Land Tenure Developments in Indonesia

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List of Abbreviations

AIDAB    Australian International Development Assistance Bureau
BAL      Basic Agrarian Law
BAPPEDA  Regional Development Planning Board
BAPPENAS National Development Planning Board
BFL      Basic Forestry Law
BIMAS    Bimbingan Massal (Major Agricultural Extension Program)
BPN      Badan Pertanahan Nasional (National Land Agency)
BPS      Biro Pusat Statistik (Central Bureau of Statistics)
CASER    Center for Agricultural Socio-Economic Research
CGIF     Consultative Group on Indonesian Forestry
CIFOR    Center for International Forestry Research
DG       Director General
DKI      Daerah Khusus Ibukota (Special Capital Region)
GLD      Guided Land Development
GOI      Government of Indonesia
GTZ      German Agency for Technical Cooperation
HTI      Hutan Tanaman Industri (Industrial Timber Plantations)
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>HPH</td>
<td>Hak Pengusahaan Hutan (Right of Forest Exploitation)</td>
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<tr>
<td>ICRAF</td>
<td>International Council for Research in Agroforestry</td>
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<tr>
<td>INSUS</td>
<td>Intensifikasi Khusus (Intensification Programme)</td>
</tr>
<tr>
<td>IPB</td>
<td>Institut Pertanian Bogor</td>
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<td>ITCI</td>
<td>International Timber Corporation Indonesia</td>
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<tr>
<td>IUCN</td>
<td>International Union for the Conservation of Nature</td>
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<tr>
<td>KIP</td>
<td>Kampung Improvement Programme</td>
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<tr>
<td>KUD</td>
<td>Koperasi Unit Desa (Village Cooperative)</td>
</tr>
<tr>
<td>KUF</td>
<td>Kalimantan Upland Farming Systems Development Project</td>
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<tr>
<td>LBH</td>
<td>Lembaga Bantuan Hukum (Legal Aid Institute)</td>
</tr>
<tr>
<td>LC</td>
<td>Land Consolidation</td>
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<tr>
<td>LIS</td>
<td>Land Information System</td>
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<tr>
<td>LUPAM</td>
<td>Land Use Planning and Mapping Project</td>
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<tr>
<td>NTB</td>
<td>Nusa Tenggara Barat</td>
</tr>
<tr>
<td>NTT</td>
<td>Nusa Tenggara Timur</td>
</tr>
<tr>
<td>MoA</td>
<td>Ministry of Agriculture</td>
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<tr>
<td>MoF</td>
<td>Ministry of Forestry</td>
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<tr>
<td>MoTM</td>
<td>Ministry of Transmigration</td>
</tr>
<tr>
<td>PBS</td>
<td>Perusahaan Besar Swasta (Private plantations)</td>
</tr>
<tr>
<td>PFMA</td>
<td>Participatory Forest Management Area</td>
</tr>
<tr>
<td>PHR</td>
<td>Pola Hutan Rakyat</td>
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<tr>
<td>PIR</td>
<td>Perkebunan Inti Rakyat (Nucleus Estate Schemes)</td>
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<tr>
<td>PNP</td>
<td>Perusahaan Negara Perkebunan (State plantations)</td>
</tr>
<tr>
<td>PP</td>
<td>Peraturan Pemerintah (Government Regulation)</td>
</tr>
<tr>
<td>PPAT</td>
<td>Penjabat Pemuaat Akta Tanah (Land Deed Officer)</td>
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<tr>
<td>PPKR</td>
<td>People’s Rubber Regeneration Project</td>
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<tr>
<td>PRONA</td>
<td>Proyek Operasi Nasional Agraria (National Land Registration Program)</td>
</tr>
<tr>
<td>PT</td>
<td>Perseroan Terbatas (Limited Liability Company)</td>
</tr>
<tr>
<td>RT</td>
<td>Rukun Tetangga („Rural or Urban Neighbourhood“)</td>
</tr>
<tr>
<td>RW</td>
<td>Rukun Warga („Neighbor Group“)</td>
</tr>
<tr>
<td>REPELITA</td>
<td>Rencana Pembangunan Lima Tahun (Five Year Development Plan)</td>
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<tr>
<td>SFD   P</td>
<td>Social Forestry Development Project</td>
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<td>SFMP</td>
<td>Sustainable Forestry Management Project</td>
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<tr>
<td>SKEPHI</td>
<td>Secretariat Kerjasama Relawan Pengendalian Pencemaran (NGO)</td>
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<tr>
<td>TGHK</td>
<td>Tata Guna Hutan Kesepakatan (Consensus Forest Land Use Plan)</td>
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<tr>
<td>UNMUL</td>
<td>University Mulaawaman (Samarinda)</td>
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<tr>
<td>UUPA</td>
<td>Undang-Undang Pokok Agraria (Basic Agrarian Law)</td>
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<tr>
<td>UUPK</td>
<td>Undang Undang Pokok Kehutanan (Basic Forestry Law)</td>
</tr>
<tr>
<td>VOC</td>
<td>Vereenigde Oost-Indische Compagnie</td>
</tr>
<tr>
<td>WALHI</td>
<td>Wahana Lingkungan Hidup Indonesia (NGO)</td>
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<td>WWF</td>
<td>World Wide Fund for Nature</td>
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Executive Summary

1. The purpose of this paper is to study the land tenure developments in Indonesia. Along with the formal, informal and traditional legal regulations, the serious land problems in rural and urban areas are analyzed, and an attempt is made to draw some conclusions from them for development cooperation. The utilization of and access to the land resources plays a decisive part in the further development of Indonesia, since even today, a large part of the Indonesian population, in particular outside Java, live in and from the agrarian and forestry sectors, and thus land tenure for the Indonesian population must be regarded as being crucial. But the legal regulations are not only significant for the agrarian sector; along with them, an increasingly significant part is being touched by the rapidly growing industrialization and urbanization of Indonesia in particular for the provision of areas of land for housing estates and infrastructural measures, and also within the framework of industrial estates or joint ventures with foreign companies. The efficient allocation of land resources is thus a central aspect of agricultural and social development in Indonesia.

2. Some 70 million ha (out of 192 million ha of land) are used in Indonesia for agricultural purposes and settlements. The primary focus of agricultural policy is self-sufficiency in rice. Rice production already occupies the most fertile lowlands of Java, Bali, Southern Sumatra and Southern Sulawesi. But the agricultural policy also tries to diversify the production and to increase the non-rice food crops and cash (estate) crops. Thus marginal lands must be developed for an increase in the production of non-rice food crops and estate crops. This includes the tidal swamp lands on Kalimantan and Sumatra (about 35 million ha), as well as the alang-alang grasslands (about 15 million ha) and the critical uplands on Java and Bali (about 10 - 40 million ha) which are susceptible to erosion. The spread of estate crop plantations will additionally require the conversion of forest areas. This means that agricultural uses compete with forest uses in many places. According to official submissions, 3 million ha of state forest land have been converted to agricultural estates, and used for transmigration and infrastructure purposes in the last 3 years.

3. For various reasons, land tenure problems in Indonesia have increased dynamically and explosively over recent years. The diverse interests of forest concessions, industrial forest plantations, commercial agricultural plantations, mining concessions, settlement programmes and the local population overlap in many rural areas. Thus it is that conflicts in these places occur repeatedly since land or resource claims are always announced by different interest groups. Shifting cultivators lay claim to rights to areas which have been assigned to commercial timber concessionaires for a long-term period by the Ministry of Forestry (MoF). Further conflicts arise out of claims from shifting cultivators to areas which are earmarked by the Ministry of Transmigration and Forest Squatter Resettlements as transmigration areas. Conflicts are also pre-programmed by the increased earmarking of National Parks and the simultaneous limiting of the resource rights of the local people.

4. The Indonesian government and the „newcomers“ (individuals from different ethnic origins, and agribusinessmen with commercial agricultural and forest plantations) view fallow land within the confines of shifting cultivation often as „vacant“ or „unused“ land. Thus it passes automatically to the State according to Indonesian law. The State can then award the land to commercial farmers and business people for agricultural and forest plantations. Immigrants have also tried to use this „vacant“ land. On the other hand, these areas are used by the local communities, either temporarily or permanently, for gathering forest products or as reserve land, and thus regarded as „their“ land. The Adat communities believe that they have ownership rights to these resources since they have received these rights from the traditional functionaries. Therefore they see no reason why they should have to have these rights recognized as „their“ ownership rights again in a lengthy and complicated procedure.

5. Competing uses of land also play an important part in the urban and peri-urban areas. Land for housing development, industrial estates and infrastructural measures which must be withdrawn from agricultural production is needed to cope with the rapidly growing industrialization and urbanization. There are no coordinated programmes for land use management in urban fringe areas. Through the division of properties and unregulated construction, unplanned conversion from agricultural to non-agricultural utilization takes place. A systematic securing of agricultural land which is highly suitable for agricultural utilization in contrast to other utilization forms does not exist. In rural areas, the economic and political elite who do not belong to the local community acquire land for themselves. In many cases, the land has been state-owned and of uncertain status although controlled by local people. This land is of high interest to „outsiders“ for appropriation due to its uncertain status. These financially powerful investors force the locals off their land in the interests of the agro-industry, luxury housing complexes, tourist and sport facilities.

6. Land conflicts are by no means a new phenomenon in Indonesia. But today, the number of land conflicts in both rural and urban areas has starkly increased. The majority of conflicts is to be found in the economic boom regions of Indonesia. In West Java, 37 % of the pending conflicts are to be found in the Bogor-
Tangerang-Bekasi Development Region, and 35% are to be found in the Greater Bandung Development Region. This may well be connected on the one hand with the concentration of investments and the corresponding need for land in these two growth regions. On the other hand, it might also be an indication of better information about and a greater awareness of these problems within the local population. The disagreements in West Java arose above all about questions of compensation and questions about the status of the land. Which parties have been involved in the disputes? In West Java, disputes take place predominantly between members of the community and government agencies, and between the community and private companies. The growing number of land disputes, in particular with regard to insufficient compensation payments, has resulted in a number of protest actions by farmers since the mid-80s, supported also by student groups.

7. Many institutions are involved in solving land conflicts, and resolutions are sought on different levels. Adat institutions, of course, contribute to the resolution of traditional conflicts between and within the various Adat communities. The Adat institutions are, however, frequently not in a strong bargaining position when it comes to conflicts between Adat authorities and the national government. The rapid changes for example in Kalimantan and Irian Jaya influence the traditional leadership patterns and tend to lead to the weakening of power of the traditional leaders. New leadership structures (Government) arise and put the paramount leadership of the adat leaders in question. This is particularly visible in the conversion of adat land to state land for development programmes. Attempts are made through state regulations to adjust and consolidate the traditional power structures so as to force back the power of the adat leaders.

8. The formal procedures of such a legal case in court are complex and lengthy and bound up with multiple administrative snare. The judges of general courts are often insufficiently prepared for the form of these land conflicts in which one party can consist of thousands of people, or in which thousands of local people want to be members of the community which is suing for higher compensation. In addition, the decisions according to „winner” and „looser” of a court battle do not fit in with the necessity of finding innovative, locally specific and flexible solutions and compromises which do not go against the interests of all concerned. This, however, appears to be an important prerequisite for long-lasting solutions. Many NGOs on several islands which deal with the problems incorporated in rural development and consider their prime task in strengthening and setting up of community institutions have become involved in the land tenure issues. Church NGOs in particular frequently play the role of negotiator in Indonesia in land conflicts. Representatives of religious institutions often live for decades in rural areas on the outer islands and often possess profound knowledge about local Adat regulations and are often seen in addition as an authority by the local Adat leaders and is turned to for advice.

9. The central law for land rights is the Basic Agrarian Law (BAL). Apart from the BAL, further laws and regulations also play an important part. This refers in particular to the Basic Forestry Law (BFL) as well as the Spatial Use Management Law and the Conservation of Living Resources and their Ecosystems. The Basic Agrarian Law, enacted on 24th September 1960, compromises two important alterations of the previously valid old Netherlands Indies agrarian legislation of 1870. For one thing, it canceled the old land registration, titling laws and regulations. This led to the dissolution of the existing dual legal system (western law and adat law), and to the introduction of a new system of land law of unique Indonesian applicability. The fixing of ceilings and the exclusion of foreigners from landownership should protect the autochthonous Indonesian citizen from economically stronger groups. In practice, however, numerous examples of land tenure can be found which more or less strongly diverge from the formal rights in the BAL. This, for example refers to the regulations for minimum and upper ceilings as well as for regulations which should avoid so-called „Absentee Landlords”.

10. The Basic Forestry Law of 1967 lays down the structural and political basis of the state forestry policy. „Forest areas” are areas with or without trees which have been designated by the government as „forest”. The permanent forest areas under the Basic Forestry Law can be divided into the following four areas: production forests (64.3 million ha) are designated for exploitation of timber, rattan, saps and other forest products. Commercial utilization rights in the form of concessions for so-called production forests are granted to private and semi-State businesses. Since the end of the 60s, the number of concessions and the extent of licensed areas of land has risen sharply and today takes in virtually the entire amount of production forest in Indonesia. Protection forests (30.7 million ha) are forest areas which should be protected so that their functions, particularly their hydrological function, can be maintained. Nature reserve and recreation forests (18.8 million ha) are for the protection and preservation of genetic resources and the development of science, education and tourism. Conversion forest (26.6 million ha) is forest land designated for conversion to other land uses such as agriculture and settlement.

11. The Consensus Forest Land Use Plan (Tata Guna Hutan Kesepakatan (TGHK)) was passed in 1984. Through the classification at the time, wide areas of land were declared as state forest. This land-use regulation not only reduced the amount of land suitable for shifting cultivation, it also led, for example, to land under hak ulayat or other adat land now being in state forest. According to the Basic Forestry Law, there are no...
personal rights in these state forest areas (Kawasan hutan). This means that as long as the land is classified as forest and is subject to the Forestry Department, no individual or communal property rights can be registered under the National Land Agency (BPN).

12. The BPN was founded through the Presidential Decree No 26 / 1988 and took over the tasks of the former Directorate-General of Agrarian Affairs in the Ministry of Home Affairs. The BPN supports the President in the management and administration of the land through the State Minister of Affairs. The State Minister for Agrarian Affairs is appointed by the President and is advised by him in land policy matters. The State Minister for Agrarian Affairs is simultaneously the head of the National Land Agency. The dual function enables the person holding office to fall back on data drawn up by BPN and simultaneously to development and implement land policy in Indonesia as a member of the cabinet and as a member of the National Development Planning Board (BAPPENNAS). The main activities of the BPN are: land registration, cadastral measurement, land use mapping, land certification and land granting. Likewise, the BPN functionally carries out the issuance of location permits and land consolidation in cooperation with the local Government.

14. Uneven distribution of land is not a new phenomenon in Indonesia. The first statistical data, from the findings of a study conducted in 1905, shows the uneven distribution of control over land in West Java. The results of the Agricultural Census have continued to reflect the imbalance which exists in control over land. According to the agrarian census of 1993, there are about 19.7 million land-holding farm households in Indonesia (from a total of about 42 million households). Of these, around 9.6 million land-holding farm households have less than 0.5 ha, and 14 million land-holding farm households have less than 1 ha of land. On Java, the land holdings are even smaller on average. In 1993, for example, more than 40 % of the farms on West Java had an area less than 0.2 ha, and about 73 % of the farms had an area less than 0.5 ha Only 0.2 % of the farms on West Java have an area of more than 5 ha.

15. Access to land for landless households is frequently only possible through tenancy arrangements. Various forms of tenancy exist in Indonesia. Sharecropping is the dominant tenancy form in many parts of Indonesia with the exception of Central and East Java, East Kalimantan and a few eastern provinces of Indonesia. Alongside sharecropping, fixed rent tenancy and pawned tenancy also exist. The majority of households in the rural areas of Java do not have sufficient land to be able to support their existence. Not only the marginal landowners but also the landless tenants and agricultural workers belong to this majority. Amongst them, the particularly poor households are those which also have no chance of taking up extra-agricultural activities because the principal workers of the household are chronically ill, invalid or aged, or because they are single women households (widows, divorcees) with children.

16. Numerous marginal people migrate seasonally or permanently to other rural regions or urban centers. If the search for employment is unsuccessful, the only way out is frequently seen as the „illegal“ acquisition of land. This is mainly the illegal occupation of land belonging to large landowners, or of communal or state land. Encroachers in the forest frequently occupy marginal areas which are endangered by erosion and which become degraded through improper maintenance. But „illegal“ land acquisitions also exist in the urban centers, and this in growing proportions. Numerous conflicts which deal with the recognition of the rights of „illegal“ land takers, and deal in particular with the question of compensation when expulsion occurs, are pending on Java.

17. It becomes clear from the agrarian structure that agriculture could only provide a part of the livelihood of many rural households and that they have to increase their income by taking employment outside agriculture. They are more interested in new employment opportunities and training in non-agricultural jobs as a way of gaining additional income. Multi-employment is widespread in Java.

18. In the growth regions of Indonesia, land is becoming more and more strongly a commercial commodity. Land sales of individual private property can be found now almost everywhere on Java. Following the introduction of the BAL and with it the subsequent conversion of land rights to hak milik, a period began in which more and more parcels of land were sold not only within the community or to peasants in neighboring villages, but also to „outsiders“, although this is illegal according to the BAL. Nonetheless, every private owner tries to hang on to his property, and sales are frequently a result of emergencies.

19. An important problem is the de facto existence of two parallel legal systems: adat law and statutory law. In many regions of Indonesia adat law persists and the local population orients itself towards ways of dealing within adat law, which is more transparent and easier to understand than statutory law which they frequently do not know about or do not fully understand. How far are adat rights taken into consideration in Basic Agrarian Law? The BAL recognizes the rights to the Adat community under hak ulayat (right of disposal). In principle, hak ulayat allows every member of the adat community to use the land and the products of the land. The Basic Agrarian Law recognizes communal as well as individual adat rights as long as they do not come into conflict with the State legal system. However, it makes no regulations for the documentation and registration of
communal rights. If adat rights cannot be proven, the land is automatically looked upon as State land. „National“ interests carry more weight than adat rights.

20. In the past 35 years after the Basic Agrarian Law was put into action, innumerable amounts of land under adat rights have been bequeathed, sold and divided up without one single registration or any other formal type of documentation taking place. So the question of what the exact origin of these claims to rights today is frequently cannot be answered. Are these rights, as one may presume, predominantly ones which are derived from hak ulayat, or are they old individual rights which were granted in colonial times? This means that the often-used term „adat rights“ is not necessarily always clear. Thus, for example, it is increasingly difficult to differentiate between land under traditional landholders from land which has been worked for centuries by farmers and their offspring as so-called outsiders.

21. Customary rights (adat), in particular in the so-called „outer islands“, are of great importance in many areas of interpersonal life. They are not only effective for land rights, water rights and inheritance rights, they are also influence other laws as marriage law and criminal law. At the same time, adat not only preserves ethnic identity, it is also important for upholding a moral and cultural legitimacy in the face of a dominant external state and culture. Rural clans and tribes believe that land is God-given and inalienable. Land is not only a basis for production; it is also a form of worship to ancestors and a connection to the spirit world. Many rituals and festivals are enshrined in the cultivation of land and the cultivation cycle.

22. The variation of adat law in the different law areas makes it difficult to establish generalized aspects of community-based law. The community has the right of disposal. One specific aspect of this right is to be found in the interaction of communal rights and individual rights under hak ulayat. This distinction between individual rights and communal rights cannot, however, be clearly drawn. A whole spectrum of rights which cannot be distinctly looked upon as the equivalent of individual or communal rights can be present here, such as anything from pure communal rights (which may be available for land lying fallow) up to pure individual rights (which for example exist in West Java).

23. To what extent is hak ulayat still significant today? In some regions, the process of dissolving hak ulayat in favor of individualization already began in the 19th century, and in some regions of West Java, Aceh and Madura, the individualization of land ownership was virtually complete by the turn of the century. The exact extent of the non-forest areas under adat law is just as unknown as the extent of the forest areas claimed by adat communities. It is estimated that most of these land rights exist on forest land. But forest land is under the responsibility of the Ministry of Forestry and not of the BPN. This means as a rule that no formal land titling and registration can be carried out for this land. Since several Government authorities (Ministry of Forestry, BPN, Ministry of Agriculture, Ministry of Home Affairs, Ministry of Transmigration, Ministry of Mining, etc.) may be involved here, a consistent and transparent plan of action is further made difficult.

24. How can the adat communities acquire secure rights to these non-forest as well as forest areas, and how can these rights be embedded in the Indonesian land registration system? An application for adat rights registration is almost never made by the members of the adat communities. A registration is usually only made when another party wants to acquire that land and wants to obtain a Basic Agrarian Law right to it. If adat communities live in forest areas, the two following possibilities exist for securing land rights: (1) The adat community, its subsistence economy and its tenure patterns must be recognized and a long-term, sustainable, multiple use forest management system must be created which is advantageous for both the local people and for the State institutions (long-term utilization rights). (2) The extent of adat land in forest areas and the individual or communal legal claims to this land must be investigated. These areas, which have been under Basic Forestry Law, must be „converted“ into agricultural land so that they come under Basic Agrarian Law and can thus also be registered.

25. In urban and peri-urban areas, other land tenure issues are more important. Here the need for land for non-agricultural purposes is starkly growing due to increasing urbanization and industrialization. The urban population is growing more quickly than the total population of Indonesia. The increasing urbanization affects land rights and land markets in urban and rural areas, since urban life is encroaching more and more into the villages. Thus one can hardly distinguish the borders of the centers previously far removed on the urban fringes any more. This is particularly the case in the conurbation JaBoTaBek. In this urban fringe alone, there will be a population of around 30 million people in 2010. With an assumed growth of the urban population of 4 % per year, Jakarta needs around 70,000 new dwellings per year, at least 25 % of which are needed for low income categories with an income of US-$ 30,- per month and person.

26. More and more agricultural land is being converted to non-agricultural uses. The land used for agriculture has been reduced from 6.4 million to around 5.5 million hectares in the last ten years. Particularly painful for agriculture in this case is the high percentage of highly productive sawah which has been taken out of agricultural production in this period of time. All in all, the amount of the reduction of „sawah“ was more than
400,000 hectares within the period 1983 - 1992. This is equal to an average loss of more than 40,000 hectares per year and an estimated loss of more than 500,000 tons of rice per year.

27. In response to population pressures and poverty in the „inner islands“, the Indonesian government has also promoted resettlement programmes. The transmigration programmes already began in Indonesia in 1905 and after that they developed into perhaps the most extensive State-planned settlement programme worldwide. The purpose of the transmigration programme is to contribute to the solution of a diverse set of objectives: reduction of the pressure of population on the inner islands (Java and Bali); economic development of the outer islands; securing and / or increasing food production; integration of ethnic groups within the framework of „nation building“ and the strategic securing of border regions. Although it was for example not possible to reduce decisively the population pressure with the extensive transmigration programme of 50 - 60,000 families (200,000 - 240,000 people) per year, the influence of the migrants in particular regions can be quite significant for some regions. In some kabupaten, transmigrants represented more than 40 % of the total population after resettlement. In general it can be said that the ambitious objectives and expectations of the transmigration projects could so far only be insufficiently fulfilled because of financial, administrative and executive constraints.

28. Various settlement programmes have been put into action by the GOI in rural areas in recent years. The central core of the PIR programmes (Perkebunan Inti Rakyat or Nucleus Estate Scheme) is a State Nuclear- Owned Estate which support surrounding small-farms in cultivation, processing and marketing. For the resettlement of transmigrants, special transmigration programmes such as the Perkebunan Inti Rakyat Transmigrasi (PIR-Trans) and the Hutan Tanaman Industri Transmigrasi (HTI-Trans) programmes have been developed. The Ministry of Transmigration (MoTM) also developed a concept of „Pola Hutan Rakyat Transmigrasi“ or PHR-Trans for the transmigratiion of 1.7 million „Perambah Hutan“ (so-called forest squatte) families. Pilot programmes for the PHR-Trans were supposed to be started in East and West Kalimantan in 1995 where 4 ha were to be used for reaforestation, and 2 ha were to be used for cash crops.

29. The Government of Indonesia supports the registration of land in urban and rural areas. But often the costs of registration, alongside the lengthy and complicated process is the main reason why the landowners hesitate to register their land in spite of the advantages for them. They cannot use their land without registration as collateral, and in the case of land acquisition by the government, they would only receive little compensation. So as to quickly raise the numbers of registrations, the Government introduced a special land project (Proyek Operasi Nasional Agraria (PRONA)) in 1981. It is estimated that nearly 900,000 titles have been issued under PRONA. A Land Administration Project has been running in Indonesia since 1995. The main objective is to foster efficient and equitable land markets and alleviate social conflicts over land. In the first years of the project, the main points of focus of the project will be in Java, in particular in West Java. It has been planned for a later stage that land under „hak ulayat“ on non-forest land (e.g. in West Sumatra) will be integrated in the Land Administration Project. Along with the promotion of systematic and sporadic registration, the systematic review of land laws and regulations will be striven for in this project.

Potential fields for development cooperation

30. Some conclusions can be drawn from the study for fields of development cooperation in the area of land tenure. At the same time, it should not be forgotten that land tenure and its changes must be seen not in isolation, but rather in a socio-cultural, political and economic context.

Policy Dialogue

31. The policy dialogue could contribute to the awareness of the existing problems and the need to change land policy. Existing information gaps need to be closed and the flow of information needs to be improved. Centrally organized bureaucracies are too little aware of local structures and institutions for resource allocation and for the resolving of land disputes. The institutional communication and the institutional cooperation between the heterogeneous local institutions and the centralized state are so far insufficient. The flow of information from the local basis to the central powers has to be improved and the closer cooperation between local level institutions and the national level has to be strengthened.

32. The policy dialogue could further contribute to the promotion of inter-institutional dialogue and close cooperation between the relevant departments at the national, regional and local level. The areas of competency of the various departments involved are often unclear and lead to conflict potential. The dialogue between the departments involved for exchanging information and improving cooperation should be improved. One example is the „Consultative Group on Indonesian Forestry“ (CGiF) in existence since 1993 which brings international donors (the GTZ amongst them) together with Government Departments. The inter-institutional dialogue of a „Consultative Group on Land Tenure Development“ (BPN, MoF, international donors) should be promoted.
33. The policy dialogue could further contribute to the encouragement of decentralization. The interests of the actors involved towards a stronger decentralization are diverse. The redistribution of State power to the various regional administrative bodies also means a redistribution of resources. A decentralization of state responsibility is a prerequisite for locally efficient land tenure institutions.

**Training and Research**

34. One important field of development activities is training and research in the area of land tenure. To this belong amongst others: short and medium-term courses and/or training on the job in Indonesia or overseas in specific fields for personnel from the BPN, MoF, etc. These courses could be in the areas of rural land consolidation, urban land consolidation, GIS, etc. Education and training should be promoted for members of NGO’s, foundations and community organizations in areas such as organizational development and legal consultation.

35. **(Electronic) conferences on specific topics** (administrative, legislative, management aspects) with relevant national and international research and decision-making bodies (BPN, MoF, MoA, ICRAF, CIFOR, CASER, universities - in particular the agricultural, forestry and law faculties), donors, NGO’s, etc.) could be conducted for information exchange and the identification of main focal points of research as well as the investigation of starting-points for the aimed promotion of national and international research projects.

36. Support should be given to curriculum development and establishment of land and resource tenure in the curriculum for agricultural, forestry and law students in the S 1 (Bachelor level) and S 2 (Masters level) of education, e.g. in the agriculture faculty (IPB), forestry faculty (UNMUL).

**Specific Initiatives in rural areas**

37. **The securing of ownership and usufructuary rights** is a necessary but not always sufficient precondition for substantial agricultural and forestry production. The security of landownership can be achieved with land registration. With this, the question arises of whether or not further privatization of land alone through the land registry or also through other pragmatic and less formal approaches is possible. It still must be made clear how communal rights are to be secured. Can, for example, the existing upper limit for landownership lead to problems in land registry for shifting cultivators? And how should the rights of the local inhabitants to classified forest land be secured? The procedures for individual land registrations should be made more simple and less costly. The institutional structures at the national, regional and local level for land registration ought to be improved. Pilot efforts for community-based forest management such as the Participatory Forest Management Approach of the SFDP which secure long-term utilization rights should be initiated and supported.

