LAND PROBLEMS IN THE CONTEXT OF REGIONAL AUTONOMY

November to December 2002

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Recognizing the need for an integrated land policy and anticipating the fundamental changes in the land administration system with the implementation of decentralization, the Government of Indonesia and the World Bank have engaged in a land policy dialogue during 2002-2003. The goal of the dialogue is to help the Government to develop a National Land Policy Framework.

This report is a summary of workshops and interviews on land policy issues with central and local government officials, journalists and representatives of NGOs. Participants were asked to reflect upon six topics: 1) land conflicts; 2) unequal distribution of land ownership/holding; 3) customary law; 4) distribution of authority between central and regional governments; 5) institutional aspects; and 6) agrarian reform.
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I. PROBLEMS AND BACKGROUND

1. The Regional autonomy Act (Law no. 22/1999) that came into effect in 2001 has created serious disputes, and possible revisions are currently being considered.

2. On 9 November, 2001, the People Assembly or Majelis Permusyawaratan Rakyat (MPR) issued a decision (TAP MPR no. IX/2001) on Agrarian Reform and Natural Resources Management (Pembaruan Agraria dan Pengelolaan Sumber Daya Alam – PA- PSDA). This decision contains essentially two mandates: first, for the Parliament (or Dewan Perwakilan Rakyat-DPR) to draft a bill on the subject within the shortest possible time, and second, for the President/Government to execute the content of the decision.

3. Until now, there is no clear sign of how both the President and the DPR will respond to the MPR decision no. IX/2001 mentioned above, while the Regional Autonomy Act is undergoing revision. These have contributed to a rather chaotic legal situation, especially concerning the division of authority between the central and the regional government in the handling of land problems. In the meantime, while most land dispute cases have not been resolved, new cases of conflict have sprouted.

4. In the midst of uncertainty and unclear direction in the overall policy on agrarian issues, local initiatives to handle resolution of land disputes have emerged in a number of regions. Despite the limited number of cases resolved regionally, these local initiatives deserve proper attention.

5. Assuming that the Government succeeds in responding to TAP MPR no. IX/2001 and implementing regional autonomy, the key questions are:
   a. How should authority on land matters be divided between central and regional governments?
   b. What kind of institutions should be established to carry out the intended agrarian reform and overcome agrarian conflicts, within the context of regional autonomy?

6. To get a better understanding on these matters, opinions from various parties (government functionaries from various departments; regional/local government authorities; NGOs; journalist; etc) were sought.

7. Methods of gathering opinions:
   In an effort to gather opinions from the various parties, a series of dialogues/discussions have been conducted in November and early December 2002:
   a. Informal group discussions with a number of high level officials from the Department of Home Affairs (DEPDAGRI) and from the National Land Agency (BPN);
   b. Group discussions with a numbers of journalists;
   c. Group discussions with a number of NGO activists;
d. Group discussions with Provincial and regional/local level government officials from Sumedang, Lampung, Wonosobo, and Kalimantan;
e. Personal discussions/individual interviews with a number of officials from various institutions who are concerned with land issues and with a number of experts/academicians;
f. Issues that were raised in these discussions were: 1) land conflict; 2) unequal distribution of land ownership/holding; 3) customary law; 4) distribution of authority between central and regional government; 5) institutional aspects; 6) agrarian reform.

II. DESCRIPTION OF THE COLLECTED OPINIONS

A. General Overview

In the absence of a clear overall policy on agrarian issues, it is understandable that opinions are very diverse. Even within the same group, people have different views.

In order to find out whether or not there is a pattern in the opinions collected from these five sources, the two variables (i.e. the sources and the theme) are cross tabulated (see Table 1 “Opinions Mapping”). Since the tables of opinions mapping contain only short key sentences, they are elaborated up below.

B. Description of the Various Opinions

(1) Land Conflict

Conflicts over land during the last decades have occurred in almost all regions in Indonesia. Depending on the characteristics of regional/local conditions, the types of conflict vary from region to region. This issue was reflected during several dialogues that were conducted.

