 2005 draft Regional Budget of West-Java Province reserved similar funds, but it was dropped after criticism from members of the Provincial Assembly. See ‘Pemprov Tidak Keberatan Batalkan Honor Kemitraan’, *Kompas*, 5 January 2005; ‘Honor Kemitraan dan THR untuk Wartawan Akan Dicoret’, *Kompas*, 6 January 2005; ‘DPRD Sepakat Hapus Dana Kemitraan dan THR untuk Wartawan’, *Kompas*, 11 January 2005.

141 These freelance journalists are also called *Wartawan Tanpa Surat* or WTS (journalist without papers), not coincidentally also an acronym for prostitute.

142 Personal communication of a journalist, Bandung, 13 January 2004; personal communication of another journalist, Bandung, 13 January 2005; personal communication of a senior journalist, Bandung, 23 July 2008, personal communication of another senior journalist, 7 August 2008.

loyal to the municipal government, the military and political parties, while others claim less attachment to specific interests.¹⁴³ The groups have thousands of members. The Bandung chapter of PP, for instance, claims a membership of 26,800 people.¹⁴⁴

The loyalty of hoodlum groups can be explained by the funding they receive from the Regional Budget. Since the election of Dada Rosada as the city's Mayor in 2003, the Regional Budget has contained an item called 'Financial Support to Civil Society Organisations' (*Bantuan Keuangan kepada Organisasi Kemasyarakatan*), which supports local hoodlum groups in addition to other non-hoodlum, pro-government organisations. Funding is significant, as table 5.3 shows.¹⁴⁵

Table 5.3 Overview expenditure of Bandung's municipal government on civil society organisations (in millions of Rupiahs)

Year	Expenditure
2003	101,909
2004	74,983
2005	85,209
2006	89,391

In addition to the size of this budget, there has been much criticism of the way it is allocated. The process for selecting organisations that receive funding lacks clear standards; there is little transparency around which organisations receive funding and how much they receive; and there is little accountability for how funding is used. Only once (in 2004) did the municipal government release a list identifying which organisations received funding and how much they received. The list included several of the afore-mentioned hoodlum groups. Interestingly the figures totalled to only about 10 per cent of the overall budget for this item. Mayor Dada Rosada has acknowledged publically that funding from the municipal government is allocated preferentially to organisations which support government policies.¹⁴⁶ Notably, criticism of this practice originates primarily from the Bandung Institute of Governance Studies (BIGS), a watchdog NGO,

143 See also Honna 2006:86-8; on the *Pemuda Pancasila*, see Ryter 1998.

144 'Kami Mendukung Segala Kebijakan Pemerintah...', *Bujet*, Is. 07, September 2006, p. 32.

145 According to one source, this is only part of the funding that hoodlum groups receive. Further funding derives from other vaguely-named items on the Regional Budget, including the Mayor's 'tactic fund'. Personal communication of a former senior municipal official, Bandung, 19 August 2008.

146 See 'Bantuan ke Ormas Harus Diaudit', *Pikiran Rakyat*, 18 February 2005; 'Dana Bantuan Ormas Naik', *Pikiran Rakyat*, 22 October 2005; 'Dari Kasus Bantuan Keuangan untuk Ormas: Kinerja Apa?', *Bujet*, Is. 01, February 2004, p. 15; 'Skandal Ormasgate: Ini Dia Daftar Penerima Dana APBD Kota Bandung', *Bujet*, Is. 03, April 2004, p. 51-6; 'Ada Apa dengan Bantuan Organisasi Kemasyarakatan?', *Bujet*, Is. 7, September 2006, p. 5-13.

and from the PKS faction in the Municipal Council. The practice does not meet with any other serious opposition.

Despite the Mayor's statements, as well as public allegations of KKN from other sources and the intimidation experienced by those protesting against the revision of the General Spatial Plan for Punclut, neither Mayor Dada Rosada, members of the Municipal Council, nor members of the hoodlum groups have been formally accused of any wrongdoing. The General Elections Committee (*Komisi Pemilihan Umum* or KPU) never identified any irregularities with campaign donations. The Supreme Audit Board (*Badan Pemeriksa Keuangan* or BPK) concluded that Bandung's General Spatial Plan was not in accordance with the Provincial Spatial Plan and recommended that the Mayor should be given a warning (BPK 2007:48-51). However, it never identified any misuse of the regional budget in relation to this matter. A report by BIGS led to the arrest of four leaders of the Municipal Council of the period 1999-2004, on the basis of corruption charges. Despite apparently strong evidence against them, Bandung's General District Court (*Pengadilan Negeri*) acquitted the four.¹⁴⁷ Following the Punclut protests, NGO members also reported hoodlums who had intimidated them to the police, but to no avail.¹⁴⁸

It is difficult to say whether the practices of spatial planning in Post-New Order Bandung are representative of (urban) Indonesia, as little research has been conducted on this topic. However, it is clear that in policymaking processes at the local level generally, citizens and particularly the urban poor still play a limited role. There are some positive examples though. For instance, the Asia Foundation has undertaken three Indonesia Rapid Decentralisation Appraisals based on research conducted in eight Districts and four Municipalities, and its first two appraisals observed that citizens now had the opportunity to play a greater role in decision-making processes at the local level, through newly established organisations such as citizens' forums (*forum warga*), mass organisations, and social movements (The Asia Foundation 2002a:10,2002b:31). However in its third Appraisal, the Asia Foundation found that local communities still have very limited knowledge, awareness, and skills related to developing bylaws; and that public consultation in policy development (when it takes place at all) is often poorly used or conducted too early or too late, with local governments lacking knowledge about options for participation (The Asia Foundation 2003:16). Rosser, *at al.* argue that the poor and their NGO allies have been able to exercise greater influence over the policymaking process than before, "if only somewhat so" (Rosser, *et al.* 2005:54). While acknowledging the risk of elite-capture, Antlöv observes "an exciting wave

147 See 'Herry Mei, "Penggunaan Sesuai dengan Tujuan" Korupsi di DPRD Bandung?', *Pikiran Rakyat*, 15 June 2004; 'Korupsi di DPRD Kota Bandung ke Penyidikan', *Kompas*, 21 September 2004; 'Empat Mantan Pimpinan DPRD Divonis Bebas', *Pikiran Rakyat*, 6 June 2007.

148 Personal communication of two NGO members, Bandung, 21 July 2008.

of grassroots mobilisation and initiatives" (Äntlov 2003:77). Some local governments increasingly recognise the importance of public participation, as evidenced by the enactment of supporting bylaws. In some areas, as case studies from Surakarta Municipality and Bandung Municipality's neighbouring Bandung District show, this has resulted in participatory planning practices (Pratikto 2005:64-6; Sofhani 2006:96-128).

5.6 MORE RECENT REFORMS RELATED TO SPATIAL PLANNING

Fairly recently, legislation related to spatial planning has been further reformed. In April 2007, Law No. 26/2007 (hereafter the 2007 SML) was enacted; followed in January 2008 by Regulation of the Minister of Home Affairs No. 1/2008, which finally replaces Regulation of the Minister of Home Affairs No. 2/1987, and Regulation of the Minister of Home Affairs No. 28/2008.¹⁴⁹ The system of spatial plans has to a large extent been maintained. Plans at the municipal level still consist of a General Spatial Plan and, if needed, Elaborated Spatial Plans, which consist of Detailed Spatial Plans and Spatial Plans for Strategic Areas (*Rencana Tata Ruang Kawasan Strategis*).¹⁵⁰

The 2007 SML and implementing legislation contains some extra safeguards that could potentially protect the interests of vulnerable groups like the urban poor in spatial planning. The legislation creates the possibility to organise public participation through an urban people's forum.¹⁵¹ Furthermore, all spatial plans at the municipal level are now enacted by bylaw, which means the role of the Municipal Councils has strengthened in spatial planning.¹⁵² Finally, there is a stronger role for central and provincial governments in spatial planning at the district/municipal level. Before any Spatial Plan, including Detailed and Strategic Plans, can be enacted by the Municipal Council, district/municipal governments need to consult the Governor and the Ministers of Home Affairs and Public Works, who must give a recommendation for and agree to the draft plan respectively.¹⁵³

149 Law No. 26/2007 on Spatial Management (*UU No. 26/2007 tentang Penataan Ruang*); Regulation of the Minister of Home Affairs No. 1/2008 on Guidelines for Planning of Urban Areas (*Permendagri No. 1/2008 tentang Pedoman Perencanaan Kawasan Perkotaan*); Regulation of the Minister of Home Affairs No. 28/2008 on the Procedure to Evaluate Draft Bylaws on Regional Spatial Plans (*Permendagri No. 28/2008 tentang Tata Cara Evaluasi Rancangan Peraturan Daerah tentang Rencana Tata Ruang Daerah*). Regulation of the Minister of Home Affairs No. 28/2008 also implements Art. 37-39 GR No. 79/2005, in accordance with Art. 42 GR No. 79/2005.

150 Art. 14 Law No. 26/2007.

151 Art. 33 Regulation of the Minister of Home Affairs No. 1/2008.

152 Art. 28 in conjunction with Art. 26 Law No. 26/2007.

153 Art. 18 Law No. 26/2007; Art. 5, 10-13 Regulation of the Minister of Home Affairs No. 28/2008.

In April 2008, Law No. 14/2008 on transparency of public information was enacted.¹⁵⁴ Acknowledging the importance of transparency, it sets a general framework for freedom of information. In principle, all government information is open and accessible to the general public. Such information should be provided in due time, against low costs and through a simple procedure. Information that is not open and accessible comprises secret information, opinions, and information that, in case it were open and accessible, would harm overriding interests.¹⁵⁵ This includes information that can endanger the state, is related to the protection of companies from unhealthy competition, personal rights, the duty of professional confidentiality, or information that is not yet held or has not yet been documented.¹⁵⁶ Public bodies should not only provide information upon request, but also periodically (meaning, every six months) publish information regarding, *inter alia*, financial reporting.¹⁵⁷ In addition, government bodies should immediately announce information that forms a threat to the essentials of many people or the public order.¹⁵⁸ Finally, they should make permanently available information regarding, *inter alia*, policies and documentation underlying such policies.¹⁵⁹ To this aim, public bodies should appoint an information officer and create an information services system.¹⁶⁰

Notably, public companies, political parties, and even “non-governmental organisations” should make certain information publicly available.¹⁶¹ For political parties and NGOs, this includes information regarding the allocation and use of public funding. Notably, political parties are only required to provide information regarding the allocation and use of funding originating from the National/Regional Budgets, while NGOs are also required to provide information regarding the allocation and use of funding that originates from public donations and/or foreign donations.¹⁶²

Law No. 14/2008 provides for the establishment of Information Commissions (*Komisi Informasi*) at the national and provincial levels, which have the task to implement the law and to resolve public information dis-

154 Law No. 14/2008 on Transparency of Public Information (*UU No. 14/2008 tentang Keterbukaan Informasi Publik*). The Law was implemented by GR No. 61/2010 on the Implementation of Law No. 14/2008 (*PP No. 61/2010 tentang Pelaksanaan UU No. 14/2008*).

155 Art. 2 Law No. 14/2008.

156 Art. 6(3) Law No. 14/2008. See also Art. 17-20 Law No. 14/2008.

157 Art. 9 Law No. 14/2008.

158 Art. 10 Law No. 14/2008.

159 Art. 11 Law No. 14/2008.

160 Art. 13 Law No. 14/2008.

161 Art. 14-16 Law No. 14/2008. “Non-governmental organisation” here has a broader meaning than the usual concept. It not only includes NGOs (*Lembaga Swadaya Masyarakat* or LSM), but also legal entities or non-legal entities that “constitutes a gathering” and non-governmental undertakings that receive funding from the National/Regional Budgets, donations from the public, and/or foreign donations (Elucidation Art. 16 Law No. 14/2008).

162 Art. 15, under d; Art. 16, under d Law No. 14/2008.

putes through mediation and/or non-litigative adjudication.¹⁶³ In case the provision of information is delayed or refused, the person who has requested the information can file an appeal to, in case the defending party is a public body, the Administrative District Court, or, in case the defending party is not a public body, the General District Court.¹⁶⁴ The Administrative District Court can award damages to a maximum of Rp. 5 million.¹⁶⁵ The person who does not accept the ruling of the Administrative District Court or General District Court can file an appeal with the Supreme Court.¹⁶⁶

A public body (or its representative) that deliberately fails to meet the requirements set in the law to make public information available, thus causing damages to a third party, is penalised with a maximum sentence of one year prison or a Rp. 5 million fine.¹⁶⁷ Each person, including public body, that deliberately destroys, damages public information and/or makes such information disappear, is penalised with a maximum sentence of one year prison or a Rp. 10 million fine.¹⁶⁸

In Chapter 3, reference was made to the launching, in October 2009, of the National Strategy on Access to Justice. This Strategy may also have an impact on spatial planning. Key policy recommendations not only include those discussed in Chapter 4, but also harmonising and improving the quality of local policies based on transparency, participation and accountability.¹⁶⁹ Further reforms can thus be expected. This is evidenced by the 2010-2014 National Legislative Programme, which for instance announces the introduction of bills on the revision of the 2007 SML, the revision of the 2004 RAL, competitional relations between the central government and the regions, and regional taxes and retributions.

The reforms are a significant step forward. A strengthened role of Municipal Councils in decision-making processes, and the requirement for municipal governments to obtain a recommendation from the Governor and an agreement from the Ministers of Home Affairs and Public Works before spatial plans can be enacted, are laudable. The implication of Law No. 14/2008 should not be underestimated. Contrary to the legislation on public participation, it imposes clear and enforceable obligations. In addition, the scope of the law is broader. The obligations apply to state bodies,

163 Art. 23 Law No. 14/2008. See also Art. 35-39 Law No. 14/2008. The Information Commission at the national level should have been established within one year and the Information Commissions at the provincial level within two years after the enactment of the Law (Art. 59-60 Law No. 14/2008). The Information Committee at the national level has already been established and became operational on 1 May 2010. The Information Commission of West Java Province is in the process of being established.

164 Art. 4(4); Art. 47-50 Law No. 14/2008.

165 Art. 16 GR No. 61/2010 in conjunction with Art. 58 Law No. 14/2008.

166 Art. 50 Law No. 14/2008.

167 Art. 52 and Elucidation Law No. 14/2008.

168 Art. 53 and Elucidation Law No. 14/2008.

169 This information was derived from the LEAD page at www.undp.org.

public companies, political parties, and even NGOs. It can not only play a role in spatial planning but also in other (land related) fields. This new piece of legislation may thus lead to a general strengthening of Indonesia's rule of law. However, most obligations imposed to municipal governments to ensure public participation remain unclear and difficult to enforce.

5.7 CONCLUSION

This chapter has discussed the law and practice of municipal spatial planning in the New Order and the Post-New Order. It has been shown that New Order spatial planning law offered only partial protection to landholders, even if they had registered their land. The 1992 SML, which also regulates spatial planning, created a system to ensure that the interests of landholders were valued; but implementing legislation, particularly in relation to public participation and transparency, was only partly enacted. As far as such legislation had been enacted, it failed to assign clear and enforceable government duties to protect the rights of the public in spatial planning, and as far as these rights were protected, they had little substance. In practice, the Indonesian government showed little concern for the interests of vulnerable groups like the urban poor in spatial planning. municipal governments drafted plans with little room for the public to participate. The Municipal Councils functioned as 'rubber stamps', enacting the plans without any form of external input. As plans required a recommendation from the Governor, and had to be legalized by the central government, higher levels of government could control the planning process. After enactment, it was hard for the public to even get access to plans.

Post-1998 reforms included reforms to spatial management law. New legislation formulated further standards for public participation and transparency. It contains safeguards that could protect the interests of landholders, but still imposes few obligations on municipal governments to ensure public participation and transparency. In addition, the role of the Municipal Councils in spatial planning diminished. Finally, the provincial and central government's role with respect to guidance and supervision initially also remained limited, but this role has increased since 2004. Despite these weaknesses, in combination with the general reforms discussed in Chapter 3, the legislation has the potential to offer protection to kampong dwellers in spatial planning.

Despite the reforms, the legal tenure security of low-income kampong dwellers remains limited, as post-New Order spatial planning practices in Bandung show. Participation of kampong dwellers in spatial planning is still rare; the municipal government hardly offers them the opportunity to be involved in this process. The Municipal Council, higher levels of government, or civil society equally fail to support the interests of kampong dwellers. Though we can witness some improvement, spatial planning is also still not fully transparent. This results in spatial plans that are adverse,

particularly for kampong dwellers who reside in kampongs the municipal government qualifies as 'slums'.

The above practices are, at least in part, the result of Post-New Order reforms and particularly regional autonomy. Administrative decentralisation as well as the new fiscal relationship between Jakarta and the regions together have invited the municipal government to consider spatial planning merely as an instrument to stimulate economic development, without considering the interests of ordinary citizens. Political decentralisation required new revenues for the municipal government to finance political support, which can for instance be guaranteed by allocating a generous budget to the Municipal Council. KKN is also implicated, including such situations as developers financially supporting a particular Mayor (or mayoral candidate) in return for permits; and, before 2004, the beneficiary using these revenues to get support from the Municipal Council for election. Yet, even after strongly supporting a new Mayor's election campaign, developers may not be guaranteed the site permits they seek, since power has become more dispersed following Post-New Order reforms.

The municipal government succeeded in getting its spatial plan approved by using weaknesses in the legal system, selectively invoking legislation which supported its interests. The weak role of the provincial government in guidance and supervision, and the lenient attitude of the central government, both contributed to the ability of the municipal government to reach decisions that violate the public interest and higher legislation. The advocacy or support for such decisions by local councillors and administrators may again indicate the involvement of KKN in certain cases, particularly given the initial public rejection of the process by some councillors.

The general public and civil society have done little to prevent these developments. People seemed disinterested in spatial planning and did not appear to value its importance. Although NGOs have been active in the process, applying political strategies, their influence was limited; and they focused on environmental issues rather than the interests of kampong dwellers. NGOs which protested against the process found that their members were intimidated by hoodlum groups. The protests were widely covered by the media, but no journalists were critical of the process, perhaps also out of fear of being targeted by these same hoodlum groups. Despite the public allegations of KKN and the intimidation experienced by those who protested against the revision of the General Spatial Plan and Puncut, no one has been formally accused of any wrongdoing.

Recently, legislation related to spatial planning has been further reformed. The 2007 SML was enacted, followed by implementing legislation. A year later a Law on Transparency of Public Information was enacted. The new legislation contains some extra safeguards that could protect the interests of vulnerable groups like the urban poor in spatial planning and sets a general framework for freedom of information. The reforms are a significant step forward. Especially the implication of the 2008 Law on Transparency of Public Information should not be underestimated.

Now that the legal tenure security of kampong dwellers has been assessed in relation to land registration and spatial planning, the question arises as to the position of kampong dwellers when the state actually wishes to clear their land. The next chapter therefore deals with the topic of land clearance by the state.

6.1 INTRODUCTION

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

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

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

6.2 LAND CLEARANCE BY THE STATE UNDER THE LATE NEW ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Art. 4 Law No. 51/1960.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 Personal communication, Bandung, 20 October 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

95 Internal documents of the National Human Rights Commission.

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

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

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

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

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

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

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

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

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

6.5 RECENT REFORMS RELATED TO LAND CLEARANCE BY THE STATE

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

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

100 Personal communication, Bandung, 20 October 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In Chapter 3, reference was made to the launching, in October 2009, of the National Strategy on Access to Justice. This Strategy may also have an impact on land clearance by the state. Key policy recommendations not only include those discussed in Chapters 4 and 5, but also strengthening

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.6 CONCLUSION

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

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

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

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

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

7.1 INTRODUCTION

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

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

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

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

7.2 COMMERCIAL LAND CLEARANCE UNDER THE LATE NEW ORDER

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

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

As discussed in Chapter 6, soon after the promulgation of the 1974 regulation, the Minister of Home Affairs promulgated Regulation No. 2/1976, which declared the procedure on voluntary land clearance for development in the public interest applicable to commercial land clearance if this was determined to be in the interest of the government.⁵ Developers were thus enabled to call on the assistance of the authorities in commercial land clearance. The regulation resulted in an unclear distinction between public interest and commercial interest.

