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Notes on Some Potential Impacts of the Implementation of Reconstruction of the Aceh Land Administration System (RALAS) Project on Customary Land Rights Institution[1]

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In June 2005 the Multi-Donors Trust Fund for Aceh and North Sumatra (MDTFANS)[2] approved the finance of the Reconstruction of Aceh Land Administration System Project (RALAS) to support the recovery and protection of land rights in Aceh province affected by the December 26, 2005 tsunami. According to the appraisal document of this project, the overall goal of the USD 28.50 million grant is "to improve land tenure security in Aceh after the devastation caused by the tsunami and the destruction of evidence of ownership" The project implementation officially starts in August 2005 and will last until 2008. At the end of this project, an estimated 600,000 land owners in Aceh and Nias will receive legal title documents. The project itself has several components: "(i) reconstruction of land records, community-driven adjudication, surveying and mapping, registration of rights and issuance of title certificates and assistance in policy, legal and regulatory issues; (ii) reconstruction and rehabilitation of land offices that were destroyed or damaged by the tsunami, provision of necessary equipment, training and capacity building for the National Land Administration Agency (BPN) staff, computerization and development of a back-up system for land-related data; and (iii) support to project management, monitoring and evaluation, complaint handling mechanism and technical assistance to support project implementation" (The World Bank, 2005).

The implementation of this land administration project in the tsunami-affected areas in Aceh and Nias is substantially different from similar cadastral programs in other parts of Indonesia. Many land records in the tsunami-affected villages, either those in the hands of the BPN (National Land Agency) in Banda Aceh and their local offices, or those in the hands of the people themselves, have been substantially damaged or loss. Recovery of the land titles issued prior to the tsunami is hindered by the fact that some of the property located in the coastal areas has been submerged under the water, the physical indications of the property were lost, and memory about property

[1] This draft is presented at the 11th Biennial Conference on International Association for the Study of Common Property in Bali, Indonesia (June 19-23, 2006)

[2] The Multi-Donor Trust Fund for Aceh and North Sumatra is a pool of resources, provided by various donor countries to support the implementation of the Indonesian government's rehabilitation and reconstruction blueprint. The total amount of 500 US$ Million in grant pledges by a number donors including the European Commission, The Netherlands, the World Bank, Norway, Sweden, The Asian Development Bank, Canada, Germany, New Zealand, Great Britain, Denmark, Finland and Ireland. The Trust Fund is managed by the World Bank and guided by a Steering Committee consisting of donors, Government of Indonesia and civil society representatives with participation by the United Nations and international NGO community (MDTFANS press release, June 24 of 2005).

ownership is gone as a large number of people have died, re missing, or displaced.[3] In some tsunami-affected areas, whole villages often times have to be reallocated, and thus land has to be purchased for the reconstruction housing projects. For these reasons, RALAS is using community-driven adjudication methods (CDA) as a key procedure in the process for land registration and issuing land titles. This land certification process is not only free-of-charge but also, in principle, the issuance of the ownership land title by BPN will be through local community agreements in each respective village. Moreover, NGOs and other donor institutions play a major role in the implementation of CDA through community land mapping .[4] Nevertheless, CDA is a new approach to cadastral systems that has never been implemented before in Indonesia.

My aim in this paper is to highlight some of the potential impacts on customary land institutions that have resulted from the implementation of RALAS. I support Fitzpatrick's (2005) report which asserts that "systematic land titling will not solve - and in some cases may exacerbate - problems caused by restrictions on access to common resources (e.g. maritime areas, fringing reefs, and forest lands). This issue requires law reform, including clarification of the boundaries of State land and the status of communal land rights (*hak ulayat*)" (p.13). These potential problems are due to the fact that land rights regulation is still centrally controlled by national land policies despite the fact that Aceh has been awarded special autonomy by the national government. These national regulations and policies vaguely acknowledge and protect customary land right systems—well known as *hak ulayat*—of local people. This analysis is mainly based on my own experience conducting numerous studies on land conflicts in a number places in Indonesia, including a year long study in North Sumatra's plantation areas in 2000. My knowledge about Aceh is based on literature studies and a number of short term visits to the region between 1996 and 1999. From 1999 to 2004, however, I had to discontinue my research in Aceh as the violent conflicts exacerbated throughout the region. Although I returned to the area in 2005 and 2006, these visits were not part of any particular project or study. I will start by briefly explaining the national regulations and policies toward customary land rights in Indonesia and then I will explain the current development of regulations in Aceh. Most of the national regulations on land and forest areas have not been revised despite the implementation of decentralization policies[5] and the affirmation of a special autonomy law for Aceh implemented in 1999.[6]

