LAND POLICIES IN INDONESIA

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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 agreed to pursue 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 working paper is a product of consultants as part of the land policy dialogue activities carried out from June 2002 to June 2003. The author reviews the evolution of Indonesia land policy and makes recommendations on developing an Agrarian Reform Act, establishing special regional courts to solve land disputes, reviving the land reform program, avoiding sectoral approach in developing land policies, and other institutional issues.
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I. Executive Summary

The People’s Consultative Assembly or Majelis Permusyawaratan Rakyat (MPR) has issued a Decision/Instruction no. IX/2001 on Agrarian Reform and Management of Natural Resources. The Decision mandates the Parliament or Dewan Perwakilan Rakyat R.I. (DPR-RI) to draft a bill on the subject within the shortest possible time.

A sub-committee within Committee II of the DPR is collecting more information prior to formulating the draft (RUU) for which heading is still under discussion in various groups (NGOs, Farmers, Experts) who have embedded interest but different opinions regarding it. The National Land Agency (BPN) is also drafting an academic paper to provide a solid basis for the bill.

One group’s position is to help the existing Basic Agrarian Law (UUPA) no. 5/1960 be the overarching Act for technical/sectoral Departments/Ministries to refer to in their respective Acts (Forestry, Mining, Irrigation, Living Environment, Transmigration, etc.).

Another group’s position is to have an Act on agrarian reform separate from the management of natural resources, but with both referring to chapter 33 of the Nation’s Constitution and to MPR’s Decision no IX/2001.

In this rather controversial situation, it is questionable to what extent the National Land Agency has been mandated to function as an effective coordinating institution, directly under the President as the head of the National Cabinet.

To answer this question as well as to understand the effect of land policies on the people, this paper presents the chronological changes in Indonesia’s agrarian policies stemming from the early 19th century to the end of the 20th century.

Indonesia’s emergence from a colonized archipelago to a unified sovereign nation state has changed the agrarian structure. As primarily an agrarian society with approximately 60 percent of its population working in or living from agriculture, governments are bound to manage natural resources such as land, water and the riches they contain as best as they could to realize public welfare. However, the presidents who governed the country for the past 50 years have had diverse opinions on their use, exploitation and management.

Therefore various agrarian policies will be described, including their respective implications and impacts on agricultural and rural developments. Land fragmentation, poverty and land hunger among others will be exposed. Institutions at national, regional and local levels will also be discussed as they have been instrumental in policy implementation.

How favorably the people in the vast rural areas respond to the policies depend on local needs. In its drive for self-sufficiency in staple food since the 1960s, Indonesia has
enthusiastically supported the Green Revolution, which unwittingly bred land accumulation in the hands of the rich. As a result, rural unemployment skyrocketed alongside rice production.

Moreover, land reform and tenancy reform implementation were practically disregarded in programs such as developing an integrated legal framework, composing a national land use map, conducting land administration and certification etc. The conviction concerning the necessity and national justification for the execution of reform has to come from Indonesia’s governing and political elites.

Any step forward in this direction seems to be a positive contribution to overcome the present multi-crisis situation.

**Key Findings**

Since the mid-1997 crisis, the country’s legal system has loosened and subordination to laws and regulations has weakened considerably.

- The process of drafting the Bill on Agrarian Reform & Natural Resources Management by the Parliament subcommittee and the National Land Agency seems to progress slower than needed for quick resolution of a great variety of conflicts.
- Reports on conflicts in the region, created by contradictions between the legality of customary law and state laws, are increasing day by day. This creates an unstable climate for medium- to long-term investments by domestic and foreign companies.
- The instability and uncertainty has also made investors seriously consider relocating their companies to neighboring countries, thus worsening unemployment domestically.
- Although the Regional Autonomy Act no.22/1999 has been promulgated - promising the District Heads (also known as Bupati) greater competency of land use and allocation, a subsequent Presidential Decree no.10/2001 (made in April 2001) seems to have overruled this promise, until it is debated again in May 2003. This decree mandated that local government could not create formal regulations on land through May 2003. Legally, Presidential Decrees are considered to be subordinate to Laws, such as the case of Agrarian Reform and Natural Resource Management. Yet district administrators are expected to obey the decrees. This causes confusion as to which law should be the overriding one.
- The lack of definition for customary land has also added to this climate of confusion for administrators and investors. The idea of private property is unheard of among some ethnic groups which practice communal farming. Since the era of Dutch

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1 The Presidential Decree No. 34/2003 issued on May 31, 2003 clearly stipulated the distribution of authorities of land affairs between the central and local government. There are nine functions given to the Regions, which includes: issuance of location permit, provision of land for public interest, resolution of land disputes, resolution of compensation for land allocated for development, land redistribution, determination and resolution of ulayat land problem, etc. The function of titling and registration stays at the central government level.
colonization, lands that were considered as customary were forcibly taken and marked as state land. The issue was un-resolved during the Soeharto government largely for fear of military reprisals. But the democratic climate of Reformasi that blossomed in 1998 had embolden some adat (customary) clans to make claims, some dating as far back as 105 years, on state land as belonging to them.

