

Land Administration in Indonesia

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Key words: Land administration, customary tenure, adat law, title registration, institutional reform.

SUMMARY

For more than 350 years Indonesia was under a colonial power. Land laws became a dualism, between western land law and traditional land laws. In the areas where western land laws applied, land registration was completely supported with cadastral maps and surveys. On the other hand, the various Indonesian kingdoms were stipulating their own regulations for the lands in their territories. Both land administration systems were scattered among lands that were subject to traditional laws, which are also various, and different from one region to another.

The Basic Agrarian Law of 1960 ended this situation by creating a National Land Law based on the utilization of traditional concepts, principles, systems and institutions. In general land status can be divided into either state land or private land. Private land is either registered or not (yet), and state land is defined as land without any right attached to it.

In the early 1990s it was estimated there were some 55 million parcels of land of which only about 17 million were formally registered. Recognizing the social and economic problems which this can cause the Government of Indonesia, in partnership with the World Bank, commenced a program of intervention aimed at accelerating the titling of land, and introducing parallel reforms to the system of land registration. The Land Administration Project (LAP) was the first stage and the second stage, the Land Management and Policy Development Project (LMPDP), is scheduled to start this year.

At the present time the estimated number of parcels has increased to about 80 million and less than 30 million of these are formally registered. The paper will highlight this and other contemporary problems and describe the commitment of government to addressing these problems. The LAP experience will be reviewed with particular reference to the drawing of lessons for the LMPDP. The comparisons with land administration in similar development environments can be easily drawn and the relevant lessons readily assessed.

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1. INTRODUCTION

The largest archipelago in the world, Indonesia has an area of some 1.9 million square kilometres supporting a population of about 215 million people. There are an estimated 80 million parcels of land in the country, but in the 45 years since registration of land rights was established under the Basic Agrarian Law, only 30 million of these have been registered.

The aim of this paper is to provide an overview of the land administration system in Indonesia – host country of this conference. The paper will recognize the evolution of the system through colonial and recent history and describe in some detail the interventions which have been made to address the social and economic shortfalls which existed in the system.

2. INDONESIA – The Land Administration Environment

2.1 Culture and Colonial History

The population spread in Indonesia is very uneven with some 60% of the population living on the island of Java which is 6% of the land mass. About 70% of the land area in Java is under intensive use, which is much higher than the second ranked island of Sumatra with about 20%. Much of the outer islands are covered with forests which amount to about 60% of total land area and rank as the largest in Asia.

Ethnically and culturally the country is extremely diverse across the width of the archipelago. There are more than 200 ethnic and sub-ethnic groups and traditionally there have been inter-island migrations between these groups. These differences are evident in terms of the various relationships with land, and the existence of varying degrees of customary systems of land administration. The extent of these customary systems is not widely understood, and their existence tended to be downplayed by the New Order Government (post 1965) in the belief that they were anachronistic and out of character in a modern market driven economy. The customary systems cannot be categorized as uniform across Indonesia; however a common theme is the notion that land is spiritual or social and community-owned, rather than an economic commodity.

In the 350 year period before its independence in 1945, Indonesia was under some form of colonial rule. Land laws became a dualism between western style systems, to meet the interest of colonial governments, and the traditional unwritten laws based on customary rights to land which exist in the diverse cultural groups mentioned above.

This dualism in land law was intended to end in 1960 with the enactment of the Basic Agrarian Law (BAL). This national law recognizes the traditional concepts and institutions while, at the same time, provides for the registration of individual rights to land. Within this framework Indonesia operates a complex system of land administration which has allowed Private Conveyancing, used when customary (unwritten) laws govern the dealing, to exist in parallel with the Registration of Deeds. The BAL was a seminal step in land administration in Indonesia however there is considerable conjecture as to its effectiveness in bridging the gap.

2.2 Land Tenure System

In general land status can be divided into two groups - state land and private land. Private land is land with a certain right on it, either registered or not (yet). There are two sub-categories of state land;

- state land the right on which has been designated to person or a legal entity and
- free state land or state land without any right attached to it.

Buildings are not legally part of the land and because land ownership is individual, not commercial, there must be a separate title for commercial buildings. Civil law permits a separate tenure whereby one person's building can exist on another's land.

