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

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9 Conclusion

9.1 Introduction

This book has presented the results of a socio-legal study assessing to what extent Indonesia's urban poor enjoy land tenure security under different tenure arrangements; particularly in the context of decentralisation and other post-New Order reforms to the rule of law. Given the weaknesses identified in some previous studies on tenure security, this study's analyses distinguished explicitly between three categories of land tenure security, namely formal, semi-formal, and informal land tenure, based on the status of each of these arrangements according to state law. This study also distinguished between legal, de facto, and perceived tenure security. Fieldwork was conducted in Bandung, capital of West-Java Province and Indonesia's third largest city (2.3 million inhabitants).

The first two sections of this final chapter summarise the main findings of the research, and address the study's primary questions about land tenure security under different tenure arrangements. The chapter then focuses on the study's other research questions, including: the socio-economic benefits of different approaches to obtaining tenure security under Indonesia's contemporary rule of law environment (Section 9.4); policy recommendations to enhance tenure security for the urban poor (Section 9.5); and the study's contributions to the international development debate on tenure security (Section 9.6). The final section gives suggestions for further research.

9.2 Land tenure security of low-income kampong dwellers

Bandung and Indonesian cities generally contend with a 'challenge of urban poverty' in the form of kampongs. Kampongs have developed mainly as a result of a combination of substantial migration flows and a failure of subsequent governments to effectively regulate these settlements. Kampongs house low-income people, and are largely informal in terms of land tenure and land use. Most settlements are, however, reasonably consolidated. In addition, among and within these settlements there are various degrees of legality. Even so, conditions in kampongs remain adverse, and it is unlikely this will change in the future unless further measures are taken. In recognition of this challenge it is significant that the Indonesian government has formulated a National Strategy for Poverty Reduction, in which the right to adequate housing and the right to secure land tenure play a central role.

The success of any approach to managing tenure security depends on the enforceability of property and/or human rights. This requires a rule of law environment, in which the urban poor are protected against arbitrary behaviour by the state or private parties. During the New Order period this was not the case. This period featured a combination of i) a 'developmentalist', central-authoritarian and frequently corrupt New Order state; ii) a (marginalised) BAL granting a strong role to that state; and iii) implementing legislation which was either lacking or, as far as it was in place, reflected an extreme 'integralist' interpretation of key-concepts of the BAL. Together these resulted in the central government retaining strong discretionary powers in the land sector, which could easily be abused in the name of 'development', and commonly were. After the fall of Soeharto in 1998, Indonesia initiated ambitious political and legal reforms. The right to adequate housing is now explicitly acknowledged. Upon closer investigation, with respect to the land sector the reforms so far are disappointing. The implementing legislation of the 1999 and 2004 RALs has led to much confusion, and has severely limited the scope of regional autonomy in the land sector. In addition, land law reform itself remains very limited. On the other hand, at least on paper, the rule of law environment in which land law is implemented has improved significantly. Compared to the New Order period, Indonesia's urban poor thus appear better protected against arbitrary behaviour by the state and private parties.

Despite the reforms, low-income kampong dwellers in Bandung and likely in other cities enjoy only limited legal tenure security, even if their land is registered. Few formal (and semi-formal and informal) landholders have the permits they need to legally reside on their land. In addition, few formal landholders appear to perform derivative registration after a change in the tenure situation of the land. Finally, the land administration system is dispossessory in nature, due to weaknesses in the legal framework as well as maladministration. Under the BAL, a land certificate is not conclusive, but only forms strong evidence regarding a land right. The NLA has a notorious reputation as a result of incompetence and corruption, with officials commonly issuing more than one certificate for the same plot of land.

The legal tenure security of low-income kampong dwellers also remains limited in relation to spatial planning, on the basis of which the Indonesian state can limit the exercise of land rights and claims. New legislation on spatial management, of which spatial planning is a part, contains further safeguards that could protect the interests of landholders, but imposes few obligations to district/municipal governments to ensure public participation and transparency. In addition, the role of the District/Municipal Councils is diminished in spatial planning. Finally, the provincial and central government's role with respect to guidance and supervision initially also remained limited, although this role has increased since 2004. In practice, the role of kampong dwellers in Bandung in spatial planning is still very limited. Not only do they rarely participate in this process, the municipal government also fails to invite them to do so. The Municipal

Council, higher levels of government, and even civil society equally fail to support kampong dwellers' interests. Spatial planning is becoming more transparent, but there are still many deficiencies. The spatial plans that are enacted are detrimental to kampong dwellers, particularly for those who reside in settlements the municipal government qualifies as 'slums'.

Finally, the legal tenure security of low-income kampong dwellers remains limited in relation to land clearance by the state or private parties. Legislation creates a broad discretion for district/municipal governments to determine for what purpose land is cleared. They have no legal obligation to explore feasible alternatives. Procedural protections are limited. Landholders are not guaranteed the right to proper compensation and the right to adequate alternative accommodation. As for informal landholders, legislation gives the Mayor broad discretion to determine whether, and how much, compensation is due. The regulation on site permits, which developers may need for land clearance, contains an ineffective mechanism to monitor commercial land clearance and enforce related norms. In addition, many landholders cannot benefit from any of the law's potentially protective provisions, as it refers to an extensive list of cases in which no site permit is required. In any event, district/municipal governments feel free to depart from it.

