

FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

Indonesia



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ABSTRACT

In Indonesia, food security is closely related to access to land and tenure security. Landlessness is another constraint for many. Few owners have managed to register their land rights; this insecurity affects investments in food production. Registration of rights is complex and expensive, which further weakens the development of a functioning land market. This situation is the result of a very intricate legal pluralistic system. The superposition of ill-defined rights and institutional arrangements poses important challenges of enforcement and provides an environment that is conducive to the emergence of conflicts. Much pressure on land is also experienced due to the conversion of land use for oil palm production, lucrative for both large companies as well as smallholder who are increasingly converting rice fields into oil palm. Conflicts between communities, the state and economic operators are increasing and hold back rural development and hamper food production. Land and water governance in Indonesia involves looking also at forest tenure – which covers 70% of the area – as well as the management of communal lands. The speed of deforestation is very high. Large-scale land acquisitions are threatening forests and livelihoods of indigenous people.

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About LANDac

LANDac, the Netherlands Academy on Land Governance for Equitable and Sustainable Development, is a partnership between Dutch organizations working on land governance. The partners are the International Development Studies (IDS) group at Utrecht University (leading partner), African Studies Centre, Agriterra, the Sociology of Development and Change (SDC) group at Wageningen University, HIVOS, the Royal Tropical Institute (KIT), and the Netherlands Ministry of Foreign Affairs. The LANDac network conducts research, disseminates information, and organizes courses and training, focusing on new pressures and competing claims on land and natural resources. Guiding question is how to optimize the link between land governance, sustainable development and poverty alleviation.

www.landgovernance.org

About F&BKP

The Food and Business Knowledge Platform (F&BKP) is one of the five Knowledge Platforms initiated by the Dutch Ministry of Foreign Affairs. It is an open and independent initiative where representatives from international networks and organizations of business, science, civil society and policy come together. The Platform shares, critically reflects on, generates, deepens and improves (interdisciplinary) knowledge and feeds practices and policies on food and nutrition security. Land governance is one of the prioritized themes in its mission to develop a more focused knowledge agenda.

www.knowledge4food.net

Regulatory land governance framework

Indonesian land policy is derived from existing legislation as well as memos providing technical guidance for policy implementation. The land policy covers 30 per cent of the area; the other part is under forest tenure. A highly sectoral and compartmentalized approach that differentiates between land administration, land use management and state forest land management (the latter not covered under the previous categories) results in ongoing inconsistencies in policy. *Adat* or customary land interests are largely ignored in practice (World Bank, 2010).

The most important legislation governing land rights continues to be the Basic Agrarian Law (BAL) (*Undang-Undang Pokok Agraria* or UUPA), Law No. 5 of 1960 which was passed under Indonesia’s first president, Sukarno. Two key purposes of the law were to create a single land law applicable to all citizens of Indonesia, thereby abolishing the dual system (Dutch and Indonesian) of agrarian rights and secondly, to promote land reform by imposing a ceiling on private landholdings.

Many of the regulations required to make the law operational have still not been prepared or promulgated, implying that mechanisms to enforce granted rights are missing. For example, as no regulation for the recognition of group rights has been written, the BAL allows only for the recognition of individual rights. Some pieces of legislation, like the MPR Decree No. IX of 2001 on Agrarian Reform and Natural Resources Management, have also not been implemented (Thorburn 2004).

Although Suharto’s New Order regime (1966-1998) never changed UUPA, this law was circumvented in practice with the Basic Forestry Act of 1967, which classified 70 per cent of Indonesia’s land area as state forest land¹, not subject to agrarian law. The state and its forestry institutions became the single largest landlord.

Law	Content
Basic Agrarian Law (BAL or UUPA), Law No. 5 of 1960	Defines the fundamental types of rights that may be held by private individuals and entities; Describes the role of the state with regard to its direct use of land as well as its regulation of private rights and private uses of land; Article 5 of the BAL states that Indonesia’s agrarian law is <i>adat</i> law, or Indonesian customary law, as long as it does not conflict with national interests or other regulations set out in the BAL; Ultimately directed at the individualization of land tenure in Indonesia.
MPR Decree No. IX of 2001 on Agrarian Reform and Natural Resources Management	Instructs the highest house of the legislature (the MPR, <i>Majelis Permusyawaratan Rakyat</i>) instructs the main house (House of Representatives, <i>Dewan Perwakilan Rakyat</i>), and the president to harmonize laws related to use of land and natural resources to promote equity, human rights and sustainable development.
Spatial Planning Law (Law No. 24) in October 1992	Defined spatial planning and provides the guidelines of plan-making processes, plan implementation and control at national, provincial and local levels; Mainly aims at the rational and appropriate utilization of natural resources and man-made resources and at regulating the utilization of protected regions and cultivation regions; Contains specific provisions with respect to rural regions and urban regions.
Spatial Planning Law (Law No. 26 of 2007)	Amendment of the 1992 law (see above). Links with the decentralization laws and stipulates explicitly the authority of provincial governments (<i>pemerintah propinsi</i>) and of district governments (<i>pemerintah kabupaten</i> and <i>pemerintah kota</i>) in spatial planning; Also covers rapid urbanization occurring in Indonesia, particularly in the Greater Jakarta Area.

