

LAND REGISTRATION REFORM IN INDONESIA

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Introduction

Indonesia is the largest archipelago in the world. It consists of five major islands and about 30 smaller groups totaling 17,500 islands and islets. The territory of the Republic of Indonesia stretches from 6°08' north latitude to 110° 15' south latitude and 94° 45' to 141°05' east longitude. The land area totals about 1.9 million square kilometers and the population is approximately 200 million.

For more than 350 years Indonesia was under the colonial governments. Straightening land matters was more aimed towards the interests of the colonial governments. Land laws became a dualism, i.e. Western land law and Traditional land laws. The areas where Western land laws applied, land registration was completely executed with cadastral maps and surveys. On the other hand, Kingdoms were stipulating their own regulations for the lands in their territories. Both land administration systems were scattered among lands that were subject to traditional laws, which are also various, and different from one region to another.

Agrarian Law of 1960 ended this situation by creating a National Land Law based on the utilization of traditional concepts, principles, systems and institutions. We recognize the existence of customary land where in principle it is a communal ownership which is controlled and utilized for the individual citizen with rights of the private nature. In general land status can be divided into two groups i.e. state land and private land. Private land is either registered or not (yet), and state land is defined as land without any right attached to it. The common forms of land tenure are freehold, leasehold and rental agreements. Freehold can be obtained from transfer, granting of state land and "improvement" from leasehold of state land. Leasehold can be obtained from transfer and granting of state land.

Not all rights are written down. Where the title is subject to customary laws, it is usually not written down since customary law is unwritten law.

Out of around 55 million parcels today, approximately 17 million have been registered. In 25 years it is estimated that these will be something like 78 million parcels due to subdivisions. (5). Recognising the social and economic problems which this can cause the Government of Indonesia commenced the Land Administration Project in 1994. The project has made an excellent start with the benefits to the people already in evidence.

Systems of Registration

Rights in land can be recorded in three systems : (a) private conveyancing; (b) the registration of deeds and (c) the registration of title. Two of them are in existence in Indonesia : private conveyancing and registration of deeds. The first one is not exactly regulated. Its principle is accepted by the courts as an informal transfer but not illegal. This principle is based on the legal principle that the title is transferred at the time of payment in cash, registered or not. The passing of the documents agreeing to the transfer is done in private, usually only witnessed by one or two persons.

Private conveyancing happens when customary law (unwritten law) governs the dealings. However if registration is encouraged, the dealings can be registered together with the initial registration. Being in the public register, the information about the ownership and subsequent dealings is made to be known to the public. The compilation of land records and the juridical processes that must be gone through in order to bring land information onto the registers should provide formal identification and legal proof of ownership. The public registers should contain all essential juridical information allowing anyone viewing the system to identify third-party rights as well as the name of the landowner. (4)

The system that is formally adopted is the registration of deeds. A copy of all agreements that affect the ownership and possession of the land must be registered at the Land Office. As a result, by searching the registry for the most recent document of transfer, any would-be purchaser should feel confident that the vendor has the right to sell. Inspection of the register will show how the vendor obtained the property and the conditions under which it was acquired. This of course provides no proof that the previous transaction was legitimate, hence the transaction before that should be inspected and so on until the purchaser is confident that there is a clear chain of title. (4)

On its own the system gives no guarantee of title. The registration of deeds adopted is not an independent system of its own. The principle is to protect the real owner from the risk of registration of the wrong one. The real owner can claim his/her ownership through court proceedings and if it is confirmed by the court, the new ownership is registered according to the court decision. While such registries do not actually guarantee title, they provide the most important evidence of ownership that can be assumed to be correct unless proved otherwise in the courts. The key factor here is the accuracy and the completeness of the documents including maps to show the boundaries as the basis of the initial registration. (2).

The three ideal components of ownership are the true title holder, the parcel boundaries that are based on agreement with adjoining title holders and the type of land right. In the deeds registration system, the legal strength of the registry is enforced if the real owner is documented, and the agreed boundaries are surveyed as such that the cadastral map is capable of reconstructing the correct location of the lost or disputed boundaries in the field. The type of right applied to the title of ownership is through the authority of the state; for example, a foreigner can not hold a freehold title. (5).

In this system the registers are treated as primary evidence rather than definitive proof. The integrity of the system is sufficient for land owners to have full confidence in their rights if the land data is accurate. The presence of however inaccurate data will weaken the system.

Problems Identification

The existence of private conveyancing creates an informal environment in land dealings. Uncertainty is one of the risks in dealing in this environment, especially experienced by the banks in giving credits. This environment is found in areas where the land parcels are not registered. Private conveyancing is inefficient and potentially dangerous since it can be subject to fraud as there is no easy proof that the vendor is the true owner. In other words private conveyancing creates an inefficient land market. (6).