The Province of Lampung, for example, is an area which, in the past became a “policy target” of the central government (transmigration; plantation estates; forest exploitation; and other kinds of investment). The indigenous people felt that those activities frequently violated their land rights. Once the New Order regime fell, they reclaimed the land they regarded as theirs. Formally, however, they lack legal proof in the form of certificate of ownership. Most cases of dispute are, therefore, very difficult to solve legally.

In the eyes of Home Affairs officials, most cases of land dispute resulted from two problems. First, the data in writing concerning the granting of land rights are inconsistent with the reality in the field. For example, on paper a certain enterprise is granted HGU right (i.e. the right to use land) for 100 ha of land. It turns out that this enterprise controlled more, or even twice as much the amount granted, such that they included areas which have been cultivated by the people. The HGU holder then made a claim that these areas belong to the enterprise. The second problem is that since the establishment of BPN, the authority of
granting land rights lie completely in its authority. But the people think that “government” means all agencies under DEPDAGRI. Therefore, complaints and claims are frequently directed toward DEPDAGRI, rather than BPN.

On the other hand, the BPN feels that the granting of land rights has been done in accordance with the valid legal procedure. In BPN’s view, land conflicts are caused more by the inability of the right holders to settle the problem with the local people in the community. BPN also holds the opinion that “sectoralism” is the main sources of conflict. While the Basic Agrarian Law (BAL, 1960) is supposed to be center of reference, a number of technical departments enacted their own “Basic Law”, without referring to, and in occasional conflict with, the BAL.

The provincial as well as the regional/local government tend to hold similar opinions as DEPAGRI. They feel that when it comes to land issues, so far they have no authority of any kind whatsoever. However, since the conflict occurred in the area within their jurisdictions, the people complained to them and urged them to solve the problem. But they cannot do anything simply because they have no legal authority. Once they make even a slight mistake in the decision, they could be brought to trial through PTUN (Pengadilan Tata Usaha Negara or State Administration Court). Formal/legal conflict resolution, therefore, is difficult or even impossible to carry out.

Those from NGOs, as well as those from the media share the view that “sectoralism” is the main source of conflict. Sectoralism is the consequence of the government policy in the past, which facilitated the capital owner to acquire land and neglect the rights of the people.

Despite the existing consensus that land conflicts should be resolved as quickly as possible, there is no comprehensive concept on how conflict should be resolved. Three factors are the main cause:

a. Lack of serious attention
b. Low capacity of human resource at local level
c. Unclear division of authority (regarding land problem) between the central and the regional/local governments

All sides agree that the TAP MPR No. IX/2001 decision is correct; a national basic law to which all sectoral laws should refer, is needed. Consequently:

a. Before the national basic law is promulgated, judicial review should first be conducted. All the existing law that is not in accordance with the constitution (UUD 45) should be suspended (including all sectoral laws which are overlapping each other).
b. All basic principles covered in the BAL 1960 which are still relevant should be maintained.
c. Supposing that some authority (concerning certain aspects of land problem) is transferred to the regional/local government, this should be based on principles of accountability and transparency.
(2) Unequal distribution of land ownership/control

All sides realize that inequality occurred not only internally among farmers, but also between farmers and large-scale agriculture estates (HGU holders; plantation estates; etc). However, most government officials (especially from the central government) seem to be less interested in this issue, probably because this is not easy to understand. They also argue that since there is no strong protest against inequality, this is not an important issue.

Instead of focusing on the problem of inequality, they prefer to solve concrete cases of conflict. However, the officials from the provincial government of West Java did raise the issue of inequality, even though not directly. They expressed their concern with the decreasing size of farms and also with the issue of absentee ownership.

In contrast to the opinions of most officials, the NGOs and the press saw the unequal distribution of land ownership/control as a fundamental problem, that if not overcome properly, could become a potential source of future conflict. They believe that a comprehensive agrarian reform is therefore badly needed.