(Mitchell et al. 2004; Fitzpatrick 1997; Lindsey 1998; Rukama 2008; Faolex 2016)

In 2012, the House of Representative initiated to draft a new regulation, named the Land Bill, that was meant to be complementary to the BAL. Among the crucial points were the rules on customary rights, the agrarian reform plan, land court and the settlement of land conflict, and new rules on land tenure forms. Until now (January 2016), the discussion about the Land Bill is still ongoing due to its complexities, division among shareholders, and its overlapping with other regulations, despite that it has always been the priority bill in the yearly Indonesia National Legislation Programs by the

¹ In 1967 these lands were managed by the Ministry of Agriculture. The Directorate General Forestry used to be under the Ministry of Agriculture and only in 1982 the Ministry of Forestry was established. This move of declaring 70% of the territory as forest land and state owned resulted in dispossession and land grabbing by a range of actors, including military and state institutions and enterprises (Kurniawan 2014).

House of Representative. One of the critiques on the Land Bill was around the concern that government and parliament will use it to substitute the BAL and as a tool of further agrarian liberalization which will facilitate foreign land ownership and massive business expansion that tends to be exploitative (KPA, 2014).

Under the new government of Joko Widodo who leads the country since 2014, agrarian reform has become one of the nine priorities for the national development agenda (known as *Nawacita*). The fifth priority in this agenda states: We will increase the quality of life of Indonesian people, such as through the improvement of social welfare with programs such as Indonesia Works and Prosperous Indonesia, by pushing on the agrarian reform and 9 million hectare land ownership program. The agenda has been detailed in the country's National Medium Term Development Plan 2015-2019 which said that the agrarian reform will carry out land distributions of 9 million hectares, in parallel with the post and pre-production support. The land that becomes the object of agrarian reform (*Tanah Objek Reforma Agraria* or TORA) derives from 4.1 million hectares of forest area and 4.9 million hectares of non-forest area.

However, at the end of 2015, the drafting of the Presidential Regulation on Agrarian Reform that will be the umbrella of the policy was still under progress in the Ministry of Agrarian and Spatial Planning. In December 2015, the so-called "one map" policy was introduced by Coordinating Minister for the Economy Darmin Nasution. The One Map Policy is a national level coordinated and integrated mapping program orchestrated by the government, involving 12 working groups from 18 Ministries/agencies, covering watershed management, space management, land conditions, forest cover, climate change risks, ecoregions, disasters, transportation, national defense and intelligence, cultural heritage, economics, and many other topics (Wibowo and Giessen, 2015). All maps in the nation will be harmonized under one reference map. The decision to accelerate the program (which has been topic of discussion for a long time) was taken after the massive forest fire incidents that took place in 2015.

Land tenure forms

Tenure forms	Description
<i>Hak milik</i>	Right of ownership; Unlimited in time and capable of being transferred and mortgaged
<i>Hak pakai</i>	Rights of use and usufruct; rights that are not permanent
<i>Hak guna usaha</i>	Agricultural commercial lease
<i>Hak guna bangunan</i>	Rights to construct and use building
<i>Domein</i>	Basic element of land law going back to the Dutch colonial period that determines conditions for registration of unregistered rights based on individual <i>adat</i> claims
<i>Hak ulayat</i>	Communal tenure. Exists on land administered by the National Land Agency (<i>Badan Pertanahan Nasional</i> – BPN) and on forest land administered by the Ministry of Forestry, and other sectoral agencies (including mines and energy). These agencies may issue concessions or permits over such land.
'village forest' (<i>hutan desa</i>) or a "customary forest" (<i>hutan adat</i>) licence	(forest law) exclusive licences which give the community the right to manage the forest. The licences are time-limited (20 years, extendable), forest remains under government control, but it gives the community management rights for the period of the licence
Leasing or licensing	Mostly applied to state forest and regulated by Forestry Law No 41/1999

The BAL recognizes private ownership and vests control of all unregistered land in the state, which holds in essence title to all land in Indonesia. The scope of the BAL is limited to approximately 30% of the country's land area, which is not classified as forest land.

Customary land: Customary land law is known as *adat*, which governs Indonesia's traditional communal land tenure system. It is essentially a communal approach to regulating land rights and varies widely across the large archipelago. Legal pluralism is the norm in rural areas, i.e. the coexistence of the national state law with customary laws (*adat*).

Article 5 of the BAL states that Indonesia's agrarian law is *adat* law, but also considers these customary laws incompatible with economic development. *Adat* is expected to gradually adapt to national law or be eventually replaced by it. *Adat* land can only be registered and certified, after having been rendered into one of seven private law land rights recognized in Article 16 of the BAL (Bakker 2008). Also, there is recognition for community right and customary right in Law No

5/1967 article 17 as by Law No 41/1999 article 34 (forest management with a special objective for community, education, research, social, and religion) and article 37 (*adat* forest)².