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

3 General Consideration, under c BAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.3 LEGAL REFORMS RELATED TO COMMERCIAL LAND CLEARANCE

As discussed in Chapter 3, after 1998 limited land law reforms were initiated. Some of these reforms were related to commercial land clearance. Just a month after Soeharto's fall, there already were indications that the government wanted to bring an end to the past practices of commercial land clearance. In June 1998 the Head of the NLA sent a letter to the Land Offices at the provincial level, asking them to remind permit holders whose site permits could no longer be extended because the term of their permit had already expired and who had not started development activities, that these permits were null and void and could no longer be used for land clearance. Henceforth, permits to clear remaining land would only be issued to those who were "really serious and acted in good faith".¹⁵ A few days later, the Head of the NLA sent another letter, in which he referred to deviations in past commercial land clearance practices and required the Land Offices to include several new provisions in allocated site permits, namely that the site permit would not reduce the rights of landowners¹⁶ in the area for which the permit had been issued; that it would be forbidden to limit access of people in the area; that the permit holder had the obligation to protect the wider public interest as well as that of local people, and; that there was an obligation to create an enclave or consolidate land for those landowners who did not want to give up their rights. Representatives of landowners would now have to be involved in the permit granting procedure through the organisation of a coordination meeting. In case of field monitoring, officials of the NLA should identify the occurrence of informal tenure as well as examine the willingness of landowners to give up their rights. Finally, the Land Offices at the district/municipal level should still provide services to those landowners who had not yet given up their rights.¹⁷

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

15 Letter of the Head of the NLA No. 462-2033, dated 26 June 1998.

16 Please note, the letter explicitly refers to landowners, not landholders generally.

17 Letter of the Head of the NLA No. 462-2083, dated 30 June 1998.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.4 PRACTICE OF COMMERCIAL LAND CLEARANCE IN POST-NEW ORDER BANDUNG

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

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

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

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

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

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

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

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

7.4.1 *The Paskal Hyper Square project*

The first project involving the development of railway land in Bandung on the basis of a PPP, forming a model for the many projects on PT KAI land to come, is the Paskal Hyper Square project, for which PT KAI signed an agreement with PT Citra Buana Prasida (PT CBP) on 25 April 2003.³² PT CBP would develop Bandung's biggest business centre, consisting of shop houses, a trade centre, shopping mall, serviced apartments, and a five-star hotel, involving an investment of Rp. 350 billion (about US\$ 35 million).³³ The project was to be realised on a plot of about 16.5 hectares in City Quarters Kebunjeruk (Neighbourhood 4) and Ciroyom (Neighbourhood 1), Sub-District Andir, West Bandung.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.4.2 Land clearance in Kebonjeruk

In order to facilitate the land clearance process, PT KAI and PT CBP formed a land clearance team (*Tim Terpadu Pengosongan Lahan Ex. Emplasemen Stasiun Bandung Gudang*), which consisted of employees of both companies.⁴⁰ In May 2003 this team 'socialised' their plan among local officials and community leaders. It underlined that residents were under contractual obligation to give up the land. They should in fact be grateful that they had been allowed to reside on the land for such a long time at such low cost and were certainly not entitled to any compensation. Yet 'out of humanity' the developer offered a nonnegotiable sum of assistance/sympathy money (*uang santunan*) of Rp. 60,000/m² for non-permanent, Rp. 110,000/m² for semi-permanent, and Rp. 210,000/m² for permanent buildings (about US\$ 6–21/m²).⁴¹

Although residents felt pressure to accept the developers' offer, most immediately rejected it. They did not want to give up the land on which some people had been residing for more than 50 years, let alone "for the realisation of a commercial project that only benefited the elite."⁴² Besides, residents were generally of the opinion that the offer was too low as it did not enable them to buy a comparable dwelling.⁴³ They were also afraid to lose their source of income. Some of the residents were willing to move, provided that they received real compensation instead of nominal 'assistance/sympathy money'. This could come in the form of cash or new accommodation. Those who wanted money asked for compensation many times higher than the 'assistance/sympathy money' offered, namely Rp. 1-1.5 million/m² (about US\$ 100-150/m²).⁴⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 'Rumahnya Akan Dibangun Mal dengan Santunan Hanya Rp 250.000-m² 2.000 KK di Lahan Milik PT KAI Bandung', *Pelita*, 25 October 2009. See also Ruling of the Bandung General District Court No. 424/PID/B/2008/PN.BDG discussed below.

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

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

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

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

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

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

7.4.3 Land clearance in Ciroyom, second zone

In February 2005 PT CBP initiated the second stage of land clearance in Ciroyom. Initially, the process unfolded just as it had in Kebonjeruk. The developer held on to its offer to pay Rp. 60,000/m² for temporary buildings, 110,000/m² for semi-permanent and Rp. 210,000/m² for permanent buildings (about US\$ 6–21/m²).

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

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

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

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

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

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

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

Meanwhile PT CBP took up its divide-and-rule and intimidation practices again and with success. This time the role of hoodlum groups was limited – likely because their assistance had proved ineffective. As in Kebonjeruk, the developer found it easier to co-opt influential residents, including members of the Forum. Many people in consequence gave up their land, and by December 2005 only 47 households in the second zone, occupying in total 6,877 m² of land, still refused to accept the offer of PT CBP.⁵⁸

The last residents did not give up easily. As a replacement of the co-opted Forum, they established the smaller People's Rescue Team (*Tim Penyelamat Warga*), consisting of a handful of (new) neighbourhood heads.⁵⁹ It was formally registered as an association to avoid being accused of provocation. The Team also consisted of a 'militia' that coped with the police, the army, and hoodlums. It tried to negotiate a compensation rate of Rp 800,000 (about US\$ 80/m²) for all residents, irrespective of the quality of buildings or number of floors.⁶⁰

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

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

58 'Kajati Jabar Diminta Tengahi Sengketa Tanah, Terkait Pengosongan Lahan Seluas 6,877 m²', *Pikiran Rakyat*, 14 December 2005.

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

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

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

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

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

64 'Kajati Jabar Diminta Tengahi Sengketa Tanah, Terkait Pengosongan Lahan Seluas 6,877 m²', *Pikiran Rakyat*, 14 December 2005.

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

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

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

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

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

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

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

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

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

The prosecutions did still not silence resisting residents. In 2007 they asked the support from the Islamic Youth Movement (*Gerakan Pemuda Islam* or GPI), some of whose members were part of the kampong community. With their support, residents organised new street protests.⁷⁰ For months negotiations were in a deadlock. The resisting residents of the second zone finally came to an agreement with PT CBP in August 2007. They received the compensation they had demanded of Rp. 800,000/m² (about US\$ 80/m²).⁷¹

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

7.4.4 Land clearance in Ciroyom, third zone

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

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

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

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

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

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

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

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

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

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

The latest strategy of the residents of Ciroyom finally seems successful. PT CBP has realised the Paskal Hyper Square project in the first zone, where it has built a shopping mall and shop houses. Most shop houses, sized 60-105 m², have been sold at Rp 1-1,815 billion (about US\$ 100,000-181,500) each – a square meter price of up to 288 times the 'sympathy/assistance money' some residents were offered and still 21 times the compensation some resisting residents received.⁷⁸ At the time of writing construction activities in the second zone have yet to begin. Land clearance in the third zone continued for several month, but stopped in the course of 2009. The future of the project is uncertain. It seems that Dada Rosada, who won the elections, has kept his word not to issue the required permits. Furthermore, it is rumoured that business partners of PT CBP have been scared off by the long, difficult, and relatively costly land clearance process. In any event, in view of the sobering experiences in this 'model' project, developers may have lost interest in initiating other projects on railway land in the near future.

7.5 COMMERCIAL LAND CLEARANCE, TENURE SECURITY, AND THE RULE OF LAW

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

76 'Ancaman Ribuan Warga Ciroyom Golput Tak Terbukti', *Detik*, 13 April 2008.

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

78 Data derived from developer's brochure, on file with the author.

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

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

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

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

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

79 See Art. 14(2c) By-law of Bandung Municipality No. 2/2004 on the General Spatial Plan of Bandung Municipality (*Perda Kota Bandung No. 2/2004 tentang Rencana Tata Ruang Wilayah (RTRW) Kota Bandung*).

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

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

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

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

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

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

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

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

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

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

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

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

7.6 CONCLUSION

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

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

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

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

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

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

8.1 INTRODUCTION

As discussed in Chapter 1, according to the dominant approach to the provision of tenure security to the urban poor, referred to as the 'functional approach', land registration can be functional in fulfilling various development goals. To shortly repeat this line of reasoning, formal landholders are believed to enjoy legal tenure security and thus perceive to have less possibility of involuntary removal than informal landholders, and if involuntary removal occurs, they have a greater possibility to receive proper compensation. Furthermore, it is suggested that land registration could contribute to, for instance, housing consolidation. After all, it is likely that landholders who perceive to have less risk of involuntary removal invest more in their land than if they perceive this risk to be higher. Land registration may also enable the land market and improve access to credit. The land certificate makes land easy to transfer and can be used as a collateral. Housing consolidation, an enabled land market and improved access to credit may in turn contribute to slum eradication, poverty alleviation, and social justice.

Although land registration programmes continue to be implemented in (urban) Indonesia on a large scale, few evaluations have been conducted on the effects of land registration with regard to perceived tenure security, housing consolidation, enabled land markets, and access to credit. The existing research consists of two World Bank assigned evaluations of the Land Administration Project (LAP) by Hardjono (1999) and Smeru (2002), already discussed in Chapter 4, and an independent study by Winayanti and Lang (2002).² The studies give valuable insights into the effects of land registration and alternatives on perceived tenure security and housing consolidation, but all three have methodological limitations. First, one could question whether the effects of the LAP would be discernible immediately after (Hardjono 1999) or just three years after (Smeru 2002) the programme was implemented; particularly with regard to housing consolidation, which requires significant financial resources. Second, the study by Winay-

1 I wish to express my gratitude to Jean-Louis van Gelder, who assisted me with the analysis of the survey data. An earlier version of this chapter was published as Reerink, G.O. & J.L. van Gelder (2010), 'Land Titling, Perceived Tenure Security, and Housing Consolidation in the Kampongs of Bandung, Indonesia', *Habitat International* 34(1), p. 78-85.

2 The study by Winayanti and Lang (2002) was based on qualitative research in the low-income kampung Penas Tanggul, in City-Quarter Cipinang Besar Selatan in East Jakarta.

anti and Lang (2002) concentrated on a single kampong, which may or may not have been representative of the broader situation. The studies by Hardjono and Winayanti and Lang were also entirely qualitative, and lacked a statistical basis to assess accurately the significance of any apparent impacts of land registration on perceived tenure security and housing consolidation. Although Smeru (2002) did conduct a more representative and quantitative study, as in Hardjono's (1999) study no distinction was made between semi-formal and informal tenure, thus ignoring potential differences in effects of land registration on these two tenure categories.

The present chapter builds on the studies mentioned above, examining the relations between tenure category, perceived tenure security and housing consolidation using the results of the survey that was conducted in seven kampongs in Bandung.³ It thus assesses whether land registration and particularly land registration programmes, in their present set-up, strengthen the perceived tenure security of kampong dwellers and contribute to housing consolidation.

The chapter is divided into five sections. The next section discusses the perceived tenure security of Bandung's urban poor by looking at their perceived legitimacy of tenure, their perceived possibility of involuntary removal, and their perceived possibility to receive compensation entitled to. Section 8.3 focuses on the changed perceptions of tenure security since the end of the New Order. The correlations between tenure category, perceived tenure security, and housing consolidation are assessed in Section 8.4, after which the chapter concludes.

8.2 TENURE STATUS AND PERCEIVED TENURE SECURITY

In relation to the effects of land registration on perceived tenure security, the two World Bank assigned evaluations are rather positive. According to Hardjono (1999), participants of the LAP "almost invariably said that they feel more secure about their rights to land." This perception could be related in large part to a decrease in 'external' threats: participants argued that "there is now no possibility of [them] being evicted from their land against their will for development projects of any kind" (Hardjono 1999:30). According to Smeru (2002), about 70 per cent of the participants believed that they now enjoyed greater tenure security, "as a land certificate now recognises their ownership rights" (Smeru 2002:25-6).

3 Participants with formal tenure included landholders who had registered their land through a land registration programme and who had registered their land themselves. As all survey results discussed in this chapter were identical for both these categories of participants, they were combined into a single category.

Winayanti and Lang (2002) argue that perceived tenure security does not always have to be based on property title, but that there are alternatives. The semi-formal and informal landholders in the kampong in East Jakarta where they conducted their research perceived their tenure to be relatively secure because of a government policy of condoning non-formal tenure and providing public services, in conjunction with a high level and unity of community organisation and the support that landholders received from civil society groups. Yet, despite having *de facto* tenure security, these landholders were still hoping for legal recognition to further strengthen their tenure security (Winayanti & Lang 2002).

All of the above studies used a single indicator to assess the perceived tenure security of the different types of landholders in kampongs. To get a better understanding of the correlations between tenure status and perceived tenure security, in the current research we considered the differences of perceived tenure security between the three tenure categories by using three indicators: we asked respondent landholders about perceived legitimacy of tenure, perceived possibility of involuntary removal, and perceived possibility to receive proper compensation. We also asked them about changed perceptions of tenure security since the end of the New Order. What follows is a discussion of the results.

8.2.1 *Perceived legitimacy of tenure*

The first indicator of perceived tenure security refers to the perceived legitimacy of tenure – that is, whether landholders think that the authorities agree with them residing on the land they occupy. Participants' responses to this question are presented in Table 8.1, and indicate that a higher percentage of both formal and semi-formal landholders believed that the authorities agreed with their residence than did informal landholders (90 per cent for formal and semi-formal landholders versus 70 per cent for informal landholders).⁴ The results indicate that landholders falling into a legally stronger tenure category have stronger convictions that the authorities agree with their residence, while landholders with informal tenure are less confident of agreement, and more likely reply 'maybe agrees'. Yet it is noteworthy that a large majority of informal landholders still thought that the authorities agreed with their residence, and that the difference between formal and semi-formal households is negligible.

4 Results from the Chi-square test indicate that, with respect to perceptions about government agreement (that government agreed with residence, maybe agreed, or did not agree), relative frequencies of the three answers were significantly different between tenure categories ($\chi^2 = 27.142$, $df = 4$, $p < .001$).

Table 8.1 Do the authorities agree that you reside on this land?

Agreement of authorities	Formal tenure ^a	Semi-formal tenure ^b	Informal tenure ^c
Yes	88.9%	91.6%	70.1%
Maybe	7.1%	5.3%	26.4%
No	4.0%	3.2%	3.5%

Note: ^a n = 100, ^b n = 95, ^c n = 145

Participants who reported that the authorities agreed with their residence were asked why they believed this to be the case. As Table 8.2 shows, the possession of land related documentation was the primary reason given by most formal landholders (91.2 per cent). The possession of such documentation was also mentioned as a primary reason given by a large percentage of semi-formal (66.7 per cent) and, surprisingly, informal landholders (47.2 per cent). For semi-formal and informal landholders, the length of occupation (which according to Winayanti and Lang can contribute to *de facto* tenure security) was another important reason to believe that the authorities agreed with their residence (around one third of the respondents). Servicing (another factor often assumed to contribute to *de facto* security) was much less frequently mentioned (less than 5 per cent of respondents across tenure categories).

Table 8.2 Why do you believe the authorities agree with you residing on this land?

Reason	Formal tenure ^a	Semi-formal tenure ^b	Informal tenure ^c
Because I have land related documentation	91.2%	66.7%	47.2%
Because I have been occupying this land for a long time	4.4%	31.1%	36.8%
Because the authorities provide public services	3.3%	2.2%	4.7%
Other	1.1%	0%	11.3%

Note: ^a n = 91, ^b n = 90, ^c n = 106

8.2.2 Perceived possibility of involuntary removal

As a second indicator, participants were asked whether they believed there was a possibility of involuntary removal within the next five years. As Table 8.3 shows, both formal and semi-formal landholders perceived a possibility of involuntary removal, but much less often than did informal land-

holders.⁵ It should however be noted that more than 76 per cent of the informal landholders perceived no possibility of involuntary removal within the next five years, despite their informality.

Table 8.3 Is there a possibility of involuntary removal within the next 5 years?

	Formal tenure ^a	Semi-formal tenure ^b	Informal tenure ^c
Possibility	5.3%	6.9%	23.6%
No possibility	94.7%	93.1%	76.4%

Note: ^a $n = 100$, ^b $n = 95$, ^c $n = 145$

We asked those landholders who thought involuntary removal was possible to specify what they believed might cause it. Land clearance by the state for development in the public interest was most often mentioned by all types of landholders. In addition, land clearance by developers was mentioned by several semi-formal landholders, and land clearance (by authorities) for occupying land without permission from the title holder was mentioned by several informal landholders. These findings demonstrate that involuntary removal is perceived by landholders from all tenure categories to be driven primarily by the state.

8.2.3 Perceived possibility to receive compensation entitled to

As a final indicator, participants were asked whether in case of involuntary removal, they believed they would receive the compensation *assumed* to be entitled to according to law. As Table 8.4 shows, a higher percentage of formal landholders perceived they would receive such compensation than semi-formal and informal landholders.⁶ It should however be noted that more than 89 per cent of semi-formal and 87 per cent of the informal landholders also perceived to receive such compensation.

Table 8.4 In case of involuntary removal, would you receive the compensation entitled to according to law?

	Formal tenure ^a	Semi-formal tenure ^b	Informal tenure ^c
Yes	98 %	89.4 %	87.2 %
No	2 %	10.6 %	12.8 %

Note: ^a $n = 100$, ^b $n = 94$, ^c $n = 141$

5 Results of the Chi-square test indicate that the difference in perceived security between tenure categories is significant ($\chi^2 = 19.908$, $df = 2$ $p < .001$).

6 Results of the Chi-square test indicate that the difference in perceived security between tenure categories is significant ($\chi^2 = 8.771$, $df = 2$ $p < .001$).

Notably, the survey also reveals that landholders have wrong assumptions about the compensation they are entitled to according to law. A high percentage of semi-formal (87 per cent) and even informal landholders (44.1 per cent) believed that they were entitled to full compensation for land and buildings. However, as discussed in Chapter 6, in case of land clearance for development in the public interest, the first category of landholders are only entitled to up to 90 per cent of the compensation received by formal landholders and as for the second category of landholders, the determination of compensation is at the discretion of the Mayor. Their perceived tenure security is thus further strengthened by a lack of knowledge about formal compensation rates.

8.3 CHANGED PERCEPTIONS OF TENURE SECURITY SINCE THE END OF THE NEW ORDER

The survey also included questions on participants' changed perceptions of tenure security since the end of the New Order. So participants were asked how according to them, the possibility of involuntary removal and the possibility to receive proper compensation had changed since the end of the New Order. As Table 8.5 shows, of all categories of landholders most believed the possibility of involuntary removal was still the same. However, they had a tendency to believe that this possibility had become bigger.

Table 8.5 How has the possibility of involuntary removal changed since end of New Order?

	Formal tenure^a	Semi-formal tenure^b	Informal tenure^c
Possibility is smaller	16 %	14.6 %	14.4 %
Possibility is the same	43.6 %	48.3 %	46.2 %
Possibility is bigger	40.4 %	37.1 %	39.4 %

Note: ^a $n = 94$, ^b $n = 89$, ^c $n = 132$

As Table 8.6 shows, at the same time all categories of landholders believed the possibility to receive proper compensation in case of involuntary removal had become bigger.

Table 8.6 How has the possibility to receive proper compensation changed since end of the New Order?

	Formal tenure^a	Semi-formal tenure^b	Informal tenure^c
Possibility is smaller	7.3 %	3.2 %	9.6 %
Possibility is same	37.5 %	38.3 %	48.6 %
Possibility is bigger	55.2 %	58.5 %	41.8 %

Note: ^a $n = 96$, ^b $n = 94$, ^c $n = 146$

8.4 HOUSING CONSOLIDATION

To investigate whether investment in housing (as indicated by the level of housing consolidation) was associated with tenure status, we tested for differences in the means of housing consolidation scores between tenure categories. Housing consolidation was measured on the basis of a composite score which represented the quality of the three defining elements of a dwelling; namely the floor, the walls and roof. For each element a three-point index of consolidation was used, with a score of 1 indicating low consolidation, and 3 representing high. The scores were combined into a composite score that could range from 3 (indicating low consolidation) to 9 (indicating high consolidation).