- Due to pressure from the farming population in certain districts, administrators have taken an independent and resolute stand by establishing joint committees at local level whose members are representing farmer’s organizations, members of the local DPR, administrators and NGOs.

- Some of these administrators, who initiated the formation of joint local committees, went on to present their respective cases at a seminar held by the Department of Home Affairs i.e. Directorate General for General Administration in June 2002.

- The cases presented have been named “best practices”, which at the same time highlighted the urgency to find the solutions to agrarian problems, even prior to the promulgation of an Agrarian Reform & Natural Resource Management if referring to Assembly Decree (MPR) No. IX of 2001.

- Steps taken so far towards the recovery of Indonesia’s macro-economy have not included the postulate that agrarian reform and effective natural resource management in developing countries is crucial to the economic recovery.

- Neither has the reform included the assumption that poverty eradication in rural areas will be accelerated through land redistribution, and that it will also enhance popular support for a democratic government.

- The drafting of a bill on Agrarian Reform & Natural Resource Management has not been prioritized in the present government for the first semester of 2003; it was not found listed among 53 other bills that have to pass parliament (Kompas, January 20, 2003).

**Recommendations**

1. Bearing in mind that Indonesia’s founding fathers had intended to revive equality, justice and eradicate poverty after a long period of colonial exploitation, this spirit should have been reflected in the forthcoming Agrarian Reform Act, based on the promulgation of the People’s Consultative Assembly Decision no. IX/ 2001, in November 2001.

2. The Basic Agrarian Law (no. 5/1960) promulgated on 24 September 1960 was inspired by the spirit of customary law, in which there is a predominance of communal over absolute private ownership (*milik*).

3. Consequently the newborn nation-state, established as a modern institution has control rather than ownership over all agrarian resources (UUPA Chap. I.2), including land, water, air, and all natural resources contained under or covering them.

4. The term “agrarian” has been understood to mean all natural resources in relation to humans/ human society, such that it necessarily implies their management and exploitation (Wiradi & Tjondronegoro, 2002).

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2 For detailed discussions of the workshop, please see the proceeding titled “Summary of Workshop Discussions on Customary Land and Land Disputes” prepared by Professor Arie Hutagalung and others.
5. It is strongly advised that the above spirit, interpretation and meaning should be imbued in the forthcoming Agrarian Reform Act, simultaneously recalling “sectoralism” in all relevant acts previously promulgated.

6. It is strongly advised that promulgation of the above meant Agrarian Reform Act should be passed by Parliament within the shortest possible time in order to prevent anarchic activities and conflicts from becoming more widespread. Drafting of the bill could be assigned to a relatively small but independent national committee, that is external to parliament and consists of dedicated experts and other incorruptible members.

7. The rapidly increasing number of agrarian conflicts, land grabbing/reclamation, illegal logging and other acts of violation demand the establishment of special regional courts, to prevent more widespread violence. This is perhaps not confined to rural areas.

8. Since the number of landless poor people is steadily increasing, and the ailing manufacturing sector is unable to absorb the surplus labor force of 2.5 million each year, falling back on agriculture development as the stimulant for reviving economic growth looks inevitable.

9. Empowerment of the farming population should include the establishment of free farmers organizations, which ideally should also be represented in the DPD, (regional) as well as DPR, and MPR (national) assemblies.

10. In order to overcome the problem of sectoral approaches in the Agrarian Reform Act, an “overarching agrarian act” should be promulgated as soon as possible. Or a Presidential Instruction should become effective to reorient Sectoral Acts (introduced by Technical Departments) to the “Umbrella Act”. Some would argue that it is not possible to find the political will to carry out agrarian reforms now when Indonesia is still undergoing economic crisis. Even during the late 1970s when Indonesia experienced political stability and a high growth rate of 7 percent GDP, the government did not seize the moment to carry out land reforms in its development plans but simply retained the Basic Agrarian Law (BAL) 5/1960 as a reference.

11. The other alternative solution would be to popularize the “best practice” experiences by allowing district heads to formalize land use through regional consensus (land reform by leverage). But a point to note is, this may cause inter-regional conflicts if no National Land Use Map is available.

12. A quick solution - if possible before May 31, 2003 - is needed to resolve the controversial issue between chapter III.5 of the law on Regional Autonomy no.25/1999, and the subsequent Presidential Decree no.10/2001 on competencies concerning land allocation. Regional/District administrators are confused and critical of the issuance of the above Presidential Decree because it does not contain legal authority to overrule any chapter of a law. This understanding has been revitalized after Reformation 1998.

13. The National Land Agency (BPN), which should have been the coordinator in agrarian restructuring, should be re-strengthened if the sectoral approach is to be overcome. At present, the BPN does not have the power to coordinate, and has become a mere administrative institution for land registration.
The central government need a strong institution to plan and implement a comprehensive Agrarian Reform and through it realize efficient management of natural resources that this country badly needs.
II. Introduction

Historical Overview 1945 – 2001

Agrarian unrest in Southeast Asia drew the interest of foreign scholars even before The Second World War, as was explicitly stated by e.g. E. Jacoby in his book entitled: “Agrarian Unrest in Southeast Asia” (1949):

“The peasants of Southeast Asia are still today victims of the vicious circle of poverty and indebtedness. The dramatic post-war developments did not change the economic and social structure which determines the way of life of the peasants, and agrarian dissatisfaction and latent unrest have remained the fundamental problem of the area.”

