SOME ASPECTS OF LAND ADMINISTRATION IN INDONESIA: IMPLICATIONS FOR BANK OPERATIONS

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Foreword

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Abstract

Land issues in most countries have major social and economic implications, more so in rapidly growing economies such as Indonesia. The Bank's post-evaluation findings reveal that a large number of Bank-financed projects across sectors is seriously affected by land acquisition difficulties. The paper attempts to highlight some aspects of the current land administration system which are the causes of such delays and are of direct relevance to the implementation of Bank-assisted projects, with particular reference to the issues of land registration and land acquisition. The paper suggests that the Bank should provide financial assistance to Indonesia to accelerate the process of land registration and titling as well as provide technical assistance for codifying and simplifying the laws and procedures with regard to land transfers and use.

I. Introduction

Land issues in most countries have major social and economic implications, more so in rapidly growing economies such as Indonesia. Inequitable ownership patterns of land have been the motivation for land redistribution movements in many countries while efficiency issues related to fragmentation and uneconomic holdings of land have been the basis for land consolidation efforts. With economic growth and population increases, land prices tend to rise, and associated with this, conflicts over land compensation and resettlement issues tend to increase. Inequitable development and changes in land use results in degradation of land. An efficient land market with proper land titling enables land to be used as collateral, and by offering security of tenure, enables more efficient investment decisions to take place. Land acquisition procedures that are not fair and transparent could lead to social instability and adversely affect the implementation of development projects. Involuntary displacement of people through acquisition of land for development projects without adequate and fair compensation and the provision of an alternative means of livelihood may cause severe hardship to them. Indeed, it is important that Indonesia consider developing a comprehensive national land policy to effectively address these and other related issues.

The motivation for the present paper arises from the post-evaluation experience of the Asian Development Bank and the World Bank. The study[1] on post-evaluation findings observed that ..."Experience shows that the implementation of a large number of Bank-financed and World-Bank financed projects across the sectors was seriously affected by two major common factors, namely, land acquisition difficulties...." Unfortunately, the Bank has not made a serious study of the procedures for land acquisitions and the underlying reasons for the significant amount of time involved in the process. The present paper has a restricted scope and attempts to highlight some aspects of the current land administration system which are the causes of such delays and are accordingly of direct relevance to the implementation of Bank-assisted projects. In particular, the paper will address the related issues of land registration and land acquisition.

II. The Basic Agrarian Law of 1960

Up to 1960 when the Basic Agrarian Law (BAL) was enacted, a dual system of land laws prevailed and citizenship determined the system applicable. Lands under the ownership of non-Indonesians were required to be surveyed, registered and titled based on western civil law procedures. For Indonesians, customary law (*adat*) was followed, and landholdings were usually unsurveyed, unregistered and untitled, with ownership and holdings based on community acceptance of boundaries and claims.

The BAL is based on the concept that land in Indonesia has a social function and is seen as the provider of both food and clothing. Accordingly, all land matters are controlled by the State of Indonesia, although, in acquisition cases, for example, the prevailing market prices may be the base on which negotiations are initiated. This

contrasts with the western view that matters relating to land should essentially be determined in accordance with the dictates of the marketplace which values it as a factor of production.

The BAL consists of sixty-seven articles covering: rights of land, water and space; land registration; penal provisions; and transitional provisions. The BAL introduced a system of control and regulation over nearly all aspects of land and its use. It established a system of land rights with varying degrees of tenure linked to citizenship requirements. The BAL also established its precedence over the *adat* system of laws, although rights acquired under *adat* prior to promulgation of the BAL were protected.