A legal breakthrough and change for *Adat* communities has happened in May 2013. The Archipelagic Alliance of Indigenous Peoples (AMAN) won its request for the Constitutional Court to overturn the Forestry Law's classification of customary forests as state forests. The Court deleted the word "state" in Article 1 of the law, which originally read 'customary forests are state forests located in the areas of custom-based communities'. The decision voided state ownership of customary forests, meaning the state must acknowledge local communities' rights over customary forests. According to the Court: 'Customary forests are within the scope of indigenous land rights where indigenous peoples are constitutionally recognized and respected as the rights owners.' The Court reasoned that the state should not ignore the rights of indigenous people, because they existed before Indonesia existed. The state still has the rights to manage state forests but a clear distinction between customary forests and state forests must be made (Kurniawan, 2014).

Communal tenure: The Indonesian state has for several decades been hostile to the continued existence of communal tenure or *hak ulayat*; a legal term connoting communal rights of an (ethnic) community to land based on that community's *adat*. A new regulation on communal tenure was issued in May 2015. However, the Agrarian and Spatial Planning/BPN Head Ministerial Regulation Number 9/Year 2015 on the Procedure of Communal Tenure Recognition of Customary Land and Community Land in Certain Area is still being criticized in particular about its implementation and the confusion regarding the legal term of communal tenure and *hak ulayat*.

State land: All land designated as state forest is state land and it is controlled by the central government (c.q. Ministry of Forestry). The information about this land is available at the Ministry of Forestry (<http://www.dephut.go.id/>). There are also forestry agency offices at provincial and district levels, which used to report to the Ministry of Forestry, but since the decentralization they have different arrangement of coordination, responsibility, and authority. District and municipal governments as well as other government services may lack data on the amount of state land placed under their control. The way in which the state currently plans land use or manages state land does not prevent either large-scale underutilization of valuable land or speculative accumulation in non-productive land holdings (World Bank, 2010).

Institutional land governance framework

Land administration is about determining the status of land, allocating, registering and regulating all land classified as non-forest. Before 2014, this was the responsibility of the National Land Agency BPN. BPN also has offices at province and district levels. *Bakosurtanal* is the National Coordinating Agency for Surveying and Mapping³. The Ministry of Agriculture, and the Ministry of Forestry and Plantations also play a role in land management. Services are fragmented as agencies have large overlaps in mandate. Coordination between sector agencies is limited. The lack of clear assignment of judicial authority and sectoral approaches to land management and administration result in inconsistent and arbitrary application of policy, especially regarding the administration of right to forest land. (World Bank, 2010).

The formerly centralized system was decentralized in 1999. Significant powers were devolved to the 33 provinces, districts and municipalities. Land affairs are among the responsibilities devolved to the regional government (Law No. 22 of 1999). Provincial and district governments demanded more authority in determining land policy within their respective jurisdictions (except for forest land which remains centrally managed). The role of customary authorities in village land affairs was weakened during the New Order regime (1965-1998). The decentralization laws have restored the possibility for customary authorities to take charge of village affairs (Thorburn 2004).

The exact weight of roles and functions of provincial governments are not clearly elaborated in the decentralization laws. While the revised Law on Local Government in 2004 gave local governments more autonomy to develop local laws and regulations, local laws may be in contradiction with national laws, making citizens' rights even less clear (Situmorang 2010; Bakker 2008). Currently, a highly complex mix of a hierarchal and top down system of development and spatial planning exists, with the central government retaining the authority to override locally developed spatial plans for special areas, when deemed strategic and of national importance (Bakker 2008).

In 2014, the new President Joko Widodo merged BPN with the Spatial Planning unit (that in the previous government was

² Personal communication Ari Susanti (Utrecht University 2011).

³ See: <http://www.bakosurtanal.go.id/bakosurtanal/tugas-dan-fungsi/>

under Ministry of Public Works) into the Ministry of Agrarian and Spatial Planning/BPN. The Ministry of Forestry was also merged with the Ministry of Environment into a Ministry of Forestry and Environment.

Under the Ministry of Agrarian and Spatial Planning/BPN, the sole role of BPN over land registry is expanded to include the policy making of land use. In the Ministerial Regulation Number 17/2015, the ministry is responsible for the formulation, ratification, and implementation of policies in spatial planning, land/agrarian infrastructure, land/agrarian legal relation, land/agrarian formation, land procurement, land tenure and spatial utilization, land/agrarian conflict settlement, spatial and land use.

Gender

Indonesia's Civil Code stipulates that men and women have equal ownership rights. Women have full rights concerning access to land. Customary frameworks have different impacts on women's land rights. Some societies favor women in terms of land inheritance (e.g. West Sumatera where a matriarchy system exists in which Minangkabau women control land inheritance and husbands move into the households of their wives). On Java, women can own land, which may be registered in the woman's name. In other regions women are customarily not entitled to own land (Brown 2003).