[3] At least 126,602 people reported died while 93,638 people are still missing and 514,150 people have been displaced from the tsunami affected areas in Aceh and North Sumatra.

[4] For further information see a *Manual of Land Registration* (RALAS, 2005)

[5] Although the regional autonomy law has been enacted in 1999 (Law No. 22 of 1999), it was not effective until 2001.

[6] Law No. 44/1999 concerning the special autonomy for Aceh has been elaborated in more detail in Law No 18 of the 2001 concerning the special autonomy for the Province of Aceh Special Region as the Province of Nanggroe Aceh Darussalam.

National Policies on *Adat* or Customary Rights

Article 33 of the Indonesian Constitution stipulates that "land and water and the natural riches therein shall be controlled by the State and be made use of for the greatest welfare of the people." This is an important legal document that basically allows the Indonesian State to establish control over land, forest, mineral and other natural resources within Indonesian internal territory. The way the government has implemented this constitution has caused people to lose their traditional access and control over customary lands. Agrarian and Forest laws have been particularly important due to their significant impact on customary land rights of local people (see Moniaga, 1993; Kartika and Gautama, 1999; Ruwiastuti, et al., 1999). The 1960 Basic Agrarian Law (BAL) promotes survey, registration, and titling process for all lands including held under the *adat* or customary system. However, in practice, to obtain full ownership rights over land, the 1960 BAL only grants title for individual/private ownership that is previously held under a customary land system. No title, on the other hand, can be obtained for land held under a communal system. Deterioration of communal land institutions, and increases in conflicts among villagers in various places in Indonesia are partly due to the privatization of land that previously held collectively by the community. Moreover, the 1960 Basic Agrarian Law adopts the principle that the state sovereignty over land is superior to local *adat* land tenure systems. The state, therefore, can limit or abolish *adat* land tenure systems. Although it stipulates that the Indonesian land law is based on *adat* law, article 3 of the 1960 BAL states that:

> "…the *hak ulayat* and similar rights of *adat* law communities, so far as they still exist in fact must be exercised in such a way as to accord with national and state interests, based on national unity, and so *not to contradict laws and other regulations which are of higher order*" (emphasis added)

The 1960 Agrarian Law also stated that the State might delegate some of its power to control land to "adat law communities" (*masyarakat hukum adat*) or self-autonomous regions (*daerah swatantra*) (Soetiknjo, 1987). In this case a special decree would be needed to explain the details of implementation of this article and the restrictions necessary so that it would not contradict with other government regulations. Most importantly, implementation has to be in line with the "national interest."[7] However, since no such decree is available in order to clarify the mechanism for adat community to exercise this policy, in practice, devolution of power over land to adat institutions has rarely been implemented. The 1960 Basic Agrarian Law, therefore, has been seen as both a limitation on specific *adat* property rights and as an affirmation of *adat* general principles relation to land (Hooker, 1978). These kind of vague explanations about recognition, on the one hand, and restrictions on the other, allow various interpretations by the government as to what extent local communities might maintain access and control over their *ulayat* lands.

[7] According to the article 2 in 1960 BAL stipulated that "the implementation of…right of control by the State may be delegated to the autonomous region and adat law communities, if deemed necessary and not being in conflict with the National interest in accordance with the provisions of Government Regulation."

