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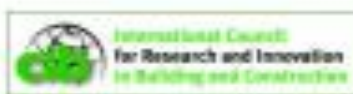
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Land Tenure Security According to Land Registration Systems in Iraq

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Abstract

Land Tenure Security (LTS) is a significant way in which the land user's rights are protected. It can be safeguarded under different forms that are included in various concepts, practices and influences which can be registered and protected officially. In Iraq, land tenure administrations have deep historical foundations reaching back to different periods related to land tenure, however, the current land systems such as registration and recording systems are greatly influenced by conflicting policies and ideologies that control its programs and reforms, and this indicates a real need for more research within this area.

Therefore, this paper aims to investigate this gap by studying the link between land tenure security and the Iraqi land administration regulations and its management which have previously been, and may currently be, linked institutionally. Focusing on the Iraqi land institutional frameworks, this research considers the land registration process, the buy–sell process, and the registration process for obtaining approval for land tenure security. The paper will deal with both the Iraqi Land Institutional Structure (ILIS) and LTS within different periods related to LTS. It also focuses on tenure security aspects in the current conflict period in Iraq after the fall of Ba’athist regime in 2003.

The data collection is built on reviewing the available data and documents and then performing analysis in order to produce results contributing to the final findings. Accordingly, the paper concludes that the history and development of the LTS in Iraq were identified via its social, political and religious settings. It stresses that land registration systems in Iraq were linked directly with the main domination of feudalism and tribalism systems relating to the landlords in rural and semi-urban areas. There is an interconnected matrix of legal, social, religious and economic factors which are linked directly with the ILIS aspects, particularly in the context of the LTS.

Keywords: Land, Tenure, Security, Land registration, Urban, Iraq.

Background

Land and property ownership rights are an essential human right. Tenure is a matter of awareness, and can be safeguarded under various forms, securing the rights of land users. The UN-Habitat report (2008, p5) defines tenure as “the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land”. In other words, tenure reflects relationships between people and land

directly, and between policies in their dealings in land. It is worth noting here that tenure has been defined as the relationship among people with respect to land resources (Payne, 2001; UN-Habitat, 2003a; Franzén, 2009; FAO, 2012).

As a result, land tenure can mean the ways in which a society allocates the titles by which land rights are held. The UN-Habitat (2005) showed that land tenure is an issue of varying elements created to manage land rights by the registry titles within the institutional states. Thus, land tenure should primarily be viewed as a complex set of rules that govern land use and rights to land ownership.

In practice, the management of land tenure and tenure security may engage in a wide range of issues related to land users and policies that control users' rights. The literature stresses that tenure policies need to be related to the capacity of institutions, communities and other stakeholders associated with land management and administration (Abelson, 1996; UNCHS, 1996; Davis, 2004; Tebbal and Ray, 2001; UN-Habitat, 2006b; [Gulyani and Bassett, 2007](#)). This is a theme echoed by the UN-Habitat report (2012) and the United Nation Millennium Development Goals report (2013) which clarified the role of documented tenure term, as the protection of ownership rights that should be issued through a legal institution's framework.

The general picture of the literature has focused on how to help governments implement the process of Urban Land Tenure (ULT) securing access to land rights for their people. It concluded that documented forms of tenure are important to save ownership rights and avoid forced eviction ([Abelson, 1996](#); [UNCHS, 1996](#); [Davis, 2004](#); UN-Habitat, 2006b; UN-Habitat, 2012). In addition, it states that tenure security is linked with the right to adequate housing which is relevant to a State's ability to protect rights through legal declarations and plans of action (UN-Habitat, 2012). Iraqi land management and administration has been well-documented since 1955 (Al-Nahi, 1955; Al Rashid, 2005; UN-Habitat, 2010b; Shaikley, 2013). It is now widely recognised that the Iraqi land tenure administration, in both the rural and urban sectors, were under massive influence from conflicting policies and ideologies of the Iraqi state and even religious rule that controlled its programs and reforms (Al Rashid, 2005; UN-Habitat, 2010b). These same factors (weak governance) eventually caused social legitimacy and legally insecurity for land tenure administrations (UN-Habitat report, 2012; Shaikley, 2013).