Though the 1974 Marriage Law provides that property purchased during marriage shall be co-owned by husband and wife, regional differences abound. Similarly the Islamic law governing inheritance in the case of Muslims and the Civil Code governs in the case of non-Muslims cause regional differences. In some areas polygamy greatly complicates inheritance (Brown 2003; Nielsen and Safik 2004).

While the BAL is neutral regarding gender, the amount of land registered in women's name remains limited (World Bank 2010). Since systematic registration of land rights began under the Land Administration Project in 1994, thirty per cent of title certificates have been issued in women's names and less than 5 per cent has been issued with the names of both spouses. Factors influencing gender differentiated land rights include: lack of institutional capacity (support provided by officials and lack of awareness of the opportunity of joint titling); considered unimportant; lack of training opportunities for women; tradition of married women not to earn an income and consequently difficulty in accessing financial services; informal marriages; and difficulty of women accessing agricultural extension services (FAO Gender and land rights 2016).

Foreign direct investments

Before 2015, the tenure rights described above were not available to foreigners, although some foreigners enter into contracts with Indonesians or establish Indonesian companies to hold land rights (Lindsey 1998; Fitzpatrick 1997). The exception was Bali (and recently in Lombok), where foreigners could buy land and houses (see PP no 41/1996).

Following the deregulation policy as part of Indonesia economic package in 2015, the restriction on foreign land ownership was loosened (Government Regulation No. 103/2015 on House Ownership of Foreigners Residing in Indonesia). Foreigners whose stay in Indonesia benefits the country, for example because they engage in business, can own a single landed house for a period up to 80 years. The aim of this regulation is to provide more legal certainty to foreigners regarding property ownership (Indonesia Investments 2016). A landed house or an apartment can be bought under the 'right of use' category which is valid for 30 years and can be extended for another 20 years, and further extended for another 30 years.

For sale or mortgaging land, government approval is not necessary. Most private development projects involve the Indonesian government. The government grants long-term use rights for state land to the legal entity that will develop the land (Thiesenhusen et al. 1997).

Large-scale land acquisitions are common in Indonesia and include areas of more than 1 million ha (West Papua). The conversion of forests to palm oil plantations has increased exponentially since the early 1990's. Large scale land acquisitions are happening on most of the big islands of Indonesia. Sumatra was the first, then Kalimantan, Sulawesi and recently Papua has seen a huge influx of palm oil investments. It started with licensing for forest concessionaries, then leasing for industrial forest plantation and also oil palm plantation⁴.

According to the ILC Land Matrix (International Land Coalition, 2015), 129 large land transactions have been made over 3,632,726 ha in the past years, mostly for agriculture and mining purposes.

4 Personal communication Ari Susanti (Utrecht University 2011).

Current situation and challenges

Regarding food security, Indonesia faces many challenges, both on the demand and the supply side. With a population of 252 million Indonesians and a population growth of 1.35 per cent annually, food security is a vital issue. On the demand side, the high population growth plays an important role, together with rapid urbanization that pushes people out of rural area (Suryana, 2014). In addition, there is a competition of land use for different commodities: food commodities for human consumption, animal feed, biofuel, and raw materials for non-food industry.

Indonesia's staple food commodities include rice, corn, soya, sugar and beef. Among them, rice is the most important as it has always been the main staple crop for more than 90 per cent of the Indonesian population. Consuming 114.8 kg rice per capita per year, the population is the world leader in rice consumption which makes food self-sufficiency in rice a hot political issue. Securing enough rice at affordable prices is critical to national security; this has been long reflected in Indonesian food policies.

The National Food Logistics Agency (BULOG) is the most important national agency with the mandate to decrease vulnerability for price fluctuations. It is responsible for issues of food security, buffer stock operations, and domestic food price stabilization through its monopoly over imports and distribution. BULOG plays a crucial role since the global rice market appears to be very thin with less than 5 per cent of production being traded internationally. Import comes mainly from three countries: Thailand, India and Vietnam. In addition to limitations in the supply market, climate change is increasingly threatening the sustainability of rice production (Susanti and Budidarsono, 2011).

The Indonesian Government continues to aim at self-sufficiency in rice and other food crops through domestic production and national buffer stocks. If not sufficient, food can be imported according to the needs (Food Law UU No.18/2012). The import policy that aims to handle food shortage and stabilizes food prices remains a political and controversial issue because of inconsistencies and the impact on smallholder farmers. Other than that, food cartels emerged in the food market system in Indonesia. Corruption cases that involved government officials and politicians in food import are prevalent, such as beef import corruption that put a former president of the Prosperous Justice Party (PKS) in jail. The problem of food import is also often rooted in inconsistencies of food stock data between government Ministries, farmers association, and importer association.

