

The Plot Thickens ~ Decentralisation and Land Administration in Indonesia

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Introduction

The turbulent events in Indonesia during the closing years of the 20th century prompted the reopening of public discussion on many long-standing issues of social and economic reform. Land reform is one of many agendas that has preoccupied policy makers, scholars and activists as the nation attempts to reinvent itself in the wake of the collapse of the 32-year New Order government of ex-President Suharto. Voices from different sectors of society and state question whether Indonesia's 40-year-old agrarian laws and new regional and village autonomy laws are appropriate to address persistent and growing problems of social welfare and justice and stagnating production.

Like other post-colonial states in South and Southeast Asia, Indonesia inherited the doctrine of state control over 'waste' land and forests from its erstwhile colonial rulers. Over 70 percent of the country's entire terrestrial area is designated as forest land, thus subject to direct state control. Much has been written over the past two decades of the Indonesian state's (mis)management of forest lands, and the problems inherent in the colonial (and post-colonial) '*domeinverklaring*' model (e.g., (Moniaga 1993; Barber, Johnson, and Hafild 1994; Barber, Afiff, and Purnomo 1995; Repetto and Gillis 1988; Dove 1983, 1993; Peluso 1992, 1995; WALHI 1993; Sunderlin and Resosudarmo 1996; Thompson and Duggie 1996; Pierce Colfer and Resosudarmo 2002). This essay will not review this debate, but only refer to the issue as it pertains to ongoing decentralisation efforts and a few specific cases cited as examples. The primary focus of this essay is the issue of land administration and management in Indonesia since the beginning of the '*Reformasi*' process, focusing more on the remaining 26 percent of the land allocated for settlement and agriculture.

Although Indonesia's landmark Basic Agrarian Law of 1960 was among the most progressive of any country for its time, it has done little to resolve problems of land ownership and tenure in the country. Presently, only about 30 percent of Indonesia's non-forest land is titled, compared to 90 percent in Thailand and 80 percent in the Philippines (Thamm 1996). The National Land Agency (Badan Pertanahan Nasional [BPN], formerly the Directorate General of Agrarian Affairs in the Ministry of Home Affairs) has long had a reputation as one of the most corrupt and inept agencies in a government not known for scrupulousness. Land lore is rife with tales of contradictory regulations and instructions, graft, manipulation, excessive fees, deception, fraud and confusion. Whereas land is of singular importance to rural and peri-urban households, most appear to accept the fact that without special government mass-titling programs, certification of ownership or other rights is probably not available to them, unless they are ready to pay official and unofficial fees that often equal or exceed the market value of the land itself. Even then, victims and observers tell tales of multiple certificates for single parcels of land, certificates being issued to the wrong people, and of land being expropriated without proper confiscation even after certificates had been issued. There exists a rich tapestry of 'urban myths' in many areas about the relative 'power' of various types of documents in assuring a measure of tenure or ownership security. The array of different types of documents and rights (*hak*) that exist – *hak milik* (right of ownership), *hak guna usaha* (right

of exploitation), *hak bangunan* (right of building), *hak pakai* (right of use), *hak buka tanah* (right of opening up land), *hak bagi hasil* (sharecropping rights), *hak menempati* (right to occupy), etc., also *hipotik, crediet verband* (mortgage and credit security arrangements still referred to in the original Dutch) and the array of *girik, ketitir, Leter C* (proof of ownership documents maintained by village governments in most of Java and parts of Sulawesi, also dating back to the colonial period), and a mind-boggling variety of tax register documents certainly provide ample raw material for this lore.

The World Bank and bilateral aid programs from Australia, the Netherlands and United States have expended considerable effort and resources to assist the Government of Indonesia to reform its land law and bureaucracy, in order to develop rational land markets, ease investment procedures, diffuse simmering social and political conflict, and lay the foundation for overcoming rural poverty and stagnation. Countless policy studies and recommendations have been produced, which now moulder in filing cabinets and cardboard cartons in closets and stairwells of the BPN office in South Jakarta. The most recent of these, the Indonesian Land Management and Policy Development Program (LMPDP), was completed in April 2003, producing another set of recommendations for a new World Bank loan for the Second Land Administration Project (LAP II).¹ The 86 million dollar LAP I Project (1994-2000) did manage to rack up some impressive numbers: registering nearly 2 million parcels of land, cheaply, efficiently, and largely free of conflict or error.² LAP I was the first of a series of LAP projects with the goal of registering all land in Indonesia by 2020.