As Table 8.7 shows, there were differences in levels of housing consolidation between the different tenure categories.⁷ The results confirm the findings discussed in Chapter 2, namely that in general, houses in kampongs in Bandung are already reasonably consolidated. At the same time a distinction can be made between houses of formal, semi-formal, and informal landholders. Landholders in formal tenure situations lived in more consolidated housing than informal landholders.⁸ There were, however, no significant differences in degree of housing consolidation between formal and semi-formal landholders. The difference between semi-formal and informal landholders was marginally significant.⁹

The question rises whether these differences in degree of housing consolidation between tenure categories cannot be explained by other factors, such as differences in household income. There were indeed such differences. Formal landholders had significantly higher incomes than informal

Table 8.7 Household income and housing consolidation

	Legal tenure category		
	Formal tenure ^a	Semi-formal tenure ^b	Informal tenure ^c
Housing consolidation ¹ M (SD)	8.78 (.52) *	8.56 (.80) */**	8.32 (1.00) **
Household income (x 1,000) ² M (SD)	1.730 (1.461) *	1.401 (1.211) */**	1.256 (1.255) **

Note: ^a n = 100, ^b n = 95, ^c n = 145 ¹ Rated as a score from 3 to 9, with 3 representing the lowest level of consolidation and 9 representing the highest; ² Household income in Indonesian Rupiahs (Rp. 10,000 ≈ USD 1); *, ** Means in the same row that do not share a superscript asterisk differ at p < .01.

7 $F(2, 337) = 9.420, p < .001$.

8 Tukey's HSD, $p < .001$.

9 $p = .071$.

landholders, but again no significant differences in income were found between formal and semi-formal landholders, nor between semi-formal and informal landholders.¹⁰

As a final step in the analysis we employed a regression analysis, using legal tenure category, perceived possibility of involuntary removal, and household income as predictors of housing consolidation, to be able to determine the unique contribution of each predictor to levels of housing consolidation (Table 8.8).¹¹

Table 8.8 Regression of tenure category, perceived possibility of involuntary removal, household income on housing consolidation

Predictor variables	B	SE B	β
Tenure category	.18	.12	.10
– Formal vs. semi-formal			
– Formal vs. informal	.37	.11	.22**
Perceived possibility involuntary removal	.32	.12	.14*
Household income	.07	.00	.15**

Note. $R = .30$, $R^2 = .09$, SE (.82); * $p < .05$, ** $p < .01$

For tenure category, the regression analysis confirms the findings presented in Table 8.7: dwellers with formal tenure live in significantly more consolidated dwellings than do informal dwellers, but again no difference was found between formal and semi-formal dwellers. Therefore, formal landholders can be differentiated from informal landholders with respect to their level of investment in housing, but there were no such differences between formal and semi-formal landholders. The results also show the perceived possibility of involuntary removal is an independent indicator of housing consolidation that is not explained by legal category. At the same time the effect for tenure category on housing consolidation cannot be explained by differences in household income between tenure categories. In other words, formal landholders may invest more in their housing than informal landholders because of differences in tenure category, while irrespective of tenure category, landholders enjoying perceived tenure security and/or having (relatively) high household incomes may invest more in their housing than landholders enjoying less or no perceived tenure security and/or having lower household incomes.

10 An analysis of variance (ANOVA) test demonstrated that these differences were significant ($F(2,337) = 3.939$, $p < .05$). To examine potential differences between particular categories, post-hoc tests using Tukey's HSD were employed. The results revealed significant differences in income only between the formal and informal tenure categories ($p < .05$).

11 Due to its categorical nature, tenure status was dummy-coded.

8.5 CONCLUSION

This chapter assessed to what extent formal, semi-formal, and informal landholders in kampongs in Bandung enjoy perceived tenure security and looked at the effect of land registration (through land registration programmes) on housing consolidation. Registration programmes generally operate under the assumption that landholders with property title enjoy greater tenure security than landholders dealing with 'extra-legal' tenure situations, and as a result are also more willing to invest in their housing.

The perceived tenure security of landholders with a property title was higher than that of informal landholders. However, no such differences were found between landholders with title and semi-formal landholders. These findings, in combination with the observations that semi-formal (and informal) dwellers often cited their land related documentation and length of residence as reasons for the legitimacy of their tenure, support the idea that perceived tenure security is enhanced not only by land registration, but also by increasing *de facto* tenure security.

The perceived tenure security of landholders has changed since the end of the New Order. Of all categories of landholders most believed the possibility of involuntary removal was still the same. Another large minority of landholders believed that this possibility had become bigger. At the same time of all categories of landholders most believed the possibility to receive proper compensation in case of involuntary removal had become bigger, with another large minority believing this possibility was still the same.

Several factors uniquely contribute to housing consolidation. Tenure category is a significant independent predictor. Landholders with formal tenure lived in somewhat more consolidated dwellings than those with informal tenure. But again, no significant differences were found between formal and semi-formal landholders. Perceived possibility of involuntary removal *and* household income are also significant independent predictors of housing consolidation. In other words, kampong dwellers with formal or semi-formal tenure, who enjoy a high level of perceived tenure security and/or have a high household income tend to invest more into their housing than those with informal tenure, who enjoy a lower level of perceived tenure security and/or have a lower income.

9.1 INTRODUCTION

This book has presented the results of a socio-legal study assessing to what extent Indonesia's urban poor enjoy land tenure security under different tenure arrangements; particularly in the context of decentralisation and other post-New Order reforms to the rule of law. Given the weaknesses identified in some previous studies on tenure security, this study's analyses distinguished explicitly between three categories of land tenure security, namely formal, semi-formal, and informal land tenure, based on the status of each of these arrangements according to state law. This study also distinguished between legal, de facto, and perceived tenure security. Fieldwork was conducted in Bandung, capital of West-Java Province and Indonesia's third largest city (2.3 million inhabitants).

The first two sections of this final chapter summarise the main findings of the research, and address the study's primary questions about land tenure security under different tenure arrangements. The chapter then focuses on the study's other research questions, including: the socio-economic benefits of different approaches to obtaining tenure security under Indonesia's contemporary rule of law environment (Section 9.4); policy recommendations to enhance tenure security for the urban poor (Section 9.5); and the study's contributions to the international development debate on tenure security (Section 9.6). The final section gives suggestions for further research.

9.2 LAND TENURE SECURITY OF LOW-INCOME KAMPONG DWELLERS

Bandung and Indonesian cities generally contend with a 'challenge of urban poverty' in the form of kampongs. Kampongs have developed mainly as a result of a combination of substantial migration flows and a failure of subsequent governments to effectively regulate these settlements. Kampongs house low-income people, and are largely informal in terms of land tenure and land use. Most settlements are, however, reasonably consolidated. In addition, among and within these settlements there are various degrees of legality. Even so, conditions in kampongs remain adverse, and it is unlikely this will change in the future unless further measures are taken. In recognition of this challenge it is significant that the Indonesian government has formulated a National Strategy for Poverty Reduction, in which the right to adequate housing and the right to secure land tenure play a central role.

The success of any approach to managing tenure security depends on the enforceability of property and/or human rights. This requires a rule of law environment, in which the urban poor are protected against arbitrary behaviour by the state or private parties. During the New Order period this was not the case. This period featured a combination of i) a 'developmentalist', central-authoritarian and frequently corrupt New Order state; ii) a (marginalised) BAL granting a strong role to that state; and iii) implementing legislation which was either lacking or, as far as it was in place, reflected an extreme 'integralist' interpretation of key-concepts of the BAL. Together these resulted in the central government retaining strong discretionary powers in the land sector, which could easily be abused in the name of 'development', and commonly were. After the fall of Soeharto in 1998, Indonesia initiated ambitious political and legal reforms. The right to adequate housing is now explicitly acknowledged. Upon closer investigation, with respect to the land sector the reforms so far are disappointing. The implementing legislation of the 1999 and 2004 RALs has led to much confusion, and has severely limited the scope of regional autonomy in the land sector. In addition, land law reform itself remains very limited. On the other hand, at least on paper, the rule of law environment in which land law is implemented has improved significantly. Compared to the New Order period, Indonesia's urban poor thus appear better protected against arbitrary behaviour by the state and private parties.

Despite the reforms, low-income kampong dwellers in Bandung and likely in other cities enjoy only limited legal tenure security, even if their land is registered. Few formal (and semi-formal and informal) landholders have the permits they need to legally reside on their land. In addition, few formal landholders appear to perform derivative registration after a change in the tenure situation of the land. Finally, the land administration system is dispossessory in nature, due to weaknesses in the legal framework as well as maladministration. Under the BAL, a land certificate is not conclusive, but only forms strong evidence regarding a land right. The NLA has a notorious reputation as a result of incompetence and corruption, with officials commonly issuing more than one certificate for the same plot of land.

The legal tenure security of low-income kampong dwellers also remains limited in relation to spatial planning, on the basis of which the Indonesian state can limit the exercise of land rights and claims. New legislation on spatial management, of which spatial planning is a part, contains further safeguards that could protect the interests of landholders, but imposes few obligations to district/municipal governments to ensure public participation and transparency. In addition, the role of the District/Municipal Councils is diminished in spatial planning. Finally, the provincial and central government's role with respect to guidance and supervision initially also remained limited, although this role has increased since 2004. In practice, the role of kampong dwellers in Bandung in spatial planning is still very limited. Not only do they rarely participate in this process, the municipal government also fails to invite them to do so. The Municipal

Council, higher levels of government, and even civil society equally fail to support kampong dwellers' interests. Spatial planning is becoming more transparent, but there are still many deficiencies. The spatial plans that are enacted are detrimental to kampong dwellers, particularly for those who reside in settlements the municipal government qualifies as 'slums'.

Finally, the legal tenure security of low-income kampong dwellers remains limited in relation to land clearance by the state or private parties. Legislation creates a broad discretion for district/municipal governments to determine for what purpose land is cleared. They have no legal obligation to explore feasible alternatives. Procedural protections are limited. Landholders are not guaranteed the right to proper compensation and the right to adequate alternative accommodation. As for informal landholders, legislation gives the Mayor broad discretion to determine whether, and how much, compensation is due. The regulation on site permits, which developers may need for land clearance, contains an ineffective mechanism to monitor commercial land clearance and enforce related norms. In addition, many landholders cannot benefit from any of the law's potentially protective provisions, as it refers to an extensive list of cases in which no site permit is required. In any event, district/municipal governments feel free to depart from it.

While the legal tenure security of low-income kampong dwellers is limited, the *de facto* tenure security of semi-formal and even most informal landholders in Bandung is surprisingly strong, in the sense that they enjoy a considerable degree of administrative recognition. They possess land related documentation (which semi-formal landholders could use for land registration), many have been residing on the land for decades, and the majority of these landholders are formal receivers of public utilities, such as water and electricity, and hold identity cards.

Land clearance as a single enforcement measure, for instance because landholders reside on land without the permission of the right holder or because they (or formal landholders) lack permits to reside on the land, was and is still rare. However, if land is needed for development in the public interest or for commercial purposes, which is more than ever the case in Post-New Order Bandung, kampong dwellers still risk involuntary removal without due process of law or proper compensation. Commercial developers particularly appear interested in land that is held informally. At the same time, landholders succeed in negotiating higher compensation than during the New Order years, which suggests that post-New Order reforms have benefited kampong dwellers who are confronted with the state or developers wishing to clear land. Notably, this study found that tenure status is not always a predictor for the level of compensation received.

This study found that formal landholders in kampongs in Bandung enjoy stronger perceived tenure security than informal landholders. However, no such differences are found between formal landholders and semi-formal landholders. Semi-formal (and informal) landholders often cited their land related documentation and length of residence as reasons for the

legitimacy of their tenure. Perceived tenure security has decreased since the end of the New Order with regard to protection against involuntary removal, while it has increased with regard to the level of compensation. The housing of landholders with formal tenure is somewhat more consolidated than that of landholders with informal tenure. However, again no significant differences are found between formal and semi-formal landholders. Housing consolidation also depends separately on perceived tenure security and household income.

9.3 RULE OF LAW DEVELOPMENT AT THE LOCAL LEVEL

The limits of low-income kampong dwellers' legal, de facto, and perceived tenure security can be explained to a large extent by Indonesia's rule of law still being weak at the local level. This problem persists despite the country's ambitious reform programme. Regional autonomy, one of the major reform initiatives, has in part actually had a negative effect on the tenure security of low-income kampong dwellers.

It is clear that to this day Indonesian land law does not offer effective protection to (low-income) landholders against arbitrary behaviour of the state and private parties. This not only applies to informal and semi-formal landholders, who often have difficulties meeting evidence requirements to register their land in the first place, but even to formal landholders. The 1960 BAL has not been revised. In relation to urban land tenure, most required implementing legislation has now been enacted, but it still reflects an 'integralist' interpretation of key-concepts of the BAL. This results in the government retaining strong discretionary powers in the sector of land, which can easily be abused. Paradoxically, when it comes to the protection of landholders against the arbitrary behaviour of private parties, such as commercial developers wishing to clear land, the state is granted a limited role.

To add to the legal confusion, regional autonomy legislation has created a contradictory framework regarding the division of authorities in the land sector between the central government, the Provinces, and Districts/Municipalities. Both the 1999 and 2004 RALs devolve full authority over land matters to the regions. However, implementing legislation maintains the NLA's authority over some parts of these matters.

When implementing the above legislation, authorities use their broad discretionary powers as they see fit, turn the contradictory legal system to their advantage, or simply operate outside the law. Instances of maladministration, including KKN, are widespread within the bureaucracy.

Post-New Order reforms, and particularly regional autonomy, have contributed to the above circumstances. Because of administrative decentralisation, district/municipal governments need extra funds to finance devolved authorities. Political decentralisation and other reforms that were meant to strengthen democracy at the local level required new (extra-budg-

etary) revenues for the district/municipal governments to finance political support. In Bandung at least, this has resulted in a municipal government eager to facilitate the development of the services industry, so it can raise land related taxes and revenues (which, as a result of the new fiscal relationship between Jakarta and the regions, support the municipal budget) without taking much account of the interests of low-income kampong dwellers.

Internal checks and procedures within the administration, which could potentially prevent the above situation, remain limited. As far as they are in place, they are often not implemented and therefore usually ineffective. There is no formal procedure for interested parties to apply for administrative review of a decision. The 1999 RALs did establish a mechanism enabling the central government and provincial government to supervise and control the district/municipal governments. The central government and provincial government can for instance annul municipal legislation related to spatial planning. On the basis of the 2004 RALs, municipal spatial plans should be evaluated by the provincial Governor and the relevant Ministers respectively before they can be enacted. In practice, supervision by the provincial government appears to be very weak and the central government takes a lenient attitude.

Indonesia's new democracy partly compensates for the above conditions. Whereas kampong dwellers seem disinterested in spatial planning, they clearly understand the implications of land clearance and now demonstrate a willingness to resist such efforts. Surprisingly, in such resistance traditional intermediaries like (rights-oriented) NGOs and the student movement play a limited role. Kampong dwellers largely depend on community-based organisations, based on strong community leadership. They seek support from politicians in land disputes, organising street protests and offering petitions. Kampong dwellers even use their right to vote to put political pressure on the executive. In doing so, they draw considerable media attention.

It would go too far to conclude on the basis of the above that there is substantive democracy in Bandung. Despite democratic reforms, the contents of laws and policies are still not determined by public consent. Participation and transparency in lawmaking processes remain limited. In the event that local politicians do support the urban poor, this takes the form of political patronage. The role of counter forces, such as hoodlums, is strong. Funded by the municipal government and commercial developers, they intimidate protesters and their backers. Media coverage often appears biased towards the more powerful side of any dispute. Journalists, particularly freelance reporters and/or those working for regional dailies, are sometimes bribed and/or fear to write in a critical way.

Despite the current disadvantages of adopting political strategies in land disputes, kampong dwellers tend not to choose litigation as a strategy, and even avoid legal discourse. Though kampong dwellers have the potential to base their demands on the law, these instead generally take form of a

moral claim: the dwellers ask for support “out of humanity”. They also explicitly call in the help of party-affiliated legal aid organisations, who can serve as brokers. Kampong dwellers thus are in a vulnerable position, depending on political favouritism.

The preference for adopting a political strategy to land disputes, instead of a legal, litigation-oriented strategy, can to a large degree be explained by kampong’s dwellers limited knowledge of and lack of trust in the law and legal institutions. The police, public prosecution and particularly the judiciary are strongly distrusted by low-income kampong dwellers. Our survey revealed that they believe courts are not independent or impartial and litigation is expensive, partly due to corruption. The role of alternative institutions of dispute settlement is also limited. The National Human Rights Commission is well-known and has a good reputation among low-income kampong dwellers in Bandung, however the fact that it is located in Jakarta forms a considerable barrier. Equally, low-income kampong dwellers in Bandung would not turn to the National Ombudsman Commission. This institution is still unknown, but even if it were known, the same problem of distance would likely apply.

Many legal institutions in Indonesia do indeed continue to carry questions of bias, suggesting that litigation may be ineffective. Despite strong allegations of corruption regarding the drafting, enacting, and revision of Bandung’s new General Spatial Plan, which led to administrators and politicians being placed under severe scrutiny by the media, a local watchdog NGO and the public, no administrators or politicians were ever investigated or prosecuted. Instead, the police and the prosecution service pressured, arrested, and prosecuted kampong dwellers who resisted land clearance by commercial developers. The few times the courts did play a role in the cases discussed in this book, their rulings were generally unfavourable to kampong dwellers.

We caution that the above findings are based on a limited number of case studies, conducted in a single city. Whether these findings are representative of broader (urban) Indonesia is difficult to confirm, because little other research has been conducted. However from the research available, it appears that involuntary removal without due process of law and proper compensation is still common in Indonesia. Although there are some positive examples, it is clear that in policymaking processes at the local level generally, citizens and particularly the urban poor still play a limited role. In relation to land clearance by the state, there are examples of city authorities, such as those of Jakarta, Medan, and Surabaya, being more repressive than Bandung’s municipal government. Based on reports in the national media, it appear that involuntary removal without due process of law and proper compensation also still often occurs, to accommodate commercial land clearance. Partly as a result of decentralisation there may however be regional differences.

9.4 INDONESIA'S CURRENT APPROACHES TO ATTAINING LAND TENURE SECURITY

The findings of this research call into question the effectiveness of Indonesia's current approaches to increasing tenure security of the urban poor. The dominant approach is mass land registration through programmes such as the National Land Registration Project (*Proyek Operasi Nasional Agraria* or PRONA), Regional Land Registration Projects (*Proyek Operasi Daerah Agraria* or PRODA), and the Land Administration Project (LAP). The LAP's aim is not only to accelerate land registration, but also to improve the legal-institutional framework for land administration, which included a systematic review and drafting of land laws and regulations, and training of NLA staff. This combination of land registration on the one hand and legal and institutional reform on the other hand also plays a role in the successor of the LAP, the Land Management and Policy Management Project (LMPDP), which was launched in 2004. The LMPDP adds two components, namely developing a Land Information System (LIS) and providing training and capacity building to all local governments.

It proves hard for landholders to perform sporadic registration; that is, to register land at their own initiative rather than through systematic land registration programmes. This difficulty is a result of several factors, including the stringent evidence requirements for the registration of semi-legal rights, a lack of political will to register rights of informal landholders, high costs and unwieldiness of the registration process as a result of poor administrative performance and even maladministration, and related negative perceptions of landholders regarding the registration process.

Certain obstacles are overcome by systematic land registration programmes; however, the reach of these programmes is limited. The LAP was only implemented in locations where registration is relatively easy, which means that locations where many low-income dwellers reside were ignored. As well, some of the obstacles associated with sporadic land registration remained present during systematic registration programmes; particularly the stringent evidence requirements for initial registration (which form an obstacle particularly for those with the lowest incomes) and more importantly, a lack of political will to grant new rights to informal landholders. This also means that semi-formal landholders participate in land registration programmes while informal landholders practically do not.

Because only semi-formal landholders participate, the socio-economic benefits of land registration programmes are very limited. As discussed above, informal landholders in many respects often enjoy significantly less tenure security than formal and semi-formal landholders. Furthermore, the contribution of land registration to housing consolidation is marginal and only occurs if informal tenure is formalised. This implies that registration programmes in Bandung and likely other Indonesian cities have so far been targeting the wrong group; as the people who may benefit most from

registration programmes, namely landholders with informal tenure, rarely find themselves among their beneficiaries.

In addition, land registration is not a prerequisite for tenure security and housing consolidation. As noted before, semi-formal (and informal) landholders often cited their land related documentation and length of residence as reasons for the legitimacy of their tenure. Not only land registration, but also increasing de facto tenure security can thus enhance perceived tenure security. Perceived tenure security, in turn, is enough for kampong dwellers to consolidate their housing. Alternative approaches in which land registration plays no (immediate) role may thus also be helpful.

The other components of programmes such as the LAP/LMPDP, including a systematic review and drafting of land laws and regulations, training NLA staff, developing a Land Information System, and supporting capacity building for local governments, appear to be urgently needed. Current land law offers only partial protection. So far however, land law reforms remain limited. The World Bank has acknowledged that the institutional development component of the LAP has been a failure. Maladministration within the NLA is still pervasive. A Land Information System could lead to a more accurate land register, an efficient and therefore cheaper use of land data, and in turn lower registration costs, with the registration process becoming less unwieldy. It appears that the performance of local governments in the land sector could improve significantly.