TABLE 1
Land Rights Established under the BAL

I. *Hak Atas Tanah* (Land Rights)	
A. Primary titles (derived directly from the state)	
1. *Hak Milik*	right of ownership
2. *Hak Guna Bangunan*	right of building
3. *Hak Pakai*	right of use
4. *Hak Pengelolaan*	right of management
5. *Hak Guna Usaha*	right of exploitation
B. Secondary titles (granted by other title holders)	
1. *Hak Sewa*	right of lease
2. *Hak Usaha Bagi-Hasil*	right of sharecropping
3. *Hak Menumpang*	right of lodging
4. *Hak Gadai*	right of land pledge
II. *Hak Jaminan Atas Tanah* (Security Rights)	
1. *Hak Tanggungan*	right of security

The *Hak Milik*, or right of ownership, is the most complete form of individual land right and is close, but not identical to, the Anglo-American concept of a simple fee. The right has no time limit, and the owner can convey the whole right, or convey a secondary interest such as a lease right; it can also be used as a security. The right should be registered, and the holder is given a certificate (*sertipikat*) as evidence of his title. There are, however, several limits on this right. For example, the state still retains the right to regulate the use of land in accordance with any authorized regional or local development plans. More significantly, although the owner is free to convey his land, he can only do so to an individual buyer; *Hak Milik* rights cannot be acquired by persons who are not Indonesian citizens, nor by Indonesian or foreign corporations. In practice, *Hak Milik* rights can be either registered or not registered, as the mandatory registration of ownership is not often complied with. Typically, rural smallholders have unregistered *Hak Milik* rights. These rights are evidenced by tax receipts and letters from local officials and are equivalent, in terms of what the owner can or cannot do with the land and to the registered right. It should be noted, however, that because the unregistered right is

evidenced by absent, or limited, written documentation, it is more subject to disputes about boundaries and ownership. Previously these rights were called customary (*adat*) titles, but since the BAL unified the land law system they are referred to as unregistered or ex-*Adat* rights. In contrast, the *Hak Guna Bangunan* is a right that only arises as a result of legislation and therefore must be registered to exist.

The continued presence of *adat* rights has worked both to the advantage and disadvantage of economic development in Indonesia. A solution to Indonesia's land problems which would have involved abolishing *adat* law would have created an untenable situation in all of those areas where western rights were nonexistent. By both leaving the *adat* law intact, and in attempting to base the formal law upon *adat* principles, continuity and stability were supported, and the right of *adat* land holders were not adversely affected. This has permitted the development of a flexible land tenure system with many levels of security—a system that allows many low-income households to acquire land rights with some security where a more formal system would not. On the other hand, in areas of rapid urbanization, something more is needed. Efficient and equitable operation of an urban land market requires more certainty in land law (especially in titling) than traditional law provides.

Adat law as applied in more urbanized settings becomes entangled with the concept of possessory rights. These are rights that exist in practice, but which are not necessarily found in written regulation. For example, much of the land that is already in use for urban housing, especially housing for lower income families, does not have a land certificate, nor even a sound customary title as evidenced by tax receipts (*girik*) and a letter from local official. Further, in practice, occupation over a period of time tends to blur the distinction among noncertified rights, as someone who originally squats on a parcel may begin paying taxes and thus attempt to assert a legal claim to ownership. The government, in turn, has tacitly supported this process for historical and policy reasons involving the scarcity of land for urban housing, as well as through programs such as the Kampung Improvement Program, providing infrastructure and services in urban neighborhoods without concern for registered titles. As a whole, the existence of these different strains in Indonesia land law has created a very complex and uncertain system.

A. Land Registration

The BAL requires that all land has to be registered. Registration includes measuring, surveying and mapping of land; the registration of rights; and issuance of certificates of rights. However, due to cumbersome procedures this is rarely complied with. This was to provide legal security to the owners and users. The implementation regulations was contained in Act No. 10 of 1961 issued by the Department of Home Affairs. Registration was necessary for evidence of legal validity of land transfer actions for sale and purchase, gift, auction, exchange, inheritance, annulment and cancellation of rights and encumbrances.

The BAL regulates the steps in registration process, including the initial registration and certification, any transfer, and any encumbrances. Initial registration includes titling of both *adat* and State land. Provisions are also made for the replacement of certificates.

