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# Which authority, whose land?

## Access to land in Paser, East Kalimantan

Laurens Bakker

### **Abstract**

*The key issue in this study is access to land registration, which is the official responsibility of the National Land Agency (Badan Pertanahan Nasional, hereafter NLA). Nonetheless other official institutions such as the Department of Forestry and regional governments have authority over issues pertaining to land usage as well. Moreover, local custom (usually called adat<sup>1</sup>) can be a normative source opposing NLA decisions. This case study is concerned with the role of the NLA in deciding and maintaining land tenure at the district level, amidst the various interests of the district's economy and the population. The research focuses on the ways in which the local population seeks redress of (perceived) grievances related to land issues: how do poor inhabitants of East Kalimantan deal with disputes over land?*

*The paper shows how possibilities for addressing land related grievances have improved since Reformasi. First important change has been that local population groups have come to demand recognition of adat-based rights to land or compensation for adat lands in use by others. In many instances NGOs took the lead in this, organising blockades and occupations. A second important change has been that elected government officials are nowadays given to considering the political benefits which they could gain from supporting these land claims. Rather than reverting to police or military assistance as was common in the New Order era., Paser's government engages in dialogue and takes a diplomatic approach to settling these issues.*

### **1. Introduction**

Access to land and security of tenure are essential in subsistence farming as well as for market-oriented agricultural enterprises (plantations) and natural resources extraction industries (mines, logging companies). East Kalimantan's economy is an economy that is moving from local subsistence farming to macro-scale, market-oriented crop cultivation. This process has gradually been taking place, increasing in intensity from the nineteen sixties. Large commercial plantations were established. First rubber, cacao and cloves, later followed by huge oil palm monocultures. Palm oil presently is East Kalimantan's main agricultural export product, while open pit coal mining provides the raw resources that fuel power stations throughout East Asia. Both plantations and mines need land, which has been made available in two ways. First, forests have been cleared for the exclusive purpose of obtaining plantation land and access to coal, second, forest land which had already been cleared by the logging industry was allocated to these sectors.

Next to land, plantation and mining companies require a work force. Sparsely populated East Kalimantan could not provide for sufficient labour, making the province a major destination for both private and government-sponsored migration. For centuries Bugis

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<sup>1</sup> *Adat* is the embodiment of the traditions and 'customary law' of Indonesia's various ethnic groups. It is a potential source of land rights that has been largely ignored by the New Order regime, notwithstanding its inclusion in a number of relevant laws. As we shall see, *adat* based land claims not only posed sensitive and complex problems to regional governments, but form a source of conflict in government circles as well.

from Sulawesi, Banjar from South Kalimantan, Javanese and Chinese had been arriving and settling in East Kalimantan of their own account. Extensive government transmigration programs brought large groups of migrants who were settled in prefabricated villages or added whole neighbourhoods to existing ones. Plots for personal usage were made available to them by local governments and many obtained work in the plantations or mines. Initially transmigration thus ‘happened’ to the population of East Kalimantan. Transmigrants often arrived in whole communities, were numerous and provided for, and thus had little need to concern themselves with local matters. Transmigration officials, and transmigrants, referred to the discourse of nationhood. Transmigrants were Indonesians moving to another part of Indonesia; one nation with the same laws and the same access to land for all.

In the post-New order political climate these assumptions are questioned. Local interests have become prominent in regional affairs. Direct elections of regional heads and parliamentarians has substantially increased attention for the local next to, or sometimes in conflict with, that of the nation. In East Kalimantan, the application of national land law has come under pressure from powerful appeals to local *adat*. The validity of such *adat*-based rights is established in national land law, although subject to severe limiting conditions. *Adat* rights are subsidiary to national interests and all land rights distinguished in official land law. This effectively limits the official validity of *adat* to land on which no other rights are placed; a situation that is close to non-existent in Indonesia.

Yet throughout the nation, *adat* rights to land are argued through appeals to indigeneity. Original populations feel they lost tremendous stretches of their *adat* lands to accommodate state interests, companies and immigrants. Pointing out their sacrifices, these groups address local governments demanding return or recompense of these lands. In Kalimantan, this issue gained muscle through the violent expulsion of Madurese migrants from West and Central Kalimantan by indigenous Dayak and Malay who justified their actions –among others- as a removal of illegal settlers from local *adat* lands. Yet descendants of earlier migrants who occupy *adat* lands have become an intrinsic and respected feature of local society in many areas. The exclusiveness of *adat* and the grievance that unauthorised usage of *adat* land entails thus seem to have an inherent political dimension.

### *Focus*

In this report I am particularly concerned with the access to land and the settlement of claims for one group, ‘the poor’. Defined as people with little property and financial means, this group transcends ethnic boundaries and comprises members of the original population, descendants of earlier migrants as well as recent arrivals. All claim land in East Kalimantan, be it through *adat*, indigeneity or national law. The role of the NLA in adjudicating land matters is a pivotal point of this research, as the NLA is the government agency responsible for land registration. Used together, registration and the issuing of a land certificate should improve the legal certainty of the certificate-holder. Yet in large parts of the nation such certification does not, as yet, inspire such certainty. NLA officials have a tenacious reputation for corruption. They are seen as demanding sums far higher than the required fees, as giving out multiple certificates to plots of land and as ‘loosing’ documents from their archives when this is convenient. Obviously such acts cannot be singularly ascribed to all NLA officials but the reputation effects the entire institution and causes many individual Indonesians to seek alternative sources of certainty. The dynamic impact of *reformasi* on Indonesian politics makes clear that government authority is not obvious. When considering authority over access to land, one should thus look beyond the established rules and laws and include political processes and local power relations. Why do people turn to specific authorities? The answer, I suspect, is much related to what people perceive as ‘justice’.

### *Research in Paser*

Data for this paper were gathered in the East Kalimantan district of Paser, where I have worked extensively from 2004 to 2010. Because of this background in the area as well as being well acquainted with the province at large, I found that an in-depth discussion of access to land at the level of a district may function to signal developments that are likely to hold relevance throughout the province.

Paser is the southernmost district of East Kalimantan. Its territory borders the districts of Paser Utara Penajam and Kutai Barat to the north, the provinces of South and Central Kalimantan to the south and west, and the Strait of Makassar to the East. The district's main geographical features are a flat stretch of fertile land along the coast that gives way to the steep northern stretch of the Meratus mountain range, known locally as Gunung Lumut, to the north and west. In 2002 Paser lost around a quarter of its territory and almost forty percent of its population when its northern stretch became part of Paser Utara Penajam, a new district consisting of northern Paser (Paser Utara) and the Penajam area that used to be part of the municipality of Balikpapan.

Paser's territory covers some 11,600 square kilometres and houses a population of 185,000, most of whom are farmers living on the flat, coastal land (*Badan Pusat Statistik*, 2008:57). The district's capital is the city of Tanah Grogot, which also is the main commercial and administrative centre. A number of large market villages have developed along the provincial road that bisects the district and connects Balikpapan and Samarinda to Banjarmasin, the capital of South Kalimantan. Small villages are scattered throughout the district, but mainly on the plain and along the coast.

The district is named after the Orang Paser, a population group that considers itself the original inhabitants of the area and is related to Dayak groups living further inland. Orang Paser currently make up around 40 percent of the district's population. Sub-groups living in the mountains, on the plains between the sea and the mountains, and along the coast speak different dialects of *Bahasa Paser* and have variations in *adat*. Large numbers of Bugis from South Sulawesi live along the coast and on the plains, as do Banjarese from nearby South Kalimantan. Both groups have been living in Paser for centuries and have left their influence on culture and daily life. Over the past decades waves of migration and transmigration have brought Javanese, Balinese, East Nusa Tenggaraese, Menadonese, Batak, Toraja and Madurese as well.

Culturally, the district is divided between the Bugis-Malay-oriented coastal plain centred on the capital Tanah Grogot, and the mountains. Until recently, the lack of infrastructure isolated mountain communities, limiting the influx of migrants and maintaining their social and cultural orientation towards the Dayak tribes of the hinterland. The construction of roads by logging companies began to shift the focus of the mountain communities towards the coast.