9.5 POLICY SUGGESTIONS

On the basis of the above findings, several policy suggestions can be made. These suggestions relate firstly to the dominant functional approach to attain tenure security. The findings of this research suggest this should change from a functional approach to a rights-based approach. In addition, this section includes suggestions regarding legal and institutional reforms. In closing, the importance of legal empowerment initiatives is underlined.

9.5.1 *Toward a rights-based approach*

Considering the fact that non-formal tenure can, but in practice does not always offer tenure security, the most important suggestion is to change from a predominantly functional approach to a rights-based approach, in which land registration plays a role only at a later stage. Rights-based approaches generally combine protective administrative or legal measures against evictions with the provision of basic services and credit facilities. In the case of Indonesia, basic services and credit facilities are already provided, for instance through the National Community Empowerment Programme. Protective administrative or legal measures are still needed. Such measures could take various forms, but a straightforward approach would

be formal condoning, which means that the competent authorities issue a decision stating they will not enforce a violation of prevailing land tenure and land use related legislation. Formal condoning would be in line with key recommendation referred to in the National Strategy on Access to Justice, to recognize and protect rights to ensure poor communities can safeguard their rights to land.

As was noted above, kampong dwellers enjoy a high degree of administrative recognition. This type of informal condoning has already been shown to enhance the perceived tenure security of low-income kampong dwellers. In particular, the possession of land related documentation contributes to perceived tenure security, in the sense that kampong dwellers believe that the authorities agree that they reside on the land legitimately. Perceived tenure security contributes to housing consolidation. By formalising the condoning process, the legal, *de facto*, and perceived tenure security of kampong dwellers will likely increase further, which in turn would stimulate housing consolidation.

Formal condoning is unknown in Indonesia. This legal figure is known in Dutch administrative law, to which Indonesian administrative law is historically related.¹ In Dutch administrative law, formal condoning is only possible if a violation of prevailing legislation will end soon. The decision to condone is thus a temporary measure. It is also an individual decision; third parties, including legal successors, cannot benefit. Conditions can be attached to the decision. Finally, interested parties can (object and) appeal to the decision at the Administrative District Court.

The legal figure of formal condoning could also be introduced in Indonesian administrative law in relation to land tenure or land use. A decision to condone can be issued if it is legally possible and actually planned that land certificates and permits to reside on the land are provided in the near future. A decision to condone may thus (first) require a qualification of land as neglected land and/or a revision of municipal spatial plans.² As a condition, a time limit for the landholder to register the land or obtain the required permits to reside on the land could be attached to the decision. Others claiming a right to the land, or who believe that otherwise their interests are affected by the decision to condone, can appeal to the Administrative District Court. The decision to condone residence can be based on Land and Building Tax documentation, which almost all kampong dwellers have and which provides relatively accurate information on the size of plots and the dwellings on it and the person(s) having an interest in the property. This information is sufficient to guarantee a basic level of tenure security.

1 A common example is municipal governments issuing decisions to condone people permanently residing in holiday homes that on the basis of the municipal spatial plan can only be used for temporal residence.

2 Rights to be annulled should include usage or management rights that have been granted to public entities and that are not used for the purpose for which they have been granted.

Obviously, formal condoning may not be possible in all cases. The non-forfeited rights of landholders whose land has been occupied without permission should of course be respected. And there will always be locations that are objectively unsustainable for residence. In such cases, kampong dwellers should be provided with adequate alternative accommodation. These dwellers will thus become formal landholders without the intermediate step of formal condoning.

Kampong dwellers whose residence is formally condoned can become formal landholders after several years through land registration. Considering the fact that kampong dwellers contend with obstacles to registration their land at their own initiative, and that these obstacles are in part overcome by land registration programmes such as the LAP/LMDP, it would be useful to continue with these programmes. However, since the effect (in the long term) of the programmes on tenure security is marginal, their set-up should be revised considerably. First, the programmes should focus particularly on the tenure position of informal landholders. In this framework, the Indonesian government should consider redistributing state land, just as it does in the framework of the National Agrarian Renewal Programme, but in this case focusing on urban land. Second, the programmes should not only provide land titles, but also all required permits to kampong dwellers, so they meet public law requirements to reside on land. Separately, the problems of limited derivative registration and the dispossessory nature of Indonesian land law should be addressed (to be discussed in Section 9.5.2 below).

In order to contribute to legal, de facto or perceived tenure security of low-income kampong dwellers, a successful rights-based approach requires a rule of law environment, which is still not available in Indonesia. The above approach should therefore be combined with interventions that strengthen the rule of law at the local level. These interventions should include both legal and institutional reforms and initiatives aimed at legal empowerment.

9.5.2 *Legal and institutional reforms*

Legal and institutional reforms should consist of land law reforms, regional autonomy reforms and general reforms. Such reforms would be in line with key recommendations referred to in the National Strategy on Access to Justice.

Land law reform

Legal and institutional reforms should first involve an integrated revision of land law, as required by People's Consultative Assembly Directive No. IX/MPR/2001 and Presidential Decision No. 34/2003, in accordance with the right to adequate housing as guaranteed by the Amended 1945 Constitution and the ratified International Covenant on Economic, Social and Cultural Rights. Considering the fact that to this day, the BAL forms the

general framework of land law in Indonesia, the revision of land law should start with a review of this law. Such a review will probably lead to the conclusion that the BAL requires amendment or perhaps even wholesale revision. Our research findings however give little reason to draw such a conclusion. The BAL grants the state a strong role in the land sector and it has repeatedly been shown in this book that this seriously affects the tenure security of low-income kampong dwellers. Yet, this does not mean the role of the state should be reformulated. Given the many problems Indonesia's land sector is facing, there is reason to retain a strong role for the state. However, there should be clear limits to this role. So far, this has not been the case. Implementing legislation, which reflects an extreme 'integralist' interpretation of key concepts of the BAL, is still in force. This legislation should be revised or annulled. Below is an overview of the most important land law reforms needed.

- Land Registration and Licensing

Recently, there have been significant reforms in relation to land registration and licensing, consisting of the enactment of new legislation on topics as various as minimum services standards, registration costs and neglected land and the introduction of the People's Service for Land Registration programme. These reforms make it potentially easier for low-income kampong dwellers to register their land at their own initiative. However, in order to strengthen land tenure security of low-income kampong dwellers, further steps should be taken, creating accessible land registration and permitting systems, and allowing any type of landholder to perform initial and derivative registration and to obtain the permits needed to legally reside on land. This requires a revision of Government Regulation No. 24/1997 and Government Regulation No. 11/2010. Law No. 25/2009 and Government Regulation No. 13/2010 may have to be revised too.

In order to make the land registration system accessible for semi-formal landholders wishing to perform initial registration, the Indonesian government could consider softening evidence requirements further. Admittedly, the replacement of Government Regulation No. 10/1961 by Government Regulation No. 24/1997 already resulted in considerable improvement. However, there is room to further accommodate the needs of semi-formal landholders, without harming the interests of third parties. In particular, the possibility to register land on the basis of non-documentary evidence could be broadened, allowing semi-formal landholders to register their right if the land has been in their possession (or the possession of possible predecessors) for a period shorter than the current required period of 20 years. Under the BAL, a third party can dispute the right of a formal landholder during the five years after the certificate has been issued, still leaving such a claimant sufficient time to challenge a new formal landholder's right.

In order to make the land registration system accessible for informal landholders wishing to perform initial registration, it should become easier for them to obtain new rights. Informal landholders occupying state land

should have a priority right to request a new land right, also if this land is not former European land that failed to be registered before 1980. Non-state land that has been occupied uninterruptedly for a certain period of time (for instance 10 years if in good faith, 20 years if not), should qualify as neglected land by virtue of the law.

Despite the enactment of new legislation on registration costs, for most kampung dwellers costs to register land at their own initiative may still be too high. In that case, more legislative revisions may be required, leading to a further limitation of registration costs. Obviously, offering further special financial arrangements for low-income groups would involve considerable costs for the Indonesian government. These costs could to a large extent be covered by a more efficient and therefore cheaper use of the land data already available. Indonesia has a state-of-the-art fiscal register that is used to collect Land and Building Tax. At present, the fiscal register is completely separated from the legal register, with the Department of Finance being responsible for the fiscal register and the NLA for the legal register. The contemporary tax system is based on the actual use of land and buildings, not on the legal status. The maintenance of two separate registers, however, only leads to the aggregation of double data. It would therefore be practical and economical to combine the fiscal and legal registers.

The combination of the legal and fiscal registers may also contribute to the registration process becoming less unwieldy. Part of the information needed for initial registration can then be drawn from the fiscal register, which will save time.

It may be the case that despite the enactment of the new legislation on minimum services standards, registration and licensing processes remain unwieldy. In that case, further legislative revisions may be required, leading to simple procedures, with requirements that can be met by low-income kampung dwellers, against modest fees, and with strict time limits, an excess of which would lead to the imposition of sanctions on the failing authorities.

- **Spatial planning**

Recently, legislation related to spatial planning has been reformed. This has led to more democratic control, strengthens the role of the provincial and central governments with respect to guidance and supervision in spatial planning, and requires public bodies, political parties, and non-governmental organisations to make information publicly available. However, most obligations of district/municipal governments to ensure public participation are still not clear and enforceable. In order to strengthen land tenure security of low-income kampung dwellers in relation to spatial planning, further steps should thus be taken, supporting substantive public participation and transparency. This requires a further revision of the 2007 SML (which the 2010-2014 National Legislative Programme recommends), Government Regulation No. 69/1996 and Regulations of the Minister of Home Affairs Nos. 8/1998, 9/1998, and 1/2008.

Substantive public participation and transparency in spatial planning can be supported by formulating clear and enforceable obligations for regional governments. Regional governments could be required, during the plan's design process, to organise a minimum number of discussions and seminars to which all parties whose interests are at stake are invited and at which all can participate. In addition, the public should be given the opportunity, during a fixed term of several weeks or months, to give suggestions and opinions, which are to be used in the decision-making process. It would be helpful if regional governments are required to respond to these suggestions and opinions in written form, and in cases where they reject the suggestions and opinions, to explicitly justify this. The public could be granted the possibility to apply for review of a bylaw enacting a spatial plan, including the prior decision-making process, at the Administrative District Court. If in the framework of such a review it turns out that a regional government has failed to meet its obligations in relation to public participation and transparency, the bylaw ought to be declared null and void.

- Land clearance by the state

Recently, legislation related to land clearance by the state has been reformed. The reforms are definitely a step forward, in that they limit the activities for which a government institution can clear land for development in the public interest; provide formal and semi-formal landholders with more procedural protections; and guarantee the right to proper compensation in better ways. In addition, the right to subsidised legal aid is guaranteed, which means that, at least on paper, landholders who wish to seek legal remedies also have better access to the judiciary. However, there is still no obligation for the authorities to explore feasible alternatives in consultation with landholders *prior* to land clearance. In addition, the right to adequate alternative accommodation is still not guaranteed. In relation to informal landholders the law still creates broad discretion for the District-Head/Mayor to determine whether, in cases of land clearance, the landholders receive any 'assistance/sympathy money' and if so, how much. In order to strengthen land tenure security of low-income kampong dwellers in relation to land clearance by the state, further steps should thus be taken, providing further protections and guarantees. This requires a revision of Law No. 20/1961 (which the 2010-2014 National Legislative Programme also recommends), as well as Presidential Regulation No. 65/2006 and Regulation of the Head of the NLA No. 3/2007; and, more importantly, annulment of Law No. 51/1961.

Prior to determining locations for land clearance for development in the public interest, there should be an obligation for the government institution requiring land to explore all feasible alternatives, in consultation with the affected landholders. The government institution could be obliged to discuss these alternatives and explicitly justify the choice for a certain location, in the proposal which it is required to submit to the District-Head/Mayor. It would be advisable to grant the public the possibility to

apply for judicial review of the decision regarding the location of land clearance, including the prior decision-making process, at the Administrative District Court. If, in the framework of such a review, it turns out that a government institution requiring land has failed to meet its obligation to explore all feasible alternatives in consultation with the affected landholders, and/or has failed to discuss these alternatives and justify the choice for a certain location in the proposal, the decision ought to be declared null and void.

It may be helpful if the use of land without permission from the title holder is no longer considered a criminal offence, but a private dispute between the informal landholder and the title holder. A title holder wishing to clear his land could still apply for a civil court order. Informal landholders who have occupied the land for a certain period of time should be able to parry such an application on the claim that the land qualifies as neglected land (see above). In cases in which the application is awarded, it is recommended that informal landholders be guaranteed proper compensation. They should also be granted the right to adequate alternative accommodation.

- Land clearance by developers

Recently, new legislation has been enacted that potentially has a positive effect for low-income kampong dwellers who are confronted by developers wishing to clear their land. A stipulation in the newly enacted 2007 SML imposes sanctions to officials who issue permits that are not in accordance with spatial plans. This stipulation should lead to stricter compliance in regard to the issuance of (site) permits. In addition, the new legislation guarantees the right to subsidised legal aid. However, in order to strengthen the land tenure security of low-income kampong dwellers in relation to commercial land clearance, further steps should be taken, providing further protections and guarantees. This requires a revision of the Regulation of the Head of the NLA No. 2/1999 on site permits.

It would be advisable to limit the list of commercial land clearance cases in which no site permit is required, so landholders who are confronted with urban development projects can benefit from the potentially protective provisions contained in Regulation of the Head of the NLA No. 2/1999. In order to strengthen the supervision of commercial land clearance processes, the Supervision and Control Teams for Commercial Land Clearance or similar bodies could be re-established. In addition, administrative sanctions could be introduced, which would be imposed if a developer violates prevailing legislation and/or permit requirements. Such sanctions could include incremental penalty payments, administrative coercion, a withdrawal of the permit, or administrative fines. The sanction of incremental penalty payments implies that the District-Head/Mayor can order the developer to comply with the permit conditions. If the developer does not comply within the given period of time, the operator will incur penalties. The sanction of administrative coercion implies that the District-Head/

Mayor has the opportunity and authority to restore the situation, and charge the developer for the costs incurred. It would be helpful if landholders were also granted the option to request the District-Head/Mayor to enforce prevailing legislation and/or permit requirements. Following such a request, the District-Head/Mayor would be required to make a decision, within a fixed term of several weeks, as to whether to enforce the legislation. Landholders should also have the possibility to apply for review of the decision at the Administrative District Court.

Regional autonomy reforms

The 2004 RALs have led to administrative recentralisation. This has also involved a stronger role for Provinces to supervise and control the exercise of devolved authorities by the Districts/Municipalities, which appeared to be needed. However, the division of authorities in the land sector between the central government, Provinces, and Districts/Municipalities would benefit from being clarified. This would require a revision of the 2004 RALs (which the 2010-2014 National Legislative Programme also recommends), Government Regulation No. 38/2007, and Presidential Regulation No. 10/2006.

The 2004 RALs stipulate that the regions hold the mandatory authority over all land matters. Government Regulation No. 38/2007 confirms this, but at the same time limits the regions' functions in the land sector to nine. By contrast, Presidential Regulation No. 10/2006 stipulates that the NLA holds a non-limited number of 21 functions. Obviously, this inconsistency should be altered. This begs the question as to how authority over the land sector should best be divided between the central government, Provinces and Districts/Municipalities. Our research findings do not provide a definitive answer to this question. It is, however, clear that whatever authority the Districts/Municipalities are granted over land matters, the higher levels of government should retain a strong role of control and supervision.

As a final note, it should be acknowledged that the enactment and implementation of the 1999 RALs and 2004 RALs have had negative side effects, not least in the land sector. In particular, because of the new fiscal relations with the central government, Districts /Municipalities feel the incentive to one-sidedly focus on economic growth. This has resulted in Districts/Municipalities attempting (often successfully) to enact bylaws on the regional budget, taxes and revenues and spatial management that contravene the public interest or higher legislation. Controlling these negative side effects does not require regional autonomy reforms. The 2004 RALs already contain sufficient mechanisms to prevent such issues from occurring. All bylaws are evaluated by the relevant Ministers and the Governor respectively. After their enactment, bylaws can be annulled by the Minister of Home Affairs. However, these mechanisms should be applied more effectively than is presently occurring; which may require general reforms.

General reforms

The research findings presented in this book show that general reforms are needed which assist government institutions to abide by the law, support substantive democracy, and create independent and impartial institutions of dispute settlement to which every aggrieved person has access.

- Assistance for government institutions to abide by the law

As noted above, a new law on minimum services standards has recently been enacted. This law will likely contribute to government institutions abiding by the law. This also applies to the land law reforms suggested above. However, more reforms are needed, including strong measures against maladministration (particularly KKN) within the NLA and the regional governments. Such measures may consist of capacity building measures, a strengthening of budget control capabilities of the Supreme Audit Board, and a strengthening of anti-corruption monitoring and law enforcement capabilities of the Corruption Eradication Commission.

- Substantive democracy at the local level

As noted above, a new law on transparency of public information has recently been enacted, which will likely contribute to the development of a substantive democracy at the local level. Further reforms which remain to be undertaken include strong measures against money politics and other forms of KKN within the regional representative bodies. In addition, there is a need for strict (election) budget control of political parties and individual politicians. To this aim, the monitoring and law enforcement capabilities of the General Elections Committee should be strengthened. Political parties should also be required to provide information regarding the allocation and use of funding that originates from public donations and/or foreign donations.

- Independent, impartial, and accessible institutions of dispute settlement

As noted above, new legislation has recently been enacted which guarantees the right to subsidised legal aid. In addition, the new law on minimum services standards requires the establishment of representative offices of the Ombudsman at the provincial and district/municipal levels. But again more reforms are needed. These reforms should include strong measures against KKN within the judiciary. Such measures may consist of capacity building measures in accordance with the Supreme Court Blueprints, and a strengthening of anti-corruption monitoring and law enforcement capabilities of the Corruption Eradication Commission and the Task Force for the Eradication of Judicial Mafia. In order to create better access to institutions of dispute settlement, a law on legal aid should be enacted, which the 2010-2014 National Legislative Programme also recommends.

In relation to land, accessible Administrative Courts are particularly needed. This can be achieved by broadening the courts' jurisdiction to

include certain decisions of a general nature, at least bylaws enacting spatial plans, so that these plans are able to be reviewed not only against acts of parliament, which currently the Supreme Court can do, but also against higher legislation generally. In addition, the possibility for the courts to review on the basis of general principles of proper administration should be extended.

9.5.3 *Legal empowerment*

Strengthening the tenure security of the urban poor finally requires initiatives aimed at legal empowerment. These initiatives should focus on increasing legal awareness, access to legal aid and counsel, and other activities that can overcome legal obstacles.

Activities to increase legal awareness could be part of the National Community Empowerment Programme, which is implemented in almost every urban kampong in Indonesia. In relation to land matters, kampong dwellers should *inter alia* be made aware of: i) the importance of (derivative) registration and to hold permits to reside on land; ii) the procedures to register land and obtain permits; iii) the existence of land registration programmes and of special financial arrangements, available within the framework or outside these programmes, for low-income people; iv) the importance of spatial planning and their rights to participation and transparency; v) their rights, including the legal remedies available, in cases of land clearance by the state or private parties.

Kampong dwellers should not only be made aware of legal processes and their rights and obligations in such processes, but also be provided with legal aid and counsel. As discussed above, the right to subsidised legal aid is now guaranteed in cases where kampong dwellers start judicial proceedings. However, kampong dwellers should also have access to legal aid and counsel outside the court system. Therefore, NGOs like the Legal Aid Institute should be supported. Such support should expressly not be offered to party-affiliated legal aid organisations, which, although potentially very effective in protecting the urban poor, may be challenged on questions of methods and intentions.

Other activities that can be initiated to overcome legal obstacles are community organising, group formation, political mobilisation, and use of media. Civil society organisations can play a major role in such activities.

9.6 CONTRIBUTION TO POLICY THEORY

The research findings from this book may contribute to the international development debate on tenure security. Firstly they show that, at least in the Indonesian context, the term 'slum', which is widely used in the international debate, is inaccurate; and that its use is often dangerous. As discussed above, most settlements in Bandung are reasonably consolidated, and

among and within these settlements there are varying degrees of legality. This means 'slums' do not exist in their typical form in Bandung; and likely hardly exist in any Indonesian city. Nonetheless, the Indonesian government often qualifies kampongs as slums. On the basis of Bandung's latest General Spatial Plan, settlements that are qualified as slums are to be restructured, not only by the construction of condominiums, but also, after relocation of residents, of shopping malls. This illustrates what dramatic and harmful consequences the qualification of kampongs as 'slums' can have. Use of the term should therefore be avoided; or only used with extreme caution.