Moreover, other national policies that have caused a great impact on customary land right systems in the past thirty years are the government policies to control Indonesia natural resources wealth. The forest laws that have been enacted since 1967,[8] in particular, have facilitated national legal control over *hak ulayat* of those local communities within forest areas that the government has designated as "state forests." Part of the reason why this law caused a tremendous impact on local communities is the fact that approximately two thirds of the total land area in Indonesia, has been designated "state forest" and is subjected to the forest law. In practice, these state forest areas are not subjected to the 1960 Basic Agrarian Law. Based on Department of Forestry regulations, all *ulayat* or customary lands that fall under the area designated as State forest are frozen. Adat forest territory is also considered as *hutan negara* (forest land). Since only BPN (the National Land Agency) has the authority to legally recognize traditional land rights or to grant land titles on State-controlled land (*tanah negara*), the people and communities living within the state forest areas have no access to land registration and titling services (Evers, 1995: 6).

Until recently there is no specific government regulation that enables systematic mapping of adat territory within state forest areas or inventory of other ownership rights of adat communities to forest resources. Furthermore, most of the boundaries between state forests and villages have also not been clearly delineated (Contreras-Hermosilla and Fay, 2005). The Indonesian government also does not have a specific policy which granted local communities the right to receive full and free consultation prior to the implementation of any large scale projects such as timber extraction, plantation estates, large-scale settlement project, conservation or other development projects that will affect the local community. During the Suharto New Order government (1967-1998), in fact, many people who protested against government programs and projects were often stigmatized as "communist"[9] or "criminal" and could be subjected to imprisonment and torture.

Customary Rights and Aceh's Special Autonomy Law

Since Suharto stepped down in 1998, the demand to replace the previously centralized administrative, fiscal, and political policies has grown. Under the regional autonomy regulations that are effective since 2001, recognition of adat institutions became possible. In West Sumatra, for example, there is a growing interest in revitalizing the traditional administrative system of *nagari*.

In Aceh, since the regional autonomy act of 2001, the previous generic name of *desa* (village) has been replaced by the Acehnese name of *gampong*. The *mukim* institution system (a supra-village level institution consisted of a number of gampongs) has also been revitalized.[10] According to the Aceh autonomy law (law no

[8] The Basic Forest Law No. 5 of 1967 has currently been replaced by Forest Law No. 41 of 1999.

[9] In Aceh, the Indonesian government stigmatized those protestors as GAM (Free Aceh Movement) as it happened to one of Acehnese environmental activists, Bestari Raden. He was sent to jail after his involvement in the protests against timber company operation in South Aceh district.

[10] Qanun No. 3 regarding *Mukim* Governance in the Province of Nanggroe Aceh Darussalam.

18 of 2001), a *mukim* controls its own territory and wealth (*kekayaan*) and administratively it is under *kecamatan* (municipal/sub-district) level. According to Qanun No. 3/2003: (i) Mukim material wealth might include forests, land, rivers, lakes, mountains, wetlands and other ulayat ownership as long as it does not contradict government regulations; (ii) Inventory of mukim material wealth should be regulated and endorsed by the Bupati (the head of District) or Walikota (the city Mayor) through agreement and consultation with the people in the mukim; (iii) *Keucik* (the head of village or gampong) and *Mukim* watch over the material wealth own by the mukim institutions (Syarif, 2005a). Many Mukim, however, have not yet carried out an inventory of their assets as stipulated in Qanun No. 3/2003 (Syarif, 2005b:5).

Despite of the possibility of recognizing adat institutions that exists under the current autonomy act, access to and control over land and forest within *adat* territories are still subject to national government regulations. The special regulation on forest management in Aceh,[11] for example, stipulats that:

1) All forests including the natural wealth within the jurisdiction of Nanggro Aceh Darussalam are controlled by the State (Article 3);
2) *Adat* forest is considered as State Forest (*hutan negara*) (Article 5);
3) For the purpose of watershed protection or biological conservation, peoples ownership of forest land (*hutan hak*) can be terminated and the right to control access to these lands transferred to the State. Some kind of compensation might be granted to those who have been affected by this decision (Article 5);
4) Government might issue permits to adat communities (*masyarakat adat*) to use and manage the state forests (Article 19).