38. A huge amount of land, forest land in particular, is under customary land rights. **The awareness and recognition of these Adat rights** have to be improved. Since many people live on land controlled by the Forestry Ministry, the Adat rights of these local people have to be respected. The current „sectoralist” approach should be replaced by an approach towards the needs of local communities. The resource use strategies of adat communities should be recognized so as to avoid the problems concerning „vacant” lands, for example. The local people’s land in forest areas should be reclassified because classified forest land is state land and this land cannot be registered by an individual.

39. Too little information is available about which land policy options are desired by the local people. Is there a natural development from communal to individual lands, when the economic value of the land or of the production of the land rises? To what extent is communal ownership of land desirable to the local people? The communal group should have the freedom to choose from available options and should not be forced into an „individual” registration system.

40. For the participation of communal groups, etc. in the law making process, the making of written laws and regulations available and disseminating them in local languages should be encouraged. Encouraging community legal education programmes can support the local people in understanding the formal laws and procedures and in being aware of their land rights. This would also be an important step for political recognition of the legitimacy of participation by all affected actors and interest groups. The Government must acknowledge that it should not be the sole arbiter of land policy. It should be ensured that the local communities, for instance, also have a say in policy decisions.

41. **Cooperation and network building** should be supported with governmental and non-governmental institutions for capacity building for land tenure development: e.g. the Faculty of Law, Gadjah Mada University Yogyakarta, the Institut Pertanian Bogor and other Universities and research institutions, the Legal Aid Institute
and individual Indonesian consultants could participate in such undertakings.

42. **A land tenure and resource documentation programme** cannot only increase public access to information but can also make land information available to decision makers at the regional and national levels. The documentation programme can undertake a survey of existing documents about land tenure matters in particular the „gray literature“ at the various institutions. The existing documents (studies, laws and regulations - in particular at the province level), court reports can be collected and made available to the public. Studies and research work on land tenure aspects (for example an inventory of communal land rights) which will be carried out should be designed in such a way that compatible data will be produced. When setting regional priorities, one should concentrate on the regions in Indonesia (e.g. Kalimantan) in which the main focal point of German technical cooperation in the field of agriculture and forestry is to be found and in which the beginnings in land tenure through networking with existent projects (e.g. SFDP, KUF, SFMP) are thus more likely to succeed.

43. The legal regulations in the BAL and the BFL as well as Government and other regulations are sometimes inconsistent and sometimes contradictory. Laws and regulations have to be reviewed and revised (for example the BFL) at the national and provincial levels. A **consistent and transparent legal system should be created** so that the regulations, provisions, directives, etc. are also consistent with the legal framework. The access to the regulating framework of Indonesian land law should be less difficult.

44. Rural land consolidation is a multi-functional and multi-sectoral activity for the improvement of production, conservation, resettlement, etc.. **A rural land consolidation programme could be a possible model for a combined technical and financial cooperation programme**. Support can be given in the fields of training, planning and management, legal aspects and regulations, technical execution (e.g. techniques for land valuation should be improved; for surveying and mapping, advanced equipment should be used; consideration of environmental aspects should be introduced), monitoring and maintenance, credit for new infrastructure and new farming systems.

**Specific Initiatives in urban areas**

45. The rapid urbanization process in Indonesia will lead to a growing number of people who are settling informally or illegally in the cities without a basic infrastructure. The informal sector provides shelter for a huge number of people. But the legalization of tenure, which is a prerequisite for having access to formal housing finance institutions is hindered by complicated, bureaucratic and costly registration procedures. Pragmatic approaches related to the **support of basic and most important functions of land management and municipal administration such as** the registration and titling of land or the levying of fees and taxes have to be found. The introduction and support of the Land Information System can be helpful for the provision of information and improving the securing of tenure.

46. For the settlement of the rapidly growing urban population, large scale land requirements are necessary. This can be done by direct land acquisition combined with land banking. It can also be done by **Land Consolidation or Guided Land Development**. Land acquisition is getting more and more difficult without land disputes and land acquisition involves high costs. Land Consolidation can not only lead to a more controlled and planned urban growth, but also contribute to the costs for providing the infrastructure being recovered.

**1. Introduction**

The land masses of Indonesia cover 7.7 million square kilometers. The total land area amounts to 1.9 million square kilometers and is divided up into 17,500 islands with a coastal length of 80,000 kilometers. Indonesia is extraordinarily varied from an ecological and socio-cultural point of view. 300 different ethnic groups with a total of almost 200 million people live on the islands which are blessed with varying resources. Rich in resources, Indonesia has amongst other things fertile soils (i.e. Java and Bali), pronounced forests (i.e. Kalimantan and Irian Jaya) and valuable mineral resources (i.e. Sumatra).

The utilization of and access to these resources play a decisive part in the further development of Indonesia. Thus, suitable framework conditions for agricultural and forest activities as well as for growing non-agricultural activities must be created or rather guaranteed.

Questions about utilization and access are essential in this context, since even today, a large part of the Indonesian population, in particular outside Java, live in and from the agrarian and forestry sectors, and thus land tenure for the Indonesian population must be reckoned as being crucial. Yet existing legal regulations
whether of a formal, informal or traditional nature are significant not only for the agrarian sector; along with them, an increasingly significant part is being touched by the rapidly growing industrialization and urbanization of Indonesia in particular for the provision of areas of land for housing estates and infrastructural measures, and also within the framework of industrial estates or joint ventures with foreign companies.

In this study, land tenure developments in Indonesia will be analyzed following the structure given below:

The study is preceded by a short introduction and problem elaboration (Part 2). It then focuses on existing land tenure arrangements (Part 3) and discusses in detail the formal, informal and traditional land tenure practices.

Part 4 discusses instruments for conflict resolution. In part 5, then, institutional structures related to land tenure will be identified and traditional land tenure institutions as well as administrative structures will be analyzed.

Part 6 is devoted to urban development, its problems, constraints and opportunities using Java as an example. The developments of land tenure in rural areas are then elaborated in part 7 using West Kalimantan as an example. Transmigration programmes are also analyzed in this part.

In part 8, the important developments and programmes regarding land tenure issues will be presented. The potential fields for development cooperation will be summarized in the last part of this study.

2. Problem elaboration

The land question in Indonesia has developed in significance over recent years. For various reasons, land tenure problems have increased dynamically and explosively. In West Java alone, more than 300 conflicts have been documented in the last years.

Growing population and rapid economic development lead to various competing land uses, in particular in booming areas. Land is not only used for increasing agricultural production, but rather for non-agricultural purposes in ever-increasing amounts.

In the following section, some of the most important problems of land tenure in Indonesia have been summarized:

- Two parallel legal systems exist de facto in Indonesia: adat law and statutory law. In many regions of Indonesia, adat law persists, and the local population is oriented towards adat law, which is more transparent and more easily understood than statutory law which people frequently do not know or do not fully understand.

- Legal uncertainty is partially caused by numerous unclear and indistinct legal regulations, which are passed in addition to the legal frameworks, such as the Basic Agrarian Law and the Basic Forestry Law. The same is true for land registration procedures or provisions for the determination of adat rights and, also for the procedures for the determination of compensation payments. Moreover, numerous regulations which are set down in the legal regulations, are either not carried out or are circumvented.

- State institutions are frequently difficult to access in isolated rural areas, and are not in the position to adequately implement land policies due to insufficient finances and personnel.

- The distribution of authority within the government is unclear and the „horizontal“ cooperation between the different vertically organized sectoral agencies which are involved in land matters at various levels is often insufficient. The National Land Agency (BPN), for example is in charge of the non-forest areas, while the Ministry of Forestry is in charge of forest areas which officially encompass 74 % of the total Indonesian land mass.

- The diverse interests of forest concessions, industrial forest plantations, commercial agricultural plantations, mining concessions, settlement programmes and the interests of the local population overlap in some regions. Thus, boundaries drawn up by the local population are frequently interpreted differently from boundaries drawn up by official institutions. For example, transmigration projects have often led to conflicts with the local population because of insufficient planning and implementation.

- Most traditional rights are still valid in forest areas which are administrated by the Ministry of Forestry.
This division of land policy and land management between forest areas and non-forest areas leads to numerous problems, in particular with regard to land use planning and the recognition of adat rights. Although many people live in forest areas, they have no chance of having their adat rights registered, since the forest areas are State land.

- The problems of „illegal“ occupation of land (squatters) exist in both remote rural regions and, increasingly, in urban growth areas, e.g. Jakarta.

- Competing uses of land also play an important part in the urban and peri-urban areas. Thus, the various agricultural and non-agricultural uses of land which compete with each other must be brought into accord on, for example, Java where the difference between rural and urban areas is scarcely obvious in many regions. Areas of land for housing development, industrial estates and infrastructural measures which must be withdrawn from agricultural production, are required for the rapidly growing industrialization and urbanization.

- As land has become more and more a commercial commodity, the level of land speculation is also increasing. As a result, there is „corruption and collusion between local government and private entrepreneurs who often misuse an existing lack of supervision“ (sadly enough, local community leaders are sometimes involved)... and „abuse of power by local government against uninformed public is often done in the name of „development“ and intimidation can reach disgraceful proportions.“

3. Documentation of the existing land tenure arrangements

3.1 Development of the Agrarian Legislation up to 1960

Before analyzing the land tenure arrangements, a brief historical outline of the Agrarian Legislation in Indonesia will be presented. The agrarian structure of Indonesia of today has been influenced to varying degrees in the past by the rulers of earlier times, the colonial powers, and in particular by the Dutch colonial rulers in various regions.

The Vereenigde Oost-Indische Compagnie (VOC) had the monopoly on trade in South East Asia after 1602. Almost all of Java apart from the Sultanates Solo (Surakarta) and Yogyakarta was brought under the control of the Trading Company. The VOC ruled through regents, whose administrative districts were known as Regencies. After an initial pioneer period of the VOC, the so-called cultivation system (Cultuurstelsel) was introduced which, however, was more a „duty system“ rather than a cultivation system. The Indonesian farmers had to devote a percentage of their land, usually 20 %, and their time to growing an export crop and handing the harvest over to the government.

In 1800, the VOC was dissolved by the Dutch Government. In 1811, the British occupied Java, and the British East India Company introduced a liberal economic system under the Governor RAFFLES. In RAFFLES‘ opinion, all land was the property of the government which meant that all land owners had to hand over 25-50 % of the harvests to the government. England returned Java to the Dutch, and the commencement of the actual colonial period under Dutch rule in Indonesia is seen to be started in the year 1816. In the years 1820 - 1830, enforced cultivation (Cultuurstelsel) was reintroduced, and was extended from sugar, indigo and coffee to other crops, for example, tobacco, pepper, cotton, cinnamon and tea. Along with the ‘Land Tax‘, additional taxes had to be paid in some regions in the form of harvest duties, and manual labor had to be performed for the construction of roads and canals. This led to excessive demands on farm laborers and thus also to the fact that land owners no longer found enough time to cultivate subsistence crops. This resulted in serious famines (i.e. the Cirebon famine in the early 1840s).

The heavy workload for the purposes mentioned above led to the breaking up of large land holdings into smaller land parcels since the individual families could no longer manage to cultivate the larger areas. These areas which could no longer be worked were reclassified: „This break-up was done by reclassifying land that hitherto had been hereditary to individual families into communal or village land so that it could be divided among a greater number of people“.

After 1870, the economic system was transformed into a „liberal system“. At the same time, the Agrarian Law was passed in 1870 which created the rise and blossoming of the plantation economy between 1870 and 1927. Towards the end of the century, the cultivation system came slowly to an end. After 1870, Europeans were allowed to lease land, more or less without limitation.
The Agrarian Law of 1870 (included as Article 51 of the „Indische Staatsregeling”) was based on the principle of dualism. The Agrarian Law differentiated in its regulations between non-Indonesians and foreigners on the one hand, and Indonesians on the other: „For non-Indonesians and Western Europeans, a civil law system prevailed in which lands were surveyed, registered, and titled based on Western civil law procedures. For Indonesians, adat, or customary law, was followed and holdings were not surveyed, registered, or titled."

Customary rights were indeed recognized, but in the Agrarian Law of 1870 there was a regulation that all areas of land to which the local population had no permanent claim was to revert to the Government as State land.

Europeans were only able to get land for setting up plantations as a hereditary leasehold, or as a concession from the Colonial Administration. In certain regions, the land came from the Indonesian princes. Hereditary leasehold land was granted as a rule for 75 years, and concessions for a period of 99 years. The areas of land were to be no more than 355 ha on Java, and 3,550 ha in other regions. After 1890, many of these plantations were turned into public limited companies.

From after Independence in 1947 until the enactment of the BAL in 1960, the regulations of the Agrarian Law and the dual system was taken on for the time being. During this time, the land was cadastrally surveyed and registered. But it is estimated that not even 5 % of the entire country was registered under Western law procedures. Adat law was applied for Indonesians, and accordingly their land plots were neither surveyed, registered nor titled. As a rule, there were also no written documents, and thus a lack of evidence to prove land ownership.

Directly after Independence, several state commissions were put to work in 1947 to develop a new land law. A lengthy process began, and it took until 1960 to bring the various points of view together about how the future land law should be in „a compromise law, the Basic Agrarian Law (BAL) of 1960". The new Basic Agrarian Law (Law No. 5 of 1960) which replaced the old Netherlands Indies agrarian legislation of 1870 was enacted on 24th September 1960. The BAL brought old elements of the existing legal system together with new aspects.

3.2 Analysis of formal laws of land tenure

3.2.1 The Basic Agrarian Law No. 5 / 1960

The BAL or Undang-Undang Pokok Agraria Nomor 5 Tahun 1960 (UUPA) is based on Article 33 of the 1945 Constitution (Undang-Undang Dasar 1945) of the Republic of Indonesia, and on Principle 5 of the state philosophy of Pancasila.

In Chapter XIV, Article 33 of the Constitution, Paragraphs 2 and 3 state: „Branches of production which are important for the State, and which effect the lives of most of the people, shall be controlled by the State" and „Land and water and the natural resources found therein are controlled by the State and are utilized to the fullest extent for the greater prosperity of the people."

Principle 5 of the Pancasila specifies: „that to provide a just and prosperous society, adequate supplies of food and clothing must be provided for the populace."

The Basic Agrarian Law (BAL) is made up of 67 articles divided up into four chapters covering:

1.) Basic Principle and Provisions

2.) The Rights to Land, Water and Air Space, and Land Registration

3.) Penal Provisions

4.) Transitional Provisions

The basic principles of the BAL are summarized in Box 1. What were the basic alterations to the previous legislation for the new BAL: The new BAL „substituted a single code based on Indonesian traditional (adat) law purified from ‘feudal’ and ‘capitalistic’ elements" and „the new legislation qualified indigenous law in various ways, although in vague terms, such as that it must not be ‘contrary to national interests’, ‘contrary to Indonesian socialism’, ‘contrary to other agrarian legal precepts’ or ‘contrary to religious law’ and that it would be ‘founded on national unity’".
Adat land rights acquired before the enactment of the BAL are fully protected and can be registered and titled under the new system. It is, however, significant that "in all land matters the BAL would govern and take precedence over the Adat system of land law."

The new Agrarian Law comprises two important alterations of the previously valid land regulations. For one thing it canceled the old land registration, titling laws and regulations. This led to the dissolution of the existing dual legal system (western law and adat law), and to the introduction of a new system of land law of unique Indonesian applicability. Land which was originally registered under western law could "be converted to the new system, but failure to do this would lead to forfeiture, with the land reverting to state ownership."

For another thing, a new Agrarian Law was developed whereby in particular "a system of land rights with varying degrees of tenure and with different citizenship requirements determining the type of right to be granted." The fixing of ceilings and the exclusion of foreigners from land ownership should protect the autochthonous Indonesian citizens from economically stronger groups.

**Box 1: Principles of the Basic Agrarian Law**

<table>
<thead>
<tr>
<th>Article 1: Foundation of the Law</th>
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<tbody>
<tr>
<td>The entire earth, water, air, and natural resources of Indonesia are gifts of God Almighty and constitute the wealth of the nation.</td>
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<tr>
<th>Article 2: Control and Authority</th>
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<tbody>
<tr>
<td>The state, on behalf of the whole people of Indonesia is responsible for the control and regulation of earth, water, air, and natural resources of the nation to achieve the maximum prosperity of the people.</td>
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<tr>
<th>Article 3: Adat Community Lands</th>
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<tr>
<td>Adat property rights shall be adjusted to the national law and interests and shall not be in conflict with the acts and other regulations of higher level.</td>
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<th>Article 4: Rights authorized</th>
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<tbody>
<tr>
<td>Several types of land rights, under the state’s direction and control, may be granted to and owned by persons and corporations.</td>
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<tr>
<th>Article 5: Adat</th>
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<tr>
<td>Adat applies to agrarian matters unless it conflicts with national and state interests, Indonesian socialism, and legislative regulations, in which case the national law provisions prevail.</td>
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<th>Article 6: Function of land rights</th>
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<tbody>
<tr>
<td>All rights on land have a social function.</td>
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<tr>
<th>Article 7: Land ownership and control</th>
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<tbody>
<tr>
<td>Excessive ownership and control of land is not permitted.</td>
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<tr>
<th>Article 8: State Regulation of Natural Resource Exploitation</th>
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<tbody>
<tr>
<td>All exploitation of natural resources shall be regulated by the state.</td>
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<tr>
<th>Article 9: Rights of Indonesian Citizens</th>
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</thead>
<tbody>
<tr>
<td>Only Indonesian Citizens regardless of being male or female may have the fullest use of the earth, water, and air resources of the nation.</td>
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<tr>
<th>Article 10: Agricultural Land</th>
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</table>
Persons and corporations with land rights for agricultural purposes are obliged to cultivate or exploit the land by themselves and not to use extortionate methods.

**Article 11: Legal Relationships with the Society**

Legal relationships between persons and corporations with the land and resources are to be regulated to achieve maximum prosperity for the people while preventing excessive control over the livelihood of other persons. The different needs, both economic and legal, of society shall be considered, including the need to ensure the protection of economically weak groups.

**Article 12: Mutual Assistance and Interests**

All agrarian efforts, regardless of whether by state or other parties, shall be based on the principle of „Gotong Royong“ (Mutual Assistance)

**Article 13: Standard of Living**

All agrarian undertakings shall be regulated to increase production, to increase the people's prosperity, and to guarantee Indonesian citizens a standard of living suitable to human dignity. Private monopolies shall be prevented and state activities of a monopolistic nature may be carried out only by special act. Social guarantees and security are to be promoted by the government.

**Article 14: Natural Resources Plan**

A general plan providing for the reservation, appropriation, and use of the earth, water, air, and natural resources shall be prepared to provide for the needs of the state: religious and sacred needs; needs for economic, social, cultural and welfare purposes; needs for agricultural production, cattle breeding, and fisheries; and needs for industry, transmigration, and mining. Regional governments are responsible for regulation of such resource uses in their respective regions.

**Article 15: Conservation Requirements**

Land cultivation must prevent damage to the land resource as well as to improve the fertility of soil.

**Article 16: Description of Rights**

The various types of rights on land, water, and in air space are stipulated:

<table>
<thead>
<tr>
<th>Type of Right</th>
<th>Code</th>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.) the right of ownership</td>
<td>hak milik</td>
<td>(Art. 20-27)</td>
</tr>
<tr>
<td>b.) the right of exploitation</td>
<td>hak guna-usaha</td>
<td>(Art. 28-34)</td>
</tr>
<tr>
<td>c.) the right of building</td>
<td>hak guna-bangunan</td>
<td>(Art. 35-40)</td>
</tr>
<tr>
<td>d.) the right of use</td>
<td>hak pakai</td>
<td>(Art. 41-43)</td>
</tr>
<tr>
<td>e.) the right of lease</td>
<td>hak sewa</td>
<td>(Art. 44-45)</td>
</tr>
<tr>
<td>f.) the right of opening-up land</td>
<td>hak membuka tanah</td>
<td>(Art. 46)</td>
</tr>
<tr>
<td>g.) the right of collecting forest products</td>
<td>hak memungun hasil hutan</td>
<td>(Art. 46)</td>
</tr>
<tr>
<td>h.) other rights</td>
<td></td>
<td>(Art. 49)</td>
</tr>
<tr>
<td>i.) the right of using water</td>
<td>hak guna air</td>
<td>(Art. 47)</td>
</tr>
<tr>
<td>j.) the right of breeding / catching fish</td>
<td>hak pemeliharaan penangkapan ikan</td>
<td>(Art. 47)</td>
</tr>
<tr>
<td>k.) the right of using the air space</td>
<td>hak guna-ruang angkasa</td>
<td>(Art. 48)</td>
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**Article 17: Size of Holdings**

Both the maximum and / or minimum size of land that may be owned and controlled by an
A further ruling of the BAL is the establishment of upper ceilings of land ownership and that the government authorities, in cases where these limits are exceeded, have the possibility of taking the surplus land for redistribution. The government passed a regulation on 24th December, 1960 as an implementation of Article 17 of the BAL, which planned both minimum and maximum land ownership. A minimum limit of ownership of agricultural land of 2 ha was established since the Government assumed that 2 hectares would be enough for the needs of a family. This was supposed to avoid further fragmentation of agricultural land.

Further, there are regulations for avoiding absenteeism amongst landlords. "A landowner cannot control - through ownership, land pledge, or lease - agricultural land outside the subdistrict or adjoining subdistrict in which he or she controls more than 2 hectares." The establishing of upper ceilings and the exclusion of foreigners was meant to protect the autochthonous Indonesian citizens from economically stronger groups.

After the introduction of the BAL, a land reform was carried out in the following years (1961 - 1965). The land reform in Indonesian is seen by many land law experts as a failure. RAJAGUKGUJK writes: "Land reform ... can be considered a failure because the provisions were unrealistic, administration and financial planning could not support a successful program, and political differences between Communist and non-Communist factions intensified during this period."

In the following section, the rights which are established by the BAL will be more closely explained:

**The right of ownership (hak milik):**

The right of ownership is the strongest right to land. Hak milik is not limited in terms of time. The land can be sold, mortgaged and can be inherited by the legal heirs. However, the owner must take the "social function" of land into consideration. Hak milik is subject to registration. The land owner receives a legal document as evidence of his rights (Sertipikat). As well, hak milik can be acquired in various different ways:

- conversion of Adat rights
- conversion of state lands which have been granted by the Government.
- conversion of property, agrarian property and milik which were valid before the BAL came into effect.

Only Indonesian nationals are able to receive hak milik. As a rule, hak milik is awarded to individuals, however in exceptional cases under certain preconditions, certain corporate bodies (state banks, cooperative agricultural associations, religious and social institutions) can be awarded the right of ownership. Foreigners are excluded from this right.
The right of exploitation (hak guna usaha)

Hak guna usaha is the right to State land, and the right to use the land for agricultural (including plantations), fishery and breeding purposes. Hak guna usaha is limited timewise. It can, for example, be granted for an oil palm plantation for up to 35 years, with the possibility of extending for another 25 years. So, de facto, hak guna usaha on state lands can be awarded for up to 50 or 60 years. Some of the regulations of the hak guna usaha have their origins in the “erfpacht rights” which was valid before the BAL came into effect. Hak guna usaha can acquired by Indonesian individuals and corporations established under Indonesian Law and domiciled in Indonesia. There is no maximum area of land which can be awarded under hak guna usaha. Hak guna usaha must likewise be registered at the Land Registry Office. Hak guna usaha can be bequeathed and likewise be transferred to other parties (sale, exchange or gift) with the permission of the BPN. Hak guna usaha also allows land to be used as a security for a debt.

The right of building (hak guna bangunan)

Hak guna bangunan gives the holder the right to build on land owned by someone else. This right is limited timewise and can be obtained for state land (by decree) as well as for private land (by contract). It is awarded for not longer than 30 years, but there is the possibility of extending for another 20 years. So far there are no regulations which hinder a further extension. There are maximum area limitations. So far there are no implementation regulations for registration. Hak guna bangunan can be bequeathed, sold, exchanged or presented as a gift. Hak guna bangunan can likewise be used as a credit security.

The right of use (hak pakai)

Hak pakai gives the holder the right to use a particular piece of land. This can be State or private land. In practice, this right is scarcely made use of for privately owned land since other titles, such as the right of lease, or right of land pledging, play a greater part here. Hak pakai is basically limited timewise. Hak pakai can in principle be transferred when no other regulations apply. Resident foreigners and foreign corporations with representatives in Indonesia can be awarded hak pakai. Hak pakai for private land does not get registered because of the lack of implementing regulations.

The right of lease (hak sewa)

There is a differentiation here between hak sewa bangunan (right of lease for buildings) and hak sewa pertanian (right of lease for agricultural land). In the first case, a building can be erected on someone else's land for a specific but not fixed time by paying a monthly lease. This is a case of a personal right. Hak sewa is created between land owner and lessee with a contract. In the case of hak sewa pertanian, land must be used for agricultural purposes, and the lease can be paid in either cash or kind.

The right of opening up land (hak membuka tanah)

Hak membuka is awarded by the Government to Indonesian citizens for clearing land, and to use the land for a maximum of three cultivation periods. Hak membuka tanah can later be changed into hak pakai, hak guna usaha or hak milik.

The right of collecting forest products (hak memungun hasil hutan)

Hak memungun hasil hutan is awarded to Indonesian citizens by the Government on adat land in order to be able to use wood and other non-wood products.

The right of landpledge (hak gadai)

Hak gadai is a way for the land owner to receive money without having to sell his land. He transfers his right of use to another person who in return pays money to the land owner. The land owner gets his land back when he has paid back the loan. This is known as a land pledge (djual gadai). The pledge arrangement is only rarely conducted before the village head, and is usually unwritten. There is no time limit in which the land owner has to pay back the money in order to get back his land.

The right of sharecropping (hak usaha bagi hasil)

Hak usaha bagi hasil is restricted to agricultural purposes. Hak usaha bagi hasil is governed by Law No. 2 / 1960 (shares, duration). In practice, these Regulations have not always been implemented (see also
Paragraph 3.5).

The right of lodging (hak menumpang)

Hak menumpang is a weak right of use. It allows someone to own a house on someone else’s land. The duration of the right is not fixed. Hak menumpang is governed by the local Adat law.

The right of using water (hak guna air)

Hak guna air is an Adat-based right which allows access to water on another person’s land and / or to divert water across another person’s land.

The right of breeding and catching fish (hak dan pemeliharaan penangkapan ikan)

Hak pemeliharaan dan penangkapan ikan is the right to breed fish and to catch fish on another person’s property.

The right of using the air space (hak guna-ruang angkasa)

Hak guna ruang angkasa is a right, and not a very clear one, for using energy and elements available in the atmosphere.

3.2.2 Basic Forestry Law (Law No. 5 / 1967)

The forest policy is based on Article 33, Clause 3 of the Constitution of 1945. The Basic Forestry Law (BFL) of 1967 (Undang-Undang Pokok Kehutanan, Nomor 5, Tahun 1967 (UUPK)) once again ensures that „All forests inside the Indonesian Territory, including their natural resources, are controlled by the state” and lays down the structural and political basis of the state forestry policy. For the implementation of the BFL, five-year forestry plans were developed as part of the REPELITA. The legal and administrative principles of the Basic Forestry Laws have important effects on land tenure issues, and of course, on the agrarian policy. The most important regulations can be summarized as follows:

Article 1 sets out the underlying definition of „forestry“: „Forest“ is an area grown with trees, forming one unity with nature and its surroundings, and determined by the government as forest. The extent of forest land is therewith determined by state definition in the final instance: „Forest areas“ are areas with or without trees which have been designated by the government as forest.

Article 2 states: Depending upon the ownership [Forestry] Minister shall declare a forest as:

1. „State Forest“, which is a forest region or forest growing on a piece of land not covered by any proprietary rights.

1. „Proprietary Forest“, which is a forest growing on a piece of land covered by proprietary rights.