(3) The Problem of Adat Land

All participants agree that the existence of adat land should be respected and recognized. According to a BPN official, in an effort to provide a framework for this, the Minister of Agrarian Affairs had issued a regulation (Minister Regulation no. 5/1999), stipulating that Bupati is given the authority to carry out investigations concerning the existence (hence recognition) of adat land. However, in the field, most local officials seem to know little about the existence of that regulation, so it was difficult to carry out. The debate on the issue of adat land is not over yet, and the final conclusion has not been reached.

(4) Distribution of Authority

This issue was raised within the context of regional autonomy. As mentioned earlier, although the President and the Government have not yet responded clearly toward the issuance of TAP MPR no. IX/2001, regional autonomy seems inevitable. The division of authority concerning land problems, therefore, has become a hotly debated issue.

a. DEPDAGRI officials hold the opinion that based on the existing law (no. 22/1999), the transfer of authority to the regional/local government is a necessity. Moreover, land disputes cannot be resolved without involving regional government. They even give consideration to the option that BPN could be dissolved and transformed back to its earlier status of Directorate General under the Ministry of Home Affairs (DEPDAGRI).

b. BPN, on the other hand, thinks that the handling of land problems has been adequate. But they agree that in terms of handling land use and/or “management”, regional/local government could be more effective, but not for land titling and granting of land rights. Land titling and land right grants should refer to the BAL 1960, which provides a legal
basis for the State to arrange land allotment, land acquisition, and legal regulation between human beings and earth, water and other agrarian resources.

c. Most officials from the regional/local government have more or less the same opinions of those from DEPADAGRI. They prefer to make reference to Law No. 22/1999 rather than the BAL 1960 because the most important for them is the determination of a clear division of authority which will give them more confidence in executing any task. They even offered a moderate proposition, i.e. the so-called “hierarchical step-wise division of authority” (kewenangan bertingkat) concerning executive tasks as well as control.

d. The NGO and the press have more or less the same opinion. They think that since land problems are different from region to region, regional/local government should be given the authority, to some extend, to handle it. However, the use of this authority should be controlled not only by their respected super ordinate, but also the public.

e. Meanwhile, based on Law 22/1999, academicians see that the determination of division of authority between central, provincial and local government should be based on the basic principles as follow:

<table>
<thead>
<tr>
<th>No.</th>
<th>Authority</th>
<th>Central government</th>
<th>Provincial government</th>
<th>Local government</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Authority to regulate</td>
<td>XXXX</td>
<td>XXX</td>
<td>XX</td>
</tr>
<tr>
<td>2</td>
<td>Authority to provide services</td>
<td>XX</td>
<td>XXX</td>
<td>XXXX</td>
</tr>
<tr>
<td>3</td>
<td>Authority to build local capacity</td>
<td>XXX</td>
<td>XXXX</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>Authority to control and supervise the implementation of land regulation</td>
<td>XXX</td>
<td>XXXX</td>
<td>-</td>
</tr>
</tbody>
</table>

Note: number of “X” means degree of decentralizing authority, the more “X” means the more authority.

Even though Law 22/1999 stipulates that land is under the authority of local government, it doesn’t mean that all authority should be given to local government. In the context of NKRI (State Unity of the Republic of Indonesia) there must be central and provincial government involvement in the handling of land administration, so called “hierarchical step-wise division of authority”.

(5) Institutional Aspect/Institutional Building

Basically all participants agree that the form of institutions that should be established, should be in accordance with the grand policy design. However, it would take a long time to
wait for the existence of a grand policy design. Therefore, for the time being, three options were raised:

a. At regional level, if the whole authority is given to the regional/local government, in accordance to Law 22/1999, there should be only one agency, namely, “Land Service” (Dinas Pertanahan).

b. At regional level, if the validity of the Presidential Decree (Keppres) No. 10/2001 (which mandates that local government cannot create regulation on land during this period until the decree ends in May 2003) is extended, then there will be only one agency, namely, “Land Office” (Kantor Pertanahan) that should serve as the extended arm of the BPN.

c. As a compromise, there is a possibility that two agencies can coexist at regional level. They are the Dinas Pertanahan, a regional apparatus to execute the task according to regional authority; and the Kantor Pertanahan, which functions as the central government apparatus but situated each region.

