SUMMARY OF WORKSHOP DISCUSSIONS ON CUSTOMARY LAND AND LAND DISPUTES

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Recognizing the need for an integrated land policy and anticipating the fundamental changes in the land administration system with the implementation of decentralization, the Government of Indonesia and the World Bank have engaged in a land policy dialogue during 2002-2003. The goal of the dialogue is to help the Government to develop a National Land Policy Framework.

This proceeding is a summary of a workshop on customary land and land disputes. Regarding the customary land issue, the workshop addressed the value of issuing general guidelines so that the local governments can develop their own subsidiary regulations, with such guidelines focused on issues such as criteria for declaring the existence of traditional land rights, authorities of related agencies, and community participation. Regarding land disputes, the workshop addressed the value of community participation in a bottom-up process as well as the option to establish an arbitration mechanism outside the formal legal process to solve land disputes more effectively.
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I. Background

The Decree of the Peoples’ Assembly No. IX/MPR/2001 (TAP MPR No.IX/MPR/2001) provides the legal frame for an integral reform of policies on land administration as well as other natural resources. The Decree has given added impetus to government efforts to reform land policies and the land administration system. Since 2001, a national dialogue on land issues and reform priorities has gained momentum. Amongst the concrete activities permitting an exchange of ideas amongst stakeholders were workshops in the provinces of East Kalimantan and North Sumatra.

These two regional workshops identified a number of issues namely, the local government capacity, decentralization of land administration, improvement of the agrarian law, land dispute resolution mechanism, acknowledgement of customary land rights, transparency in land information, and forest land disputes.

The present condition is that the regulations and laws acknowledge ulayat and similar customary rights, however in practice no protection is available for customary law communities. With the emergence of the reformation era many land reclams evolved, particularly in cases regarding Forest Concession (HPH) as well as mining and plantations. In addition, there are inconsistencies amongst the regulations for implementation of the Basic Agrarian Law No. 5 of 1960.

Taking into account the above mentioned issues, the World Bank proposed to the Government to provide support in moving forward on:

1. Identifying land policies in relation to the protection of customary law communities and customary land;

2. Identifying land dispute resolution practices performed by the local government since the introduction of the regional government autonomy program. A good example of this at the local level is the improvement of land administration decentralization and the search for an innovative method to enable issuing of useful land policies; and

3. Supporting pilot projects to improve transparency on land tenure, land management and land ownership towards the partnership between the sub-regency and NGO’s.

Of those three issues, a decision was jointly made to concentrate activities during 2002 on:

a. The customary land perspective;

b. comprehensive approach towards land dispute resolution.
II. Objectives of the Discussion on Land Issues

The objectives of the 2002 land policy dialogue, which focused on the customary land perspective and the comprehensive approach towards the resolution of land disputes, were:

a. To formulate proposals for real actions by the government (central/local) to create acknowledgement and prevent denial of adat land including all its consequences; and

b. To formulate proposals for concrete actions to be performed by the government, in order to become guidelines for the regencies/municipalities for innovations in land dispute resolution in their respective regions.

III. Arrangement on Land Issues Discussion

The Department of Home Affairs, being the government institution with main responsibilities for the implementation of regional autonomy, arranged a discussion on land issues at its central office, on the 19th and 20th of June 2002. Regarding the customary land perspective, the material presented comprised:

1. The position of adat/ulayat land according to regulations and laws (presented by Prof. Mrs. Arie Sukanti Hutagalung, SH., MLI.);

2. Returning the adat community authority over adat regions (presented by Abdon Nababan);

3. Dynamics of land issues and land services strategy in the Regency of Sumedang (presented by Drs. H. Misbach / Regency Head of Sumedang).

Regarding the comprehensive approach towards the resolution of land disputes, the material presented comprised:

1. Land dispute resolution in the West Lampung Regency (DR. I Wayan Dirpha, SH.);

2. Land dispute resolution in the Simalungun Regency (Ir. John Hugo Silalahi);

3. Transparency in land information (Chris Bennett).

Besides the presenters, resource persons made presentations on the above-mentioned topics. The three resource persons, were:

a. The Director of Land Acquisition for Government Institutions of the National Land Agency (Mr. Rusmady Murad, SH.);

b. The Secretary of the Multi Party Working Group on Land Control Issues In Forest Regions (Maritua Sirait);

c. Professor in Agrarian Law (Prof. Boedi Harsono)
IV. Customary Land: The Position of Adat Land According to Laws and Regulations

In this discussion, four issues were elaborated:

1. What is actually meant by adat/ulayat land?
2. How do the existing regulations and laws preside over adat/ulayat land?
3. Are these existing regulations and laws sufficient and do they provide assurance and legal protection to the adat law community?
4. Is there a need for these adat/ulayat land to be governed by particular regulations and laws? And if needed, what framework should these regulations and laws have?

Prof. Arie Sukanti Hutagalung, SH, MLI quoted van Vollenhoven’s view regarding the existence of six specific characteristics of ulayat rights, namely:

a. The existence of inter-communal relationship;
b. The existence of extra-communal relationship;
c. Tasks of the adat head;
d. The functions of ulayat right;
e. The presence of two ulayat region dimensions, one of primary and the other of an exceptional nature; and
f. Limitation of ulayat region.