However, disruptions of the supply side have several causes. Aside from the impact of global climate change which may disrupt production, another problem is the uneven food production and distribution across time and across regions. Java holds more than 50% of total nation food production in almost all commodities (Suryana, 2014). At the same time, the Indonesian system is characterized by an inefficient food distribution system, caused by problems from infrastructure, distribution chains, and market speculators. The eastern part of Indonesia bears the highest burden in the form of high food prices, compared to other regions, and is thus most prone to food insecurity.

Agriculture in Indonesia is characterized by smallholder farmers including landless farmers. The Agricultural Census data by Central Statistics Bureau in 2013 states that there are 26.14 million farming households, owning on average 0.98 ha land. Half of the households (14.6 million farming households) are smallholder farmers who work on land which is less than 0.5 ha, and especially rice farmers often have paddy field of less than 0.2 ha (Food and Agriculture Director, Bappenas, 2013 as quoted in Suryana, 2014). The farmers cope with limited access to financial services, market information, and technology. It is therefore not surprising that numbers of farmers have been decreasing. From 2003 to 2013, the number of farming households decreased with 16.32 per cent, while agricultural enterprises increased with 4 per cent (Agusta, 2013).

In 2013, agricultural enterprises in Indonesia are concentrated in the plantation business (2,216 companies), with as much as 354 plantation businesses added (or a 19 per cent increase as compared to 2003). Increased numbers of agricultural companies also occurred in livestock, and annual food crops. The largest decline occurred in fishing enterprises that decreased with 40 per cent, especially aquaculture, which decreased with 47 per cent (Agusta, 2013).

Geographically, the biggest decline in farmer's household is found in Java. Farming households outside of Java have increased, but not at the same pace as the decline on Java. Increasing number of farms generally occurred in less developed regions, namely North Maluku, West Sulawesi, Southeast Sulawesi, Central Sulawesi, North Borneo, West Kalimantan, East Nusa Tenggara, Riau.

The biggest reduction of farming households is in smallholders, which dropped from 19 million in 2003 to 14 million in 2013. Conversely, the increased number of farm households appear only in the group that controls the 1-2 ha and above 3 ha of land. It is plausible that the bottom layer of the smallholder farmers do no longer own land and may have become farm workers or have found off-farm work (Agusta, 2013). This is a possible case for Java which experienced urbanization and conversion of agricultural land usage to residential and industrial use.

The current government tries to address these challenges in its development agenda *Nawacita*. In *Nawacita*, food self-sufficiency takes a central place. One of the issues is to coordinate between the different bodies and Ministries who's policies relate to food security, including the Ministry of Agriculture, the Ministry of Trade, the Ministry of Industry, the Ministry of Public Works, the Ministry of Maritime, BULOG, the Central Statistical Bureau, Kopti, local governments, and state owned enterprises in agricultural and fertilizer sectors.

The links between agribusiness, land, and food security

To achieve food security in Indonesia in the face of its current population growth, an increase in productivity is a requirement. Productivity increases as they are now, are however not enough. Land conversion from agricultural use to other usage is a major challenge. The UU Nomor 41/2009 looking at Sustainable Agricultural Land Protection aims to prevent agricultural land conversion to non-food usage. However, this has not stopped land conversion in practice. Some developments driving land conversion include the increasing need for land for residential purposes, industry, and infrastructure. At the same time, increased competition for land is driven by sectors with more attractive commercial crops, oil palm in particular. Oil palm, for example, has halted the possible expansion of rice cropping areas in particular in the outer islands (Susanti and Burgers, 2013).

An example is land conversion for palm oil plantations in Riau Province, Sumatera. Due to low profit margins of rice cultivation, a combination of low farm gate prices with high input prices and the increased risks of changing climatic conditions, local farmers are increasingly converting their rice fields into small-scale oil palm plantations. Provincial statistics show that this process started as early as 2002, when oil palm plantations started to boom. Between 2002-2009, around 15% of all small-scale wet rice fields in Riau were converted into other uses, such as fish pond, mining, rubber plantation, coconut plantation – but oil palm plantation is by far the most important driver of for conversion (40%) (Dinas Tanaman Pangan dan Hortikultura Provinsi Riau, 2010). As a result, the provincial government of Riau has become a major importer of food commodities. And at the same time you see a process in which local population in Riau are largely losing out compared to immigrant from Java; who are usually better equipped to benefit from the expanding palm oil sector (Susanti and Burgers, 2013).

On the other hand, the government's ability to develop new production areas for rice lags behind compared to the areas that are converted into other uses. The average amount of land converted for rice production annually is around 100,000 ha, while the Ministry of Agriculture claimed it would produce 347,984 ha for new rice production in the period 2010-2014. Difficulties are encountered in getting new land ready for rice production and the quality of the new rice producing areas – which is generally lower than the quality of the areas converted into oil palm and other crops (Ministry of Agriculture, 2015). Central government says that an important role in monitoring land conversion from food crops into other types of uses is to be played by the local governments.