While the legal tenure security of low-income kampong dwellers is limited, the de facto tenure security of semi-formal and even most informal landholders in Bandung is surprisingly strong, in the sense that they enjoy a considerable degree of administrative recognition. They possess land related documentation (which semi-formal landholders could use for land registration), many have been residing on the land for decades, and the majority of these landholders are formal receivers of public utilities, such as water and electricity, and hold identity cards.

Land clearance as a single enforcement measure, for instance because landholders reside on land without the permission of the right holder or because they (or formal landholders) lack permits to reside on the land, was and is still rare. However, if land is needed for development in the public interest or for commercial purposes, which is more than ever the case in Post-New Order Bandung, kampong dwellers still risk involuntary removal without due process of law or proper compensation. Commercial developers particularly appear interested in land that is held informally. At the same time, landholders succeed in negotiating higher compensation than during the New Order years, which suggests that post-New Order reforms have benefited kampong dwellers who are confronted with the state or developers wishing to clear land. Notably, this study found that tenure status is not always a predictor for the level of compensation received.

This study found that formal landholders in kampongs in Bandung enjoy stronger perceived tenure security than informal landholders. However, no such differences are found between formal landholders and semi-formal landholders. Semi-formal (and informal) landholders often cited their land related documentation and length of residence as reasons for the

legitimacy of their tenure. Perceived tenure security has decreased since the end of the New Order with regard to protection against involuntary removal, while it has increased with regard to the level of compensation. The housing of landholders with formal tenure is somewhat more consolidated than that of landholders with informal tenure. However, again no significant differences are found between formal and semi-formal landholders. Housing consolidation also depends separately on perceived tenure security and household income.

9.3 Rule of law development at the local level

The limits of low-income kampong dwellers' legal, de facto, and perceived tenure security can be explained to a large extent by Indonesia's rule of law still being weak at the local level. This problem persists despite the country's ambitious reform programme. Regional autonomy, one of the major reform initiatives, has in part actually had a negative effect on the tenure security of low-income kampong dwellers.

It is clear that to this day Indonesian land law does not offer effective protection to (low-income) landholders against arbitrary behaviour of the state and private parties. This not only applies to informal and semi-formal landholders, who often have difficulties meeting evidence requirements to register their land in the first place, but even to formal landholders. The 1960 BAL has not been revised. In relation to urban land tenure, most required implementing legislation has now been enacted, but it still reflects an 'integralist' interpretation of key-concepts of the BAL. This results in the government retaining strong discretionary powers in the sector of land, which can easily be abused. Paradoxically, when it comes to the protection of landholders against the arbitrary behaviour of private parties, such as commercial developers wishing to clear land, the state is granted a limited role.

To add to the legal confusion, regional autonomy legislation has created a contradictory framework regarding the division of authorities in the land sector between the central government, the Provinces, and Districts/Municipalities. Both the 1999 and 2004 RALs devolve full authority over land matters to the regions. However, implementing legislation maintains the NLA's authority over some parts of these matters.

When implementing the above legislation, authorities use their broad discretionary powers as they see fit, turn the contradictory legal system to their advantage, or simply operate outside the law. Instances of maladministration, including KKN, are widespread within the bureaucracy.

Post-New Order reforms, and particularly regional autonomy, have contributed to the above circumstances. Because of administrative decentralisation, district/municipal governments need extra funds to finance devolved authorities. Political decentralisation and other reforms that were meant to strengthen democracy at the local level required new (extra-budg-

etary) revenues for the district/municipal governments to finance political support. In Bandung at least, this has resulted in a municipal government eager to facilitate the development of the services industry, so it can raise land related taxes and revenues (which, as a result of the new fiscal relationship between Jakarta and the regions, support the municipal budget) without taking much account of the interests of low-income kampong dwellers.

Internal checks and procedures within the administration, which could potentially prevent the above situation, remain limited. As far as they are in place, they are often not implemented and therefore usually ineffective. There is no formal procedure for interested parties to apply for administrative review of a decision. The 1999 RALs did establish a mechanism enabling the central government and provincial government to supervise and control the district/municipal governments. The central government and provincial government can for instance annul municipal legislation related to spatial planning. On the basis of the 2004 RALs, municipal spatial plans should be evaluated by the provincial Governor and the relevant Ministers respectively before they can be enacted. In practice, supervision by the provincial government appears to be very weak and the central government takes a lenient attitude.

Indonesia's new democracy partly compensates for the above conditions. Whereas kampong dwellers seem disinterested in spatial planning, they clearly understand the implications of land clearance and now demonstrate a willingness to resist such efforts. Surprisingly, in such resistance traditional intermediaries like (rights-oriented) NGOs and the student movement play a limited role. Kampong dwellers largely depend on community-based organisations, based on strong community leadership. They seek support from politicians in land disputes, organising street protests and offering petitions. Kampong dwellers even use their right to vote to put political pressure on the executive. In doing so, they draw considerable media attention.