In fact, consequences of state insecurity and inter-communal violence can contribute to land tenure insecurity. For instance, after the fall of the Ba'athist regime in 2003, there was a period of great influence from conflicting state policies. In addition, many reports indicate that an estimated 4 million Iraqis have fled their homes and 57% of the urban population currently lives in slum-like conditions (Al Rashid, 2005; UNICEF, 2007; UNRWA, 2012; Shaikley, 2013). Recently, the chaos of looting, multiple ownership claims and destruction of public records (in Iraq) have increased (UN-Habitat report, 2012; Shaikley, 2013), causing more influence on land tenure security.

With this in mind, the literature has focused on the sustainable institutional aspects of the administration as the principal mechanism through which tenure security can be sought. As a result, the absence of an ability to address the more fundamental supply rights of land, inappropriate regulatory frameworks and weak financial mechanisms; all lead to a lack of Iraqi tenure security.

The Iraqi land tenure indicators

The paper focuses on examining the Iraqi land tenure policies, practices, and the land legal structures, presenting the issues involved in tenure security. It also describes the related systems in order to improve tenure security and identify the main indicators, as discussed below:

The Iraqi Social and Political Influence

Iraq is a multi-cultural society and post war country; it currently suffers many abnormal situations. Iraqi livelihoods, living standards and basic infrastructure services have been deeply damaged (UN-Habitat, 2007; UNRWA, 2012; Shaikley, 2013). Iraqi social and political conflicts have an important influence on land tenure security. Many reports indicate that an estimated four million Iraqis, nearly 15% of the total population, have fled their homes (Williams, 2007; UNICEF, 2007; Razokhi, 2006; UNRWA, 2012; Shaikley, 2013). Furthermore, the majority of the urban population is still suffering from a lack of access to safe drinking water, sanitation, and basic health services, in addition to the lack of electricity (UN-Habitat, 2010; Shaikley, 2013).

In addition, the Iraqi political situation had a significant influence on the migration inside and outside the Iraqi cities. For example, approximately 1.9 million people have sought refuge inside Iraq (UNRWA, 2012), in addition to the 2.2 million which have crossed the Iraqi border into neighbouring countries, and the 57% of the urban population which currently lives in slum-like conditions (UNRWA, 2012; UN-Habitat report, 2012; Shaikley, 2013).

Therefore, state insecurity and inter-communal violence plays a significant role in activating the dislocated millions of people outside the Iraqi cities, which in turn has established one of the more serious relocation problems both during and after the 2003 war. That leads to a significant problem for millions of householders to save their land tenure rights and also for authorities to control such migration within such political situations.

The Influence of the Ethno-Genesis

Up until the end of the nineteenth century, as pastoral nomads, the tribes in the southern region of Iraq have influenced local frameworks for a ruling dynasty and tribal state. For example, Yitzhak (1994, p.443) stated that "...in 1867, 50 percent of the population in southern Iraq were nomads and 41 percent were cultivators, by 1905 this had changed to 19 and 72 percent, respectively". However, that percentage was halved throughout the twentieth century (Franzén, 2009; Shaikley, 2013) where the Iraqi urban dwellers increased their numbers much faster.

According to the vast influence of pastoral nomadic tribes in southern regions of Iraq, Yitzhak (1994) stated that these tribes were gradually forced to establish primitive settlements under the form of tribe unity. In the beginning the tribes were displaced pastoral nomads living a rural life and then they were organized within primitive neighbourhoods. The Al-Nasiriyah territory, for example, was established as a tribal city ruled by the clan dynasty of the sheikh (Yitzhak, 1994). Thus, land ended up registered in the name of the tribe sheikh, Naser Basha, and even the city took its name (Yitzhak, 1994; Franzén, 2009).

However, the tribal background was a working political alliance of clans based on social and religious conceptions. According to tribal rules, the tribal lands are private property and

owned in the name of the tribal sheikh, who was thereby presenting his tribe's men (Yitzhak, 1994; Shaikley, 2013). In addition, the land ownership according to tribal rules is converted between men only (Yitzhak, 1994), that means the tribal lands are the ownership of tribe's members under the name of the sheikh. According to Shaikley (2013) land ownership under the rural and tribal background, is a right of men.

That means that land tenure rights are influenced by gender regulations according to tribal rules of ownership, since the land is registered in the name of the family men while women do not have that right.