Also quoted was the opinion of Prof. Boedi Harsono who mentioned that Ulayat Right was the name provided by the law and by the legal society for the relationship that existed between an adat law community and a certain particular region, this region providing an everlasting “lebensraum” for those community members.

From the legal point of view, ulayat rights are a series of rights and obligations of an adat community regarding a particular region that is their ulayat, which being this community’s “lebensraum” to utilize its natural resources, including the land that exists in this ulayat region. Amongst the adat law community, two types of land are known, namely:

1. Ulayat land being possessed and managed by the community;
2. Privately owned land of an adat law community member.

According to the presenter, a difference in opinion exists amongst government officials, community members, as well as experts regarding the term ulayat land/adat land. The regulations governing ulayat/adat law, ulayat/adat land, ulayat forests, as well as the protections of adat law community rights, are dispersed unsystematically across regulations
and laws. At the same time, these regulations are far from being comprehensive whether regarding their form as well as their content, and as such are not capable of providing legal protection to the adat law community. Hence special regulations capable of providing legal protection to the adat law communities in the form of Government Regulations are needed. The central government regulations should be followed-up by regional regulations capable of remedying the vagueness of the existing regulations. It is expected that with the establishment of such regulations, legal assurance and legal protection of adat law community rights might become a reality.

V. Customary Land: Views of the Archipelago Adat Community Alliance (AMAN) regarding Re-instatement of Adat Community Rule over Adat Regions

As the second presenter, Abdon Nababan, AMAN’s Executive Secretary, explained in his paper that the definition of adat community varies in accordance with the its history as well as the present condition. For those in the AMAN alliance, adat communities are “communities that live in accordance with the tradition of their ancestors in a specific adat region, possessing rights over that land as well as its natural resources, living a socio-cultural life controlled by adat law and possessing an adat institution which sustains the community’s life”.

Adat community may consist of an estimated 50 – 70 persons whose life fully depends on the land. Their land is inseparable from all the natural resources incorporated. A strong spiritual and cultural bond exists on their land, and there are obvious characteristics that distinguish them from other local inhabitants who only regard land as something of economic value. “No adat community exists without adat land”.

AMAN’s position is that the New Order development policy created many legal products such as in the fields of forestry, mining, and others that shifted the ownership of adat land to state land and adat forests to state forests. The government unilaterally categorized a part of the customary adat region as production and conversion forest and the government later granted other parties (private enterprises and government owned enterprises) the forest land use rights. And even adat forest categorized as conservation forest and protection forests were being managed by the government itself.

The policy on allocation and management of such forest areas then systematically destroyed the adat management of natural resources which has its roots in the original adat tradition.

Development became the main source of adat community poverty, and also a continuous source of disputes with the government as well as private enterprises. Adat communities even became the main victims of forest ecology damages as a result of these concession systems (HPH/HTI). They were then relocated as a result of the government granting Exploitation Rights to plantation companies.

These sectoral Laws and their derivates which positioned adat land and adat forests as state land/forests clearly contravenes Article 18 of the State’s Constitution (1945 Constitution), that was elucidated by the second Amendment of year 2002 in Article 18 B.
This article clearly assures government protection of adat rights as original rights/customary rights. This constitutional transgression was executed by the government through unilaterally interpreting “government control rights” mentioned in Article 33 as government’s right to possess customary land/adat forests.

AMAN in its first conference, held in 1999 clearly declared its stance of “acknowledging the state if the state does not acknowledge the (rights) of the adat community”. This attitude was taken to remind all parties, particularly government officials that adat communities already existed long before the state was established. As such these customary adat community rights are original rights (inherited from their ancestors) which have a higher value as compared to rights which are granted by Government, such as HPH, HGU, Location Permit for Development, etc.

This unfair legal pattern finally created the awareness to re-claim the rights of the customary adat community on their land. Some initiatives to return the right of customary adat communities on their land at the community level were done through adat regional approaches and through the revitalization of customary adat agrarian institution. The adat regional approach was performed through participative mapping of adat regions to assess such region borders and to re-manage land use here in accordance with adat wisdom (indigenous knowledge). Besides reclaiming of land was performed on land that was being controlled by other parties without going through the proper adat regulations. Approach through the revitalization of adat agrarian institution was performed by putting up efforts to re-implement the respective agrarian adat institution, taking into account the variety of adat community systems.

Another important initiative which is also important for adat communities, is to strengthen their bargaining position, politically as well as economically through the formation and strengthening of adat community organizations at varies levels:

1. Alliances between adat communities (based on family relationships, similarity in history/culture, similar interest regarding social and economy services, similarity in natural ecology e.g. water catchments areas);
2. Linking alliances at the regency level and/or at the provincial or equal levels; and
3. Alliances of various adat community organizations at the national level.

Through these organizations the adat community and their supporters can initiate cooperation with the executive and legislative leadership at the central and regional levels to get rid of old and inappropriate regulations and laws, and to produce new ones that enable adat regional unity to become the basis for the creation of real government autonomy to replace the “desa” system.