Ulayat

The Basic Agrarian Law (BAL) of 1960 was the first major legislation enacted in Indonesia since independence and the 1945 constitution, an attempt to create a new, uniquely Indonesian framework for managing land and natural resources. The law is based on Article 33 of the constitution, which states that land in Indonesia has a ‘social function’ and that the earth, water, air and natural riches are controlled by the State of Indonesia as the representative authority of the people of Indonesia. Land is seen as the fundamental provider of food, shelter and clothing – rights that are guaranteed in the constitution and national philosophy *Pancasila*. This notion is perceived to be in direct opposition to a Western concept of land as a factor of production or commercial commodity to be bought and sold in a market economy with financial return as the main consideration (MacAndrews 1986).

Deeply enmeshed in the text and intent of the BAL is the concept of ‘*ulayat*.’ *Ulayat* usually refers to common, or community-controlled land, and its precise translation is problematic. The term (actually, its Dutch equivalent ‘*beschikkingsrecht*’) was central in the works of Cornelius Van Vollenhoven, founding father of the ‘*Adat Law School*’ at Leiden, who premised that Indonesian *adat* (customary) laws were the expressions of a thought world alien to the minds of Europeans, but which could form the basis for a comprehensible and coherent legal system for the native population of the Indies if subjected to diligent and sympathetic investigation by Western jurists (van Vollenhoven 1918, 1931, 1933; ter Haar 1948; Supomo 1953; Hooker 1978; Wignjodipuro 1979). Generally translated as ‘right of disposal’ or ‘right of avail,’ Burns (1989) suggests that ‘right of allocation’ more closely captures the original intent of the term (though still fails to cover the whole concept). Because one of the basic features of Van Vollenhoven and his followers’ definition of *ulayat* is that theoretically neither

1 The author served as Community Consultation and Social Assessment Expert on the LMPDP Project from September through December 2002.

2 Other LAP I components included Land Policy Development – producing a new set of policy studies and papers, and Institutional Development – mostly scholarships for BPN officials to study overseas.

the autonomous community, nor any one of its members, could alienate land forever, hence ‘right of disposal’ gives the wrong idea.

Van Vollenhoven presented six basic characteristics of *ulayat/beschikkingsrecht*:

- ❑ The autonomous *adat* community and its members may make free use of virgin land within its area. It may be brought into cultivation; it may be used to found a village; it may be used for gleaning; etc.
- ❑ Others may do the same there only with the permission of that community; without it, they commit an offence.
- ❑ For such use, outsiders must always pay some charge or give a gratuity in tribute, sometimes members of the community are also obliged to make such payments;
- ❑ The autonomous *adat* community retains in greater or smaller measure the right to intervene concerning land within its area;
- ❑ The autonomous *adat* community is accountable for whatever transpires within its area if there is no one else from whom recovery can be made (for examples, offences for which the culprit remains unknown).
- ❑ The autonomous *adat* community cannot alienate *ulayat* rights in perpetuity (Burns 1989:9-10).

Another important *adat* concept elevated by Van Vollenhoven and his followers was the notion of the ‘social function’ of land, resources and labour. A community’s assets are to be used for the greatest good of the entire group.

These concepts resonated with the drafters of both the 1945 constitution and the 1960 Basic Agrarian Law, who were striving to create a new, wholly Indonesian polity. They envisioned an entire national community guided by an overarching sense of social function. The state, as the ultimate arbiter of ‘national *adat*,’ was in effect granted *beschikkingsrecht* rights to all the land, sea and natural and economic resources in the country.

The BAL was intended to eliminate the dual (i.e., Western and *adat*) system of land law of the colonial past by introducing an entirely new system of unique Indonesian character and applicability. As described above, it was based on the (Dutch) Indonesian concepts of *adat* and *ulayat* – particularly social function and the common good. As well, it contained stipulations about the application of local *adat* law and norms, stating in Article 5 that ‘*adat* applies to agrarian matters unless it conflicts with national and state interests, Indonesian socialism, and legislative regulations in which the national law provisions prevail.’ In effect, the duality of the previous system was retained, though in more ambiguous form.

The 1960 law emphasised land reform, setting limits on the maximum and minimum size of holdings, nationalising lands held by individuals or corporations in excess of the maximum size and/or redistributing these to the people based on need, and requiring landholders to prevent damage to the land resource as well as improve its fertility. The state reserves the right to reclaim any land for purposes of ‘national good’ (social function) – even a ‘*hak milik*’ (ownership) certificate is only strong (but not final) evidence of ownership (MacAndrews 1986).