Although it is mandatory under the BAL to register land, no time limit was prescribed at the time of its promulgation within which such registration was to be

completed. Moreover, the government's assuming responsibility was seen to be as a facilitating agent for such registration, rather than an enforcing role. In addition, registration and issuance of certification being only a strong but not sufficient evidence of ownership, it did not provide any sense of urgency for compliance with the requirement. Also, as the mapping of land through the Cadastral Survey System was incomplete and such mapping was a necessary condition for measuring and recording of lands prior to registration, the pace of registration was extremely slow.

The functional responsibility for land registration under the BAL was placed with the Department of Home Affairs and operationally under the jurisdiction of the Directorate General of Agraria within this Ministry. Under the Director General, the Directorate of Land Registration was responsible for the administration of land registration requirements. The Directorate General of Agraria had offices in each province, city (*kotamadya*) and district (*kabupaten*) and the latter two were the key offices for land registration.

Registration is required for the following purposes: (1) original issuance of title—this includes titling of actions on previously untitled land and initial registration, both for *adat* lands that are held or claimed under customary law and State lands owned by the Republic of Indonesia; (2) land transfer—this is required for changes in ownership through sale, gift, auction, exchange or inheritance; (3) registration of encumbrances—this includes the use of land collateral or as security for obtaining funds. The BAL specifies the various rights in land that may be used as security and must be registered.

The procedures for obtaining titles to land are cumbersome and are distinct for State-owned land and land under *adat*. For State-owned land, the application must be filed in the Office of Agraria in the city/district of where the land is located for *hak milik* (right of ownership), *hak guna bangunan* (right of building), *hak pakai* (right of use) and *hak pengelolaan* (right of management), and in the Office of Agraria at the provincial level for *hak guna usaha* (right of exploitation).

The initial process at the city/district level involves five steps as indicated in Table 2.

TABLE 2
Procedure for Obtaining Title to State-owned Lands

(i) The application is filed.
(ii) The applicant pays the necessary fees for a letter of measurement and the administrative costs for checking and processing the application.
(iii) The application is referred to a committee called Committee A (*Panitia A*) for in-the-field checking, evaluation of the application, and preparation of a report on the land use aspects of the application. Committee A is an ad hoc committee established for this purpose, and it is composed of a representative from Agraria, a representative from the village involved, and other individuals from the area who are familiar with the land. The committee also determines if there are any claims of ownership to the land and makes appropriate recommendations on resolution of conflicts. The committee prepares a report of its findings and submits the report to the head of the city or district office of Agraria.
(iv) Based on Committee A's report, the agrarian office at the city/district level prepares a letter of recommendation on whether or not the application should be removed.
(v) The letter of recommendation is then sent to the provincial office of Agraria for further action.

Similar procedures are involved at the provincial level. Depending on the type of right applied for, maximum limits are prescribed, which are relatively low. All applications requesting in excess of the limits prescribed have to be approved by the Minister of Home Affairs or, under delegated authority, the Director General of Agrarian Affairs.

On the basis of the decision, a *sertipikat* (certificate of title) is issued to the applicant with the appropriate information. This process could take from six months to three years depending on completion of the survey, disputes with claimants, and other bureaucratic delays.

In the case of privately-owned land, the procedures for registration are equally complex. Essentially, the problem lies in the number of steps involved and the documentation required, discouraging in the process, the smallholder from attempting to title the land. The steps involved are presented in Table 3.

TABLE 3
Procedures for Obtaining Title to *Adat* Lands

(i)	Applicant obtains official documents.
(ii)	Applicant files for land title. The application must include:
	(a) information on the chronological/historical status of land, certified by the village head;
	(b) a rough sketch of the land parcel showing boundaries approved by the village head;
	(c) information on land ownership verified by subdistrict head; and
	(d) certification of tax payment, verified by subdistrict head.
(iii)	The District Agraria Office carries out a field check to identify any adverse claims.
(iv)	The land is officially surveyed and a map prepared.
(v)	Upon completion, the map and documents are posted in the office of the village head and the subdistrict for 60 days to permit complaint.
(vi)	District (or subdistrict) Office of Agraria prepares a letter of recommendation if no complaints are received.
(vii)	The letter of recommendation is sent to the provincial Office of Agraria for letter of decision (for non-*adat* land, the latter is forwarded to Jakarta).
(viii)	The applicant is informed of the decision and required to pay fees for the completion of the process.
(ix)	The certificate of title is issued, and a copy is provided to the applicant.