It is finally recognized that political freedom is by no means identical to freedom from direct or indirect foreign economic control. Indonesia’s founding fathers were deeply convinced of the above findings, and that was one reason why the late Dr. Moh. Hatta agreed to establish a national committee for Agrarian Reform, less than a year after Indonesia’s proclamation of independence. It took another two years, however, before a Presidential Decision (Pen. Pres. No.16, 1948) enabled the setting up of such a committee in Yogyakarta.

Unfortunately, the political and military struggle between 1945-1949, referred to as the period of Physical Revolution, caused considerable retardation of the committee’s work. It took 12 more years before the committee could finalize its work, which is known as the Basic Agrarian Law no.5/1960, an “over arching Law” that can be used as a major reference. The Law, comprising 58 chapters, set the basic principles for national control over all natural resources (land, water, space and the riches under and above them (Chapter 1 and 2).

Poverty alleviation, people’s welfare and establishing a basis for a more independent economic development, were the fundamental principles of the founding fathers and committee members.

To elaborate on the foundation of their idealism:
A). The ideological or paradigmatic foundation to lessen the country’s dependence on foreign control is a response to centuries of colonial misrule. The spirit of Merdeka (Freedom) pervaded in the minds of millions, of citizens and ignited a strong hope for a better future among the rural population. In pre-independent Indonesia, there was hardly an indigenous urban bourgeoisie. Since the upper echelon of society consisted of Westerners and Chinese entrepreneurs, the indigenous nobility was more dominant in the bureaucratic ranks but had no role to play in the commercial sector. Since there was hardly any industrial development to absorb the surplus rural labor force, the vast majority depended on agriculture, making Indonesia a predominantly agrarian nation-state.
B). The New Order regime (1967-1998) entered its ruling period by preventing further implementation of the land reform, with the false assertion that land squatting by land hungry and landless peasants was politically directed by the Indonesian Communist Party. This is also partly due to strong resistance from the landed proprietors particularly in rural areas, where Muslim clericals were dominant.

The ban on the Communist Party and affiliated peasant organization (B.T.I.) resulted in a cessation of all agrarian reform implementation, including tenancy reform (UUPBH 2/1960) in 1965.

There was practically no central control over agrarian affairs in subsequent years, and this paved the way for the various Departments to take individual action, leading to the promulgation of the Basic Forestry Act 5/1967, Mining Act no.8/1967: Oil & Gas Act. No 8/1971; Transmigration Act no.3/1972, etc.

As a result, a form of uncoordinated sectoralism emerged, which still continues today, as seen in the various sectoral bills on irrigation, estates, living environment etc.

There were two problems arising as a consequence of the uncoordinated policies of various technical Departments.

a. The demand for land for developmental purposes increased considerably, causing land scarcity as well as high land prices.

b. Not only was the implementation of several developmental projects stalled, land conversion without any registration also occurred frequently.

Under a strong centralistic regime, no opposition could be effective, and government controlled areas widened at the cost of adat (customary) land.

As a result, the rich marginalized the poor peasantry and landless farmers had to flee to the cities in search of work. By the end of the second Five-Year Development Plan (November 1977), former President Soeharto instructed two Ministers of State to conduct an assessment on the Agrarian State of Affairs. Although the Basic Agrarian Law no.5/1960 was declared by the Minister of Interior to be the Act for any reference, in actual practice nobody bothered.

The Directorate General for Agrarian Affairs was even dissolved and replaced by the National Land Agency (BPN) in 1988. Although the BPN was put directly under the President and Secretariat of State (Sekretariat Negara), it has very little leverage in the field.

The government set up a research team to make recommendations, which was chaired by two Ministers of State - Prof. Soemitro Djohadikoesoemo (Research) and Prof. Widjojo Nitisastro (Economic, Finance & Industry). Ex-officio Chairman of the National Planning Board consisted of an Advisory Committee of 17 members, an Expert Secretariat of 6 members and 2 professional consultants on agrarian affairs and statistics.
to advise the expert Secretariat. One of them, Prof. Boedi Harsono, was a member of the national drafting committee between 1948-1960.

The above committee finally recommended in the report 25 points/actions for the short-term period, among which 12 researches to be conducted, 8 operational steps, as well as 3 research themes for the long-term period, perhaps beyond National Five-Year Plan (Repelita) III (1978/79-1983/84).

However, the recommendations might as well be bouncing off the walls as none of them appeared in the Grand State Guidelines (GBHN) of Repelita III and were therefore omitted as development project proposals.

III. Basis for Further Discussions: Clarifications of Key Concepts

With reference to secondary data sources and formal definitions of international agencies like FAO, it is useful to present brief descriptions of such terms as: (a) agrarian reform, (b) agricultural development, (c) community development, and (d) economic development.