The capital Tanah Grogot has some 20,000 inhabitants, schools, a hospital, a large market and a shopping mall. The city is dominated by the many government offices of the district government, many of them new and built to impress. Its central street is a one-kilometre stretch of four-lane highway flanked by official buildings, mansions, shops, and public institutions. Although small agricultural enterprises dominate its outskirts, the town is the undisputed urban centre of the area.

Governance over the population and lands of Paser is a complex affair. Ministry of Forestry officials estimate that 65 percent of the land in the district comes under their authority. However, the regional forestry office does not possess a map delineating the borders between forest land and non-forest land. Notably in the coastal areas the NLA claims authority in land matters as well. Government bodies are less occupied with the forest land

designation of nearly all of the Gunung Lumut Mountains, contrary to the communities living there. These groups maintain claims of *adat* territories infringement of which gives rise to dispute.

## 2. Disputes over land: two examples

### *Building a boulevard*

The centre of Paser's capital Tanah Grogot is bound to one side by the Kandilo River. Along its bank runs a thoroughfare that is mainly used to transport the produce and waste of the large daily market that sits next to it. Until recently, the riverbank itself was covered in a long row of shacks –for a large part built on stilts above the river- housing simple shops and basic food stalls. As reform brought financial circumstances more favourable to resource-rich regions, East Kalimantan's natural resources industry provided its regional governments with considerable income. In many cities and districts this led to the construction of monumental new public buildings, mosques and offices. Paser had not stayed behind, and Tanah Grogot boasts a brand new giant mosque opposite the market and a parade ground laid out in Islamic architecture facing the river for ceremonial occasions. The ramshackle stands of the market – now separating the mosque from the river- had been designated for removal, but public objections to moving the market and the legal ants' nest of multiple land claims had the government decide to leave the market for the time being and concentrate on improving the waterfront instead. A long boulevard was planned that would offer splendid views of the river and lead from the parade ground to the location of the evening market. This required the removal of the slum-like riverfront.

The slum dwellers claimed ownership of their shacks' locations. Many had been living there for generations, as their fishermen-ancestors migrated from Sulawesi or Java and settled the riverbank conveniently located next to the market. Some of them were even Orang Bajau, whose ancestors were seafaring nomads and who felt that they had a right to their spot based on *adat*. None had land certificates, but all felt entitled to the land based on their long period of settlement. Opinions in the government offices differed. The NLA had a new head, an Orang Kutai originating from the neighbouring district and indigenous to East Kalimantan, who felt that although the government could freely avail of such land an indemnification would be in order. Simply removing these people, the NLA head felt, would deprive them of a home as much as of an income; for fishing they needed river access and the shops existed because of the spill over from the market. Hardliners in the government were not convinced. They maintained that as most of the shacks stood on stilts above the river, no land expropriation was taking place and hence no indemnification was required by law. The slum dwellers, with local NGO support, countered that at low tide a lot of land became exposed beneath their buildings and the issue therefore really concerned land. With the BAL as applicable law, its Article 27 decreed that suitable indemnification was necessary.



*Tanah Grogot's boulevard.*

Ridwan Suwidi, the district head, agreed that an indemnification was in order and in open, public negotiation it was further established that land in the centre of Tanah Grogot commanded a high prize and that indemnifications should be generous, as the lives of entire families depended on the amount they would receive for a few square meters.<sup>2</sup> With the eyes of Paserese society upon them, the regional government decided upon an indemnification of 3,000,000 rupiah per square metre in December 2006, a sum virtually unheard of that elicited the dry comment from the provincial government that apparently land prices in Tanah Grogot had risen to the level of those in Menteng in Jakarta.<sup>3</sup> The height of the indemnification gave considerable credibility to Paser's district head as a socially concerned person, yet caused problems as well.

Whereas the boulevard required indemnifications for a narrow stretch of shore only a couple of hundred of metres long, another project concerned enlargement of Paser's main road. This road stretches some eighty kilometres and requires the purchase of land on both sides, most of which is private property and certified by the NLA in hundreds of individual plots. Preceding the boulevard indemnification, government staff had already engaged in negotiations with a number of land owners. In some cases agreement had already been reached, generally for amounts of 300,000 to 500,000 rupiah per square metre. In reaction to the outcome of the boulevard negotiations these land owners demanded withdrawal of these agreements, as much higher prices were now anticipated. The highest amount the government will be able to pay is 800,000 rupiah per metre, which –staff expects- will lead to considerable

<sup>2</sup> No indemnification was paid for land that was claimed but beneath the water at low tide as well.

<sup>3</sup> Personal communication by provincial government staff, 30 March 2009.

disappointment if not dissatisfaction. The generous indemnification for the boulevard land thus has adverse effects as well.

### *Claiming a plantation*

January 2009 saw an indigenous Paserese of little means, whom I will call Zainul, engage a palm oil company over ownership rights to land. Zainul maintained that the company had recently laid out a plantation on land to which he held *adat* rights. His neighbours and fellow-villagers supported Zainul's claim. As the company would not receive Zainul, he sent them a letter detailing his claim and requesting an indemnification. As the company did not reply, Zainul approached a local *adat* organisation for help.

The organisation agreed to look into the case. After establishing the validity of Zainul's claim with the local *adat* leader and Zainul's fellow-villagers, they also sent a letter, requesting a reply within one week. When no reply came, they sent another letter informing the company that they would visit its office at a certain time and date. They also informed the police of this visit. Before the date arrived, however, the company contacted the *adat* organisation and proposed an indemnification. After some negotiation Zainul accepted this sum and paid the organisation 20 percent for their troubles.

This *adat* organisation has a fixed working procedure. If no answer would have arrived, a group of several dozen members would go to the plantation's office at the announced time and date. All would be dressed in white to show their good intentions but some would carry machetes, suggesting that they might want to destroy the plantation. If the company would not budge, the organisation's members would occupy a part of the plantation lands or block the road. Nothing would be destroyed, but any work would be prevented. The company might request police assistance, but the police would be unwilling to interfere as they have a good relationship with this specific organisation and are convinced of the sincerity of its actions. The organisation maintains a register of claims and ensures that no two people claim the same plot of land from a company, thus ensuring a certain degree of security for the company as well. Moreover, they make sure that the number of claims made against a company within a given period of time is workable for said company. Too many claims would render a plantation unremunerative and could cause a company to quit Paser, thus damaging the local economy as a whole.

### **3. Competing legal frameworks**

With these two examples I wanted to give an impression of the way people voice their grievances regarding land, and the strategies they employ to find a redress for these grievances. These grievances are related to an experience of a violation of *adat*-based land rights: as the Indonesian government for a long time did not acknowledge the validity of *adat*-based land rights, people often perceived the attitude of the government towards their land claims as unjust. People in Paser claiming *adat* rights to land perceive these as valid for two reasons. First, because of the traditional and historic nature of such claims. *Adat* has been respected and followed for generations, dating back to before the independence of Indonesia. As one respondent put it: "our *adat* was even respected by the Dutch colonists when they came here, and now our own government is telling us that it is no longer valid? Nonsense". The concept of a national government applying a nationwide legal system that rightfully supersedes local customary claims thus is disputed. A second reason for claiming the validity lies in the mentioning of *adat* rights in the BAL. Even though, as is discussed below, the legal status given to *adat* in that law does not necessarily mean that *adat* based claims are recognised, information provided by NGOs and others has instilled the notion that *adat* rights are at the very least a potential source for official recognition of a land claim.

Until recently, it was quite common for individuals claiming ownership of a plot of land based on *adat* to find that the National Land Agency in Tanah Grogot was unwilling to accept *adat* as sufficient ground to grant official ownership rights as well. Although this stance of the NLA has altered in recent years and its legal possibilities were severely restricted (see the next paragraph), this attitude is frequently considered as wilful obstruction or even malevolence of its personnel. Rural paserese often feel that official land law does contain recognition of *adapt* land rights, but that these regulations are not implemented. This notion was brought about by human right and indigenous peoples NGOs visiting these communities during ‘empowerment projects’, in which the communities were made aware of their status and rights under official Indonesian law. Exactly how or where and in which law *adat* land rights are recognised is not clear to most of the claimants, but this notion of validity inspires a feeling that the local government is acting against national law on purpose, favouring immigrants and large companies just as it did during the New Order.