It would go too far to conclude on the basis of the above that there is substantive democracy in Bandung. Despite democratic reforms, the contents of laws and policies are still not determined by public consent. Participation and transparency in lawmaking processes remain limited. In the event that local politicians do support the urban poor, this takes the form of political patronage. The role of counter forces, such as hoodlums, is strong. Funded by the municipal government and commercial developers, they intimidate protesters and their backers. Media coverage often appears biased towards the more powerful side of any dispute. Journalists, particularly freelance reporters and/or those working for regional dailies, are sometimes bribed and/or fear to write in a critical way.

Despite the current disadvantages of adopting political strategies in land disputes, kampong dwellers tend not to choose litigation as a strategy, and even avoid legal discourse. Though kampong dwellers have the potential to base their demands on the law, these instead generally take form of a

moral claim: the dwellers ask for support "out of humanity". They also explicitly call in the help of party-affiliated legal aid organisations, who can serve as brokers. Kampong dwellers thus are in a vulnerable position, depending on political favouritism.

The preference for adopting a political strategy to land disputes, instead of a legal, litigation-oriented strategy, can to a large degree be explained by kampong's dwellers limited knowledge of and lack of trust in the law and legal institutions. The police, public prosecution and particularly the judiciary are strongly distrusted by low-income kampong dwellers. Our survey revealed that they believe courts are not independent or impartial and litigation is expensive, partly due to corruption. The role of alternative institutions of dispute settlement is also limited. The National Human Rights Commission is well-known and has a good reputation among low-income kampong dwellers in Bandung, however the fact that it is located in Jakarta forms a considerable barrier. Equally, low-income kampong dwellers in Bandung would not turn to the National Ombudsman Commission. This institution is still unknown, but even if it were known, the same problem of distance would likely apply.

Many legal institutions in Indonesia do indeed continue to carry questions of bias, suggesting that litigation may be ineffective. Despite strong allegations of corruption regarding the drafting, enacting, and revision of Bandung's new General Spatial Plan, which led to administrators and politicians being placed under severe scrutiny by the media, a local watchdog NGO and the public, no administrators or politicians were ever investigated or prosecuted. Instead, the police and the prosecution service pressured, arrested, and prosecuted kampong dwellers who resisted land clearance by commercial developers. The few times the courts did play a role in the cases discussed in this book, their rulings were generally unfavourable to kampong dwellers.

We caution that the above findings are based on a limited number of case studies, conducted in a single city. Whether these findings are representative of broader (urban) Indonesia is difficult to confirm, because little other research has been conducted. However from the research available, it appears that involuntary removal without due process of law and proper compensation is still common in Indonesia. Although there are some positive examples, it is clear that in policymaking processes at the local level generally, citizens and particularly the urban poor still play a limited role. In relation to land clearance by the state, there are examples of city authorities, such as those of Jakarta, Medan, and Surabaya, being more repressive than Bandung's municipal government. Based on reports in the national media, it appear that involuntary removal without due process of law and proper compensation also still often occurs, to accommodate commercial land clearance. Partly as a result of decentralisation there may however be regional differences.

9.4 Indonesia's current approaches to attaining land tenure security

The findings of this research call into question the effectiveness of Indonesia's current approaches to increasing tenure security of the urban poor. The dominant approach is mass land registration through programmes such as the National Land Registration Project (*Proyek Operasi Nasional Agraria* or PRONA), Regional Land Registration Projects (*Proyek Operasi Daerah Agraria or* PRODA), and the Land Administration Project (LAP). The LAP's aim is not only to accelerate land registration, but also to improve the legal-institutional framework for land administration, which included a systematic review and drafting of land laws and regulations, and training of NLA staff. This combination of land registration on the one hand and legal and institutional reform on the other hand also plays a role in the successor of the LAP, the Land Management and Policy Management Project (LMPDP), which was launched in 2004. The LMPDP adds two components, namely developing a Land Information System (LIS) and providing training and capacity building to all local governments.

It proves hard for landholders to perform sporadic registration; that is, to register land at their own initiative rather than through systematic land registration programmes. This difficulty is a result of several factors, including the stringent evidence requirements for the registration of semi-legal rights, a lack of political will to register rights of informal landholders, high costs and unwieldiness of the registration process as a result of poor administrative performance and even maladministration, and related negative perceptions of landholders regarding the registration process.

Certain obstacles are overcome by systematic land registration programmes; however, the reach of these programmes is limited. The LAP was only implemented in locations where registration is relatively easy, which means that locations where many low-income dwellers reside were ignored. As well, some of the obstacles associated with sporadic land registration remained present during systematic registration programmes; particularly the stringent evidence requirements for initial registration (which form an obstacle particularly for those with the lowest incomes) and more importantly, a lack of political will to grant new rights to informal landholders. This also means that semi-formal landholders participate in land registration programmes while informal landholders practically do not.

Because only semi-formal landholders participate, the socio-economic benefits of land registration programmes are very limited. As discussed above, informal landholders in many respects often enjoy significantly less tenure security than formal and semi-formal landholders. Furthermore, the contribution of land registration to housing consolidation is marginal and only occurs if informal tenure is formalised. This implies that registration programmes in Bandung and likely other Indonesian cities have so far been targeting the wrong group; as the people who may benefit most from

registration programmes, namely landholders with informal tenure, rarely find themselves among their beneficiaries.