Partly, the aspiration to return community rights on land through organizing “participation” in political processes has been accommodated in Law No. 22 of 1999 regarding Regional Government. Some of the local regions are in the process of formulating Local Regulations (Perda) that will accommodate those aspirations, for instance the Toraja...
Regency Perda regarding *Lembang* (already ratified), the Sanggau Regency Perda regarding *Banua* (still in the process of deliberations at the Regional House of Representatives, and the Bali Province Perda regarding *Pekraman Desa* (already ratified).

The existence of a strong adat community organization is not only a prerequisite to the realization of the aspiration to possess a fair policy and national legal bases, but it is also very important to create social transformation amongst the adat communities to become more democratic, honoring human rights, and a wisdom in management of land as well as natural resources in their respective adat region.

**VI. Customary Land: Sumedang Bupati’s View on the Dynamics of Land Problems and Land Services Strategy in the Sumedang Regency.**

Clause (2) of Article 33 of the Constitution stipulates at least two strategic essentials regarding the management of natural resources in Indonesia. The first essential stipulates that natural resources comprising land, water and air space as well as the natural wealth contained therein, shall definitely be controlled by the state. The term state means a holistic unity consisting of its population, the government and region in one system. Article 18 of the Constitution stipulates that the state consists of large and small regions. This stipulation regarding large and small regions indicates the existence of central government and regional governments, both possessing the same rights in the management of natural resources, that are further regulated through laws regarding local governments. The second essential implies that these natural resources should be utilized in the interest of the people’s prosperity.

To this purpose, the management of natural resources, including land, will be focused on the optimal improving of people’s prosperity. In this case the following aspects need to be taken care of:

1. Economically viable
2. Socially acceptable
3. Environmentally sound

The larger part of the Sumedang Regency area is utilized for agriculture, with rice fields covering 33,672 ha, and dry rice fields covering 44,041 ha. The remaining area is used for housing, gardens, community forests, state forests, etc. Land management in Sumedang Regency is far from sufficient, with three main problems arising around land services:

a. Technical services in the land:

1. The Jatinangor case

This is an example of unclear management structure problem. In the Jatinangor region there was 3,274 ha allocated for educational purposes. Of which, 359 ha is located in the Sumedang and Bandung Regencies. Management rights are held by the West Java Province, however some of its forests area are controlled by the central
government through PT. Perhutani (the State’s Forests Enterprise) and KSDA (Natural Resources Conservation);

2. The P.T. KAI case

P.T. KAI controls a land area of 7.5 ha which was not utilized. The land was later used by farming-squatters as agricultural land, then rented out by the farmers to services and goods companies without notifying P.T. KAI and without involving the Local Government;

3. The Pasir Padang and Ganjartemu case

An area of 1,116,123 ha that once belonged to the Pasir Padang and Ganjartemu Plantation was converted into state land, the right to control and decide its use was granted to the West Java Province. The West Java Provincial Government then redistributed the land, however the redistribution was not implemented according relevant regulations, and hence caused a gap between the indigenous population who previously farmed the land and the new owners who obtained the land through the redistribution.

4. The Sampora Right of Exploitation (HGU) case

Sampora Agrotama Coco Beef Ltd. possesses the Right of Exploitation of 480 ha in the Gendereh village of the Buahdua sub-regency. The land was not being optimally utilized and hence did not properly contribute to the welfare of the community living around the plantation area. This was a result of an improper supervision mechanism causing the land to be wasted and hence no advantage was provided to the community’s welfare.

5. The Satin and Gendereh case

This case evolved as a result of forest land which still was in dispute with the local community. Up to date the registering process could not be performed and this is causing discontent within the community.

b. Land administration services.

Land administration services have so far not been able to produce satisfaction to the community. The type of land administration aspects concerned are time, costs, procedures, and respect to the community.

c. Unbalanced positioning

The relationship between the government as the services provider and the community as the consumer of land administration services are currently not balanced. This is apparent from the fact that if a negligence by the government occurred, then no type of punishment resulted, while if on the other hand the negligence was by a community
member, then consequences ensued such as the process being postponed or an additional fee to be paid.

VII. Land Dispute Resolution: View of the West Kutai Regent regarding Land Issues and Ideas of the West Kutai Regency Local Government.

The West Kutai Regency is recently established based on Law No. 47/1999. Its area is 3.1 million ha consisting of:

1. Production forest Cultivation area of 1,481,066 ha;
2. Nature reserve of 5,500 ha;
3. Protection forests of 744,038 ha;
4. Non-forest cultivation area of 932,266 ha.