A New Order

As the BAL was being framed and passed into law, Indonesia was sliding into ungovernability. The year before, President Sukarno had dissolved parliament and declared himself ruler

for life, initiating a system he called ‘Guided Democracy’ (which was neither guided nor democratic). Runaway inflation evaporated people’s income and savings, regional politicians and military commanders became increasingly defiant of Jakarta’s leadership, political parties and movements – particularly political Islam and the robust and aggressive Indonesian Communist Party (PKI), grew increasingly restive. The government failed to produce the scores of implementing regulations needed to implement provisions contained in the BAL, and most of the changes stipulated in the law went unheeded – except for numerous unilateral actions on the part of Communist-led farmers’ groups who initiated their own land reform programs by seizing sections of state and private plantations and state forest land. In 1965 an abortive coup and successful countercoup brought an end to Sukarno’s Guided Democracy and ushered in the military-led New Order government headed by Colonel (later Major General) Suharto.

After eradicating the PKI, reigning in rebellious regional military commanders and politicians and brutally restoring order in the countryside and cities,³ the new government’s next task was to bring order to Indonesia’s ‘basket case’ economy. Sukarno’s ‘Old Order’ nation building and self-reliance gave way to export-led economic growth and development. In rapid succession, the New Order government devalued the Rupiah; lifted price controls; reinstated bank reserve requirements; eradicated multiple exchange rates; raised interest rates; stopped automatic Central Bank credits to state enterprises; ended subsidies for key consumer goods; abolished all quantitative restrictions on imports; returned many nationalized enterprises to their former owners; and promulgated easygoing foreign and domestic investment laws. The government also passed several new laws on natural resource management – including forestry,⁴ mining,⁵ oil and natural gas,⁶ resettlement and transmigration,⁷ irrigation,⁸ and fisheries.⁹ These latter laws in many respects directly contradicted both the overall spirit and many premises of the Basic Agrarian Law, which was originally envisioned as an ‘umbrella’ law for all natural resource management in the country (Moniaga 1993). The Forestry Law, in particular, carved out over 70 percent of the country’s entire terrestrial territory as State Forest, which was not subject to the Basic Agrarian Law, but became a ‘country within a country’ under the control of a new and increasingly powerful Ministry of Forestry. These new policies and laws were deemed necessary to attract the investment needed to pull Indonesia back from the brink of bankruptcy.

Many of the new policies and laws were painful and unpopular, but the international payoff was quick in coming. Western creditors formed the International Governmental Group for Indonesia (IGGI) to provide new concessionary loans to ‘ease the dislocations caused by the structural adjustments’ until the economy started to pick up momentum in the early 1970s (Woo, Glassburner, and Nasution 1994: 29).

3 Estimates of the number of people killed during the post-coup bloodbath range between 100,000 and 1,000,000. Most of the killing took place in areas where land-reform conflicts and ‘unilateral actions’ (*aksi sepihak*) had been prevalent.

4 Law No. 5 of 1967 on Forestry (*Undang-undang No. 5 Tahun 1967 tentang Kehutanan*)

5 Law No. 11 of 1967 on Mining (*Undang-undang No. 11 Tahun 1967 tentang Pertambangan*)

6 Law No. 8 of 1971 on Oil and Natural Gas (*Undang-undang No. 8 Tahun 1971 tentang Minyak and Gas Bumi*)

7 Law No. 3 of 1972 on Resettlement (*Undang-undang No. 3 Tahun 1972 tentang Transmigrasi*)

8 Law No. 11 of 1974 on Irrigation (*Undang-undang No. 11 Tahun 1974 tentang Pengairan*)

9 Law No. 9 of 1985 on Fisheries (*Undang-undang No. 9 Tahun 1985 tentang Perikanan*)

The rest, as they say, is history. Economists cite Indonesia during the three decades beginning in 1966 as one of the most remarkable recoveries of the twentieth century (Hill 1996). The country embarked on a long period of sustained economic growth, becoming a magnet for foreign investment, particularly in the petroleum, forestry and mining sectors. Massive infusions of foreign aid and investment, followed by windfall profits from the OPEC price increases in 1973 and '79 and the revival of raw material exports allowed Suharto to build, over the course of the 1970s and '80s, a massive national bureaucracy that stretches to the farthest reaches of the archipelago. These funds also supported infrastructure, education, extension, health and industrial development projects that transformed Indonesia into one of Asia's 'emerging tigers.'