In addition, land registration is not a prerequisite for tenure security and housing consolidation. As noted before, semi-formal (and informal) landholders often cited their land related documentation and length of residence as reasons for the legitimacy of their tenure. Not only land registration, but also increasing de facto tenure security can thus enhance perceived tenure security. Perceived tenure security, in turn, is enough for kampong dwellers to consolidate their housing. Alternative approaches in which land registration plays no (immediate) role may thus also be helpful.

The other components of programmes such as the LAP/LMPDP, including a systematic review and drafting of land laws and regulations, training NLA staff, developing a Land Information System, and supporting capacity building for local governments, appear to be urgently needed. Current land law offers only partial protection. So far however, land law reforms remain limited. The World Bank has acknowledged that the institutional development component of the LAP has been a failure. Maladministration within the NLA is still pervasive. A Land Information System could lead to a more accurate land register, an efficient and therefore cheaper use of land data, and in turn lower registration costs, with the registration process becoming less unwieldy. It appears that the performance of local governments in the land sector could improve significantly.

9.5 Policy suggestions

On the basis of the above findings, several policy suggestions can be made. These suggestions relate firstly to the dominant functional approach to attain tenure security. The findings of this research suggest this should change from a functional approach to a rights-based approach. In addition, this section includes suggestions regarding legal and institutional reforms. In closing, the importance of legal empowerment initiatives is underlined.

9.5.1 Toward a rights-based approach

Considering the fact that non-formal tenure can, but in practice does not always offer tenure security, the most important suggestion is to change from a predominantly functional approach to a rights-based approach, in which land registration plays a role only at a later stage. Rights-based approaches generally combine protective administrative or legal measures against evictions with the provision of basic services and credit facilities. In the case of Indonesia, basic services and credit facilities are already provided, for instance through the National Community Empowerment Programme. Protective administrative or legal measures are still needed. Such measures could take various forms, but a straightforward approach would

be formal condoning, which means that the competent authorities issue a decision stating they will not enforce a violation of prevailing land tenure and land use related legislation. Formal condoning would be in line with key recommendation referred to in the National Strategy on Access to Justice, to recognize and protect rights to ensure poor communities can safeguard their rights to land.

As was noted above, kampong dwellers enjoy a high degree of administrative recognition. This type of informal condoning has already been shown to enhance the perceived tenure security of low-income kampong dwellers. In particular, the possession of land related documentation contributes to perceived tenure security, in the sense that kampong dwellers believe that the authorities agree that they reside on the land legitimately. Perceived tenure security contributes to housing consolidation. By formalising the condoning process, the legal, de facto, and perceived tenure security of kampong dwellers will likely increase further, which in turn would stimulate housing consolidation.

Formal condoning is unknown in Indonesia. This legal figure is known in Dutch administrative law, to which Indonesian administrative law is historically related.[1] In Dutch administrative law, formal condoning is only possible if a violation of prevailing legislation will end soon. The decision to condone is thus a temporary measure. It is also an individual decision; third parties, including legal successors, cannot benefit. Conditions can be attached to the decision. Finally, interested parties can (object and) appeal to the decision at the Administrative District Court.

The legal figure of formal condoning could also be introduced in Indonesian administrative law in relation to land tenure or land use. A decision to condone can be issued if it is legally possible and actually planned that land certificates and permits to reside on the land are provided in the near future. A decision to condone may thus (first) require a qualification of land as neglected land and/or a revision of municipal spatial plans.[2] As a condition, a time limit for the landholder to register the land or obtain the required permits to reside on the land could be attached to the decision. Others claiming a right to the land, or who believe that otherwise their interests are affected by the decision to condone, can appeal to the Administrative District Court. The decision to condone residence can be based on Land and Building Tax documentation, which almost all kampong dwellers have and which provides relatively accurate information on the size of plots and the dwellings on it and the person(s) having an interest in the property. This information is sufficient to guarantee a basic level of tenure security.

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1 A common example is municipal governments issuing decisions to condone people permanently residing in holiday homes that on the basis of the municipal spatial plan can only be used for temporal residence.

2 Rights to be annulled should include usage or management rights that have been granted to public entities and that are not used for the purpose for which they have been granted.

Obviously, formal condoning may not be possible in all cases. The non-forfeited rights of landholders whose land has been occupied without permission should of course be respected. And there will always be locations that are objectively unsustainable for residence. In such cases, kampong dwellers should be provided with adequate alternative accommodation. These dwellers will thus become formal landholders without the intermediate step of formal condoning.

Kampong dwellers whose residence is formally condoned can become formal landholders after several years through land registration. Considering the fact that kampong dwellers contend with obstacles to registration their land at their own initiative, and that these obstacles are in part overcome by land registration programmes such as the LAP/LMDP, it would be useful to continue with these programmes. However, since the effect (in the long term) of the programmes on tenure security is marginal, their set-up should be revised considerably. First, the programmes should focus particularly on the tenure position of informal landholders. In this framework, the Indonesian government should consider redistributing state land, just as it does in the framework of the National Agrarian Renewal Programme, but in this case focusing on urban land. Second, the programmes should not only provide land titles, but also all required permits to kampong dwellers, so they meet public law requirements to reside on land. Separately, the problems of limited derivative registration and the dispossessory nature of Indonesian land law should be addressed (to be discussed in Section 9.5.2 below).