Whereas, for instance, *adat*-based land claims traditionally sufficed to arrange affairs among the Paserese population, large-scale immigration to Paser gave rise to conflicts emanating from the land needs of these new arrivals. The regional governments of the time showed a persistent disinclination to engage with these conflicts other than by hard-handed repressive methods. This caused, first, for people to remain silent but discontent regarding what was considered a violation of *adat*-based land claims. Second, it gave rise to an image of Paser as a region that was peaceful and complacent as no riots, fights or other serious violent outbreaks or social disruptions occurred. Yet this popular contentment was ostensive, as dissatisfaction over land rights continued to exist in the Paserese population. Regional government however, largely made up of immigrant officials and civil servants with few connections to Paserese communities, failed to pick up on this dissatisfaction or appreciate its severity. Upon Suharto’s resignation as President of Indonesia and the ensuing climate of greater democratic freedom, this dissatisfaction over land claims resurfaced in Paser. The perception that one’s land rights are not being recognized manifests itself, generally speaking, in the following types of grievances being voiced about land in East Kalimantan:

#### 1. *Grievances over the seizure of land by others*

From the seventies onwards, authorities gave large tracks of land in Paser in use to companies and immigrants. Extensive parts of these lands were considered as *adat* land by local Paserese, thus giving rise to the grievance that the authorities ignored individual or group ownership of land. Quite often the Paserese claiming *adat* rights were willing to accommodate government plans with those lands –although the matter of local assent rarely featured among official planning- but felt that some type of recognition of their rights would be in order. Using other peoples’ lands without permission is a transgression of both Paserese *adat* and official land law. Taking other peoples’ land as one’s property without the original owners’ consent is theft. Paserese communities felt that they had never given up their ownership of those lands, at most they would agree to a temporal usage by others, but since their consent had not been asked at earlier stages they were due apologies, indemnifications, and a return of the lands. At the very least a decent agreement had to be drawn up in which Paserese rights to the land were acknowledged and safeguarded, and compensation or rent established with retrospective force.

Grievances such as this are actively pursued in Paser and occasionally give rise to actual conflict. These grievances are voiced in terms of a violation of *adat* land rights. Migrants perceive this discourse around *adat* as threatening – since many migrants use land that was assigned for transmigration or plantations by previous governments, often land that is claimed by others as *adat* land.

## 2. Grievances over the compensation of land that is being used by others

Notably in the eighties and nineties did companies and on occasion the government pay attention to protests over the usage of *adat* land and offer –usually financial- compensation. Frequently communities deemed it wise to accept this money rather than remain completely empty handed. Following *reformasi*, however, numerous instances came to the fore in which the circumstances –under pressure of government force, which prevented fair negotiations- and the exact nature of the agreement were brought to the fore. Communities maintained that they had not given up their rights to the land but had only permitted usage. Continued usage by immigrants or companies was usually possible, but only after additional payments that would reflect the actual rental value of the land would have been made.

This grievance is frequently part of the discourse that leads to conflicts over land. As with the preceding issue, solutions are often sought through *adat* organisations rather than through official channels. Yet as various *adat* organisations revert to putting pressure on opponents if negotiations do not work out, a strong and threatening undertone give *adat* rights a rather different meaning to the immigrants and companies that are targeted. As a spokesperson for an immigrant community confronted with such claims told me:

“These claims cannot be real. We have held certificates to this land for the past twenty years and all of a sudden these claims are made. Not as long as the land was not in use but now that we have planted oil palm trees and they are bound to start bearing fruit, the land is claimed. These people are only looking for money.”

*Adat* spokespersons counter that there was no point for them in voicing their claims under the New Order as this would only result in a reputation as upstarts. They maintain, however, that they had regularly reminded this specific immigrant community of their claim to the land, but that they had refrained from persisting too much for the reason stated.

Defining justice in this and similar thorny situations is a highly delicate task for the relevant authorities. *Adat* authorities and interest groups have a very strong voice in this, although the power of the regional government often supersedes if the conflict reaches that level. In many instances, however, all parties involved prefer to keep a conflict low-level, and reach a swift settlement to which all parties agree. Neither authority wants to be accused of instigating large-scale disagreement with its counterpart, as both the district head and *adat* leaders publicly emphasize their respect for, and commitment to, each other’s authority. Reputations are at stake for both *adat* and government officials and both prefer to settle a matter before the other comes in. Rivalry over public favour clearly plays a part in this as well.

## 4. The law: possibilities and hindrances

**Box 3:** “The BAL actually recognises *adat* rights to land, did you know that? Article 5 states that the law governing land and water is actually *adat* law. The problem is that this article also states conditions under which *adat* rights can be limited. There cannot be conflicts with the interests of the nation or those of the state, other regulations in the BAL or even conflicts with Indonesian socialism. Who has ever heard of Indonesian socialism? And if government officials are allowed to decide what is in the interest of the government or the state –are *adat* communities not part of the state as well?- and if all other regulations in the BAL precede Article 5, then how can the BAL be properly applied? (Arguments given by an East Kalimantan *adat* activist as to why the application of the BAL is in the wrong hands with the government).”

Three pieces of legislation are of major importance when it comes to obtaining and safeguarding access to land. The Basic Agrarian Law (BAL), the Basic Forestry Law, and the Regional Autonomy Laws (RAL). Below follows a brief discussion of these laws.

### *The Basic Agrarian Law*

The BAL<sup>4</sup> is an umbrella law providing a framework for a national system of land legislation. It does not contain many elaborated stipulations, but rather provides principles according to which implementing legislation was to be formulated. It is distinctly nationalist in its outlook. Article 1 decrees that all of Indonesia's territory as well as the natural resources it includes belong to the Indonesian people. The state is the manager of the land (Article 2), but –as Article 6 states- all rights to land must have a social function. Whereas this implies that collective rights supersede individual ones, Article 7 decrees that the general interest should be protected by limiting large landownership. The BAL instructs the establishment by law of a maximum size of land property (Article 17), and the formal registration of all land tenure to guarantee its certainty (Article 19). Article 9 stresses that all Indonesian citizens, men and women alike, have an equal right to land to provide for their needs. Nonetheless the interest of the state is paramount: the government has the authority to withdraw citizens' land rights if this is in the national interest (Article 18) – although a suitable indemnification should be paid and the decision must be in accordance with the law - in which case the land reverts to the state (Article 27).

The BAL's drafters aspired to develop a uniform national land law that honours Indonesian traditions, which, for land, come to the fore in the nation's many and diverse local *adat* systems. Article 5 states that the agrarian law governing land and water is *adat* law, whereas Article 3 confirms the validity of communal (*ulayat*) *adat* land rights. However, the actual impact of these Articles is not so straightforward. Article 5 continues by posing the limiting conditions that *adat* may not conflict with national interests or those of the state, 'Indonesian Socialism', other regulations in the BAL, or other laws. Article 3 prescribes that the effectuation of *ulayat* rights must take place in such a way as to be in accordance with national and state interests and may not be at odds with other legislation. Recognition of *adat*-based land claims thus becomes possible only if no other legal claim is made to the land, and might be annulled if the limiting conditions of Article 5 require this.

Formal recognition of a land claim requires registration of the plot by the National Land Agency (*Badan Pertanahan Nasional*). This agency registers land titles to individuals as one of seven private rights, defined in Article 16 of the BAL. There are four primary land rights: the right of ownership (*hak milik*), exploitation right (*hak guna-usaha*), building right (*hak guna-bangunan*), usage right (*hak pakai*), and three secondary land rights: lease right (*hak sewa*), exploitation right (*hak membuka tanah*) and the right to collect forest products (*hak memungut-hasil-hutan*). The BAL allows for the creation of additional land rights by new laws, and in 1974 a state management right (*hak pengelolaan*) and temporal usage rights derived from subsided *adat* rights such as the sharecropping right (*hak usaha-bagi hasil*), and a right of temporal occupation (*hak menumpang*) have become accepted as rights to land not listed in the BAL.<sup>5</sup>

### *The Basic Forestry Law*

With over seventy percent of Indonesia's land mass defined as forestry land, those appointed as its managers are in an influential position. Since the early eighties this position is held by

<sup>4</sup> Undang-Undang Pokok Agraria. Law 5 of 1960.