(6) Agrarian Reform

Referring to TAP MPR no. IX/2001, the division of authority regarding land problems should be in line with the spirit of agrarian reform. However, from the dialogues that have been conducted, it appeared that government officials tended to avoid the issue of agrarian reform. Both DEPDAGRI and BPN seem to look at TAP MPR no. IX/2001 simply as a product of legislation, without too much attention on the ideology of agrarian reform. What’s worse, most officials from regional/local government seem to have little knowledge about agrarian reform and about the substance of TAP MPR no. IX/2001.

On the other hand, the NGOs think that agrarian reform is a problem and is acknowledged through the existence of TAP MPR no. IX/2001. Since agrarian reform is a fundamental problem, it should become a national agenda to be implemented. They even said that before we waste so much effort discussing the distribution of authority and institution building, we should first talk about the need to establish a National Committee on Agrarian Reform as the transitional phase.

III. INTERPRETATION OF THE FINDINGS

A. The Collected Opinions

First of all, it should be noted that all opinions that were expressed by the participants in the various forums are subjective, in the sense that these are spontaneous responses to the issues that were raised. It is therefore necessary to treat the collected opinions (as a body of

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1 Presidential Decree No. 34/2003 regarding the decentralization of land affairs was issued on May 31st, 2003. The Decree clearly defines the responsibilities of land affairs between the national and local governments. The most significant characteristic of the Decree is that land management functions (land use planning, development control, location permit, etc.) are fully decentralized to the local governments. The land titling and registration stay as central government functions.
data) with caution. It is difficult to judge what motives underlie their expressions. Secondly, the diverse opinions concerning certain issues may lead to an unending discussion. It is therefore difficult to make a sort of generalization. Despite all these, however, some tendencies can be identified as follow:

1. Most bureaucrats tend to be more interested in discussing technical problems, rather than conceptual problems.
2. The tendency to avoid a thorough discussion about agrarian reform, or about inequality in the structure of landownership/holding, indicate that most people still have little elementary knowledge (let alone scientific knowledge) of the topics.
3. The provincial government as well as the regional/local government (especially the latter) tend to take an attitude of “wait and see” - waiting for determination of national grand policy to be decided by top level national elites.
4. However diverse the collected opinions are, two lines of basic differences can be drawn. These are:
   
a. Between government official on one side and NGOs and the Press on the other. The former stresses more on the regional autonomy Law no. 22/1999 as the basic reference, whereas the latter stresses on TAP MPR no. IX/2001.
   b. Between Home Affairs Ministry on one side and BPN on the other, the former tend to insist that Law no. 22/1999 should be the only reference, whereas BPN, without denying that law, tend to insist that the spirit of BAL 1960 should be maintained.
5. Above all that, the fact remains that so far there is still no signs of follow up on the existing Tap MPR no. IX/2001. At the same time, it is unclear to what extent Law no. 22/1999 will be revised. In this uncertain situation, the debate between DEPDAGRI and BPN may give the impression that they are just competing for power.
6. Viewing the diverse opinions described above, the answer to the two questions mentioned above in section-1 appears to be inconclusive.

B. What Could Be Done

1. Theoretically, and ideally, a new agency/service should be established only when the division of tasks has been clearly defined, and these tasks should be a function of a certain mission borne. This mission should reflect a certain vision on which the overall policy design is based. But, what one witnesses at present is the reverse! This is the source of controversy and confusion.

2. At the time when Regional Autonomy Act no. 22/1999 and Government Regulation no. 25/2000 were enacted, the regional/local government exuded euphoria. They began to establish regional “Land Service”, based on article 11 of this act - in which the word “pertanahan” is mentioned without any clarification or specification on the kind of land problem that regional governments have the authority to handle. So the land service was set up before a clear vision and mission concerning land is formulated. Although the TAP MPR no. IX/2001 (which is supposed to be the basis for formulating the vision and mission in designing overall national policy) was created later, there is no sign of an effort
to formulate a sort of “basic” law that integrates all sectoral laws, as mandated by this TAP MPR.