The land problems experienced in West Kutai Regency consist of:

a. The land services do not yet cover the Adat Ulayat Rights of the Customary Community and similar customary rights;

b. The social and cultural aspects of the customary law community are still being neglected.

c. The present land policy is still not capable of providing protection to ulayat rights of the customary law community or similar rights.

d. The proportion of land parcels not yet registered/not accommodated by a land title is huge (more than 99%).

e. The decentralization of land authority by the (Central) Government to the West Kutai Regency Government as stipulated in Law No.22/1999 has not properly and appropriately been carried out by the Central Government; the National Land Agency (BPN) has on the contrary pursued various strategies to maintain a status quo to centralize the implementation of authority regarding land despite this having proven to be incapable of comprehensively resolving land problems.¹

f. The trend to main central authority in land administration is still a constraint in simplifying land services to make it cheap and rapid, due to the long bureaucratic process of land services and layers of authority that could be streamlined through

¹ The Presidential Decree No. 34/2003 issued on May 31, 2003 clearly stipulated the distribution of authorities of land affairs between the central and local government. There are nine functions given to the Regions, which includes: issuance of location permit, provision of land for public interest, resolution of land disputes, resolution of compensation for land allocated for development, land redistribution, determination and resolution of ulayat land problem, etc.. The function of titling and registration stays at the central government level.
decentralization to the West Kutai Regency Government (see footnote 1 for the final decision on land affairs decentralization).

The total population of West Kutai is 146,000 persons, mainly belonging to customary adat communities possessing customary adat rights. Since the enactment of the Basic Agrarian Law in 1960, the customary adat rights were acknowledged, however in practice no clear formulation was obtainable. In addition, sectoral laws (such as those regarding forest, mining, etc.) did not refer to the adat principle stipulated in the BAL which is supposed to serve as an umbrella law for land affairs.

**The West Kutai Land Dispute Resolution Idea:**

1. Using the right parameters: Understand the customary adat community perceptions and aspirations, government policies, and needs of investors;

2. The Basic Agrarian Law should contain articles that guarantee the implementation of land autonomy decentralization to the local regencies;

3. The regency government should exert its decision making and executing function. The regency government should have the courage to pronounce the authority in land issues, as a form of improving land services, particularly in bringing land services nearer to the community in sphere of mutual understanding and capable of accommodating various interests in the frame of the Republic of Indonesian Unitary State.

4. The settlement of ulayat rights of the customary law and similar rights is herewith submitted to the West Kutai regency government. As such a proper approach and dialogue with the customary adat community can be established. A real acknowledgement regarding their existence, these customary adat communities should be respected and valued as subjects possessing the right to be involved in the various development processes (decision making processes, licensing processes, rights acknowledgements, as well as choosing proper and fair compensation for customary land).

5. Eliminate the designation “slash and burn forest dwellers”, a social stigma which socially classifies a community into a marginal group.

**VIII. Land Disputes Resolution: Simalungun Regency Head’s View on Comprehensive Approach towards the Resolution of Land Disputes in the Simalungun Regency**

Land disputes in the Simalungun Regency can be classified into four groupings, namely:

1. Land disputes between the local community and government / private plantation enterprises, a total of 55 cases;
2. Land disputes between the local community and Simalungun regency government, a total of 7 cases;

3. Land disputes between the local community and the forestry (state forest land), a total of 8 cases; and

4. Land disputes amongst community members themselves, 17 cases.

Efforts to resolve land disputes in the Simalungun Regency fall into two main groups, namely:

a. Group I, which were land disputes between the local community and the state/private plantation enterprises (these are disputes occurring in Exploitation Rights areas). This Group I was settled through applying Model A (see below);

b. Group II, consisting of the following land disputes:
   1. Between the local community and the Simalungun Regency Government (asset land);
   2. Between the local community and the forestry (forestry area land); and
   3. Amongst the community members themselves.

**Model A is applied to Group I disputes**

To solve land disputes between the community and the plantation enterprises in the Exploitation Rights areas, a Community-based Land Dispute Controlling Team was established to cater for disputes in the PTNP HGU area as well as areas of other private plantation enterprises in the Simalungun Regency. This team was formed by the Collective Decree No. 188.45/9924-Tapem-20/DPRD/2001 of the Regency Head and the Chairperson of the Regional House of Representatives of the Simalungun Regency. This team involves all parties related to the land dispute resolution, namely the Regency Head, the House of Representative Chairperson, the Simalungun Military Regency Commander, the Regency Police Head, the Regency Attorney, Executive Government Officials, Commission A of the House of Representatives, the PTNP (State Plantation Enterprise) as well as other private plantation enterprises (as temporary members). The team tasks are to:

a. Collect data regarding land issues, particularly those that in the present reformation era send delegations to the Simalungun Regency’s Head Office and the Regional Simalungun House of Representatives.

b. Implement the control of land use in accordance the applicable rules and regulations;

c. Handle issues regarding data collection and control of land used by the community in the HGU PTNP area as well as in other private enterprises in the Simalungun Regency.

d. Verify the ownership data/proofs of the enterprises and the community; and
e. Provide recommendation to the leadership for the resolution of those disputes.

Example of a Model A Land Dispute Resolution:

1. The dispute between the PTPN IV Bah Jambi against the Committee for the Return of the Huta Agasan Reserve Land for Village and Farming Extension of the Silampuyang Village in the Siantar Sub regency. After undergoing discussions, the team advised the Regency Head to release the respective 225 ha land from the HGU PTPN IV jurisdiction, then distributing it to the rightful community. A letter No.: 620/11581-Tapem dated 29 November 2001, was sent to this purpose by the Regency Head addressed to the North Sumatera Governor with a copy sent to the Minister of Home Affairs.