<sup>5</sup> Decision of the Minister of Internal Affairs No. 5/1974

the Department of Forestry, based on Law 5 of 1967 on the Basic Forestry Regulations<sup>6</sup>, the original Basic Forestry Law.

Law 5/1967 gives the state the authority to designate and manage Indonesia's forest lands (Article 1 paragraph 1) –notwithstanding the earlier recording of the state's authority over all land in Indonesia in the BAL- and charges the population with assisting the government in developing the nation. Law 5/1967 hence has little time for land claims by the population that oppose the interest of the state. Article 5 paragraph 1 states that all forest in Indonesia and the natural resources found therein are controlled by the state, which gave the state the right (Article 5 paragraph 2) to plan the usage of forests, decide all legal issues pertaining to forests and draw up legislation relating to the forests.

Law 5/1967 makes no reference to the BAL or the various categories of land rights listed therein. Article 2 distinguishes between state forest (*hutan negara*), where no BAL private ownership rights apply, and private forest (*hutan milik*) which is forest growing on privately owned land, generally known as 'people's forest' that can be owned individually, commonly, or by a legal body (elucidation to Article 2). The key to forest ownership thus lies in landownership.

The position of *adat* rights is a precarious one. The elucidation of Article 2 explains that *adat* rights to forest are limited to *ulayat* rights, the validity of which is to be reviewed critically and may not interfere with national interests or higher legislation. It is not stated how the validity of *ulayat* claims is to be reviewed, or by whom. Article 17 decrees that communal as well as individual usufruct rights to forests may remain in place, provided they are deemed still valid and do not interfere with other purposes for which the forest is used. This gives no recognition of *ulayat* claims: the elucidation of Article 17 states that since such claims cannot be verified, they cannot be honoured if they oppose government plans such as forest clearing or transmigration projects. The state designates forest land, which is not subject to the BAL, thus making it virtually impossible to have *adat* claims in forest land recognised. This meant that communities living in forest areas and working forest land would need to request usage rights from the forest authorities. Claims of property based on *adat* have no value in this situation.

The Department of Forestry's resistance against the BAL and the Department's authoritative application of the Forestry Law by rejecting nearly all land claims in forest areas were causes of considerable resentment and uncertainty for those living in areas designated as forest land (see for instance McCarthy, 2000:104-113). Following on the heels of the 1999 decentralisation laws, law 5/1967 was revised and reappeared as Law 41 of 1999 on Forestry.<sup>7</sup>

Law 41/1999 included various notable changes. First, the concept of *adat* forest (*hutan adat*) was introduced into forestry legislation. *Adat* forest is defined as state forest in the territory of an *adat* community (Article 1.6), and as such is not the exclusive domain of that *adat* community. The state remains in control of all forests and the natural resources within them, and is responsible for defining their status (Article 4). State forest, as explained in Article 5.2., can take the shape of *adat* forest, but to do so the community claiming *adat* forest must qualify as an *adat* community first. The elucidation to Article 67 contains conditions for this. It stipulates that an *adat* community can still be considered to exist if:

- a) the community still functions as a 'law community' (*rechtsgemeenschap*)
- b) *adat* institutions can be said to exist and function
- c) a clear *adat* territory can be discerned
- d) *adat* law institutions that are still respected exist and

<sup>6</sup> Undang-undang no 5 tahun 1967 Tentang Ketentuan-Ketentuan Pokok Kehutanan.

<sup>7</sup> Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 Tentang Kehutanan.

- e) a harvest of forest produce is still collected from the area to meet daily needs

Article 67 itself states in paragraph 1 that *adat* communities, provided they can be proven to exist and are acknowledged as existing have the rights:

- a) to collect forest products for the daily needs of the *adat* community
- b) to manage the forest based on prevailing *adat* law provided this does not contradict official law; and
- c) to receive empowerment aimed at raising their level of prosperity<sup>8</sup>

It hence remains questionable whether law 41/1999 adds anything to forest law that improves the standing of *adat* claims other than that it indicates that recognition of *adat* communities is possible, it could even worsen the position of *adat* claims to forest land.

### *Regional autonomy laws*

The regional autonomy laws of 1999 and 2004 delegated considerable administrative authority to the regional level of government. Three key issues are of importance here.

First, the 1999 RAL transferred authorities from the central level mainly to the regional level of government. Article 11 paragraph 2 of Law 22/1999 explicitly mentions land issues as a regional matter. The introduction of the RAL caused confusion as well as opportunistic interpretations by the new regional authorities. This is most visible in the forestry sector, as district governments applied various new Government Regulations<sup>9</sup> and the decentralized authorities of Law 22/1999 to contravene the monopolist control of the Department of Forestry and begin giving out small scale logging concessions themselves. Within days of the coming into force of the 1999 RAL, forces within the central government effectuated a check on the regions' authority over land. This was Presidential Decision 10/2001 on the Realization of Regional Autonomy Regarding Land Issues.<sup>10</sup> This decision instructed the preparation of new legislation regulating the authorities of the regions in land management, and decreed that until such legislation was available authority remained with the NLA. This decision failed to make much impact in the heyday of regional autonomy. The legislation ordered in Article 1 of Presidential Decision 10/2001 followed two years later as Presidential Decision 34/2003 on National Authority in Land Issues. It orders the NLA to revise and refine the Basic Agrarian Law in accordance with National Assembly Policy Decree IX of 2001 on Agrarian Reform and Management of Natural Resources, and to develop an inclusive land management and information system.<sup>11</sup>

<sup>8</sup> Paragraph 2 continues with the statement that the existence or ending of *adat* communities such as referred to in paragraph 1 must be recorded in a regional regulation, whereas paragraph 3 states that more elaborate provisions should be formalised in a government regulation. Bedner and Van Huis (2008:184) actually identify a 'Catch 22' dilemma in that: "*Adat* law communities can only fulfil their needs by collecting forest products, because farming in forest areas is prohibited by law. As a result the communities concerned need 'empowerment' but such empowerment would be paramount to modernisation and might well cause them to lose their status as traditional community as *adat* law communities.

<sup>9</sup> Mainly Government Regulations 6/1999 and 62/1998.

<sup>10</sup> *Keputusan Presiden Republik Indonesia Nomor 10 Tahun 2000 Tentang Pelaksanaan Otonomi Daerah di Bidang Pertanahan.*

<sup>11</sup> Then the instruction goes on in Article 2 to redefine district and municipal authorities with regard to land to a limited set of powers: a. issuing location permits; b. land clearance for development; c. settlement of disputes over farmed land; d. settlement of disputes related to compensation and aid money in land clearance for development; e. determining subjects and objects of land redistribution, as well as determining compensation for land exceeding the maximum permitted size or owned by an absentee landlord; f. determining and settling problems related to customary land (*tanah ulayat*); g. granting permits to open/develop new land and h. spatial planning. As with Presidential Decision 10/2001, one can question the actual validity of this instruction adding

Second, the RAL abrogated Law 5 of 1979 on Village Government. This law had introduced a Javanese model, the *desa*, as the basis of village government throughout the nation. This model clashed with local *adat* governance of the village and was experienced as an unwelcome intrusion by those preferring their own *adat*, although it provided opportunities to induce change for those opposing custom. Following the law, local government representatives were installed at the village level with largely the same tasks as the *adat* leaders carried out. The law on Village Government thus introduced a competitor to *adat* that made it possible to substantially weaken, or overrule, the influence of its leaders. Law 22/1999 contains a change of outlook. It defines a village (Article 1 under o) as:

An undivided legal community with the authority to govern and regulate the interests of the local community on the basis of local origins and customs (*asal-usul dan adat-istiadat*) which are acknowledged in the national government system and is [hierarchically] positioned below the district level.

The acknowledgement of the existence of regulating origins and customs in this definition provides leverage for *adat* authority at the village level. This is further elaborated in Article 99 which states that the scope of village government can be based on the rights of origin of the village, while Article 111 paragraph 2 states that all district regulations must take the rights, origins and traditions (*hak, asal-usul, dan adat-istiadat*) of the village into account. The RAL thus gives the position of the traditional authorities of the village a significant boost *vis-à-vis* the official authorities that the 1979 law on village government introduced.