Article 7 sets out the fundamentals of the classification of forest land as official „Forest Areas“ (Kawasan Hutan): „special areas maintained as permanent forest by Ministerial Decision“. Kawasan Hutan status gives legal certainty to this state-controlled forest land.

Article 11 states: „The management of Proprietary Forests shall be carried out by their owners under the guidance of the Minister ...“

The rights of Indonesian citizens to collect forest products (Article 14), to participate in protecting the forests (Article 15) and to hunt animals (Article 16) are expressly granted.

The Basic Forestry Law also contains some inconsistencies: Article 5 states: „All forests within the territory of the Republic of Indonesia, including the natural resources they contain, are taken charge of by the State.“ Article 17 states: „The exercise of communal and individual rights to exploit or benefit from forests based on some or other legal regulations shall not infringe upon the achievement of the aims stated in this Law.“
The permanent forest areas under the Basic Forestry Law can be divided up into the following four areas: **Production Forests (Hutan Produksi)** are, according to the Departemen Kehutanan, „designated for exploitation of timber, rattan, saps, and other forest products.“ Production forests cover about 45.8 percent or 64.3 million ha of the total forest area of 140.4 million hectares. Most of the Indonesian production forests can be categorized into four vegetation types: Mixed hill forests (73 %), peat swamp forests, fresh water swamp forests and tidal forests (mangroves).

**Protection Forest (Hutan Lindung)** are „forest areas which have specific physical characteristics that should be protected so that their functions, particularly their hydrological function, can be maintained.“ Protection forests cover about 21.8 percent, or 30.7 million hectares of the total forestry area.

**Nature Reserve and Recreation Forests (Hutan Suaka Alam dan Hutan Wisata)** are for the protection and preservation of genetic resources, life supporting system and for the development of science, education and tourism. Nature Reserve and Recreation Forests cover about 13.4 percent or 18.8 million hectares of the total forestry area.

**Conversion Forest (Hutan Konversi)** is forest land designated for conversion to other land uses such as agriculture and settlement. Conversion forests cover about 19 percent, or 26.6 million hectares of the total forest areas in Indonesia.

State forest land has been reduced by about 3 million ha in the last 5 years. These areas have been used first and foremost for the conversion from forest land to agricultural estates, transmigration programmes, and infrastructure purposes (roads and dams). The MoF lays great importance on securing the existing areas of land for the Forest Department, and commented on the Government regulation for Spatial Arrangement Law No. 24 / 1992 as follows: „The legal status of remaining forest areas has been more established, and currently, the harmonization of the forest land legal status at the provincial level is still in progress.“

Summarizing, one can state that under the Basic Forestry Law, about 74 % of the nation’s land falls under the responsibility of the Ministry of Forestry (Departemen Kehutanan). This means that Forestry officials make the decisions regarding the utilization of forest land, and thus, all aspects with regard to communities and land tenure are also subject to their discretion. The authority for policing violations of the Forestry Law also falls under their jurisdiction.

### 3.2.3 Further Laws and Government Regulations

The Basic Forestry Law in its universally applicable form should be seen rather as a framework which has to be complemented by further laws and regulations. Of particular importance here are:

**Government Regulation No. 21 / 1970** which controls the utilization of the rights given to concessionaires for a 20-year period for the commercial use of forest resources.

**Government Regulation No. 7 / 1990** covers the Industrial Timber Plantations (Hutan Tanaman Industri (HTI)). The State can grant an HTI concession right to state-owned enterprises, private sector companies and cooperatives which regulates the utilization of HTI land areas for 35 years plus one rotation of the main species (Article 8). The rotation in the case timber is planted for pulp purposes amounts from 8 years (i.e. eucalyptus sp.) up to 12 years (pinus sp.), and in the case of timber for non-pulp purposes, from 5 years (for wood energy) up to 45 years (shorea sp. and tectona grandis). The HTI concession right can be extended. Article 12 mentions expressly that an HTI concession does not grant ownership and control of the land. The maximum size of the concession may not exceed 300,000 ha for supporting pulp industries, and 60,000 ha for construction wood and other industries (Article 6). The concession can be revoked by the Minister as a sanction before the end of the concession period (Article 16 and Article 18). Article 11 (1) gives the concession holder the right to operate a processing plant in the concession areas and to utilize the wood produced.

Two further Government Regulations are of interest here. These are the Government Regulation No. 33 / 1970 on Forest Policy Planning (PP 33 / 1970) and the Government Regulation No. 28 / 1985 on Forest Protection (PP 28 / 1985) which are based on the Basic Forestry Law. Both Regulations and the Government Regulations on the granting of forest production concessions are the basis for the establishment of forest boundaries and the classification of forest land within these boundaries.

Regulations have also been introduced for border adjustment at the Kabupaten level. The salient decision here is Decision No. 178 / 1975 of the Ministry of Agriculture, the „General Guide for changing the Border of Forest
Areas”. This Decision states that the size of the permanent forest areas may not be altered when altering boundaries. Border adjustments must be decided by the Minister who delegates his decision to the Governor and forest officials as long as no very large areas of land are affected by the border alterations.

A further regulation concerns the establishment of a Forest Border Committee (Panitia Tata Batas Hutan) at the District level with representatives of various authorities and which is under the chairmanship of the Bupati. This committee at the District level is important for land tenure issues, since „while there is some latitude for recognition of rights to land in Forest Areas, the range of rights available under the law is much narrower than those available under the Basic Agrarian Law.”

The Government Regulation No. 28 / 1985 for Forest Protection already mentioned above states that forests must be protected so that they can fulfill their numerous tasks. This can likewise be used to deny access to forest resources, in particular also for the activities of communities which live either from or in the forest. In the PP 28 / 1985, damage to or alteration of forest border markings will be punished. The unauthorized utilization of forest areas, such as cutting and harvest of forest products, setting fires and grazing outside the designated areas can be punished with a fine up to 100 million Rupiah or up to ten years prison. In addition, all production tools can be confiscated in the case of such violations.

Since 1993 a decree from the Ministry of Forests has been in existence which grants forest dwellers living within the concession areas the right of harvest forest products, including rattan, if the concessionaires and the Ministry of Forests grant permission.

Conservation of Living Resources and their Ecosystems (Act No. 5 / 1990)

Alongside the Basic Agrarian Law and the Basic Forestry Law, the laws for protection of the environment can also affect aspects of land tenure. The Basic Provisions for the Management of Living Environment Act No. 4, 1982, and the Act No. 5, 1990 concerning the Conservation of Living Resources and their Ecosystems must be mentioned here in particular. In the Act No. 4 / 1982, the basic regulations for the management of the ecosystem and the utilization of natural resources are set down. Act No. 5 / 1990 provides a legal basis for the protection of conservation areas.

This law for the protection of Living Resources and the Ecosystems makes illegal use punishable in Article 33. Through this, „legal” traditional utilization rights are also restricted. But one must keep in mind that possibilities of the Government for controlling particularly the out-of-the-way regions is very restricted when, for example, one forest employee with insufficient equipment is responsible for 20,000 ha.

Beside the national legal instruments, international conventions related to nature conservation were ratified by the Government of Indonesia, such as the Convention on Biological Diversity, Act No. 5 / 1994.

Spatial Use Management Law No. 24 / 1992

The law concerns urban and rural land and includes the national as well as provincial and district level. It contains regulations for spatial use, including water, land use matters, forestry, mining, regional developments, transmigration, industry, fishery, roads, housing and settlements.

Further laws and Government regulations for land tenure issues are only briefly listed here. They cannot be discussed further in this context (but are partially contained in the Appendix):

- Law on Mining No. 5 / 1967
- Law on Irrigation No. 11 / 1974
- Housing and Settlements Law No. 4 / 1992
- Government Regulation on Nature Tourism Concession No. 18 / 1994

3.3 Analysis of formal types of land tenure

In this section, the various forms of ownership, tenancy, and of land use and access to land will be presented more closely:
3.3.1 Ownership

Agrarian land ownership in Indonesia can be classified as follows:

a.) Individual ownership

Those with the right of disposal has the complete rights of disposal over their land. Under hak milik, they can, without the agreement of a third party, sell, bequeath, transfer and lease the land. Generally, it is not absolutely necessary for the plot of land to be registered.

The disposal rights of individuals can, however, be restricted. This concerns, for example, the rights to utilization. Thus, it is e.g. compulsory to cultivate sawah in Bali.

Various transfer rights (inheritance, sale, rent) can likewise be restricted. The BAL has set, for example, an upper limit to land ownership (see Article 17, BAL) and restricts the rights of non-Indonesian citizens (see Article 9, BAL) who are only allowed to acquire particular land titles. Regulations continue to exist for avoiding absentee landlords (see Article 10, BAL).

In addition, the State retains the right to acquire land owned under any type of land right for utilization in the public interest (Article 18, BAL). Article 6 place particular emphasis on the social function of all rights to land. This means that „state interests“ or „the general interest“ have priority over personal interests.

b.) State ownership

In Indonesia, all areas of land classified as forest are under State ownership. This includes the Protection Forests already mentioned above (watershed areas, amongst others) and Recreation Forests. Land under the land titles hak guna usaha and hak pakai are also under State ownership. Thus all plantations under these land titles are the property of the State. The following differentiation exists with regard to the organizational form of the plantations:

- State plantations (Perusahaan Negara Perkebunan (PNP))
- Privately organized companies with limited propriety which are the property of the Government for reasons of capital contributions (Perseroan Terbatas Perkebunan (PNP)).
- Private plantations (Perkebunan Besar Swasta (PBS)), whereby national PBS’s are of prime importance. The percentage of foreign plantations is low.

The State dispenses rights to private persons and corporations for using State land. The concessions for the operating of production forests for 20 years are dispensed in this way.

c.) Communal ownership

There exist various forms of communal ownership in Indonesia. The authorizations and restrictions regarding disposal of property can vary greatly in the various law areas. The restrictions on the disposal of property are presented in the next section using selected examples. The territorially organized legal circle „Central Java“ differentiates between three forms of communal land ownership:

1. Communal ownership of the desa (village) which is regularly rented out for getting funds to cover the routine or development costs (titisara, bondo desa, kas desa).

2. Communal ownership of the desa to which individuals have temporary or inherited individual use rights (norowito, gogolan, pekulen, playangan, kesikepan) and have to fulfill certain obligations connected to these rights.

3. Communal ownership of the desa which is in the possession of village officials in lieu of salary (bengkok).

d.) „Wakap“

There are two kinds of so-called wakap:
• a residential area for a mosque and an additional arable field to provide for the maintenance of the mosque and its personnel

• as inalienable property for the benefit of descendants

While wakap areas of land in Central Java are virtually unknown, there are on Madura, for example, and also in West Sumatra, wakap which are used for the erection of mosques.

### 3.3.2 Land use

#### Forest areas

In presenting the classification of forest land, the quantitative data for the various uses of forest land have already been explained. However, not all areas of land which fall under the jurisdiction of the Forestry Department are forested. It is reported from Sumatra that 30% of all land belonging to the Forestry Department is deforested, and that 15% of all rubber in Sumatra is now on Forestry Department land.

In addition, areas of land with a slope of over 45% have been classified as production forest but which ought to be classified as protection forest. According to a report made by the WORLD BANK, „resolving conflicting views and objectives about forest classification will be a major task of Government over the next decade” since

- forestry categories have been drawn up without detailed knowledge of slope and forest conditions,
- local cultivators have been incorporated within Forestry Department boundaries
- agricultural needs or land suitability have not been taken into account in defining conversion categories.

Commercial utilization rights in the form of concessions for so-called production forests are granted to private and semi-State businesses. Since the end of the 60s, the number of concessions and the extent of licensed areas of land has risen sharply and today takes in virtually the entire amount of production forest in Indonesia. In 1992, a total of 579 concessions were granted with a total area of 60,345,000 ha. This is equal to about 94% of the entire areas of forest which have been declared production forest. It is estimated that concessionnaires carry out logging on 800,000 ha per year.

With this, forest land with natural forest will be considered productive and forest land with grass, scrub or „sparse” natural forest and „bare land” is considered less productive. According to the Ministry of Forestry, there were already approximately 25,177 million hectares „unproductive forest lands” outside Java in 1984. HTI were allowed to set up on these „unproductive or less productive forest lands” which must have a low average commercial stem volume of less than 20 m3. However, ISWANTO is of the opinion that these regulations are not sufficient to prevent productive natural forests from being turned into plantations.

During REPELITA IV, 68,700 ha were brought under HTI schemes. In the time period 1989 / 90-1993 / 94, the planting of 1.5 million ha under HTI schemes was planned. Of that, the planting of 597,354 hectares had been realized by October 1992. As the MoF sees it, a total of 6.2 million ha of HTI will be established in the long run, and there are plans to develop 1.25 million ha between 1994-1999.

#### Agricultural areas

Some 70 million ha of a total of around 192 million ha of land are used for agricultural purposes and settlements. In the following table 1, the land use for 1989 is given:

### Table 1: Indonesia: Land utilization, 1989 (million hectares)

<table>
<thead>
<tr>
<th>Type of land use</th>
<th>Java</th>
<th>Sumatra</th>
<th>Kalimantan</th>
<th>Sulawesi</th>
<th>Nusa Tenggara a</th>
<th>Irian Jaya / Maluku b</th>
<th>Total</th>
</tr>
</thead>
</table>
Indonesian agriculture relies heavily on three different land types:

- dry land for non-wet land rice and food crops, orchards, fruits and vegetables
- estates
- wet land rice farms.

About 3.6 million ha of the wetland rice farms (of that around 3 million ha in Java) are well irrigated and highly productive. The remaining rice fields are rain-fed rice lands and tidal swamp rice lands with a much lower productivity. About 300,000 ha of well irrigated rice farms on Java are presently used for sugar cane. More than 10 million ha are used for estates, but one must distinguish between:

- smallholders’ estates, mainly for the cultivation of rubber, coffee and coconuts
- highly market-oriented and large scale plantations mostly run by state-owned companies.

---

<table>
<thead>
<tr>
<th>Source: BPS (1990c).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home-lots</td>
</tr>
<tr>
<td>Rice-land c</td>
</tr>
<tr>
<td>Dry Fields</td>
</tr>
<tr>
<td>Grassland</td>
</tr>
<tr>
<td>Fish-Ponds</td>
</tr>
<tr>
<td>Wooded Land d</td>
</tr>
<tr>
<td>Estates</td>
</tr>
<tr>
<td>Agric. land temporarily uncultivated</td>
</tr>
<tr>
<td>Forest land e</td>
</tr>
<tr>
<td>Other Land f</td>
</tr>
<tr>
<td>Total area</td>
</tr>
</tbody>
</table>

Notes:

- a Nusa Tenggara refers to Bali, West and East Nusa Tenggara and East Timor; East Timor is included only in figures for total area and forest land.
- b Figures for Irian Jaya and Maluku refer to 1982-83.
- c ‘Rice-Land’ includes irrigated, rain-fed and swamp land used for rice.
- d ‘Wooded land’ refers to land covered in wood-producing trees, shrubs and bamboo, planted or otherwise, outside the authority of the Department of Forestry.
- e ‘Forest Land’ is land classified in 1984 as being under the authority of the Department of Forest.
- f The residual ‘other land’ is the difference between the total area of the region and the sum of all other land. It includes land occupied by inland water bodies, reservoirs, roads, cemeteries, sports fields, airports and the like. It also reflects discrepancies between figures from different agencies for forest land.
3.3.3 Renting land

There are various forms of tenancy in Indonesia. There are, however, no exact figures about the extent of the areas of land used for the various tenancy forms. Many „tenancy contracts” are made unofficially and without the approval of the village head.

Fixed rent tenancy

Land is rented from the landowner for a defined, agreed period. This could be for one cultivation season, or for one year. The tenant pays a fixed amount of rent - in the form of cash (in many regions of Java) or in kind, in the form of products harvested - either before the land is cultivated or after the harvest. The amount of the rent payment depends, amongst other things, upon the location of the land, land quality, irrigation facilities, season, demand for, and supply of land.

Pawned tenancy

The land is mortgaged by the landowner for a specific amount of credit. Usufructuary rights to the land are transferred to the pawn tenant for a certain period. The pawning system (Gadai) not only exists in wetland rice areas, but also in upland farming areas. In the Garut District on West Java, it was observed that in all cases of land pawning, written contracts had been made, whereas for share tenancy and fixed rent tenancy arrangements, no written documents were exchanged. This difference seems to reflect the unique nature of „gadai” as a credit institution and a land-tenure institution. It is not only small farmers who pawn their land because of a financial emergency; large landowners also pawn the property so as to be able, for example, to get credit for buying new land. This form of tenancy also exists in Kalimantan.

Share tenancy

Share tenancy has been widespread in Indonesia for a long time, and still plays an important role today. Sharecropping is the dominant tenancy form in many parts of Indonesia with the exception of Central and East Java, East Kalimantan and a few eastern provinces of Indonesia. The tenant cultivates land rented out by the landowners for an agreed share of the yield. The share can vary. Common distribution ratios in various „Law Areas” in Indonesia are:

- **Systim maro**: this can appear in various sub-forms. As a rule, the landowner receives a determined amount of money from the tenant before renting. After the harvest, the landowner receives 50 % of the harvest.

- **Systim mertelu**: the landowner receives two-thirds of the harvest, but as a rule he provides the seeds or seedlings.

- **Systim merapat**: the landowner receives three-quarters of the harvest, but he provides other inputs besides the seed (e.g. fertilizer), or he pays the land tax.

In West Kalimantan share tenancy arrangements are also common on smallholder rubber plantations. As a rule, the landowner gets 1 / 3 of the yield, and the tenant, who taps the rubber trees, gets 2 / 3. But there are also 50-50 arrangements between landowner and tenant. The tenant has to provide his own tapping equipment.

3.3.4 Agrarian Structure

Uneven distribution of land is not a new phenomenon on Java. One could, for example, distinguish between three classes on West Java even in pre-colonial times:

- A large class of landless farmers who frequently resided with landowning families.

- Farmers who controlled land, often communal land.
Village officials who controlled private land, communal land and large areas of village-owned land as their payment for handling government matters.

The first statistical data, from the findings of a study conducted in 1905, show an uneven distribution of control over land in West Java. The results of this study, known as the „Declining Welfare Inquiry“ of „Mindere Welvaart-Onderzoek“, shows that a large proportion (51 %) of the rural households were landless. Two-thirds (67 %) of the landowners owned less than 0.7 ha, and 7 % of the households controlled more than 4.2 ha of land. Many rural households controlled dozens of hectares of land.

The results of the Agricultural Census conducted in 1963, 1973, 1983 and 1993 have continued to reflect the imbalance over control of land. According to the agrarian census of 1993, there are about 19.7 million land-holding farm households in Indonesia (from a total of about 42 million households). Of these, around 9.6 million land-holding farm households (or about 49 %) have less than 0.5 ha, and 14 million land-holding farm households (or about 71 %) have less than 1 ha of land (see also table 2).

### Table 2: Number of Land Holding Farm Household by Size of Land Controlled and Farm Household Classification

<table>
<thead>
<tr>
<th>Size of land controlled (ha)</th>
<th>Land holding farm household</th>
<th>Paddy / Secondary Crops</th>
<th>Horticulture</th>
<th>Estates Crops</th>
<th>Livestock Breeding</th>
<th>Timber culture</th>
<th>Fresh water-pond / Paddy field culture</th>
<th>Brackish water-pond culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 0.05</td>
<td>646 372</td>
<td>225 303</td>
<td>57 492</td>
<td>21 346</td>
<td>385 168</td>
<td>7 805</td>
<td>37 066</td>
<td>634</td>
</tr>
<tr>
<td>0.05-0.09</td>
<td>948 296</td>
<td>751 041</td>
<td>146 691</td>
<td>81 939</td>
<td>209 843</td>
<td>17 067</td>
<td>30 456</td>
<td>844</td>
</tr>
<tr>
<td>0.10-0.14</td>
<td>1 218 949</td>
<td>1 084 817</td>
<td>204 328</td>
<td>159 557</td>
<td>239 683</td>
<td>29 070</td>
<td>34 485</td>
<td>1 007</td>
</tr>
<tr>
<td>0.15-0.19</td>
<td>1 200 783</td>
<td>1 104 986</td>
<td>206 268</td>
<td>175 708</td>
<td>228 131</td>
<td>26 807</td>
<td>29 941</td>
<td>1 421</td>
</tr>
<tr>
<td>0.20-0.24</td>
<td>1 150 639</td>
<td>1 065 280</td>
<td>213 918</td>
<td>196 942</td>
<td>233 720</td>
<td>35 055</td>
<td>32 202</td>
<td>1 947</td>
</tr>
<tr>
<td>0.25-0.49</td>
<td>4 417 121</td>
<td>4 118 584</td>
<td>956 699</td>
<td>972 618</td>
<td>1 024 410</td>
<td>180 017</td>
<td>126 634</td>
<td>10 047</td>
</tr>
<tr>
<td>0.50-0.74</td>
<td>2 934 875</td>
<td>2 675 579</td>
<td>746 344</td>
<td>908 341</td>
<td>760 234</td>
<td>149 894</td>
<td>83 072</td>
<td>12 069</td>
</tr>
<tr>
<td>0.75-0.99</td>
<td>1 438 870</td>
<td>1 321 266</td>
<td>423 497</td>
<td>540 765</td>
<td>411 037</td>
<td>89 056</td>
<td>50 533</td>
<td>7 868</td>
</tr>
<tr>
<td>1.00-1.24</td>
<td>1 644 860</td>
<td>1 383 989</td>
<td>476 335</td>
<td>766 876</td>
<td>433 581</td>
<td>82 173</td>
<td>44 184</td>
<td>12 004</td>
</tr>
<tr>
<td>1.25-1.49</td>
<td>662 624</td>
<td>607 832</td>
<td>212 852</td>
<td>303 349</td>
<td>200 260</td>
<td>40 761</td>
<td>21 932</td>
<td>4 799</td>
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<td>1 004 734</td>
<td>871 343</td>
<td>332 312</td>
<td>565 289</td>
<td>300 244</td>
<td>60 913</td>
<td>31 306</td>
<td>9 186</td>
</tr>
<tr>
<td>2.00-2.99</td>
<td>1 457 561</td>
<td>1 223 692</td>
<td>496 113</td>
<td>826 165</td>
<td>416 991</td>
<td>63 038</td>
<td>34 975</td>
<td>16 392</td>
</tr>
<tr>
<td>3.00-3.99</td>
<td>506 675</td>
<td>397 058</td>
<td>170 907</td>
<td>365 336</td>
<td>147 468</td>
<td>22 113</td>
<td>14 170</td>
<td>8 418</td>
</tr>
<tr>
<td>4.00-4.99</td>
<td>211 339</td>
<td>172 039</td>
<td>77 161</td>
<td>151 650</td>
<td>66 915</td>
<td>10 177</td>
<td>5 701</td>
<td>5 775</td>
</tr>
<tr>
<td>5.00-7.49</td>
<td>188 881</td>
<td>148 732</td>
<td>68 274</td>
<td>144 824</td>
<td>60 227</td>
<td>9 139</td>
<td>5 961</td>
<td>7 349</td>
</tr>
<tr>
<td>7.50-9.99</td>
<td>43 319</td>
<td>34 191</td>
<td>15 210</td>
<td>33 418</td>
<td>14 501</td>
<td>2 328</td>
<td>1 659</td>
<td>2 404</td>
</tr>
<tr>
<td>&gt; 10.00</td>
<td>37 846</td>
<td>28 010</td>
<td>13 211</td>
<td>30 199</td>
<td>14 009</td>
<td>2 354</td>
<td>2 224</td>
<td>2 539</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>19 713 806</strong></td>
<td><strong>17 213 742</strong></td>
<td><strong>481 736</strong></td>
<td><strong>624 343</strong></td>
<td><strong>5 146 447</strong></td>
<td><strong>827 767</strong></td>
<td><strong>576 505</strong></td>
<td><strong>104 703</strong></td>
</tr>
</tbody>
</table>

On Java, the land holdings are even smaller on average. In 1993, for example, more than 40 % of the farms on West Java had an area less than 0.2 ha, and about 73 % of the farms had an area less than 0.5 ha Only 0.2 % of the farms on West Java have an area of more than 5 ha.

Apart from land holding size, interest has to be focused on land quality. Ten acres of high quality land, irrigated
and suitable for rice crops can be large enough to support a farm family, while ten acres of rainfed land in a remote upland area might be insufficient for the livelihood of a cultivator’s family. But also on irrigated rice fields cropping intensity can vary enormously. Cropping intensity ranges from 64 percent (in Kalimantan) to 224 percent (in East Java).

On Java land is usually divided in home gardens (Pekarangan), wet rice fields (Sawah) and rain-fed fields (Tegalan). The irrigated areas are concentrated in Java (2,535,000 ha or 57.8% of the total irrigated areas).

It is difficult to secure reliable land area figures for areas outside Java. But in general the land holding sizes seem in the outer islands to be larger than in Java. The land/person ratio in the Sanggau District in West Kalimantan, for example, was 4.14 ha/person in 1991. However, if population figures were related only to land not classified as forest land, the resulting land/person ratio was 1.93 ha/person.

The agrarian census form 1983 also indicated that 14% of the total operated area in Indonesia is rented-in land. The amount of rented-in land (2,830,000 ha) exceeded by far the amount of land rented out (around 800,000 ha). There were several reasons given for this:

- a considerable amount of operated land is not under individual title:
- land is still considered as „communal“ land (e.g. Bengkok on Java)
- land formerly owned by non-household institutions (estates, Government)
- certain people do not report land rented out for fear of being seen to contravene the provisions of the BAL.

Nearly half the rented-in land is in holdings under one hectare. On the other side only ca. 28 percent of the land rented-in is found in holdings over two hectares. Thus, it is difficult to support the claim that the existing land rented-in system leads to more land being transferred to the larger holdings. The reverse seems to be the case.

It becomes clear from the agrarian structure briefly sketched here, that agriculture could only provide a part of the livelihood of many rural households and that they have to increase their income by taking employment outside agriculture.

3.4 Analysis of informal land tenure practices

In the previous section, the legal foundations which are in part very specific and formal have been presented. In practice, however, numerous examples of land tenure can be found which more or less strongly diverge from the formal rights in the BAL. „Behavior is oriented to what one sees as the law, not what is written down.”

*Exceeding the maximum permitted hectarage*

Upper limits of landownership has been fixed in the BAL dependent upon population density so as to avoid landlords:

<table>
<thead>
<tr>
<th>Population Density (per square km)</th>
<th>Sawah (Wet Land)</th>
<th>Tanah Kering (Dry land)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 50 inhabitants</td>
<td>15</td>
<td>20</td>
</tr>
</tbody>
</table>

Table 3: Maximum Permitted Hectarage (see Law No. 56 of 1960, Art. 1 and Supplement)
If one relates the above figures to the real situation on Java, the population density in all the Kabupaten today is higher than 400 inhabitants per square kilometer. This means, according to the fixed ceilings, that land ownership on Java ought not to exceed the ceilings of 5 ha sawah or 6 ha tanah kering.

The minimum ceilings of 2 ha likewise fixed by law were seen early on as being unrealistic since there was not enough land available to be able to guarantee two hectares of land for every household. Therefore, de facto, the minimum ownership of two hectares has never been enforced.

The land ownership sizes presented in the table are regarded as the upper limit which can be under the control of one family (using a seven-member family as basis). If the size of the family diverges from this „family“, 10 % can be added for every additional family member (however, only up to a limit of 50 %). At the same time, the total amount of property must not exceed 20 ha. There are exceptions for areas of land under hak guna usaha (concessions) and land under hak pakai (e.g. Tanah Bengkok (land in lieu of salaries for village officials)). Anyone who violates the provisions for maximum limitations can be sentenced to three months’ jail and / or fined up to Rp.10,000.

RAJAGUKGUK has established in his empirical studies that some owners control a lot of land through the renting-in of land. This is the case in particular in regions with sugar factories. E.g. in the Saradan District, one village head controls about 100 ha In the Pati Region, there are at least 4 people who control more than 100 ha, and one person controls more than 50 ha.