2. The land dispute between the PTPN IV Bah Jambi and the Committee for the Return of Land of the Tuan Silampuyang and its community, who were claiming a land area of about 5,600 ha. During the developments the community started to act destructively by damaging the palm trees of the PTPN IV. Against this act the Simalungun Police supported by the Regency Executive Leadership and the Team have taken legal action by taking into custody and delivering the offenders to the court for further legal process.

3. Land dispute between the Reformation Era Land Concern Committee (PERKETA) and PT Londsum regarding an area of 220 ha located in Nagori Bandar Rakyat in the Pematang Bandar Sub-regency. After going through discussions, the team reached the conclusion that the documents submitted by the community had no legal strength, and since PT Londsum insisted to defend its rights, the team advised the regent that the community’s claim could not be approved and that the case should be brought to court. To this purpose the Simalungun Regency Head sent letter No. 621.71/11630/Tapem dated 31 October 2001 to the North Sumatera Governor with a copy sent to the Minister of Home Affairs; the community have been informed about this action.

4. The land dispute between PT Goodyear Sumatera Plantation Dolok Merangir and the Tani Tertib Group (KETAT) of Batu Silangit, Dolok Kahean, Dolok Mainu and Serbajadi Village in the Dolok Batu Nanggar Sub regency regarding a land area of 800 ha. After discussions the team took the conclusion that PT Goodyear Sumatera Plantations paid compensation to the KETAT community for the plants and land of 800 ha, or else the land should be returned to the claiming community. To this purpose the Simalungun Regency Head sent letter No. 593.890-Tapem dated 12 December 2001 to the North Sumatera Governor with a copy sent to the Minister of Home Affairs.

Example of a Model B Land Dispute Resolution:

For the resolution of model B type land disputes, the Simalungun Regency government made an inventory of all documents/proofs of the community claims and co-
ordinated these with the related institutions. In case of claims that were supported by documents/proofs the settlement was done on deliberation and agreement bases. If this deliberations could not be implemented, then it was advised to gain settlement through the judicial system/ court. For the Simalungun regency government these disputes were regarded as solved, however the community still regard these disputes as unresolved yet, since their claims were not being approved.

An example of model B land dispute resolution involves about 340 ha of Huta Buntu Turunan Area located in Huta Padang Nagori Buntu (presently Nagori Buntu Bayu) in the Tanah Jawa sub-regency. The community living in this area sued the Government cq the Minister for Forestry to immediately return their land which is being used under Industrial Forest Land Use Permit (HPHTI) by PT Sintong Sari. The procedure taken by the Simalungun Regency government in conjunction with Regency Executive Leadership (Muspida), the Commission A of the Regional Regency’s House of Representatives, representatives of the community as well as of PT. Sintong Sari Union, was to issue an Official Agreement Report stating that PT Sintong Sari Union in 8 months at the fastest and 12 months at the latest would return without any prerequisites the Industrial Vegetation Forest (HTI) of about 340 Ha to the Simalungun Regency government which in turn will distribute it to the rightful community members in accordance with the applicable and valid regulations and laws. To this purpose the Simalungun Regency Head sent letter No. 593/7418-Tapem dated 07 July 2001 to the Minister for Forestry, but up to now no response has been received.

In attempting to solutions to land disputes, the Simalungun Regency government encountered the following constraints:

a. Bearing in mind that land issues have not been delegated to become part of the autonomous authority, the authority of the regency’s head in resolving land disputes remains very limited.

b. Taking into account that the officials issuing the decree for granting Exploitation Rights to PTPN (State Plantations) as well as other private enterprises working in the same field are of the ministerial/department level, the resolution of disputes in the local regions can not be fully settled and only reach the stage of recommendations or advice for the resolution of such cases, which are then forwarded to the higher officials who take the final decisions.

c. The documents/evidences in the form or letters or other exhibits submitted by the community to support their claims usually do not have strong legal value as authentic evidence (mainly, only photostats), and as such the community is always on the weak end if resolution of land disputes (particularly in Exploitation Rights areas) are settled in the court system.

The Simalungun regency government therefore advises:
1. Taking into account that land disputes occur in almost every region and are related to various parties (the Central down to the Local Government, the legislative society, private sector, NGO’s and the community), and that the resolution of land issues have not yet been delegated to the autonomous authority, hence in the case of resolution of land disputes, particularly those occurring in Exploitation Rights areas and Forest areas, is suggested to establish hierarchically and integrated manner a Land Dispute Resolution Team starting at the Central Government level down to the Regional local involving all parties that are related to the dispute.

2. To prevent horizontal disputes and anarchic actions occurring, which may disadvantage all parties, it is expected that the Exploitation Rights holders will show transparency in resolving land disputes.

3. In the context of resolving land disputes, guidelines should be issued, at least in the form of Presidential Instruction, that clearly indicate the handling authority of the Central Government, the local Regency/Municipal governments and these should be accompanied by standard operation procedures and technical guidelines, in order for its smooth operational implementation in the field.

IX. Land Disputes Resolution: West Lampung Regency Head’s View on the Local Regency Government Model for the Resolution of Land Disputes in State Forests Areas and Ulayat Land.