There are presently five types of basic tenure with Hak Milik the highest and nearest to freehold tenure. These are:

- Hak Milik – ownership (freehold)
- Hak Guna Usaha – cultivation only
- Hak Guna Bangunan (HGB) – building only
- Hak Pakai – use only
- Hak Penguasaan – land management only.

This hierarchy of rights, uniquely linked to the use of land, has blurred the boundary between land administration and land management. Under such a structure the land registration system is a de facto planning control mechanism, but it is a less than effective one.

With the exception of Hak Milik, existing rights are specific and temporary. The inherent need for periodic renewal is viewed by many as an automatic process for extracting fees rather than a bona-fide tool for effective land use management. The assurance that land use conforms to accepted norms and standards is appropriately a technical planning function. While restrictions may be endorsed (as an encumbrance) on registration documents, the imposition of these restrictions should properly be done by qualified personnel within the framework of prudent land and natural resource management.

Rights in land are recorded in two systems: (i) private conveyancing and (ii) registration of deeds

(i) Private conveyancing is not regulated; however it is accepted by the courts as an informal, but not illegal, transfer. This is based on the legal principle that the title is transferred at the time of payment in cash, registered or not. The passing of the documents agreeing to the transfer is done in private, usually witnessed by two persons.

(ii) The system that is formally adopted is the Registration of Deeds. A copy of all agreements that affect the ownership and possession of the land must be registered at the Land Office.

The Indonesian system of registration is not guaranteed by the state (a negative system). The principle is to protect the real owner from the risk of registration of the wrong one. The real owner can claim his/her ownership through court proceedings and if it is confirmed by the court, the new ownership is registered according to the court decision. In this system the registers are treated as primary evidence rather than definitive proof. The integrity of the system is sufficient for land owners to have full confidence in their rights if the land data is accurate. However, the presence of inaccurate data will weaken the system.

2.3 Basic Agrarian Law

As mentioned before the land laws under colonial governments were a dualism between western systems and the traditional (*adat*) laws based on the customs of various regions.

The Basic Agrarian Law was introduced in 1960 to end this situation by creating a National Land Law based on the utilization of traditional concepts, principles, systems and institutions. However a growing number of commentators consider the BAL has been used to dilute customary rights and the law has outlived any usefulness it may have had. Review of the BAL has been difficult until recently because of a strong band of formalists who believe land law, like that of marriage, is non-neutral or unable to be changed. With a contrary view there is demand from the NGOs to revert completely to the customary rights principles.

Recognition of '*adat*' or customary land rights and customary systems of tenure, which are explicitly acknowledged in Article 5 of the BAL, has become a critical element of contention in Indonesia. The root of the problem is that most of the existing implementing regulations of the BAL failed to elaborate, and are even contradictory to, the *adat* principles.

In the past the government has attempted to recognize the existence of customary land provided that the following criteria exist:

- the land is under the ownership of a recognized *adat* community
- the boundaries are defined and understood and
- the community is recognized and functioning as such under *adat* law principles.

In the face of growing pressure, the GoI has recently directed a review of the BAL and the public consultation process is proceeding as this paper is under preparation.

2.4 Problems

2.4.1 Social Conflict Over Land

Not all countries have managed to develop their land tenure systems in an orderly fashion, and in ethnically diverse countries ethnic divisions and social conflict have proved to be a major impediment to developing tenure systems. Although disputes relating to land are common to most developing countries, the situation is arguably worst in Indonesia. Here problems have been exacerbated by the pressure of rapid economic transformation and previous policies such as Transmigration which aimed to move people from the densely populated island of Java to the outer islands. Disputes have arisen from the cultivation by communities on plantation/state land, non-compliance with land reform rules, civil claims about entitlements, customary land rights issues, levels of compensation for land, and land acquisition for development and the allocation of *location permits* (or *izin lokasi* - a permit reserving a right to purchase tracts of land – often large - to a single developer).

Basic statistics indicate considerable inequity in the present distribution of land where some 69% of the land is owned by 16% of the population; and the average parcel size of a rural holding in the crowded island of Java is shrinking from what is already a non-viable 0.85 ha.