The findings of our research also confirm that it is inaccurate to categorise tenure status in dichotomous terms of 'legal' versus 'extra-legal' tenure. In Indonesia at least, there is a continuum of tenure categories with varying degrees of legality. In order to compare different tenure arrangements, in our research we distinguished between three categories, based on the status of each of these arrangements according to state law. This categorisation was appropriate to answer the research questions addressed in this book.

In order to understand the effects of approaches to strengthen the tenure security of the urban poor, a distinction should be made between legal, *de facto*, and perceived tenure security. There can be a (wide) gap between the tenure security offered by the law, and the tenure security that the urban poor enjoy in actual practice. In addition, the urban poor base their investments in housing on perceptions of tenure security, which can be based on legal and on *de facto* tenure security.

It follows from the above that directly equating formal tenure with tenure security and informality with insecurity is too simplistic, and can be incorrect. Legal tenure does not equate with security by definition, nor is non-legal tenure always insecure. In fact, informal landholders may enjoy significant *de facto* tenure security. This also means that land registration does not inherently lead to legal tenure security for landholders and that, at least for the time being, it may be enough to strengthen the *de facto* tenure security of landholders. Perceived tenure security can be based on *de facto* tenure security, and this may be enough for landholders to invest in their housing.

The findings of this research also confirm that, whether or not land registration plays a role in approaches to strengthening the tenure security of the urban poor, the success of such approaches depends on the rule of law environment in which they are implemented. If the rule of law is weak, rights that are granted to landholders cannot be enforced. Tenure security thus requires at least the basic rule of law elements to be in place, such as government institutions that abide to the law, a substantive democracy, and independent and impartial institutions of dispute settlements to which every aggrieved person has access. Therefore, approaches to strengthening the tenure security of the urban poor should be part of an integrated package of measures that are not restricted to land policies, but also focus on general reforms toward the rule of law.

Decentralisation in the land sector has the potential to support the tenure security of the urban poor, however the effectiveness of such support depends on the type of decentralisation implemented, and the specific circumstances surrounding the situation. Our research findings show that, in Bandung at least, political decentralisation has been predominantly positive; but the combination of administrative and fiscal decentralisation has had a negative effect on the tenure security of kampong dwellers. It appears that at least in cases where decentralisation involves a far-reaching type of decentralisation, such as devolution, this should be combined with control and supervision mechanisms between the executive, legislative and judicial branches of government and between different government levels.

9.7 SUGGESTIONS FOR FURTHER RESEARCH

As discussed in Chapter 1, the research presented in this book has certain limitations. Due to time constraints and the sensitivity of the topic central to this study, research was conducted in Bandung only, and involved a limited number of cases that focus on 'external' risks of involuntary removal. During fieldwork, data analysis and the writing process, new developments emerged which have not been fully addressed in this book. While these limitations do not reduce the relevance of this research, these new developments highlight the benefits of continuing and broadening the scope of such research, to investigate these emerging issues.

The author recommends that further research could focus on 'internal' risks of involuntary removal. Matters that may be investigated include the type of disputes kampong dwellers contend with; the way they deal with these disputes; their outcome and of course the differences in relation to these matters between formal, semi-formal and informal landholders in terms of land tenure security.

It would also be valuable to investigate the effects of land registration on enabled land markets and access to credit. Questions in relation to the effects of land registration on enabled land markets may include whether formal, semi-formal and informal landholders sell their land and dwellings, and if so, to whom and at what price. Questions in relation to the effects of land registration on access to credit may include whether these various types of landholders have access to credit, why they may not, and whether those with access to credit make use of this facility.

In order to verify whether the research findings presented in this book are representative of (urban) Indonesia more broadly, it would be relevant to conduct further research in other cities in Indonesia. The research could start with a focus group discussion with key experts, at which occasion several problems identified in this study could be discussed. The most thorough approach would involve studying spatial planning and land clearance cases in several cities, and comparing these cases with the cases presented in this thesis, with an analysis of any differences and the reasons for these differences.

In closing, it would be valuable and interesting to conduct research on the effects of the recent reforms enacted and announced, alongside the reforms suggested in this book. This requires longitudinal research in Bandung, and particularly in the kampongs where research has been conducted for the present study.

APPENDIX I AUTONOMOUS VILLAGES IN BANDUNG MUNICIPALITY
1906-1942

1906-1917	1917-1942
1. Pasar	18. Padasoeka
2. Soeniaradja	19. Soekarasa
3. Bandoengkoelon	20. Soekasari
4. Regol	21. Pasirkaliki
5. Lengkong	22. Tjibeureum
6. Bandoengwetan	23. Tjidjerah
7. Tjoblong	24. Tjigondewah
8. Bloeboer	25. Tjigoegoertengah
9. Soekadjadi (= Taman Sari)	26. Melong
10. Tjijtjendo	27. Rantjamalang
11. Andir	28. Margahajoe
12. Astanaänjar	29. Batoenoenggal
13. Bodjongloa	30. Soekapoera
14. Tjiparaj	31. Lengkong
15. Pasawahan	32. Tjipagalo
16. Tjikawao	33. Boeahbatoe
17. Goemoeroeh	34. Babakandjati
	35. Kiaratjondong
	36. Soerabaja
	37. Antapani
	38. Padasoeka
	39. Tjikadoet
	40. Tjisarantenkoelon
	41. Tjibeunjing
	42. Pagerwangi
	43. Tjidadap

Source: Stads-gemeente Bandoeng (1938), *Orienteerende Nota van de Desa's binnen de Stads-gemeente Bandoeng*, Bandoeng: Commissie tot Voorlichting van de Inheemse Bevolking nopens Gemeentelijke Aangelegenheden, p. 32.

APPENDIX II SOCIO-ECONOMIC CHARACTERISTICS OF KAMPONGS IN BANDUNG MUNICIPALITY

	Taman Sari	Babakan Surabaya	Cibangkong	Ciroyom	Kebon Lega	Kebon Pisang	Lebak Gede	Average
Education of male household head in %	Never went to school	1.8%	2.3%	1.9%	2.0%	-	-	1.4%
	Primary school – not finished	3.5%	4.5%	7.4%	11.8%	7.1%	6.4%	6.7%
	Primary school	33.3%	25%	31.5%	41.2%	26.8%	27.7%	31.4%
	Junior secondary school	14.9%	22.8%	31.8%	20.4%	23.3%	19.1%	21.1%
	Senior secondary school	23.4%	29.8%	36.4%	35.2%	32.1%	38.3%	31.5%
	Academy	12.8%	5.3%	-	1.9%	2.0%	2.1%	3.7%
	University	6.4%	3.6%	-	1.9%	2.0%	6.4%	4.2%
Sector employment male household head in %	Formal	37.2%	39%	9.8%	43.2%	32.6%	60%	37.2%
	Informal	62.8%	56.4%	61%	56.8%	67.4%	40%	62.8%
Income poverty categorisation per household in % *	Poorest	1.6%	3.3%	3.8%	6.7%	2.9%	1.7%	3.1%
	Vulnerable poor	16.1%	21.7%	32.7%	15.0%	23.5%	8.6%	20.2%
	Established poor	22.6%	21.7%	17.3%	18.3%	16.2%	31.0%	21.4%
	Low-income	27.4%	41.7%	28.8%	45%	30.9%	37.9%	35%
	Non-poor	32.3%	11.7%	17.3%	20%	11.7%	26.5%	20.2%
Population under poverty line of Rp. 115,332.- per month in % **	11.3%	10%	15.4%	11.7%	16.7%	14.7%	6.9%	12.4%
Population under poverty line of \$ 1.- (= Rp 10,000.-) per day in % ***	45.2%	70%	71.2%	61.7%	73.3%	64.7%	70.7%	65%

* Poverty categorisation per household with a monthly income of below Rp. 300,000 categorised as poorest; monthly income of Rp. 300,000-700,000 as vulnerable poor; monthly income of Rp 700,000-1 million as established poor; monthly income of Rp. 1-2 million as low-income and; monthly income of more than Rp 2 million as non-poor, as set by the Asian Development Bank. See Asian Development Bank (2001), *Housing Finance for the Poor, Indonesia*, Manila: ADB, pp. 7-9.

** Poverty line as set by Bandung Municipality. See BPS-Statistics Indonesia, BAPPENAS & UNDP Indonesia (2004), *Indonesia Human Development Report 2004, The Economics of Democracy, Financing Human Development in Indonesia*, Jakarta: BPS-Statistics Indonesia, Bappenas & UNDP Indonesia, p. 182. See also: BPS Kota Bandung (2003), *Indikator Kemiskinan Kota Bandung Tahun 2002*, Bandung: Badan Pusat Statistik Kota Bandung, p. 33.

*** Poverty line as set in the UN Millennium Development Goals. The first goal is to reduce by half the proportion of people living on less than US\$ 1.- a day.

APPENDIX III PHYSICAL CHARACTERISTICS OF KAMPONGS IN BANDUNG MUNICIPALITY

	Taman Sari	Babakan Surabaya	Cibangkong	Ciroyom	Kebon Lega	Kebon Pisang	Lebak Gede	Average
Size house	18-36 m ²	48.3 %	42.3 %	31.7 %	18.3 %	42.6 %	24.1 %	33.8 %
	37-70 m ²	21.0 %	46.2 %	45.0 %	38.3 %	33.8 %	36.2 %	35.5 %
	> 70 m ²	40.3 %	7.7 %	18.3 %	38.3 %	19.1 %	37.9 %	25.7 %
Average house size per person	16.7 m ²	10.2 m ²	9.4 m ²	15.6 m ²	14.8 m ²	11.1 m ²	14.7 m ²	13.20 m ²
Material used for roof	Tiles	79.0 %	90.4 %	81.7 %	95.0 %	77.9 %	93.1 %	86.2 %
	Concrete	3.2 %	1.9 %	-	-	4.4 %	3.4 %	2.1 %
	Asbestos	8.1 %	7.7 %	11.7 %	1.7 %	16.2 %	3.4 %	8.3 %
	Zinc	6.5 %	-	-	3.3 %	1.5 %	-	1.7 %
	Wood	3.2 %	1.7 %	-	3.3 %	-	-	1.7 %
Material used for walls	Bricks	95.2 %	92.3 %	95.0 %	88.3 %	86.8 %	96.6 %	91.7 %
	Wood	4.8 %	3.8 %	5.0 %	6.7 %	5.9 %	3.4 %	4.8 %
	Triplex	-	-	-	-	2.9 %	-	1.4 %
	Bamboo	-	1.7 %	3.8 %	-	4.4 %	-	2.1 %
Material used for floor	Tiles	82.3 %	73.3 %	73.4 %	73.3 %	67.6 %	81 %	74.9 %
	Concrete	14.5 %	26.7 %	26.7 %	25.0 %	27.9 %	17.2 %	23.3 %
	Wood	3.2 %	-	-	-	4.4 %	1.7 %	1.7 %
Households with services provided	Earth	-	-	-	1.7 %	-	-	0.2 %
	Piped water	35.5 %	17.3 %	11.7 %	6.7 %	14.7 %	13.8 %	16.9 %
	Electricity	98.4 %	98.1 %	100 %	100 %	100 %	100 %	98.3 %

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Samenvatting

Zeker grondbezit voor arme stadsbewoners in Indonesië

Een *socio-legal* onderzoek naar grond, decentralisatie en de rechtsstaat in de kampongs van Bandung

Dit boek beschrijft de resultaten van een *socio-legal* onderzoek naar de vraag of arme stadsbewoners in Indonesië zeker kunnen zijn van het bezit van hun grond (*tenure security*), vooral tegen de achtergrond van de rechtstatelijke hervormingen die na de val van President Soeharto in 1998 in Indonesië hebben plaatsgevonden.¹ Op basis van dit onderzoek wordt geanalyseerd wat het praktisch effect is van internationale beleidsstrategieën die gericht zijn op het vergroten van de zekerheid van grondbezit. Voorts worden in dit boek enkele beleidssuggesties gedaan. Ten slotte beoogt het een theoretische bijdrage te leveren aan het lopende internationale ontwikkelingsdebat over zekerheid van grondbezit.

ANALYTISCH KADER EN OPZET VAN HET ONDERZOEK

Hoofdstuk 1 beschrijft hoe een groeiend aantal arme stadsbewoners in ontwikkelingslanden in sloppenwijken leeft. De fysieke, sociaaleconomische en juridische karakteristieken van deze wijken manifesteren zich in een vicieuze cirkel van stedelijke armoede. Van belang is de vraag hoe deze vicieuze cirkel te doorbreken. Hoewel in het internationale ontwikkelingsdebat over het algemeen wordt erkend dat dit een combinatie van strategieën vereist, is er de laatste jaren bijzonder veel aandacht voor een aanpak die gericht is op het versterken van zekerheid van grondbezit. Daarin zijn grofweg twee soorten benaderingen te onderscheiden, de 'functionele' benadering en 'alternatieve' benaderingen.

De 'functionele benadering', die dominant is, legt nadruk op de beoogde gevolgen van de formalisering van grondbezit voor specifieke ontwikkelingsdoelen, zoals economische groei, armoedebestrijding en het verbeteren van levensomstandigheden in sloppenwijken. Om deze doelen te bereiken, achten voorstanders van deze benadering grondregistratie van essentieel belang. Registratie zou leiden tot meer juridische zekerheid en

1 Zekerheid van grondbezit wordt kortweg gedefinieerd als bescherming van grondbezitters tegen onvrijwillige ontruiming van hun grond, tenzij dit geschiedt conform een reguliere rechtsgang en met betaling van een behoorlijke schadevergoeding.

daardoor niet alleen de arme stadsbewoner het vertrouwen geven om in zijn huisvesting te investeren en in staat stellen zijn grond te verhandelen, maar ook resulteren in een gemakkelijker toegang tot bankkrediet met grond en opstallen als onderpand. Naar het werkelijke effect van grondregistratie is echter tot nu toe weinig onderzoek gedaan. Het onderzoek dat is gedaan, plaatst vraagtekens bij de effectiviteit van deze benadering.

Als gevolg van kritiek op de functionele benadering is er een groeiende aandacht voor 'alternatieve benaderingen' ter vergroting van zekerheid van grondbezit. Deze benaderingen leggen de nadruk op zekerheid van grondbezit, zoals deze wordt gegarandeerd in internationale mensenrechtenverdragen, in het bijzonder waar die deel uitmaakt van het recht op behoorlijke huisvesting (*the right to adequate housing*). Daartoe is het volgens de voorstanders van deze alternatieve benaderingen niet per se noodzakelijk om grond te registeren; het gaat in de eerste plaats om bescherming tegen grondontruiming, op basis van bestaande claims op grond.

Welke benadering ter versterking van de zekerheid van grondbezit van arme stadsbewoners ook wordt gekozen, het succes daarvan hangt af van de afdwingbaarheid van eigendomsrechten en/of mensenrechten. Beide vereisen een behoorlijk ontwikkelde rechtsstaat die arme stadsbewoners beschermt tegen de willekeur van de overheid of private partijen. Opvallend genoeg krijgt dit punt weinig aandacht in de literatuur over zekerheid van grondbezit.

In het licht van voorgaande overwegingen concentreert dit boek zich op de zekerheid van grondbezit voor arme stadsbewoners in Indonesië, gebaseerd op de uitkomsten van *socio-legal* onderzoek in de kampongs (traditioneel arme buurten) van Bandung, dat met 2,3 miljoen inwoners de op twee na grootste stad van Indonesië en hoofdstad van de provincie West-Java is. Hierbij wordt een onderscheid gemaakt tussen formele, semiformele (op basis van geïndividualiseerd adatrecht, het Indonesische gewoonterecht) en informele vormen van grondbezit enerzijds en juridische, feitelijke en gepercipieerde zekerheid van grondbezit anderzijds.

Normatieve beoordelingen in deze studie worden gegeven vanuit het perspectief van de rechtsstaat. Daartoe wordt een definitie van rechtsstaat gehanteerd die bestaat uit verschillende elementen: procedurele elementen, materiële elementen en controlemechanismen. Voorts wordt een vergelijking gemaakt tussen de periode van de Nieuwe Orde (1965-1998), toen Soeharto aan de macht was, en de Post-Nieuwe Orde periode (vanaf 1998). Deze verhandeling is gebaseerd op zowel juridisch onderzoek als op empirisch veldwerk, verricht gedurende een periode van in totaal ongeveer anderhalf jaar. Daarbij is gebruik gemaakt van kwalitatieve en kwantitatieve methoden: participerende observatie in twee kampongs in de wijken Taman Sari en Cibangkong, 140 interviews met diverse betrokkenen en een survey onder 420 huishoudens in zeven kampongs. Ook werden in deze veldwerkperiode duizenden krantenknipsels en honderden wetgevings- en beleidsdocumenten verzameld en bestudeerd.

KAMPONGS IN BANDUNG

Hoofdstuk 2 van dit boek geeft een beschrijving van de ontstaans- en ontwikkelingsgeschiedenis van kampongs in Bandung, van de maatregelen die de overheid heeft genomen om de levensomstandigheden in deze buurten te verbeteren en van het huidige karakter van kampongs. Hierbij wordt bij wijze van illustratie telkens ingezoomd op de ontwikkelingen in kampongs in Taman Sari, waar het langst veldwerk werd verricht.

Ondanks tal van uiteenlopende maatregelen van opeenvolgende koloniale en Indonesische overheden, zo laten onze survey-data zien, zijn de hedendaagse kampongs in Bandung nog altijd arme buurten, die vooral laagopgeleide mensen huisvesten, werkzaam in de informele sector, met lage inkomens. Hoewel kampongs er op het eerste gezicht vaak vervallen uitzien, bestaan de meeste uit permanente huizen met toegang tot openbare nutsvoorzieningen en een relatief goede infrastructuur. Wanneer wij de informele status van grondbezit en grondgebruik in de kampongs nader beschouwen, zien wij verschillende gradaties van informaliteit binnen en tussen deze kampongs.

De Indonesische regering geeft nog altijd een hoge prioriteit aan de bestrijding van stedelijke armoede. Het recht op behoorlijke huisvesting en zekerheid van grondbezit worden hierbij tegenwoordig aangemerkt als twee belangrijke doelstellingen.

HET INDONESISCHE GRONDENRECHT IN EEN VERANDERENDE RECHTSSTAAT

Hoofdstuk 3 geeft een algemeen overzicht van het grondenrecht tegen de achtergrond van de ontwikkeling van Indonesië als rechtsstaat. Het fundament van het Indonesische grondenrecht zijn artikel 33 van de Grondwet van 1945 en de Agrarische Basiswet van 1960, de tijd van de Oude Orde onder de socialistisch georiënteerde President Soekarno. Ter bescherming van zwakke groepen benadrukt de wet dat grond een sociale functie heeft. De wet kent de staat daarom een ruime bevoegdheid toe in grondzaken. Deze bevoegdheid is voornamelijk gebaseerd op het in de grondwet gestipuleerde staatsbeschikkingsrecht (*hak menguasai*), dat de overheid, door middel van de Nationale Dienst voor Grondzaken (*Badan Pertanahan Nasional*), de bevoegdheid geeft grond zelf in beheer te houden dan wel rechten op grond aan individuen toe te kennen, deze rechten te beperken, of zelfs in te trekken.

In 1965 begon de Nieuwe Orde, een periode die werd gekenmerkt door stabiliteit en economische groei. President Soeharto bouwde een autoritair regime op dat berustte op de steun van het leger. Het regime voerde een ontwikkelingsbeleid van staatsgeleide industrialisatie, intensivering van de landbouw en grootschalige exploitatie van natuurlijke hulpbronnen. Het Soeharto-regime werd in toenemende mate gekenmerkt door *KKN*, het Indonesische acroniem voor corruptie, collusie en nepotisme. De economi-

sche en politieke kenmerken van het autoritaire regime weerspiegelden zich in de wetgeving. Zo werd het grondenrecht hervormd om grote investeringen en exploitatie mogelijk te maken. Ondanks zijn socialistische doelstellingen, bleef de Agrarische Basiswet gehandhaafd; hiermee kon de centrale overheid haar wil immers afdwingen. De territoriale reikwijdte van de wet en van zijn uitvoerende Nationale Dienst voor Grondzaken werd echter sterk beperkt door nieuwe wetgeving. Zo gaf de Boswet van 1967 het Ministerie van Bosbouw het beheersrecht over alle bosgrond (meer dan de helft van Indonesië) en ook de Wet Ruimtelijke Ordening van 1992 gaf de overheid nieuwe bevoegdheden. Het regime introduceerde voorts op enkele deelterreinen uitvoeringsregelgeving die in strijd was met de letter en geest van de Agrarische Basiswet. Onder deze omstandigheden beschikte de uitvoerende macht over sterke discretionaire bevoegdheden, waarvan zij daadwerkelijk gebruik maakte ter realisatie van haar doelstelling van 'ontwikkeling' – zulks dikwijls ten koste van de zekerheid van grondbezit van gewone burgers.