3. With such uncertainties, the distribution of authority should be based on certain principles stipulated in the still valid existing laws (and in this case the BAL 1960) during this transition.

4. Article-2, ad-1, of the BAL stated that: “Based on the provision in article 33, paragraph 3 of the constitution, the earth, water and air space including the natural resources contained therein, are in the highest instance controlled by the state being an authority organization of the whole people”.

5. Paragraph 2 of the same article stated that “the right of control by the state provide authority”:
   a. To regulate and implement the appropriations, the utilization, the reservation and the cultivation of that earth, water, and air space as mentioned above;
   b. To determine and regulate the legal relation between persons and the earth, water, and air space;
   c. To determine and regulate the legal relations between persons and legal acts concerning the earth, water, and air space.

6. Despite the seemingly centralized nature of that article of the BAL, there is a clause in article 2 paragraph 4, which most people have missed out. This clause stated that:

   “The implementation of the above mentioned right of control by the state may be delegated to the autonomous regions and Adat Law Communities, if deemed necessary and it is not in conflict with national interest, and in accordance with the provisions of a government regulation”

7. The authority based on the state’s right of control, is exercised in order to achieve the maximum prosperity of the people in the sense of happiness, welfare, and freedom (see paragraph-2, article-2 of the BAL). Looking at the BAL as a whole, it can be summarized that the task of the government (on behalf on the state) covers essentially (in technical term):

   a. To regulate and administer land rights, granting and titling
   b. To carry out land registration
   c. To restructure land ownership/land control, or “land reform”
   d. To regulate and administer land use

8. In the absence of “overall policy”, and in the uncertain situation, the distribution of authority during the transition phase, could be based on three principles:
   a. Principle of subsidiary
   b. Principle of uniformity
   c. Principle of “not neglecting National Interest”
Based on these three principles, the authority to carry out the tasks can be distributed. The table below is just a rough sketch, a general outline of how those principles could be applied.

<table>
<thead>
<tr>
<th></th>
<th>Land right granting and titling</th>
<th>Land registration</th>
<th>Land reform</th>
<th>Land use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subsidiary</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>· CG for large scale</td>
<td>CG</td>
<td>LG</td>
<td>LG for specific design and operational execution</td>
</tr>
<tr>
<td></td>
<td>· LG for small scale</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Uniformity</strong></td>
<td>CG for guiding principles</td>
<td>CG</td>
<td>CG for guiding principles</td>
<td>CG for basic design</td>
</tr>
<tr>
<td><strong>National Interest</strong></td>
<td></td>
<td>CG</td>
<td>CG for guiding principles</td>
<td>CG for basic design</td>
</tr>
</tbody>
</table>

Note: CG = central government, LG = local government

By subsidiary, it means that for any program that is most effectively executed by a certain level of government, it is not necessary for the upper level of government to intervene or to be involved, except for control and supervision. At the most, the upper level should only facilitate.

To some extent, uniformity and national interest are important. The filled-in cells in the table above, are just an example. It very much depends on how each of the four main tasks will be broken down into more specified ones. For example, the task of the Land Office (of BPN) regarding “land use” is specified as:

a. To prepare and carry out data collection and data processing (data on land use)
b. To prepare land use planning
c. To give guidance to the society regarding land use
d. To control changes in land use

The question is, which level of government is most effective in implementing these specific tasks?

For instance, it is possible that regional level of government is most effective in preparing the plan on land use. But to do that, it should be supported by a good quality of data. Hence, uniformity and national interest should become important factors to be considered.

Another example: If an area which is a target of policy (e.g. “hutan wisata” or tourism forest) turns out to be located in an overlapping area across two regions, the provincial or
central government should be given authority to manage this problem instead of the regional government.

IV. CONCLUSION

1. Participants in these discussions generally agree that the pattern of distribution of authority concerning land problems can only be properly or adequately designed if – and only if - there is a overall policy at the national level. A clear and strong political commitment from the part of the central government (i.e. the President) is required to implement Agrarian Reform as instructed by TAP MPR IX/2001. A National Commission for Agrarian Reform should be constituted to prepare the implementation of the reform. Waiting for all these processes, however, would take quite a long time.