In order to contribute to legal, de facto or perceived tenure security of low-income kampong dwellers, a successful rights-based approach requires a rule of law environment, which is still not available in Indonesia. The above approach should therefore be combined with interventions that strengthen the rule of law at the local level. These interventions should include both legal and institutional reforms and initiatives aimed at legal empowerment.

9.5.2 Legal and institutional reforms

Legal and institutional reforms should consist of land law reforms, regional autonomy reforms and general reforms. Such reforms would be in line with key recommendations referred to in the National Strategy on Access to Justice.

Land law reform

Legal and institutional reforms should first involve an integrated revision of land law, as required by People's Consultative Assembly Directive No. IX/MPR/2001 and Presidential Decision No. 34/2003, in accordance with the right to adequate housing as guaranteed by the Amended 1945 Constitution and the ratified International Covenant on Economic, Social and Cultural Rights. Considering the fact that to this day, the BAL forms the

general framework of land law in Indonesia, the revision of land law should start with a review of this law. Such a review will probably lead to the conclusion that the BAL requires amendment or perhaps even wholesale revision. Our research findings however give little reason to draw such a conclusion. The BAL grants the state a strong role in the land sector and it has repeatedly been shown in this book that this seriously affects the tenure security of low-income kampong dwellers. Yet, this does not mean the role of the state should be reformulated. Given the many problems Indonesia's land sector is facing, there is reason to retain a strong role for the state. However, there should be clear limits to this role. So far, this has not been the case. Implementing legislation, which reflects an extreme 'integralist' interpretation of key concepts of the BAL, is still in force. This legislation should be revised or annulled. Below is an overview of the most important land law reforms needed.

- Land Registration and Licensing

Recently, there have been significant reforms in relation to land registration and licensing, consisting of the enactment of new legislation on topics as various as minimum services standards, registration costs and neglected land and the introduction of the People's Service for Land Registration programme. These reforms make it potentially easier for low-income kampong dwellers to register their land at their own initiative. However, in order to strengthen land tenure security of low-income kampong dwellers, further steps should be taken, creating accessible land registration and permitting systems, and allowing any type of landholder to perform initial and derivative registration and to obtain the permits needed to legally reside on land. This requires a revision of Government Regulation No. 24/1997 and Government Regulation No. 11/2010. Law No. 25/2009 and Government Regulation No. 13/2010 may have to be revised too.

In order to make the land registration system accessible for semi-formal landholders wishing to perform initial registration, the Indonesian government could consider softening evidence requirements further. Admittedly, the replacement of Government Regulation No. 10/1961 by Government Regulation No. 24/1997 already resulted in considerable improvement. However, there is room to further accommodate the needs of semi-formal landholders, without harming the interests of third parties. In particular, the possibility to register land on the basis of non-documentary evidence could be broadened, allowing semi-formal landholders to register their right if the land has been in their possession (or the possession of possible predecessors) for a period shorter than the current required period of 20 years. Under the BAL, a third party can dispute the right of a formal landholder during the five years after the certificate has been issued, still leaving such a claimant sufficient time to challenge a new formal landholder's right.

In order to make the land registration system accessible for informal landholders wishing to perform initial registration, it should become easier for them to obtain new rights. Informal landholders occupying state land

should have a priority right to request a new land right, also if this land is not former European land that failed to be registered before 1980. Non-state land that has been occupied uninterruptedly for a certain period of time (for instance 10 years if in good faith, 20 years if not), should qualify as neglected land by virtue of the law.

Despite the enactment of new legislation on registration costs, for most kampong dwellers costs to register land at their own initiative may still be too high. In that case, more legislative revisions may be required, leading to a further limitation of registration costs. Obviously, offering further special financial arrangements for low-income groups would involve considerable costs for the Indonesian government. These costs could to a large extent be covered by a more efficient and therefore cheaper use of the land data already available. Indonesia has a state-of-the-art fiscal register that is used to collect Land and Building Tax. At present, the fiscal register is completely separated from the legal register, with the Department of Finance being responsible for the fiscal register and the NLA for the legal register. The contemporary tax system is based on the actual use of land and buildings, not on the legal status. The maintenance of two separate registers, however, only leads to the aggregation of double data. It would therefore be practical and economical to combine the fiscal and legal registers.

The combination of the legal and fiscal registers may also contribute to the registration process becoming less unwieldy. Part of the information needed for initial registration can then be drawn from the fiscal register, which will save time.

It may be the case that despite the enactment of the new legislation on minimum services standards, registration and licensing processes remain unwieldy. In that case, further legislative revisions may be required, leading to simple procedures, with requirements that can be met by low-income kampong dwellers, against modest fees, and with strict time limits, an excess of which would lead to the imposition of sanctions on the failing authorities.

- Spatial planning

Recently, legislation related to spatial planning has been reformed. This has led to more democratic control, strengthens the role of the provincial and central governments with respect to guidance and supervision in spatial planning, and requires public bodies, political parties, and non-governmental organisations to make information publicly available. However, most obligations of district/municipal governments to ensure public participation are still not clear and enforceable. In order to strengthen land tenure security of low-income kampong dwellers in relation to spatial planning, further steps should thus be taken, supporting substantive public participation and transparency. This requires a further revision of the 2007 SML (which the 2010-2014 National Legislative Programme recommends), Government Regulation No. 69/1996 and Regulations of the Minister of Home Affairs Nos. 8/1998, 9/1998, and 1/2008.