Some recognition and protection of traditional rights and customary laws of the local community might also be possible under law no 18/2001 through the establishment of decrees at the gubinatorial level. In my observation, however, the two laws, Qanun No. 4/2003 on Mukim and Qanun No. 14/2002 on Forest Management, can be contravened when it comes to the issue of *ulayat* rights over land and forest resources. To avoid overlapping claims, a clear boundary, therefore, need to be established to delineate State-controlled territories and mukim territories. In pre-tsunami Aceh, however, community mapping had not yet been extensively carried out. . I shall now return to the discussion about the potential impact of RALAS on customary land rights institutions.

The potential impact of RALAS on Customary Land Rights

The RALAS project claims that " to improve land tenure security in Aceh after the devastation caused by the tsunami and the destruction of evidence of ownership [and] the first priority would be given to areas designated as settlement and housing areas" (The World Bank, 2005: iii).

[11] Qanun of the Province of Nanggroe Aceh Darussalam No. 14 of 2002 concerning Forest Management in Nanggroe Aceh Darussalam.

Many villages in the tsunami-affected areas have lost some of their land parcels, and rehabilitation of settlements in the original village could no longer be possible due to their becoming permanently flood-prone (BRR, 2005). Although the government master plan to restrict settlement along the coastline has been dropped due to public protest, and the right of the tsunami survivors to return to their original village is now guaranteed, many villagers have voluntarily agreed to establish green belt areas to protect them from future disasters. Based on the manual provided by the BPN supported by MDTFANS MDTFANS consultant, it seems the focus of the RALAS project is to restore individual ownership over parcels of land (see RALAS, 2005). It is unclear, however, to what extant the community maintains land rights over land that is currently designated as a green belt area or sustains other communal uses. Based on what the government has practiced in other parts of Indonesia and the current forest regulations for Aceh (Qanun 14/2002), there is the possibility that the State will claim these green belt areas and other communal landsin the future. As indicated by previous State practices in Indonesia, the government might then transfer the right to use these areas to private enterprises for commercial purposes. Furthermore, based on what has happened in other places in Indonesia, once the coastline has been designated for protection or conservation purposes, local communities often loose their rights to fish or to park their boats or canoes.

As the case of mukim Syech Abdurrauf, in the city of Banda Aceh, indicates, it is also unclearto what extant RALAS projects will recognize community land rights over land that has overlapping or conflicted claims in the past . Local people who have lived there for generations do not have official land title. However, for unclear reasons, BPN issued a land certificate in the name of a person who was considered to be “illegitimate” in the minds of local people (Syarif, 2005b). The RALAS project might cause these people to loose their traditional rights over land if this overlapping land claim is not acknowledged and resolved. Also, it also important to consider the possibility of that some land certificates in the pre-tsunami era will be issued through the manipulation of data. It is no secret that corruption is a well known practice in Indonesia.

Although commercial and large-scale development projects along the coastline of NAD (Nanggroe Aceh Darussalam) have been few, in some areas the previous government granted state controlled forest lands to plantation and timber estates. Local communities who claim customary rights over this land have disputed this policy with no success. . It is unclear, therefore, to what extant the RALAS project will provide tenure security for local people who have lost access to their customary lands due to their government designation as state forest or plantation.

The other potential difficulty is the promotion of privatization of common property land. As I explained in the previous section, communal or collective land title is not possible under the current Indonesia land policy. Although some privatization might be justifiable, there are some potential advantages to maintain common-property regimes to govern and manage environmental resources (McKean, 2000).

Conclusion

Although intra-communal land disputes created by the tsunami have been remarkably low (Fitzpatrick, 2005), the systematic cadastral reconstruction promoted by RALAS might instigate conflicts not only between villagers but also between local communities and the state. All these potential impacts need further study.

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