Land and authority: the state and the village in Pasir, East Kalimantan

Nearly five years after the implementation of administrative decentralisation in Indonesia, popular influence on governance has increased, especially at the kebupaten (district) level, where ‘local ways’ have become a hot topic in political discourse. But what are local ways and to whom do they belong? Can they be reconciled with national law? Consider land tenure, where district regulations and grassroots practice often differ: in Pasir, government and society are looking to tradition, national law and Pasir identity to redefine authority over land.

Laurens Bakker

Pasir is the southernmost district of the province of East Kalimantan, comprised of a flat coastal plain and a mountainous interior in the Gunung Lumut. Most inhabitants are ethnic Orang Pasir who have recently shifted their cultural focus from nearby Central Kalimantan’s Dayak communities to the ethnically diverse coastal area, Islam and Malay identity.

Without its natural resources, Pasir would have been an inconspicuous peripheral district within Indonesia. Oil palm plantations and mining dominate the coastal area and provide work to migrants from throughout Indonesia. In the mountains, where communities of subsistence farmers live in villages comprised of a small number of extended families, legal (and illegal) logging and land dumps slash-and-burn farming are the main economic activities. Local customs and both agreements between communities, rather than national law or government policies, regulate access to land.

Pasir’s district government, based in the city of Tanah Grogot, is far away from the mountains. Because communication and administrative control are lacking, government policies and regulations frequently hold no sway in mountain villages. Moreover, mountain communities saw the New Order’s unilateral management of logging and mining projects in Gunung Lumut as dictatorial and unjust, leaving them suspicious of any government initiatives and national law. As a result, official regulations are implemented along the coast, but lessen in influence and even disappear in the mountains. Government land or forest management, however, remains oblivious to, the other’s strictures.

When it comes to land, I am the state

Gunung Lumut communities govern land and forest according to local ways usually referred to by the umbrella term adat, translated as ‘custom’ or ‘tradition’. Depending on the context, adat is both adored and rejected in national politics. In representing local identity and traditional authority, adat has for years been a useful instrument in tying local cultural variety to matters of national economic interest, such as logging, mining and oil palm agriculture, land or forest management, however, local adat and national policy-making are frequently at odds. According to Indonesia’s national land law (Ruwil) and constitutional (sec. 196), national land law is adat law, but the BAL does not define adat; it merely provides broad qualifications under which the validity of adat land claims may be overruled (see also Haverfield 1999). During the New Order, these qualifications were often applied to nullify adat claims regardless of their validity. Moreover, the BAL mentions only individual rights to land, whereas traditional rights are often communal.

The illegality of communal claims does not stop the population from making them. In recent years national media exposure and the establishment of a network of adat community NGOs have helped increase the number of cases in which communal land are proclaimed by adat communities. The Minister of Agraria/Head of the National Land Agency tried to address this in a 1999 regulation specifying conditions for the recognition of such claims and guidelines for their settlement (see also Slaats 2000; Saka 2000). The regulation was never implemented and as an adat community it is not required to investig- ate whether communal land claims exist within their district.

The Pasir government enlisted a team of researchers from Universitas Hasanuddin in Makassar to conduct four days of field research in 2002, mainly in Progo and Pasir districts, where large numbers of migrants live. Although part of the team worked along Gunung Lumut’s perimeter, no research was done in the mountainous region itself. Results showed clear differences among the areas studied, but final conclusions were presented in terms of a percentage of the whole area that is a breakaway area, making existing claims appear insignificant. Thus, in 2003, the district government drafted a regulation stating that communal land claims effectively no longer existed in Pasir.

You’re not the state, we are

This, to many, did not reflect ‘local ways’. Three local NGOs, claiming to represent Pasir’s adat communities, immediately challenged the district gov- ernment. The first was LAP (Lembaga Adat Pasir, or Foundation for Adat in Pasir), whose mission is to improve reli- gious, medical and education facilities for all of Pasir’s population. The second, PEMA (Persatuan Masyarakat Adat Pasir, or Association of Adat Communities in Pasir), is a small Gunung Lumut organisation that puts its consider- able knowledge of local circumstances to work on just about anything it finds relevant. The third, PBA-PDB (Persatuan Benuaq Adat – Paser Dayak Pasir Division), attempts to strengthen the position of the Orang Pasir by joining forces with Dayak organisations from other areas of Kalimantan.

Also based in Tanah Grogot, PBA-PDB instead tries to attract the attention of the government, newspapers, and Pasir society through demonstrations. Although both claim to represent adat groups, they have in fact little contact with them and rely on third party informa- tion to pursue their goal of influenc- ing the government in Tanah Grogot – which, since both have supporters in and around the local government, they often achieve.

