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# Land and authority: the state and the village in Paser, East Kalimantan

Nearly five years after the implementation of administrative decentralisation in Indonesia, popular influence on governance has increased, especially at the *kabupaten* (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 Paser, government and society are looking to tradition, national law and Paser identity to redefine authority over land.

Laurens Bakker

Paser is the southernmost district of the province of East Kalimantan, comprised of a flat coastal plain and a mountainous, forested hinterland called Gunung Lumut. Most inhabitants are ethnic Orang Paser who have recently shifted their cultural focus from nearby Central Kalimantan's Dayak communities to the ethnically diverse coastal area, Islam and Malayu identity.

Without its natural resources, Paser 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 *ladang* slash-and-burn farming are the main economic activities. Local customs and border agreements between communities, rather than national law or government policies, regulate access to land.

Paser'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 all 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 law and local practise usually coexist peacefully because would-be enforcers or practitioners ignore, or remain 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 tradition, *adat* has for years been a useful instrument in tying local cultural variety to matters of national economic interest, such as tourism. In matters of land or forest management, however, local *adat* and national policy-making are frequently at odds. According to Indonesia's Basic Agrarian Law (BAL) of 1960, national land law is *adat* law, but the BAL does not define *adat*; it merely provides five broad qualifications under which the validity of *adat* land claims may be overruled (see also Haver-

field 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.

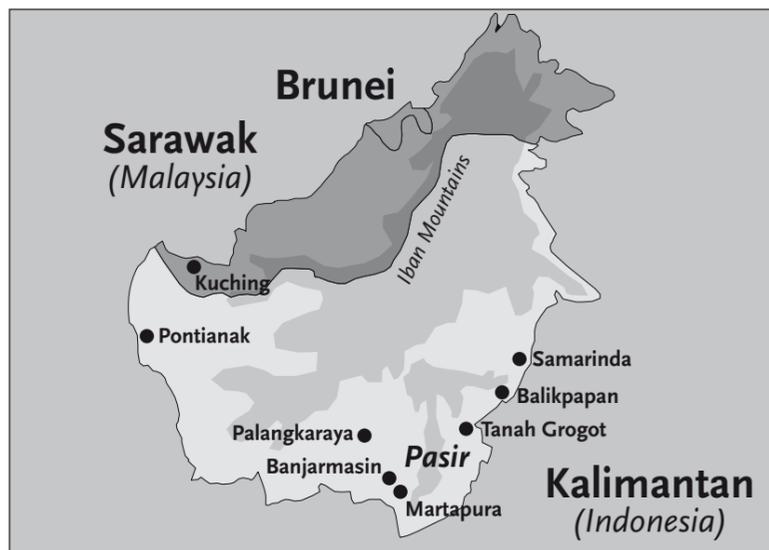
The illegality of communal claims does not stop the population from making them. In recent years national media exposure and the establishment of a network of *adat* community NGOs have helped increase the number of cases in which communal lands are (re)claimed by *adat* communities. The Minister of 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; Sakai 2002). The regulation directs all district governments to investigate whether communal land claims exist within their district.

The Paser government enlisted a team of researchers from Universitas Hasanuddin in Makassar to conduct four days of field research in 2002, mainly on the coastal plain where large numbers of migrants live. Although part of the team worked along Gunung Lumut's periphery, 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 rather than a breakdown by area, making existing claims appear insignificant. Thus, in 2003, the district government drafted a regulation stating that communal land rights effectively no longer existed in Paser.

## You're not the state, we are

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

Through a special partnership, LAP, though not well-known outside its base in Tanah Grogot, is the district government's official liaison with all other NGOs – all, that is, except PBA-PDB.



Also based in Tanah Grogot, PBA-PDB instead tries to attract the attention of the government, newspapers, and Paser society through demonstrations. Although both claim to represent *adat* groups, they have in fact little contact with them and rely on third party information to pursue their goal of influencing 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 representing their clients and gaining political influence, both opt for the latter and take possible inconsistencies with 'local ways' for granted. Only PEMA has actual 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 government.

All three NGOs voiced their concern at a meeting organised by the district government to discuss the 2003 draft regulation. The government's decision to address the NGOs' protests is not mere opportunism. Most government officials are of migrant origin and identify little with Paser society beyond Tanah Grogot. They co-operate with organisations that appear to best represent it – a pragmatic 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-operate with.

## State? What state?

For the Orang Paser of the Gunung Lumut mountains, the debate on communal *adat* lands was as irrelevant as every government official who ever passed through to confirm the existence

of such lands. However, as in government-NGO relations, Gunung Lumut communities treat messages from 'the other party' pragmatically. When decentralisation 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 recentralised to the districts' Department of Forestry offices, some communities continue to issue their own logging permits. Similarly, the borders of a national forest reserve designated by the Ministry of Forestry overlap *adat* lands; some communities recognize its protected status while others hold their customary rights higher, depending on their ideas about preservation or exploitation.

A second example of this pragmatism is the size of territories claimed. Paser'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 communal *adat* territories; with the smallest 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 persuade government officials to sign these maps as an expression of alternative registration. Most communities express a keen interest in formal registration, but on a communal basis and for all of the territory.

## Reconcilable differences?

Negotiation and selective ignorance are common ways of dealing with land issues in Paser's mountains. Mountain communities consider the district government as only one of many sources of authority, while the government's administrative 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 local has clearly gained a place in district politics, its relation to 'local ways' is not necessarily clear or direct. The physical 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 certainly more influenced by local circumstances than they were before decentralisation. 'Local ways' are a platform for local politics and are regarded as such by local governments. However, in spite of what some politicians and NGOs claim, 'local ways' are at risk of becoming subservient 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. Paser's politics appear to be evolving toward the former, but it is too early to conclude that a new style of district government has been established.

## References

- Haverfield, Rachel. 1999. 'Hak Ulayat and the State: Land Reform in Indonesia'. Lindsey, T., ed. *Indonesia, Law and Society*. Sydney: The Federation Press.
- Sakai, Minako. 2002. 'Land Dispute Resolution in the Political Reform at the Time of Decentralization in Indonesia'. *Antropologi Indonesia Special Volume*.
- Slaats, Herman. 2000. 'Land Law in Indonesia: Changing Approaches'. *IIAS Newsletter* 22.

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*Indira* (Indonesian-Netherlands studies of Decentralisation of the Indonesian 'Rechtsstaat' and its impact on 'Agraria') is a Dutch-Indonesian socio-legal research project focusing on the impact of the new, decentralised administrative structure on the rule of law at regional and local levels in Indonesia. The project studies how 'guardian institutions' such as courts and ombudsmen oversee the legality of the acts of newly empowered legislatures and executives, and how the new system influences 'realistic legal certainty' of common people; an in-depth analysis is made in the sector of land law. *Indira* is part of the Royal Dutch Academy of Sciences' programme 'Indonesia in Transition'. Participating universities include Universitas Andalas, Universitas Gadjah Mada, Universitas Airlangga, Universitas Parahyangan, Leiden University and Radboud University Nijmegen. A more detailed account can be found at: [www.indira.leidenuniv.nl](http://www.indira.leidenuniv.nl).