2.4.2 Public Confidence

The existence of private conveyancing creates an informal environment in land dealings. Uncertainty is one of the risks in dealing in this environment, especially experienced by the banks in giving credit. Private conveyancing is inefficient and potentially dangerous since it can be subject to fraud as there is no easy proof that the vendor is the true owner.

The lack of reliable documents also results in the slow process of registration and the weakening of the system. Initial registration is the beginning of the compilation of a land register and there must be some adjudication mechanism to bring land into the registers. The systematic approach is being adopted in Indonesia whereby adjudication is executed in an orderly manner and all parcels in a particular area are registered systematically one by one. This mechanism grows from a legal rather than a land management perspective. The cadastral surveys and mapping are integral parts of a legal cadastre.

2.4.3 Institutional Reform and Decentralisation

The National Land Agency (Badan Pertanahan Nasional – BPN) is responsible for administration of all non forest land in Indonesia. It was established in 1988 as a separate agency in response to land issues impacting on development, with specific responsibility for recognition, registration and administration of property rights and dealings.

Until recently the technical components of BPN have remained essentially unchanged since its establishment and these are grouped under the four areas stipulated in the BAL - land reform, land use, land titling, and land survey/registration.

The agency was specifically charged with:

- formulating policies and planning for land reform and land use;
- formulating policies and planning for the ownership of land with the principle that land has a social function as defined in the Basic Agrarian Law;
- administering survey, mapping and registration of land to provide security for land ownership;
- granting land rights to maintain order in land administration;
- research and development in land matters and the training of personnel to support BPN operations and;
- other duties as decided by the President.

This mandate is wide and covers the whole range of land *management* and land *administration*. It is presently under active review as part of the GOI decentralisation directions and the emerging BPN is likely to become focussed on administration with the management role devolving, to local Government.

3. LAND ADMINISTRATION REFORM IN INDONESIA

By the early 1990s only 22% of the estimated land parcels were registered and the growth in property transactions outstripped BPN's capacity to deliver timely, transparent and community responsive services. With existing resources and procedures, it was estimated that it would take BPN about 100 years to register all the existing eligible land parcels, let alone process the annual growth in new parcels. Noting the inordinate procedural delays, disputes over land rights, compensation for land acquisition, and conflicts with traditional land holders, the GoI identified land administration as a major issue impacting on national economic and social development.

In 1991 the World Bank prepared a report on Land Resources and Management which recommended a long term program aimed at facilitating the emergence of efficient land markets and alleviating social conflict over land rights. This was envisioned at the time as a 25 year program of reform which commenced with the first 5 year Land Administration Project (LAP I) in 1994.

3.1 Land Administration Project – LAP I

3.1.1 Project Objectives

Commencing in 1994, LAP I has been implemented during perhaps the most volatile social and economic period in the short history of the Republic of Indonesia.

The project was designed to be delivered in three parts:

Part A: Accelerate land titling and registration by systematically mapping, surveying and registering rights in land for parcels in all non forest areas;

Part B: Strengthen the National Land Agency (BPN) as an institution so that it can achieve the objectives of the program;

Part C: Support GOI efforts to devise a long term policy for land management through a series of studies and workshops.

The project design addressed the primary development objectives of poverty alleviation and sustainable development. These objectives were reinforced in a review of the project at the time of the economic crisis in 1998 with additional emphasis being placed on good governance. This was appropriate in view of the movement by the GOI toward decentralisation and the devolution of hitherto centralised government to the regional level.

Part C in particular was designed to examine (i) institutional roles in land management (ii) land acquisition (iii) displacement and resettlement of people (iv) options for land aggregation (v) spatial development planning (vi) land rights issues (vii) boundary issues between forest and non-forest lands, and (viii) land policies for sustainable development. (LAP I produced a number of valuable studies, however these topics remain of major concern - the failure to follow up on the BAL reform could be due, in part at least, to an absence of well developed policies based on broad social agreement.)

3.1.2 Implementation

Part A and Part B were implemented by BPN and the National Development Planning Agency (Bappenas) was responsible for the policy aspects of Part C.

A Project Executive Committee (PEC) was formed to provide overall direction and coordination of all project activities (Parts A, B and C). This included senior representatives from all agencies concerned with land issues and was co-chaired by the respective Heads of Bappenas and BPN. Beneath the PEC were two Project Management Committees for Parts A & B and Part C respectively.