The risk in land dealings in the informal environment caused by unregistered land is greater than those with registered land. Unregistered land means the ownership is not officially known. The process of bringing the title of land into the register for the first time, needs a special procedure to operate. A series of investigations and examinations of the maps and documents presented as evidence of ownership, is called the process of *adjudication*. At similar procedure is used by the Land Office to determine the land status. The results are not always in accordance. The applicant tends to claim (with or without written evidence) the ownership. If the Land Office thinks that it is state land, it will ask the applicant to apply for land granting with higher fee. The applicant might object to the procedure because he/she thinks it is a private land, inherited or transferred through informal procedure, or simply by long occupation without objection from anybody. Usually this disagreement is caused by the lack of documented or written evidence. This is logical since the customary law is unwritten law based on trust, witnesses and public understanding (known by the public). In this legal system, long occupation contributes to the formation of title if no objection is expressed by anyone.

The history of ownerships, transfers and dealings of a parcel of land must be preserved against possible disaster, loss or destruction. This can be costly and difficult to store and to retrieve, and is also time consuming. The vast accumulation of documents also presents another problem in storage.

The lack of reliable documents also result in the slow process of registration and the weakening of the system. In the initial registration that is the beginning of the compilation of a land register there must be some adjudication mechanism to bring land onto the registers. The approaches can be divided into two categories, *systematic* and *sporadic*. In the systematic approach, the process is planned completely to meet all the geodetic and cadastral requirements. The execution is in an orderly manner and all parcels in a particular area are registered systematically one by one. This mechanism grows from a legal rather than a land management perspective. The cadastral surveys and mapping are integral parts of a legal cadastre.

Most of the 17 million registered land parcels came from the so-called "sporadic" approach of land registration. Sporadic means "here and there" or "now and then". In this approach, the registration takes place whenever or wherever there is a reason to register boundaries and ownership of individual parcels. For example when a dealing of an unregistered parcel is about to take place formally or when an owner requests that the land be registered. Therefore the registration is piecemeal, haphazard and unpredictable. Such practice results in the uncertainty of the parcel location in a coordinate system. One danger that may happen is the overlapping registration of two adjoining parcels.

The needs of an efficient land market, more security of land ownership and, confidence in dealing, justify the need to speed up the land registration without overlooking the importance of land management. (6).

The Land Administration Project

It is predicted that in the future, subdivision of land parcels will take place more than amalgamation. The present figure of approximately 55 million parcels will become something like 78 million parcels in 25 years. It has been decided that by that time the registration of all land parcels should be finished. To achieve this objective, a careful plan has been prepared to undertake the Land Administration Project (LAP). The period of 25 years is divided into five 5 - year phases of LAP. Meanwhile it is only logical that the plan includes the activities to achieve the following goals (6) :

- (a) to accelerate the registration of land rights so that in 25 year all land parcels are registered;
- (b) to review land administration laws, regulations and procedures such that they serve the requirements of the society;
- (c) to adopt a cost-effective scale of fees;
- (d) to strengthen the institutions serving the public;
- (e) to review land administration and management policy;

Starting in 1994, the project introduced new concepts in land administration. A new regulation will be used as the legal basis for the adjudication of title to land. Instead of relying on the written documents of ownership, the new regulation dictates that in those cases where written documents as evidence of ownership are not available, written documents will be created by accepting the written statements and testimonies both from the applicant (owner) and witnesses who can be formal and informal local leaders, friends and neighbours. In principle if somebody claims that he/she is the owner of a piece of land, he/she must be responsible for the legal implication of his/her statements in the future. If the land is state land, then the Land Office will investigate the possibility of land granting and if possible a right will be granted and the certificate of ownership will be issued to the applicant. (1).

The new regulation includes :

- the authority for the adjudication to take place;

- the procedures for the appointment of the adjudication team (they have to swear an oath);
- the procedures for taking statement and testimony;
- the publicity concerning the area and schedule of the systematic adjudication (door to door method);
- the determination of the rights in accordance with the prescribed procedures;
- the announcement of the results (names and maps) and the hearing of appeals within 60 days;
- the methods for solving problems (if possible disputes are settled out of the court through negotiation between the parties with the team as a mediator);
- the formal entry of the results into the registers of title. (After the formal entry, any dispute must be settled by the court);
- the issuance of the certificates of ownership.

Areas to be systematically adjudicated are selected with priority in accordance with needs (rapid development, high level of disputes, etc.).

Other features of the land administration reform are :

- a. the introduction of licensed surveyors;
- b. the new regulation concerning boundaries;
- c. the new regulation about the mortgage of property;
- d. the new regulation concerning land ownership for foreigners;

A new perspective toward the system of registration of deeds is being considered to be included in the revised regulation of the land registration. The basic idea is to make the registration compulsory for the land owner, and after a certain period of time since the title is registered, the chance to claim the ownership is closed. It is proposed that the period is ten years. Eventually the system will become similar to the registration of title. In the case of fraudulent possession, the principle is not valid.