Religious Tenure Systems

The UN-Habitat (2008) stated that within religious tenure systems, a number of tenure security categories exist. In a given authority, these include various types of shared ownership. For example, in an Islamic land tenure system there are four main categories within the Islamic law (*Shari'a*): the term '*Waqf*' is land 'held for endowment'; '*Mulk*', or private ownership lands; and '*Miri*' term as the state controlled land which carries '*Tassruf*' or the government rights to use land, and the '*Musha*', or communal lands, (UN-Habitat, 2008; Shaikley, 2013). It is important to recognize the essential characteristics and applications of religious tenure systems that could work as an impediment to urban renewal and efficient land management. These include, for example, the *Waqf* lands within the Islamic tenure system which hold substantial areas of land allocated for charitable or religious endowment. The ownership of this land and the *Waqf* lands cannot be repossessed (UN-Habitat, 2008).

Therefore, these types and applications of land tenure show the effective role of the religious systems in Islamic countries and how these systems can work as major factors against the registry requirement of land ownership. In summary, it should be acknowledged that Islamic land laws (*Shari'a*) have a vital and deep dynamic existence within the active systematic evolution of Islamic Ownership concepts (figure 1).

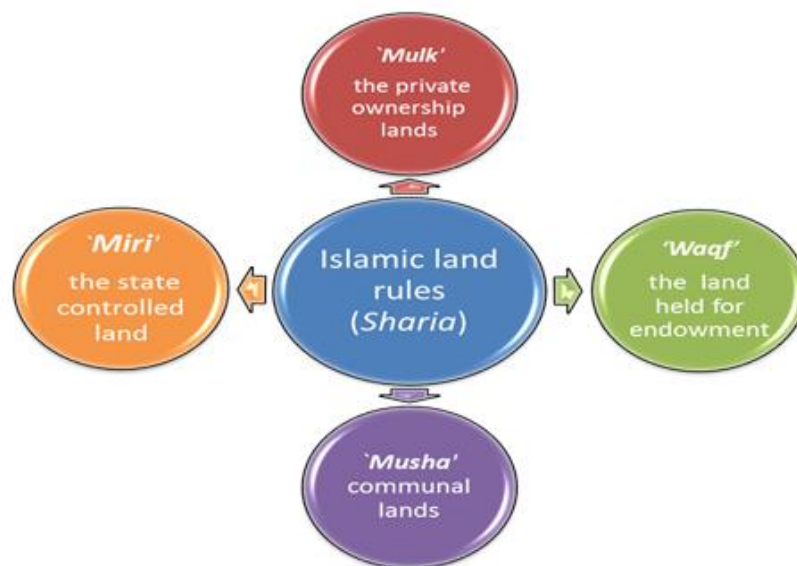


Fig. 1: The legitimate characteristics of land tenure under Islamic laws (*Shari'a*).

The Iraqi Historical Background of Land Registration

Iraqi land administration can be classified within four main periods according to the main administration forms of a land register and ownership title deeds:

The Ottoman Land Ownership Period

This period started by the Ottoman occupation of Iraq in 1534 (Shaikley, 2013). During the Ottoman period, most of the lands were owned in a feudal system, by the powerful families of tribal lords (Sleglet and Peter,1983; USAID, 2005; Sheikh, 2013). In Iraq, according to Batatu (1978), land was held by socio-economic and political factors which combined to inhibit the development of individual landholding. In fact, the land was held by the tribal landowners, many of whom were tribal sheikhs. Land tenure was classified into several categories with legal sources of transfer. Sheikh (2013) included a category, such as the TAPU, that provides individual rights while most of the land ownership was owned by legal sources of ownership title deeds.

However, further TAPU grants were banned after 1881, and the Ottomans made numerous attempts over the next thirty years to repossess the lands (Sleglet and Peter, 1983). Thus, during the era of the British occupation in 1914 some 80 percent of the land was *Miri* and a small fraction was TAPU (Sleglet and Peter,1983; Batatu,1978; Sheikh,2013).

In practice, Iraqi land administration was established during the Ottoman period. The main land reform within this period can be identified into the main categories of land owned by the state and public land use, land held individually, and finally, land held by religious rules (Table 1).

Table 1 : The Ottoman Main Land Ownership Regulations in Iraq.