De val van Soeharto in 1998 was het startschot van een ambitieus hervormingsprogramma dat tot doel had de autoritaire staat te ontmantelen. De Indonesische regering startte ook een nieuw economisch beleid, evenals een gerichte campagne tegen *KKN*. De Grondwet van 1945 werd viermaal geamendeerd en uiteenlopende regelgeving werd gewijzigd of ingevoerd. Dit leidde, althans op papier, tot meer democratie, een duidelijke scheiding van machten en een betere bescherming van mensenrechten. Het recht op behoorlijke huisvesting wordt nu expliciet erkend. Afgezien van de constitutionele hervormingen waren de twee Regionale Autonomie Wetten van 1999, die in 2001 van kracht werden en in 2004 werden gewijzigd een belangrijk hervormingsinitiatief. Deze wetten regelden de overdracht van taken, bevoegdheden, beslissingsmacht en middelen van de centrale overheid naar lagere overheden, met name naar het niveau van de districten/steden. Uitvoeringsregelgeving heeft de reikwijdte van deze decentralisatiewetten echter sterk beperkt. Zij leidde bovendien tot grote onduidelijkheid, niet in de laatste plaats in de grondsector. Het grondenrecht zelf is intussen nauwelijks veranderd, ondanks de breed gedragen steun voor fundamentele hervormingen. Hierin zijn dan ook nog altijd restanten van de ideologieën en belangrijke leerstukken uit de periodes van Geleide Democratie en Nieuwe Orde terug te vinden. Niettemin is al met al – in ieder geval op papier – de rechtsstatelijke omgeving waarin het grondenrecht wordt geïmplementeerd aanzienlijk verbeterd.

GRONDREGISTRATIE

Nadat aldus de achtergrond en context van het onderzoek zijn geschetst, gaat Hoofdstuk 4 in op de wetgeving en praktijk van de grondregistratie. In de koloniale periode genoten kampongs in steden als Bandung een grote mate van autonomie, wat betekende dat bewoners ook in relatie tot grond

hun eigen adatrecht konden toepassen. De Indonesische regering wees het koloniale rechtsdualisme echter af; in haar ogen was het discriminerend en belemmerde het de economische ontwikkeling. Dit was één van de belangrijkste redenen waarom in 1960 de Agrarische Basiswet van kracht werd. De wet moest leiden tot unificatie van het grondenrecht; in plaats van adatrecht en Europees recht werden alleen nog in de wet beschreven rechten op grond erkend. Om bestaande rechten op te laten gaan in deze door de wet erkende rechten moest de grond worden geregistreerd.

In praktijk blijkt het vooral voor kampongbewoners moeilijk grond te laten registreren. Hiervoor zijn verschillende verklaringen te geven, zo blijkt uit ons onderzoek. Hieronder zijn: i) de strenge bewijsvereisten die gelden voor de registratie van semiformele claims en die geen rekening houden met de complexe grondrelaties in stedelijke kampongs; ii) een gebrek aan politieke wil om rechten van informele grondbezitters te erkennen en te registreren; iii) wanbestuur van de kant van de Nationale Dienst voor Grondzaken, en; iv) daaruit voortvloeiende hindernissen en negatieve perceptie van grondbezitters van het registratieproces.

In reactie op het trage tempo van grondregistratie heeft de Indonesische regering vanaf de jaren '80 verscheidene registratieprogramma's als PRONA, PRODA en LAP geïnitieerd. Alleen al in Bandung hebben honderdduizenden mensen aan deze programma's deelgenomen. Uit onze analyse blijkt echter dat voornamelijk semiformele rechten worden geformaliseerd. Veel kampongbewoners met informele claims – dit zijn vaak ook degenen met de laagste inkomens – worden niet bereikt. Kennelijk is de overheid ook in het kader van registratieprogramma's niet bereid om deze bewoners rechten te geven.

Het laatste deel van Hoofdstuk 4 analyseert de vraag in hoeverre kampongbewoners juridische zekerheid genieten en grondregistratie, al dan niet op basis van de genoemde programma's, hieraan bijdraagt. Uit de analyse volgt allereerst dat veel informele en vooral semiformele grondbezitters vaak al enige mate van zekerheid van grondbezit genieten door een grote mate van bestuurlijke erkenning. Dit blijkt niet alleen uit het feit dat velen al decennia op een bepaald grondgebied wonen zonder enige vorm van interventie, de overheid door middel van kampongveteringsprogramma's actief de infrastructuur in kampongs heeft verbeterd en bewoners heeft voorzien van toegang tot water, elektriciteit en dergelijke, maar – belangrijker – uit het feit dat de overheid ook grondgerelateerde documentatie verstrekt. Een tweede belangrijke bevinding is dat grondregistratie, zeker op de langere termijn, maar weinig bijdraagt aan juridische zekerheid, omdat i) een deel van de formele grondbezitters niet van plan is om in geval van overdracht van grond het kadaster hiervan in kennis te stellen, ii) de meeste nog altijd niet voldoen aan publiekrechtelijke vereisten om op grond te wonen en iii) het Indonesische grondenrecht hoe dan ook maar gedeeltelijke zekerheid biedt. Dit laatste is niet alleen het geval vanwege onvolkomenheden in de wetgeving maar ook door een falende uitvoering door de overheid.

RUIMTELIJKE ORDENING

Juridische zekerheid van grondbezit is niet alleen afhankelijk van juridisch geldige titels, maar ook van de inhoud van ruimtelijke ordeningsplannen. Hoofdstuk 5 gaat daarom in op de wetgeving en de praktijk van de ruimtelijke ordening, zowel gedurende de Nieuwe Orde periode als tijdens de Post-Nieuwe Orde periode. Ruimtelijke ordeningswetgeving die van toepassing was gedurende de Nieuwe Orde periode bood maar ten dele bescherming aan grondbezitters, zelfs als zij formele grondbezitters waren. De Wet Ruimtelijke Ordening van 1992 creëerde weliswaar een systeem dat de belangen van grondbezitters zou moeten borgen, maar uitvoeringsregelgeving, vooral op het gebied van publieke participatie en transparantie, kwam slechts gedeeltelijk tot stand. Voor zover deze regelgeving wel tot stand kwam, ontbraken hierin duidelijke en handhaafbare verplichtingen van de overheid om de rechten van burgers in het proces van ruimtelijke ordening te beschermen.

In praktijk werden de belangen van grondbezitters zelfs nog minder geëerbiedigd dan op grond van bestaande regelgeving verplicht was. Grondbezitters werden niet vanaf het begin actief betrokken bij het ruimtelijke ordeningsproces; vaak speelden zij hierin geen enkele rol. De enige bijdrage van de gekozen gemeenteraad was met een bestemmingsplan akkoord te gaan. Nadat een plan was vastgesteld, hadden burgers nauwelijks inzage in een bestemmingsplan. De verplichte instemming door het provinciebestuur en de centrale overheid, met een plan geschiedde vaak pas jaren nadat het plan was vastgesteld.

Na de val van President Soeharto werd nieuwe uitvoeringsregelgeving betreffende burgerparticipatie en transparantie vastgesteld. Deze bevat bepalingen die de belangen van grondbezitters verder kunnen beschermen. Toch legt zij weinig verplichtingen op aan het gemeentebestuur om burgerparticipatie en transparantie te bevorderen. Bovendien werd de rol van de gemeenteraden op het terrein van de ruimtelijke ordening aanvankelijk kleiner. Ten slotte bleef de begeleidende en toezichhoudende rol van de provinciale overheid beperkt, al is deze vanaf 2004 weer groter geworden.

Het proces van ontwerpen en vaststellen van het bestemmingsplan in Bandung laat zien dat burgers en zeker kampongbewoners daarin maar heel beperkt participeren en ook nauwelijks de kans krijgen van het gemeentebestuur dit te doen. Hun belangen, vooral die van zekerheid van grondbezit, worden ook niet behartigd door de gemeenteraad, hogere overheden of maatschappelijke organisaties. Het ruimtelijke ordeningsbeleid is bovendien niet volledig transparant, al zijn er de laatste tijd verbeteringen te zien. Dit resulteert in ruimtelijke plannen die nadelig zijn voor kampongbewoners, vooral voor degenen die wonen in kampongs die het gemeentebestuur als 'krottenbuurten' heeft gekwalificeerd.

Paradoxaal genoeg is het voorgaande voor een belangrijk deel te verklaren door de nieuwe financiële verhoudingen tussen Jakarta en de lagere overheden. Hierdoor ziet het gemeentebestuur ruimtelijk ordening primair

als een instrument voor economische groei, zonder rekening te houden met de directe belangen van gewone burgers die hierbij in het geding zijn. Gerelateerde KKN-praktijken en een groeiende rol van knokploegen in de stedelijke politiek dragen er ook aan bij dat burgers in ruimtelijke ordening feitelijk weinig tot niets te zeggen hebben. De vaagheid, overlap en inconsistentie van hogere regelgeving geven het gemeentebestuur vervolgens de kans om selectief een beroep te doen op die bepalingen die het nodig heeft. Zelfs als een bestemmingsplan in strijd blijkt met hogere regelgeving dan nog komt het gemeentebestuur hiermee weg vanwege het zwakke provinciale toezicht en de inschikkelijke houding van de centrale overheid. Gewone burgers en maatschappelijke organisaties doen weinig om dergelijke praktijken te voorkomen en op te komen voor de belangen van getroffen kampongbewoners. NGO-activisten die zich wel tegen deze praktijken keren, worden geïntimideerd. Dat geldt evenzeer voor journalisten, die er uit professioneel lijfsbehoud voor kiezen niet al te kritisch te schrijven.

GRONDONTRUIMING DOOR DE OVERHEID

Hoofdstuk 6 bespreekt de wetgeving en praktijk van ontruiming door de overheid die de grond voor andere doeleinden nodig heeft, zowel gedurende de Nieuwe Orde periode als in het Post-Nieuwe Orde tijdperk. Gedurende de laatste jaren van de Nieuwe Orde bood wetgeving inzake grondontruiming door de overheid weinig juridische zekerheid voor kampongbewoners. Het Presidentieel Decreet van 1993 inzake grondontruiming voor ontwikkeling in het algemeen belang was weliswaar een verbetering ten opzichte van zijn voorganger, maar ook dit decreet vertoonde ernstige gebreken. Zo was de definitie van 'algemeen belang' ruim gesteld. Er bestond voorts geen verplichting voor overheden om alternatieven te bestuderen, procedurele bescherming was beperkt en het recht op een behoorlijke schadevergoeding of alternatieve huisvesting werd niet gegarandeerd. In geval van informele grondbezitters had de burgemeester een ruime discretionaire bevoegdheid om te bepalen of hun een vergoeding toekwam en zo ja, hoe ruim die was. Het bevoegd gezag interpreteerde het begrip 'algemeen belang' zo ruim dat de procedure van grondverwerving voor ontwikkeling in het algemeen belang voor vrijwel ieder doel kon worden gevolgd. Zo niet, dan deden de autoriteiten wel een beroep op andere bevoegdheden waarmee grond en huizen konden worden ontruimd. Als het bevoegd gezag toch de procedure van grondverwerving op basis van vrijwilligheid toepaste, dan had deze vaak een dwingend karakter. De hoogte en vorm van de schadevergoeding die werd uitgekeerd was doorgaans inadequaat. Juist informele grondbezitters werden zwaar getroffen: vaak ontvingen zij helemaal geen compensatie. Het Bureau voor Rechts-hulp – in Indonesië bekend als *LBH*, een NGO – en later ook de studentenbeweging, verzetten zich tegen deze praktijk door het organiseren van juridische en politieke acties, vooral gedurende de periode van openheid

(*keterbukaan*) (1989-1994), maar zij richtten hun aandacht doorgaans op de positie van boeren in plaats van op die van arme stadsbewoners. In sommige gevallen hadden zij invloed op het verloop van grondgeschillen, maar zelden was deze invloed zo groot dat zij grondontruiming konden voorkomen.

In de eerste jaren na de val van President Soeharto bleef de wetgeving inzake grondvererving van staatswege ongewijzigd. In de praktijk komt ontruiming als een handhavingsmaatregel, bijvoorbeeld wegens ongeoorloofde occupatie of vanwege de overtreding van bouwregelgeving, nog steeds weinig voor. Als grond echter nodig is voor 'ontwikkeling in het algemeen belang', wat in Bandung tegenwoordig geregeld voorkomt, dan riskeren kampongbewoners nog altijd onvrijwillige grondontruiming zonder behoorlijke schadevergoeding. Zoals een casestudie naar het proces van grondontruiming in Taman Sari voor de ontwikkeling van de Pasupati flyover laat zien, slagen kampongbewoners er tegenwoordig echter in om door hardnekkig onderhandelen hogere schadevergoeding af te dwingen dan gedurende de Nieuwe Orde het geval was. Tussen deze volhouders blijkt er geen verschil op basis van het type van hun grondbezit: de hoogte van de schadevergoeding is voor allen gelijk. Deze vergoeding is echter nog steeds lager dan de sociaaleconomische waarde van de grond en dwingt kampongbewoners zich aan de rand van of zelfs buiten de stad te vestigen, ver van hun inkomstenbron.

Bovengenoemde gang van zaken wordt in de eerste plaats veroorzaakt door de genoemde tekortkomingen in de wetgeving. Bovendien weigeren overheden nog altijd zich aan de wet te houden. Zij trachten arme stadsbewoners uit hun huizen te krijgen zonder behoorlijke schadevergoeding te bieden. De versterkte democratie op lokaal niveau compenseert deze omstandigheden enigszins. Hoewel de steun van het Bureau voor Rechts-hulp en de studentenbeweging tegenwoordig beperkt blijft, durven kampongbewoners zich nu zelf te verzetten tegen grondontruiming. Dit verzet krijgt vorm in politieke mobilisatie, zonder al te veel gebruik te maken van de beschermende werking die het recht kan bieden. Ook zien kampongbewoners af van procederen. De media besteden veel aandacht aan de protesten, maar zij lijken in hun berichtgeving vaak op de hand van de overheid te zijn. Knokploegen intimideren demonstranten. Ondanks deze tegenkrachten bereiken kampongbewoners echter relatief gunstige resultaten.

GRONDONTRUIMING DOOR PROJECTONTWIKKELAARS

Hoofdstuk 7 besteedt aandacht aan de wetgeving en praktijk van grondontruiming door projectontwikkelaars, ook hier zowel gedurende het tijdperk van de Nieuwe Orde als tijdens de Post-Nieuwe Orde periode. Gedurende de Nieuwe Orde veranderde de juridische basis voor grondontruiming voor commerciële doeleinden voortdurend. Er gold echter altijd een vergunningensysteem, waarin de zogenoemde locatievergunning (*izin lokasi*)

een centrale rol speelde. Deze vergunning staat projectontwikkelaars toe in een bepaald gebied met grondbezitters onderhandelingen te beginnen. In de bovengenoemde periode van openheid nam het regime enkele maatregelen die grondbezitters zouden moeten beschermen. De maatregelen hadden weinig betekenis, aangezien overheden niet in staat waren om projectontwikkelaars die niet voldeden aan hun verplichtingen tegenover grondbezitters, sancties op te leggen. In de praktijk was het gebruikelijk dat projectontwikkelaars grondbezitters sterk onder druk zetten hun grond op te geven tegen een zeer lage vergoeding. De overheid, inclusief het leger, stond projectontwikkelaars hierin vaak bij.

Na de val van Soeharto werd de wetgeving inzake grondontruiming voor commerciële doeleinden gewijzigd. Dit leidde echter niet tot een algemene verbetering. De bevoegdheden van toezicht en handhaving zijn nog altijd inadequaat. Veel kampongbewoners kunnen hoe dan ook niet van de beschermende werking van de wetgeving profiteren, omdat in veel gevallen wettelijk geen locatievergunning is vereist. De Paskal Hyper Square case laat zien dat kampongbewoners, zeker bij informeel grondbezit, nog steeds kans lopen op onvrijwillige ontruiming zonder een reguliere rechtsgang en een behoorlijke schadevergoeding. Daar staat tegenover dat kampongbewoners tegenwoordig projectontwikkelaars dwingen hun plannen te herzien of een hogere vergoeding te betalen dan tijdens de Nieuwe Orde gebruikelijk was. Wel is deze vergoeding nog steeds lager dan de sociaal-economische waarde van de grond.

Bovenstaande gang van zaken worden in de eerste plaats veroorzaakt door de gebrekkige wetgeving en door de nalatigheid van het gemeentebestuur kampongbewoners tegen dit soort praktijken te beschermen; het assisteert projectontwikkelaars soms juist. Als gevolg van de regionale autonomie en waarschijnlijk ook KKN heeft het gemeentebestuur er alle belang bij dat projecten slagen. Maar opnieuw compenseert de versterkte democratie op lokaal niveau deze omstandigheden enigszins. Ook tegen commerciële grondontruiming durven kampongbewoners zich nu te verzetten door politieke mobilisatie. Zij organiseren straatprotesten, zoeken de steun van bureaus voor rechtshulp met politieke connecties en gebruiken zelfs hun stemrecht om het gemeentebestuur onder druk te zetten. Strategieën waarin het recht een expliciete rol speelt, worden echter vermeden. Ondanks gebruikelijke tegenkrachten weten kampongbewoners op die manier redelijk gunstige uitkomsten te realiseren.

DE PERCEPTIE VAN ZEKER GRONDBEZIT

Hoofdstuk 8 ten slotte gaat in op de laatste dimensie van het fenomeen zekerheid van grondbezit voor kampongbewoners, namelijk die van de gepercipieerde zekerheid. Daarbij is ook gekeken naar het effect van grondregistratie op investeringsgedrag bij kampongbewoners met verschillende vormen van grondbezit. Uit onze survey-data blijkt dat kampongbewoners

over het algemeen een behoorlijke mate van gepercipieerde zekerheid genieten. De gepercipieerde zekerheid van formele en semiformele grondbezitters is ongeveer even sterk, die van informele grondbezitters veel minder. Formele grondbezitters baseren gepercipieerde zekerheid op het bezit van documenten inzake hun grond, terwijl veel semiformele en informele grondbezitters menen dat de overheid akkoord gaat met hun woonsituatie omdat zij er al lang wonen. Een grote meerderheid van de semiformele grondbezitters en een kleiner deel van de informele grondbezitters baseren dit vertrouwen eveneens op het bezit van documentatie over hun grond.

Ongeacht de vorm van hun grondbezit geloven veel kampongbewoners dat het risico van onvrijwillige ontruiming sinds het einde van de Nieuwe Orde is toegenomen. Tegelijkertijd hebben veel kampongbewoners het idee dat de hoogte van de vergoeding sindsdien is gestegen.

Om te weten te komen of registratie leidt tot meer investeringen in huisvesting hebben we de correlatie gemeten tussen vormen van grondbezit en de kwaliteit van huisvesting van respondenten. Zoals hierboven besproken, bestaan de meeste kampongs in Bandung uit permanente huizen. Toch kan er een onderscheid worden gemaakt naar de vorm van grondbezit; deze laatste factor blijkt samen te hangen met investeringen in huisvesting. De huisvesting van formele grondbezitters is van significant betere kwaliteit dan die van informele grondbezitters. Echter, benadrukt moet worden dat huisvesting van formele en semiformele grondbezitters van ongeveer gelijke kwaliteit is. Voorts zullen, ongeacht de vorm van grondbezit, kampongbewoners met een sterke perceptuele zekerheid en/of een hoger inkomen meer investeren in hun huisvesting dan diegenen die een dergelijke zekerheid niet voelen en/of niet over een dergelijk inkomen beschikken.

CONCLUSIE

Op grond van het voorgaande concludeert Hoofdstuk 9 dat vraagtekens zijn te plaatsen bij de effectiviteit van de huidige benaderingen, in Indonesië, die gericht zijn op de versterking van de zekerheid van grondbezit voor arme stadsbewoners. De dominante benadering, die bestaat uit registratie van grond door middel van registratieprogramma's, schiet haar doel voorbij. Informele grondbezitters die het meest baat zouden hebben bij die programma's, kunnen hieraan namelijk nauwelijks deelnemen. Daarnaast leidt een certificaat niet per definitie tot meer zekerheid van grondbezit. Bovendien blijkt registratie niet van beslissende invloed op investeringsgedrag. Zolang kampongbewoners zelf zekerheid ervaren (percipieren), zullen zij evengoed in hun huisvesting investeren. Deze gepercipieerde zekerheid hoeft niet op juridische zekerheid gebaseerd te zijn; feitelijke zekerheid is voldoende.