(a) Agrarian Reform covers all organized action designed to improve existing systems of land tenure, such as improvement of tenure legislation, consolidation of fragmented holdings, tenancy reforms and the break up of large estates and/or forest areas, either by transfer of ownership (land redistribution) or conversion of government controlled forest land into forest concession (HPH).

The full effect of land reform, as one action within the Agrarian Reform scheme, however, can only be obtained if it is accompanied by improvements of other closely related parts of the economic and social systems, such as credit facilities, marketing, taxation and education.

(b) Agricultural Development is the process of making fuller and more rational the use of agricultural resources of a country, with special reference to the efficiency of agriculture and the standard of living in the rural.

(c) Community development is the process of empowering members of the community as well as the existing institutions to increase community welfare by utilizing available resources as the first step towards a modern industrializing society.

(d) Economic Development is the process of making fuller and more rational the economic utilization of the natural and human resources of a country while stepping up environmental management in a responsible way.

There is no doubt that reforms in the system of land holding will create favorable conditions if they are coordinated with measures in related fields, and with a corresponding program for general economic development.
It should be reminded that since a long time ago the holding and use of land have been of greatest importance to every political and economic system - particularly in developing countries. In fact, it is the basis of social organization; a tenure system that is no longer in accordance with the stage of political and economic development and lacks the capacity of adjustment, will inevitably contribute to instability, insecurity and uncertainty.

A tenure system, which can ensure the net returns of production proportionately, divided according to the contribution of capital, skill and labour can help to provide the rural family with a decent level of living. A bad tenancy system, may, however, result in the farmer being deprived of income that is due to him.

IV. Agrarian Reform In Retrospect

The Agrarian Reform issues may be traced back to the interregnum of Sir Stamford Raffles (1811-1816) who implemented the first cadastral registration particularly on the island of Java, and leaving the outer islands practically untouched. In other words, customary law dominated agrarian affairs.

In the *History of Java*, Raffles had a chapter on agriculture where he also described the traditional tenure of lands, particularly on Java. But he omitted an account of the implementation of a cadastral registration.

In trying to duplicate the *ryotwari* system in India, Raffles carried out the renting out of lands to the actual occupants - whether in small or large estate for a moderate term - during 1814-1815 (vol. I, p.155).

“The lands, after being surveyed and estimated, were to be parceled out among the inhabitants of the villages, in the proportions established by custom or recommended by expediency. Contracts were to be entered into with each individual cultivator, who was to become the tenant of government, etc...”

Clearly, Raffles moved towards a land registration that is in harmony with traditional customs and yet has the security of tenure due to adequate government supervision. The liberal that he was tried to ensure that this would help the tenants move away from feudal tenure systems, where there is less tenurial security for them.

Raffles' important contribution has been recorded as “substance of a minute on the introduction of an improved system of the internal management and the establishment of a land rental for the island of Java” (1814).

Meanwhile, a former lieutenant in the colonial army Johannes van den Bosch, who had built his career on to the position of Governor General of Netherlands Indies (circa 1828), introduced the *Cultuur Stelsel* (Cultivation System) in 1830. Although, he initially did not want to reintroduce a forced labor system that existed since the East India Company time, in actual practice there was not much difference.
The idea matured among the Dutch colonial administrators to rent out idle/uncultivated land to foreign companies, which implied a monopoly of control over land by the state.

The original idea behind the cultivation system during the colonial period was that the millions of tenants in Java, who cultivated food crops on tiny holdings with primitive mean, had to be changed, and European capital, knowledge and technology were to be brought in to develop agriculture.

Thus long lease of uncultivated land by Western companies emerged, which was sustained by a free labor market.

An alternative idea was to mandate the state and its bureaucracy to become contractors e.g. for sugarcane cultivation, instead of large foreign companies. In practice both systems were implemented for selective crops.

To some extent this can be perceived as the predecessor system of the State Enterprise (BUMN), which became well known and later notorious for its corrupt practices during the New Order Era (1969 - 1998).

The Cultivation System broke down in 1870 due to the emergence of more liberal ideas in Europe, where socialist movements grew stronger. Liberalization was in the air and the grip of the colonial state was to be replaced by big private commercial entrepreneurs.

Agrarian affairs were restudied and the first Agrarian Act (Agrarische Wet) was promulgated in Indonesia (then Netherlands-India). The principle of registering landownership was an absolute condition. Land that could not be claimed on the basis of a legal document (traditional token) was declared state land (domein verklaring), which could be leased for 75 years to foreign companies.

This is why most forest land, also in the outer provinces, became state land, or was at least considered to be so. Lands under customary law were fairly limited, since population density around the 20th century was also relatively low. Indonesia’s second Agrarian Law, which was the Basic Agrarian Law No.5/1960 introduced after the proclamation of the Republic, put an end to the dichotomy of customary and state law. Communal ownership of the nation was in principle accepted as long as it is in harmony with public interest.

In this sense, the state merely mandated to exert control over all agrarian resources on behalf of the people.