The social and environmental costs of this progress were high. Thousands of square kilometres of Indonesia's rich and diverse tropical lowland rainforest were reduced to smouldering moonscapes or seas of *alang-alang* (*Imperata cylindrical*) grass, or converted to rubber, oil palm or pulp plantations. Thousands of forest-dependent communities were displaced, or lost access to the *swidden* fields and hunting and gleaning grounds that had sustained them for generations. Migrant farmers from densely populated regions of Java, Madura and South Sulawesi followed logging roads into the interiors of Borneo, Sumatra and Sulawesi, practicing 'pioneer slash-and-burn' agriculture in areas where the soils would quickly lose their fertility (Vayda, Pierce Colfer and Brotokusumo 1980). Estimates of the deforestation rate in Indonesia since the 1970s range from 550,000 to over 1,500,000 hectares per annum (Hurst 1990; Repetto and Gillis 1988; World Bank 1995). Confrontations between local communities and state- and armed forces-backed concession-holders and migrant farmers were frequent and often violent. Cronyism and patronage led to ever-increasing concentration of political and economic power in the hands of a small group of conglomerates closely aligned to President Suharto and his family members, and tight political controls and a large and powerful intelligence and security apparatus suppressed dissent and public discussion of the pace and direction of change in the country.

NGOs and environmental groups began appearing in Indonesia during the late 1970s, and over the next two decades grew into a noisy rag-tag mob that continually 'pushed the envelope' of public discourse. Resource conservation, environmental and social justice and sustainable development were prevalent themes of NGO tirades. One particular target of NGOs' and indigenous communities' disdain was Law No. 5 of 1979 on Village Government, which they accused of replacing locally adapted social orders and structures grounded in norms and practices developed over generations of intimate interaction with local environments, with a 'cookie-cutter' form of government based on a Javacentric, pseudo-military model, which depended on funds and support from the centre rather than its local subjects for legitimacy and authority.¹⁰ The Indonesian government responded to these criticisms with a mixture of repression, concessions and co-optation. Global discourses of indigenous people's rights and indigenous knowledge systems found gained a sympathetic hearing (and garnered abundant case study material) within Indonesia. This, in turn, led over time to a 'greening' of government and multilateral agencies' rhetoric on development, and the passage of numerous laws and regulations on sustainable environmental management and people's participation. In fact,

10 Law No. 5 of 1979 and its scores of implementing regulations were the final piece in a national edifice of territorial control initiated with the passage of Law No. 5 of 1974 on Regional Government. These laws created a system of territorial control that paralleled the Indonesian military's territorial command structure. Indeed, active or retired military officers held many important positions in the Ministry of Home Affairs' bureaucracy.

Indonesia's environmental legislation is among the most progressive and comprehensive of any Asian country. Implementation and enforcement have been another story altogether.

The economic crisis that swept across East and Southeast Asia in 1997-98 exposed the flaws and contradictions in the New Order economic model, and President Suharto's 32-year iron grip on power ended abruptly in May 1998 amidst an outburst of street rioting set off by a brutal crackdown on student demonstrations that had nearly paralysed the capital Jakarta and other major cities over the previous few months. The New Order had finally run its course.

Reformasi

In his last act as President, General Suharto appointed Vice President Bahrudin J. Habibie, an eccentric engineering genius who lacked strong support within the armed forces or bureaucracy, as his successor. Perhaps attempting to establish legitimacy and retain power, President Habibie began pushing through a sweeping reform program. Draconian social and political laws were rescinded, new election laws passed, press controls relaxed, political prisoners released, and a referendum was organized to determine the future status of East Timor. For the purposes of this essay, the most significant reform measures of this period were Laws No. 22 on Regional Government¹¹ and No. 25 on Fiscal Balance between the Centre and the Regions,¹² which together establish the framework for a radically decentralized form of government in Indonesia. The hastily prepared laws fundamentally alter the relationship between Jakarta and regional governments, delegating significant decision-making and implementing powers to district and municipal (*Kabupaten/Kota*) governments. Law No. 22 replaced both the hierarchical Regional Government Law No. 5 of 1974, and the 'cookie cutter' Village Government Law No. 5 of 1979. After a frenetic preparation period, the new decentralization laws officially came into effect on New Years Day 2001.