Third, an important point here is that Law 32/2004 promotes regional democracy by giving more responsibility to the position of the regional head. Articles 56 to 67 provide guidelines for the direct election of regional heads by the population instead of being appointed by the regional parliament. This change greatly increases the population's influence in the governance of the area. Moreover, the central government gets the authority to suspend a regional head if he is sentenced for –among others- corruption, terrorism, subversion, threatening the state security or when sentenced to more than five years in prison for other reasons (Article 29 to 31). As members of the regional parliament, who are elected directly as well and can also be subjected to criminal prosecution, and the regional head together make up the regional government, this means that Law 32/2004 made this level of government accountable to both the regional population and the central government.

### *Land registration*

Land registration is instructed in the BAL in order to provide claimants with a certificate stating their right to the land and thus to create certainty regarding the legal status of land claims. The BAL requires primary land rights to be recorded in a registry<sup>12</sup>, and exempts people who cannot afford registration expenses from payment for such registration.<sup>13</sup> Upon registration people receive a land certificate, which may serve as evidence of their right. Nonetheless land registration does not appeal to Indonesia's masses. NLA officers have been

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to higher legislation. Although the actual impact of the instruction remains unclear, various regional governments have implemented it while officials of both the NLA and the Department of Forestry have been known to refer to it when disputing actions carried out by regional government officials. (Based on Personal communication by regional government civil servants as well as staff of NLA and forestry offices).

<sup>12</sup> BAL Articles 23, 32 and 38 in conjunction with 19. BAL in conjunction with Article 9 Government Regulation No. 24/1997 on Land Registration.

<sup>13</sup> BAL Article 19. However, Article 61(2) of Government Regulation No. 24/1997 on Land Registration states that people unable to afford registration *can be* exempted from *part of* or all the costs for registration. This regulation is an elaboration of BAL Article 19 and replaces Government Regulation No. 10/1961 on Land Registration.

known to demand high prices and have a general reputation for corruption. An NLA certificate by itself is rarely sufficient or decisive in a land dispute, even if the case is brought before the court. For instance, Government Regulation 24/1997 on Land Registration which implements BAL provisions on this issue allows various documents as supportive evidence for initial registration of land.<sup>14</sup> This allows for claims to be awarded retroactively and has made the production of fake historical land documents a popular crime.<sup>15</sup> The registration system attracts criticism from NLA officials as well as from right holders. NLA officials lament the lack of popular effort to keep the system updated, thus causing sales, inheritances or divisions of plots to go unrecorded and endanger their validity. Yet right holders, basing themselves on earlier cases of multiple-certification or non-registration of reported changes, expressed their distrust of NLA officials and the system in general. Many people prefer to put their trust in recognition of their land rights in their local connections - support of neighbours or other fellow-villagers, family members, or other persons, rather than present themselves at the expensive and uncertain NLA registry.

In Paser, land registration is on the rise. A lively trade in plots of land along the district's roads is taking place as the district's economic prosperity keeps attracting new migrants. The value of land in these semi-urban areas steadily increases, and it is not uncommon for people to invest in such plots. NLA certificates as proof of registration thus gain in importance. Unfortunately, the expenses of first time registration are a major obstacle to a large part of Paser's poor. Anyone desiring a certificate needs to pay registration tax over the land first.<sup>16</sup> The tax is five percent of a fixed sum per square metre -for Paser, this sum is 170 rupiah- minus a deduction decided by local government (ten million in Paser).<sup>17</sup> Hence:

	Times 170	Minus 10 million	5 percent	Tax
1 hectare	1,7 million	negative	negative	none
5 hectares	8,5 million	negative	negative	none
10 hectares	17 million	7 million	350,000	350,000

Registration tax is kept deliberately low in order to encourage people to register their lands. Notably the urban and semi-urban population along the roads profits from this situation. Yet especially the rural, indigenous Paserese population fails to register. Many rural Paserese are subsistence farmers who do however claim extensive tracks of land. In Paser up to 20 hectares can be registered as individual property, which would incur a tax of 1,200,000 rupiah. A substantial sum for a subsistence farmer.

Moreover, a yearly tax needs to be paid to maintain property of the land which is also based on a set sum per square metre. In Paser, this sum is 5,000 rupiah. Percentages of the total (20% of the total, and then 5% of that sum) are calculated to come to a yearly tax of 4% of the land's estimated value.

<sup>14</sup> Examples of such documents include a counterpart original of a notary deed concerning a European ownership right; a private contract concerning the transfer of land that is witnessed by an *adat* leader / head of the village / head of the neighbourhood, created before the enactment of the 1997 Government Regulation; an official deed concerning the transfer of land which has not yet been registered; a colonial land tax document, or a letter by the land and building tax department clarifying the history of the land. In case the evidence is incomplete, witnesses or the person claiming the right can give testimony (see Harsono, 2005:495-498).

<sup>15</sup> Personal communication by judges at two East Kalimantan district courts and the national Supreme Court in Jakarta.

<sup>16</sup> This is the *Bea Perolehan Hak Tanah Bangunan*.

<sup>17</sup> Possible deductions differ per region and may fluctuate wildly. In Paser it is ten million, in neighbouring Kutai Kertanegara it is six million. After the boulevard case discussed in paragraph 8 Paser temporarily abandoned the discount while it stood as high as 30 million in 2005.

	Times 5000	20 percent	5 percent	Tax
1 hectare	50 million	10 million	500,000	500,000
5 hectares	250 million	50 million	2,5 million	2,5 million
10 hectares	500 million	100 million	5 million	5 million
20 hectares	1000 million	200 million	10 million	10 million

A successful agrarian company will be quite able to pay 10 million in taxes on a yearly base for 20 hectares, but our subsistence farmer cannot. Citizens of Paser may request to be exempted from this tax or pay a lower amount –a regional government commission deals with these requests- but this is a long and bureaucratic procedure that induces expenses and moreover needs to be undertaken each year.

The combination of registration and taxation hence does not work well for traditional subsistence farmers claiming extensive plots of land, although urban and semi-urban poor with small plots of land look favourably upon it.

## 5. Rights awareness and legal knowledge

### Box 2: thinking of land law

“Of course the land is mine, the government just does not recognise it”, is how a respondent from one of the remote mountain villages expressed his view on the legal status of his land claim. The land he claimed as his for usage, not as property, is part of a larger territory claimed by his community as their hereditary *adat* land. The regional government has never recognised that claim, but they are far away and hardly ever bother the mountain communities. If they do, however, it is through large logging or reclaiming projects which seriously impact local circumstances. After *reformasi*, *adat* has become part of the rights discourse in Paser and in recent years the government has started paying attention. A dialogue with official law is taking place. At the same time knowledge of official land law is increasing in the population, making that land registration with the NLA is gaining in popularity. Recently, the local NLA office has started paying attention to *adat* claims as well, making that official law is seen by many villagers as accommodating *adat*. Strictly speaking, the law has not changed, but politics have. This realisation is spreading as well, but at a slower pace.

As may have become clear in the above, two elementary sources of rights to land are distinguished in Paser. Official law which is given shape through the authority of the regional government, the National Land Agency and the Department of Forestry, and the *adat* law that is applied through local *adat* leaders and a variety of *adat* organisations. For decades, a link between these two was practically nonexistent as the regional government referred mainly to official law in governing matters pertaining to land, and had little time for *adat* based claims or grievances. Issues most frequently occurring were disputes over land, generally taking the shape of an individual or, frequently, a community, claiming *adat* rights to land for which a usage right had been given out to a plantation company or to forest for which a logging concession had been issued. This situation only changed recently.

Following Suharto’s resignation, the Head of the National Land Agency/Minister of Agraria issued a Ministerial Instruction (number 5 of 1999) requiring all regions in Indonesia to look into the existence of *hak ulayat* (communal *adat* land) in their territory and promulgate regional legislation formalizing their findings. For various reasons, few regions actually acted upon this instruction but Paser’s government did. Following research the district government of the time concluded that there was no valid *hak ulayat* in the district,

although it was established that such rights had indeed existed in the past. The research also concluded that *adat* land rights still existed in the shape of hereditary plots of land, but these were inherited on an individual base, not communal. The findings of this research and the proposed regional decree invited considerable popular criticism and wreaked havoc on the district head's popularity. As this was close before new district head elections would take place, the issue was left for the time being. The incumbent district head was not re-elected and Ridwan Suwidi, his successor, took this result at heart.