Current Status of LAP

The LAP draws on the Thai experience in its design and approach. A key lesson is that successful implementation is dependant more on the capacity to influence people than on the application of technical solutions. For this reason attention is focused on institutional development, a legal framework and community awareness from the outset. In the first two years the concentration is on pilot projects rather than full scale production. (7)

The two pilot projects designed to test the systematic procedures, community acceptance, communications and the enabling regulations, have been completed and work has now commenced on the full scale implementation of LAP. The first pilot was carried out in the district of Depok, an outer urban area of Jakarta, during February to September 1995. The second pilot covered a larger area of urban/rural land in Karawang, some 50 km outside Jakarta, over the period October 1995 to May 1996.

The Depok pilot was the first experience in the new methods for BPN, and the expected teething problems were encountered. Because it was so experimental the area was confined to 1,000 parcels with only one field team of 26 BPN personnel (including 10 surveyors) involved. In spite of the experimental nature of the work, it was the subject of unusual attention and criticism which, at best, is based on misunderstanding. (8). A more reasoned assessment would conclude that many lessons were learned and these have been put into effect in the Karawang pilot work. (9). As a few examples, the program of Community Relations and Service (CRS) which is responsible for encouraging community awareness and participation has been significantly overhauled; the regulations have been changed as previously described; and following Depok all cadastral surveying has been contracted to the private sector.

The pilot projects have been successfully completed and 5,000 certificates have been distributed by systematic methods. A feature has been the very high level of participation, and satisfaction, of the land holders concerned. This suggests perhaps, that criticism of the LAP is unlikely to come from the community who have experienced the benefits - on the contrary, the problem for BPN is actually meeting the demands from the people to expand the systematic registration into adjacent areas. The pilot experience has been incorporated into a Manual of Operations and is being used in training and in the full scale implementation of the project.

The target for the remaining three years of the first phase of LAP is the registration of 1.2 million parcels. A total of 122 systematic field teams, or some 1,950 BPN staff, are scheduled to be trained and progressively mobilised. In addition about 1,200 surveyors will be needed from the private sector to undertake the cadastral survey program. The project is supporting tertiary training to assist the private sector in this new component to the local survey and mapping industry.

Sustainability.

The LAP represents an investment of US \$140m in the first phase alone. It is reasonable for Government to expect that such an investment will prove to be a permanent and stable foundation for the land administration reforms it is instituting in Indonesia. For this to be the case, attention needs to be focused at the community level as well as on the institutions responsible.

- Community

There are several factors influencing the sustainability of the land administration reforms in Indonesia. Most fundamental of these is the continued political commitment to the considerable level of investment in LAP itself. This commitment cannot be taken for granted, but must be nurtured by ensuring that the objectives of reform, embodied in the LAP, remain relevant to both the national objectives and the expectations of the community.

In the case of many developing countries (and others), some might say that the national objectives, as expressed by the Government, do not necessarily reflect the expectations of the community. Indeed this seems to be the basis of the criticism, being put forward by some representatives of the NGO community in the formative stages of the LAP. However, land issues are especially sensitive in developing communities and they can readily be used as a conduit for politicisation of programs such as LAP. In this context it is tempting to dismiss such criticism as erroneous and unjustified, but to do so may allow confusion to grow in the community and erode the public confidence which is essential for viability of the project. Active community awareness must therefore be an integral part of LAP.

The engine of the LAP is Systematic Registration. By its nature this process is reliant on maximum participation by the land holders within the community. Any reasonable comparison between the existing systems, and the benefits offered by the LAP, would suggest that complete participation should be readily forthcoming. But it is not so straightforward if the community has a tradition of communal ownership and is being encouraged to view a departure from such traditions with distrust. Those who encourage distrust may of course harbour a genuine, and well meaning, longing for a retention of tradition and customary land systems. But it is clear that the systems of the past, and the institutions responsible for these systems, are unable to cope with the pressures of development. They may then suggest that development, as such, is the root cause of concern. But, can it be seriously asserted that development should cease? Can anyone contemplate a return to an environment of isolation, low levels of education, and wide-spread poverty, on the basis that this was the environment when the traditional land systems were in place?

This is not to say that customary land systems are to be arbitrarily discarded in the interest of reform. Indeed, an important issue is transition between the recognition of customary rights and those rights which will be registered by LAP. For these reasons the project is supporting two studies into Traditional (Adat) Land Rights to examine the scope and complexity of the issue and to make the transition as streamline as possible.