**Informal rent arrangements**

In many regions of Indonesia, rent arrangements exist which go against the regulations of the BAL and the Instruksi Presiden Republic Indonesia No. 13 / 1980 (see the boxes 2 and 3).

<table>
<thead>
<tr>
<th>Population Density</th>
<th>Sawah Ceiling</th>
<th>Dry Land Ceiling</th>
</tr>
</thead>
<tbody>
<tr>
<td>51 - 250 inhabitants</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>251 - 400 inhabitants</td>
<td>7.5</td>
<td>9</td>
</tr>
<tr>
<td>Over 400 inhabitants</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: RAJAGUKGUK, 1988:80

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**Box 2: Selected Regulations from the Undang Undang No.2 / 1960 (Sharecropping)**

- The sharecropping contract must be drawn up in writing in the presence of the village head.
- The length of the renting must be at least 3 years for sawah and 5 years for dry land.
- Prepayment for the attainment of a rented parcel of land is not allowed.
- Division of the harvest between landowner and sharecropper must be determined according to the ratios with regard to cultivated plants, soil quality, population density, socio-economic factors by the bupati for a kabupaten.
- The regulations are not valid for permanent crops.

**Box 3: Selected Regulations from the Instruksi Presiden Republic Indonesia No. 13 / 1980**

- The ratio is 50-50 for sawah.
- For other crops on sawah and for rice grown on dry land, the ratio is supposed to be 1 / 3 (landowner) and 2 / 3 (sharecropper).
Thus in practice there are always divergences from the set distribution of harvest yields and input costs. In remote areas of Sumatra, for example, in the case of wet land rice farming along the northern coastal area, sometimes only 10% of the harvest yield is passed on to the landowner. On the other hand, farmers in Toba area had to provide all the inputs although the harvest was then divided up 50-50. There are also reports of divergences from Java: "The share tenancy system in Indramayu and Cianjur / West Java is generally arranged on the 50-50 sharecropping basis. However, in Cianjur most of the costs of farm inputs are paid by the tenants (73%), whereas in Indramayu in 97% of the cases the costs of farm inputs are equally divided between the landowner and the tenant."

Avoiding „Absente landlords”

The regulation that an owner may only own land in the subdistrict in which he has his residence, or in the subdistricts which borders this subdistrict is often neglected. It was originally intended that the problem of „absentee landlords” should be avoided. This regulation does not, however, apply to government officials and members of the armed forces while they are in service. But there is a restriction, that government officials and members of the armed forces as absentee landlords may not acquire more than 2/5 of the maximum amount of land allowed. This is evidently hard to control since „at present, the camat usually does not know about land which is owned in another kecamatan. This situation allows an individual to own land far beyond the maximum limit as long as it is located in various parts of the country."

Various village studies from Java have shown that economically better off urbanites in particular have bought land outside the kecamatan as an investment, for land speculation, or for weekend or retirement retreats, especially in recent years. The urban elite is in a better position because of a head start in information and knowledge about recognizing the future uses of the relevant parcels of land, and is also in the position of being able to have the complex process of registration more quickly carried out.

The regulations for absentee landlords can be got around in multiple ways:

- An Indonesian can have a citizen card issued in several towns or districts and can then acquire land as a resident of the district.

- For getting around the fixed upper limits, people take the opportunity of registering land under the names of various family members.

- Further, it is possible to write the name in varying ways when registering land.

Empirical studies make it clear that both absentee landlords and exceeding certain upper limits are widespread problems, at least on Java:

- In Rowosari / Kabupaten Kendal, 50% of sawah is used by people from outside the village.

- In Pendenarum / Kabupaten Demak, out of a total 160 ha in the village, more than 48 ha are given to the kepala desa as tanah bengkok.

- In the village M / Kabupaten Subang, 27 ha of sawah from a total of around 59 are owned by two households.

- „A distant landowner who has more than 10 ha of agricultural fields in Suka Galih (West Java) owns also some 5 ha of agricultural fields in Pancawati. Some farmers who have sold parts of their land to people from Jakarta bought cheaper agricultural land in other districts, others only still have the sites for their houses and become landless farmers."

The distribution ratio must be applied to the output after all the costs for seed, fertilizer, draught animals and labor have been subtracted. The input costs must be born 50-50.

If the sharecropper puts so much effort into his work that a considerably higher yield is achieved, it is usual in this region that it is divided up 1/5 (landowner) and 4/5 (sharecropper).
Many city dwellers own land in rural areas, although the exact number is unavailable. „Because of large scale cases of land occupation by distant owners not only occurring in Java but also in Kalimantan, Bali and Sulawesi, Central Government has already committed itself to strengthening law enforcement in land ownership (KOMPAS, 3. Feb. 1995). However, the success of this law enforcement depends on the strong will of local government to overcome the present issues (KOMPAS, 7. Feb. 1995).”

**Pawning land**

Although the BAL from 1960 forbade pawned tenancy (gadai) where land is used as a deposit or as a pledge, gadai is still used. This demonstrates an example from Cianjur in West Java: „In Cianjur, the rice field can be pawned at the average value of 7 million rupiah per ha, whereas the price of land is 42 to 49 million rupiah per ha.”

### 3.5 Analysis of traditional adat law practices

The adat law is described as the indigenous normative system of the various Indonesian Societies and Communities. The Indonesian Archipelago can be divided up into 19 different law areas. Adat law varies not only within the 19 law areas. It can also vary considerably within a given law area. Of course, this variation of adat law makes it difficult to establish generalized aspects of community-based law.

The community has the right of disposal (hak ulayat). One specific aspect of this right is to be found in the interaction of communal rights and individual rights under hak ulayat. This distinction between individual rights and communal rights cannot, however, be clearly drawn. A whole spectrum of rights which cannot be distinctly looked upon as the equivalent of individual or communal rights can be present here, such as anything from pure communal rights (which may be available for land lying fallow) up to pure individual rights (which for example exist in West Java).

To what extent is hak ulayat still significant today? In some regions, the process of dissolving hak ulayat in favor of individualization was already beginning in the 19th century, and in some regions of West Java, Aceh and Madura, the individualization of land ownership was virtually complete by the turn of the century.

The Basic Agrarian Law recognizes communal as well as individual adat rights. However, it makes no regulations for the documentation and registration of communal rights. According to EVERS, it can happen that „in incidental cases, collective titles are registered in the names of all community members concerned - e.g. the Tanah Kaum in West Sumatra; ...”. If adat rights cannot be proven, the land is automatically looked upon as State land.

A further problem is that there is no, or rather only insufficient data which can clarify the actual extent of the areas of land under individual or communal adat rights. In addition, it is estimated that most of these land rights exist on forest land. But forest land is under the responsibility of the Ministry of Forestry and not of the BPN. This means as a rule that no formal land titling and registration can be carried out for this land. Since several Government authorities (Ministry of Forestry, BPN, Ministry of Agriculture, Ministry of Home Affairs, Ministry of Transmigration, Ministry of Mining, etc.) may be involved here, a consistent and transparent plan of action is further made difficult.

In the past 35 years after the Basic Agrarian Law was put into action, innumerable amounts of land under adat rights have been bequeathed, sold and divided up without one single registration or any other formal type of documentation taking place. So the question of what the exact origin of these claims to rights today is, frequently cannot be answered. Are these rights, as one may presume, predominantly ones which are derived from hak ulayat, or are they old individual rights which were granted in colonial times? This means that the often used term „adat rights” is not necessarily always clear. Thus, for example, it is more and more difficult to differentiate between land under traditional landholders from land which has been worked for centuries by farmers and their offspring as so-called outsiders.

After this short introduction to a few problem areas of adat rights, selected aspects of adat rights, such as access rights and restrictions will be considered more closely in the following section, and be made clearer by examples.

**Access rights and restrictions**

The establishment of community rights of disposal occurs as a rule during the foundation of a settlement when
land becomes cleared or cultivated by the community. See as well the example of Sukoharjo / Kabupaten Wedajaksa on Java in the Box 4.

**Box 4: Foundation of the village of Sukoharjo / Java**

Originally, 300 kepala soma (heads of households) received land in Sukoharjo. Each received 200 deciare (0.200 hectares) of arable land or 350 deciare (0.350 hectares) of less arable land from norowito gilir (village communal land which was cultivated by annual rotation), of the land which had been cleared. Until 1948, this rotation system almost always caused unrest and disputes. During 1948 - 1950, the norowito gilir became the norowito matok; the land which had been rotated was now permanently cultivated by the same heads of households. Even though the land was cultivated permanently, it could not be transferred or sold because the village communal rights to land ownership still existed. In 1960, under the Basic Agrarian Law, the norowito matok became hak milik (privately owned) which could thereafter be transferred. Of the 300 kepala soma (heads of households) who originally received land permanently between 1948 - 1950, only one hundred remain today (1986). The rest have much smaller plots of sawah or tegalan or have only the pekarangan, which range from thirty-five to fifty deciares (350 to 550 square metres).

A central area of adat law is made up of land rights and other resource rights (rights to water and trees). The differentiation between the various resources is necessary since a differentiation between the owner of land and the owner of trees or other (long-term) crops can be made under adat law.

Thus adat law on Ambon differentiates between land rights and rights to trees or crops. Along with this, the rights to land and to the trees on this land can be in completely different hands. Thus the land can belong to the community (dati), while the sago palms may belong to individual members of the community. Since it is normally the children and grandchildren of the person who planted the sago palm, and not the person himself who will use the tree, sago palms on one property can belong to different people, since sago palms can be bequeathed to descendants. Since descendants from the female line as well as from the male line can be considered as heirs, sago palms can be in the possession of different clans.

Other trees of value can have been planted on land between sago palms (durian, manggis or cloves). Some of these trees may have been planted by the current generation and may be in their possession while others may belong to earlier generations. These various legal entitlements may exist on a piece of land only 70 by 70 meters.

It has been reported from West Kalimantan that tanah tembawang, a plot of land on which as a rule a multitude of different trees may be growing (durian, rambutan, tengkawang), can be used by different families. Tanah tembawang is normally to be found in the form of natural preservation areas along streams. Different trees can belong to different members of extended families, and someone who has contributed to the planting of seeds can make a claim to the ownership of these trees.

Land and the communal groups are narrowly interwoven. The land is not only the basis for the nourishment of the community, it is the burial ground and the home of the gods.

The community as a group has rights to the land. The representatives of the group control access to the resources for the community members, and can exclude outsiders from using the land.

On Ambon, sago palms, in particular the wild-growing sago, can be the property of a clan (dati property). The distribution of the individual trees to the clan members is in the hands of the dati elders, in particular in the hands of the kepala dati, whose job is the control and administration of tree and land resources. As soon as a particular clan member is assigned a specific tree, he no longer has to share the utilization of this tree with other dati members.

The first of the kabihu (a community in Lawonda on Sumba) who settled in Lawonda is called the mangu tanah, or „Lord of the Land“. The land is the community-based property of the group. The elder of the kabihu distribute the land to the individual kabihu. Apart from using the individually apportioned land, the kabihu use the communal land for hunting and gathering wild fruit.
The individual access to the resources is determined by the kabihu community, and the access to land is dependent upon the position of the individual in the kabihu. Rank, generation, gender and economic wealth all play an important part here. The higher the position the individual has in the internal hierarchy of the kabihu, the more influence he has regarding the distribution of and access to land. As a rule, it is the „old and wealthy nobility“ who rank as „landlords“.

Of course, the individual members clear and sow the plots of land assigned to them by the community, and thus produce a specific individual bond to their plots. The stronger the individual relationship to a particular field, the stronger the legal relationship of the individual to the field becomes.

The tree planter acquires individual rights to the sago palms which he has planted which allow him the exclusive utilization of the trees. After the death of the planter, the plant and its off-shoots are bequeathed to the descendants (pusaka or inherited property). Pusaka rights are bound up with individual trees, but the land remains under the control of the dati. However, the land cultivated by the deceased is passed on to the descendants to be used in the form of pusaka.

The Dani in Irian Jaya also differentiate between individual home gardens and community-based rights to forest and water resources.

Where a field has not been cultivated, the land falls back under the hak ulayat of the community, although: „In some law areas, the titles of individual members to their abandoned sawah are maintained for a long time against the claim of the community“. As a rule, the community allows the individual utilization of certain areas of land as long as it is necessary to secure the subsistence of the family, and not for commercial purposes. This regulation also covers hunting, gathering wild fruits, and wood use. Above and beyond this, the individual user can also acquire rights to trees which are growing on communal property. The following individual rights can be valid in a community:

**Hak menikmati (right of usufruct)**

This concerns the right of use for a cultivation season on community land. The land is individually used for one cultivation season, and the right can be extended for the following season. The use of the land can also be claimed by shifting cultivators by planting valuable trees (fruit or rubber trees) until they return after the fallow period.

**Hak milik (right of possession)**

The right of possession can arise out of the hak menikmati through stronger individual rights, with which the landowner obtains a personal right to the use of specific plots.

**Hak wenang pilih (right of preference)**

When land is cleared by the community, the members of the community can choose a piece of land. When fields are re-assigned, the previous user as a rule has the right of preference to the field he has already cultivated.

A farmer can also have a right of preference to the waste land which borders onto his fields.

The chief of the community can exercise personal access to particular areas of land during his period in office. The official fields given to the chief by the community (e.g. dusun datu raja on Ambon) must be distinguished in this case from those assigned by princes to lower royal officials. The latter concerns village chiefs in the royal territories of Java. This right is dissolved when the office holder retires or dies.

**Selected aspects of „individual“ community land**

In the various law areas, the community allocates land to its members for cultivation. These individual rights of use can imply to use the land and may include inheritance rights. Different aspects of individual rights of use and limitations of the disposal of land can be distinguished.

**Sale of land**

The sale of communal land was originally not permitted. In spite of this, TER HAAR reported in 1948: „Sales by persons who do not have a true title to the law occur again and again.“
The adat law also allows the sale and purchase of sago palms on Ambon.

In Lawonda on Sumba, no land purchases had taken place up to the beginning of the 90s.

Land pledging

Land pledging was and is widely spread in rural areas. In this case, „the pledgee has no legal power to demand the repayment of the sum he has loaned the pledgor. Such a step would be utterly at variance with the legal and social character of the pledging of land in the adat system.“ Here it is the case that the pledgee may keep the land at least until harvest-time before the pledgor can have it back. Where this period of time is longer, which is usually the case, the land may only be sown with annual crops. A report from the Batak states: „...when the pledgor tacitly permits the planting of trees on pledged land, he forfeits his right ever to redeem the land he has pledged“. The pledging of land used to occur in former times only for the fulfillment of adat obligations (e.g. paying the bride price in South Sulawesi).

In the village of Lawonda on Sumba, the practice of pledging land is normal. And when it does, it appears to be extremely difficult for the debtor to regain the pledged land. The situation for the debtor is very difficult because he can lose both the control over and the right to use his land. The pledgor can use the land as he wishes or further pledge it to a third person if the debtor is unable to return the pledgor’s horse or buffalo. As a rule, land on Sumba is pledged to receive a good for ceremonial purposes. This usually means a horse or a pig. Normally there is no time limit agreed upon for the repayment of money.

Renting of land

Land can also be rented on Sumba. The amount and the time span of the renting are not always specified. „The borrower often obtains a general indebtedness, and the lender can ask the borrower to provide him with whatever suits the lender best.“

Where sharecropping is concerned, the ratio of harvest distribution in Lawonda / Sumba is determined before the harvest. Depending on the arrangement (providing buffaloes), it can be 50 / 50, or if the owner provides the service of the buffalo, he gets 75 %, and the share-cropper 25 % of the harvest.

A report from West Kalimantan tells of a „seedling reward system“: „The borrower is allowed to cultivate freely the former shifting cultivation land (as long as the land has not yet developed into shrub and bush fallow) for one or two harvesting periods. But, the borrower must plant and grow a number of local or native clone rubber’s seedlings adequately on the land before he returns the land to the owner."

Land gifts

In some cases, land is also given as a present. This is mostly a gift of land from the father of the bride to the newly married couple.

Inheritance of land

There are exact regulations in the individual law areas for the bequeathing of land. This can mean rules for the sharing of property as well as the maintenance of undivided land ownership. Land is bequeathed to male heirs in particular regions (Batak), and to female heirs in others (Minangkabau). It can also happen that all heirs receive a share, or only the eldest son.

Extent of land ownership

In some law areas, there are regulations which hinder the accumulation of land. The individual amount of land should not exceed what the family needs to secure its subsistence.

The adat law on Ambon, however, contains no regulations which could prevent the large-scale ownership of huge sago reserves.

Restrictions on utilization

There are for example regulations for keeping particular fallow periods. The cultivation of tree and bush crops can also be restricted to particular areas.
Areas of the land of the Dani in the highlands of West Irian Jaya are used for planting for 2-3 seasons, and then they must be left fallow for 7-10 years.

A part of kabihu land in the village of Lawonda on Sumba is reserved for ritual purposes. One of these is the so-called tana da pabari. On these areas of land, which for the most part are near water springs and along rivers, trees may not be felled. This land has always been community land and may not be used as residential land.

Land which has been used for religious ceremonies may also not be used for settlement or cultivation. Although the land in the village of Lawonda is no longer used for ritual purposes, a few regulations have remained. A house has so far never been built on sacred land or in the vicinity of a spring.

Preferential rights

The village founders, or rather their descendants, have a preferential position in the community regarding the access to land resources. Outsiders can only use community land with the permission of the village chiefs. Small gifts to the chiefs are frequently involved in obtaining this permission. As a rule, the following applies: „Only when outsiders have lived in the community for generations do they acquire a more clearly fixed title to their fields."

In the highlands of West Irian Jaya, permanent (i.e. bequeathed) rights to land are also inextricably bound up with kinship. Therefore, these rights cannot be awarded to an outsider without the outsider integrating himself in some way into the kinship.

It has been reported from Sumba that immigrants from other areas, usually government officials, or an organization in Sumba, ask about land. They want, for example, to purchase a piece of land to build a house and to have a garden where they can plant their own rice crop. Asking the kabihu on Sumba for a piece of kabihu land is the same as making the attempt to be accepted into the community. Thus the acquisition of land would require the same ceremonies required when someone wants to marry the daughter of a landowner.

3.6 The relationship between Adat law, the Basic Agrarian Law and the Basic Forestry Law

In this section, the relationship between Adat law and the Basic Agrarian Law, as well as between Adat law and the Basic Forestry Law will be looked at more closely.

Adat Law and Basic Agrarian law

In discussing BAL, it has already become clear that adat law is recognized by BAL in Articles 3 and 5: „Adat property rights shall be adjusted to the national law and interests and shall not be in conflict with the acts and other regulations of higher level." (Article 3)

„Adat applies to agrarian matters unless it conflicts with national and state interests, Indonesian socialism, and legislative regulations, in which case the national law provisions prevail." (Article 5)

In practice, this means that in conflicts between adat law and BAL, adat rights must give way to the interests of the national state. At the same time, Article 5, which is very general, has never been further specified. Adat rights are indeed recognized by BAL, but the regulations say very little about how adat rights are looked upon and taken into consideration in reality. In legal reality, adat rights are regarded everywhere, as long as they do not come into conflict with the State legal system: „It is more accurate to say that the national structure of agrarian law and regulation has subsumed and replaced adat land law except for adat that does not conflict with that structure."

Adat Law and Basic Forestry Law

How far are adat rights taken into consideration in Basic Forestry Law? In comparison to BAL, the most important difference is that Basic Forestry Law does not say that adat is the basis for forest land use. The Basic Forestry Law (Article 17) states: „Implementation of social rights, traditional rights as well as individual rights to obtain advantage from forests, must not interfere with the goals stated in this law."
Going by this, adat rights are not to interfere with the implementation of forestry law. It is, however, not clear in Basic Forestry Law which adat rights are recognized. The Presidential Decree No. 1 / 1976 concerning the Implementation of Agrarian Affairs with the Forestry, Mining, Transmigration and Public Works Sectors also refers to the rights of the local adat community: „Where a piece of land (intended as a part of an HPH) is controlled by the local adat community under a valid right (hak yang sah) that land must be cleared (of those rights) at the outset with the payment of compensation...“ and „Where the holder of an HPH needs to close off an area with the result that the local community cannot enjoy its adat rights, the HPH holder must give compensation to the community.”

Of course, it is also unclear here what is meant by a valid right (hak yang sah). To summarize, even if BAL expressly recognizes adat rights, and traditional rights are mentioned in the Basic Forestry Law, in cases of conflict „national“ interests carry more weight than adat rights.

4. Instruments for conflict resolution

4.1 Land conflicts in rural and urban areas

Land conflicts are by no means a new phenomenon in Indonesia. According to SUHENDAR there were already numerous conflicts over land under Dutch colonial rule in regions with a rapidly growing population. Through the agrarian policy of the time, which was characterized by the obligatory coffee cultivation in the Priangan area (Preangerstelsel), the land tax (Landrente), the compulsory cultivation system (Cultuurstelsel) and the practice of granting „private“ (partikelir) lands, the land rights of the indigenous population were cut back.

Today, the number of land right conflicts in both rural and urban areas has starkly increased. It must be differentiated here between the following conflicts:

1. The acquisition of Adat land can lead to conflicts within the Adat community about who owns which rights to a specific piece of land. This holds true in particular for the following questions about the potential of conflicts:
   - Who has the authority to lease land use rights and / or the permanent alienation of land?
   - Who has the right to receive compensation for the leasing or permanent alienation of land?
   - Who has the right for compensation of resources on the land (i.e. tree crops)?

2. The recognition and thus the compensation of Adat rights in the case of land acquisition for development projects by the government depends on the type of Adat rights:
   - If land has been declared to be Daerah Pembangunan, this is considered automatically as non-Adat land and compensation is usually only paid for standing crops.
   - Likewise, land classified as Hutan Lindung is not compensated for, only for the crops and trees.
   - In the case of Tanah terlantar, the question arises of how to define „abandoned land“? As a rule, Tanah terlantar is looked upon as being free of land claims and from an official point of view does not need to be compensated.
   - If the so-called „Bukti Hak Milik Adat“ (proof of land ownership under Adat) is lacking, compensation is also not necessary.

3. There are numerous disputes about compensation. One can differentiate between the following conflicts:
   - a of compensation payments

4. Between local populations and planned and / or unplanned migrants:
   - In a of insufficient planning and implementation of transmigration projects, numerous disputes have developed:
In Central Aceh, there were complaints about "barren soil which is full of stones while in other parts of Sumatra, and even more so in East Kalimantan, they have found that the soil consists of quartz sand".

"At the Kurik I Transmigration site in Merauke, transmigrants are plagued by floods, infertility, pests and lack of drinkable water".

5. Transfer of a land title to an individual farmer

6. Between State-supported migrants and other migrants because of competing claims (e.g. spontaneous migrants (Buginesen) and sponsored transmigrants in Ambon)

7. Between commercial agriculture and forestry enterprises and the local population

8. Between commercial agriculture and forestry enterprises and the State

9. Different objectives and interests of the various Government Departments

In rural areas, the economic and political elite who do not belong to the local community acquire land for themselves. These financially powerful investors force the locals off their land in the interests of the agro-industry, luxury housing complexes and sport facilities. Areas of land for industrial estates, textile, garment and shoe factories, rapidly expanding tourist facilities and government agencies are particularly in demand in West Java. In urban areas, land is acquired for hotels, shopping centers and housing complexes by wealthy investors.

In many cases, land has been state-owned and is of uncertain status although controlled by local people. This land is of high interest to "outsiders" for appropriation due to its uncertain status.

The majority of conflicts is to be found in the economic boom regions of Indonesia. In West Java 37% of the pending conflicts are to be found in the BoTaBek Development Region, and 35% are to be found in the Greater Bandung Development Region. This may well be connected on the one hand with the concentration of investments and the corresponding need for land in these two growth regions. On the other hand, it might also be an indication of better information about and a greater awareness of these problems within the local population.

The disagreements arose above all about questions of compensation (34.7%) and about the status of the land (31.5%). The issue of compensation (low compensation, poor handling of compensation) and the reduction or delay of payment still leads to disputes. Which parties have been involved in the disputes? In West Java, disputes take place predominantly between members of the community and government agencies (57%), and between the community and private companies (30%).

The growing number of land disputes, in particular with regard to insufficient compensation payments, resulted in a number of protest actions by farmers in the mid 80s (such as delegations to political institutions), supported also by student groups.

Acquisition of land and compensation payments

The form of compensation is legally fixed. The Presidential Decree No. 55 / 1993 contains regulations for making land available for development purposes. At first, direct negotiations take place between the parties involved (land owner and government) which are voluntary and try to reach an agreement about the form and amount of the compensation payments. The so-called Committee for Making Available Land (Panitia Pengadaan Tanah), which can meet in every regency or middle-sized town under the chairmanship of the regency head, is responsible for the negotiations.

This committee estimates the amount of the compensation and makes a suggestion to the parties involved. Suggestion can be either accepted or rejected. If no agreement is reached even after several attempts, the committee has to pass a decree about the form and amount of the compensation. If one party cannot agree with this decree, the Governor has to be involved. The Governor attempts to settle the dispute and can likewise himself pass a decree. If then no agreement can be reached, the Governor will suggest that the dispute should be settled through expropriation (Regulations in Act, No. 20 / 1961). At this stage, the agreement of the land owners is de facto no longer required. The request of the Governor to carry out a expropriation is passed on to the President who makes the final decision.
RAJAGUKGUK describes the law in action using the example of the situation in Kedungombo. For the construction of the Kedungombo Reservoir in Central Java, the relocated families received the following compensation for their land and their houses per square meter:

<table>
<thead>
<tr>
<th>Type of Land</th>
<th>Compensation (in rupees and US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pekarangan (home garden)</td>
<td>730 (US$ 0.37)</td>
</tr>
<tr>
<td>Sawah (wet land)</td>
<td>360 (US$ 0.18)</td>
</tr>
<tr>
<td>Tegalan (dry land)</td>
<td>250 (US$ 0.125)</td>
</tr>
<tr>
<td>Semi-permanent house</td>
<td>3,080 (US$ 1.54)</td>
</tr>
<tr>
<td>Temporary house</td>
<td>2,150 (US$ 1.08)</td>
</tr>
</tbody>
</table>

These compensation payments are made without prior negotiation or consultation with those involved. In a few cases, not even the least amount of compensation is paid. In some cases, because of the corruption of certain officials, they have not received full payment.

The bargaining position of the landowner can depend on many factors. The type of land rights definitely plays a part. As a rule, the amount of the compensation is set according to the certainty of the rights. Thus a landowner with hak milik receives more compensation than one with hak ulayat or girik.

In Kedungombo, the Government made concessions after NGOs and student groups supported the people. As a result, there was oral approval for local people to cultivate the green belt and tidal lands, although the purpose of the green belt is to protect the reservoir from erosion. But there are no written agreements, and as a result of the uncertain regulations, uncontrolled and unregulated cultivation of protected areas takes place which can sooner or later lead to erosion and thus to a threat to the water reservoirs.

As a consequence of the oral permission to use the green belt and the uncertainty of that right, some disputes occur between land users who were the previous land owners, and outsiders who, since the land is now de jure State land, likewise claim the right to cultivate this land. In one case, an outsider gave up the right to farm again when he noticed that the village population supported the former land owner. In another case, a relative of a former landowner who had migrated to Sumatra noticed that a third person had planted corn on the land without permission. In this case, the landowner and the „outsider” agreed to share the harvest 50:50. In addition, tanah bengkok land given to officials in lieu of salaries is controlled by former village officials although some of them had to resign when their villages were merged with others because of the construction of a dam, and thus lost their functions.

The complexity of such cases has also been analyzed using the example of Garut Regency in Java (see box 5).

**Box 5: Example from the Garut Regency**

The area of land used as a plantation at Gunung Badega in the Regency Garut was originally long-lease property of the NV Cultuur Maatschappij Tijkanere, the largest percentage of which belonged to a foreigner, Mr. Tan Eng Hong. In 1965 the plantation was requisitioned by the State because it turned out that Mr. Tan had violated Foreign Exchange Regulations. The land had been farmed by former farm workers from the plantation and partly by immigrants since 1950 whereby it is unclear who was responsible for the administration of the plantation.