Suwidi was not the only one to do so. Throughout East Kalimantan regional administrators started to allow space for *adat* land claims. Partly because of the new direct election system which directly tied government officials to their performance, but also because of fear inspired by the Dayak violence in West and Central Kalimantan. East Kalimantan had seen no ethnic fighting but new, more militant Dayak organisations had come to the fore here as well. These groups maintained that if the government continued to ignore the *adat* land rights of the province's indigenous population, this could well lead to unrest in East Kalimantan as well.

When Ridwan Suwidi was elected district head of Paser in 2005, he chose to incorporate the issue of *adat* land rights in regional policies (see Bakker, 2009). One of Suwidi's main election promises had been to increase the overall wealth of the district's population and improve the living conditions of the population at large, but especially those of the 'common people'.<sup>18</sup> Improvement of access to land and a policy aimed at relaxation of the tensions aroused by the announced *hak ulayat* legislation were part of his measures, although no new official legislation or instructions regarding the issue were formulated and the official legal status of *adat* land in Paser has not changed. Rather, the government considers the effect of going against *adat* claims with care and unofficially condones (limited) claims for compensation of *adat* land in use by large companies. This is in part remarkable as such companies usually dispose of NLA certificates to the land, thus having the right to use the land according to official law. Yet peace and order in the district is worth a price and many companies are in fact willing to pay, thus ensuring a good reputation.

#### *Plural normativity*

The effect of this situation is that many people in Paser perceive two normative systems, official law and *adat*, as governing access to land. Official law is strongest as it has the power of the state behind it, but mobilising this abstract power is no easy feat and its results uncertain. For claims concerning *adat*, the ready power of that authority can locally surpass that of state law, which it regularly does. *Adat* land claims are popularly thought of as recognised in official land law, whereas government authorities have for decades been unwilling to put this recognition into practice. This is put down to a general untrustworthiness of officials who are thought of as corruptly serving their own interests by having third party land claims prevail against payment over the just claims of *adat* communities. Yet few people are absolutely certain of such an unconditional recognition of *adat* land rights in official law. Until recently Paser's NLA office would not accept requests for registration based on *adat* rights alone. Although many villagers felt that this was no doubt due to corrupt practices and desires for bribes, many consider it a sign that *adat* is not omnipotent. Likewise, judges at the regional court of law would in land cases never rule in favour of those solely maintaining *adat* rights if their opponent possessed an NLA land certificate. Judges as well as other civil servants are considered as corruptible, but such persistent rulings served to raise questions regarding the official status of *adat* land.

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<sup>18</sup> Phrased as '*orang biasa yang pakai sarong*' by one of Suwidi's assistants. After an incident in which a man in sarong wanted to speak with Suwidi, but feared that he would not be allowed to due to his dress. He was admitted, and the slogan was used in the campaign for some time.

Popular opinion perceived officialdom's dealings with access to land as subject to corrupt practices and as officials as above the law since they got away with it. Such perceptions tie in with the notions of patronage and 'deep corruption' discussed in the above, which see government officials as part of a larger, powerful network that literally controlled the implementation of law. The existence of such ties in the bureaucracy was clear to many individuals at the grassroots level, and usually accepted as beyond one's control. Patrimonial relations thus were widely considered to control the unclear relation between official law and *adat*.

*Reformasi* and direct elections of regional leaders introduced a changed perspective to grassroots perspectives on power in Paser. The vocal presence of NGOs and *adat* organisations as well as the open attitude of Ridwan Suwidi towards popular problems and opinions instilled the notion that the population does have a say in local affairs. The regional government wants to maintain the peace and prosperity of the district, and is aware of its own need for popular support. The government hence is susceptible to appeals for justice, especially if made in public and with organised support by NGOs or *adat* organisations. This means that the government remains the major force of authority controlling official law as well as –to a large extent- *adat*, but the law is no longer there for the exclusive benefit of the happy few. If cases are brought to the fore with popular backing and regarding vital subjects such as land, the government can facilitate a solution that moves beyond a strict interpretation of official law. People are aware of this role of the government and attempts at seeking redress of grievances where official law will not grant them have thus gained a distinctly political dimension.

## **6. Intermediaries in land rights**

Conflicts over land rights are rarely settled without outside support. Parties can involve a variety of intermediaries to generally argue their cause, lobby the forum deciding the dispute and –for certain bodies- put pressure on the opposing party. Being an intermediary is not a single or exclusive position. Authorities acting as intermediaries often act as conflict-resolvers in forums as well, but generally limit their role to one or the other in a given conflict. Authorities' involvement and their role usually depends on the specific nature of the case although parties might also select authorities to argue their cause based on the power-relations and political constellations among these authorities; choosing an authority known to oppose the intermediary approached by the opposition in the land conflict.

Intermediaries and forums (discussed in the next paragraph) thus are not mutually exclusive categories when it comes to the authorities capable of taking up these roles. The functions of intermediary and conflict-resolving, however, are quite specific, non-overlapping tasks. A decision-taker in a forum cannot be publicly seen to be awarding a party without clear and good cause, without accusations of corruption and nepotism, and hence damage to their reputation. An intermediary, on the other hand, has the sole task of representing his client's interests by all means at the intermediaries' disposal. In Paser, intermediaries can be divided into three main categories; government officials, the judiciary and *adat* leaders and organisations. It is not uncommon to have more than one category involved or various authorities from the same category, as both sides bring in those intermediaries as are most likely to substantiate their claim. Moreover, a decision or verdict given by an intermediary from one category may be countered or weakened by decisions given by authorities from other categories.

*a. Government officials*

Government officials are a diverse range of civil servants mainly employed with the regional government. In most cases village heads are involved in disputes at an early stage by one or other of parties, yet their involvement rarely suffices to settle a case. In cases in which the government has an interest, for instance land appropriation for general interests or conflicts over land in use by plantation companies, the regional government has teams of officials from its public administration division (*tatapraja*) standing by. These teams (*pertanahan* and *senggeta* respectively) are tasked with negotiating a solution with the parties involved, either by themselves or in collaboration with intermediaries of other categories. It is not uncommon for these teams to be proactive and monitor a conflict before their assistance is requested, as it is their task to maintain the peace in land disputes and avoid the development of serious conflicts in the district. As such, they are often informed of such potentially dangerous conflicts by the village head in whose area the conflict is taking place, and that village head may take the step of inviting *tatapraja* officials to take part in the meetings of this is deemed important for government interests.

*b. The judiciary*

The judiciary is rarely involved in an intermediary position. Few individual persons will bring their conflict before the court on their own account, as the court procedure is lengthy and costly, and no lawyers –who are often close to the judiciary in the regions- specialising in land matters live in Paser. Moreover, the court applies official law and is not inclined to make considerations regarding claims based on *adat*. From 2008 onwards, however, a shift in approach appears to be taking place. Under the influence of NLA officials the public prosecutor's office has started to allow indemnifications for *adat* lands and to appreciate the social bearing of *adat* based land claims. Although this has so far not amounted to an adjudication of such lands and indemnifications are kept low as to avoid an increase in claims for the financial benefit, the step is an important one as no such considerations were made before. The change was unexpected for parties willing to bring land claims before the court, in general private or state companies rather than individuals. On the whole, however, the change was welcomed. Inclusion of indemnifications of *adat* land in the court procedure means that the grounds for demands for such indemnification made outside of the court -which was the only place where they could be made before- are losing their legitimacy if the court has already awarded compensation. The court taking *adat* land claims into consideration thus provides companies with a degree of protection from further demands for indemnification or even threats of violent reprisals. However, attention within the judiciary for *adat* as a source of rights makes it quite likely that lawyers, public prosecutors and –possibly- judges will gain prominence as intermediaries in land conflicts as well.