However, two centuries of colonial rule made the concept of individual ownership (hak milik) stronger and more absolute. Communal control over land has therefore been eroded seriously.
How important agrarian affairs have been since the early years of the Republic is reflected in the formation of a cabinet under Burhanuddin Harap (1955-1956) with the appointment of a Minister for Agrarian Affairs.

Prior to the implementation of the Basic Agrarian Law no.5/1960, a Minister of Agriculture and Agraria was appointed and remained in office until the New Order government came into power.

Since then, a Director General under the Minister of Interior had been assigned with agrarian affairs until it was again reorganized to become the National Land Agency (Badan Pertanahan Nasional) in 1988. Although the agency is directly under the President, it functions more as an administrative unit. The term land reflects clearly the cessation of the agrarian reform.

After the Reformasi of 1998, ethnic groups and poor peasants have revived the adat spirit, and this communal spirit ignited many instances of land reclamation.

We will also see individual ownership growing stronger among the urban population which sees the natural resources as the most valuable asset. These natural resources will be highly priced for a long time to come, particularly now that liberalization and global economy are becoming more dominant.

It appears inevitable that an appropriate legal system to secure tenurial relations at all levels, rural and urban, will be developed in the shortest possible time.

The caveat is that conflicts will occur since liberalization has also brought along disintegration of communal structures, and individualization is evidently in progress.

Adat leaders taking steps and making decisions without the traditional consultations or musyawarah are occurring more frequently. Laws regulations are often taken at face value stripped of their intrinsic values of solidarity and consensual spirit.

V. New Order’s National Development Paradigm

As discussed in the previous chapter, the New Order’s development paradigm displayed a shift in belief, sectoral priorities and spirit.

Not only was the land reform discontinued, former large landowners who lost land in 1961 – 1965 also reclaimed their distributed land. The agricultural policy was focused on exportable (estate) crops and the effect on the small farmers was disastrous, resulting in a food crisis in 1967.

An important and prioritized food program that the Old Order regime initiated in the early 1960’s, known as Panca Usaha was therefore revived, and became a first step towards getting involved in the Green Revolution. Fertilizer and pesticide plants were set up partly with foreign loans.
Although food production increased considerably in the year 1968/1969, the Green Revolution also resulted in some negative consequences for the small and middle farmers. Collective harvesting by women was replaced by wage laborers, unemployment increased as did urban migration. Moreover, land accumulation became widespread creating even more poverty and rural unemployment.

Production increases were attainable if there were greater investments. This was the small farmer’s problem since the cost of production on tiny plots of land could not match the value of its final product.

Consequently many small farmers tried to stay out of the program, but the best soils were also needed by the Department of Agriculture, and many were forced to join the program.

Since no free farmer organizations were allowed to exist, protests could not be channeled to the People’s Consultative Assembly or Parliament.

It is true that in 1984/85 Indonesia became self-sufficient in rice, however, it did not last more than a few years. Indonesia was no longer the largest rice importer in the world during that period.

In the macro-economic context, agriculture was no longer the sector that spearheaded national development. It was replaced by the oil and gas sector, mining sectors, forestry, and the manufacturing industry that were created by foreign investments.

The balanced routine and development budget presented each year to parliament looked trustworthy, and it was only much later that widespread corruption, collusion and nepotism were detected and made public, generating various other crises after the economic monetary crisis of the mid-1997.

The Indonesian state was ranked as the number 2 most indebted country and as the first most corrupt nation in the world. It is feared that Indonesia’s debt repayment may take decades.


The political instability that marked the beginning of the Post-Reformation Era, as well as the sudden changes of the nation’s top-leadership also affected the foundation of the legal system. Political organizations and non-governmental organizations (NGO) mushroomed all over the country, and a new national consensus was created through a general election in 1999.
National unity trembled due to the emergence of dissident movements in distant provinces such as Maluku, Irian Jaya, Aceh and Central Kalimantan. Ethnic and religious clashes added to the loosening of the central authority.

The general election, in which some 48 political parties contested, eventually elected a new president, made up a new parliament and formed a coalition Cabinet.

Among the many bills and government regulations that have been debated and revised by DPR, the renewal or reinstatement of the Agrarian law was not a priority. Only a decision by the People’s Consultative Assembly no. IX/2001 on the Agrarian Reform Law and Natural Resource Management passed the DPR. The Post Reformation political paradigm of the new ruling political parties has been rather focused on debt repayment, stimulation of investment and economic growth. The country once became again the world’s largest rice importer.

Controversies arising from the contradiction between customary and state laws were more frequently reported, not only from distant provinces but also from Java.

Meanwhile the term on land lease of State Lands to Companies, such as in vast forest areas, was revised; the lease period was cut down to 30 years, and renewable for another term if good management was proven.

Gradually, autonomous regions would be given wider freedom to make decisions regarding land allocation and long lease contracts.

More particularly, foreign investors are demanding firmer assurances from the central government in case disputes arise with provincial and/or district administrators. Such disputes may be due to the unclear boundaries between state and adat lands as claimed by local ethnic communities.