On 14.2.1972, the plantation was auctioned and bought by P.T. Citrin which retained the rights which had in the meantime been converted to „hak guna usaha”. The businessman did not work the land itself but rather rented out the said land to the farm workers who were already cultivating the land. On 16.6.1984, the rights on land were given to P.T. Surya Andaka Mustika which planted tea in the 1984 / 1985 season although the company had not received the Decree for the Granting of the Right. Since no farm worker knew who administrated the plantation before the sale of the land, and since P.T. Citrin also had no means at that time for setting up a tea plantation, the land was rented out to the farm workers for more than 21 years. Thus the workers administrated the plantation de facto although they were not the owners of the land de jure. For that they would have had to apply for „hak milik”, but this did not happen.
4.2 Institutions involved in conflict resolution

When solving conflicts, many institutions are involved and resolutions are sought on many levels which are described in brief in the following section:

a.) Courts

General Courts

The judiciary in Indonesia consists of four divisions: General courts, religious courts, military courts and administrative courts. The Mahkama Agung (Supreme court) in Jakarta is the highest court for all divisions of the judiciary. At the Province level, one finds the Pengadilan Tinggi (High Courts). The Pengadilan Negeri (District Courts) are situated at the Kabupaten level. The Pengadilan Negeri are the courts which are involved in land disputes at the District level.

A judicial case at the Pengadilan Negeri starts with an oral hearing (siddang) in which the witnesses can be questioned and other parties can be heard after the formal registration of the legal dispute and the perusal of the files by the judges. The formal procedures of such a legal case are complex and lengthy and bound up with multiple administrative snares.

Aspects of Adat Law are involved especially in land disputes. The judges only have little knowledge of Adat Law as a rule and can acquire this knowledge only in a limited manner since they usually remain in the same court for a few years before being transferred. In addition, they only rarely understand the local language.

Some authors doubt that the general courts are able to play an important role in the solving of land disputes at all due to qualifications of the personnel and the procedures. As a rule, judges are only insufficiently prepared for the form of these land conflicts in which one party can consist of thousands of people, or in which thousands of local people want to be members of the community which is suing for higher compensations. In addition, the decisions according to winner and loser of a court battle do not fit in with the necessity of finding innovative, locally specific and flexible solutions and compromises which do not go against the interests of all concerned. This, however, appears to be an important prerequisite for long-lasting solutions.

But the judges also try to find solutions for land disputes through informal negotiations and advice in advance. Additionally the chief judge of a district court is also chairman of a legal extension committee which operates under Kanwil Kehakiman (Regional Office of the Justice Department). The two basic aspects of this legal extension committee are the Pusat Hukum Masyarakat (Public Law Centers) and the field extension programs carried out by Hakim Musak Desa (Judges). This committee, if implemented at all, suffers from being completely inadequately financially equipped, and only has standard advisory material available which is completely unsuitable for the outer islands.

Religious courts

The religious courts (Pengadilan agama) mainly deal with inheritance problems. They can be asked for advice when property is to be divided between heirs after the death of the head of the family. The court dispenses a fatwa (advisory opinion). This fatwa can be issued in writing and can be discharged as a „Document of heirs“ or as „Documents concerning Division of Inheritance by agreement“. 
Problems connected to inheritance, which are the reason of real land disputes, can also be brought before the Islamic courts. The advantage of Islamic courts is their fast decision making progress, in contrast to civil courts with usual procedures over several years. At least on Java it is possible at any time to deny the jurisdiction of Islamic courts and force a complete rehearing in a pengadilan negeri.

b.) Government Institutions

BPN

In the BPN, the Land Rights Directorate is responsible for the granting, extension, renewal and termination of legal rights to land and for the resolution of land rights disputes which are connected with such a termination. There are, however, no set procedures and rules for regulating disputes in the BPN

The land committee (Panitia A) meets regularly or on an ad hoc basis. This land committee can meet in an open session, or can be handled by one-to-one consultations. The first formal step is usually, the filing of a consultation form (Lembaran Konsultasi). In practice, however, there are informal discussions and other possible forms of resolution for land conflicts.

Provincial Government

At the Province level, the Biro Hukum dan Hubungan Masyarakat (Law and Public Relations Bureau) plays an important part in the resolution of land conflicts. The Biro Hukum is located within the Provincial secretariat (Sekretariat Wilayah / Daerah Tingkat I - SETWILDA). The tasks of the office are, amongst others:

- coordinating the issuance and organization of provincial regulations and decisions by the Governor
- monitoring current developments in the law
- analyzing and evaluating the implementation of laws and regulations in the province
- ratifying and / or voiding District level regulations
- providing legal advice and assistance to all members of the provincial government encountering legal problems in the implementation of their duties
- cataloguing and publishing laws, regulations and other legal materials
- carrying out public relations"

The tasks of the legal representative of the Provincial Government can often only be inadequately carried out due to restricted financial and personnel resources.

The Biro Hukum represents the provincial Government in court cases and also gathers data and documents about land cases through the Legal Aid Section (Bagian Bantuan Hukum) of the Biro Hukum. The Biro Hukum might be involved in several hundred land disputes per year.

Local Government

Local government officials, the village headman, the Camat and the official from the Department Kehutanan, are also frequently involved in the resolution of land disputes. Especially at the lowest administrative level that they are asked for advice. There exists no fixed pattern of regulations for the various participants, but rather they act according to traditional patterns of decision, „musyawarah and mufakat” (consultation and consensus).

The influence of these local leaders is strongly dependent upon their personalities and their level of recognition amongst the local population. Sometimes it is doubtful whether they are more interested in the rights of the local population or in carrying out the development programs and projects which the higher administrative levels would like to see done quickly and unproblematically. In addition, knowledge of the BAL and Adat Law is either not very deep, or varies greatly from official to official.

c.) Non-Government Organizations
A multitude of non-governmental organizations are involved in land issues and dispute resolution. Many large non-government institutions, which deal first and foremost with the protection and conservation of nature and community development have become involved in land tenure issues. Examples of these are SKEPHI (Secretariat Kerjasama Relawan Pengendalian Pencemaran) and WAHLI (Wahana Lingkungan Hidup Indonesia), which achieve public notice through numerous undertakings and publications. E.g. a meeting in September 1995 between MoF DJAMALUDIN and WALHI representatives was conducted at which WALHI representatives presented 6 conflicts between local populations and HTI plantations, thus, the Minister of Forestry promised the „establishment of a conflict resolution forum“.

The Legal Aid Institute (Lembaga Bantuan Hukum-LBH) offers legal advice. The main office is in Jakarta with sub-offices in several urban centers: Bandung, Banjarmasin, Jambi, Medan, Menado, Padang, Palembang, Semarang, Surabaya, Ujung Padang, Yogyakarta. They explain and advice on rights to locals. The objectives of the LBH can be summarized as follows:

- „to give legal aid free of charge to the poor sector of general public irrespective of their religion, ethnicity, descendence, political affiliation, ideology or social and cultural background

- to develop and promote the understanding of the values of the state law and of human dignity and basic human rights in general and in particular to increase legal consciousness among the people, both officials and common people, so that they become aware of their rights and duties as legal subjects

- to make efforts in influencing both the process of improving and innovating laws and their implementation.“

There is likewise an Indonesian Center for Environmental Law (Lembaga Pengembangan Hukum Lingkungan Indonesia) in Jakarta which carries out advisory and publicity work for environmental laws in the broadest sense. This Centre is in contact with, amongst others, the IUCN in Geneva and the Environmental Law Center of the IUCN in Bonn.

Non-governmental organizations can play an important part as mediators for example in land conflicts between the government and local people since they are looked upon as „neutral“ parties. As outsiders they can even act as negotiators in conflicts between Adat leaders. There are now many specific NGOs which deal with problems incorporated in rural development and consider their prime task in strengthening and setting up of community institutions.

ZERNER reports that „in the early 1990s, a well-known Indonesian environmental and indigenous rights lawyer was reputed to be visiting Holland to obtain Dutch-era maps of territories under the control of specific ethnic groups in Kalimantan. These ethnically based, topographically inscribed representations were to be used in a campaign to secure recognition of contemporary community claims to control areas of forest in Kalimantan then under the control of timber concessions. The assumption underlying such a tactic was that colonial maps, like colonial codification of „customary law“, constituted transparent reflection of realities „on the ground“, as it were, rather than politically constructed representations freighted with assumptions about the nature of property, ethnicity, and maps.“

A report from Ambon states that HUALOPU (a non-governmental environmental organization on Ambon) for example financed a survey of sasi-like practices in the Maluku Province in 1991 / 92 in order to find out local institutions and values for the controlling and the access to natural resources.

Church NGOs in particular frequently play the role of negotiator in Indonesia in land conflicts. An example here is the Delsos committee of the Catholic Church in Sorong / Irian Jaya and the Church World Service (see box 6). Representatives of religious institutions often live for decades in rural areas on the outer islands and often possess profound knowledge about local Adat regulations and are often seen in addition as an authority by the local Adat leaders and are turned to for advice.

Box 6: Involvement of the Delsos Committee and the Church World Service in land issues in Irian Jaya

a. One program has assisted local people to obtain legal title to land. Delsos purchases a parcel of land and divides it among poorer local inhabitants. Delsos holds the title (sertipikat) and allows the people involved to pay for the land in installments. When it is
d.) Adat institutions

Adat institutions, of course, contribute to the resolution of traditional conflicts between and within the various Adat communities. Adat councils can, for example, be very significant when separating up overlapping Adat rights to land. It must be made certain here that the rightful Adat leaders take part, this indeed being those who have the mandate from the local population to represent their interests.

Adat institutions also play an important part in the taking of Adat land for development projects and the conflicts which result therefrom. The Adat institutions are, however, frequently not in a strong bargaining position when it comes to conflicts between Adat authorities and the national government. In this case only damage limitations is being dealt with, i.e. the amount of the compensation being negotiated for the taking of the land.

5. Identification of the institutional structure related to land tenure

5.1 Analysis of socio-cultural values and norms

The presentation of traditional values and norms must be restricted to only a few chosen elements because of the diversity of the various ethnic groups. Thus in the following analysis, a few characteristics of Javanese values which are certainly dominant in many regions will be analyzed, but the moral concepts of the adat communities will regard to land matters will also be conveyed.

Javanese moral concepts are based on the assumption that harmony should rule the three basic human relationships, namely the relationships to nature, the spirit world and to ones fellow man. These concepts are also based on the assumption that the „Javanese“, because of the three relationships mentioned above, „have to do harmony justice“. The principle of the avoidance of conflict and in particular the principle of respect (as a hierarchical structure) are important for interpersonal harmony. „If there is a conflict of interests, it should not be resolved by each side insisting that it is right, but rather by using the common consultation of the group (musyawarah). In so doing, all sides of the problem as well as the interest of the other members of the group are discussed until a unanimous conclusion is possible (mufakat).“

These principles of respect and conflict solution are also applied to the implementation of development plans which in reality take the following course: „If the objectives and tasks of a national plan are passed on to the village level through each level of responsibility of the hierarchy, this is often done without reference to local conditions and needs. Although some people know that the plan cannot be realized without resistance, local leaders agree to it. When the government official has returned to his office, the villagers merely „realize“ the symbolic elements of the plan combined with their own (current) needs.†
In recent decades in many regions, values have changed with increasing economic development. In virtually all regions, the modern mass media is prevalent, and the transition from traditional life and work structures to „modern” structures is visible everywhere with varying intensity: „With these linkages to outside sources of political and economic power, traditional ties of reciprocity and exchange between the local elite and their followers are being replaced by a more entrepreneurial market-oriented approach in the valuations applied to land, labor and capital.”

In the growth regions of Indonesia, land is becoming more and more strongly a commercial commodity. Today, land sales of individual property are spread out almost everywhere on Java. Nonetheless, every private owner tries to hang onto his property, and sales are frequently a result of emergencies.

Traditional moral concepts are more strongly anchored in the rural areas, in particular in the so-called „outer islands”. Customary rights (adat) are of great importance in many areas of interpersonal life. They are not only effective for land rights, water rights and inheritance rights, they are also influence other laws as marriage law and criminal law. At the same time, adat not only preserves ethnic identity, it is also important for upholding a moral and cultural legitimacy in the face of a dominant external state and culture. Rural clans and tribes believe that „land is God-given and unalienable; the community gives much higher importance to its responsibility towards the land than to its loyalty towards the government. Even the concept of a ‘right’ to the land is often not understood: the availability of land and resources is a simple ‘reality’ and has little to do with ‘rights”.

At the same time, land serves many factors which are virtually inseparable from one another. Land is not only a basis for production; it is also a form of worship to ancestors and a connection to the spirit world. Many rituals and festivals are enshrined in the cultivation of land and the cultivation cycle. „In the Dani view, land and its use are closely tied to the spirit world, the clan’s ancestors, and the identity of the clan. Opening, planting, and harvesting of lands require the intercession of the spirit world, elicited through a complex cycle of rituals and ceremonies.”

In spite of this close bond to „their” land, these people are perfectly open to change if „whatever is done by the outsider will be done in respect, and obedience of the traditional laws and norms.”

5.2 Analysis of traditional land tenure institutions and structure (selected areas)

The subject of land tenure institutions has already been initially broached in the discussion of traditional land tenure practices. A few selected institutions in two rural regions, West Kalimantan and the Baliem Highlands on Irian Jaya are going to be looked at a little more closely in particular at traditional power structures.

The Dayak of West Kalimantan

The Dayak tribe consists of more than 200 small groups which are spread over the whole of Kalimantan. They have their unique languages, their own traditions and count as a single legal community. In the individual groups, there are varying power structures. Thus one finds the following hierarchical order of traditional leaders, for example in some regions of the Kabupaten Sanggau: Temenggung, Mangku, Kepala Kampong, Kebayan, Pengurus Adat.

Temenggung and Pengurus Adat

Traditional leaders are chosen because of their charismatic values, for instance their judgmental abilities or their physical strength. They are often thought to have magic powers. The authority of adat functionaries is hierarchical and autonomous. The Temenggung (in other Dayak clans the leaders are called „singa”, „patiraja”, „macan”, „panggawa” or „panglima”) is the highest adat leader within the clan. He controls his subordinate functionaries and in serious conflicts he has the highest power of decision, and he can make these decisions autonomously. The Temenggung is also responsible for resolving disputes over the contravention of borders by one clan if the borders of the Adat areas are controlled by another clan (see also part 6.1.1.).

The Pengurus Adat has the autonomous authority for the opening up and allocation of land within his group. Other traditional functionaries can be found for specific tasks in the different clans, so there is, for example, an official in charge of oaths called Bilal Tomang amongst the Dayak Merui. The traditional leaders at both the clan and the local level seldom carry out their decisions without consultation with the elders of the group.

The Baliem Valley Dani
More than 100,000 Dani live in the central highlands of Irian Jaya. This Dani community has a very complex social and political organization.

**“Big man” and Kwanke**

Socio-political authority is held by two types of leaders. One leader is in charge of prowess in war, material wealth and organizational abilities ("big man"); the other leader is in charge of rituals, soil fertility and land allocation (kepala adat). The position of a "big man" cannot be inherited. Rather he acquires his position of leadership through recognition of his achievements in war and / or in the accumulation of wealth. The "big man" also possesses power over the allocation and use of resources, but he is not considered as an official "land trustee" of the lands of his own clan.

The paramount ownership of all lands, both cultivated and fallow, is in the hands of the individual small clan. The ownership is communal and the kwanke (kepala adat tanah) is responsible for land allocation to specific families which have a strong individual, inheritable right to the areas of land allocated to them with specific borders. The kwanke is both the administrator of land clearance, land allocation, planting and harvesting and the connection between the land and the spirit world. The kwanke decides which land will be cleared or opened up for cultivation. He allocates land and can also re-allocate this land both to insiders of and outsiders to the clan. To outsiders land is allocated for one cultivation period as a rule, and they have no inheritance rights to this land. The kwanke does indeed possess paramount authority over land matters, but he works together closely with other adat leaders. The elders can act as an informal council for providing advice and they solve the day to day affairs.

Of course, the rapid changes in Kalimantan and Irian Jaya influence the traditional leadership patterns and tend to lead to the weakening of power of the traditional leaders. New leadership structures (Government) arise and put the paramount leadership of the adat leaders in question. This is particularly visible in the conversion of adat land to state land for development programmes. Attempts are made through state regulations to adjust and consolidate the traditional power structures so as to force back the power of the adat leaders.

### 5.3 Analysis of the administrative structure at the central, provincial and local level

The Government is based on the five principles of the State philosophy (Pancasila) and the Constitution of 1945. The administration of the country is divided into four levels. Indonesia includes 27 Provinces, 295 Districts (kabupaten and kotamadya), 3340 Sub-Districts (kecamatan), and around 60,000 villages (desa).

Each ministerial department has a network of subordinate offices down to / up to the District level (Daerah Tingkat II). These offices of the Ministries have as so-called Kantor Wilayah (Kanwil) the same position as the regional bodies, the so-called Dinas. Alongside the Ministries (e.g. Ministry of Agrarian Affairs, MoF, MoA, MoTM, etc.) there are other authorities with particular tasks, such as the Planning Authority (BAPPENAS) and the National Land Agency (Badan Pertanahan Nasional (BPN)).

The Provinces are denoted as autonomous Regional Bodies, Level 1 which have their own budget which, however, consists 70 - 90 % of contributions from the central government designed for specific purposes. At the District level there is the Badan Pertanahan Kabupaten or Badan Pertanahan Kotamadya. The Districts are denoted as Regional Bodies, Level 2 (Daerah Tingkat II). The District is led by the Bupati.

Since the jump from the Kabupaten level to the village level is too big for an effective administration, there is the kecamatan as a Sub-District. The kecamatan is led by the camat. The civil administration system with paid staff from the government exists right down to the village level. The village, the fourth level, is denoted as Regional Body, Level 3 (Daerah Tingkat III). At this level, alterations were made in 1979 with the Village Government Law No. 5 of 1979 (UU 5 / 1979) which led to the replacement of elected village heads with appointed state-paid staff. This has already taken place in urban villages where the heads, kepala desa, have been appointed. So far, only a small number of heads have been appointed in rural villages. For financial reasons, most of them are still elected and paid by the revenue from village land put aside for that purpose.

At the rural level we then find the hamlet (lingkungan / dusun, traditionally also called a dukuh on Java), whereby the hamlet chiefs and their helpers are viewed as staff members of the one village government. Below the village level there are the Rural or Urban Neighborhood (rukun warga (RW)) and the Neighbor Group (rukun tetangga (RT)), the status of which has hardly changed in the last 4 decades. Thus they are seen, according to the Ministry of Internal Affairs, Regulation 7 from 1983 as “social organizations acknowledged and founded by government to maintain and perpetuate the values of Indonesian social life ... also to help increase...”
the smooth execution of governmental, developmental and social tasks.” Rukun warga are composed of 3 to 7 Rukun tetanggan or around 170 households on average.

*Badan Pertanahan Nasional*

The BPN was founded through the Presidential Decree No 26 / 1988 and took over the tasks of the former Directorate-General of Agrarian Affairs in the Ministry of Home Affairs. The central authority is seated in Jakarta with branches at the Province and District levels. The BPN supports the President in the management and administration of the land through the State Minister of Agrarian Affairs.

The State Minister for Agrarian Affairs is appointed by the President and is advised by him in land policy matters (Presidential Decree No. 44 / 1993). The State Minister for Agrarian Affairs is simultaneously the head of the National Land Agency, BPN. The dual function enables the person holding office to fall back on data drawn up by BPN and simultaneously to develop and implement land policy in Indonesia as a member of the cabinet and as a member of the National Development Planning Board (BAPPENAS). According to HENSSEN, the Minister has the following functions in the management of agrarian affairs:

- coordination of the formulation of the state policy in agrarian affairs,
- planning of the policy implementation in preparation for agrarian programs,
- coordination of all government agencies related to agrarian affairs for the implementation of a comprehensive government program,
- promotion of community participation in agrarian affairs,
- coordination of the National Land Agency’s (BPN) operational activities,
- preparation of reports, information, proposals and recommendations relating to his tasks and responsibility to the President.”

*a.) Central level*

According to the Presidential Decree No. 26 / 1988, the BPN is responsible for the following areas:

- policy formulation and planning in land tenure and land use
- policy formulation and planning in the arrangement of land tenure in conformity with the principle that land has a social function in accordance with the Basic Agrarian Law,
- land surveying, mapping and registration in the endeavor to provide legal security in land rights,
- issuance of land rights for the maintenance of orderly land administration,
- carrying out research and development in land-related matters, and training and education for personnel needed for the management of orderly land administration,
- other matters to be decided by the President.”

The main activities of the BPN are: land registration, cadastral measurement, land use mapping, land certification and land granting. Likewise, the BPN carries out the functional issuance of location permits and land consolidation in cooperation with the local Government. The chairman of the BPN is supported by five Deputy Chairmen:

- Deputy I: General Affairs
- Deputy II: Land Tenure and Land Use Arrangement
- Deputy III: Land Rights
b.) Provincial level

The Directive of the Head of the BPN, No. 1 / 1989 revised by the Directive of the Head of the BPN No. 6 / 1993 describes the tasks of the BPN at the provincial level (Daerah Tingkat I):

- to carry out the planning of the program tasks within the BPN;
- to coordinate the arrangement of land use, land ownership, spatial use, management of land rights, land survey and registration;
- to carry out advising and controlling - in the field of land use and ownership, spatial use, management of land rights, land survey and registration;
- to carry out the arrangement of administration and regulation.

At the Province level, the BPN Office is divided up into 4 Divisions:

- Land ownership
- Land use
- Land rights
- Measurement and registration

c.) District level

At the District level, the BPN has to look after the following tasks:

- to prepare the activities of land use and spatial use and manage land rights - including land surveys and registration;
- to carry out service activities in the fields of land use, spatial use, management of land rights, land survey and registration;
- to carry out internal office procedures and administration.

The District (Kabupaten) or Municipal (Kotamadya) Office is divided up into 4 sections:

- Land tenure
- Land use planning
- Land rights
- Measurement and Registration

Below the kabupaten level, the BPN is to be found only in single regions in which the kabupaten may be far removed from the individual island, as on the Moluccas for example. These regions have 1-2 representatives at kecamatan level.

Departemen Kehutanan

Since approximately 140 million ha are under the influence of the MoF, the administrative structures of the various levels in the area of forestry will also be briefly described here.
With the Presidential Decree No. 45 / 1983, the rights to forest lands and policies were transferred from the Directorate General of Forestry (MoA) to the MoF (Departemen Kehutanan). The Departemen Kehutanan consists of 8 sections:

- Secretariat General
- Inspectorate General
- Directorate General of Forest Utilization
- Directorate General of Reforestation and Land Rehabilitation
- Directorate General of Forest Protection and Nature Conservation
- Board of Forestry Research and Development
- Forestry Education and Training Center

As of December 1994 the Ministry of Forestry employed 37 Ph.D., 353 M.Sc., 2,375 forest engineer graduates and 1,491 non forestry MSC degree holders. However, 50% of all Forestry Department Staff is in Java, although Java has only just on 2% of all forested land.

The Departemen Kehutanan is represented by regional offices (Kanwil) at the provincial level which are directly under the authority of the Minister. In addition, each Province has a Provincial Forestry Service (Dinas Kehutanan) which is part of Provincial Government and must report to the Governor. The distribution of tasks between Dinas and Kanwil is as follows: „In practice, the Dinas implements forestry in the field, while the Kantor Wilayah makes and oversees policy.“

5.4 Participation of marginal groups in the land tenure development

The majority of households in the rural areas of Java do not have sufficient land to be able to support their existence. Not only the marginal landowners but also the landless tenants and agricultural workers belong to this majority. Amongst them, the particularly poor households are those which also have no chance of taking up non-agricultural activities because the principle workers of the household are chronically ill, invalid or aged, or because they are single women households (widows, divorcees) with children.

The marginal landowner frequently has no other choice in a crisis than to pawn his land. But pawning this foundation for subsistence leads almost inevitably as a rule to the later sale of the land.

Access to land for landless households is frequently only possible through tenancy arrangements. However, amongst the common tenancy arrangements on Java, such as

- fixed rent for cash paid in advance (sewa)
- temporary cession of land to a creditor (gadai)
- sharecropping (maro)

only „maro“ is possible since they are not able to come up with the necessary financial means for „sewa“ and „gadai“. But the access to sharecropping arrangements is also restricted. Thus „maro“ is only allocated as support for poor relatives of a landowner or as an „extra reward“ for the permanent agricultural worker of a larger landowner in some regions of Java.

The majority of landless in many regions earn a living as daily workers in agriculture and participate in the rice harvest. The so-called bawon system is still widespread in many parts in which no one who reports to the landowner that he would like to participate in the rice harvest may be refused and he has a right to a share of the crop (usually 1 / 5 to 1 / 10). Another labor peak occurs when rice is transplanted. At this time in some regions of Java, planting groups (mainly women) are put together by a team leader (kepala rombongan) which transplant rice for the large landowners. It has been possible to extend their work radius to more remote
villages by using bicycles and the „revolusi colt“. But the traditional landlord-tenant relationships have been broken in many regions of Java, and previously wide-spread mutual assistance (gotong royong) along with other communal support mechanisms have already disappeared or have lost much of their original effectiveness.

Numerous marginal people migrate seasonally or permanently to other rural regions or urban centers. If the search for employment is unsuccessful, the only way out is frequently seen as the „illegal“ acquisition of land. This is mainly the illegal occupation of land belonging to large landowners, or of communal or state land. Encroachers in the forest frequently occupy marginal areas which are endangered by erosion and which become degraded through improper cultivation.

But „illegal“ land acquisitions also exist in the urban centers, and this in growing proportions. The spontaneous occupation of land areas can certainly be tolerated by officials, but they can also be destroyed daily by bulldozers. Numerous conflicts which deal with the recognition of the rights of „illegal“ land takers, and deal in particular with the question of compensation when expulsion occurs, are pending on Java.

6. Problems, constraints and opportunities to the urban development in Java

6.1 Urbanization process in Java

The island of Java with its fertile land has a very high population density compared to the other Indonesian islands (with the exception of Bali and South Sumatra). The density for Java for 1995 was estimated at 881 inhabitants / km², whereby West Java (excluding Jakarta) had 889, Central Java 904, and East Java had 701 inhabitants / km².

The urban population is growing more quickly than the total population of Indonesia. According to the REPETITA VII, it is estimated that the urban population will have grown by about 4.5 % in the time period 1993 / 94 - 1998 / 99, and then the urban population will be 80.3 million. The rural population will have reduced slightly to 124.1 million in the same time span. According to the agrarian census of 1993, the number of urban households in Java has starkly risen from 1983 - 1993. In West Java, it rose from 18.4 % to 32.9 % of all households; for Central Java it was 18.3 % up to 26 %, and for East Java, 19.7 % up to 26.2 %. The numbers here are for DKI Jakarta and KI. Yogyakarta is not taken into consideration within the respective Provinces.

The increasing urbanization affects land rights and land markets in urban and rural areas, since urban life is encroaching more and more into the villages. Thus one can hardly distinguish the borders of the centers previously far removed on the urban fringes any more. This is particularly the case in the conurbation JaboTaBek. In this urban fringe alone, there will be a population of around 30 million people in 2010, whereby BoTaBek shows a higher growth rate than DKI Jakarta. The situation is similar, if on a smaller scale, for the conurbations Bandung and Surabaya. With an assumed growth of the urban population of 4 % per year, Jakarta needs around 70,000 new dwellings per year, at least 25 % of which are needed for low income categories with an income of US $30 per month and person.

6.2 Transformation of Rural Land to Urban Land

The need for land for non-agricultural purposes is starkly growing with increasing urbanization and industrialization. The following uses for this scarce land compete with each other:

- Residential areas and shopping centers
- Industrial parks
- Environmental and water protection areas
- Mining areas
- Recreational areas
- Agriculture and forestry
- Infrastructure (roads, dams)

The agrarian census from 1993 shows that the land used for agriculture has been reduced from 6.4 million to around 5.5 million hectares in the last ten years. Particularly painful for agriculture in this case is the high percentage of highly productive sawah which has been taken out of agricultural production in this period of time. All in all, the amount of the reduction was more than 400,000 hectares within the period 1983 - 1992. This is equal to an average loss of more than 40,000 hectares / year (or around 1.4 % / year) and an estimated loss of more than 500,000 tons of rice per year.