Als beleidssuggestie vloeit uit dit onderzoek dan ook voort de keuze voor een alternatieve benadering waarin in eerste instantie de feitelijke zekerheid van kampongbewoners wordt versterkt. Dit kan bijvoorbeeld door middel van formele gedoogbeschikkingen ten aanzien van grondbezit en –gebruik. Na verloop van tijd kan worden overgegaan tot grondregistratie door middel van registratieprogramma's, waarbij de opzet van deze programma's echter wel moet worden aangepast. Ten eerste moeten zij vooral gericht zijn op informele grondbezitters. Bovendien moeten grondbezitters niet alleen grondtitels krijgen, maar ook de nodige vergunningen om op de grond te mogen wonen. Los daarvan moeten de problemen van beperkte herregistratie en de diverse zwakke punten in het Indonesische grondenrecht worden aangepakt.

Het is van belang dat bovengenoemde beleidsmaatregelen gepaard gaan met verdere hervormingen ter versterking van de Indonesische rechtsstaat. Het gaat hierbij om juridische en institutionele hervormingen als ook zogenoemde *legal empowerment* maatregelen, maatregelen van beneden af met als doel de armen juridisch mondig te maken. De juridische en institutionele hervormingen moeten in de eerste plaats gericht zijn op het grondenrecht, dat zoals gezegd nog nauwelijks is hervormd. Daarnaast zijn hervormingen in de regionale autonomie en algemene rechtsstatelijke hervormingen nodig; deze zouden ertoe moeten leiden dat lokale overheden zich beter aan de wet houden, de democratie op lokaal niveau verder wordt versterkt en kampongbewoners toegang hebben tot onafhankelijke instellingen voor geschillenbeslechting. Voorlichting en rechtshulp moeten kampongbewoners meer bewust maken van hun rechten en plichten ten aanzien van grondbezit en –gebruik.

Uit het onderzoek zijn ook conceptuele lessen te trekken. In de eerste plaats wordt bevestigd dat grondbezit in kampongs in Indonesië en waarschijnlijk in de meeste ontwikkelingslanden niet zwart-wit kan worden ingedeeld als legaal versus niet-legaal. Er bestaan doorgaans gradaties van legaliteit. Ook moet zorgvuldig worden omgegaan met het begrip zekerheid van grondbezit, dat voor analytische doeleinden in ieder geval moet worden benaderd vanuit drie dimensies: juridische, feitelijke en perceptuele zekerheid. Kampongbewoners kunnen bijvoorbeeld een hoge mate van perceptuele zekerheid genieten zonder dat sprake is van juridische zekerheid. Het is voorts simplistisch om formeel grondbezit gelijk te stellen met zekerheid van grondbezit en informeel grondbezit met onzekerheid. Informele grondbezitters kunnen bijvoorbeeld een hoge mate van feitelijke zekerheid genieten. Welke benadering ter versterking van zeker grondbezit van arme stadsbewoners ook wordt gekozen, het succes van deze benadering is afhankelijk van de mate waarin de rechtsstaat functioneert. Zonder rechtsstaat kunnen rechten immers niet worden gehandhaafd. Dit betekent ook dat benaderingen niet enkel gericht moeten zijn op grondbeleid, maar deel uit moeten maken van bredere hervormingen ter versterking van de rechtsstaat.

Ringkasan

Kepastian tenurial bagi kaum miskin perkotaan di Indonesia

Penelitian sosio-legal terhadap tanah, desentralisasi dan negara hukum di perkampungan kota Bandung

Buku ini memaparkan hasil dari penelitian yang berdasar pada pertanyaan apakah kaum miskin perkotaan mempunyai kepastian tenurial (*tenure security*), terutama dengan latar belakang reformasi politik dan hukum yang terjadi setelah jatuhnya Presiden Soeharto pada tahun 1998.¹ Berdasarkan penelitian ini akan dianalisis manfaat dari berbagai pendekatan yang mengarah pada peningkatan kepastian tenurial. Selain itu akan diberi beberapa usulan kebijakan. Pada akhirnya, buku ini bermaksud memberi masukan teoretis pada perdebatan internasional yang sedang berlangsung mengenai kepastian tenurial.

KERANGKA PENELITIAN

Bab 1 memaparkan kehidupan masyarakat miskin perkotaan yang kian bertambah dan hidup di daerah kumuh di berbagai negara berkembang. Bentuk fisik, sosial-ekonomi dan hukum dari daerah ini berlangsung dalam lingkaran setan kemiskinan. Pertanyaan yang penting adalah bagaimana menyudahi lingkaran ini. Walaupun diakui dalam perdebatan internasional bahwa hal ini memerlukan kombinasi dari beberapa strategi, namun tahun-tahun terakhir ini justru banyak perhatian pada pendekatan yang mengarah pada peningkatan kepastian tenurial. Dalam hal ini secara garis besar terdapat dua macam pendekatan, pendekatan 'fungsional' dan pendekatan 'alternatif'.

Pendekatan 'fungsional', yang dominan dalam hal ini, menekankan pada dampak dari formalisasi pemakaian tanah untuk tujuan pembangunan dalam hal tertentu, seperti pertumbuhan ekonomi, penanggulangan kemiskinan dan perbaikan kondisi kehidupan di daerah-daerah kumuh.

1 Kepastian tenurial diartikan sebagai perlindungan bagi pemakai tanah (dalam bentuk formal, semiformal ataupun informal) terhadap pengosong secara paksa atas tanah mereka, kecuali jika terjadi melalui proses hukum sebagaimana mestinya dan pembayaran ganti rugi yang layak.

Untuk mencapai tujuan tersebut, para pendukung dari pendekatan ini menganggap pendaftaran tanah begitu penting. Pendaftaran tanah mengarah pada kepastian hukum, oleh karena itu bukan saja kepercayaan yang dapat diberikan kepada penduduk perkampungan untuk melakukan investasi tempat tinggal dan jual-beli tanah mereka, namun juga mempermudah perolehan kredit dari bank dengan tanah dan bangunan sebagai jaminannya. Namun sampai saat ini masih sedikit penelitian yang telah dilakukan untuk mengetahui dampak dari pendaftaran tanah. Penelitian yang pernah dilakukan menuai tanda tanya dalam hal keefektifan pendekatan ini.

Kritik pada pendekatan ini mengakibatkan munculnya pendekatan 'alternatif' dalam rangka peningkatan kepastian tenurial. Pendekatan kedua ini menekankan pada kepastian tenurial. Hal ini dijamin dalam perjanjian-perjanjian internasional tentang hak asasi manusia, khususnya hak atas perumahan yang layak (*right to adequate housing*). Menurut pendukung dari pendekatan ini, tidaklah begitu penting untuk mendaftarkan tanah; yang diperlukan adalah menghindari penggusuran, yang didasarkan pada tuntutan tanah yang ada.

Pendekatan apa pun yang dipilih dalam rangka peningkatan kepastian tenurial, keberhasilannya bergantung pada perlindungan terhadap hak milik dan/atau hak asasi manusia. Dua pendekatan tersebut mensyaratkan negara hukum yang substansial dan dapat melindungi kaum miskin perkotaan dari kesewenang-wenangan pemerintah dan sektor swasta. Kendati demikian, hal ini mendapat sedikit perhatian dalam kepustakaan tentang kepastian tenurial.

Berdasarkan pertimbangan-pertimbangan di atas, buku ini memusatkan perhatian pada kepastian tenurial bagi kaum miskin perkotaan di Indonesia, yang didasari dari hasil penelitian sosio-legal di beberapa kampung di kota Bandung, yang merupakan ibukota Provinsi Jawa Barat dan kota terdua terpadat (2,3 juta penduduk) di Indonesia. Di satu sisi, dalam buku ini akan dibedakan antara bentuk-bentuk pemakaian tanah, yakni secara formal, semiformal (hak milik adat), dan informal dan sisi lainnya yaitu dari segi kepastian yuridis, nyata dan perseptual. Penilaian-penilaian normatif dari studi ini akan dilihat dari pandangan negara hukum. Definisi negara hukum yang diterapkan terdiri dari: unsur-unsur prosedural, unsur-unsur material dan mekanisme pengawasan. Selain itu, akan dibandingkan antara masa pemerintahan Orde Baru (1965-1998) ketika Presiden Soeharto berkuasa dan periode Reformasi. Tulisan ini berdasarkan penelitian hukum dan penelitian lapangan yang berjalan selama kurang lebih satu setengah tahun. Penelitian ini menggunakan metode kualitatif dan kuantitatif: observasi langsung di beberapa kampung di Kelurahan Taman Sari dan Cibangkong, 140 wawancara dan survei terhadap 420 kepala keluarga di tujuh kelurahan. Dalam penelitian lapangan ini juga dikaji ribuan kliping koran dan ratusan dokumen legislasi dan kebijakan.

PERKAMPUNGAN DI BANDUNG

Sebagai latar belakang dan penjelasan konteks penelitian ini, bab 2 memaparkan sejarah kelahiran dan perkembangan perkampungan di Bandung, berbagai tindakan yang telah diambil pemerintah dalam rangka memperbaiki kondisi kehidupan di daerah perkampungan ini dan corak kehidupan setempat di masa kini. Mengenai hal ini akan dipusatkan perhatian pada perkembangan kampung di Kelurahan Taman Sari, di mana penelitian lapangan memakan waktu paling lama.

Biarpun ada bermacam tindakan yang telah dilakukan oleh pemerintah kolonial dan Indonesia, survei menunjukkan masih adanya kemiskinan di perkampungan Bandung, yang menampung orang-orang berpendidikan rendah, mereka yang bekerja di sektor informal dan berpendapatan rendah. Walaupun pada dasarnya seringkali rumah-rumah di perkampungan tersebut terlihat kumuh, banyak rumah-rumah permanen yang dapat ditemui dengan akses sarana publik dan memiliki prasarana yang relatif baik. Ketika ditelaah lebih jauh mengenai status informal dari pemakaian tanah, ditemukan berbagai tingkat formalitas di dalam dan diantara kampung-kampung tersebut.

Pemerintah Indonesia masih memberi prioritas dalam penanggulangan kemiskinan kota. Hak atas perumahan yang layak dan kepastian tenurial menjadi tujuan yang begitu penting.

HUKUM AGRARIA INDONESIA DAN NEGARA HUKUM YANG SEDANG BERKEMBANG

Bab 3 menjelaskan secara umum mengenai hukum agraria berdasarkan latar belakang perkembangan negara Indonesia sebagai negara hukum. Dasar dari hukum agraria Indonesia adalah Pasal 33 Undang-Undang Dasar (UUD) 1945 dan Undang-Undang Pokok Agraria (UUPA) tahun 1960, yang disahkan pada periode Orde Lama dibawah kepemimpinan Presiden Soekarno yang cenderung sosialis. Demi melindungi kaum tertindas, butir undang-undang ini menekankan bahwa tanah mempunyai fungsi sosial. Oleh karena itu, undang-undang ini mengakui bahwa negara memiliki kewenangan besar dalam perihal agraria. Kewenangan ini terutama didasari oleh hak menguasai oleh negara yang diatur dalam UUD 1945. Hak ini memberi kewenangan pada negara untuk menguasai tanah dengan langsung atau untuk membagikan hak-hak atas tanah kepada individu, membatasi hak-hak tersebut atau bahkan membatalkannya.

Pada tahun 1965 dimulai periode Orde Baru, yang dikenal dengan kemapanan dan pertumbuhan ekonomi. Presiden Soeharto membangun pemerintahan otoriter yang menerima dukungan kuat dari tentara. Rezim ini menanamkan kebijakan pembangunan industri, intensifikasi pertanian dan eksploitasi sumber daya alam dalam skala besar. Pemerintah Soeharto pada akhirnya semakin dikenal dengan praktek Korupsi, Kolusi dan Nepotisme (KKN). Ciri khas politik dan ekonomi dari rezim ini tercermin

pada peraturan dan perundangan. Hukum agraria berubah haluan demi menghalalkan segala bentuk penanaman modal dan eksploitasi. Walaupun dengan tujuan sosialisnya, UUPA tetap dipertahankan; sehingga pemerintah pusat dapat memaksakan kehendaknya. Namun, jangkauan wilayah dari undang-undang ini dan Badan Pertanahan Nasional (BPN) sebagai pelaksana sangat dibatasi oleh peraturan baru. Undang-Undang tentang Ketentuan-ketentuan Pokok Kehutanan tahun 1967 memberi hak kepada Kementerian Kehutanan untuk menguasai seluruh kawasan hutan (lebih dari setengah wilayah Indonesia) dan Undang-Undang Penataan Ruang (UUPR) tahun 1992 memberi pemerintah kebijakan baru. Lebih-lebih, rezim ini memperkenalkan peraturan pelaksanaan di beberapa bagian yang berlawanan dengan apa yang tercantum dan tersirat dalam UUPA. Dengan begitu, kekuasaan pelaksana memegang kewenangan diskresi yang kuat, yang benar-benar dipakai untuk mewujudkan tujuan pembangunan – ini seringkali mengorbankan kepastian tenurial rakyat jelata.

Kejatuhan Soeharto pada tahun 1998 merupakan titik balik segala perubahan yang bertujuan melucuti kekuasaan otoriter. Pemerintah baru memulai suatu kebijakan ekonomi alternatif dan kampanye melawan KKN. UUD 1945 diamandemen sebanyak empat kali dan berbagai peraturan direvisi atau disahkan. Ini mengarah, setidaknya hitam di atas putih, pada demokrasi yang meluas, pemisahan jelas kekuasaan dan perlindungan yang lebih baik dalam hal hak asasi manusia. Kepastian tenurial yang merupakan bagian dari hak atas perumahan yang layak, diakui secara jelas. Selain amandemen UUD 1945, dua Undang-Undang Pemerintahan Daerah tahun 1999, yang mulai berlaku pada tahun 2001 dan direvisi pada 2004, merupakan inisiatif reformasi yang penting. Undang-undang ini mengatur pengalihan berbagai tugas, kewenangan, kekuatan putusan dan sumber daya dari pemerintah pusat ke pemerintah daerah. Namun, peraturan pelaksanaannya sangat membatasi jangkauan undang-undang desentralisasi ini. Terlebih lagi, hal ini menjurus kepada ketidakpastian, juga di bidang pertanahan. Sementara itu, hukum agraria pun tidak mengalami perubahan, walaupun ada dukungan luas untuk perubahan ini. Hal ini berarti, sampai sekarang sisa-sisa ideologi dan dogma penting masa Demokrasi Terpimpin dan Orde Baru masih bisa ditemukan. Walaupun begitu, secara garis besar – setidaknya di atas kertas – lingkungan negara hukum di mana hukum agraria dijalankan cukup membaik.

PENDAFTARAN TANAH

Setelah sejumlah pemaparan latar belakang dan konteks dari penelitian ini pada bab sebelumnya, Bab 4 menjelaskan perihal legislasi dan praktek pendaftaran tanah. Di masa kolonial, perkampungan di kota-kota seperti Bandung menikmati besarnya otonomi, yang berarti bahwa penduduk dapat menerapkan hukum adat masing-masing dalam perihal masalah tanah. Pemerintah Indonesia meniadakan praktek hukum kolonial ini; di

matanya hal ini merupakan suatu bentuk diskriminasi dan dapat menghambat pertumbuhan ekonomi. Ini adalah satu dari banyak alasan mengapa UUPA disahkan pada tahun 1960. Undang-Undang ini menggiring pada penyatuan hukum agraria; bukan lagi hukum adat dan hukum Eropa yang diakui, melainkan hanya hak-hak tanah yang diakui oleh UUPA. Supaya hak-hak yang ada menjadi hak-hak yang diakui oleh UUPA, tanah harus didaftarkan.

Pada kenyataannya, begitu sulit untuk mendaftarkan tanah yang dimiliki terutama bagi para penduduk perkampungan. Dari hasil penelitian, terdapat berbagai penjelasan dibalik masalah ini, yaitu: i) keharusan tuntutan bukti-bukti yang berlaku untuk pendaftaran tuntutan semiformal yang mengacuhkan hubungan antara tanah dan penguasanya yang rumit di perkampungan kota; ii) kurangnya kehendak politik untuk mengesahkan dan mendaftarkan hak pemakai tanah informal; iii) ketidakmampuan kepengurusan di pihak BPN, dan; iv) hal itu menimbulkan kendala dan persepsi negatif bagi para pemakai tanah dalam proses pendaftaran.

Sebagai reaksi dari lambatnya proses pendaftaran tanah, pemerintah Indonesia memulai beberapa program pendaftaran tanah sejak 1980, seperti Program Operasi Nasional Agraria (PRONA), Program Operasi Daerah Agraria (PRODA) dan Proyek Administrasi Pertanahan (PAP). Di Bandung terdapat ratusan ribu peserta untuk program-program tersebut. Namun tampak dari hasil analisis terutama hak semiformal yang diformalisasi. Banyak dari penduduk kampung dengan tuntutan informalnya – mereka yang biasanya berpendapatan rendah – tidak terjangkau oleh program ini. Rupanya pemerintah dalam hal ini belum sanggup memberikan hak padaarganya.

Bagian terakhir dari Bab 4 menganalisis pertanyaan sejauh mana penduduk perkampungan dapat menikmati kepastian yuridis dan apakah pendaftaran tanah, melalui program-program di atas, membawa kepastian tersebut atau tidak. Hasil dari analisis itu, pertama-tama banyak pemakai tanah informal dan khususnya semiformal menikmati cukup banyak kepastian tenurial karena pengakuan administratif yang kuat. Ini ternyata tidak hanya karena banyaknya penduduk perkampungan yang menguasai tanah tanpa diganggu, pemerintah melalui program perbaikan perkampungan memperbaiki prasarana dan menyediakan akses pada air, listrik dan lainnya, namun yang lebih penting lagi karena pemerintah mengeluarkan dokumen yang terkait dengan tanah. Temuan kedua yang penting adalah bahwa pendaftaran tanah, dalam jangka panjang, hanya memberi sumbangan kecil pada kepastian yuridis, hal ini dikarenakan: i) sebagian pemakai tanah formal tidak berencana untuk mendaftarkan ulang tanah mereka dalam hal peralihan hak atas tanah; ii) kebanyakan dari mereka masih belum dapat memenuhi tuntutan hukum publik untuk dapat menempati tanah, dan; iii) bagaimana pun juga hukum agraria Indonesia tidak memberi kepastian yuridis secara penuh. Yang terakhir ini bukan hanya dikarenakan ketidaksempurnaan peraturan perundangan namun juga pelaksanaannya yang gagal oleh pemerintah.

PENATAAN RUANG

Kepastian yuridis pemakaian tanah tidak hanya bergantung pada sertifikat yang berlaku secara hukum, namun juga pada rencana tata ruang. Bab 5 berbicara mengenai legislasi dan praktek penataan ruang, pada masa Orde Baru dan pasca Orde Baru. Legislasi penataan ruang yang berlaku selama masa Orde Baru tidak begitu melindungi pemakai tanah, bahkan pemakai tanah formal. UUPR sebetulnya menciptakan suatu sistem dimana kepentingan para pemakai tanah dapat dilindungi, namun dalam peraturan pelaksanaan, terutama dalam hal partisipasi masyarakat luas dan transparansi, hanya sebagian dari hal ini yang terwujud. Sejauh peraturan ini berjalan, di dalamnya tidak terdapat kewajiban yang jelas dan dapat dilaksanakan oleh pemerintah untuk melindungi hak-hak warga dalam proses penataan ruang.

Pada kenyataannya, kepentingan dari pemakai tanah kurang dihormati dari yang seharusnya menurut peraturan. Dari awal para pemakai tanah tidak dilibatkan secara aktif dalam proses penataan ruang; bahkan seringkali mereka tidak mendapatkan peran apapun. Satu-satunya sumbangan dari pemerintah kota terpilih adalah menyetujui suatu rencana tata ruang. Setelah tersusunnya sebuah rencana, masyarakat tidak dapat melihat langsung rencana tata ruang tersebut. Penyetujuan akan rencana oleh pemerintah provinsi dan pemerintah pusat yang wajib dilakukan, seringkali baru dikeluarkan beberapa tahun setelah rencana tersebut ditetapkan.