Gender, land and food security

40 Per cent of domestic food supplies are provided through kitchen gardens managed by women. Since most rural households control small amounts of land or have no land at all, an increasing number of rural women seek to supplement household income with wage labor, non-farm and off-farm income generating activities in small enterprises, home gardens and small agricultural plots (FAO Gender and land rights 2016). This shows how gender is intrinsically linked to food security at the household level.

INTEGRATED WATER RESOURCE MANAGEMENT (IWRM)

Policy framework around IWRM

All waters in the country are controlled by the state according to article 33 of the Constitution. The use of water is regulated by the Law on Water Resources (Law No. 7 of 2004). Article 6 of the Law affirms the state's control over all water resources. The Law gives primary consideration to the use of water for daily basic needs, followed by the irrigation needs of farmers within an existing irrigation system. Licenses are not required for irrigation, but the Law prohibits the trade of

water rights. Article 6 of the Law provides that traditional communal rights to use water may be recognized by regional regulations, but the law makes no mention of customary adat (Ma 2007).

The 2002 Indonesian Water Vision, addressing water resource problems and structural deficiencies, outlines three major considerations for reform of water resources management: sustainability of water quality and quantity; the need for achieving food security and sustainable irrigation; and improvement of institutional capacity.

Reform objectives include the establishment of a national framework for coordinating water resources and irrigation management; adoption and implementation of a national water policy; establishment of institutions and procedures for involving stakeholders and water resources service beneficiaries; and the introduction of a water rights system for water allocation (UN 2004; ROI 2003).

The 1967 Basic Forestry Law declared all forest land the property of the state and eliminated adat rights for forests. Essential legislation around forests are the Forestry Law (Law No. 41 of 1999), the law on Conservation of Biodiversity and Ecosystems (Law No. 5 of 1990), on Management of the Environment" (Law No. 23 of 1997), On Spatial Use Management (Law 24 of 1992), and MPR Decree No. IX of 2001 "On Agrarian Reform and Natural Resources Management" (Rhee et. al 2004).

Indonesia has the world's third-largest area of tropical forests (after Brazil and the DRC), which cover approximately 48% of the nation and are important for watershed management. Deforestation and forest degradation is a concern. Indonesia is a major player in the international climate talks, particularly in those centering of Reduced Emissions from Deforestation and Degradation (REDD).

As an effort to deal with forest degradation and deforestation, Indonesia has enacted a moratorium policy on forest area. Jokowi government issued the indicative map on the moratorium of new license to forest exploitation, forest area usage, and the changing mode of forest area and other areas which should be reviewed every six months. Other than that, the government is under way to create a government body named Peatland Restoration Body, to prevent the massive forest fire incidents to happen again.

Institutional framework around IWRM

The Directorate General of Water Resources Development of the Ministry of Public Works managed water resources; it has four primary missions: (1) to help the nation maintain self-sufficiency in rice production; (2) to meet increasing demands for drinking water and water for industry; (3) to alleviate floods and manage rivers; and (4) to develop, conserve and manage water resources (FAO 1999). The development and management of government agencies responsible for water management at the central and regional levels are among the main challenges (Hirsch et al. 2006).

Land classified as forest land (including land without tree cover) is administered by the Ministry of Forestry. This formally designated forest land' represents almost 70% of the total land in Indonesia, although large parts are degraded and no longer carry trees. Since on such lands only temporal concessions but no tenure rights can be obtained, communities who may have been living on such land for a long time often find themselves with no legally recognized rights to such land. The difficulty of achieving formal recognition of communal property rights on forest land perpetuates tenure insecurity (World Bank 2010). Within state forests the Ministry of Forestry has consistently ruled that the interests of the state trump the interests of *adat* communities, freely granting concessions to companies to harvest trees or establish plantations of oil palm or other commercial crops. (Lindsey 1998; Contreras-Hermosilla and Fay 2005).

Provincial governments have increasingly been demanding a greater stake in managing forests within their regions. The decentralization of government authority from the central government to the district (*kabupaten*) governments also created more space for *adat* communities to assert rights to at least receive compensation for the removal of trees from their land (Contreras-Hermosillo and Fay 2005; Jakarta Post 2010b).

Recent legislation has clarified authority over forests and could enable more rational and sustainable management, with participation of stakeholders (World Bank 2006b). Several organizations (e.g. IUCN, Both ends and others) are exploring the potential of this new legislation for better securing community rights and improving management of natural resources in combination with 'village forest' (*hutan desa*) or a "customary forest' (*hutan adat*) licenses.

The village and customary forest licence allow exploitation of non-timber products, and in some cases timber, through a

proper forest management planning process. The licence holder is obliged to manage the forest according to the agreed plan, and to protect the forest from outside destruction. When securing the *hutan desa* licence (a) the government can no longer give out the forest in concession to a company for logging or oil palm development; b) the community has the right to apply customary rules protecting forest and stop people coming in from outside to do illegal logging. Clarifying the roles of different authorities while integrating and supporting customary forms of land governance seems a necessary step to avert further deforestation and ensure more harmonious relations. The ongoing decentralization of central government functions could be an opportune time to work with district (*kabupaten*) governments on various land tenure and natural resource property issues.