This loss (of land) for agriculture cannot be compensated for on Java considering the lack of land reserves. Since the self-supply of rice is important for political stability amongst other things, rice planting programs and the expensive construction of irrigation systems are carried out on the outer islands (BIMAS u. INSUS, or SUPRA-INSUS, 1987). Due to estimations of the WORLD BANK it requires US-$ 2,000 - 3,000 to create one hectare of new irrigated land.

How quickly the transformation is taking place can be seen for example in the time period from 1969 to 1985 when 1.2 million ha in Java were brought under irrigation through the erection of new irrigation facilities. At the end of the 80s, 25 % of the land had already been converted to non-agricultural uses.

This means that if sawah land must be converted when it cannot be avoided, then one should try to make sure that it is less productive sawah land which is taken. In practice, however, it looks as though it is precisely the extremely productive land which has a very good infrastructure and is very accessible, so that the most productive sawah land is frequently used in particular by brokers and developers.

Urbanization and industrialization also endanger agricultural areas through the pollution from households and businesses. Added to this is the pollution from farming. As a result, strongly polluted water can no longer be used for irrigating agricultural areas in certain parts of Indonesia. There are, however, no reliable figures for the extent of the loss of valuable farming land, or its restricted use. In the future, a conflict of use concerning drinking water vs. water for irrigation might come to the fore.

The need for recreational areas and sports fields in Indonesia is continuing to grow with the increase in the middle and upper classes. Golf, for instance, presents an intensive utilization of land, needing as a rule several hundred hectares per course. There are already more than 90 golf courses with increasing tendency. Most of them are in the directly reachable vicinity of the urban fringes on Java.

6.3 Urban Fringe Pressure

On the urban fringe of Jakarta, land is predominantly privately owned. The pattern of land acquisition, according to STEINBERG, shows that there is a multitude of ways of acquiring land for building on:

- The household can buy directly from the landowner
- The household buys land from an informal sub-divider who buys it
- directly from the landowner or
- from an investor / speculator (who keeps the land in expectation of rising prices). In this case, the speculator has a preference for land in the vicinity of highway construction sites, housing projects, or new public facilities.
- The household buys the land from a real estate developer who has bought it
- either directly from the landowner
- or from an investor / speculator (however, little land passes hand from an investor to a real estate developer).
Here one must differentiate between formal private development and informal private development. Formal private development is carried out on land which is registered, for which there are the necessary permits, and where the planning and construction standards are satisfied. This formal private development is carried out first and foremost by real estate companies which buy land and develop houses ready for occupancy, shopping centers, factories, office buildings, hotels and industrial parks. Real estate companies may not sell land for construction purposes unless it is for ear-marked industrial areas where completely opened up parcels of land may be sold.

But all the houses which are built on land which has been bought or inherited by people or entrepreneurs who already have a land title, or obtain one, also belong to formal private development.

Activities carried out on land without a title are described as informal private development. Since permits are not issued for unregistered land, the building of houses takes place without permits as a rule, and thus outside the existing regulation systems. A further characteristic is that such a building is erected under the owner’s own direction, and with his own design and standards. Therefore, the regulations which concern the size and layout of the construction or property, and provisions for the necessary infrastructure are frequently not taken into account. On the other hand, this has the advantage for families with low incomes that the builders can build their houses without regard to construction regulations as low income housing. Some estimates are that approx. 20 % of the new buildings in towns have been erected without permission.

Informal private development predominantly takes place in rural areas on land which is under adat rights. The most varied of documents are presented here in an attempt to prove land ownership:

- property tax („girik“)
- notarized or unnotarized purchase receipts
- transfer papers, some sealed and witnessed by local officials, some not
- letters from kepala desa, or the sub-district head (lurah) or the district head (camat).

A part of the unregistered areas of land are kept with a so-called „possessory title“. This refers to state land which has been farmed for decades by the owner and his family who can also prove this with various documents.

Only a small part of this informal development form the squatter settlements on state land. This mostly happens in DKI Jakarta. Squatters can also sometimes be awarded a so-called „surat garap“ by a local official who acknowledges the right for squatters to „occupy“ public land. This „letter“ can be transferred and sold and thus creates a form of „legal squatters“.

With informal land development, the owner of a kampung frequently divides the property further in order to create new land for construction with access to roads or connecting roads. By doing this he makes the settlement area all the more dense without the provisions for infrastructure in the form of drinking water, sewage etc. being extended. This can sometimes happen retrospectively if the settlement is chosen for a Kampung Improvement Program (KIP). A KIP gives the residents a certain legal security although land titles under community-based law are not converted into registered titles. Since the complexities of land tenure aspects were already well-known, KIPs were started from the beginning out of practical considerations so as to save time. The registration was supposed to be caught up on later.

Other concepts for urban development on rural land in urban fringe areas are the „Guided Land Development“ (GLD) and the Urban Land Consolidation Programme. Both concepts will be discussed later (see chapter 8.2. and 8.3.).

The real estate companies, other private companies, the National Housing Corporation (Perumnas) as well as various private people usually register land when they buy unregistered land. Real estate companies must first of all receive a location permit (Izin Lokasi) and a land purchase permit before they are authorized to buy up land in a certain region. The Iizin Lokasi gives the real estate company the exclusive right to carry out the purchase of the land in the designated area. Of course, in JaBoTaBek far more land is in the possession of an Iizin Lokasi than has been previously developed. This leads to the blockage of the development of conurbation.

The private household which buys unregistered land and wants to have it registered must reckon with additional expenses (about 25 % of the sale price) if the land is bought from an informal sub-divider. The costs of registration, alongside the lengthy (6-12 months) and complicated process is the main reason why the
landowners hesitate to register their land in spite of the advantages for them. They cannot use their land without registration as collateral, and in the case of land acquisition by the government, they would only receive little compensation.

At the end of the 80s, supposedly about 37% of all landowners in Jakarta possessed a certificate. Of this 37%, more than 4/5 of all landowners have full ownership rights (hak milik). Next to hak milik, the tax receipts (girik) already mentioned above and further letters play a part in this process. It is assumed that next to the 37%, a further 24% can produce a property tax receipt. This means that half the landowners in Jakarta cannot be called upon to pay property tax.

**Proyek Operasi Nasional Agraria (PRONA)**

In order to quickly raise the numbers of registrations, in 1981 the Government introduced a special land project (Proyek Operasi Nasional Agraria (PRONA)) through the Decision No. 189 / 1981 of the Minister for Home Affairs. PRONA is supposed to have the following functions:

- Mass land titling
- Popular legal education (agrarian law)
- Research on land disputes
- Resolving land disputes

As much land as possible is supposed to be registered within a short time under the auspices of PRONA. To achieve this objective, those regions in which maps exist and other data on land and land rights are available are being concentrated on first and foremost. Up to 1989, around 37,000 certificates for a relatively small fee of 23,700 RP had been issued in certain priority areas. According to WORLD BANK statistics, 900,000 titles have been awarded under PRONA. In total, 8,000,000 land parcels are said to have been registered since 1960, but only about 10% of those in rural areas.

Since the middle of 1994, a Land Administration Project supported by the World Bank has been running, the important component of which is registration (see part 8.5.).

**Land rights for foreign investors**

Land rights also play an important role in the growing industrialization of Indonesia. This is also true, for example, for regulating land rights for foreign investors. Thus, since the Government Regulation No. 20 / 1994 has been in force, not only joint ventures, but also direct investments with 100% foreign capital have been possible. Of course, there is no regulation about whether or not undertakings with 100% foreign capital can have „hak guna bangunan” in the way it is possible for joint ventures in the agrarian sector and for certain industrial projects to have „hak guna bangunan” and „hak guna usaha” according to the Presidential Decree No. 34 / 1992.

The rights „hak sewa untuk bangunan” and „hak pakai” are aimed at both Indonesian and foreigners who have their residences in Indonesia, and also for foreign corporate bodies, which have a representation in Indonesia.

**6.4 Development of the land market**

Land sales of individual private property can be found almost everywhere on Java. They were already common around 1950. Following the introduction of the BAL and with it the subsequent conversion of land rights to hak milik, a period began in which more and more parcels of land were sold not only within the community or to peasants in neighboring villages, but also to „outsiders”, although this is illegal according to the BAL.

In some villages on Java it was decided at village meetings not to sell land to „outsiders”. In reality, however, this decision was not always stuck to. The following example from Central Java demonstrates this: „In the village of Tambak Bulusan, Demak (Central Java) there is a regulation which prohibits the sale of land to non-residents, but this regulation is rarely obeyed. Frequently fish ponds are sold to people form Semarang, which is seventy five kilometers away.”
The following reasons for land sales have been named in empirical village studies:

- Land is given as collateral to village money lenders. If the credit cannot be paid back, the land is kept by the money lender. By relinquishing his subsistence base to the money lender, repayment of the credit becomes even more difficult. In the end, the land must be sold.

- Land is sold so as to be able to pay the following expenses:
  - medical treatment
  - weddings
  - funerals

- Land is sold following an inheritance if the heirs cannot share the land, and no single heir is in the position to be able to buy the land from the others. The land is sold to a third party, and the profits from the sale are divided up between the heirs.

- Land must be „sold” since „general interests” take precedence over „personal interests” if land is required for development projects, for example.

The high demand for land causes land prices to rise sharply. The increasing demand amongst people from big cities such as Jakarta, Bandung and Bogor for land in the area of Suka Tani in West Java near the Pangrango National Park caused the land price to rise to more than Rp 30,000/m². This encourages large local landowners to sell land. In the long run, the small peasants will lose their land where they used to work.

The land prices have risen particularly sharply in urban fringe zones. But since most of the landowners do not want to separate themselves from their land for various reasons (socio-cultural value of the land, reserving land for children for them to be able to build on later), the land prices are way above the economic value of a parcel of land used for farming. The farmers cannot compete with the financial power of the investors who use the land for speculation, for extra-agricultural investments, or as retirement or weekend properties. BUDIONO has made a report about the village Pancawati near Pangrango National Park:

„However inequity of land ownership creates problems with land tenure especially in the upper parts of the village... . Firstly farmers with large agricultural fields are tempted to sell land to rich and distant users from Jakarta and other big cities, because of high land prices. Fields along the access roads for rice fields and dry fields, and even land with very steep slopes have been bought by outsiders. Close to the tea plantation an area of 5 ha belongs to an owner from Jakarta. Some of the land has already been used for villas and some of it still remains as agricultural fields. At present some of the poor-land and landless farmers can still grow vegetables or rice on land of owners from Jakarta left as agricultural fields. They have to pay rent or share products, however they lose it when the owners change their minds or want to allot their land to other purposes."

Regulations of the land market

In section 3.3. the existing restrictions for the transfer of land have already been discussed. According to the currently operative BAL, limitations exist on the owning, buying or selling of land:

- Upper limits for land ownership
- No sales to „absentee landowners”
- Restrictions for foreigners and foreign companies
- Fees for the mechanism of land allocation.

When land is sold, this transaction must be witnessed by the head of the village and legitimized by the camat who functions as a notary. In the District of Wedarijaksa in Central Java, the camat receives the people who want to have a land transfer legitimized every Saturday.

Since a new Government Regulation of 1994, it has been necessary for the transfer of land rights to pay income tax on the profit gained from the sale of a right to land, or land and buildings. In 1994, this tax was set...
at 3% of the sale price, and was raised to 5% on Jan. 1st, 1995.

In connection with the stipulations contained in Article 19 and Article 24 of the BAL, and the Article 19 of the Government Regulation No. 10 / 1961 on Land Registry, every land transfer or the mortgaging of property must be proved with evidence in the form of a certificate which is drawn up in the presence of an official, the Land Deed Officer (Penjabat Pembuat Akta Tanah, PPAT), who is appointed by the Minister for Agrarian Affairs. The certificates which should be made in the presence of the PPAT are in the form of:

- Transaction Deed
- Grant Deed
- Exchange Deed
- Separation and Division Deed
- Heritage Allotment Deed
- Mortgage Deed
- Credit Obligation Deed
- Registration Deed

Since the 1st of June, 1994, the PPAT has been instructed not to make any more certificate entries if the vendor cannot prove that the income tax has been paid. The head of the Office for Land will also not register any land rights transactions if the sales contract is dated after 1.6.1994 and proof of payment of income tax cannot be produced. The BPN does not issue any rights certificates either if the above certification is not supplied. The following can be understood by „transfer of a right“:

- „Sale, exchange or other way of transfer as agreed with other taxable parties.
- Sale, exchange or other way of transfer as voluntary agreed with the government, other than for development purposes in the general interest.
- Release or transfer of a right on land or land and building to the government for development purposes in the general interest."

However, there are various possible exceptions:

- If the total value of the purchased land and / or building is less than Rp 60,000,000.
- If the land was presented as a gift.
- If the land is inherited
- If the land has been acquired by the Government for development purposes (public roads, water drainage, reservoirs, harbors, airports, armed forces, etc.).

**Rental market**

Along with the sale and purchase of land, land transfers can also take place through renting out / renting in of land. The following are amongst the motives given for renting out land:

- the owner is too old to be able to farm his land himself.
- the owner has no time to work his own land because of non-agricultural activities.
- to obtain cash needed to renovate a house.
to finance a child’s marriage

to pay for medical expenses.

for finance a child’s education.

the owner’s lands are situated too far away.

the owned area is too large to be cultivated by the farmer on his own.

7. Problems, constraints and opportunities in the development of land tenure in rural areas.

7.1 The impact of land tenure in the project area of the „Kalimantan Upland Farming Systems Development Project“ and the „Social Forestry Development Project“ in West Kalimantan

Land use

Both the Kalimantan Upland Farming Systems Development Project (KUF) and the Social Forestry Development Project have their project areas in the District of Sanggau in West Kalimantan. The District of Sanggau covers a total area of 1,830,200 ha (12.47 % of West Kalimantan Province). Of that, around 216,043 ha (14.3 %) are village forests and 714,637 ha (39 %) are state forest areas. The state forest areas are divided up as follows:

- Production Forest 68.2 %
- Protection Forest 9.5 %
- Nature Reserve and Recreation Forest 2.6 %
- Conversion Forest 19.7 %

Although more than 50 % is forest land according to the classification, in 1991 only about 27.9 % was „really forest“. The remaining areas were bushland, Imperata grasslands and „barren“ land.

Around 249,317 ha (13.6 %) are used for plantations (rubber, oil palm, coconut, cocoa, cloves, coffee and pepper). Conversion forests are used for Nucleus Estate Smallholder Systems (PIR) in which rubber and oil palm plantations are predominantly set up. Shifting cultivation is practiced by the Dayak communities on 77,531 ha Of course, the fallow areas covering 202,902 ha have not been calculated into this figure. They are identified separately in the statistics as „temporary cultivated land“. The home gardens, forest gardens and mixed rubber gardens which are important for the Dayak communities take up 148,144 ha (8.1 %). The remaining areas cover swamp land (3.7 %), Imperata grasslands (0.7 %) as well as wet rice lands (3.2 %), fish ponds (0.1 %) and settlement areas, 37,437 ha (2.0 %).

In 1991, 442,556 people lived in the District of Sanggau, 70 % of them being Dayaks, with a yearly population growth of 2.85 %. In addition, in 1991 alone more than 4,000 households (17,079 people) were resettled in the district under the transmigration program. The population density of the total area is 24 people / km². The land / person ratio is 4.14 ha / person. However, if the population figures are only related to the land not classified as forest land, the resulting land / person ratio is 1.93 ha / person.

Some important land tenure issues in West Kalimantan have been summarized in the following pages:

Written law versus Adat law

The BAL recognizes the rights to the Adat community under hak ulayat. In principle, hak ulayat allows every member of the adat community to use the land and the products of the land. This hak ulayat can be made valid taking the following three aspects into consideration:

- „that there is still a holder of traditional rights of control over the land who maintains the traditional ways,
• the authority of the traditional rights holder is still acknowledged and obeyed by the adat community,

• the adat community is conscious of a boundary that separates their local hak ulayat from the hak ulayat of a different community."

At the same time, hak ulayat should not be in conflict with national interests and the interests of the people of Indonesia according to the BAL. The Basic Forestry Law does not recognize the existence of a hak ulayat.

As already presented in more detail in section 3.4., there are maximum limits for land holdings under ladang and sawah agriculture which are dependent on population density. For West Kalimantan and the District of Sanggau, which belong to the low density category (1-50 persons / km²), the maximum for sawah land is 15 ha, and 20 ha for dry land. These upper limits must be taken into account if land is to be registered.

The Dayak communities follow the parental system, i.e. men and women have the same inheritance rights. There is no difference between written law and adat law for the Dayaks. The basis for obtaining control and possession of land in the Dayak community is that male and female heirs live in the parents’ house (or in a rumah panjang).

The rights to land are dispensed according to adat law in the Dayak community. Individual rights to land are acquired through the clearing of an allocated land parcel. This is still the case today, and new family couples especially acquire individual rights to a parcel of land this way.

Some regulations for the strengthening of Dayak land ownership rights are disadvantageous. If parcels are to be registered individually, the adat leader or village head must confirm that the landholder is a member of the adat community and holds individual rights to the parcels. Along with this it is a lengthy process since an official letter granting the right must be issued by the governor.

**Adat institutions for conflict resolution**

In spite of the great diversity of the Dayaks with more than 200 different small groups, common ground and similarities can be found in their power structure. In a hierarchical structure, the Temenggung (Royal Official) is the highest leader at the pinnacle of a Dayak tribe. He stands above the Patih or Menteri (Minister), and they in turn stand above the Pengurus Adat (Governor). There are of course different variations and one also finds special officials in some Dayak communities, for example an official in charge of oaths called Bilal Tomang of the Dayak Merui tribe.

In the district of Sanggau there are only 23 Temenggung left who are no longer today in charge of one Dayak tribe as they used to be, but instead preside over several tribes. This is the result of a Gubernatorial Decree where the Governor as the head of the provincial Government, decided that only two groups of traditional functionaries, namely Temenggung and Pengurus Adat would represent the issues of the adat communities within the framework of the simplification and restructuring of traditional power. Thus a Temenggung was positioned in one district village and was in charge of several „dusun“. This Temenggung is superior to the Pengurus Adat of the various adat communities. „In this specialization process, traditional power was not destroyed, but also acknowledged to exist. This is apparent from the letter of Promotion from the Governor, especially for the position of Temenggung. The letter of promotion („Surat Pengangkatan“) was published after a public election was held, because in any case it was acknowledged that the Dayak society - which still has a strong attachment to the adat norms - would be more likely to follow the decisions of an adat functionary."

DHARMAWAN, however, sees a clear weakening in traditional power here: „Under the strong influence of the UUPA and powerful government regulations, the head of the tribe has less power to exercise control on the land in his regions.‘‘ The Governor’s decree sets down in case one of the Temenggung who was promoted by the Governor’s decree dies, there will be no new promotion. Thus, traditional power will die out in the future along with the Temenggung. Through the restructuring of traditional power by the provincial government, the role of the Pengurus Adat has become very strong. They now have various functions to fulfill for which there used to be a multitude of adat functionaries under the Temenggung. The Temenggung has rather more to fill the role of a „coordinator“ who makes decisions if the problems cannot be solved by the Pengurus Adat. Temenggung can also take oaths from community members („sumpah selam air“ or „sumpah selam tali“) in order to find out the truth. In many villages in which a Temenggung can no longer be found, the Pengurus Adat takes over his function (for example in Lubuk Sabuk).

The hierarchical and autonomous authority of the Temenggung also appears in conflict resolution. If the conflict cannot be resolved at a lower level, the next highest level of decision is brought in. The highest level for decision making is the Temenggung. These mechanisms for resolving conflicts can be applied in the following
conflicts:

- Exploitation / use of land by a second party, which has been already cleared by the first party
- Disputes over the boundaries of land or ownership disputes
- Permission for the opening of new land
- Destruction of plants / trees by another person
- Letting tree branches fall on the road, and not being removed
- Theft
- Taking another man’s wife

As a rule, these conflicts are dealt with by the adat functionaries under the Temenggung, and the Temenggung is only asked for advice if no resolution can be found at this level. The Temenggung possesses the autonomous power of decision in the following cases:

- Manslaughter or murder

  In the case of manslaughter, the punishment imposed is called sekati nyawa, where goods equated to the value of the parts of the body of the victim must be surrendered, and in the case of murder, it is sekati delima, where goods equal to three times the value of the punishment required for manslaughter must be surrendered.

- Overstepping the boundaries of an adat area controlled by another tribe.

„Vacant“ land

The government and the „newcomers“ (individuals from different ethnic origins, and agro-businessmen with commercial agricultural and forest plantations) view fallow land within the confines of shifting cultivation as „vacant“ or „unused“ land. Thus it passes automatically to the State according to Indonesian law. The State can then award the land to commercial farmers and business people for agricultural and forest plantations.

Immigrants have also tried to use this „vacant“ land.

On the other hand, the Dayaks believe that they have ownership rights to the resources since they have received these rights from the traditional functionaries and see no reason why they should have to have these rights recognized as „their“ ownership rights again in a lengthy and complicated procedure.

It is often overlooked that the Dayaks also use numerous products from „fallow“ land and of course use the land continuously. This, of course, differs from continuous use as seen from the official side which is that „tree crops must be planted in rows and preferably as a monocrop“. In some regions, this has led to the Kenyah Dayaks, for example, planting their trees in a row so that government officials will acknowledge that the land is being used and is thus owned. This change leads, of course, to less sustained, unstable and unproductive forms of land use in contrast to the complex, mixed cropping agroforestry systems. „Acknowledgment and formal clarification of shifting cultivators‘ claims to land is an important prerequisite for environmentally suitable forest management which incorporates the knowledge, abilities and rights of the indigenous people.“

Agricultural land versus forest land

The Consensus Forest Land Use Plan (Tata Guna Hutan Kesepakatan (TGHK)) was passed in 1984. Through the classification at the time, wide areas of land were declared as state forest. This land-use regulation not only reduced the amount of land suitable for shifting cultivation; it also led, for example, to land under hak ulayat or other adat land now being in state forest. According to the Basic Forestry Law, there are no personal rights in these state forest areas (Kawasan hutan), and the BPN cannot issue land certificates.

This means that as long as the land is classified as forest and is subject to the Forestry Department, no individual or communal property rights can be registered under the BPN.
Individual rights and communal rights

In section 3.5., attention has already been drawn to the fact that individual rights and communal rights cannot always be clearly differentiated. There can be a whole range of rights from pure communal rights (which can be available for fallow land under hukulat) to pure individual rights (which exist, for example, in the towns of the Sanggau District) which cannot clearly be regarded as the equivalent of individual or communal rights.

Individual rights to land are dependent on the status of individuals in the adat community to a great extent, and here one must differentiate between „insiders“ and „outsiders“. The following criteria can be used to differentiate between those two:

- member of the lineage of the said Dayak group
- through marriage, both males and females might become „insiders“. Following an inter-tribal marriage, the pair can choose if they live with the family of the husband or the wife. After the presentation of a gift, the husband / wife is accepted as an insider in the district of his / her partner. But they also retain the right of inheritance from their parents if they should end up returning to the parental community.
- an „outsider“ can become an „insider“ through „adoption“ which results from a „plate giving“ ceremony. Following this ceremony, such people may clear land and receive certain insider rights.

An „insider“ can have the following rights:

„Ownership rights“
- The Pengurus Adat is asked for permission to clear land and where this land may be cleared. After that, a boundary sign is erected which is accompanied by a „ngusak“, „ngudas“ of „motan muat“ ceremony. The clearance of the forest land indicates the beginning of the „slash and burn“ cultivation. The person who clears the land has the „ownership“ of this parcel of land. The land must be continuously worked on. Part of this is a fallow period of 5-10 years following on after about 3 cultivation periods, but the signs of ownership (a big tree or a hut) remain on the „fallow land“. The owner can sell or bequeath the land whereby a sale can only be made to an insider and only takes place as a rule in the vicinity of growth centers. The land can be bequeathed equally to sons and daughters. The only condition is that the prospective heirs live in their natal homes.

„Rights of use“
- Land can be used for a set period of time. This right can be awarded to an „outsider“ and also to a family member who is already married and has left the family home.

„Rights to enjoy produce“
- This means the awarding of the right to trees and their products.

Trees and their products on tanah tembawang land can only be harvested by the heirs of the owners of tanah tembawang. In adat forest areas, only the „insider“ can use the forest products. Dayaks differentiate between the rights to land and the rights to trees. This means that the tree is looked upon as the property of the person who planted it, regardless of who owns the land. However, there can be restrictions as to how many trees may be planted on someone else’s land. It has been reported from the Kenyah on East Kalimantan that they are not allowed to plant more than ca. 10 trees on someone else’s land. The rights to trees are likewise not an absolute right: „Anyone is allowed to pick someone else’s fruit to satisfy hunger on the spot; but one is not permitted to take it home, sell it, or destroy it without special permission. Similarly, plants from people’s forested fallow lands which have useful parts (e.g. banana leaves, medicinal plants, bamboo, pandanus) belong to the land owner.“ (See also box 7 with an example from Long Ampung / East Kalimantan.)

Box 7: Tree tenure on Long Ampung

An interesting story illustrates some important aspects of Kenyah tree tenure. A man owned a fruit tree along a path on Long Ampung, and another man came by one day and „illegally“
Watas ompuk is the term amongst the Dayak in West Kalimantan for communally owned land. This is primary forest land which has not yet been cleared for swidden cultivation and is limited by the boundaries with other adat communities. The villagers know and respect these boundaries between the communities.

Watas oko (my land) is the term for individual land ownership. This is the term for land which the individual has cleared within the watas ompuk. Bawas is the term for „fallow“. This fallow land is newly cultivated after 5-10 years dependent upon soil fertility and secondary vegetation. This means that the individual owns about 5-10 „parcels“ which he uses in a „rotation cycle“.

Along with watas oko, the Dayaks have further terms for forest land within the watas ompuk which is prohibited to cultivate:

- utak sunge: forest land around springs (watershed area)
- penyaren: very old cemeteries
- hutan adat: customary forest reserved for the provision of building timber
- land reserved for cemeteries

Protection of ecological values versus the need for food and other produce

Through the strict application of the legal regulations for the management of ecosystems and the protection of conservation areas, illegal use has been made punishable, and thus „legal“ traditional utilization rights have been restricted. The further planned extension of protected areas of land in Indonesia and the further increasing value of (plant)genetic resources in the future means that adat communities can expect further restrictions, while on the other hand their demands on food, timber and non-wood products is growing with the increasing population numbers.

Rights of adat communities versus the resettlement of excess population from other islands

The spontaneous and planned resettlement of population groups from the densely populated islands to the „outer islands“ is bound up with lots of problems (which are set out in the next section). In the Sanggau District alone, more than 17,079 people have been resettled under the transmigration program.

The local government is planning to integrate a self-supported transmigration program (Transmigrasi Swakarsa Mandiri, TSM) into the region of the PFMA. This implementation of the TSM will lead to at least two problems:

- As a rule, participating transmigrants ought to receive a land certificate after three years, but this is not allowed in forest areas.
- If the transmigrants are given land certificates, the „original inhabitants“ will also make claims to this land.

Rights of adat communities versus commercial agricultural and forestry land uses

The adat communities set the boundaries of the territorial lands through the „historical experience of the founder“. The boundaries are dependent upon the rotation of the crops and the utilization of forest products. They are usually separated from other adat communities by distinctive land marks such as mountains, rivers, large rocks, high trees and huts. Cropping and gathering activities have been carried out on these territorial lands for generations and have led to a „magical relationship“ between the Dayaks and their territorial regions.
The boundaries of the adat areas have approached the administrative boundaries of the desa or dusun in the course of time in particular with the building up of villages and their administrative boundaries. Thus the boundaries of adat areas are the same as the village boundaries in some Dayak communities. But as a rule, the boundaries of adat areas are still in existence and are known well to the individual members even if administrative village boundaries have been drawn inside this adat area.

