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 practices 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 terrain where Gunung Lumut, Indonesia's highest mountain, can be found. 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 Malayu 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 nuclear families, legal and illegal logging and lading slash-and-burn farming are the main economic activities. Local custom and the local understanding of international law, as well as national law, government policies and regulations, regularly conflict and influence one another in this district. As a result, official regulations are implemented along the coast, but lessen in influence and even disappear in the mountains. Government law and local practice usually coexist peacefully because local 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 political and administrative concerns, adat has for years been a useful instrument in tying local cultural variability to matters of national economic interest, such as environmental conservation, land or forest management, however, local adat and national policy-making are frequently at odds. According to Indonesia’s Basic Agrarian Law (BAL) of 1999, any traditional land title is only legally valid if it is registered. The Ministry of Forestry has the authority to register land titles, 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 Havenfield 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 proclaimed by adat communities. The Minister of Agrarian/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 aims at improving local understanding of law, by investigating 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 on the coastal plain. Government officials and the local community always expressed interest in conducting such research in the area, making existing claims appear insignificant. Thus, in 2003, the district government drafted a regulation stating that communal land claims (as defined by the Ministry of Forestry over the 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 population that is involved in adat by area, making existing claims appear insignificant. Thus, in 2003, the district government drafted a regulation stating that communal land claims (as defined by the Ministry of Forestry over the Lumut’s periphery, no research was done in the mountainous region itself. 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