*c. Adat-derived authorities*

*Adat* authorities, the last category, are probably the most complex of them all. *Adat*, in Paser, is a very lively normative category that has validity for a large part of the population. Whereas the population is ethnically diverse and for a large part consists of immigrants, many of these agree to the validity of *adat*. As migrant communities settled in Paser throughout its history, many accepted land from the local rulers in exchange for their agreement to follow *adat*. Even if the interpretations among ethnically homogeneous migrant groups are mixed with the *adat* of their area of origin, a notice that local *adat* should be respected is quite common. In later migrants this notion exists as well. *Adat* concepts are common throughout Indonesia and the population of each area requires new arrival to respect their rights. For migrants arriving by themselves a respect for *adat* was essential to gain local acceptance, and for groups of transmigrants who usually hold land certificates and find strength in numbers, consideration

of local *adat* is if not essential, at least sensible. As such, many inhabitants of Paser who are second, third or even further removed descendants of migrants to the district consider Paserese *adat* if not as their own *adat*, then at least as the common norms of Paser. As their own interests are shaped and formulated with this *adat* in mind, many of these migrants will argue the validity of Paserese *adat*, even if they do not consider or present themselves as ethnic Paserese.

Authorities enforcing *adat* exist in a number of varieties. Traditional *adat* experts generally exist at the village level and are often called upon in first instances of dispute. They are able to settle a conflict swiftly and –usually- reasonably amicably, but they often do not have influence over unwilling opponents. In that case one of the various organisations championing *adat* rights might be of use. A few of these exist throughout Paser, and these are able to field eloquent and well-respected spokespersons with a reasonable knowledge of national law and contacts with local government officials. These can bring more social pressure to bear than the village-level *adat* authorities can, but not as much as a third category of *adat* organisations. These consist of a few organised groups that present themselves as ‘*adat* councils’ or ‘*adat* militias’. These are larger organisations that add an element of compulsion to the procedure. When called upon, these organisations visit the opponent with a large group of members and attempt to convince him of their client’s rights. Whereas the large group itself can already be intimidating, covert or overt threats of violence and land occupations may well be part of the procedure. For one group the threat and exercise of violence is their one strategy, most others prefer the threat as a means to force negotiation. These organisations are mainly called upon in conflict with large, non-local opponents such as plantation or mining companies. Such enterprises prefer to bring any disputes before the district court –which will usually confirm the validity of the official certificates and permits that the companies possess. The *adat* militias take the opposite stance; their main take on valid law is not with official law but on *adat* rights. If rights under official law violate *adat* rights, return of lands or indemnifications are in order. The police do not object to these organisations since, as one officer put it: “they ensure that local *adat* is respected and no conflict arises from it. We do not know local *adat*, so we cannot fulfil this task.”

## 7. Access to Forums

**Box 4:** “When I needed to have my land claim affirmed I went to the PBA, a Paserese *adat* council that is also an NGO. They went to talk to the company that was using my land and asked them to pay me. First the company would not do so, but then the PBA went again, this time with many people and wearing their official clothes and with the *entero* leading them. The *entero* explained that my claim was really valid according to Paserese *adat* and then the company was willing to pay me. I gave part of the money to the PBA to thank them” (explanation given by a Paserese villager as to how he got a claim for land indemnification awarded by a palm oil plantation company).

The quantity and accessibility of forums to approach to solve land related grievances has increased in recent years. Whereas in past decades such institutions as the district government, district court of law and the NLA were all located in the capital of Tanah Grogot, the present situation in which *adat* organisations as well as the district government through its *tatapraja* teams attempt to keep up with developments and sentiments in the district, makes that it is relatively easy for Paser’s inhabitants to contact a forum’s representatives. Moreover, Paser’s infrastructure has greatly improved. The introduction of public transport as well as the

widespread availability and ownership of motorbikes make that Tanah Grogot is a destination that can be reached by nearly everyone.

Two different categories, official and unofficial, of forums can be distinguished. Both refer to different types of authority and each has its specific qualities and drawbacks. Forums can be accessed on the level of the village or the sub-district –in many instances the difference between these two is negligible- or at the level of the district, which means that higher, more powerful authorities are approached. The choice between the two is generally influenced by the seriousness of the issue –does one prefer an amicable solution or is it an all-out conflict?- and by the identity of the claimant; *adat* is a strong factor, but *adat* is a source of rights that is only available to Paserese or migrants with good contacts. Essentially, the following forums can be accessed.

*a. Village administrators and local adat councils*

Each village has a village head who is part of the government administration system, and all villages that are Paserese in origin have an *adat* leader. Most disputes at the level of the village are initially judged by either or both of these authorities. In both cases enforcement of decisions generally depends on persuasion, the force of which varies. Some of these village-level authorities are charismatic and well-liked persons who enjoy a broad popular support for their actions, which puts popular pressure on defendants to comply. Others, however, do not enjoy such prestige and hence lack real authority. The identity of the defendant is of importance as well. Is he a local villager, a Paserese or an immigrant, someone with connections and friends or a simple peasant? Villagers can be powerful individuals who may ignore an *adat* leader's decisions and bribe the village head. When either claimant or defendant find the case of sufficient importance to take it beyond the village, the sub-district head may be approached –although this authority has little more authority than the village head- or the local chapter of any of Paser's regional *adat* movements might be contacted. In the latter case, the matter swiftly moves up to the regional leadership of these informal authorities, which might bring in regional-level official authorities on behalf of the opposing party. The specific capacities of these respective forums have been discussed in paragraph 3.

*b. The courts*

The major official forum at the regional level is the district court of law. Cases brought before this court are dealt with strictly in accordance with national land law, meaning that the judges will base their decision largely on the legislation discussed in paragraph four. For those in possession of a land certificate this is a clear and acceptable situation, for those arguing *adat* rights to land the court is a waste of time. As a consequence, a party referring to *adat* rights to land is unlikely to bring the case before the court. First because the decision will be a foregone conclusion, second because many parties arguing *adat* rights will disregard the court's decision and revert to other, possibly more heavy-handed, authorities. For the sake of cordial relations refraining from involving the court can hence be a sensible course of action for parties in possession of a land certificate as well. Obviously, enforcement of a court decision is one of the tasks of the police, but many respondents indicated a distrust of its officers who may lack in dedication or demand payment for their efforts. Moreover, if the opponent is persistent in referring to *adat*, he may be able to mobilise support by an *adat* organisation who –as indicated before- are given considerable freedom by the police.

As indicated above, however, *adat* is making some inroads into the considerations of the court; if not as a source of rights to land, then at least as a reason to award indemnification. Moreover, bringing *adat* into the court seems to be resulting in bringing the court's authorities –who are well-versed in national land law- out of their forum role and into the local discussions and conflicts over land rights as intermediaries.

*c. Supra-local adat organisations*

*Adat* organisations operate for a select clientele, and with considerable autonomy from the state. As such they are not beyond criticism and various organisations have highly different reputations among migrants as well as among Paserese. Essentially reputations depend on the frequency of the usage of violence, demands for and heights of payments and the willingness of spokespersons to take the position and interest of both sides into account. Two or three organisations can almost be equalled to mediators; they will state relevant *adat* rules, consider the circumstances under which the offence was committed, verify any such claims to *adat* rights as are being made and consider all this in the light of the present situation. They will attempt to reach an agreement between parties, rather than one-sidedly enforce the interest of the party referring to *adat*. Two other organisations, however, are largely thugs for rent that will support the party claiming *adat* rights provided they will get paid. Cases in which this group is involved virtually always involve violence. By coincidence, the group has its headquarters opposite Paser's jail. Its leader and a number of other members have been jailed on various occasions.

*d. Regional head*

The regional government, most notably the district head, forms the highest authority for parties to refer to. Not many cases reach this level; to many individuals, the district head still is an elevated authority who is not to be troubled with trifling matters. Also, appealing to this authority is not without commitment as a decision by the district head cannot be ignored without incurring the government's displeasure resulting in official enforcement. Perhaps most important, the district head is no official conflict-deciding forum but rather an impartial executor of government administration in the district. Cases must have a sizeable scale or be causing considerable social disquietude, thus more or less demanding a decision taken at the highest regions of government authority. In the case of Paser's present district head, Ridwan Suwidi, his reputation as a socially concerned and conscientious administrator sustains wide acceptance of his decision in Paserese society.