Following the re-structuring of the adat authorities as already mentioned above, there have been alterations to the boundaries which are controlled by a Temenggung. According to the re-structuring, a Temenggung can be in charge not only of one Dayak group, but rather of several, and thus his sphere of influence can extend beyond the regional boundaries of an individual adat group.

Registration of Land

Thus far, only inhabitants in the villages which border onto the state road connecting Kambayan and Balai Sebut, such as Sejua, Mobui, Bantai and Majel in the project region of the SFDP have applied for land certificates from the BPN. Those applications are usually only for land for houses.

In Bantai, 58 land certificates are supposed to have been issued by the BPN under PRONA by 1995. In addition, 39 land certificates have been issued to the participants in a rubber plantation under the People’s Rubber Regeneration Project (PPKR) by the BPN which will be held by the PPKR until the participating farmers have paid back their credits.

Only a few land certificates have also been issued in the project area of the KUF. These are also certificates for land for houses as a rule. In the 80s, the government tried to register individual parcels in the confines of the intensification program for rubber and cocoa cultivation.

Pressure on land in the border regions of Sarawak / Malaysia

In the project area of the KUF near the border of Sarawak, cocoa and pepper are cultivated all along with rubber trees. Cocoa and pepper have a high value in the markets in Malaysia. At the same time, swidden cultivation is still practiced which is significant not only for subsistence supplies, but also for traditional belief, ritual and ceremonial activities.

Individual land rights are strongly marked in this regions and reflect the economic value of the land in the community. If a person rented in land from another villager, the tenant must plant rubber trees on this as a kind of compensation to the land owner before the land is returned. In so doing, the owner of the land becomes the owner of the rubber garden (adat penyasih). Here, the influence of the nearby capital of Kuching in Malaysia, which can be reached on the „highway“ in about a three-hour drive, is distinct. The economically favorable location attracts many people to the region of course, which „may push the farmers into giving up or selling their land and to moving up to the forest areas“.

Participatory Forest Management Area (PFMA) of the SFDP

A model project for the establishment of a long-term, sustainable, multiple use forest management system is the Indonesian-German Social Forestry Development Project (SFDP), Sanggau District, West Kalimantan. The SFDP has supported the local population in getting a concession for an area of 103,000 ha from the Ministry of Forestry. The area of land involved is land identified as state forest until now on which 17,000 people live in 50 settlements. The types of vegetation vary from grassland (result from clearing with fire), through agricultural land to primary forest.

The villagers have formed a „communal association“ for getting the concession and for cultivating the land. A formal agreement between the Ministry of Forestry and the communal association for participatory management of the model concession was signed. This participatory model concession is looked upon by the Indonesians as an important example for „a development of „local people participation“ model in the management and utilization of public production and protection forests in West Kalimantan“.

7.2 Scope and results of the transmigration programme

Introduction
Resettlement programmes began in Indonesia in 1905 and after that they developed into perhaps the most extensive State-planned settlement programme worldwide. The first 155 families were resettled in that year to Gedong Tataan in Lampung Province, South Sumatra. Under Dutch colonial rule, just on 240,000 people had been resettled by 1941, of those 175,000 to Lampung Province as well as to other regions in Sumatra and to Sulawesi. In the post-independent era between 1951 and 1969, a further 400,000 became resettled under the State-planned migration programmes.

The transmigration programmes received high priority with the first Five Year Plan (REPELITA I). Within the framework of REPELITA I (1969 / 70 - 1974 / 75), around 46,000 families were resettled, and 88,000 were resettled during REPELITA II (1974 / 75 - 1978 / 79).

The intensity of the transmigration programmes increased at the end of the 70s. Within the framework of REPELITA III, 366,000 families (ca. 1,500,000 people) have been resettled by the State. In addition to this there are 170,000 families who are “unassistant Transmigrasi”. Of those, 300,000 families have been resettled mostly from Java, but also from Madura, Bali and Lombok as well as around 66,000 families within the Provinces. The major percentage of the migrants (62 %) has been resettled within Sumatra, 19 % within Kalimantan, 14 % in Sulawesi and 5 % in Irian Jaya.

Within the framework of REPELITA IV (1984 / 85 - 1989 / 90), 750,000 families were supposed to be resettled, of those 330,000 as spontaneous transmigrants, and 550,000 families were scheduled for resettlement in REPELITA V (1989 / 89 - 1994 / 95). But the high projected goals have not been reached because of financial, administrative and executive constraints.

At present, about 50,000 families per year can be resettled with national funds.

Objectives of transmigration

Transmigration is supposed to contribute to the solution of a completely diverse set of tasks. These range from providing quick accommodation for flood victims to creating better living conditions for the unemployed and homeless people of Jakarta. The following transmigration programme objectives can be differentiated:

- Reduction of the pressure of population on the inner islands (Java and Bali)
- Economic development of the outer islands
- Securing and / or increasing food production
- Creation of new jobs
- Technology transfer to ethnic minorities
- Integration of ethnic groups within the framework of „nation building”
- Strategic securing of border regions

Types of transmigration

There are four types of transmigration:

- Official transmigration (Transmigrasi Umum)

  This form is organized and financed by the State. In the colonial period, the transmigrants were provided with 1 ha of irrigated land per family. In the period after Independence, each family received 2 ha of land consisting of a 0.25 ha large yard, an already cleared parcel 1 ha in size, and a parcel not yet cleared 0.75 ha in size. Further, each family receives state support in the form of farming implements, seed and fertilizer as well as enough basic food for 1 to 2 years. The State takes care of the health and education infrastructure in the project areas.

- Spontaneous transmigration (Transmigrasi Swakarsa)

  This form as a rule is not or only partially supported by the State. The transmigrants are, however,
allotted a piece of land in the resettlement area. The percentage of this group has constantly grown during the last Five Year Plans.

- **Transmigration of the local population (Alokasi Pemukiman Bagi Penduduk Daerah Transmigrasi (APPDT))**

  Within the framework of the transmigration projects, a certain number of local families in the target area are considered for resettlement.

- **Relocation and settlement of „Perambah Hutan”**

  The programmes for resettling indigenous people onto permanent sites are organized and financed by the State.

**Schemes for resettlement**

*Various farming schemes have been used for resettlement over the years:*

- Irrigation schemes
- Swamp reclamation schemes
- Rainfed schemes
- Cash crops

Irrigation schemes were based during the colonial period on new large irrigation schemes on the outer islands, and in the post-independent era, resettlement predominantly took place in those regions which in principle seemed suited to irrigation projects.

During REPELITA IV, transmigrants were predominately put onto rainfed schemes (80%). Almost one fifth (18%) of the families were at the same time resettled onto Swamp Reclamation Schemes. These areas of land were scarcely populated and were thus relatively free of land claims. These Swamp Reclamation Schemes, however, had other problems (such as flooding, salination, too out of the way for off-farm jobs).

Since the end of the 70s, 2% of transmigrants have been resettled onto cash crop schemes. The central core of the PIR (Perkebunan Inti Rakyat or People's Nucleus Plantation Scheme) are State Nucleus-Owned Estates which support surrounding small-farms in cultivation, processing and marketing. For the resettlement of transmigrants, special transmigration PIR (Trans-PIR) have been developed within the framework of REPELITA III.

- **Trans-PIR**

At the end of REPELITA III there were 26 PIR-KHUSUS Projects (from a total of 57 PIR Projects) which were specially intended for transmigrants. Under PIR-KHUSUS Projects, the participants receive 3 ha of land which in ideal cases are grouped around the (core)plantation (INTI). Of that, smallholder families (PLASMA) take up 70 - 80% of the total area of these Nucleus-Estate Plantation Schemes. The following are the three different steps involved in the setting up of the PIR Projects:

- planting of PLASMA land, the takeover of new technology by the participating farmers
- conversion of plots into the ownership of the farmers and issuing of a title (hak milik).
- repayment of credits by the participating farmers (costs of land, houses, roads, tree crops, etc.)

In this case, the smallholders must pay back the development costs. Repayment of credits begins in the sixth year, and the total amount must be paid back after 17 years (in the case of oil palms or cocoa plantations). Rubber, oil palms, coconut palms were planted first and foremost in PIR-KHUSUS as permanent crops as well as sugar cane, tea, cocoa and cotton. A successful example for a PIR / NES project was the NESP-OPHIR project in West Sumatra combining financial and technical cooperation (see box 8).
Box 8: A successful project combining financial and technical cooperation: „NESP-Ophir” in West Sumatra

Within Indonesia’s regional development planning, the sparsely settled area in the District of West Pasaman / West Sumatra was identified as a potential region for setting up an oil palm plantation in 1975. The infrastructural development of the area by the West Pasaman Road (Financial Cooperation Project) favored opportunities for producing high-quality agricultural products. After clearing land rights in this region through the Indonesian government, the land was prepared for the development project. Each settler was allotted 2 ha land for oil palms and 0.5 ha for a home garden. The new settlers were provided with houses (36 m²) with a latrine and water supply. Village streets and community facilities (schools, medical stations) were constructed.

The OPHIR Project was bedded within the Indonesian government’s NES / PIR concept. But it further was extended to involve the component „participation” (= NESP). In choosing the settlers, attention was paid to a heterogeneous composition of settler groups in the various plantation sections so that the specific experience and behavioral patterns of the different people and ethnic groups would be advantageous for the various tasks of the self-help organizations. Around 35% of the places for settlers were reserved for veterans. The heterogeneous composition of the settler groups and in particular the participation of people with organizational and administrative skills as well as the willingness and ability of many settlers to take responsibility and leadership in the farmers’ organization was a decisive basis for the high degree of self-administration and participation of the settlers in the course of the project.

Emphasis must be placed on the successful combination of financial and technical cooperation within this project. Components of the financial cooperation were the setting up of an oil palm plantation complex of 6,000 ha, i.e. 1,200 ha for the nucleus plantation, and 4,800 ha for the 2,400 small farmers. This includes the infrastructure facilities (houses with water supply, community facilities, village streets, plantation roads) as well as the construction of a palm oil mill with a capacity of ca. 36,000 tons of palm oil and 5,700 tons of palm kernels per year.

The technical cooperation supported the 2,400 settler families on the plantation in setting up and running a functioning farmers’ organization for the management of the oil palm plantation. An other central task of the technical cooperation was the agricultural extension. The common objective of the financial and the technical cooperation was the sustainable growth of the farmers’ incomes in this region. The OPHIR Project was successful both with regard to the material impacts (income, employment) and with regard to the functioning institutions and the impacts at the regional level.

The number of PIR-KHUSUS Projects rose to 58 by the end of the 80s in which 72,900 ha were intended as INTI land, and 207,000 for PLASMA land. However by, 1989 these plans could only be carried out to 47 % and 63 % respectively. By 1989, 47,979 families had been resettled under PIR-KHUSUS, whereby the percentage of the local population was about 6,600 families (7 %).

Insufficient selection criteria have led, amongst other things, to many participants in PIR-KHUSUS Projects only existing on paper. There are examples for South Kalimantan where only 5 % or 12 % or 34 % of the participants are either only formally registered, or have sold their land. It was even reported form North Sumatra in 1990 that around 80 % of all PLASMA land was in the possession of officials in administrative and scientific areas who work the land using casual labor.

- HTI-Trans and PHR-Trans

At the end of 1990, a joint decree was reached between the MoF and the MoTM for initiating so-called HTI-Trans programmes. Under this Hutan Tanaman Industri Transmigrasi Programme, 284,000 ha of forest land were scheduled for 1992 / 93, 57,000 ha for 1993 / 94 and around 34,000 ha for 1994 / 95.
The MoTM also developed a concept of „Pola Hutan Rakyat Transmigrasi“ or PHR-Trans for the transmigration of 1.7 million „Perambah Hutan“ (so-called forest squatter) families. Pilot programmes for the PHR-Trans were supposed to be started in East and West Kalimantan in 1995 where 4 ha were to be used for reforestation, and 2 ha were to be used for cash crops. These PHR-Trans programmes are planned for former HPH (Hak Pengusahaan Hutan or Right of Forest Exploitation) land in production forests and conversion forests. With this, the transmigrants ought to be supported by forest businesses (e.g. by P.T. Kumaldi in KALTIM) in questions of management. The businesses are supposed to buy up the produced timber.

Results of the transmigration programmes

Contribution to the reduction of population pressure

It was not possible to reduce the pressure of population even with the extensive transmigration programmes of 50 to 60,000 families (200 - 240,000 people) per year. So 1.5 % of the total population migrated away from Java during REPELITA III. This is about 15 % of the yearly growth of the population of Java.

Influence of the migrants in the target regions

The influence of the migrants in particular regions can be quite significant for the regions. This means that after resettlement, transmigrants represented more than 40 % of the population in 2 out of 66 receiving kabupaten, and more than 20 % of the population in 9 out of 66 receiving kabupaten. And in 4 of the receiving kabupaten, they represented 10 - 20 % of the total population.

Land ownership for migrants

It was not clear at first when the full ownership rights (hak milik) should be passed on to the migrants although the migrants were induced to transmigrate above all with the prospect of own land. Repeatedly there were delays because the land was frequently not free of claims, although the following was already valid in the 60s: „Transmigrants who have already been settled for at least three years in a transmigration project are to be given ownership rights to the land they have occupied and cultivated, in keeping with the stipulations of the Basic Agrarian Act“. The job of issuing land deeds was that of the agency for agrarian affairs (today the BPN), and not that of the transmigration authority. Of course, the plots of land have not been passed on to the smallholders after the three years are up since additional requirements are always being made before the land is finally handed over to the smallholder.

„The most insidious is that they prove to be ‘satisfactory laborers’ and to be willing to work and live on tree-crop holdings. Just how this level of satisfactoriness is judged is unknown and undocumented.”

The Bank of Indonesia additionally holds the land certificates as security until the credits taken out by the smallholders have been paid back in full. „These certificates, however, often turn out not to exist and so, even if repayment is made, maladministration and corruption deprives smallholders of documentary land security. And repayment often turns out to be impossible even if the smallholders qualify for hak milik.”

This means that receiving a land title is bound up with the economic performance of the smallholder. This performance is not always easy to fulfill under the conditions of a transmigration project, and the smallholders have no influence over „market conditions“ for cash crops. In addition, it is easier in the regions where individual property rights in the case of rainfed cultivation have existed for a long time to convert land into hak milik than in regions where the land is the ownership of the community.

Acquisition of transmigration areas

Disputes about resource rights have repeatedly led to conflicts between transmigrants and local population groups. The Government paid no compensation for the acquisition of land in the beginning. From the point of view of the Government, the advantages for the resident population (access to education and health institutions, additional employment opportunities, etc.) are compensation enough for land within the framework of the transmigration programme. The Government also feared an increase in land prices if it asked for land for the transmigration programme. This would only make the transmigration projects even more expensive. A further argument was that land titles were non-existent in many regions and thus it would be difficult to give an individual compensation in the form of cash for the acquisition of land.
In the box 9 the procedure for the acquisition of and compensation for 24,000 ha of land for a transmigration settlement project from the Aimas areas in Kabupaten Sorong on Irian Jaya is described, and is presented as a positive example. It is the documentation of a lengthy process with lots of meetings in which both parties involved agreed that the release of land was handled well. There are, however, many cases which present the exact opposite of this one.

**Box 9: Procedures Followed for the Taking and Compensation of Adat lands for a Transmigration Project in the Aimas areas, Sorong District**

<table>
<thead>
<tr>
<th>Community meetings. These were held at the Camat’s office, and included Adat leaders, the Camat, and representatives of the local agrarian, Transmigration and other government offices. Everyone present signs a document that they were „Present at a Meeting Concerning the release of Adat Lands Covering 24,000 Hectares” in a specified area. This document is not in itself a release of any land, but rather establishes a record of who was present at what meetings. It took ten or more meetings of this sort before the process went on to the next step.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Letter Recognizing the Release of Adat Rights in Land (Surat Pernyataan Pelepasan Hak Atas Tanah Adat) was executed by the people involved on a group basis, for the whole area of land. The format of the letter the Agrarian Office uses in Sorong is one they created themselves. It is very specific, including a release of all the crops and trees, but specifically excepting the sago groves.</td>
</tr>
<tr>
<td>A formal rights release ceremony (Upacara Penyerahan Resmi) was then held. The land was officially released, and the compensation paid, at this ceremony, witnessed by all local officials and the Chief Judge of the District Court.</td>
</tr>
<tr>
<td>The Bupati then decided on the specific location for the transmigration project, and forwarded the plan to the Governor for approval and the issuance of a Decision of the Governor officially describing and approving the location.</td>
</tr>
<tr>
<td>The location was then surveyed.</td>
</tr>
<tr>
<td>The local Agrarian office then submitted a request to the Minister of Domestic Affairs, through the Provincial Agrarian Office, for the issuance of a right of Management (Hak Pengelolaan) to the Regional Transmigration Office (Kanwil Transmigrasi).</td>
</tr>
<tr>
<td>The Right of Management was granted by a decision of the Minister of Domestic Affairs, through the Agraria chain of command.</td>
</tr>
<tr>
<td>The local Agrarian Office issued a title (sertipikat) to the Regional Transmigration Office.</td>
</tr>
</tbody>
</table>

Thus in practice there are frequently problems when opening up settlements on areas of land which are not free of prior claims. There were for example cases in Sumatra where individuals or groups with rights to a particular parcel of land would appear with claims to it after it had been initially opened up and cultivated by migrants. Thus, Marga groups in Sumatra have hereditary rights to large, unmapped tracts of land. There do not exist any records about these land rights and about the borders of these Marga areas of land, but de facto, there are no „free” areas.

There were further problems since shifting cultivators plant (valuable) trees on their cleared land. They abandon the land and move on, only to return some years (six or more) later in order to tap rubber, for example. If migrants have felled these trees in the meantime, or have harvested rubber for themselves, conflicts naturally arise with the local users.

Through the easier access of migrants to resources, and the support of transmigrants, discontent has arisen amongst the local population. Thus up to 10 % of transmigration places were awarded to the local population. This percentage was later increased to 20 %, and for the transmigration programmes on Irian Jaya, 25 % of the total number of places were given to the local population.
In summing up, it can be said that the ambitious objectives and expectations of the transmigration projects could only be insufficiently fulfilled because of financial, administrative and executive constraints.

8. Important development, reforms and programmes

8.1 Land orientation

The Indonesian Minister for Agriculture, Professor SJARIFUDDIN BAHARSJAH made the re-orientation of agriculture clear at a seminar of the Gadjah Mada University in May, 1993. The objective of the policy is the establishment of a commercialized agriculture in Indonesia which would lead to a more professional cultivation of agricultural land. The model for the agricultural structure is the farmer as entrepreneur who methodically applies bio-technical advances and contributes to a further rise in efficiency and productivity in the agricultural sector through the improved availability of State services.

The primary focus of agricultural policy is self-sufficiency in rice. But the agricultural policy also tries to diversify the production and to increase the non-rice food crops (palawija) and cash (estate) crops. Rice production already occupies the most fertile lowlands of Java, Bali, Southern Sumatra and Southern Sulawesi. Thus marginal lands must be developed for an increase in the production of non-rice food crops and estate crops. These include the tidal swamp lands on Kalimantan and Sumatra (about 35 million ha), as well as the alang-alang grasslands (about 15 million ha) and the critical uplands which are susceptible to erosion on Java and Bali (about 10 - 40 million ha).

The spread of estate crop plantations will additionally require the conversion of forest areas. This means that agricultural uses compete with forest uses in many places. According to official submissions, 3 million ha of state forest land have been converted to agricultural estates, and used for transmigration and infrastructure purposes in the last 3 years.

The present area of state forest land covers 140.4 million ha, consisting of 113.8 million ha as permanent forest lands, and 26.6 million ha convertible forest lands. Of the permanent forest areas, 64.3 million ha are classified as production forests, 30.7 million ha as protection forests, and 18.8 million ha as conservation forests.

Along with a stable timber log production, it is the objective of the MoF to extend plantation forests (Hutan Tanaman Industri (HTI)). The HTI will be extended to 6.25 million ha in the long run, and will contribute to the supply of industrial wood, land conservation, the reafforestation of unproductive forest land as well as providing job opportunities.

For the protection of the biodiversity and nature conservation, further areas of land will likewise be made available in the future. For example, further Nature Reserves and National Parks are being planned. By the year 2000, 40 National Parks ought to have been established.

Forestry and agricultural areas of land are more strongly required for urban purposes in the course of economic development. On Java alone, land used for agriculture has been reduced from around 6.4 million ha to around 5.5 million ha in the last ten years. In urban fringe areas, new land development and settlement concepts are required for the improvement of urban development.

8.2 Land use management

The efficient allocation of land resources is a central aspect of agricultural and social development in Indonesia. This necessary allocation is, however, made more difficult by the fact that Indonesia is so spread out, and by the information basis which is still unsatisfactory.

There is no coordinated programme for land use management in Indonesia. A systematic securing of agricultural land which is highly suitable for agricultural utilization in contrast to other utilization forms does not exist. Forest areas come under the Forestry Department and their classification was introduced in the early 1980s with the „Forest Land Use by Consensus“. Priority uses of land are established here.

Apart from some exceptions, non-forest areas are under the BPN. Amongst these exceptions are areas under
the Ministry of Mines as well as areas under the Ministry of Transmigration and Forest Squatter Resettlement.

In many regions, activities on the land overlap. Thus it is that conflicts in these places occur again and again since land or resource claims are always announced by different interest groups. Shifting cultivators lay claim to rights to areas which have been assigned to commercial timber concessionaires for a long-term period by the MoF. Further conflicts arise out of claims from shifting cultivators to areas which are earmarked by the Ministry of Transmigration and Forest Squatter Resettlements as transmigration areas. Conflicts are also pre-programmed by the increased demarcation of National Parks and the simultaneous limiting of the resource rights of the local people. There are no clear rules for „vacant“ land. It is often regarded by the government as unused sites and thus as state land whereas the areas is used by the local communities, either temporary or permanent, for gathering specific forest products, or as reserve land, and thus regarded as „their“ land.

Various settlement concepts have been put into action by the GOI in rural areas in recent years. At the end of the 70s, PIR (Perkebunan Inti Rakyat) programmes for settling transmigrants were carried out. These programmes were supplemented with new programmes at the beginning of the 90s. Amongst these were the so-called HTI-Trans programme and the PHR-Trans programme. 284,000 ha of forest land were set aside for the HTI Transmigrasi programme in 1992 / 93, 57,000 ha were set aside for 1993 / 94, and 34,000 ha in 1994 / 95.

PHR-Trans projects were planned for the settlement of „perambah hutan“ (so-called forest squatters) by the Ministry of Transmigration and Forest Squatter Resettlement. Pilot programmes for the transmigration of 1.7 million „perambah hutan“ were to be carried out in East and West Kalimantan, amongst other places, in which 4 ha of land on individual farms were to be reforested, and 2 ha were to be used for cash crops. These projects are supposed to be carried out on former HPH (hak pengusahaan hutan) areas in production and conversion forests.

There are also no coordinated programmes for land use management in urban fringe areas. Through the division of properties and unregulated construction, unplanned conversion from agricultural to non-agricultural utilization takes place. Various land development and settlement concepts are put into action as land management techniques.

One concept for the improvement of urban development on rural land in selected urban fringe areas is the „Guided Land Development“ (GLD). The GLD is supposed to get the Government to provide the necessary infrastructure in the form of roads, water supply and sewage, and thus to guide the land development before private urban development begins. The layout of the plans ought to take place in consultation with the landowners and the local officials (kepala desa).

Too often there is a lack of clear information about land both in rural and urban areas. Various activities for the improvement of the situation are being undertaken in this area. With this, the Indonesian-German Project LUPAM is supporting the introduction and dissemination of new technology for an efficient allocation of scarce land resources in the areas of land use mapping, GIS, monitoring and land allocation.

A further concept, rural and urban land consolidation, will be extensively discussed in the next section.

8.3 Land consolidation

Indonesia has more than a decade’s experience in land consolidation and was the first Southeast Asian country to apply this technique. The first L.C. project was suggested for Bali in 1979 and was completed in 1985. Between 1979 and mid 1993, 102 L.C. projects have been carried out in 25 provinces. 6,230 ha of land, 38,210 land parcels and 31,740 land owners have been involved.

The following are the desired objectives of L.C. according to the State Minister of Agrarian Affairs / Head of the National Land Agency, Mr. SONI HARSONO:

1. „The provision of land for the construction of basic economic infrastructure and facilities needed for the development of rural and agricultural areas in question, as well as the neighboring urban areas to facilitate the provision of services necessary for the surrounding total and agricultural areas;

2. The intensification of the use of lands already designated for the development of agriculture production corresponding to the existing local and regional spatial plan;
3. The drive towards the promotion of people’s participation, especially the active involvement of land consolidation participants in the process of preparation, planning, implementation and control of the project, as well the maintenance of infrastructure constructed for their direct benefits;

4. Land consolidation should be implemented in the framework of the development of economic well-being of the community;

5. In the process of accomplishing those objectives, re-arrangement of land tenure and ownership shall be simultaneously carried out to substantiate legal security of land rights belonging to the landowners or project participants."

Legal bases

The legal bases are the Basic Agrarian Law No. 5 / 1960, the Spatial Use Management Law No. 24 / 1992 and the Law on Housing and Settlement. Various instructions, regulations (e.g. the BPN regulations No. 4 / 1991) and directives are in force. At present, Government Regulations for Land Use Management and for Land Consolidation are being worked out.

Institutions involved

The BPN has the mandate for carrying out L.C. projects. Land consolidation is related to Deputy II, the Directorate of Land Tenure Arrangement. The BPN can be supported in the planning and execution of L.C. projects by other Government institutions as well as further institutions and persons:

- The Local Government
- Public Works
- BAPPENAS at the national level
- BAPPEDA I at the provincial level
- BAPPEDA II at the regency / municipality level.

The central government is responsible for the framework legislation and gives guidance in the planning and implementation of L.C. projects.

The task areas of the provincial offices of the BPN are the initiation and control of the L.C. projects. The district offices of the BPN prepare the L.C. projects and implement them. At the provincial level, a „controlling committee“ is employed under the chairmanship of the Head of the First Level Regional Land Office (Kakanwil BPN). Along with the chairman, the following Representatives are present:

- The Head of the Regional Development Planning Board (Ketua BAPPEDA), vice chairman
- The Head of the Land Tenure Arrangement Department (Kabid PPT), secretary
- The Head of the Regional Government Guidance Bureau (Karo Bina Pemerintah)
- The Head of the Land Use Department (Kabid PGT)
- The Head of the Land Right Department (Kabid HHT)
- The Head of Regional Public Works (Kadis PU)

A so-called „Coordinating Team“ is formed at the Regency / Municipality level comprising the following members:

- The Regent / Mayor, Second Level Head (Bupati / Walikota), Chairman
• The Head of the Regency / Municipality Land Office (Kakan Pertanahan Kab / Kodya), Vice chairman
• The Head of the Second Level Development Planning Board (Ketua BAPPEDA II), Vice chairman
• The Head of the Land Tenure Arrangement Section (Kasi PPT), Secretary
• The Head of the Land Use Section (Kasi PGT)
• The Head of the Land Right Section (Kasi HHT)
• The Head of the Land Measurement and Registration Section (Kasi P2T)
• The Head of the Second Level Regional Government (Kabag Pemerintah)
• The Head of the Second Level Public Works (Kadis PU)
• The Head of the Second Level City Planning (Kadis Tata Kota)
• The Sub-District Head (Camat)
• The Village Head (Lurah)
• Two persons of the Land Owners’ Representative

This committee makes the decisions about location and block / site plans. Since the landowners play a considerable part in L.C., their consent and support are a basic precondition for a successful L.C. project. Their involvement in the field, in the planning and carrying out as well as the maintenance of L.C. is essential (see as the section about the involvement of people). L.C. takes place within the existing framework of physical planning which demonstrates the land use of various areas. The provincial and regency / municipal planning policy is particularly important for L.C. At the Province level, the Province plan RSTRP (Rencana Struktur Tata Ruang Propinsi) lays down the directions of spatial planning under the planning authority BAPPEDA Tk I through schemes for settlement extensions and preferential zones.

