



Universiteit  
Leiden

The Netherlands

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

Reerink, G.O.

### **Citation**

Reerink, G. O. (2011, December 13). *Tenure Security for Indonesia's Urban Poor : a socio-legal study on land, decentralisation, and the rule of law in Bandung*. Meijers-reeks. Leiden University Press (LUP), Leiden. Retrieved from <https://hdl.handle.net/1887/18325>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/18325>

**Note:** To cite this publication please use the final published version (if applicable).

## 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.<sup>2</sup> 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).<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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).<sup>6</sup> 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.<sup>7</sup> These deeds form the major source of information for maintaining the land register.<sup>8</sup>

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).<sup>9</sup> 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*).<sup>10</sup> The Indonesian government gives priority to systematic registration in the cities.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> 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).<sup>14</sup>

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).<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> Poor people are exempted from registration costs.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> People who are in a weak economic position get a 50 per cent reduction.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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).<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> Until the alienator has paid this tax, the NLA is not allowed to cooperate in the transfer of the land right.<sup>36</sup>

---

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).<sup>37</sup> For instance, evidence requirements for registration were made less stringent.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> Still, an estimated 15 per cent of the municipal land is used without a permit.<sup>43</sup> Qualification of land as neglected land and redistribution of such land also seldom occur in Bandung, although a lot of squatted land would qualify.<sup>44</sup> 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.<sup>45</sup> 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 Java 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.<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> Notably, almost one-third of the respondents believed that these costs would involve bribes.<sup>50</sup> 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).<sup>51</sup>

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.<sup>52</sup> 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).<sup>53</sup> 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).<sup>54</sup>

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.<sup>55</sup>

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 kampung 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).<sup>56</sup> 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.<sup>57</sup> Moreover, the average duration of the systematic registration procedure was shorter than sporadic registration, namely 2.2 months.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup>

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.<sup>66</sup> 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*).<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

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.<sup>72</sup> 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.<sup>73</sup> Finally, an average kampong house does not meet building standards, including standards regarding facilities.<sup>74</sup> 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.<sup>75</sup> Despite the threat of such severe sanctions, it may not come as a surprise that very few kampong dwellers have such permits.<sup>76</sup> 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 <sup>d</sup>	Informal tenure <sup>e</sup>
	Sporadic registration <sup>a</sup>	Systematic registration <sup>b</sup>	Total <sup>c</sup>		
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: <sup>a</sup> n = 37 <sup>b</sup> n = 44, <sup>c</sup> n = 99, <sup>d</sup> n = 94, <sup>e</sup> 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 <sup>d</sup>	Informal tenure <sup>e</sup>
	Sporadic registration <sup>a</sup>	Systematic registration <sup>b</sup>	Total <sup>c</sup>		
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: <sup>a</sup> n = 28, <sup>b</sup> n = 39, <sup>c</sup> n = 83, <sup>d</sup> n = 91, <sup>e</sup> 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'.<sup>77</sup> However, to date the programme has had limited effect.<sup>78</sup> 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.<sup>79</sup>

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

	Formal landholders by sporadic registration <sup>a</sup>	Formal landholders by systematic registration <sup>b</sup>	Formal landholders total <sup>c</sup>
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: <sup>a</sup> n = 38, <sup>b</sup> n = 44, <sup>c</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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).<sup>82</sup> 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.<sup>83</sup> 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'.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup> 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).<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup>

Meanwhile, the Indonesian government initiated the People's Service for Land Registration programme.<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup> The decision was soon replaced by Regulation of the Head of the NLA No. 6/2008.<sup>97</sup> On the basis of the regulation, the procedure to perform derivative registration should take no longer than five days.<sup>98</sup> Notably, the Regulation formulated no time limit for initial land registration.

In July 2009, Law No. 25/2009 on Public Services was enacted.<sup>99</sup> 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.<sup>100</sup> The services standards should relate to, *inter alia*, time limits and costs.<sup>101</sup> Provisions on costs should be enacted with the agreement of the People's Representative Council, the Provincial Assembly, or the District/Municipal Council.<sup>102</sup>

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.<sup>103</sup> 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.<sup>104</sup> Following complaints, superiors can impose sanctions.<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup> 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.<sup>108</sup>

All regulations regarding public services should be brought in accordance with the law within two years after its enactment.<sup>109</sup> 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.<sup>110</sup>

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.<sup>111</sup> Regulation No. 3/2010 requires that each land office has a service counter.<sup>112</sup> 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 m<sup>2</sup> 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.<sup>113</sup> District/municipal governments have also formulated services standards. In Bandung, Bylaw No. 22/2009 was enacted.<sup>114</sup> 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.<sup>115</sup> 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.<sup>116</sup> The objective of this government regulation is to increase non-fiscal state revenues for the NLA.<sup>117</sup> The fees for the surveying of land are now fixed and amount to Rp. 450,000.<sup>118</sup> The fees for registration itself have increased by 100 per cent to Rp. 50,000.<sup>119</sup> Poor people are however still exempted from registration fees.<sup>120</sup> 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.<sup>121</sup> 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](http://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.