REALITIES ON THE GROUND

Many Indonesians practice *hak ulayat* and other forms of *adat*; yet while this may be observed as binding within communities, it is not recognized by the state (Lindsey 1998; Bakker 2008). The selective interpretation of legislation and policy suiting the state needs ahead of smallholders is a major issue. Often referred to as “sectoral laws,” the Laws on Forestry and the 1967 Law on Mining eliminated even the weak protection contained in the BAL regarding land rights of customary law (*adat*) communities living in forested areas or on lands granted by the state to mining corporations (Rhee et al. 2004)

Forest-dwelling *adat* communities and timber companies and others who want to harvest trees are often in, sometimes violent, conflicts. Factors that motivate and sustain forest-related conflicts are: (1) direct and indirect involvement of the Indonesian formal security and military forces in timber conflict; (2) fragmentation of natural resource management authority due to rapid devolution of political power from the central government to *kabupaten* authorities; (3) *kabupatens*’ abuse of their newly evolved political powers; (4) selective and inconsistent law enforcement; and (5) ambiguous land and resource tenure (ARD 2004).

The multiplicity of ill-defined rights and institutional responsibilities means that different types of rights are frequently super-imposed on top of each other, which poses challenges for their enforcement, and provides an environment that is conducive to the emergence of conflicts. In Indonesia disputes over land are widespread, it has been estimated that at least 1500 major land conflicts remain unsettled. Clashes between communities of farmers on one side and either the Ministry of Forestry or private plantation companies on the other are common (Thorburn 2004). The effects of future REDD policies, notably the securing of international funding for forests, could actually increase competition for control over Indonesia’s forests.

Based on KPA data, there have been 252 agrarian conflicts in Indonesia covering 400,430 hectare in 2015 and involving 108,714 heads of family. The majority of conflicts took place in the plantation sector with a number reaching 127 conflict or 50 per cent of the total conflicts. Other conflicts are related to infrastructure development (28 per cent), forestry (9.60 per cent), mining (5.2 per cent), and others (2 per cent). The largest number of conflicts took place in Riau, the province with a rapid expansion of plantations. In the last 11 years between 2004 to 2015 there were 1,772 agrarian conflicts covering 6,942,381 ha of land.

Both formal and informal arrangements are in place in Indonesia to address land related conflicts. Four different institutions possess parallel and overlapping competences to handle land related conflicts: the civil court; the criminal court; the administrative courts; and a dispute settlement forum established by BPN to handle disputes relating to land mis-administration and errors in land registration or titling. These available tools to manage and resolve land conflict appear to treat the symptoms rather than causes such as the lack of coordination among between agencies and policies. As the formal dispute resolution system favors government agencies, dispute resolution mechanisms are even less effective in settling disputes with the state, particularly the Ministry of Forestry regarding forest planning and land use. The absence of a consistent or legitimate civil process means at present land disputes tend to be resolved politically. The legal system has not resolved such disputes and the inadequacy of the current system has prompted calls for the creation of a Land Court (Lindsey 1998; Fitzpatrick 1997). In the current Land Bill that is under discussion in the parliament, the land court is planned to be established as a separate special court.

Addressing these issues requires changes in the legal framework and at the level of institutions. Examples are changes around land rights recognition (legal recognition to possession, communal land rights; forest land ownership), and the resolving of ambiguities between customary (*adat*) and formal land laws. A reorganization of the institutional structure may reduce overlapping responsibilities. The capacity of land administration can be expanded through local land capacity

building at the *kabupaten* level. Overall, service delivery should become more transparent. There is also a need to improve spatial planning (ensuring that land planning is more transparent, public, and conducted at local level) also at the urban level. Better planning also requires more quality of land information. Given the large number of landless people, measures are needed to expand land access for landless people, or build alternative non-land based livelihoods.

The World Bank “Land Governance Assessment Framework” was applied recently in Indonesia. It concluded that Indonesia faces challenges with land management issues regarding its significant forest and natural resources, and highlighted problems associated with legal pluralism. In this context, there are many opportunities for Indonesia to overcome obstacles that currently prevent economic actors from gaining more secure rights to land and thus for society to fully benefit from the advantages of land as a safety net and respond to incentives for sustainable management and investment.

The National Land Agency (BPN) has long resisted reforms. Some district governments may be more amenable to reforms that they see as responsive to the needs of their communities. This could also be an opportune time to engage with civil-society organizations that have an interest in agrarian, natural resource and legal aid matters, but which may not have sufficient technical capacity to design and promote specific legislative reforms (USAID, 2010).