Substantive public participation and transparency in spatial planning can be supported by formulating clear and enforceable obligations for regional governments. Regional governments could be required, during the plan's design process, to organise a minimum number of discussions and seminars to which all parties whose interests are at stake are invited and at which all can participate. In addition, the public should be given the opportunity, during a fixed term of several weeks or months, to give suggestions and opinions, which are to be used in the decision-making process. It would be helpful if regional governments are required to respond to these suggestions and opinions in written form, and in cases where they reject the suggestions and opinions, to explicitly justify this. The public could be granted the possibility to apply for review of a bylaw enacting a spatial plan, including the prior decision-making process, at the Administrative District Court. If in the framework of such a review it turns out that a regional government has failed to meet its obligations in relation to public participation and transparency, the bylaw ought to be declared null and void.

- Land clearance by the state

Recently, legislation related to land clearance by the state has been reformed. The reforms are definitely a step forward, in that they limit the activities for which a government institution can clear land for development in the public interest; provide formal and semi-formal landholders with more procedural protections; and guarantee the right to proper compensation in better ways. In addition, the right to subsidised legal aid is guaranteed, which means that, at least on paper, landholders who wish to seek legal remedies also have better access to the judiciary. However, there is still no obligation for the authorities to explore feasible alternatives in consultation with landholders *prior* to land clearance. In addition, the right to adequate alternative accommodation is still not guaranteed. In relation to informal landholders the law still creates broad discretion for the District-Head/Mayor to determine whether, in cases of land clearance, the landholders receive any 'assistance/sympathy money' and if so, how much. In order to strengthen land tenure security of low-income kampong dwellers in relation to land clearance by the state, further steps should thus be taken, providing further protections and guarantees. This requires a revision of Law No. 20/1961 (which the 2010-2014 National Legislative Programme also recommends), as well as Presidential Regulation No. 65/2006 and Regulation of the Head of the NLA No. 3/2007; and, more importantly, annulment of Law No. 51/1961.

Prior to determining locations for land clearance for development in the public interest, there should be an obligation for the government institution requiring land to explore all feasible alternatives, in consultation with the affected landholders. The government institution could be obliged to discuss these alternatives and explicitly justify the choice for a certain location, in the proposal which it is required to submit to the District-Head/Mayor. It would be advisable to grant the public the possibility to

apply for judicial review of the decision regarding the location of land clearance, including the prior decision-making process, at the Administrative District Court. If, in the framework of such a review, it turns out that a government institution requiring land has failed to meet its obligation to explore all feasible alternatives in consultation with the affected landholders, and/or has failed to discuss these alternatives and justify the choice for a certain location in the proposal, the decision ought to be declared null and void.

It may be helpful if the use of land without permission from the title holder is no longer considered a criminal offence, but a private dispute between the informal landholder and the title holder. A title holder wishing to clear his land could still apply for a civil court order. Informal landholders who have occupied the land for a certain period of time should be able to parry such an application on the claim that the land qualifies as neglected land (see above). In cases in which the application is awarded, it is recommended that informal landholders be guaranteed proper compensation. They should also be granted the right to adequate alternative accommodation.

- Land clearance by developers

Recently, new legislation has been enacted that potentially has a positive effect for low-income kampong dwellers who are confronted by developers wishing to clear their land. A stipulation in the newly enacted 2007 SML imposes sanctions to officials who issue permits that are not in accordance with spatial plans. This stipulation should lead to stricter compliance in regard to the issuance of (site) permits. In addition, the new legislation guarantees the right to subsidised legal aid. However, in order to strengthen the land tenure security of low-income kampong dwellers in relation to commercial land clearance, further steps should be taken, providing further protections and guarantees. This requires a revision of the Regulation of the Head of the NLA No. 2/1999 on site permits.

It would be advisable to limit the list of commercial land clearance cases in which no site permit is required, so landholders who are confronted with urban development projects can benefit from the potentially protective provisions contained in Regulation of the Head of the NLA No. 2/1999. In order to strengthen the supervision of commercial land clearance processes, the Supervision and Control Teams for Commercial Land Clearance or similar bodies could be re-established. In addition, administrative sanctions could be introduced, which would be imposed if a developer violates prevailing legislation and/or permit requirements. Such sanctions could include incremental penalty payments, administrative coercion, a withdrawal of the permit, or administrative fines. The sanction of incremental penalty payments implies that the District-Head/Mayor can order the developer to comply with the permit conditions. If the developer does not comply within the given period of time, the operator will incur penalties. The sanction of administrative coercion implies that the District-Head/

Mayor has the opportunity and authority to restore the situation, and charge the developer for the costs incurred. It would be helpful if landholders were also granted the option to request the District-Head/Mayor to enforce prevailing legislation and/or permit requirements. Following such a request, the District-Head/Mayor would be required to make a decision, within a fixed term of several weeks, as to whether to enforce the legislation. Landholders should also have the possibility to apply for review of the decision at the Administrative District Court.