<i>Land Type</i>	<i>System Name</i>	<i>Regulations</i>
• <i>Privately held Land</i>	<i>TAPU</i>	<i>Ottoman land rights law</i>
• <i>Owned by Ottoman State</i>	<i>Ameriya (Miri)</i>	<i>Ottoman Land Rights law</i>
• <i>Endowed Lands</i>	<i>Waqf</i>	<i>Ottoman land rights law</i>
• <i>Public Land for general use</i>	<i>Mewat</i>	<i>Ottoman land rights law</i>

The British Mandate Period

Under British control, the form of land Ownership title deeds named ‘TAPU’ was ordered to be examined by registry institutions. That ownership examination led to the establishment of the Real Estate Registration (RER) which was issued under Declaration No. 24 (1920) (Sleglet and Peter,1983; USAID, 2005; Franze´n, 2009). The British realised the importance of tribal Sheikhs. Franze´n (2009) states that they gave them vast legal and taxation powers that effectively transformed them into feudal landlords.

However, during the British Mandate period, types of land regulations were achieved through new rights of land use and benefit. Sheikh (2013), for example, has listed a wide range of land rights use for a fixed term. However, land distribution within the old policy of feudalism was encouraged by British policy (Franze´n, 2009; Shaikley, 2013), while the religious forms of land ownerships such as the *Waqf* were kept from the Ottoman period (Franze´n, 2009). After 1920, the Kingdom of Iraq began for the first time to play a role in the land registration process. For example, Sleglet and Peter (1983) and Franze´n (2009) stated that with the old

document known as the TAPU was issued an Arabic translation of the law (No. 727) dated (January 28, 1929).

In practice, within this short period, the Iraqi land system was slightly changed while most of the land regulations are still influenced by the old policy of feudalism and tribalism (Table 2).

Table 2 : Land Rights Categories and Practices in Iraq during the British Mandate.

<i>Land type</i>	<i>System</i>	<i>Regulations</i>
• <i>Privately held land.</i>	<i>Rights gained through TAPU Authorization/allocation.</i>	<i>Real Estate Registration RER; Declaration No. 24 (given 1920).</i>
• <i>Ameriya lands</i>	<i>Ameriya (Miri) lands (State land).</i>	<i>Declaration No. 15 (given December 18, 1918). Alezma 10 Land Rights Law (an old Ottoman land system established about 1890)</i>
• <i>Endowed lands.</i>	<i>Waqf</i>	<i>Ottomans Land Rights Law</i>

The Iraqi Independence Period

The Iraqi land administration system in an independent Iraq can be divided into two main periods; the period of the land socialism reform and the Arab nationalism of the Arab Socialist Baath Party (ASBP). *Qasim*'s reign, the stage of social land reform, was a short era (1958-1963). Built on socialism, the old feudalism and tribalism systems were demolished (Al Rashid, 2005; Franze'n, 2009; Shaikley, 2013).

Although the era was short and with political problems, *Qasim*'s policy also played a significant role in land ownership reforms; for example, Al Rashid (2005) and Shaikley (2013) stressed that the first Iraqi modern land polices were linked directly to the demolition of feudalism and tribalism which both related to the landlords in Iraqi rural and semi-urban areas.

In context, the Arab Socialist Ba'ath Party's (ASBP) political development went on to argue for Arab Nationalism. Iraqi land administration under the ASBP ideological policy was concerned with the centralized system (ASBP Article No. 49 of 1972) (Franze'n, 2009; Shaikley, 2013). In line with socialist ideology, Al Rashid (2005) and USAID (2005) showed that by 1974 the task of state ownership of the land, targeted by the land reform act of 1958, had been completed. Additionally, Al Rashid (2005) stated that by the end of the 1970s, the old Ottoman land administration system, the basic TAPU land system of registration, was replaced finally by the Real Estate Registration Departments (RERD), which created an improved title issuance system and established the RERDs throughout the country.

In summary, during the previous periods of the Socialist and Ba'athist policies, the basic system and the legal body policies relating to Iraqi land were identified. Also the land ownership document was recorded and validated and held the title deed document as the national legal proof of ownership.