This comprises the most far-reaching reconfiguration of governance in Indonesia since the mid-1960s. The resource management implications of this new framework of government are profound. Environmental organizations and NGOs, for many years Indonesia's most critical and outspoken civil society groups, were oddly quiet during this turbulent period. *Adat* law and local community control over territory and natural resources, usually prominent themes in national development discourse, were drowned out in the hubbub over delegation of political authority and administrative responsibility. It took more than two years for these issues to regain their place in the national debate.

District and municipal governments are now empowered to set resource use and spatial planning policy, and to manage revenues and budgets. The Ministries of Forestry, Petroleum and Mining have managed to retain a greater measure of centralized control over their respective realms than most other departments, nonetheless, many decisions that directly affect local people's access to and use of local forest, land, coastal and marine resources have been delegated to the districts.

Complex formulae are still being developed to determine the proportions of resource revenue that are retained in the respective districts and provinces, and how much is forwarded to Jakarta for redistribution. Laws are still being drafted to specify obligations and service standards for local and regional governments, including their role in managing natural resources. District and provincial assemblies (DPRD) are faced with the task of issuing scores of new regulations and decrees to administer local governments' new responsibilities.

11 *Undang-undang No. 22 Tahun 1999 tentang Pemerintah Daerah*

12 *Undang-undang No. 25 Tahun 1999 tentang Perimbangan Keuangan antara Pusat dan Daerah*

Whence the BAL?

Although the 1960 Basic Agrarian Law had been more-or-less gutted by the natural resource and investment laws of the 1970s and '80s, it continued to retain almost talismanic status among Ministry of Home Affairs and National Land Agency leaders and cadre. Its deeply nationalistic references to *adat* and *ulayat* and 'social function' assured these officials that theirs was a sacred mission – which in combination with the ambiguities in the law and lack of implementing regulations turned land affairs into one of the most arcane and convoluted of all government functions. Soni Harsono, one of the drafters of the original law and for many years the Head of the Directorate General of Agrarian Affairs and later the BPN, was deeply hostile to communal land ownership, seeing customary *ulayat* systems in the regions as a hindrance to progress and rationalisation of land management. The 'communalistic' nature of production and consumption is seen as 'wasteful' and 'inefficient' (Dove 1990), and when such groups protested against state or concessionaires' seizure of what they considered to be 'their' land, the distinction between 'communist' and 'communalist' narrowed or disappeared altogether in the authorities' views. On state forest lands, although the 1973 Forestry Law specifically recognises the traditional property rights of *adat* communities and their customs regarding forest exploitation, animal husbandry, hunting and forest products collection, it delimits these rights by stating that *adat* laws cannot be used to justify activities that would reduce forest production or protection functions, or prevent the implementation of the general plan provided by the government.¹³

Even in those areas not beclouded by matters of *ulayat* and customary stewardship, such as the urban, peri-urban and rice paddy regions where private property rights would appear to be more clear-cut and straightforward, citizens' attempts to acquire title for land are fraught with peril, and often frightfully expensive. The BAL stipulates that all privately held land under colonial law (*eigendom*) was to be converted to ownership rights (*hak milik*) within a year of the passage of the law, or the land would revert to state ownership. During the political and economic uncertainty that prevailed at that time, very few landowners did this, and 40 years later most urban plots in Jakarta and other large cities still exist in a state of bureaucratic and legal limbo. Most rural inhabitants of Java and other parts of the country where the colonial government had undertaken to register land still cling to *Leter C*, *ketitir*, *petuk*, *girik*, or other bits of paper dating back to *Nederlandsche Oost-Indische* days. In most village headquarters, these books and certificates are still meticulously maintained.

Corruption, and arbitrary land seizures for development projects, industry, resorts, or state forestry or plantation schemes have been a prevalent feature of Indonesian agrarian politics, and horror stories abound of multiple certificates being issued for the same properties or wealthy and well-connected individuals suddenly producing certificates for land that families thought they owned. Many district and sub-district agencies have crafted their own land certificate and taxation procedures and formalities, clearly benefiting from the uncertainty and lack of public knowledge of national land law. Industrialisation and urbanisation have led to the burgeoning of urban populations throughout the country, giving rise to vast, incredibly dense 'slum' communities within and around Indonesia's urban and industrial centres. While the residents of these communities have developed clear and intricate rules and arrangements pertaining to land ownership and even building codes within their neighbourhoods – and the government's grid of named and numbered grid villages (*Desa*), sub-village hamlets (*Dusun*), and neighbourhoods (*Rukun Warga* and *Rukun Tetangga*) has been emplaced – the actual of-

13 Articles 5 and 17, Law No. 5 of 1967 on Forestry.

ficial status of the land is terribly vague and tenuous. Slum clearance, often by deliberately set fires, is a regular feature of the landscape of Jakarta and other major Indonesian cities.