To a large extent the committee structure was a result of the separation between Parts A & B and Part C, however it was not effective at the most senior level. A 2 year delay in commencement of Part C was undoubtedly a contributing factor as the respective agencies, having commenced the program independent of any synchronisation, continued in the same manner. The PEC would also have been more effective if it had been supported by a full time secretariat to ensure that an appropriate agenda was regularly placed before the busy senior officials.

Overall the implementation arrangements were most effective at the operational level, satisfactory at the institutional level and mostly ineffective at the policy level. In spite of the political upheaval experienced in the final year of the project, the systematic registration

processes developed over the previous years continued to function strongly. However, reduced GOI budget and the resultant reduction in field teams over this period caused a reduction in new title production. Difficulty in disbursing funds meant the project was extended an additional 2 years.

Significant progress was made in reviewing the laws and regulations that govern land administration, however little impact was made on overall reform of land policy. The separation of Part C from the other parts of the project was not successful and this is one lesson that would need to be carefully reviewed in any further stages. Other lessons from LAP I include the successful approach to the education and training program and the development of the private sector to undertake all aspects of surveying and mapping.

3.1.3 NGO Reaction

The project attracted considerable criticism from local and international NGO's during the early stages. Most of the critical comment was based on misunderstanding and poor information; however this was difficult to counter in the government climate of non-engagement with most of the NGO community prevailing at the time.

Criticism was also difficult to counter without reliable internal intelligence on project performance. While there was evidence of historic distrust of GOI and BPN informal 'customer surveys' confirmed that the systematic registration component of the project was universally well accepted by landholders. Surveys showed that landholders believe the title certificate improves their security through greater evidence of ownership; improves their access to credit either through the formal or informal systems; and overall increases the value of their land.

These findings were generally supported by the "Social Assessment of the Land Certification Program" study commissioned by the Bank in 1999. This estimated that 70% of the recipients of land certificates were low-income families and noted that a high percentage of certificates were registered to women. In the latter case some concern was expressed that the ability to register land in the joint names of a husband and wife was not universally clear to the recipients. On a less positive note, the SAS pointed to a low level of derivative registration – the registration of subsequent dealings (eg sale) on the registered property.

3.1.4 General Outcomes

In the seven years of the Project there have been a number of major sector outcomes, which can be summarised as:

Improved social and economic status of more than 1.8 million households through security of tenure to land and property;

Improved governance through a gradual shift in BPN from a closed, autocratic, self-serving central agency toward a more open, inclusive and service delivery organisation. While this shift is far from complete, the progress is manifest in the open dialogue with NGO's and

special interest groups, decentralised project management and focus on the Land Office as the primary service delivery point, a transparent systematic registration program (fees etc) and the growing recognition of traditional systems of land tenure and existence of customary (*Ulayat*) communities.

The establishment of a cadastral survey industry, supported by tertiary level training and education, reinforcing the aim of maximising private sector involvement in building and sustaining the system of land administration in Indonesia.

3.2 Land Management and Policy Development Project – LMPDP

3.2.1 Balance of Policy Institutional Development and Titling

The LMPDP was envisioned to follow on from LAP I as the next stage of the long term program of land administration reform. For a variety of reasons a seamless transition was not possible and the LMPD is scheduled for implementation over the second half of 2004. The objectives continue the pursuit of the strategic program goals and reflect to a very large extent the not insignificant political changes in Indonesia over recent times.

The project design emphasizes a balance of activities which aim for achievements in policy, institutional development and titling operations. Other projects, such as LAP I, had less focus on institutional development, particularly on local land offices, and a greater focus on titling. The balanced focus recognizes the large potential benefits from policy improvements to benefit the poor while helping to foster a climate for investment and growth. The project design also seeks a balance between the issuance of new titles and institutional development for improved land office functioning. Service provision in land offices is essential for sustaining security of tenure and providing assurance for secondary rights such as mortgage. Focusing on improved service provision is also strategic for reducing the scope for corruption which places inordinate burdens on poorer groups.