The area of the West Lampung regency is 495,040 ha. The greater part of this is forest areas with an areas of 380,092 ha, consisting of water catchments areas to supply the water demand of the South Bengkulu Regency, of the Tanggamus area, the Way Kanan area, the North Lampung and Central Lampung Regencies.

The West Lampung community consists of customary adat communities (24 Sai batin marga) that possesses:

a. Customary adat / institutional infrastructure;

b. Customary leaders / sai batin / sai batin marga officials with rank titles;

c. Land area that belongs to ulayat land;

d. Customary Law;

e. Real Community Members.

Since the start of the reformation up to date 43 land cases surfaced, generally regarding boundary issues. The land problems related to forest area in the West Lampung regency are located in Seminung mountain, Palakiah, Pesagi mountain, Basongan, Kenali, Sukapura, Suoh, TNBBS, Coastal Krui, Sukamarga, Way Haru, Bandar Dalam, Pengekahan, and Bengkunat.
The background underlying these land cases is:

1. The existing pressure of land demand experienced by the local community
2. The claim of land ownership by the community on forest area / ulayat land
3. Changes in forest area land use
4. Disagreement regarding borders between forest areas and ulayat land
5. Un-settled forest area borders
6. The Government not positioning itself as motivator, moderator and facilitator
7. Improper planning of transmigration policies
8. One-sided implementation of mapping activities
9. Non existence of nationally integrated agenda
10. Limited supporting funds available

The occurrence of land cases in the West Lampung Regency causing insecurity of community rights, results in the following impacts:

a. Inefficient land management
b. Security/protection of forest areas do not receive community support
c. Constraints in arranging regional planning and the field of forest area and ulayat land planning
d. Vertical disputes with a tendency of changing into becoming horizontal disputes
e. Diminishing functioning of forest areas
f. Non-conducive sphere for investors

To settle land disputes the West Lampung regency government implemented the following dispute resolution model:

1. Consolidating empowerment of the community and the customary adat community institutions around the forest areas in a participative manner;
   a. Establishing the Sai Batin Penyimbang Coastal Adat Foundation (YASPAP) and the Babuta co-operative;
   b. Publicize the fostering of the customary repong damar by the adat community (in CD format);
c. Organizing regular meetings (each three months) of adat institutions;
d. Providing funding support from the Regional Budget;
e. Issuing Local Regulations (Perda) regarding adat community and the implementation of adat law;

2. Participative demarcation and management of area boundaries;

3. Developing a participative utilization zone at the National Parks to improve the community’s economy, through:
   a. The Regency Head’s Recommendation No.500/339/PSW/05/2001 regarding the Utilization of Swallow Nests of the Babuta Cave, Sepanas Cave, Cikupit Cave, Masjid Cave and Kerinci Cave;
   b. Utilization of tree-resin in Bengkunat marga region.

4. Establishing the Self-subsistence Civil Security Guards;
   a. A total of 8 persons from the local community for the Pekon Tri Budi Sukur protection forest;
   b. Secure the still intact natural forest area of about 2,200 ha.

5. Issuing management rights to the community of the limited protection and industrial forests utilizing the community forest pattern;
   a. In the Sumber Jaya sub-regency, a total of 32 community management groups;
   b. Those receiving permits in the Pekon Tri Budi Sukur, for 700 ha (a total of 320 families);
   c. Still being processed the permits in Pekon Tambak Jaya, 600 ha (a total of 250 families).

6. Independent rehabilitation outside the forest area (the Dare To Marry, Dare to Plant program);
   a. Regency Head’s Decree No. : B/165/KPTS/05/2001;
   b. Integrated Monitoring System (Office for Marriage Registration-Peratin-Sub-regency Head – Regency Head, with copies to the Regional Environmental Impact Agency and the Forestry Services);
   c. Prediction of 2,000 marriages per year.

7. Improvement in community income through the management of community forests;
   a. Multi-party co-operation system (community, government, and business persons);
b. Location of formerly Dutch Long Leased land of 5 ha;

c. Implementing the plants seedling process (cork-like medicinal wood trees) of 5000 trees;

8. Participative leadership
   a. Maintaining good relationship
   b. Resolving problems in the field
   c. Multiparty involvement

9. Year 2002 follow-up
   a. West Lampung Regency Spatial Plan Revision;
   b. Multiparty participative Re-Mapping of Area Boundaries;
   c. Issuing Local Regulations on Regional Management
   d. Allocating Operational Funding in the Regional Budget (APBD).

X. Transparency in Land Information

Transparency of land information is important and can contribute to the resolution of land disputes in Indonesia. The problem is related to adat land which is very complicated, where more than half of the land in Indonesia is being claimed, and resistance by various parties that do not want to implement reforms. This resistance is presently still going on despite the demise of the New Order era, and is caused by Corruption, Collusion and Nepotism (KKN), and the persistence of conservative thinking.

Transparency of land information can be implemented through public disclosure -- announcing to the community of all levels from the regency level down to the village level, for instance regarding all permits that have been issued, issuing of land titles on legal land, regarding procedures to be taken before obtaining legal status of land, issuing of Forest Concessions. Also announcing information on the physical status of land in Indonesia, for example regarding borders between conservation forests, state forests and land of the community. The bio-physical status of the respective land also needs to be announced.