The following matrix serves as a schematic illustration of the pros and contras of the various forums discussed in this paragraph:

	Preferred by migrants	Preferred by Paserese	Preferred by companies	Decision will be enforced	Can be corrupted	location
<b>village</b>						
Adat leader	no	yes	no	maybe	yes	close
Village head	yes	yes	yes	maybe	yes	close
<b>Regional</b>						
District court	maybe	maybe	yes	maybe	yes	Relatively close, but psychological barrier
Adat organisations	no	yes	no	yes	yes	close
Regional Head	yes	yes	yes	yes	no	Relatively close, but psychological barrier

## 8. The role of the NLA

In the examples given in paragraph eight the NLA does not come to the fore as a crucial agency. Nonetheless its societal significance has considerably increased following reform. Whereas before the agency operated according to a strict interpretation of the BAL and the national political course, its present staff contains a fair number of reformers quite willing to engage from within a local context with such specific issues as present themselves. Like the district head, the NLA is using greater administrative discretion and the wide possibilities provided by the laws discussed in paragraph 6 to show initiative and inventiveness in settling local issues. Yet the agency remains in the background. It is, after all, not part of the district government apparatus but a decentralised unit of a central institution. Strictly speaking, it is largely independent from Paser's district government and in no way obliged to cooperate with inventive schemes. However, cooperation does ensure the agency a role in local affairs and an advisory capacity in local policies; it makes that a specialist institution is included and hence rendered effective. A low level of visibility is not a bad course to proceed along since it precludes accusations of neglect of duty from officials higher up in the NLA hierarchy. Moreover, it was not the NLA alone that gained in prominence, so did several other agencies and offices. The NLA thus rose to the fore among others.

The role of the agency in overt conflict is limited. Officially its register of right holders and their plots should be the source on which the qualified decision-taking authority bases his conclusion, but as this authority often is the district court –which parties frequently avoid- NLA-registered rights are arguments rather than absolute values.

### *Competition within the government*

As the discussion in paragraph 6 of the three main laws of relevance to land access illustrated, various government agencies have authority over land. Next to the NLA these are the Department of Forestry and the regional government. The respective areas of authority of the NLA and the Department of Forestry are demarcated on a map of which both agencies possess a copy. The authority of the NLA is largely concentrated in and around Paser's urban areas, its coastal zone and as a broad corridor along the major roads. The rest of the district, some 65 percent, hence falls under the Department of Forestry. This means, for instance, that many claims of *adat* land initially concern forest land. The rural parts of Paser where subsistence farmers claim 20 hectares (see paragraph 6) are essentially beyond the authority of the NLA. That does not mean, however, that the agency is unwilling to issue land certificates to plots in those areas. Small villages connected by roads and disposing of electricity and telephone connections are located here, so claiming the area as forest is a retainment of outmoded circumstances. Even a “conscious obstruction of development by the Department of Forestry” as one government official –who preferred to remain anonymous- put it. The Department of Forestry will not hand over its authority voluntarily, but is also not able to enforce it locally. Overshadowed by the combined forces of the NLA and the district government, the regional office of the Department turns a blind eye to the local NLA nibbling away at its territory.

### *Whither the poor?*

From the position of Paser's poor, the stance of the government in controlling access to land has immensely improved over the past few years. The previous rigid stance in which the interest of ‘Jakarta’ were prioritised is largely replaced by one in which officials focus on local needs and problems. Obviously they cannot ignore the greater framework of provincial or even national politics and it is still not uncommon for politicians to maintain personal

interests as well, but on the whole many of Paser's poor feel that the bureaucracy has changed for the better.

The bureaucracy, for its part, contains many officials who wholeheartedly agree with this observation. Many feel that their loyalty is to the state, which concretely means to the population of their jurisdiction. To many career-officials improving the conditions of life in Paser is a serious challenge which they enjoy engaging with. Yet, as a senior department head sensibly pointed out, a lot depends on who is in charge. At present Paser has a district head with a major interest in improving life in the district, but another head could bring a turn of affairs. Few officials feel that they would stand up to this to the level of giving up their position. A populace engaging with local politics and controlling their elected representatives, many officials felt, thus is of major importance to the social consciousness of a regional bureaucracy's political actions. If elements of that bureaucracy engage with social developments, progressive officials felt, so much for the better. The course of action of the NLA thus has sincere supporters both among the population and within the bureaucracy.

### **9. Conclusions. Access to justice for the landless poor?**

The present post-New Order situation in which the Indonesian economy is steadily recovering from the crisis of the late nineteen nineties has given rise to numerous stimuli influencing the land tenure situation, as this case study of Paser illustrates. International companies invest in natural resource exploitation, stimulating the local economy while simultaneously creating stiff competition for land usage. Increased democracy has seen district heads and politicians start to heed the needs and interests of the local masses of voters, but this can work adversely as popular expectations do not live up to government means. Land indemnification for the construction of Tanah Grogot's boulevard and the ensuing expectations of high prices paid for land needed to broaden the main road is an example of this. The boulevard and other examples illustrate that the regional level of government is relatively autonomous from central government in plotting its own course in land matters, and that local land conflicts are mediated and settled by a variety of authorities, many of whom do not have such powers according to the law. Whereas this allows for original thoughts and pragmatic solutions that bypass a strictly bureaucratic application of the law, it does not necessarily contribute to a stable situation. Access to justice in matters of land access in Paser is dynamic and, if anything, a road of which the direction regularly changes. This is not necessarily a bad thing. Notably when it comes to poor people –by their own definition or by that of others- a strong readiness exists locally to look into their interests. This readiness is manifest in various ways. First in the willingness of individuals to come forward and state their grievances, second in the formation of non-government organisations –for instance *adat* organizations- representing the interests of these people and, third, in the willingness of the regional government to engage with these issues.

This does not mean, however, that these factors preclude other interests. The potential of equating the poor to those who maintain *adat* claims to land is a strategy that brings a considerable (potential) following to those championing the observance of *adat* rights. Poor subsistence farmers from the hinterlands do not approach the NLA of their own accord. Deference to state authority, combined with a (comfortable) remoteness of state representatives and a distrust of government officials, stop these poor from manifesting themselves beyond their own environment if outside support is absent. Introducing and providing such support thus provides not only assistance to these poor but also, in the best Foucauldian tradition, a vehicle to access district government. The predicament of the poor – as well as the category of 'poor' itself- thus can be used as a stepping stone to greater social power by the upwards mobile; be it politicians or leaders of non-governmental organisations.

This aspect is an important aspect of the reason why the poor get noticed. Ambitious social leaders need support to rise above their peers and the poor can provide it. Land conflict and its resolution provide a useful arena. Both the BAL and *adat* have ambiguous roles in land conflicts. Recognition of *adat* claims to land might well interfere with BAL-derived rights of others, be it large companies or poor (descendants of) immigrants. Claimants of *adat* land rights may be poor, but they are not the only poor land users.

‘The poor’ are more than an element in an equation for access to power. They cannot be simplified into a category subject to the whims of authorities in search of power, but they can hardly be seen as a homogeneous group with common interests either. What unites groups of people subject to conditions of restricted access to land is a shared legal consciousness, an abstract notion of how the law ought to be and what it should do: an ideal situation that cannot be reached by those without power. Yet they can, as the masses sustaining leaders and representatives, influence the directionality of events. ‘The poor’ thus are a source of political power for those in positions of leadership as much as a force directing where these leaders should take them if they want to maintain support.

The issue of land registration shows a large category within the poor is unable to effort registration of land or the yearly taxes such property incurs. The land-tax system is geared towards people with a modicum of financial income and relatively small plots of land -the urban and semi-urban areas- or towards large commercial agricultural enterprises. The *adat* groups practicing shifting cultivation and subsistence farming on large tracks of land are by no means able to raise the taxes that their claims would command. Their problem is thoroughly foreign to the theoretical assumptions underlying Paser’s land taxes, in which a large areal equals intensive commercial exploitation. Tax deductions for such traditional modes of land usage could be a solution in theory, but would lead to gross inequality once these fiscal advantages become incorporated in the market economy and *adat* land is leased out to companies. The current situation in which claimants do not request registration and the NLA refrains from actual registration in these areas is a go-between, but a more constructive solution will be needed in the future.

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