The Iraqi Conflict Period (2003-to date)

After the fall of the Ba'athist regime in 2003, there was a period of great influence caused by conflicting social and state policies. For example, the new Iraqi government was faced with a huge legal problem regarding the transfer of lands and properties ownership which had been

removed by Ba'ath from thousands of families (Al Rashid, 2005; United Nation report, 2009; UN-Habitat report, 2010; Shaikley, 2013). Also, the Iraqi refugee crisis still presents a national humanity problem. Thus, by returning to Iraq, refugees could presently have more influence and use this as an indicator of tenure insecurity in vulnerable Iraqi communities with legal challenges to urban land tenure problems. In order to solve this problem and with the aim of encouraging the Iraqi refugees to return, the Iraqi administration established the national legal committee to resolve property disputes (Al Rashid, 2005).

Many reports indicate that current social and political conflicts are important explanatory factors with potentially grave consequences. For example, the UN-Habitat report (2010) declared that in Iraq as a result of conflicts, urban residents living in slum conditions rose from 2.9 million in 2000 to approximately 10.7 million in 2010. Recently the chaos of looting and destruction of public records have also increased (UN-Habitat report, 2010).

In summary, the legitimate characteristics of land tenure established its own land laws based essentially on religious regulations of ownership in specific arrangements and administrations and across the Muslim majority.

In practice, the Iraqi basic land tenure categories and practices of the previous periods are listed in Table (3), and the Iraqi factors influencing the security of land tenure are illustrated in figure (2).

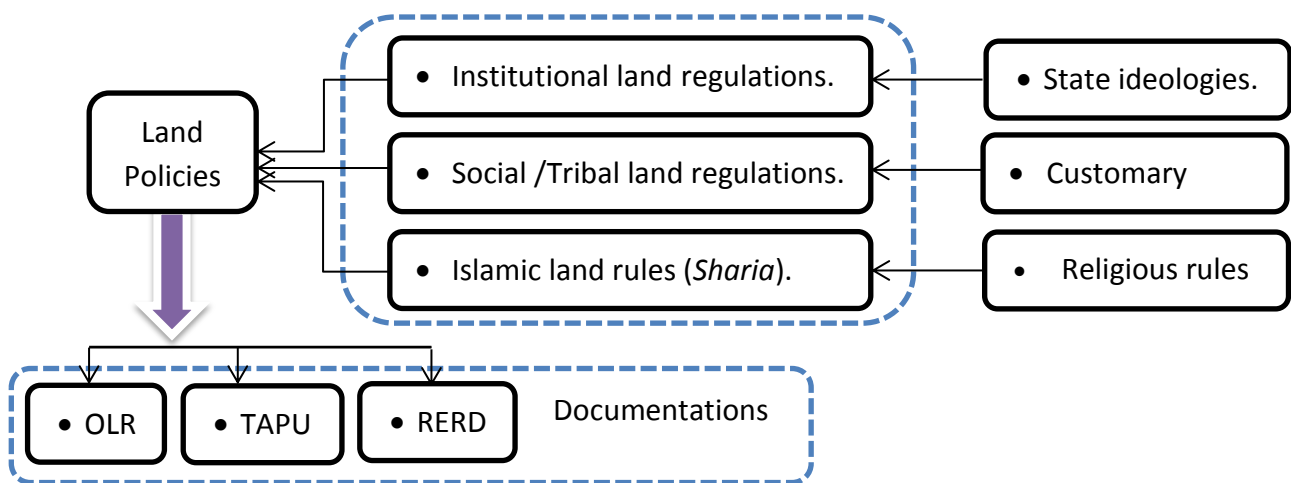


Fig. 2 : The Iraqi main Factors influencing the local Systems of Land Tenure.

Table 3 : Iraqi basic Land Tenure Categories and Practices.