2. On the other hand, if Presidential Decrees No. 10/2001 and no. 103/2001 are implemented consistently, authority regarding land matters should be determined no later than May 2003 (see footnote 1). In such a situation, authority should be distributed but it should be viewed as being transitional, until the overall policy in accordance with TAP MPR IX/2001 is formulated. But even in this transitional phase, distribution of authority should be in such a way that can fulfill a number of conditions, which are (1) able to provide access land for the poor; (2) able to solve conflict cases; and (3) able to carry out services effectively. Besides that, it should give ample room for local/regional initiatives, or “reform by leverage”.

3. In short, during this transitional phase, the division of authority on land matters should be carried out in such a way that it would be: political tolerable, economically viable, socially acceptable, technically applicable, and legally justifiable. A number of factors, should thus be taken into account:

   a. Limitations or boundaries of authority between central, provincial, and regional/city government, should be clear (as expected by regional government);
   b. The spirit or principle of unitary state of Indonesia should be kept (as expected by central government);
   c. The Regional communities should be given ample room for launching “reform by leverage” (i.e., local initiatives, as expected by the NGOs);
   d. Authority for control and supervision should be designed in a “hierarchical step-wise” pattern (as expected by the provincial government);
   e. Capacity to resolve cases of land disputes (as expected by all).

4. All those considerations here are suggested simply for the sake of accommodating the various opinions.

5. Finally, two possibilities should be anticipated with regard to the political decision on the realization of TAP MPR IX/2001 that will be made by the central government. One possibility is that the agenda for agrarian reform becomes a top priority, which could
imply the extension of the validity of Presidential Decree 10/2001 (which is supposed
to end on May, 2003)\textsuperscript{2}. The second possibility is that the top policy maker tends to put
aside, at least for the time being, the agenda of agrarian reform. Therefore if any
distribution of authority is designed, two scenarios could be described. Firstly, the
distribution of authority would be designed in line with the agrarian reform agenda, in
accordance with TAP MPR IX/2001. Secondly, the distribution of authority is designed
without relating it to TAP MPR IX/2001 and referring only to Regional Autonomy Act
no. 22/1999 and Government Regulation no. 25/2000 (for a more detailed description of
these two possibilities, see Table 2).\textsuperscript{3}

\textsuperscript{2} See footnote 1 for the government’s decision on land affairs decentralization.

\textsuperscript{3} The Presidential Decree No.34/2003 on decentralizing land functions among the central and local governments
attaches a great importance to TAP MPR IX/2001. The Decree instructs the BPN to finish amending BAL
following the principles set in TAP MPR IX/2001 by August 2004.
<table>
<thead>
<tr>
<th></th>
<th>Central Government</th>
<th>Provincial Government</th>
<th>Local Government</th>
<th>NGO</th>
<th>Press</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land Conflict</strong></td>
<td>· Need to be resolved as soon as possible</td>
<td>· Sectoral policy was the source of land disputes</td>
<td>· Sectoral policy was the source of land disputes</td>
<td>Land conflicts happen because in the past, land policy was not stated as the basis of development strategy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>· Can be done through clear division of authority between central and local government</td>
<td>· Regional government have no authority to give any form of land rights</td>
<td>· Regional government have no authority to give any form of land rights</td>
<td>Land policy was directed at facilitating economic growth</td>
<td>Source of conflict: sectoral and central land policy; not involving regional government</td>
</tr>
<tr>
<td></td>
<td></td>
<td>· Regional government have no right to solve the conflict</td>
<td>· Regional government have no right to solve the conflict</td>
<td>The granting of land rights neglected the rights of the people/community, in favor of big, private enterprises</td>
<td>Conflict resolution should be done by involving regional/local government</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The role of regional government become more important</td>
<td>Clear division of authority between the central and regional/local government is necessary</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Local authority should be controlled by provincial government, and the provincial government authority should be controlled by central government (step-wise control)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>In certain aspects (e.g. management of protected forest) central government is more effective</td>
</tr>
<tr>
<td><strong>The imbalance of land tenure</strong></td>
<td>Ministry of Home Affairs (MoHA):</td>
<td>More attention on details, such as:</td>
<td>It appears that regional/local government have not realized the importance of structural problem.</td>
<td>Inequality in the structure of land ownership/holding is important, because it reflects injustices, which could potentially lead to future conflicts</td>
<td>Inequality in the distribution of land ownership/holding amongst rural households is not crucial</td>
</tr>
<tr>
<td></td>
<td>· It is not an urgent problem to be solved immediately</td>
<td>· The ever decreasing average size of farm unit</td>
<td></td>
<td></td>
<td>Big enterprises’ control of large areas is a more serious important problem</td>
</tr>
<tr>
<td></td>
<td></td>
<td>· The great number of absentee ownership rather than on the structure itself</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| BPN: | They propose: | • Protection should be given to the poor  
• Avoid the process of marginalization | • To overcome this problem, agrarian reform is needed  
• This reform should be designed within the context of regional autonomy, since agrarian resource conditions are different from place to place.  
• Therefore, regional/local government should be given authority (wholly or partially) to implement agrarian reform | as it reflects injustice and could lead to conflict. |