Inspite of the BAL, land registration has proceeded very slowly and generally only in urban areas. In rural areas, less than 10 per cent of households have obtained the title. In addition to the cumbersome procedure, government institutions are ill-equipped to handle the workload. Agraria staff are expected to carry out the entire process from receiving applications, doing the cadastral survey, and preparing the titling papers. Consequently, the available staff are unable to meet the demands of the existing applications, further hampering the progress of the registration process.

B. Land Acquisition

In Indonesia, obtaining land for any purpose, whether by private individuals or the government, must be carried out through negotiations with the owner of the title. It is a time-consuming process due to inadequate land registration and complicated regulations for land release. For government purposes, a permanent local committee of government officials is in charge of conducting negotiations. Should there be no agreement, the state is entitled to take land by force, provided the land is required for the public interest. Indonesian law states that expropriation must only be used as a last resort, if negotiations have really failed. Expropriation is provided for under the Land Expropriation Act (No. 20 of 1961). The President alone is authorized to declare expropriation; he acts by decree, issued following consultation with the Minister of Justice, Minister of Internal Affairs, and the minister whose jurisdiction covers the operation or service for which the land is required. These consultations determine whether there is a public interest and whether it is possible to acquire the land in some other way. The presidential decree fixes the form and the amount of compensation; it is based on the recommendation of a committee of experts, which consists of governmental officials who act under oath. Compensation need not be in the form of money, but may be in the form of facilities that can bring material benefits to the former owners. Presidential decisions to carry out expropriation may not be questioned, although the compensation issued by it can be litigated.

Usually, a Decree of the Minister of Home Affairs (PMDN 15/1975) is employed to acquire more than five hectares of land for use by the State which provides for those relinquishing land right to do so as a "release of title." This decree states that the level of compensation should be guided by consensus and general local prices. The rates of compensation are determined by the Land Release Committee, normally referred to as the "Committee of Nine" (usually having nine members). These rates are based on prevailing land values and, upon advice of the Committee, are set in a decree by the provincial governor, or the mayor in urban cases. People contesting the amount of compensation must appeal to the governor (or mayor) who may increase the rates, although this is rarely done. In a few cases, the people have refused the compensation and have taken recourse to the judicial process on the grounds that their land was seized illegally.

The procedure for land acquisition as elaborated in Presidential Decreee No. 55 of 1993 are as follows:

(i) The agency responsible for the project submits a request to the governor to release land.
(ii) The governor issues a decree announcing that the land is to be released for the project, and instructs the Land Acquisition Committee through the Head of the District (*Bupati*), to prepare an inventory of land, building and trees.
(iii) In the case of Jakarta, the mayor holds a meeting with the owners of the property to be acquired and listens to their views, which can lead to changing the boundaries of the land to be acquired.
(iv) The Committee measures each plot of land, counts the buildings and trees, and inspects the owners' certificates, if they have them.

(v) The Committee recommends to the governor rates of compensation for various classes of land. The rates are supposed to be based on current prevailing values, but are frequently out of date.

(vi) The governor issues another decree stating the rates of compensation for various classes of land and for permanent, semi-permanent and temporary buildings, and for trees, fences, wells and driveways (driveways only apply in urban areas.) Owners with full ownership rights, and in cities, a building permit, receive the full amount. People with other, lesser legal claims to rights receive proportionately less, with the proportions varying from project to project. People without any certificate for the land they occupy may receive nothing, although in rural areas, some sort of right can usually be established with the cooperation of local authorities.

(vii) The property owners are then offered their compensation, but if they refuse it, the project manager has to lodge the amount in the local Treasury Office in order not to lose it, because if the money is not disbursed within the financial year, the money reverts to the government.