<i>Land Type</i>	<i>Contributing</i>	<i>Practices</i>	<i>Legal source</i>
<i>Ameriya (Miri)</i>	<ul style="list-style-type: none"> • <i>State land, owned by governorate.</i> 	<ul style="list-style-type: none"> • <i>The Ottoman era and still exists under state regulations.</i> 	<ul style="list-style-type: none"> • <i>Ottoman Land Rights.</i> • <i>State regulations of ownership.</i>
<i>Mulk</i>	<ul style="list-style-type: none"> • <i>Rights gained through TAPU title, allowing various degrees of freedom in the use of the property.</i> 	<ul style="list-style-type: none"> • <i>Private ownership and governed by land rights laws, still exists.</i> 	<ul style="list-style-type: none"> • <i>Ottoman Land Rights.</i> • <i>State regulations of ownership.</i>
<i>Waqf</i>	<ul style="list-style-type: none"> • <i>Mainly religious endowments, translation of private ownership within an endowed land governed and regulated by Islamic law.</i> 	<ul style="list-style-type: none"> • <i>The Ottoman era, still exists.</i> 	<ul style="list-style-type: none"> • <i>Ottoman land rights</i> • <i>The British Mandate land rights.</i> • <i>The recent State regulations laws.</i>
<i>Empty land</i>	<ul style="list-style-type: none"> • <i>The dead land (Mewat) is undeveloped land at a distance from any town or village.</i> 	<ul style="list-style-type: none"> • <i>The Ottoman era.</i> 	<ul style="list-style-type: none"> • <i>Ottoman land rights</i> • <i>The British Mandate land rights.</i> • <i>The recent State regulations laws.</i>
<i>Land rights use for a fixed term</i>	<ul style="list-style-type: none"> • <i>Rights of use and benefit land.</i> 	<ul style="list-style-type: none"> • <i>The Ottoman era, still exists.</i> 	<ul style="list-style-type: none"> • <i>Ottoman Land Rights.</i> • <i>State regulations of ownership.</i>
	<ul style="list-style-type: none"> • <i>Rights of use and benefit for a fixed term of years during which the land and property is still owned to grantor.</i> 	<ul style="list-style-type: none"> • <i>The Ottoman era, still exists.</i> 	
<i>Communal lands</i>	<ul style="list-style-type: none"> • <i>The term was used at village level to denote either common undivided land or communal grazing land.</i> 	<ul style="list-style-type: none"> • <i>The Ottoman era, still exists.</i> 	<ul style="list-style-type: none"> • <i>State regulations of ownership laws: Civic Code Art 68 (1958). Civic Code Bk. 1 (1929).</i>
<i>Unit/plot</i>	<ul style="list-style-type: none"> • <i>User residence ownership rights.</i> 	<ul style="list-style-type: none"> • <i>Still exists under the new state regulations.</i> 	<ul style="list-style-type: none"> • <i>Ottoman land rights.</i> • <i>Pastoral lands, as opposed to cultivated land.</i>
<i>Leases</i>	<ul style="list-style-type: none"> • <i>Rights of use and benefit for specific amount and period.</i> 	<ul style="list-style-type: none"> • <i>Still exists under the state renting regulations.</i> 	<ul style="list-style-type: none"> • <i>Ottoman land rights.</i> • <i>State regulations of ownership such as: Law 87/1979 .</i>
<i>Sell-Buy Process</i>	<ul style="list-style-type: none"> • <i>Long complex transaction procedures that takes place at the RERD.</i> 	<ul style="list-style-type: none"> • <i>Still exists under the state renting regulations.</i> 	<ul style="list-style-type: none"> • <i>Issuing the Title Deed to be examined accurately at the RERD.</i>

Summary and Conclusions

In this paper, the interconnection between the Iraqi land administrations and land tenure security were investigated. The paper suggests that Iraqi land tenure security is associated with a wide range of relationships related to social, ideologist and religious aspects. There is an interconnected matrix of legal, social, and economic factors linked with the land aspects. The history and development of the LTS in Iraq were identified via its social, political and religious settings.

These motivation indicators will help to drive and increase the efficiency and accuracy of the local urban sectors and to adopt a certain ULT application in Iraqi cities. It can pose the problem of how the Iraqi institutional framework and legislation technologies promote tenure security working between land users and land policies to ensure that individual and community rights are documented and protected.

As argued in the introduction, the issue of Iraqi land tenure legality / illegality and insecure tenure with the current consequences can be dependent on the ability to define legal requirements regarding access to land and property. And the Iraqi land arrangements can help to illustrate misconceptions about the critical local factors influencing the LTS.

A review of land policy in Iraq should be placed high on the government's agenda. What is required is a rather more active attitude from the matrix of legal, social, and economic factors linked with the land aspects, and to reduce political conflicts and provide support in the form of an urban planning scheme to enhance urban development. With this paper, it is expected that more research on this issue will be useful.

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