In essence there seems to be no development paradigm changes during the post-reformation era; agrarian reform is not perceived as a prime mover for economic revival and growth.

Just one year after the resignation of President Soeharto and the breach of centralistic and authoritarian rule, a law on Regional Autonomy has been promulgated (UU Atonomi Daerah no.22 & 25 / 1999, May 7), which accordingly replaced Law no.5/1974 on 2nd level (Dati I) and 3rd level (Dati II) Regional Autonomy, as well as the law on Village Administration no.5/1979.

The new Law on Regional Autonomy comprises interrelated but independent components which are:

- No.22/1999 on Regional Administration (Province, Kabupaten/District and Desa/Village);
- No.25/1999 on Financial Balance between Central and Regional Administration; and
Although in Chapter 10 of Law No.22 it is stated that delegation of competences has been granted to regional administrators to manage “national resources”, nowhere has land been explicitly mentioned. Rather, the focus is on marine resources [Chapter 10 (2)]. Agriculture and Land among many other sectors appeared without further explanation [in chapter. 11 (2)] in the context of regional governance.

The government sees the marine resources, more particularly fisheries as one way to acquire state revenues. Already in fiscal 2001 a plan was developed to increase the export of fish to the value of USD 10 million (6.1 ton) under the Protekan 2003 (Fish Export 2003 Project). It would mean a significant jump from 38 to 82 percent of perikanan tangkap (fisheries).

Some NGOs have cautioned against over-fishing which would affect the environment badly. Therefore a management model has to be designed such that production increase should take traditional fishing rights and environmental sustainability into consideration.

In Chapter 80 regional rights to levy land tax has been mentioned under the subject of Regional Finances. Therefore one would wonder which institution in particular would be responsible for agrarian affairs since also the regional BPN office has not been referred to.

In a discussion with the Vice-Governor of West Java and top echelon administrators from 10 Kabupatens/Districts, it was disclosed that there have been occasional coordinative meetings but the collaboration has not been legally or administratively structured.

Over the past thirty years the extractive, manufacturing and local rural industries have displayed considerable growth, causing urbanization to expand rapidly at the cost of arable land conversion. According to demographic projections (Aris Ananta, 1995) Indonesia will be close to 50 percent urbanized by the year 2030.

Urbanization progresses at the cost of fertile irrigated farmland on Java which constitutes some 40 percent of Indonesia’s wet rice fields. Java’s rice production amounted to 27,382 million tons of husked rice, representing 57.4 percent of total national production (Djamal & Djauhari, 1998).

Concern was voiced in mid-2002 (Dibyo Prabowo, Tjondronegoro), and President Megawati banned further conversion of land, particularly in Java.

The rapid rate of conversion in land use was to some extent compensated by intensive and modern techniques of farming to attain higher staple food production, particularly rice. A large project of about one million hectare to expand farmland was started in Central Kalimantan (1996) on tidal swamp area (PLG Project). But the project,
which should have provided jobs for the local population (60 percent) and transmigrants (40 percent) from Java and Bali, was a complete failure.

The project was discontinued at the beginning of the Reformation era, and Indonesia again became the largest rice importer in the world. The import figures are:

1998 5.765 million tons
1999 3.729 million tons
2000 1.500 million tons
2001 1.500 million tons
2002 2.500 million tons
(Kompas 13 May, 2002)

From the figures it seems that among the farming population, many are net-consumers rather than net-producers.

VII. Problems To Be Solved

Illustration of problem - cases

Although land redistribution - particularly to the landless and poor farmers - will be more complex than it was in the early 1960s, it needs to be done in order to reduce rural poverty, environmental destruction, dependency on landlords and rural unemployment – all of which contributed to rural underdevelopment.

The common argument is that small farm plots are not efficient. However, for rural people who have never owned any land, receiving even a small piece of land will stimulate their productive activities. Becoming independent from their patrons will prove a good incentive for production. Doing that will also help slow down rapid urbanization.

If the boundaries between adat and state lands can be more clearly delineated and mapped out, farmers in the outer islands are likely to find it profitable to expand the cultivation of exportable (perennial) crops.

Security of tenure is undoubtedly a condition to ascertain higher production and the introduction of new farming technologies.

A national land use map could be produced with the help of aerial photographs, as a first step towards micro land use mapping, without which land registration and administration would be very difficult. Obviously clear delineation of boundaries between adat and state land is a prerequisite.

The Agricultural Census, held every other decade since 1963 can be most helpful in not only determining size of holdings to predict the production of crops, but also to delimit their legal status (tenurial, ownership etc.).

Land use and environmental management are inseparable issues that should be carefully planned.
A tax-system has to be developed to reduce land areas left idle and unproductive, not infrequently by absentee landlords.

Conversion of land use should be subject to regulation and control by BPN, whose consent is needed.

Limits to minimum and maximum land ownership, already stated in the Basic Agrarian Law no.5/1960 should be reviewed, though the essence in Chapters 1 to 13 may still hold.

Similarly tenurial conditions in sharecropping cases as stimulated in the Tenancy Act no. 2/1960 should also be reviewed.