Setelah jatuhnya Presiden Soeharto, disusun kembali peraturan pelaksanaan tentang partisipasi masyarakat dan transparansi. Hal ini mengandung pasal-pasal yang dapat melindungi kepentingan pemakai tanah. Walaupun begitu, kewajiban bagi pemerintah kota atas pencanangan partisipasi masyarakat dan transparansi sangat terbatas. Lagipula peran Dewan Perwakilan Rakyat Daerah (DPRD) dalam hal penataan ruang menjadi semakin kecil. Dan akhirnya, peran pemerintah kota dalam hal pembinaan dan pengawasan sangat terbatas, meskipun mulai tahun 2004 peran ini bertambah.

Proses dari perancangan dan penetapan rencana tata ruang wilayah di Bandung memperlihatkan bahwa masyarakat dan penduduk perkampungan pada khususnya hanya bisa berpartisipasi secara terbatas dan hampir tidak diberi kesempatan oleh pengurus kota untuk terlibat dalam proses itu. Kepentingan mereka, terutama dalam hal kepastian tenurial, tidak diunggulkan oleh pemerintah kota, pemerintah yang lebih tinggi atau pun organisasi-organisasi kemasyarakatan. Lagipula kebijakan penataan ruang tidak sepenuhnya terbuka, walaupun begitu hal ini telah membaik di tahun-tahun terakhir. Dalam hal ini, penataan ruang menghasilkan kerugian bagi penduduk perkampungan, terlebih bagi mereka yang tinggal di daerah yang digolongkan oleh pengurus kota sebagai daerah kumuh.

Hal di atas cukup paradoksal dan dapat diperjelas oleh hubungan keuangan baru antara Jakarta dan pemerintah daerah. Oleh karena itu, pemerintah kota melihat penataan ruang terutama sebagai alat untuk

pertumbuhan ekonomi, tanpa menghiraukan kepentingan langsung dari masyarakat awam yang terancam karena hal ini. Praktek KKN dan tumbuhnya peran preman pada politik perkotaan juga berdampak kepada masyarakat yang dalam hal penataan ruang sedikit bahkan sama sekali tidak dapat mengungkapkan pendapat. Ketidajelasan, ketumpangtindihan dan inkonsistensi legislasi memberi pemerintah kota kesempatan untuk menggunakan secara selektif ketentuan yang diperlukan. Bahkan jika suatu rencana tata ruang wilayah berlawanan dengan peraturan yang lebih tinggi, maka pemerintah kota tidak akan dicecar, dikarenakan oleh lemahnya pengawasan pemerintah provinsi dan sikap pemerintah pusat yang cenderung ikut-ikutan. Masyarakat awam dan organisasi-organisasi kemasyarakatan tidak bertindak banyak untuk menghindari praktek-praktek semacam ini dan untuk berpihak pada kepentingan penduduk perkampungan yang menjadi korban. Para aktivis lembaga swadaya masyarakat (LSM) yang melawan praktek semacam ini diintimidasi. Hal ini berlaku juga bagi para wartawan, yang demi kelangsungan hidup – kepastian kerja!- memilih untuk tidak terlalu kritis dalam tulisannya.

PENGOSONGAN TANAH OLEH PEMERINTAH

Bab 6 menjabarkan legislasi dan praktek pengosongan tanah oleh pemerintah untuk tujuan lain, di masa Orde Baru dan pasca Orde Baru. Selama tahun-tahun terakhir pemerintahan Orde Baru, legislasi tentang pengosongan tanah yang ditawarkan pemerintah membawa kurangnya kepastian yuridis bagi penduduk perkampungan. Keputusan Presiden tahun 1993 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum secara luas merupakan perbaikan jika dibandingkan dengan pendahulunya, namun keputusan ini pun menunjukkan kekurangan yang sesungguhnya. Seperti itulah kandungan arti ‘kepentingan umum’ yang dijabarkan. Lagipula tidak ada kewajiban bagi pemerintah untuk mengkaji alternatif, perlindungan prosedural pun begitu terbatas dan hak untuk mendapatkan ganti rugi atau tempat tinggal layak pengganti tidaklah dijamin. Dalam hal pemakai tanah informal, walikota mengambil diskresi untuk memastikan apakah mereka menerima uang santunan atau tidak, jika ya, berapa harga yang akan diberikan.

Dalam prakteknya, pihak berwenang menginterpretasikan konsep ‘kepentingan umum’ begitu luas sehingga prosedur pengadaan tanah bagi pelaksanaan pembangunan untuk kepentingan umum bagi tujuan apa pun dapat terlaksana. Jika tidak, pemerintah menggunakan berbagai kewenangan yang bertujuan untuk mengosongkan tanah dan membongkar rumah. Jika prosedur untuk pengadaan tanah bagi pelaksanaan pembangunan untuk kepentingan umum diikuti, prosedur ini bersifat memaksa. Bentuk dan besarnya ganti rugi yang diberikan biasanya tidak memadai. Lebih parahnya, pemakai tanah informal seringkali tidak mendapat kompensasi. Lembaga Bantuan Hukum (LBH) bersama beberapa gerakan mahasiswa

melawan praktek ini dengan mengorganisir aksi-aksi hukum dan politik, terlebih pada periode keterbukaan (1989-1994), namun mereka biasanya lebih mengarahkan perhatian pada petani, bukan pada kaum miskin perkotaan. Di beberapa kasus mereka dapat mempengaruhi berjalannya sengketa tanah, namun jarang sekali pengaruh ini menjadi begitu besar sehingga dapat mencegah pengosongan tanah.

Di tahun-tahun pertama setelah jatuhnya Presiden Soeharto, legislasi tentang pengosongan tanah masih tetap berlaku. Dalam prakteknya, pengosongan tanah untuk melaksanakan hukum, misalnya karena pemakaian tanah tanpa izin atau pelanggaran peraturan bangunan, jarang terjadi. Namun jika tanah diperlukan untuk kepentingan umum, seperti yang terjadi di Bandung saat ini, maka penduduk perkampungan menghadapi risiko pengosongan tanah secara paksa tanpa ganti rugi yang memadai. Kasus dari pengosongan tanah di Taman Sari untuk pengembangan jalan layang Pasupati menunjukkan keberhasilan penduduk perkampungan, walaupun harus melalui proses perundingan tanpa henti, untuk menerima ganti rugi yang lebih besar dari yang biasa diterima pada masa Orde Baru. Diantara mereka yang bertahan tidak ada perbedaan antara bentuk pemakaian tanah (formal, semiformal, informal): besar ganti rugi yang diterima berjumlah sama untuk semua. Namun ganti rugi ini masih saja lebih rendah jika dibandingkan dari nilai sosial-ekonomis tanah. Hal ini memaksa para penduduk perkampungan untuk tinggal di pinggiran bahkan di luar kota, jauh dari (tempat) sumber penghasilan mereka.

Berbagai permasalahan di atas merupakan masalah dari kecacatan peraturan perundang-undangan. Lagipula pemerintah seringkali menolak untuk berpegang teguh pada peraturan perundangan. Pemerintah mencoba mengusir penduduk miskin kota dari rumah-rumah mereka tanpa memberi ganti rugi yang layak. Masalah tersebut terkompensasi dengan demokrasi di tingkat lokal yang berkembang. Pada saat ini dukungan dari LBH dan gerakan mahasiswa terbatas, namun penduduk perkampungan mulai berani melakukan perlawanan sendiri terhadap pengosongan tanah. Pelawanan ini berbentuk mobilisasi politik, tanpa banyak memanfaatkan hukum yang sebenarnya bisa melindungi penduduk tersebut.

PENGOSONGAN TANAH OLEH PENGEMBANG SWASTA

Bab 7 mencurahkan perhatian pada legislasi dan praktek pengosongan tanah demi kepentingan para pengembang swasta, juga di periode Orde Baru dan semasa pasca Orde Baru. Perubahan dasar hukum untuk kepentingan lahan usaha berubah terus-menerus pada masa Orde Baru. Berlaku semasa itu suatu sistem perizinan, dimana izin lokasi menjadi begitu penting. Izin ini memberikan lampu hijau bagi para pengusaha untuk memulai tawar-menawar dengan para pemakai tanah. Di masa keterbukaan seperti yang telah disebut di atas, pemerintah telah mengambil beberapa tindakan demi melindungi para pemakai tanah. Tindakan-tindakan tersebut tidak

mempunyai arti banyak, karena pemerintah tidak dapat memberi sanksi pada pengembang yang tidak dapat memenuhi kewajiban mereka terhadap para pemakai tanah. Pada kenyataannya, seringkali para pengembang memaksa para pemegang tanah untuk menyerahkan tanah mereka yang lalu diganti dengan harga rendah. Pemerintah, termasuk tentara, seringkali berada di belakang para pengembang ini.

Semenjak jatuhnya Soeharto peraturan perundangan tentang pengosongan tanah demi kepentingan para pengembang direvisi. Ini tidak mengarah pada perbaikan secara umum. Tindakan-tindakan pengawasan dan pelaksanaan hukum masih tidak memadai. Bagaimana pun juga, banyak dari penduduk kampung tidak dapat menikmati perlindungan hukum, karena dalam banyak hal izin lokasi tidak diperlukan. Kasus dari Paskal Hyper Square memperlihatkan bahwa penduduk perkampungan, terutama yang menguasai tanah secara informal, berisiko digusur secara paksa tanpa proses hukum sebagaimana mestinya dan pembayaran ganti rugi yang layak. Di sisi lain, penduduk perkampungan pada saat ini bisa memaksa pengembang untuk mengubah rencana pembangunannya atau untuk membayar imbalan yang lebih besar dari yang biasa diterima pada masa Orde Baru. Namun jumlah imbalan ini tetap lebih rendah dari nilai sosial-ekonomi tanah sebenarnya.

Hal di atas pertama-tama disebabkan oleh ketidaksempurnaan legislasi dan kegagalan pemerintah kota untuk melindungi penduduk perkampungan melawan praktek semacam ini; justru pemerintah seringkali memberi bantuan pada pengembang. Sebagai akibat otonomi daerah dan mungkin juga praktek KKN, pemerintah kota memiliki kepentingan agar proyek pembangunan berhasil. Dan lagi-lagi, masalah tersebut terkompensasi dengan demokrasi di tingkat lokal yang berkembang. Juga dalam hal pengosongan tanah untuk kepentingan komersial, penduduk perkampungan berani melawan melalui mobilisasi politik. Mereka mengorganisir berbagai protes jalanan, mencari dukungan dari kantor bantuan hukum yang memiliki koneksi politik dan bahkan menggunakan hak suara mereka sendiri untuk menekan pemerintah kota. Strategi di mana hukum memainkan peran utama dihindari. Walaupun selalu ada kekuatan penentang, penduduk perkampungan mengetahui bahwa dengan cara ini dapat mewujudkan hasil yang cukup baik.

PERSEPSI KEPASTIAN TENURIAL

Pada akhirnya, Bab 8 akan mengungkap dimensi akhir fenomena kepastian tenurial, yaitu kepastian perseptual. Dalam hal ini dilihat juga efek dari pendaftaran tanah dan sikap penanaman modal pada penduduk perkampungan dengan berbagai bentuk pemakaian tanah. Dari hasil survei menunjukkan bahwa secara umum penduduk perkampungan dapat menikmati kepastian perseptual ini dengan cukup tinggi. Kepastian perseptual pemakai tanah formal dan semiformal hampir sama kuatnya,

sedangkan kepastian perseptual pemakai tanah informal lebih rendah. Pemakai tanah formal mendasari kepastian perseptual dengan dokumen-dokumen terkait dengan tanah yang mereka miliki, sementara itu banyak dari pemakai tanah semiformal dan informal mengira bahwa pemerintah setuju akan kependudukan tanah mereka karena lamanya mereka tinggal di sana. Hampir semua dari pemakai tanah semiformal dan sebagian kecil dari pemakai tanah informal mendasari kepercayaan ini juga pada kepemilikan dokumen-dokumen terkait dengan tanah.

Apapun bentuk dari pemakaian tanah mereka, banyak dari penduduk perkampungan yang percaya bahwa risiko pengosongan tanah meningkat sejak berakhirnya masa Orde Baru. Bersamaan dengan itu, banyak pula penduduk perkampungan yang menyangka bahwa imbalan yang diterima naik jumlahnya.

Untuk mengetahui apakah pendaftaran tanah mengarah pada peningkatan investasi tempat tinggal, diukur korelasi antara bentuk pemakaian tanah dan kualitas dari tempat tinggal para responden. Seperti telah dibicarakan di atas, perkampungan di kota Bandung terdiri dari rumah-rumah permanen. Walaupun begitu, dapat dibedakan kualitas rumah tinggal responden berdasarkan bentuk pemakaian tanah; faktor terakhir ini ada kaitannya dengan investasi tempat tinggal. Bangunan bagi pemakai tanah formal jauh lebih baik kualitasnya dibandingkan tempat tinggal bagi pemakai tanah informal. Namun, perlu ditekankan bahwa bangunan pemakai tanah formal dan semiformal kurang lebih berkualitas sama. Selain itu, apapun bentuk dari pemakaian tanah, penduduk perkampungan yang memiliki kepastian perseptual tinggi dan/atau pendapatan lebih tinggi, akan berinvestasi lebih banyak daripada mereka yang kepastiannya lebih rendah dan/atau tidak berpenghasilan sebanyak itu.

KESIMPULAN

Pada Bab 9 diambil kesimpulan bahwa pertanyaan ditujukan bagi efektivitas dari pendekatan-pendekatan yang berlaku, di Indonesia, yang didasari pada peningkatan kepastian tenurial bagi kaum miskin perkotaan. Pendekatan yang berpengaruh, terdiri dari pendaftaran tanah lewat berbagai program pendaftaran tanah hampir tidak memiliki manfaat. Pemakai tanah informal, yang memiliki paling banyak kegunaan atas program, jarang sekali bisa ikut serta dalam program tersebut. Selain itu, kepemilikan sertifikat tanah belum tentu dapat meningkatkan kepastian tenurial. Lagipula terbukti bahwa pendaftaran tidak memengaruhi secara nyata sikap penanaman modal. Selama penduduk perkampungan mengalami sendiri kepastian perseptual, mereka akan berinvestasi pada tempat tinggal. Kepastian perseptual ini tidak perlu didasari oleh kepastian yuridis; kepastian nyata sudah mencukupi.

Bagaimana pun juga, sebagai usulan kebijakan, penelitian ini menja-tuhkan pilihan pada pendekatan alternatif dimana kepastian nyata pen-duduk perkampungan meningkat. Ini dapat terjadi melalui keputusan formal yang memperbolehkan pemakaian tanah (dalam bahasa Belanda disebut 'gedoogbeschikking'). Seiring berjalannya waktu, hal ini dapat mengarah pada pendaftaran tanah melalui program-program pendaftaran, dimana perancangan program itu harus disesuaikan. Pertama, program-program tersebut harus mengarah pada pemakai tanah informal. Lagipula bukan hanya sertifikat tanah yang perlu diterima oleh para pemakai tanah, namun juga izin- yang diperlukan agar bisa menempati tanah tersebut. Terlepas dari itu semua, masalah keterbatasan pendaftaran ulang dan ber-bagai titik lemah dalam hukum agraria Indonesia harus dituntaskan.

Penting, tindakan kebijakan yang disebut diatas dilakukan secara bersamaan dengan perubahan lebih lanjut dalam rangka peningkatan negara hukum Indonesia. Perubahan ini berpusat pada reformasi hukum dan kelembagaan dan juga yang dikenal dengan tindakan *legal empowerment*, tindakan paling dasar yang bertujuan agar kaum miskin bersuara secara hukum Reformasi hukum dan kelembagaan haruslah pertama-tama mengarah pada hukum agraria, yang seperti telah disebutkan ham-pir tidak mengalami perubahan. Di samping itu, diperlukan reformasi di bidang otonomi daerah dan reformasi umum menuju negara hukum; hal ini seharusnya dapat menghasilkan pemerintahan lokal yang berpegang teguh pada peraturan perundangan, demokrasi di tingkat lokal meningkat dan penduduk perkampungan menjadi lebih sadar akan hak dan kewajiban mereka dalam hal pemakaian tanah.

Dari penelitian ini dapat pula diambil beberapa pelajaran konseptual. Pertama-tama, dapat dibenarkan bahwa bentuk pemakaian tanah di perkampungan di Indonesia dan kemungkinan juga di banyak negara berkembang lainnya tidaklah dapat dilihat secara hitam-putih seperti legal versus tidak legal. Biasanya berlaku berbagai tingkat legalitas. Juga harus diperhatikan mengenai pengertian dari kepastian tenurial, dalam perihal tujuan analitis perlu didekati oleh tiga dimensi: kepastian yuridis, nyata dan perseptual. Contohnya, penduduk perkampungan dapat saja menikmati kepastian perseptual tanpa adanya kepastian yuridis. Selain itu, terlalu mudah menyamakan pemakaian tanah formal dengan kepastian dan pemakaian tanah informal dengan ketidakpastian. Pendekatan apa pun yang dipilih demi peningkatan kepastian tenurial bagi kaum miskin perkotaan, keberhasilan dari pendekatan ini bergantung pada sejauh mana negara hukum berfungsi. Tanpa adanya negara hukum mustahil hukum dapat dipertahankan. Ini berarti pula bahwa pendekatan-pendekatan ini tidak berfokus pada kebijakan tanah saja, namun harus menjadi bagian dari reformasi lebih luas demi peneguhan negara hukum.

Curriculum Vitae

Gustaaf Reerink was born in Dwingeloo, on 2 September 1978. After having completed secondary education in 1996, he studied French language and culture at the International Centre for French Studies, University of Burgundy, Dijon, for a year. In 1997 he started to read law at Leiden University. From 1998, Gustaaf combined law with a study of Indonesian languages and cultures. As part of this study, in the summer of 2000, he did a course in Indonesian language at PURI, a private language institute in Jogjakarta. In 2002, Gustaaf studied a semester at King's College London, in the framework of an Erasmus exchange program, and the School of Oriental and African Studies, University of London. During his studies, he worked as a volunteer at 'Vluchtelingenwerk', a Dutch NGO that provides (legal) assistance to asylum seekers, and Amnesty International, International Secretariat, London. In addition, Gustaaf was employed as a student assistant at the Van Vollenhoven Institute for Law, Governance, and Development (the VVI), Faculty of Law, Leiden University. After having obtained his Masters degree in Dutch private law in 2003, he began to work as a PhD researcher in the INDIRA project at the VVI. In 2007 he obtained his Masters degree in Indonesian languages and cultures. In addition to his PhD research, Gustaaf presented papers at various international conferences, gave several guest lectures in the Netherlands and in Indonesia and taught courses in Law and Governance in Indonesia. Since 2008, he works as a lawyer ('advocaat') at De Brauw Blackstone Westbroek N.V., Amsterdam. In his spare time, he volunteers for Lawyers for Lawyers, a Dutch NGO that has committed itself to enabling lawyers all over the world to practice law in freedom and independence.

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Today, about 1 billion people are estimated to live in 'slums' worldwide. This number will only grow and urban poverty worsen unless radical measures are taken. While it is generally acknowledged in the international development debate that breaking the circle of poverty requires multiple strategies, there is renewed attention for approaches that centre on the issue of tenure security. This means landholders are protected against involuntary removal from the land on which they reside, unless through due process of law and payment of proper compensation. The prevailing approach to the provision of tenure security is land registration. And while the land registration approach currently dominates policy, there has been little research into the effects of registration, particularly in urban areas. What research has been conducted, contests the benefits of this approach. As a result, we witness increasing interest in alternative approaches which generally combine protective administrative or legal measures against eviction with the provision of basic services and credit facilities.

The author describes and analyses the extent to which formal, semiformal, and informal tenure arrangements that can be found in kampongs (typical low-income settlements) in Indonesia provide tenure security to the country's urban poor, particularly since 1998, when Indonesia embarked on an ambitious political and legal reform programme. The author reviews the current legal framework that applies to urban land tenure in Indonesia. In addition, based on rich material that was acquired through empirical research in the city of Bandung, there are a number of case studies presented in which the urban poor's tenure security was put to the test. Finally, drawing on statistical data, the author analyses the urban poor's perceptions regarding their tenure security and whether and, if so, how this influences their housing investment behaviour. Following this analysis, the author evaluates the socio-economic benefits of current approaches to attaining tenure security. And with these findings, there are policy suggestions and contributions to theory formation presented to further the current international development debate on tenure security.

This is a volume in the series of the Meijers Research Institute and Graduate School of Leiden University. The study is a part of the Law School's research programme on Securing the rule of law in a world of multilevel jurisdiction and was conducted as part of a research project of the Van Vollenhoven Institute for Law, Governance, and Development.



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