Transparency in the land sector will create a good climate amongst the stakeholders, and hence all parties should implement a clear dialogue between the central and the regional governments. Activities regarding transparency can be in the form of submitting reports, instructions, and organizing meeting.
XI. Views of the Resource Persons

1. Director for Government Institutions and Land Acquisition – Rusmadi Murad, SH

a. The problem of delegating authority regarding the land sector from the Central to the Regional governments.

The Basic Agrarian Law stipulates that the authority regarding land issues is held by the central government. Law No. 22 of 1999 was enacted regarding Local Government, which stipulated that the land sector was included in the decentralization to the regional governments. This means that other Laws surely should refer to this Law. However in practice the implementation is not as easy at it looks like. With the release of Presidential Decree No. X of 2001 which postponed the implementation of the regional authority in the land sector, it was obvious that an uncertainty prevailed regarding the decentralization of authority in land sector to the local regional governments. This has caused confusion not only at the regional level, but also at the central level.

While the above problem remained to be solved, the Decision Letter (Ketetapan/TAP) of the Assembly No. IX/MPR-RI/2001 regarding Natural Resources was issued, also with a different content. Each respective institution now feels that it should implement the contents of this Decision Letter.

b. The problem of regulating the customary ulayat / adat rights in the laws

In 1999 Regulation No. 5 of the Minister of State for Agrarian Affairs / Head of the National Land Agency was released. A misperception of the regulation occurred amongst the public who regarded this regulation as impeding customary adat communities. Actually this regulation should only be a guideline for the resolution of adat/ulayat land problems. The presenter agreed that regarding adat land issues, further guidelines should be created through establishing regulations or laws. The point to be considered is whether this should be in the form of Laws (UU) or Government Regulations (PP).

2. Professor in Agrarian Law of the School of Law, Trisakti University – Prof. Boedi Harsono (one of the academics that took part in establishing the Basic Agrarian Law/UUPA).

a. Regarding the delegation of authority in land sector to the regional governments

Initially the ideas regarding the land sector were indeed centralistic as stipulated in Article 2 of the Basic Agrarian Law which stipulates that basically land issues are handled by the central government. However after the enactment of Law No. 22 of 1999, in principle the autonomy or decentralization was granted. This should not be argued, but only be elaborated on. However, what is actually meant by ‘delegating in the broadest sense of the word, to the local government’? What aspects are included? Does it include the development of national land law?
b. Regarding the Basic Agrarian Law

Is the Basic Agrarian Law including its operation procedure not appropriate; or is the law all right but not its implementation in the field? According the presenter, the law still contains weaknesses in its formulation, and is often causing misinterpretations. This is apparent from the existence of regulations and laws in the land sector that do not conform with the spirit and formulations as stipulated by the Basic Agrarian Law. How could this happen? This was due to the fact that before the Basic Agrarian Law was fully implemented, a change occurred from the Old Order into the New Order. The New Order government, focused on economy development which needed huge capital, which was for the greater part obtained from loans including foreign loans. However, the economic development was not fairly distributed. And even some of these economic outcomes were then “parked” overseas. With the onset of the prolonged economic crisis, the burden of the government loans as well as private sector loans are borne by the public who are not enjoying the results of the development.

c. Regarding ulayat / adat land

In the Basic Agrarian Law, the existence of customary ulayat rights is acknowledged, as long as the customary adat community still exists.

However it was hence strange that during the New Order era, Law No. 5 of 1967 was enacted regarding Forestry. This Law was the first law issued by the New Order regime. This law did not mention at all the existence of ulayat rights, and regarded all forests as state’s forests including all its consequences. The only thing acknowledged here was the right of the community to utilize forest harvest. And even this only counted for areas that were not yet controlled by the holders of Forest Use Rights.

Indeed this Law No. 5 of 1967 has been amended by Law No. 41/1999, which brought some improvements, however here again the ulayat rights were not mentioned. We may say that the improvements were performed halfheartedly.

How can we determine whether in a region the customary ulayat rights still or do not exists anymore? The respective local governments, involving elements such as customary adat leaders, non-government organizations, related institutions, and the community itself. A number of requirements should be met:

1. The existence of adat community
2. The existence of a region
3. The existence of an active adat leader

Regarding ulayat rights, the Regulation of the Minister for Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 exists. However, it is generally regarded as not
sufficient to regulate ulayat rights only by Ministerial Regulation. Hence when the opportunity arose to formulate the Law regarding Special Regional Autonomy for the Papua Province, which came into realization with the enactment of Law No. 21 of 2001, issues regarding ulayat rights were regulated. This law not only acknowledged the existence of ulayat rights, but also protected the customary ulayat / adat rights. A form of protection that has been stipulated in that Law, mentions that if such land is needed by another party then deliberations should be performed (real deliberation producing a dialogue) between the party needing the land and the adat leader (real adat leader). At least an agreement should be reached between them regarding the preparedness of the land-rights holder to release his rights and also regarding the compensation. After an agreement is reached by the deliberations, then the process can be continued by issuing the Decree of Granting Land Title.