A national affiliation of agrarian reform NGOs known as the Consortium for Agrarian Reform (KPA) conservatively lists 1,500 unsettled major land conflicts in Indonesia, involving plantations, urban infrastructure projects, housing estates, forest and mining concessions, dams and reservoirs, and military and government complexes. During the years 1999 to 2001 they recorded 376 cases of land-related violence, involving nearly 5,000 people being threatened, beaten, kidnapped, shot and/or raped. Nineteen people have died, while another 14 are listed as missing. Over 307,000 hectares of crops were destroyed during these confrontations (KPA 2002).

These conflicts are reducing productivity, contributing to the ethnic and sectarian violence that is plaguing the country, and driving away investors. The need for agrarian reform in Indonesia has never been more urgent. In 2001, the Supreme Consultative Council (MPR: the highest lawmaking body in government) issued Decree No. IX/MPR/2001 on Agrarian Reform and Management of Natural Resources, requiring the government to review and reform the Basic Agrarian Law and related regulations, and all laws and regulations pertaining to natural resource management, exploitation and conservation in Indonesia. The decree states that patterns of land tenure and natural resource management have brought about a decline in the quality of the Indonesian environment and inequality and injustice in the ownership, use and exploitation of land and natural resources in the country, and that legislation on management of agrarian and natural resources is rife with overlaps, ambiguities and contradictions. Since the decree was issued, little if any progress on these issues has been achieved as the government of President Megawati Soekarnoputri wrestles with regional secessionist movements and ethnic strife, the protracted economic crisis still plaguing the country, endemic corruption, divestiture of assets appropriated by the government during the banking sector collapse, fine-tuning the decentralisation process, controversies over educational reform, private and political party militias, and preparations for the 2004 national election.

Agrarian Reform in the Post-New Order Era

In theory at least, devolution of authority to local government should foster improved natural resource management and promote sound, equitable development policy and programs, because of the closer proximity between decision-makers and those affected by their decisions, increased opportunities for public input and feedback, and greater accountability. Mission statements and policy documents of multilateral development agencies, international environmental organizations or political associations that promote sustainable development and social equity prominently feature such terms as ‘decentralization,’ ‘community participation’ and ‘sustainability’ – often in the same sentence. A good example of this premise can be found on the FAO Community Forestry Website:

The aim is to reduce the size and role of central government in order to increase efficiency of services, as well as to promote pluralism, democracy and public participation.

Experiences in Indonesia and a host of other developing countries are leading experts to question many of these assumptions. Under the decentralization scheme laid out in Laws No. 22 and 24 of 1999, central government allocations for regional governments are greatly reduced, forcing provincial and district governments to generate a larger portion of their own revenue. In the midst of the country’s protracted financial crisis, governments at all levels are hard pressed to meet routine expenses, much less provide improved services and infrastructure, and promote local development. This has ominous consequences for what remains of Indone-

sia's once vast tropical forest reserves, as well as coastal and marine resources and whatever terrestrial resources not still controlled by mining and petroleum and gas ministries.

In one of the best-known examples of what has come to be known as 'local revenue obsession' (*obsesi PAD*), the District Head (*Bupati*) of one district in East Kalimantan issued 223 small-scale timber licenses (HPHH) for concessions of less than 100 hectares. He granted all these permits by August 2000, four months before the 1999 Regional Government Law granting him authority to do so actually came into effect. Although 100 hectares is a relatively small forest area, multiplied by 223 this becomes 22,300 hectares. Issues of the location and of who benefits are also of concern (Pierce Colfer and Resosudarmo 2002). There are numerous similar examples from other districts in Kalimantan and Sumatra. In another case, the *Bupati* of Kupang, West Timor, distributed plots of beachfront land along Kupang Bay to members of his own staff and other district government agencies, a move he proudly described as 'increasing professionalism in government.'¹⁴ Some of these same lands had been the site of intense conflict a few years earlier when Jakarta issued a permit to a (non-local) entrepreneur to develop a salt industry. According to local residents, this land is already owned – mostly by migrant families from the nearby islands of Savu and Rote.