Finally, after the fall of Suharto in 1998, agrarian reform and resistance movements started emerging of farmers and landless people demanding access to land and other resources. There was pressure to decentralize state authority, while simultaneously, occupations of land controlled by the state and to a lesser extent corporations took place all over Indonesia (estimated in 2000 at 118,830 hectares of national estate land and 48,051 hectares of private estate lands). Presidential decrees on land reform were passed in 2001⁵ and 2003 (*Keputusan Presiden*) which led to the opportunity of farmers’ movements to talk directly to district (*kabupaten*) administrations about agrarian issues. These decrees have become legal tools, which helped to legitimize the idea of land and agrarian reform but were resisted by parts of the government like the Ministry of Forestry, which have obstructed efforts to implement the decree. There is growing attention of the government to land reform and the opinion of farmer movements⁶.

RESOURCES AND OTHER INFORMATION

Related country profiles

- USAID: <http://www.usaidlandtenure.net/indonesia>
- FAO: <http://www.fao.org/countryprofiles/index.asp?lang=en&ISO3=IDN>
- FAO/Gender: http://www.fao.org/gender-landrights-database/country-profiles/countries-list/general-introduction/en/?country_iso3=IDN
- IMF: <http://www.imf.org/external/country/IDN/index.htm>
- World Bank: <http://www.worldbank.org/en/country/indonesia>
- Land Portal: <https://landportal.info/book/countries/IDN?indicator=INDFAOFSEC1&comparing-country=AFG>

Laws, policy and regulations search engines

- FAO Lex (Land & NR search engine): <http://faolex.fao.org/faolex/index.htm>
- Water Lex (Water laws search engine): <http://faolex.fao.org/faolex/waterlex.htm>

Maps and databases

Land and soils databases/information systems: <http://www.fao.org/nr/land/databasesinformation-systems/en/>

Water database/information systems: http://www.fao.org/nr/water/infores_databases.html

Land and water maps and graphs: http://www.fao.org/nr/solaw/maps-and-graphs/en/http://www.fao.org/nr/water/infores_maps.html

5 The NGO network KPA played a critical role in processes that led to the proclamation of the 2001 Presidential Decree on Agrarian Reform (Suraya Afiff et al.)

6 Source: Agriterra

Portals and other resources

Land Portal: http://landportal.info/search/apachesolr_search/indonesia

Landesa: <http://www.landesa.org/search/?q=indonesia>

Donor support programs

The Global Donor Working Group on Land (GDWGL) quotes 29 donor programmes and projects in Indonesia (finalized and active ones): <https://landgov.donorplatform.org>. This includes the following:

The World Bank is supporting the BPN to develop the registration system and roll out systematic registration. The land governance assessment framework (LGAF) has been piloted in Indonesia (2010).

The USAID Environmental Services Project; the World Bank's Water Resources and Irrigation Sector Management Program, the Asian Development Bank, the Japan Bank for International Cooperation and the Netherlands work on water resources,

USAID, the Center for International Forestry Research (CIFOR), The European Union (on FLEGT), Australia (on REDD) and DFID support forest policy in Indonesia (World Bank 2006).

Civil society organizations working on land governance

Members of International Land Coalition from Indonesia:

- Jaringan Kerja Pemetaan Partisipatif – (participatory mapping learning groups). Bogor, <http://www.jkpp.org/>
- Indonesian Institute for Forest & Environment – Rimbaun Muda Indonesia (RMI) rmibogor@indo.net.id
- Consortium for Agrarian Reform/Konsorsium Pembaruan Agraria – iwan_selamat@yahoo.com; [kpa@kpa.or.id](http://www.kpa.or.id) website?
- Sajogyo Institute, <http://www.pustaka-agraria.org/>

These four organizations together form the so-called NES (National Engagement Strategy) platform: see <http://www.landcoalition.org/sites/default/files/documents/resources/indonesialeaflet.pdf>

Farmer organisations

- API (Alliansi Petani Indonesia) www.api.or.id
- SPI: National Farmers Organisation
- STN: National Peasants Union
- Agra: Agrarian Reform Movement Alliance, member of Asian Peasant Coalition. A network with focus on West-Java.

Members Landwatch Asia

- BINA DESA/IndHRRRA binadesa@indo.net.id
- Bina Swadaya – binaswadaya@binaswadaya.org

Other CSOs

Indonesian civil society groups have provided essential services, with respect to land, active civil-society groups including JATAM-Mining Advocacy Network, Jaringan Advokasi Tambang, and KPA-Consortium for Agrarian Reform Konsorsium Pembaruan Agraria.

- Consortium for Agrarian Reform/Konsorsium Pembaruan Agraria – KPA is an NGO network focusing on advocacy on agrarian reform since 1994. KPA is also member of the international land coalition <http://www.kpa.or.id/>
- Warsi: working on strategic land use planning www.warsi.or.id/About_us/Profile.htm
- Wahana Lingkungan Hidup Indonesia (WALHI): Email: info@walhi.or.id
- Aliansi Masyarakat Adat Nusantara (AMAN) <http://www.aman.or.id/>

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