The project will be delivered under 5 components:

- Development of the Land Policy Framework
- Institutional Development, Capacity Building and Training
- An Accelerated Land Titling Program
- Development of a Land Information System
- Capacity Building Support for Local Government

The project very much reflects the changes in responsibility for land affairs which accompany the thrust toward decentralisation and broaden the range of implementing agencies to include key involvement by the Ministry responsible for Local Government.

3.2.2 Testing the Feasibility of Cheaper, Faster Documentation of Land Rights

Many land projects choose to limit titling methodology to traditional systematic land registration techniques in which each land parcel is surveyed to a high standard of accuracy

by centrally deployed teams, which are also responsible for adjudicating and documenting land rights. The LMPDP project will employ these traditional techniques where high accuracy of survey and potentially conflicting land rights call for it. But LMPDP also recognizes that traditional systematic registration methodologies are slow and expensive. In order to bring the benefits of secure land rights to the whole country within the government's general target of 20 years, the project will evaluate the feasibility of using faster, cheaper methods to the systematic documentation and registration of the land rights..

3.2.3 Implementation

As in LAP I, the National Development Planning Agency (Bappenas) will be responsible for the development of land policy under Component 1. The issues impacting on the policy development component of LAP I (Part C) have been assessed and the approach modified to ensure greater policy outcomes and more emphasis on developing the capacity of Bappenas and the GoI for future policy setting.

The Ministry of Home Affairs becomes a principal player in the delivery of Component 5. This component recognises the varied, but generally low level, capacity of local government to undertake the land related services which have been mandated to them under the GoI decentralisation legislation.

Components 2,3 and 4 will be the responsibility of BPN. The emphasis shifts to the institutional developments necessary to give substance to the changes in responsibilities which accompany decentralisation. Central in this will be the development, acceptance and implementation of a Strategic Plan for the agency. The importance of this plan and the sensitivity by some senior executives to the changes it must herald cannot be underestimated.

3.2.4 Outcomes Expected

While not the primary focus the project aims to apply the experience from LAP I to issue about 5 million titles. Landholders would have the opportunity to access institutional credit by using land title as collateral for medium- and long-term investment activities. A related increase in secured credit transactions would facilitate development of financial sectors, particularly the rural financial sector, through expanding the client base.

Component 4 will create an opportunity to develop a land information system for Indonesia by using the registration data as a primary dataset. A land parcel-based information system would be used or have potential to be used to improve the cross-section of government services which are reliant on spatial information such as land valuation, land use planning and the management of natural resources and planning and management of land-based utilities and physical infrastructure for communication and transportation. Most cities in Indonesia do not have city plans; the information system under the proposed project, especially cadastral maps, will provide a sound basis for the preparation of these plans.

LMPDP is expected to have positive social effects. The two social assessments conducted under LAP I showed that land-related conflicts had decreased with certification. Titles have been used to clarify the issue of the position of boundary marks and the size of parcels and bring parties to a common basis for resolving conflict. The assessments also found little evidence of discrimination between rich and poor, if anything the poor gained relatively more.

During LAP I, project area selection criteria were developed which placed priority on areas where there are larger numbers of low-income families. This is to maximize protection to those landowners who would be the most vulnerable during any land transactions. LMPDP would also follow this direction to sustain positive social impact.

The LMPDP could also expect to have a positive impact on indigenous people through bringing *adat* into formal land law and would enable the benefits of certification to be extended to them.

4. LAND ADMINISTRATION IN TRANSITION

Some momentum has been lost in reforming land administration owing to the unplanned, but largely unavoidable, 3 year transition between the first (LAP I) and second (LMPDP) phases of the GoI strategic reform program. The system of land administration in Indonesia has remained fluid, shaped by a range of political and economic forces. Principal among these is the thrust toward decentralisation and the need to negotiate policy changes to achieve the institutional environment to enable the implementation of this thrust.

4.1 Decentralisation

Under a broad regional autonomy program, the GoI legislated in 1999 that primary responsibility for land administration would be decentralized to the local governments. This followed closely on legislation which redefined the overall revenue generation and distribution roles and functions of central and local government agencies. Initial proposals provide for dissolution of a central role and complete devolution for all *land affairs* (an all-embracing and poorly defined term at the time) to the district level; by-passing the provincial level. This was subsequently (and sensibly) modified to maintain BPN as a central agency, but with a role limited to legislation, performance standards, uniform land registration procedures, training, and the provision of some services.