There are positive examples as well. Fauzi and Zakaria (2002) detail three case studies where NGO affiliates of the Consortium for Agrarian Reform conducted lawmaking training workshops for district parliament (DPRD) members, in Garut, West Java, Tana Toraja, South Sulawesi, and Sanggau, West Kalimantan. The training programs covered an in-depth analysis of the new Regional Government law and district parliaments' new roles and responsibilities, public consultation processes, followed by discussions and public forums on issues of village governance, community participation and natural resource management. The DPRDs of Tana Toraja and Sanggau proceeded to draft and pass new regulations on village government in their respective districts, restoring much of the form and authority of traditional structures that had been sidelined or annulled by the 1979 Village Government Law. In Garut, the training program did not directly result in the promulgation of any new regulations, but did serve to galvanise a local movement by farmers to reclaim land that had been converted to rubber and timber plantations during the previous regime, and facilitated the establishment of linkages between these farmers and local parliamentarians and government officials, some of whom are now helping to press their case with provincial and central government agencies.

In Wonosobo, Central Java, local farmers moved to retake land that had been turned into pine plantations by the state forestry corporation *Perhutani*. Much of this forest had already been pillaged – mostly by *Perhutani* officials and local government and military officials – who had established well-organised illegal logging industries with small mills operating in nearly every village and town in the district. Local farmers had long despised the pine plantations, claiming that these depleted surface and underground water sources and poisoned their cattle. Environmental rights NGOs from nearby Jogjakarta began organising farmer groups to promote sustainable agroforestry initiatives, while collaborating with local parliamentarians to negotiate with *Perhutani* to establish new forms of partnership with the farmers. When this failed, they lobbied the district DPRD to issue a new regulation establishing 'Community-Based Forestry' zones in the denuded areas. The regulation passed, attracting considerable media attention – and also the attention of the Minister of Forestry, who feared a 'domino effect' if other districts in Java began succumbing to pressure from farmers and NGOs, and reclaiming state forest land for their districts' citizens. The Minister pressured his colleague

14 The *Bupati* explained this remark by saying that these officials would not have to resort to corruption once they had established their own productive enterprises.

at Home Affairs to declare the Wonosobo district regulation illegal, since it clearly encroached on the central state's authority over forest land, and exerted pressure on the *Bupati* of Wonosobo to rescind the regulation.¹⁵ As this is being written, the issue remains unresolved. Hired thugs routinely destroy farmers' fields, and farmers retaliate by cutting and burning further into the remaining forest area. Currently in Wonosobo, farms located outside the state forest area present a much denser tree cover than the state forest land located higher on the slopes.

One particularly interesting example can be found in the *adat* territory of Bungamayang Sungkai, North Lampung, Sumatra. During the colonial era, Dutch East Indies officials had carefully mapped all customary *adat* lands in southern Sumatra, an area they saw as rich in potential for plantation development. Many of these maps still exist, and the national and provincial governments were usually careful to grant concessions only in the non-*adat* portions of Lampung and other Sumatran provinces. Lampung had been very sparsely populated until the post-independence period, when migrants from Java and other parts of Sumatra began moving there in large numbers. Several large transmigration settlements – some dating back to the colonial period – also dot the landscape. Eventually, nearly all arable non-*adat* land had been allocated, and the state began issuing permits on what had once been acknowledged as *adat* land.

The *adat* territory of Bungamayang Sungkai comprises about 120,000 hectares of arid, hilly land traversed by a few small streams and rivers. In the early 1980s, 40,000 hectares located in the centre of this tract were granted to the state plantation corporation PTPN VII to establish a sugar plantation and mill. A portion of this land was to be used for outgrower schemes where Javanese transmigrants and local Bungamayang farmers could grow cane with seed and fertiliser provided by the company. The venture was fairly successful, although the outgrower schemes were plagued with the usual problems of misappropriation, poor seed stock, late delivery of credit, seed and fertiliser, and underpayment for cane delivered to the mill by farmers.

By 2000, violent conflict over plantation land was becoming increasingly commonplace throughout most of Lampung. PTPN VII in Bungamayang Sungkai has been spared the sabotage and blockades that are driving other investors out of the province, however, most of the outgrowers had ceased producing cane, and the mill was running at about 40 percent of capacity. The *adat* council of Bungamayang Sungkai elected a new leader, an ex-student activist native son who now serves as Dean of the Engineering School at University of Lampung. Ir. Anshori Djausal set about strengthening and modernising the *adat* council, and is a leading figure in the provincial council of *adat* peoples, as well. At his urging, the local *adat* council entered into negotiations with the sugar company to seek a mutually beneficial solution to the deteriorating situation at the plantation.