(viii) If property owners accept the compensation offered, they are given time to vacate. In the urban situation, if only part of a building is acquired, one to three months time is given to enable the owner to demolish and remove materials. If owners do not demolish their buildings, the project will assist them. Rural people are allowed to continue cultivation of their land after it becomes the property of the state or project, and until it is inundated in the case of reservoirs.

A further decree (PMDN No. 2/1976) states that the procedures of PMDN No. 15/1975 could be applied for the release of land to the private sector for the implementation of projects that are in the public interest. As a consequence, private sector developers can either obtain land by outright purchase, or approach the Land Release Committee which sets the rates of compensation, or a combination of both.

Intrinsic to the working of the land release process (not expropriation) is the traditional Indonesian concept of **consensus reaching** on the amount of compensation to be paid, bearing in mind local prices (*musyawarah dan harga setempat*). There is a common belief that land to be used for a public service such as a road, irrigation, school or clinic should receive a lower rate of compensation than a piece of land to be used, for example, to construct luxury apartments and places of entertainment. Although the principle of consensus is often noted as a distinct feature of Indonesian cultural values, it tends to be misused when the stakes are high. Those with the power of the State behind them stand to gain if low rates of compensation can be paid for land. Some believe that low rates of compensation are justified in projects of the Government which serve public purposes whereas higher rates are justified for land when private developers will make large profits. In any case, this inevitably adds further to the lead time in acquiring land for development purposes.

The total time involved for acquisition and titling varies greatly depending on circumstances of a project. The legal status of the land, the desire of the local landowner to sell, and the workload of the Agraria offices, all affect the outcome. The time required

tends to vary from six months to four-and-a-half years and can be characterized as ranging from reasonable to unacceptable. And, while it is true that some projects are titled in a reasonable amount of time, in a large number of cases (perhaps the majority) total times are excessively long, at over two years. The fact that the experience has been so diverse is in itself interesting, as it suggests that the process can be completed fairly rapidly. Impressionistic evidence suggests that it is the developer's skill, experience, and relationships with pertinent officials that enable some to move through the process faster than others. However, this is not to say that if all developers had the appropriate skills and resources, all titling times would be short. Agraria definitely does face resource constraints, and the entire process remains cumbersome.

The way in which these times have changed in recent years is also important. In West Java Province, times for issuing location permits have remained fairly constant over the last five years, but times for release and granting land rights have risen from 17 to 28 months on average. This is particularly disturbing, as it is associated with increased development activity. Thus, in assessing the reasons for these increases in time, the increase in development activity is certainly one factor, but there are undoubtedly others. In particular, simple administrative inefficiency plays a major role, with two factors presenting themselves as causes of such inefficiency. The first involves the management of information, records and office procedures. Problems in this area are shown by cases of lost documents, inaccurate record keeping, mistaken approvals, and so on. In part it relates to a lack of resources, as well as bad management of existing resources. The second factor involves the complexity of the legal framework, with its multiple layers of documentation and approvals. As an example, three stages in the titling process (location permit, release of rights, and grant of rights) require processing by different committees, each with substantial, although not complete, overlap in membership and function. The same may be said of many of the functions of the local Agraria office, which also participates in all stages of the titling process. Illustrations of this duplication include checking for consistency with land use plans at the location permit and grant of title stages; reviewing the legal history and status of the land at the release and granting stages; and checking the legal status and credentials of the acquirer at the location permit and granting stages. More broadly, the entire titling process involving the release of rights to the state, followed by the granting of rights for the same parcel to the acquirer, is cumbersome, and many of the policy rationales for individuals' twists in the process have become obscure over time. Further, often well-intended additions to the law have been overshadowed by the problems they have caused.