At the Regency level, the guidelines of the Government for land utilization in Regency areas are settled under the planning authority BAPPEDA Tk II in the regional plan RUTRD (Rencana Umum Tata Ruang Daerah). The urban spatial plan RUTRP (Rencana Umum Tata Ruang Pekotaan) sets out the fundamentals for the securing and forming of urban areas. The plan RUTRK (Rencana Umum Tata Ruang Kota) for cities earmarks land use. It forms the framework for the entire urban-structural measures.

Implementation of L.C.

The ideal and typical execution of L.C. projects is supposed to run according to the following steps for urban and rural areas according to the BPN:

**Urban areas:**
- a) choosing the location
- b) information
- c) approaching agreement
- d) decision on the location
- e) presenting proposal list planning of L.C. activity
- f) subject and object identification
- g) surrounding measuring / mapping
- h) detailing of measurement / map
- i) measuring topography and mapping the land use
- j) making block plan / predesign of spatial plan

**Rural areas:**
- a) choosing the location
- b) information
- c) approaching agreement
- d) decision on the location
- e) subject and object identification
- f) presenting proposal list planning of L.C. activity
- g) selecting the right obtainer candidates
- h) surrounding measuring / mapping
- i) detailing of measurement / map
- j) measuring topography and mapping the land use
A special problem is the fact that the Public Works Department is responsible for drawing up the infrastructure. This can mean that the BPN carries out the block plan by staking out the roads, but if the Public Works Department does not begin with the construction work, the project is indeed complete for the BPN, but of course it has not been completed in practice.

**Involvement of the people**

L.C. intrudes upon the land rights of the owner, and multi-functional objectives are connected with L.C. These objectives can serve individual and / or public interests. It is therefore significant that the land owners who are involved in L.C. are certain that their rights are protected. For the active participation in L.C. projects, the flow of information from those responsible for the project to the land owners and vice versa is extremely important. The participants must have faith in those responsible for the project and in the planned measures, and must be convinced that they can expect to reap the advantages of this L.C. project. If the exchange of information is continuous in all phases of the L.C. project between the project organizers and local leaders as well as the participants, the danger of difficulties and problems arising is slight. The greater the willingness to participate, the slighter the number of future disputes, and lengthy court cases which can lead to year-long delays and increased costs can be avoided.

In Indonesia, an L.C. project can be carried out if at least 85 % of the land owners have given their consent, and if at least 85 % of the land of the total project area is involved. To ensure the support of the participants, it is necessary to establish a community institution. This can be a foundation, cooperative, or association, etc.. Such an association can take care of the following functions:

- A forum of interaction among the landowners and the government
- An instrument to motivate the land owners to convince unwilling land owners and to follow self-financing projects
- A representative institution for making agreements with related parties such as government institutions, developers, banks.

Two examples here are intended to clarify the constraints and problems of urban and rural consolidation in Indonesia (see the boxes 10 and 11).

**Box 10: Urban Land Consolidation: The PB Selayang II L.C. Project in Medan.**

An area of urban fringe land, 78.9 ha in size, in Tuntungan District of Medan Municipality (about 7 km south of central Medan) was subdivided in 1989 into 510 parcels and plots of 445 land owners. The owners, who had cultivated the land for years, or even decades, claimed full ownership rights. However, officially they counted as “squatters” on state land which originally belonged to a plantation.

The land was partially used for farming, but large parts of it lay fallow, and on one part of it there were already 38 buildings, one of them being a primary school.
The BPN was responsible for this L.C. project and the BPN North Sumatra Provincial Office was in charge. The Provincial Office set up the Technical Team, the Evaluation Committee (Level I) and the Coordination Committee (Level II). The affected land owners, however, were not represented in the coordination committee.

A road layout and a re-plotting plan was drafted in September, 1989 and the plan was finally passed in December, 1989 after consultation with the landowners who then released their land to the BPN. In February, 1990, the landowners received their new parcels, and the title documents came in April 1990.

20 % of the land made available was intended for public facilities. Each parcel was to have access to public roads. Areas for a market place, a mosque, a church and for recreation were marked out.

The size of the new plots was 100 m², and as far as possible, the former land owners were given plots on the land they originally owned, or as close to it as possible.

The infrastructure measures for the planning were, of course, stuck to. This meant that no roads had been constructed by 1991. This in turn meant that the new plots had no access to roads, and the land has thus remained as unused agricultural land.

The costs of the project were born by the BPN and the land owners while the benefits are reaped by the land owners, Medan Municipality, and the community. The land owners made 20 % of their land available and paid a total of 6,000,000.- Rp for the issue of their land title certificates. The land owners gave up land with an estimated value of Rp 5,000.- per m² and got back plots with an estimated value of Rp 11,000.- / m² (Estimated value in Oct. 1989)

An area of 6,784.26 ha was to be reclaimed by the PTP Minanga Ogan for the establishment of a PIR project for producing and processing oil palm products. For the setting up of the oil palm plantation, plots of 40 ha were established which were to spread out over an area of 1,000 m (east-west) by 400 m (north-south). Streets were to be built for the transport of the necessary input and output between each 40 ha plot. Smaller parcels of land, each 2 ha in size, were to be made available to each family head inside the 40 ha plots. The areas of land which were earmarked were covered with secondary forest, bushes and grass with remaining trees of durian, rubber and other species. The land belonged to the Marga and was under hak ulayat since parts of this land had been used by individual families for many years.

About 1,000 owners with 2,630 plots were identified, and the Marga land had a range of 3,700 ha. The Marga chiefs considered this area of land to be under the influence of the Marga who had to be compensated for the land. But at the same time, local people insisted that they had been given this land for individual use by the Marga, and thus had individual rights to the land cultivated by them, and so ought to be compensated too. PTP Minanga Ogan thus not only compensated the Marga community for the 3,700 ha, but also the local people who claimed to have individual rights within the 3,700 ha.

Traditionally, „Marga Pacung Alas“ and „Angkat Sila“ had to be given as a present to the Marga community in return for the permission to clear the land. So the investor paid a „fee“ of 5,000 Rp / ha to the Marga community (1983). Each „land owner“ likewise received compensation, and payment was documented by the land owner with a photo on receipt of the payment.

A cooperative, KUD-Minanga was founded, and all villagers (and also non-villagers who owned land in the village) who wanted to take part in the Land Consolidation Project were registered along with the extent of the land and the land borders. The setting of the land borders was reached in agreement with all land owners while visiting the fields which were announced in the traditional way with the beating of a gong. Afterwards, the parcels of land were surveyed, also at the announcement of a gong, with a theolith and a compass.

The participants were prepared to relinquish 20 % of their land for facilities. This means that
Rural L.C. as well as urban L.C. is based on giving up land and re-plotting this land with the participation of the land owners. Land for public facilities may be more necessary (up to 40%) for urban L.C. than for rural L.C.

Since reduction can be of great significance in urban L.C., it is necessary to balance out the value of the land reduced by the consolidation of the land areas through the increased value of the newly set-out and registered areas of land. As a rule, the increase in value can only be realized, apart from the increase of value through registration, by the utilization of reduced parcels for urban purposes. But along with this, it is urgently necessary that the necessary infrastructure (roads, etc.) is made available. The construction of roads, etc. is not in the hands of the BPN which is in charge of L.C.

For those who still want to go on farming, it would be sensible if they could acquire plots of land outside the domain of the L.C. project. For this purpose, the Government could have „land banking“ where areas of land could be swapped with participants for L.C. projects.

An L.C. project is by no means concluded once redistribution has taken place. One of the most difficult tasks is securing the newly set-up structure which can be very quickly ruined again by inheritance practices, for example. If land will be bequeathed in equal portions, the fragmentation and the structure of the parcels can be unfavorably changed. This is not the case where land is only bequeathed to one heir, and the other heirs are given compensation.

Inheritance practices are strongly fixed in tradition and patterns of behavior as a rule, and changes can only be made with the greatest difficulty. If the disadvantages of fragmentation cannot be made clear to the land owners, there will be a structure in only a matter of years which will have unfavorable effects on further development.

In rural areas, L.C. is an instrument for optimizing the use of agricultural areas of land and other projects such as tourism, nucleus plasma estates, transmigration, highway construction, drainage and irrigation.

The State Minister of Agrarian Affairs SONI HARSONO underlines the future significance of L.C. in Indonesia: „Being one of the techniques for the arrangement and rearrangement of land tenure and land use, rural land consolidation has increasing importance in Indonesia. The rearrangement of land use and land tenure in rural areas, which are basically agricultural in character, is of the utmost importance in the present stage of our development efforts."

8.4 Registration of ADAT land rights

The exact extent of the non-forest areas under adat law is just as unknown as the extent of the forest areas claimed by adat communities. The latter are also looked upon as State land by the GOI.

How can the adat communities acquire secure rights to these non-forest as well as forest areas, and how can these rights be embedded in the Indonesian land registration system? For a better understanding of the possible approaches, the previous process of registration of adat rights will be briefly investigated. In so doing, one should bear in mind that an application for adat rights registration is almost never made by the members of the adat communities. A registration is usually only made when another party wants to acquire that land and wants to obtain a Basic Agrarian Law right to it.

In the box below, the steps are listed which have to be undertaken for obtaining a title to adat lands.

**Box 12: Procedures for Obtaining a Title to Adat Lands**
First of all, the person selling the land must execute a certificate of adat land ownership (Surat Keterangan Pemilikan Tanah Adat), in which he proves that he also really has the right to release and/or sell the adat land in question. This letter must be signed by the adat land owner, the village head (Kepala Desa), the subdistrict head (Camat) and the adat leader (Kepala Adat).

The buyer needs a letter certifying the Release of Adat Land (Surat Bukti Pelepasan Tanah Adat). This letter releases the adat land to the state as Tanah Negara. This intermediate step is necessary before the release of an adat land right to the person who wants to acquire a Basic Agrarian Law right can take place. Only after that can the land be transferred to the buyer. This letter must also be signed by the land owner, the village head (Kepala Desa), the subdistrict head (Camat) and the adat leader (Kepala Adat).

Then the buyer makes a formal surveying request (Permohonan Pengukuran) to the BPN office. Along with the Surat Keterangan Pemilikan Tanah Adat and the Surat Bukti Pelepasan Tanah Adat, an historical status of the land and a rough sketch map of the parcel and its boundaries must be submitted.

After the submission of these documents, an examination of this information is carried out by the Land Investigation Committee, and a report is sent to the BPN office about the status of the land (Risalah Tanah). The BPN office approves the request and carries out a survey for the drawing up of a map as soon as the necessary fees have been paid. This map as well as an explanatory letter, the so-called survey letter (Surat Ukur), must be displayed in the office of the Kepala Desa for at least 2 months. If no objections are raised in this period, the land is registered in a Land Book (Buku Tanah). The land is indeed registered at this point, but the buyer still does not have a legal title to the land. The BPN sends all the documents, including the proof of payment on to the governor for a final decision.

The Governor informs the BPN office about his decision (SK Gubernor). After that, the issuance of a land title (Sertipikat) takes place. The applicant receives a land title (Sertipikat) consisting of the Surat Ukur and the Buku Tanah. In addition, a letter verifying the land registration (Surat Keterangan Pendaftaran Tanah) is drawn.
up. This Surat Keterangan Pendaftaran Tanah is necessary for using the land as collateral or for obtaining a building permit (Izin Mendirikan Bangunan).

The procedures described have to be considered as a rule. There are, however, exceptions where the procedures do not take the course described above (e.g., taking land for development). Further exceptions are PRONA and some experimental “social forestry” initiatives.

In the following part, only more recent developments for registration and recognition of land rights to forestry lands under “social forestry” programmes will be gone into.

If adat communities live in forest areas, the two following possibilities exist for securing land rights:

1. The adat community, its subsistence economy and its tenure patterns must be recognized and a long-term, sustainable, multiple use forest management system must be created which is advantageous for both the local people and for the State institutions (long-term utilization rights).

2. The extent of adat land in forest areas and the individual or communal legal claims to this land must be investigated. Then these areas, which have been under Basic Forestry Law, must be “converted” into agricultural land so that they come under Basic Agrarian Law and can thus also be registered.

A model project for the way described in 1. is the Indonesian-German Social Forestry Development Project (SFDP), Sanggau District, West Kalimantan. The SFDP has supported the local population in getting a PFMA of 103,000 ha from the Ministry of Forestry. The area of land involved is land identified as state forest until now on which 17,000 people live in 59 settlements. The types of vegetation vary from grassland, through agricultural land to primary forest.

The villagers have formed a “communal association" for getting the concession and for cultivating the land. A formal agreement between the Ministry of Forestry and the communal association for participatory management of the model concession was signed. This participatory model concession is looked upon by the Indonesians as an important example for "a development of local people participation" model in the management and utilization of public production and protection forests in West Kalimantan: “People's participation in forestry management activities is one of the major forestry development objectives in Indonesia. Various programmes for local community involvement have been implemented successfully."

The examples cited by the MoF have, however, not have had the objective of registering individual or communal land rights, and have been classified by many authors as being strongly in need of improvement. At present there are no provisions for the registration of communal land rights. Even if the political will existed to register these areas of land, working out the legal regulations and implementing them would take up time in which communal land rights could be pushed back.

Various approaches have been undertaken by other national / international organizations concerning the land rights for local people in recent years. The WWF, for example, has compiled the boundaries of the local population in East Kalimantan with so-called “mapping”, and has compared the results with the “official” maps, such as land use maps and forest concession maps, so as to draw attention to possible sources of conflict potential, and to find resolution approaches.

COLCHESTER describes two further WWF projects in Irian Jaya which support the local people in securing the rights to their resources (see also the box 13).

Box 13: Wasur National Park

The WWF had documented a similar experience with the 13 villages inside the Wasur National Park in the forests and savannas in the south of the province. An initial mapping exercise demonstrated that the local tribes people have claims to the whole of the 413,810 hectare park and have well-established concepts of zoning and management. Overcoming initial local suspicions with the help of local peoples’ approval for the park by gaining formal written recognition by central government of their continued rights of residence and land use. Controlled deer hunting for sale in the local market has been encouraged, while parks teams and local people have collaborated in excluding outside poachers coming with rifles and motorized transport from the local urban centers. Since the park provides land security in a
8.5 The Land Administration Project

The Indonesia Government’s Land Administration Project has been running since 1995 with the support of the World Bank and the Australian International Development Assistance Bureau (AIDAB). The estimated costs of the whole project run to US$ 135 million of which US$ 81 million is a loan from the World Bank, and US$ 15 million is a grant from AIDAB. The project encompasses the following three parts: Part A assists BPN in accelerating land titling and registration as the first five-year phase of the GOI’s 25 year program to register all non-forest parcels in Indonesia. Part B should help to improve the institutional framework for land administration which is necessary for sustaining the program in the long term. Part C should support the GOI to develop long-term land management policies.

The main objective of Parts A and B is to foster efficient and equitable land markets and alleviate social conflicts over land. The objective of Part C is to support the GOI’s efforts to address issues having inter-agency, cross-sectoral implications over a long period. In the first years of the project, the main points of focus of the project will be in Java, in particular in West Java.

The BPN Offices will be supported in the implementation of accelerated land registration in the following areas:

a.) Systematic Registration Areas:

- West Java:
  - Kotamadya Bandung
  - Kabupaten Bekasi
  - Kabupaten Bogor
  - Kabupaten Karawang
  - Kotamadya / Kabupaten Tangerang
- DKI Jakarta:
  - Kotamadya Jakarta Selatan
- Central Java:
  - Kotamadya Semarang
- DI Yogyakarta:
  - Kabupaten Sleman
- East Java:
  - Kotamadya Malang

b.) Sporadic Registration Areas:

- West Java:
  - Kabupaten Bandung
  - Kabupaten Wonogiri
- DKI Jakarta:
- Kotamadya Jakarta Barat
- Kotamadya Jakarta Timur
- Central Java:
  - Kabupaten Klaten
- East Java:
  - Kotamadya Surabaya
- North Sumatra:
  - Kotamadya Medan
- South Sumatra:
  - Kotamadya Palembang

It has been planned for a later stage that land under „hak ulayat“ on non-forest land (e.g. in West Sumatra) will be integrated in the Land Administration Project. For the preparation of the registration of „hak ulayat“, adat land rights studies will be carried out in three chosen places to provide the GOI with a basis for the development of a strategy to address this issue. During this, data in particular about the extent and the boundaries of the „hak ulayat“ on non-forest areas will be gathered. It is assumed that a high degree of accuracy is necessary for Java, Bali and Sumatra while reasonable accuracy is necessary for Kalimantan, Sulawesi and Maluku, and approximate accuracy is necessary for NTT, NTB, Irian Jaya and Timur Timur.

Along with the promotion of systematic and sporadic registration and the intensive work with questions about adat land rights, the systematic review of land laws and regulations will be striven for in the project. The following areas will be reviewed in particular:

- Legal aspects of conveyancing and title registration practice
- Private land law
- Public and administrative law concerning land
- Practical aspects and skills concerning legislative drafting and
- Judicial procedure (i.e. law of civil procedure, in particular the law of evidence).

At the same time, a revision of the government regulation concerning land registration (PP 10 / 1961) will be tackled at the beginning. After that, a review of the key ministerial regulations concerning the systematic and sporadic titling and registration process in particular will be carried out, and at the end of Part A, a draft for the proposed Land Rights Act regulating private rights to land will be prepared.

### 9. Potential fields for development cooperation

In this part, some starting-points for development cooperation in the area of land tenure will be discussed. It should not be forgotten that land tenure and its changes must be seen not in isolation, but rather in a socio-cultural, political and economic context.

#### 9.1 Policy Dialogue

The policy dialogue could contribute to the following:
The awareness of the existing problems and the need to change land policy

Existing information gaps need to be closed and the flow of information needs to be improved. Centrally organized bureaucracies are too little aware of local structures and institutions for resource allocation and for the resolving of land disputes. The institutional communication and the institutional cooperation between the heterogeneous local institutions and the centralized state are so far insufficient. The flow of information from the local basis to the central powers has to be improved and the closer cooperation between local level institutions and the national level has to be strengthened.

Encouraging discussions on the future land tenure developments

The dialogue should be carried out with as many decision makers in the field of land tenure as possible. For this discussion process, the potential decision makers and the position they take up must be known at the national, regional and local level. To enable this, a long-term network of relationships must be built up and fostered.

The demonstration of various policy options

Various policy options with regard to land tenure developments ought to be demonstrated. Amongst these are:

- State Land Registry versus less formal approaches
- Basic laws with only a few and clear principles versus very detailed laws and regulations.

How do other countries in the region solve similar land tenure problems? Previous positive project experience gained in Indonesia or in other (Asian) countries also ought to be made available to the decision makers involved.

Encouragement of dialogue between donors

A better communication and coordination among the donors (World Bank, Asian Development Bank, etc.) is not only important for reaching a „more unanimous“ vision of land policy in Indonesia, it is also important for avoiding parallel developments and clashes.

The promotion of inter-institutional dialogue and close cooperation between the relevant departments at the national, regional and local level.

The areas of competency of the various departments involved are often unclear and lead to conflict potential.

The dialogue between the departments involved for exchanging information and improving cooperation should be improved. One example is the „Consultative Group on Indonesian Forestry“ (CGIF) in existence since 1993 which brings international donors (the GTZ amongst them) together with Government Departments. One working group of the CGIF deals with questions about social forestry and land tenure. The inter-institutional dialogue of a „Consultative Group on Land Tenure Development“ (BPN, MoF, international donors) should be promoted.

Encouraging decentralization

The interests of the actors involved towards a stronger decentralization are diverse. The redistribution of State power to the various regional administrative bodies also means a redistribution of resources. A decentralization of state responsibility is a prerequisite for locally efficient land tenure institutions.

9.2 Training and Research

One important field of development activities is training and research in the area of land tenure. To this belong amongst others:

- Short and medium-term courses and / or training on the job in Indonesia or overseas in specific fields for personnel from the BPN, MoF etc. These courses could be in the areas of rural land consolidation,
Education and training for members of NGO’s, foundations and community organizations in areas such as organizational development and legal consultation.

Preparing and making available information already available to international organizations, various authorities, religious institutions and foundations so that decision makers can digest and implement it.

Conducting electronic conferences on specific topics (administrative, legislative, management aspects) with relevant national and international research and decision-making bodies (BPN, MoF, MoA, ICRAF, CIFOR, CASER, universities - in particular the agricultural, forestry and law faculties), donors, NGO’s etc.) for information exchange and the identification of main focal points of research as well as the investigation of starting-points for the aimed promotion of national and international research projects.

Promotion of research and training in region specific adat law and land policy.

Consultation for curriculum development and establishment of land and resource tenure in the curriculum for agricultural, forestry and law students in the S 1 (Bachelor level) and S 2 (Masters level) of education, e.g. in the agriculture faculty (IPB), forestry faculty (UNMUL); build up of a study programme, „Land and Resource Tenure“.

The joint development and making available of a text book and didactic material for the dissemination of knowledge in the area of resource tenure in English and Indonesian language.

Support for above average candidates in further qualification, for example in the study programmes of the BMZ / GTZ „Cooperation of Universities in Postgraduate Education and Research Programme“: „Integrated Tropical Agriculture and Forestry Sciences“ (Bogor / Göttingen) or „Spatial Planning for Regions in Growing Economies“ (Manila / Dortmund).

The promotion and fostering of graduates who have, for example, finished a non-degree or degree course (in Germany, but also in Wageningen, Ghent, etc.) in the area of resource tenure (regional planning (e.g. SPRING Dortmund), law, agriculture, forestry (e.g. CeTSAF Göttingen) and have become employed in the own countries in key positions in Ministries, parliaments, research institutes and universities. Identification of these graduates can take place with the support of the universities, the DAAD regional office in Jakarta and the Jerman Alumni Association in Jakarta.

Identification and further qualification of Indonesian consultants.

9.3 Specific initiatives

a.) Initiatives in rural areas

Where village land use is concerned in many regions, all ownership systems have to be dealt with by the local people:

<table>
<thead>
<tr>
<th>Ownership Type</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Individual) private ownership:</td>
<td>cultivated plots, trees</td>
</tr>
<tr>
<td>Communal ownership:</td>
<td>village agricultural / forestry lands</td>
</tr>
<tr>
<td>State ownership:</td>
<td>state forests, infrastructure</td>
</tr>
<tr>
<td></td>
<td>(state roads, dams)</td>
</tr>
</tbody>
</table>

Therefore one cannot only concentrate on community approaches.

Approaches for development cooperation in rural areas could be planned in the following areas:

Securing of ownership rights

The securing of ownership rights is a necessary but not always sufficient precondition for substantial agricultural and forestry production. The security of land ownership can be achieved with land registration. With
this, the question arises of whether or not further privatization of land alone through the land registry or also through other pragmatic and less formal approaches is possible? It still must be made clear how communal rights are to be secured. Can, for example, the existing upper limit for land ownership lead to problems in land registry for shifting cultivators? And how should the rights of the local inhabitants to classified forest land be secured?

The procedures for individual land registrations should be made more simple and less costly. The institutional structures at the national, regional and local level for land registration ought to be improved.

Pilot efforts for community-based forest management such as the Participatory Forest Management Approach of the SFDP which secure long-term utilization rights should be initiated and supported.

Respect for Adat Rights

A huge amount of land, forest land in particular, is under customary land rights. The awareness and recognition of these Adat rights have to be improved. Since many people live on land controlled by the Forestry Ministry, the Adat rights of these local people have to be respected. The current „sectoralist“ approach should be replaced by an approach towards the needs of local communities. The resource use strategies of adat communities should be recognized so as to avoid the problems concerning „vacant“ lands, for example. The local people’s land in forest areas should be reclassified because classified forest land is state land and this land cannot be registered by an individual.

A programme of acknowledgment of rights has been proposed in the Rancangan Peraturan Pemerintah Tentang Pendaftaran Tanah (The Bill of the Regulation on Land Registration). Landowners who do not have written proof of ownership or whose proof is no longer valid can obtain proof of their rights based on the control of land for 20 successive years given in good faith and unquestioned by the local adat community of the kelurahan involved or any other party.

Inventory of options desired by the communal groups

Too little information is available about which land policy options are desired by the local people. Is there a natural development from communal to individual lands, when the economic value of the land or of the production of the land rises? To what extent is communal ownership of land desirable to the local people?

The communal group should have the freedom to choose from available options and should not be forced into an „individual“ registration system.

Encouragement of Participatory Law Making

For the participation of communal groups, etc. in the law making process, the making of written laws and regulations available and disseminating them in local languages should be encouraged. Encouraging community legal education programmes can empower the local people to know the formal laws and procedures and to be aware of their land rights. This would also be an important step for political recognition of the legitimacy of participation by all affected actors and interest groups. The Government must acknowledge that it should not be the sole arbiter of land policy. It should be ensured that the local communities, for instance, also have a say in policy decisions.

Cooperation and network building

Cooperation and network building should be supported with governmental and non governmental institutions for capacity building for land tenure development: e.g. the Faculty of Law, Gadjah Mada University Yogyakarta, the Institut Pertanian Bogor and other Universities and research institutions, the Legal Aid Institute and individual Indonesian consultants could participate in such undertakings.

Land and resource tenure documentation

A land tenure and resource documentation programme can not only increase public access to information but can also make land information available to decision makers at the regional and national levels. The documentation programme can undertake a survey of existing documents about land tenure matters in particular the „gray literature“ at the various institutions. The existing documents (studies, laws and regulations - in particular at the province level), court reports can be collected and made available to the public. Studies and research work on land tenure aspects (for example an inventory of communal land rights) which will be
carried out should be designed in such a way that compatible data will be produced.

When setting regional priorities, one should concentrate on the regions in Indonesia (e.g. Kalimantan) in which the main focal point of German technical cooperation in the field of agriculture and forestry is to be found and in which the beginnings in land tenure through networking with existing projects (e.g. SFDP, KUF, SFMP) are thus more likely to succeed.

Improved transparency and comprehensiveness of the legal framework

The legal regulations in the BAL and the BFL as well as Government and other regulations are sometimes inconsistent and sometimes contradictory. Laws and regulation have to be reviewed and revised (for example the BFL) at the national and provincial levels. A consistent and transparent legal system should be created so that the regulations, provisions, directives etc. are also consistent with the legal framework.

The access to the regulating framework of Indonesian land law should be less difficult.

Rural land consolidation

Land consolidation is a multi-functional and multi-sectoral activity for the improvement of production, conservation, resettlement, etc.. A rural land consolidation programme could be a possible model for a combined technical and financial cooperation programme. Support can be given in the fields of training, planning and management, legal aspects and regulations, technical execution (e.g. techniques for land valuation should be improved; for surveying and mapping, advanced equipment should be used; consideration of environmental aspects should be introduced), monitoring and maintenance, credit for new infrastructure and new farming systems (for further recommendations see the Workshop Proceedings of the International Workshop on the Implementation of Rural Land Consolidation).

b.) Initiatives in urban areas

The rapid urbanization process in Indonesia will lead to a growing number of people who are settling informally or illegally in the cities without basic infrastructure. The informal sector provides shelter for a huge number of people. Some government programmes exist to improve and upgrade informal settlements (KIP). But the legalization of tenure, which is a prerequisite for having access to formal housing finance institutions is hindered by complicated, bureaucratic and costly registration procedures. Pragmatic approaches related to the support of basic and most important functions of land management and municipal administration such as the registration and titling of land or the levying of fees and taxes have to be found. The introduction and support of the Land Information System can be helpful for the provision of information and improving the securing of tenure.

A Land Information System Pilot Project is being carried out in Semarang which supports the land titling / land use registration activities of the national Land Agency / BPN, the local property taxation of the Ministry of Finance, as well as Land Use Planning under the responsibility of Local Governments (indirectly including the Ministry of Home Affairs and the Ministry of Public Works bodies).

For the settlement of the rapidly growing urban population, large scale land requirements are necessary. This can be done by direct land acquisition combined with land banking. It can also be done by Land Consolidation or Guided Land Development. Land acquisition is getting more and more difficult without land disputes and land acquisition involves high costs. Land Consolidation can not only lead to a more controlled and planned urban growth, but also to the costs for providing the infrastructure being recovered.

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