If development is inevitable, positive reform in the system of land administration must be a priority. Unlike the traditional systems which evolved over generations, the reforms must be managed into place if the benefits which are the object of development are to be shared in the community. Principle amongst the reforms is the recognition of the rights of people to land, and a process whereby these rights are secured by registration. To consider development without this security introduces the danger of placing the most vulnerable in the community in a position of even greater vulnerability.

The literature paints a fairly common scenario for developing countries. It is one in which land is an increasingly scarce resource; where its distribution is perceived as inequitable; where compensation paid for land required for development is unfair; where revenue through taxes for land is low and disproportionately shared; where land transactions are expensive and bureaucratic and where the levels of disputes concerning land are increasing. Reforms embodied in Indonesia's LAP are a response to this scenario. This is not to say that the reforms are universally good, nor will they immediately redress all problems involving land, but to continue a system which has delivered the above problems would seem a less welcome alternative.

- Institutional

There are many technical innovations in LAP. However experience clearly shows that technical innovation needs to be matched with change at the institutional level if reforms are to be sustained. In Indonesia the agency responsible for implementation is Badan Pertanahan Nasional or BPN (the National Land Agency). BPN has some 26,000 staff operating from over 300 land offices throughout Indonesia.

There are many projects in BPN, some funded by international donors, aimed at improving aspects of the land administration system. Some are more effective than others but all place a demand on BPN available skills and resources. An important strategy in the implementation of LAP is that it is not another *project* with a finite life and budget, but a long term *national program* which will ultimately change land administration in Indonesia. By focusing on the common end (land administration reform), rather than the means (technology, regulations etc.), it is easier for LAP to be accepted as an umbrella under which coordination, and cooperation, between projects can be achieved.

The LAP is thus not so much a project but a new way of life. This new way of life will begin to emerge as the systematic registration activities proceed and the market economy in land begins to grow. The profile of routine work in BPN will shift from first registration of rights (by sporadic registration) to one in which people seek to exercise their rights through subsequent dealings (transfers, subdivisions, mortgages) on a transaction basis. This is, after all, one of the reasons for undertaking LAP in the first place. Experience in Thailand shows the result of this shift is a significant increase in demand for services. It is expected that the growth in demand for BPN services will be similar. Contrary to the fears of some, a corresponding increase in workload for BPN staff is likely.

The capacity to meet increased demand, within the constraints of zero growth in staff numbers, is a challenge which BPN must address. Paradoxically a zero growth policy becomes a stimulus for change since it means the traditional response of throwing resources at a problem is no longer appropriate. Institutional reform starts with the realisation that existing staff resources must be used more effectively. It continues with an examination of what the staff resources will be used for, and results in an agency wide HRD program.

Conclusion.

Indonesia is committed to the reform of land administration as a foundation for development. The Land Administration Project which is being implemented by the National Land Agency is a central part of the reform process.

Indonesia has, partly as a legacy of colonisation, a complex system of land administration. The LAP has been introduced to accelerate the recognition of peoples rights to land and to further the changes in land administration, which commenced with the introduction of the National Land Law in 1960. Although in the early stages the LAP has been a catalyst for changes in regulations and procedures which streamline the registration of rights and improve the capacity of people to benefit from the rapid development occurring.

The Government of Indonesia has taken the initiative, and committed to considerable investment, to address a range of problems which arise from the present system of land administration. Reform is not usually a smooth process as it involves change at many levels of the community. It is made smoother however if criticism of the process is constructive, and causes a constant reinforcement of the ultimate objective of development - the improvement in the overall quality of life.

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REFERENCES

1. Government of Indonesia : "Systematic Land Registration Administration" Regulation of the Minister for Agrarian Affairs/Chairman of National Land Agency No.3, 1995.
2. Government of Indonesia : Act no.5 of 1960 (State Gazette No. 104 of 1960; Supplement to State Gazette no.2043).
3. Government of Indonesia : Government Regulation No.10 of 1961 re Land Registration.
4. United Nations : "Land Administration Guidelines", Economic Commission for Europe, New York and Geneva, 1996.
5. Walijatun, D : "Land Registration in Indonesia", Paper, Asia-Pacific Land Tax Workshop, Jakarta, 1996
6. Walijatun, D : "Land Administration Project: Preparation for the Future", International Workshop on Land Records Management in South East Asia, Bali, 1993
7. Grant, C.A. : "Indonesia - the other Land Titling Project", Paper, 37th Australian Survey Congress Perth Western Australia, 1996
8. Konsortium Pembaruan Agraria (KPA) : Report on Investigations in Land Administration Project in Depok - Bogor, June 1996
9. Lunnay, C : "Systematic Registration - the Developments since Depok". A paper presented to the LAP Workshop on the Karawang Pilot Project, Jakarta, June 1996.