The council and local residents did not want PTPN VII to leave their land; they simply wanted a better deal. Their solution was to 'adopt' PTPN VII as a citizen of the Bungamayang Sungkai *adat* community – a procedure that is traditionally performed when a man from another clan marries into a Bungamayang Sungkai family and wants to farm and raise a family there. Membership in the clan brings with it certain responsibilities, and new member PTPN VII gladly agreed to do a better job providing and maintaining infrastructure such as roads and public buildings, promised to hire and train more local residents for managerial positions at the plantation and mill, eliminate problems with credit, seed stock and fertiliser for

15 Both the Minister of Forestry and the *Bupati* of Wonosobo are members of President Megawati's PDI-P Party, where loyalty and unanimity take precedence over ideology or populist sentiment.

outgrowers, and to pay an honest market price for cane delivered. The company also ceded back all land within 50 meters on both sides of streams and rivers criss-crossing the plantation for the (re)establishment of *adat* forests, to be communally owned and managed, for gleaning, firewood and timber extraction, fishing and hunting. The agreement was read and signed at an elaborate ceremony attended by the *Bupati* and other government officials from North Lampung and PTPN VII officials from Jakarta and the provincial capital Bandar Lampung, who were then officially inducted into the clan.

This ‘win-win’ solution provides an excellent model for other trouble-plagued plantations and enterprises throughout the province of Lampung and beyond. It is particularly interesting as an expression of the vaunted ‘social function’ of land.

Decentralization and Land Administration

MPR Decree No. IX of 2001 raised hopes in many quarters that the Indonesian government would seriously address the long-overdue matter of reforming land and natural resource policy. In the wrangling that has ensued – between Ministries and other agencies at the central level, and between the central government and the regions – those hopes were quickly dashed. One complicating factor is that ‘land affairs’ is one of 22 responsibilities devolved to district governments under Law No. 22 of 1999 on Regional Government. The National Land Agency (BPN), still reeling from ‘losing’ 74 percent of the country’s territory as a result of the Forestry Law more than three decades earlier, adopted a siege mentality, refusing to entertain any discussion of revisions of the BAL or relinquish any of its remaining authority. BPN officials regard the BAL as the ‘holy grail’ of land reform in Indonesia, and themselves as the law’s guardians and champions.

Meanwhile, with an eye to potential revenues and the opportunity to settle many conflicts plaguing their regions, most districts have interpreted Law 22 as meaning that they should assume all functions previously handled by BPN, and have established their own land agencies (*Dinas*). In some districts, they have simply assumed control of regional BPN offices and staff, in others, parallel offices with identical structures and responsibilities have been established. If land certification and transactions were uncertain and risky ventures before *Reformasi*, they have now become nigh impossible.

The LMPDP project produced a set of recommendations sure to upset all sides in this impasse. The central proposition is that land *titling* remains a centralised function – which accords with Law 22 since justice and law are functions which are to be retained by the central government – while delegating all land *management* functions to regional governments. The latter includes spatial planning and zoning regulations, land acquisition and compensation for all but national-level development projects, settlement of land conflicts and disputes, issuing location permits, producing recommendations for disposal and reallocation of state land, reclamation and utilisation of idle land, and designation of *adat* communities and land.

One popular – but quite difficult – set of recommendations deals with the problem of *adat* or *ulayat* land. The project proposes that existing *adat* communities be allowed to register their land as they see fit. This could include registering the entire *ulayat* territory as a single parcel, owned and managed by a corporate *adat* community, or registering individual, family or clan plots, but having these properties subject to concise written restrictions and regulations determined by the corporate *adat* community or council. Another option would be to simply subdivide the territory into individual private plots, to be registered like any other non-*adat* parcel. In most cases, the final outcome would likely be some combination of the various options. LMPDP recommends proceeding cautiously with this experiment, beginning with pilot activities in relatively conflict-free areas and where *adat* communities remain coherent and

relatively cohesive. One of the greatest challenges facing whoever is eventually charged with carrying out this colossal and highly sensitive program is that of defining and identifying 'adat communities' and 'adat land.' These are the same issues that preoccupied Professor Van Vollenhoven in the early decades of the last century. They have become much more complicated – and more urgent – in the intervening decades.

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