An analysis of the costs of acquisition and titling requires consideration of both the regulatory framework and actual practice. Five types of charges associated with titling can be distinguished:

- Charges with specific amounts set out in the regulations;
- Charges where general categories are set out in the regulations without specific amounts (often chargeable against receipts);
- Payments without specific regulatory support, but which are for legitimate agency operating and administrative costs;
- Minor payments to officials to maintain a good working relationship, compensate for overtime hours, and so on; and
- Major payments to initiate a project, or to permit it to move forward in a timely fashion.

III. Conclusion and Implications for Bank Operations

Land registration and titling have important socioeconomic consequences as well as serious implications for Bank operations. Besides providing security of ownership, it provides access to credit for the owner under various programs. Land registration and titling provide for orderly land transfer and increases the efficiency of land markets which is important in the case of Bank-supported private sector projects. In the case of public sector Bank-supported projects, inadequate land registration can seriously hamper the project implementation process. For example, in the case of irrigation projects, there could be delays in acquisition of land due to legal disputes. The rights to the use of water could be ill-defined thereby adversely affecting the functioning of water users' associations. Compensation issues could be confused resulting in social discontent. The Bank has to date processed two irrigation projects in Indonesia without paying adequate attention to these issues.

Accordingly, there is an immediate need to establish priority areas for land registration. Currently only a very limited number of areas that come under major government projects such as the nucleus estate smallholder program (NES) are adequately mapped. A very low percentage of land is titled, and throughout the country there are a very large number of small individual parcels of land and also large numbers of individual owners. Given the land size of Indonesia and its limited resources to carry out nationwide registration, it has been estimated that even an accelerated land registration program could take up to 100 years to implement. Thus, prioritization of key areas for land registration is an urgent priority. Some attempts to do this have been already started with the introduction in the 1970s of special government agriculture development programs in the rural areas. In urban areas the guided-land-development (GLD) type of scheme is being used. However, while these programs are individually beneficial, there is no countrywide attempt to set up a system of priorities in land surveying, mapping or regulation that would provide a sound basis for national development in the future. The Bank could make a very useful contribution by providing financial and technical assistance in this area.

A land data base system is urgently needed to provide accurate and comprehensive statistics on all aspects of land, particularly ownership and registration. In the case of registration there is currently no consistent or uniform manner for collecting national data on registration. Data are usually collected manually, on a case-by-case basis, and are not collated throughout the country. There is also no easy way of retrieving present data stored manually on cards in land offices. This makes any attempt to improve the system difficult, particularly in trying to meet the present increase in demands for registration throughout the country, let alone the increased workload anticipated with compulsory registration. Again, the Bank could initiate and support programs and/or projects in this area.

The Government has taken measures to deal with land-related issues. As stated, the Directorate of Agrarian Affairs within the Ministry of Home Affairs was changed into the National Land Agency (BPN) in 1988 and is directly responsible to the President. It has been vested with greater powers to implement policies on land management, planning and administration. A National Commission for Spatial Development has been set up, headed by the Chairman of BAPPENAS, and is charged with the responsibility of drawing up broad policy outlines and guiding the process of institutional reform. In

early 1992, the Government announced a plan to title and register all nonforest land parcels in Indonesia in the next 25 years. The July 1992 deregulation package included removal of restrictions on the right of exploitation and the right of building for joint ventures in the agricultural sector. However, these issues need to be further pursued with the ultimate objective of formulating a national land policy which would address both long-term problems such as land distribution and consolidation, as well as the immediate issues of legislation, such as simplified procedures on land acquisition, and the registration, toning up and strengthening of the administrative set-up for land matters. In view of its importance for Bank operations which cuts across most sectors, including private sector projects, this should be a matter of priority in the Bank's policy dialogue with the Government. The Bank should consider providing financial assistance to accelerate the process of land registration and titling[2] as well as provide technical assistance for codifying and simplifying the laws and procedures with regard to land transfers and use.

Notes

1. Special Study: A Review of Post-Evaluation Findings in Indonesia, November 1988, Doc. SS-6.

2. Projects such as land resource evaluation and planning or irrigation projects could include components for financing such activities. The World Bank is already active in this area but given the large funding requirements, the ADB could also play a useful role.