Regional autonomy reforms

The 2004 RALs have led to administrative recentralisation. This has also involved a stronger role for Provinces to supervise and control the exercise of devolved authorities by the Districts/Municipalities, which appeared to be needed. However, the division of authorities in the land sector between the central government, Provinces, and Districts/Municipalities would benefit from being clarified. This would require a revision of the 2004 RALs (which the 2010-2014 National Legislative Programme also recommends), Government Regulation No. 38/2007, and Presidential Regulation No. 10/2006.

The 2004 RALs stipulate that the regions hold the mandatory authority over all land matters. Government Regulation No. 38/2007 confirms this, but at the same time limits the regions' functions in the land sector to nine. By contrast, Presidential Regulation No. 10/2006 stipulates that the NLA holds a non-limited number of 21 functions. Obviously, this inconsistency should be altered. This begs the question as to how authority over the land sector should best be divided between the central government, Provinces and Districts/Municipalities. Our research findings do not provide a definitive answer to this question. It is, however, clear that whatever authority the Districts/Municipalities are granted over land matters, the higher levels of government should retain a strong role of control and supervision.

As a final note, it should be acknowledged that the enactment and implementation of the 1999 RALs and 2004 RALs have had negative side effects, not least in the land sector. In particular, because of the new fiscal relations with the central government, Districts /Municipalities feel the incentive to one-sidedly focus on economic growth. This has resulted in Districts/Municipalities attempting (often successfully) to enact bylaws on the regional budget, taxes and revenues and spatial management that contravene the public interest or higher legislation. Controlling these negative side effects does not require regional autonomy reforms. The 2004 RALs already contain sufficient mechanisms to prevent such issues from occurring. All bylaws are evaluated by the relevant Ministers and the Governor respectively. After their enactment, bylaws can be annulled by the Minister of Home Affairs. However, these mechanisms should be applied more effectively than is presently occurring; which may require general reforms.

General reforms

The research findings presented in this book show that general reforms are needed which assist government institutions to abide by the law, support substantive democracy, and create independent and impartial institutions of dispute settlement to which every aggrieved person has access.

- Assistance for government institutions to abide by the law

As noted above, a new law on minimum services standards has recently been enacted. This law will likely contribute to government institutions abiding by the law. This also applies to the land law reforms suggested above. However, more reforms are needed, including strong measures against maladministration (particularly KKN) within the NLA and the regional governments. Such measures may consist of capacity building measures, a strengthening of budget control capabilities of the Supreme Audit Board, and a strengthening of anti-corruption monitoring and law enforcement capabilities of the Corruption Eradication Commission.

- Substantive democracy at the local level

As noted above, a new law on transparency of public information has recently been enacted, which will likely contribute to the development of a substantive democracy at the local level. Further reforms which remain to be undertaken include strong measures against money politics and other forms of KKN within the regional representative bodies. In addition, there is a need for strict (election) budget control of political parties and individual politicians. To this aim, the monitoring and law enforcement capabilities of the General Elections Committee should be strengthened. Political parties should also be required to provide information regarding the allocation and use of funding that originates from public donations and/or foreign donations.

- Independent, impartial, and accessible institutions of dispute settlement

As noted above, new legislation has recently been enacted which guarantees the right to subsidised legal aid. In addition, the new law on minimum services standards requires the establishment of representative offices of the Ombudsman at the provincial and district/municipal levels. But again more reforms are needed. These reforms should include strong measures against KKN within the judiciary. Such measures may consist of capacity building measures in accordance with the Supreme Court Blueprints, and a strengthening of anti-corruption monitoring and law enforcement capabilities of the Corruption Eradication Commission and the Task Force for the Eradication of Judicial Mafia. In order to create better access to institutions of dispute settlement, a law on legal aid should be enacted, which the 2010-2014 National Legislative Programme also recommends.

In relation to land, accessible Administrative Courts are particularly needed. This can be achieved by broadening the courts' jurisdiction to

include certain decisions of a general nature, at least bylaws enacting spatial plans, so that these plans are able to be reviewed not only against acts of parliament, which currently the Supreme Court can do, but also against higher legislation generally. In addition, the possibility for the courts to review on the basis of general principles of proper administration should be extended.

9.5.3 Legal empowerment

Strengthening the tenure security of the urban poor finally requires initiatives aimed at legal empowerment. These initiatives should focus on increasing legal awareness, access to legal aid and counsel, and other activities that can overcome legal obstacles.

Activities to increase legal awareness could be part of the National Community Empowerment Programme, which is implemented in almost every urban kampong in Indonesia. In relation to land matters, kampong dwellers should *inter alia* be made aware of: i) the importance of (derivative) registration and to hold permits to reside on land; ii) the procedures to register land and obtain permits; iii) the existence of land registration programmes and of special financial arrangements, available within the framework or outside these programmes, for low-income people; iv) the importance of spatial planning and their rights to participation and transparency; v) their rights, including the legal remedies available, in cases of land clearance by the state or private parties.

Kampong dwellers should not only be made aware of legal processes and their rights and obligations in such processes, but also be provided with legal aid and counsel. As discussed above, the right to subsidised legal aid is now guaranteed in cases where kampong dwellers start judicial proceedings. However, kampong dwellers should also have access to legal aid and counsel outside the court system. Therefore, NGOs like the Legal Aid Institute should be supported. Such support should expressly not be offered to party-affiliated legal aid organisations, which, although potentially very effective in protecting the urban poor, may be challenged on questions of methods and intentions.