The two organisations will, like true politicians, co-operate to keep smaller NGOs small but are otherwise fanatical rivals. Given the choice between rep- resenting their clients and gaining politi- cal influence, both opt for the latter and take possible inconsistencies with ‘local ways’ for granted. Only PEMA has links with the adat communities all three NGOs claim to represent. Based in the mountainous Gunung Lumut, this proximity to the grassroots results in the organisation’s isolation from the political nerve centre of Tanah Grogot, meaning that PEMA is dependent on LAP for access to the district govern- ment.

All three NGOs voiced their concern at a meeting organised by the district govern- ment to discuss the 2003 draft regu- lation. The government’s decision to address the NGOs’ protests is not mere opportunism. Most government officials are of migrant origin and identify little with Pasir society beyond Tanah Grogot. They co-operate with organisations that appear to best represent it – a pragmat- ical approach that endows government officials with popular support, but leaves them wary of opportunism and power plays from other popular elements including the very NGOs they co-oper- ate with.

State? What state?

For the Orang Pasir of the Gunung Lumut mountains, the debate on com- munal adat lands was as irrelevant as every government official who ever passed through to confirm the existence of such lands. However, as in govern- ment-NGO relations, Gunung Lumut communities treat messages from ‘the other party’ pragmatically. When decen- tralisation began, village governments swiftly adopted the view that national law recognised their authority over land and forest in their adat territories. Although authority over forests has since been mostly re-centralised to the districts’ Department of Forestry offices, some communities continue to insist on their own logging permits. Similarly, the borders of a national forest reserve des- ignated by the Ministry of Forestry over- lap adat lands; some communities rec- ognise its protected status while others hold their communal rights higher, depending on their ideas about preser- vation or exploitation.

A second example of this pragmatism is the size of territories claimed. Pasir’s National Land Agency, in accordance with national law, limited the amount of land that can be registered per family head to 20 hectares. But Gunung Lumut communities claim much larger com- munal adat territories, with the smallest est claim at around 150 ha per family, no community has yet agreed to registration. However, many have mapped their territories and borders and some are attempting, with varying success, to per- suade government officials to sign these maps as an expression of alternative reg- istration. Most communities express a keen interest in formal registration, but on a communal basis and for all of the territory.

Reconcilable differences?

Negotiation is the key to reconciling the differences that are common ways of dealing with land issues in Pasir’s mountains. Mountain communities consider the district gov- ernment as only one of many sources of authority, while the government’s admin- istrative decisions show disregard for the existence of local traditional systems of land management. The two meet only through a chain of NGOs with varied local expertise and influence, but with a solid position in local politics. Although the district has already gained a place in dis- trict politics, its relation to ‘local ways’ is not necessarily clear or direct. The phys- ical and procedural distance between mountain communities and the district government allows for the communities’ locality to be politicized by outsiders, such as the LAP and rival PBA-PDB.

On the upside, district politics are cer- tainly more influenced by local circum- stances than they were before decen- tralisation. ‘Local ways’ are often seen as a platform for local politicians and are regarded as such by local governments. However, in spite of what some politicians and scholars may regard as signs of becoming subversive to local politics. The political experimenting currently taking place in districts throughout Indonesia has not yet led to stable results. Local people may gain influence in district politics, or a local political and economic elite may seize control after the New Order’s example. Pasir’s poli- tics appear to be evolving toward the for- mer, but it is too early to conclude that a new style of district government has been established.

Laurens Bakker

Institute of Folk Law
Radboud University Nijmegen

Bakker@ru.nl

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Indoe (Indonesian-Netherlands studies of Decentralisation of the Indonesian ‘Repubblicat’ and its impact on ‘Agraria’) is a Dutch-Indonesian socio-legal research project focusing on impacts of the new decentralised administrative structure on the role of law and local levels in Indonesia. The project studies how ‘guardian institutions’ such as courts and ombudsmen overlie the legality of the acts of newly empowered legislatures and execu- tive, and how the new system influences ‘realistic legal certainty’ of common people, an- d how the new decentralised structure is implemented. The project is a cooperation of ‘Persatuan Masyarakat adat indoe’, a network of Indonesian National CSOs’ programme ‘Indonesia in Transition’. Participating universities include Universitas Indonesia, Universitas Gadjah Mada, Universitas Atma Jaya, Universitas Padjadjaran, Indonesia University and Radboud University Nijmegen. A more detailed account can be found at www.indoe.Indonesia.net.