If the central government feels itself incapable of carrying out agrarian reform in all its aspects, the replication of “best practices” in the region may be a next best solution. In any case, the race is against time (agrarian reform by leverage). No doubt certain rights of a comprehensive nature and in the interest of the nation should be reserved to the central government.

Following here under are a few problem-cases:

**Institution**

Although the Law on Regional Autonomy No.22 & 25/1999 have been promulgated including the explicit delegation of authority in Chapter 11 as well as Government Regulation No. 25/2000 pertaining to land and agricultural matters, institutional problems have yet emerged between the District level BPD (Badan Pertanahan Daerah) Office, as a regional sub-unit of the BPN, and the Dinas Pertanahan (District Land Service), which the District is entitled to establish. Contraventions of competences have been reported.

Government Regulation no.25 of 2000 states that the following competences have been warranted to the District:

-- Formulating conditions to extend land rights;
-- Formulating conditions related to land reform;
-- Setting a standard for land administration; and
-- Delineate the framework for cadastral registration and implementation.

As was reported earlier the above competences seem to have been over-ruled by Presidential Decree no.10/2001.
Land Use Conversion

In a developing country with high population density, land use conversion is not without problems - particularly since optimization of land use has given rise to disputes. For the poor every single square meter of land - even if it is left unused - has its value as a dwelling space, shelter and peddler markets. So any conversion into uses for “public interest” such as mini markets, parking lots, shopping malls will ignite resistance.

Therefore the meaning of “functional optimization” has to imply meeting the needs of the poor, and finding some form of acceptable compensation. For them it is a matter of economic survival.

Agriculture Development

Ever since the New Order regime came into power, it has in its agricultural development policy put an emphasis on staple food production i.e. rice in particular, without changing the agrarian structure. Both Laws on Basic Agrarian Affairs and Tenancy were “refrigerated”, and the head start in the agricultural sector began with a rehabilitation of irrigation systems, plantations producing exportable perennial commodities, and technological modernization in food crop production.

Agricultural development in a developing country such as Indonesia that has a rapid growing rural population is inevitably related to the nation’s land use pattern.

According to BPN statistics (1999) space for “Agriculture” in a comprehensive sense comprises 71.2 million Ha of forest area and 52.2 million Ha of non-forest area, including agriculture.

The total area of 121.4 million Ha can be differentiated in state/ public land and adat land possessed by local ethnic communities. It is admitted that a differentiation between the two domains is still an intricate problem.

The Deputy Head of BPN has attempted to introduce three criteria to distinguish one from the other:

(1) The existence of a homogenous indigenous community subjected to customary law; (2) a territory with certain boundaries as its Lebensraum as the object of customary law. (3) a clear distribution of rights and competences regarding control and utilization of agrarian resources.

Forestry

The Minister of Forestry as quoted by Kompas newspaper outlined his policy on January 8, 2003. Admitting that deforestation and mismanagement of forest concessions (HPH & HTI) have been disastrous, he said that industrial restructuring would continue.
If no further limitation on tree felling is made, he estimated that Indonesia would be completely deforested by the year 2006.

Tree felling will be reduced by approximately 50 percent of the volume allowed in previous years, which boils down to 6.89 million cubic meters. The government gave permission to cut 22 million cubic meters in 2001 and 12 million cubic meters in 2002.

Although there is still the option to change the 2003 target, an increase would be insignificant. The basic consideration for the above policy has been to implement a program for reforestation in the coming 15-20 years, which according to the Minister would be an optimistic prediction. A more pessimistic view would likely add another hundred years for recovery.

All permits for HPH and HTI will be reviewed and the Minister estimated that around 200 HTI permits will be declared void and about 150 HPH permits discontinued, which would mean a 50 percent cut.

One of the reasons for the drastic decision was the result of an evaluation over the prior three months showing that of the 60 HTI permits given, 30 HTI concessionaires failed to meet the performance criterion.

As for reforestation, the Minister explained that the government provided funding which composed of 38.5 percent interest free loans and 16 percent from the Reforestation Fund. Another 50 percent was acquired from the concessionaires.

Concerning illegal logging and smuggling of logs across the border with neighboring countries the government has taken diplomatic steps, but the Minister did not reveal greater details.

As mentioned above, it is difficult to estimate illegal logging and deforestation province by province, but several newspapers have reported that regional autonomy has worsened the problem. The regional governments may have set limits to logging but in reality, nobody is following them. As a result, widespread forest destruction due to overexploitation and illegal logging occurs. Cases have been reported from the province of South Sumatera, West Kalimantan, South Kalimantan (Kompas, 2001, 2002), East Nusa Tenggara and more.

Talking about forest areas in the larger and smaller outer Islands of Indonesia, one is bound to come across problems related to state land and adat land.

As mentioned, no clear boundaries between the two have been clearly delineated, and even after the BAL 1960 was implemented, much of the forest land has been assumed as state land by the central government. In fact this claim has been inherited from colonial days, since no cadastral registration has ever been implemented: Land acquisition for transmigration settlements have always been through negotiations with adat notables, and with the consent of the provincial governor.
Indeed in some cases governors have taken decisions without prior consultation with adat chiefs, and this has caused social frictions afterward.