Other activities that can be initiated to overcome legal obstacles are community organising, group formation, political mobilisation, and use of media. Civil society organisations can play a major role in such activities.

9.6 Contribution to policy theory

The research findings from this book may contribute to the international development debate on tenure security. Firstly they show that, at least in the Indonesian context, the term 'slum', which is widely used in the international debate, is inaccurate; and that its use is often dangerous. As discussed above, most settlements in Bandung are reasonably consolidated, and

among and within these settlements there are varying degrees of legality. This means 'slums' do not exist in their typical form in Bandung; and likely hardly exist in any Indonesian city. Nonetheless, the Indonesian government often qualifies kampongs as slums. On the basis of Bandung's latest General Spatial Plan, settlements that are qualified as slums are to be restructured, not only by the construction of condominiums, but also, after relocation of residents, of shopping malls. This illustrates what dramatic and harmful consequences the qualification of kampongs as 'slums' can have. Use of the term should therefore be avoided; or only used with extreme caution.

The findings of our research also confirm that it is inaccurate to categorise tenure status in dichotomous terms of 'legal' versus 'extra-legal' tenure. In Indonesia at least, there is a continuum of tenure categories with varying degrees of legality. In order to compare different tenure arrangements, in our research we distinguished between three categories, based on the status of each of these arrangements according to state law. This categorisation was appropriate to answer the research questions addressed in this book.

In order to understand the effects of approaches to strengthen the tenure security of the urban poor, a distinction should be made between legal, de facto, and perceived tenure security. There can be a (wide) gap between the tenure security offered by the law, and the tenure security that the urban poor enjoy in actual practice. In addition, the urban poor base their investments in housing on perceptions of tenure security, which can be based on legal and on de facto tenure security.

It follows from the above that directly equating formal tenure with tenure security and informality with insecurity is too simplistic, and can be incorrect. Legal tenure does not equate with security by definition, nor is non-legal tenure always insecure. In fact, informal landholders may enjoy significant de facto tenure security. This also means that land registration does not inherently lead to legal tenure security for landholders and that, at least for the time being, it may be enough to strengthen the de facto tenure security of landholders. Perceived tenure security can be based on de facto tenure security, and this may be enough for landholders to invest in their housing.

The findings of this research also confirm that, whether or not land registration plays a role in approaches to strengthening the tenure security of the urban poor, the success of such approaches depends on the rule of law environment in which they are implemented. If the rule of law is weak, rights that are granted to landholders cannot be enforced. Tenure security thus requires at least the basic rule of law elements to be in place, such as government institutions that abide to the law, a substantive democracy, and independent and impartial institutions of dispute settlements to which every aggrieved person has access. Therefore, approaches to strengthening the tenure security of the urban poor should be part of an integrated package of measures that are not restricted to land policies, but also focus on general reforms toward the rule of law.

Decentralisation in the land sector has the potential to support the tenure security of the urban poor, however the effectiveness of such support depends on the type of decentralisation implemented, and the specific circumstances surrounding the situation. Our research findings show that, in Bandung at least, political decentralisation has been predominantly positive; but the combination of administrative and fiscal decentralisation has had a negative effect on the tenure security of kampong dwellers. It appears that at least in cases where decentralisation involves a far-reaching type of decentralisation, such as devolution, this should be combined with control and supervision mechanisms between the executive, legislative and judicial branches of government and between different government levels.

9.7 Suggestions for further research

As discussed in Chapter 1, the research presented in this book has certain limitations. Due to time constraints and the sensitivity of the topic central to this study, research was conducted in Bandung only, and involved a limited number of cases that focus on 'external' risks of involuntary removal. During fieldwork, data analysis and the writing process, new developments emerged which have not been fully addressed in this book. While these limitations do not reduce the relevance of this research, these new developments highlight the benefits of continuing and broadening the scope of such research, to investigate these emerging issues.

The author recommends that further research could focus on 'internal' risks of involuntary removal. Matters that may be investigated include the type of disputes kampong dwellers contend with; the way they deal with these disputes; their outcome and of course the differences in relation to these matters between formal, semi-formal and informal landholders in terms of land tenure security.

It would also be valuable to investigate the effects of land registration on enabled land markets and access to credit. Questions in relation to the effects of land registration on enabled land markets may include whether formal, semi-formal and informal landholders sell their land and dwellings, and if so, to whom and at what price. Questions in relation to the effects of land registration on access to credit may include whether these various types of landholders have access to credit, why they may not, and whether those with access to credit make use of this facility.

In order to verify whether the research findings presented in this book are representative of (urban) Indonesia more broadly, it would be relevant to conduct further research in other cities in Indonesia. The research could start with a focus group discussion with key experts, at which occasion several problems identified in this study could be discussed. The most thorough approach would involve studying spatial planning and land clearance cases in several cities, and comparing these cases with the cases presented in this thesis, with an analysis of any differences and the reasons for these differences.

In closing, it would be valuable and interesting to conduct research on the effects of the recent reforms enacted and announced, alongside the reforms suggested in this book. This requires longitudinal research in Bandung, and particularly in the kampongs where research has been conducted for the present study.