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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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1 Introduction

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-

nomic, 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, disproportionally 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.

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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 neoliberal 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 ICESSR 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).

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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 'kampong' 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 (*Keppres 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 Caraibisch gebied' (Netherlandse 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 reseacher.

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-dept 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 Fitrian, a former law student from Padjadjaran University, assisted me in these activities. I also shared information with Tristam 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 Tandu 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 kampong. Within each kampong, 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), Cirooyom (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 Fitrian 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 kampong 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 kampong dwellers regarding their willingness to sell their land and dwellings and the type of party they would sell to. I also collected data from kampong 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.

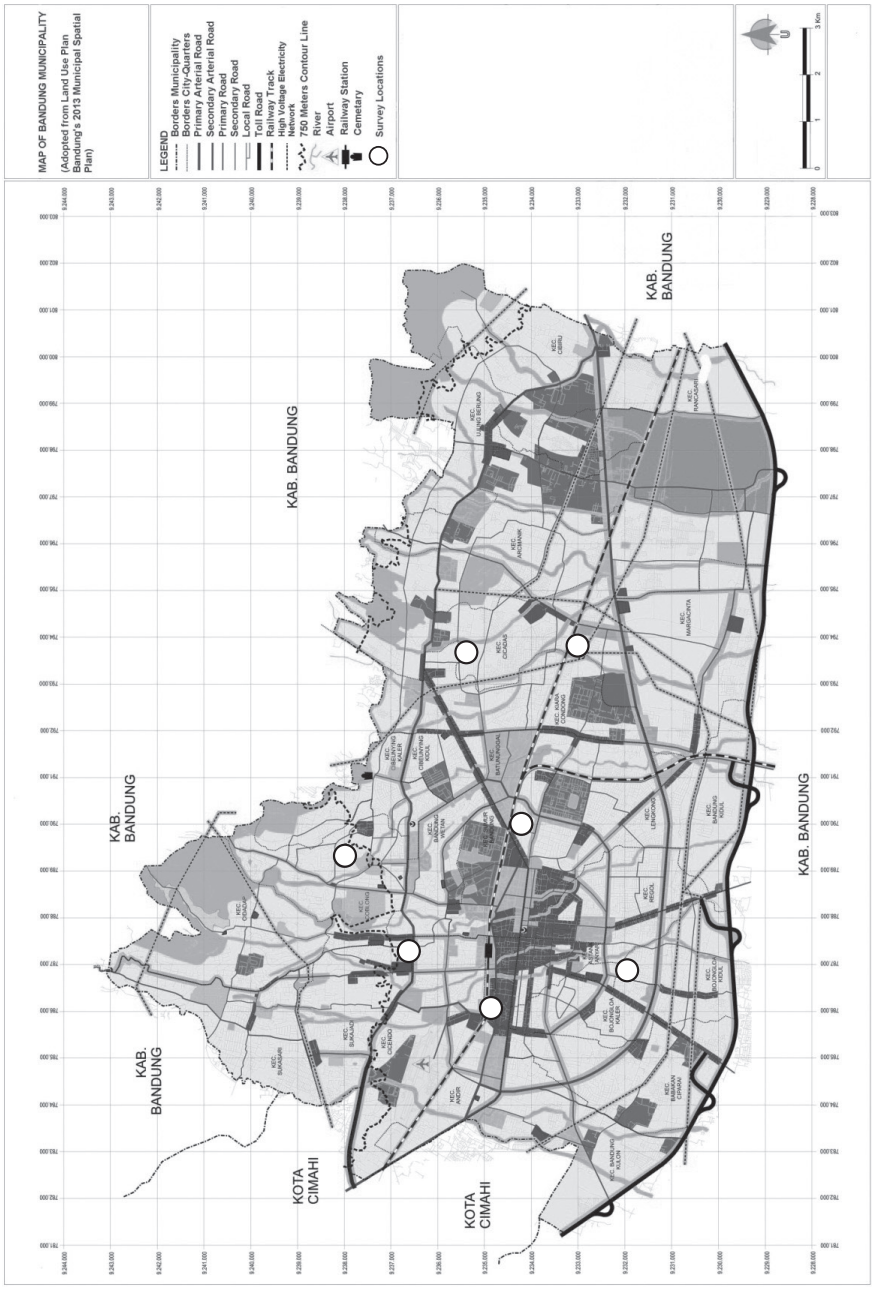
Chapter 5 turns to the issue of spatial planning and legal tenure security. It first discusses spatial planning law and practice in the late New Order. The chapter then pays attention to Post-New Order reforms related to spatial planning law. Thereafter, it takes a closer look at spatial planning practices 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*