This may have been also due to the dissolution of the Swapradja’s in 1974 (local ethnic regions). A unique case would be East Nusa Tenggara where there were 27 Swapradja’s on a small island called Flores. The BAL had been imposed on the ethnic groups of Flores to whom it was entirely alien. The Law on Regional Autonomy therefore may revive the old adat agrarian arrangements.

**Forest Fires**

According to periodic monitoring (A. Subandi, 2000) large scale forest fires have occurred in Indonesia every 3-4 years since 1982, but the most destructive one occurred in 1997 due to vast land clearing operations by large estates expanding them for oil palm cultivation. For the past decade palm oil has made very attractive prices on the world market and Malaysia and Indonesia have been competing in production increases.

The spread of forest fires in 1987 was worsened by the very dry season as a result of the El-Nino Southern Oscillaton (ENSO) phenomenon. Only part of the forest fires is caused by shifting cultivators (10%), but the largest part is due to land clearing by HPH and HTI concessionaires.

Not only did neighboring countries such as Singapore and Malaysia suffer from the smog created by the forest fires, Indonesia also lost approximately 400,000 ha of its forest, not counting the impact on living conditions of the local population.

Statistics from the Directorate General of Plantations show the following figures:

<table>
<thead>
<tr>
<th>Year of Land clearing</th>
<th>Area cleared (ha)</th>
<th>Crude palm oil production targets X 1.000.000 (Brl)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>1,792,413</td>
<td>4.1</td>
</tr>
<tr>
<td>1997</td>
<td>2,048,891</td>
<td>7.0</td>
</tr>
<tr>
<td>2000</td>
<td>2,103,620</td>
<td>10.1</td>
</tr>
</tbody>
</table>

Conversion of forest area into large plantations for oil palm has reached 3,841,304 ha between 1994-2000.

The loss of forest particularly in 1997 has been estimated to be at least 165,361.83 Ha (Directorate of Forest Protection, 1997), but it is believed to have reached 400,000 ha (Ministry for the Environment).

Yet, to delineate the land boundaries has often given rise to disputes between local government administrators and ethnic communities. Cases in North Sumatera,
Lampung, East Kalimantan and West Papua to quote just a few are well known. (Sayogyo, 2002).

A research report by the Department of Agriculture (1996) disclosed that in the short period of Pelita VI (1994/95 - 1999/2000), irrigated rice fields have been expanded by 300,000 ha and the irrigation system by 105,000 ha.

However, the BPN also reported that irrigated fields that have been converted into other uses amounted to 50,000 ha annually, most likely in Java, which has approximately 3.44 million ha of arable land.

Despite the policies of food diversification, rice consumption all over Indonesia and in all social strata of society is expected to increase quite significantly. The loss of 50,000 ha of irrigated land means a decline of husked rice production to the amount of 600,000 tons which will be equivalent to Rp.300 billion at 1996 market price.

A. Japan International Corporation Agency (JICA) projection suggested that similar losses of irrigated field will also occur in Sumatra (62,500 ha) and in Sulawesi (35,000 ha) up to 2020.

It is therefore estimated that rice shortages will again be suffered if by end of projected Pelita X (2019/20) Indonesia fails to expand its irrigated field with 2,579,400 ha.

Community Forestry

Indigenous communities living in or close to the forests in developing countries as observed all over the world are typically relegated to the lower economic stratum of society.

The arrival of forest concessionaires to start their logging and timber operations may employ some of the needed wage laborers. But most of the shifting cultivators who live in those communities are not accustomed to getting involved in such technical production processes.

Workers will therefore be recruited from elsewhere creating a more heterogeneous community around the forest area under production. And shifting cultivators, who practice swidden agriculture (shifting agriculture) and forest product gathering, are losing their territory.

Community forestry as a concept is to prevent indigenous shifting cultivators from becoming a menace to the logging/timber companies, by offering them alternative jobs.

Simultaneous food-and tree crop cultivation (tumpang sari) is offered as a way out. But the time-span within which it can be practiced becomes a problem when the tree
canopy reaches a certain height such that it over shadows the food crops. Commercial crops may have to be cultivated subsequently.

The problem in efforts to develop social forestry has often been that of “property rights” both on land as well as forest. The low educational level of the local community mean their employment opportunities are also limited.

Relative poverty will consequently emerge in the newly established heterogeneous community. Social envy and conflicts often find their roots in the above process of marginalization of indigenous (adat) communities.

A fundamental change in the joint management of natural resources will have to be conceptualized, including: (1) a redefinition of state/public-and adat land; (2) clear and enforceable rules regarding rights and duties of the companies and local communities; (3) democratic procedures relating to the allocation of natural resources. (S. Moniaga, 1999).

Meanwhile the Basic Forestry Law no.5/1967 is revised and promulgated as Forestry Law no.41/1999, which has become a major reference for the Government Regulation no.34/2002 on Drafting a Plan for Forest Management. However, law enforcement has been too weak to sustain effective environmental management at large.
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