| Customary land rights | All participants recognize that adat law should be respected. BPN refers to Ministerial Agrarian Decree No. 5/1999 | Know nothing about Ministerial Agrarian Decree No. 5/1999 | Know nothing about Ministerial Agrarian Decree No. 5/1999 | No mention of Ministerial Agrarian Decree No. 5/1999 |

| Distribution of authority | • BPN: obligatory authority as stipulated in Law 22/1999 does not mean that the whole authority concerning land becomes the authority of the regional government  
• Authority on the | • Referring to PP 20/2000 there must be “step wise” distribution of authority and control between the central and regional/local government.  
• Devolution of power to the province can be done via Presidential Decree (de-Idem)  
Stepwise (hierarchical) control | Local/regional should be given the authority that could encourage them to launch agrarian reforms in their region.  
Authority to manage forest should be transferred to regional/local government, except for protected forest (hutan lindung) |
| Institution | The Home Affairs’ view is that institutional aspect concerning local agrarian matters should be under the authority of local government and at the national level it should be under the authority of the Directorate General Agraria under MoHA. BPN’s view: in order to keep uniformity in administering land problems, authority to handle it should remain in the hand of central government (BPN). BPN also think that there is concentration. | Principle:  
- No problem with the implementation of Law 22/1999 as long as P3D is transferred to the province  
- Authority of provincial government is so far not clear (no to mention either Law 22/1999 or in Government Regulation 25/2000)  
Open to several options but the most important is the clear division of authority. | Idem |
| | | | |
| | Just follow what have been stipulated in Law 22/1999 and Government Regulation No. 25/2000, i.e. land office should be transferred to Land Service Kabupaten/Kota and Regional Office of Land Agency become Provincial Land Service. | Institutional building depends on how authority will be distributed. | An agency which has the authority to implement agrarian reform should be established. |
| The relevancy of agrarian reform | • Both MoHA and BPN appears to look at TAP MPR IX/2001 just as legislation product  
• Not so concerned about the substance or how to implement agrarian reform in accordance with the TAP  
• Discuss decentralization without relating it to agrarian reform agenda  
• Neglect totally the issue of “moratorium of the existing law” | • To treat and look at TAP MPR IX/2001 simply as just as legislation product  
• Appears not to know the consequences  
• Just waiting for further action from central government | Poor comprehensive understanding of TAP MPR IX/2001 within the context of regional autonomy | • Underline the importance of establishing institutional body in line with the agenda of agrarian reform in accordance with TAP MPR IX/2001  
• To prepare a special “Authority agency” through organizing a National Committee for Agrarian Reform  
• There is an awareness to push agrarian reform from below so as to change the attitude of the central government. |
## TABLE 2 TWO SCENARIOS IN DETERMINING THE DISTRIBUTION OF AUTHORITY CONCERNING LAND MATTERS