The implementation of decentralisation has been slow for a variety of political, institutional and economic reasons. After considerable debate, the two principle laws are undergoing review. In the interim, a 2003 Presidential Decree BPN has been used to clarify the intent of decentralisation as it affects land affairs and this defines more specifically those responsibilities of BPN which devolve to the local level. In the same decree, BPN were mandated to complete a draft of a long-awaited revision of the Basic Agrarian Law. This reflects a major commitment by the GoI to reform.

4.2 Political Direction

There have been several recent actions at political level which reflect government commitment to reform. These include:

4.2.1 The Decree from the People's Advisory Assembly (MPR/2001)

This concerns *The Agrarian Renewal and The Management of Natural Resources*. It recognises, amongst other things and in the context of land administration reform, that

- The management of agrarian/natural resources currently undertaken has caused a decline in the environmental quality, and an imbalance in the structure of control ownership, usage and exploitation, has also caused various conflicts;
- The laws and regulations related to the management of agrarian/natural resources are overlapping and contradict each other.

The decree states that *agrarian renewal* covers a process that is continuous, relative to the rearrangement of control, ownership, use and exploitation of agrarian resources, as undertaken to achieve legal certainty and protection as well as fairness and prosperity for the whole Indonesian nation. It *Resolves* (again, amongst other things and in the context of land administration) to:

- reorganise control, ownership, usage and exploitation of land (land reform) that is fair by giving attention to the land ownership of the people;
- collect data on land through inventory taking and registration of the control, ownership, usage and exploitation of land in a comprehensive and systematic manner in the implementation of this land reform;
- settle conflicts related to agrarian resources which have currently arisen and to anticipate conflict potential in the future;
- strengthen the institutions and their authorities in agrarian renewal implementation and the settlement of conflicts relating to agrarian resources.

4.2.2 Presidential Decree Number 34 of 2003

This decree further reinforces the reform approach and directs BPN to accelerate

- Formulation of a draft refinement of the hitherto sacrosanct Basic Agrarian Law and other legislation in land affairs;
- Development of Land Information systems covering a data base of land assets, textual and spatial data serving land registration, cadastral mapping and an inventory of land tenure and ownership, etc

Finally, the decree stipulates the role of Regency/Municipal government in land affairs and specifically defines this role as including the functions below:

- Location permit issue
- Provision of land for public interest
- Cultivated land dispute
- Resolution of compensation for land allocated for development
- Determination of subject and object of land redistribution and compensation for maximum excess land and absentee land;
- Determination and resolution of *ulayat/communal* land problems
- Utilisation and resolution of neglected land problems
- Land opening permit provision
- Planning of land use within Regency/Municipal areas.

4.3 National Land Agency (BPN) Role

A range of models for delivery of land administration services conforming to the above political directions have been given some consideration. All required some degree of adjustment to the two principle laws governing decentralisation. All options also identify a continuing role for provincial government and this is contrary to the present policy which devolves all responsibility to the district level as they presently stand. The preferred model can be described as one which incorporates:

- All land policy and standards to be set by central government (BPN Pusat);
- All monitoring and supervision activities to be carried out by central government;
- Provincial spatial planning and the issue of major land grants to be delegated to Provincial Land Services Offices;
- Regional spatial planning, land use management, permits, expropriation, minor land grants and systematic adjudication to be delegated to Regional Land Services offices;
- Land registration to be carried out within BPN Land Offices at regional level;
- Technical services associated with land registration (base mapping, coordinate networks, licensing of surveyors etc) to be supplied by BPN Technical Services Units based in Provinces.

Developments in land administration therefore remain quite volatile and the LMPDP will be a vehicle for stabilising the system and assisting the institutions involved at central and local government levels to accept and effectively undertake the reorganised roles.

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Chris Grant is a director of the consulting company Land Equity International. He was the manager of the technical assistance program for the second Thailand Land Titling Project from 1991 – 1994. He was subsequently the Team Leader of the large technical assistance team on the Indonesian Land Administration Project from project inception in 1994 until 1998. Since then he has been active in consulting on a shorter term basis in the field of land administration in most developing regions.

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