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>SCENARIO-I</th>
<th>SCENARIO-II</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle:</strong></td>
<td>Regional Autonomy without Agrarian Reform</td>
<td>Regional Autonomy in line with Agrarian Reform</td>
</tr>
<tr>
<td></td>
<td>Provisional distribution of authority is designed without relating it to TAP MPR IX/2001. (Transitional, waiting to confirm political will whether or not agrarian reform should be a top priority agenda)</td>
<td>Definite design of the distribution of authority will be formulated only after the grand policy referring to TAP MPR IX/2001 has been decided.</td>
</tr>
<tr>
<td><strong>Division of Authority</strong></td>
<td></td>
<td>Stages to pass:</td>
</tr>
<tr>
<td>• Kabupaten/kota government</td>
<td></td>
<td>1. Formation of National Commission for Agrarian reform (NCAR) which functions as preparatory body to speed up legislation process, and provide the basis for the formation of Board of Authority to launch agrarian reform in accordance with TAP MPR IX/2001</td>
</tr>
<tr>
<td>They could be given authority to:</td>
<td></td>
<td>2. Formulation of authority distribution among levels of government within the context of agrarian reform</td>
</tr>
<tr>
<td>a. Grant small scale land rights</td>
<td></td>
<td>3. Formation of effective institutional apparatus for executing the reform</td>
</tr>
<tr>
<td>b. Execute land reforms according to its local characteristics</td>
<td></td>
<td>4. Implementation of the reform in the regions</td>
</tr>
<tr>
<td>c. Design land use planning under the coordination of provincial government</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Could also have authority to:

- Execute land registration through BPN working units which are located in the regions
- Large scale land granting

**Institutional Apparatus**
- In Kabupaten/Kota
  A Land Service (Dinas Pertanahan) can be established, in which a working unit of BPN is included, but this unit is responsible only for land registration and accountable to BPN
- In the Provinces
  Two bodies co-exist: i.e. Provincial Land Services, and BPN unit of Land Affairs
- In Central Government
  One agency: BPN

**POSITIVE ASPECTS**

1. Authority division concerning land matters could be accomplished by the end of May, 2003.
2. Controversy or dualism concerning institutional apparatus in the regions could be overcome.
3. Uncertainty felt by the whole society in terms of land services can be much reduced in a relatively short time.

**NEGATIVE ASPECTS**

1. Transitional or provisional in nature, waiting for clarity and confirmation on the implementation of TAP MPR IX/2001
2. Subject to changes or amendment of 1945 Constitution which could imply changes in the content of Regional Autonomy Act no. 22/1999
3. Sectoralism is difficult to overcome

1. The possible extension of Presidential Decree no. 10/2001 could invite protests from the regions.
2. Legislation, following-up on TAP MPR IX/2001 for agrarian reform would be a process which could take a very long time.

**CONDITION REQUIRED**

1. Full commitment from the part of the government and the parliament to execute agrarian reform by speeding up the process of legislation (i.e. the issuance and enactment of the basic law)
2. Revision of Regional Autonomy Act no. 22/1999 can be accomplished after grand policy has been defined.
Annex: List of Discussants and Participants

Ministry of Home Affairs
1. Director General of Public Administration
2. Director of regional development
3. Director of urban development
4. Sub-Directorate Agrarian
5. Directorate General of Regional Autonomy
6. Center of Research and Development

National Planning Agency
1. Directorate of Spatial Planning and Land

National Land Agency
1. Project Manager LMPDP

Sumedang
1. Bupati Sumedang
2. Head of Forestry and Crops Service
3. Head of BPN
4. Head of Village Own Enterprise

Lampung
1. Legal Aid Foundation
2. WATALA, local NGO
3. Dinas Kehutanan
4. Tim 13
5. Bappeda

Wonosobo
1. ARUPA (local NGO)
2. Dinas Kehutanan

Kalimantan
1. YPSB, Sanggau (local NGO)
2. Dinas Kehutanan

Forestry NGOs
1. LATIN, Bogor
2. LEM 21, Mojokerto
3. JKPP, Bogor