Another adat land problem that is being regulated by that law relates to the claim of land that has been possessed by another party, although the basis for such possession is a permit that has been regulated by laws. According to this Law the resolution of such dispute is delegated to the provincial or regency government.

Although this Law applies to Special Autonomy for the Papua Province, in essence it can be applied to the needs of other regions.

Secretary for Implementation– **Maritua Sirait**

The surety of land status is one of the sustainable development prerequisites. Sustainable development can not proceed if no guarantee exists regarding the surety of land-status. As a matter of fact, disputes regarding land authority issues and natural resources have been present for a long time, for instance:

a. During the Dutch colonial time, between the Department of Forestry against the Local Government (Tectona 1932). This Law regulates the authority which is controlled by the “Resident” (Colonial Regional Government Leader).

b. The Basic Agrarian Law contradicts later sectoral laws, such as the Forestry Law No.5 of 1967.

c. The Basic Agrarian Law contradicts Law No. 22 of 1999 (Regional Autonomy).


In the meantime a “pull and push” of the acknowledgement of customary adat land occurred. This can be proven by, for instance, some of the policies produced by the Sectoral Departments that contain some one-sided criteria regarding the acknowledgment of adat land. This is again in contradiction with the Assembly’s Decree (TAP MPR) No. X/MPR/2001. The nature of its criteria and indicator tend to
be rigid and do not accommodate the diversity and dynamics of the public. (the colonial criteria of Ter Haar / van Vollenhoeven is still being used). The local regional initiative in solving land issues has been hampered by the authority possessed and by the sectoral criteria.

The direction of the management of agrarian resources, changed the “denial economy” politics of the past into “empowerment politics” of the future, and can be represented in following picture:

<table>
<thead>
<tr>
<th>THE PAST</th>
<th>TRANSITION</th>
<th>THE FUTURE</th>
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<tbody>
<tr>
<td>1. Denial economy politics</td>
<td></td>
<td>Ensured rights</td>
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<tr>
<td>2. Degradation of agrarian resources &amp; dehumanization.</td>
<td></td>
<td>Agrarian justice</td>
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<td>3. Agrarian structural imbalance.</td>
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<td>Environmental governance</td>
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<tr>
<td>4. Dispute &amp; anxiety</td>
<td>Transitional justice</td>
<td>Empowerment economy politics</td>
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What can the Local Government do to provide guarantee of land status and natural resources?

Suggestions:

1. Inventory, compilation and identification of adat community unity and adat regions in a participative manner.

2. Redefinition or rationalization of forests areas.
3. Participative border management and mapping.

4. Accommodate a land system appropriate to farmers and members of the adat community.

5. Community based natural resources management.

6. Facilitate repossessing / restitution processes, and not only compensation of adat community rights that have been “taken away” from them.

7. Delegation of full and complete authority to the regency to handle land issues in a comprehensive manner.

8. Sectoral approach is contrary to the Assembly’s Decree No. IX/MPR/2001.

9. Respect, acknowledge, protect and improve the rights of adat community members on their land and Natural Resources (in accordance with Article 18 and 28 of Amendment II of the 1945 Constitution).

10. Immediately establish the Land Disputes Resolution Agency (Assembly’s mandate No. IX/MPR/2001).

11. Organize dialogues on land systems appropriate to the adat community, and farmers which conform to public aspirations and in line with up-to-date national policy development as well as international tools.

XII. Discussion progress

Views of the participants

1. Regarding the term “Agraria”

Agrarian may be defined as land, water, and natural resources contained therein, as stipulated in Article 33 para 3 of the Constitution. With the enactment of Assembly’s Decree No. IX/MPR/2001 this was reinforced. Hence in the discussion on agrarian law, not only land, but also forestry, mining, water/right aspects aspects should be taken into consideration. How is the relationship between the community with the areas of forests, mining, waterways. This all has to be taken into account.

To implement the Assembly’s Decree No. IX/MPR/2001, an “umbrella act” is required to become the protecting tool of the sectoral Laws, although it is not called the Basic Agrarian Law.

The expectations are that this land discussion will not only end here, in other words that this event may not be limited to become an event to change thoughts, but that it will be able to produce an agreement to push the enactment of a Law in the agrarian sector to become an “umbrella act” for Laws issued by the other sectors.
The point is not only to establish a Law, but more importantly there should be a political will to implement the reorganization of control and possession of land, the use of land, conferring the right on land, land administration, implementing obligations of possessing land rights, procurement of land, management of customary/ulayat land to enable the implementation of the Basic Agrarian Law’s mission. The lack of the government’s political will has been proven by the results achieved in the 42 years after the BAL was enacted, that is only a number of 23.3 million land titles/certificates cover about 5% of the total land area (including the forest area) of the Republic of Indonesia.

2. Regarding the existence of the adat community.

It has been anticipated that over time the adat community will vanish. This prediction proved to be wrong. As we can see presently many claims are submitted by customary adat communities on their land that have been possessed by other parties.

The adat community should be maintained and not eliminated, since amongst such a diversity, strength could be developed.

Acknowledgement of the adat community and all its consequences including ulayat land, seems to be an acknowledgement of the positive law and regulation which in fact does not adhere to it. The Kerinci Case, in Muara Bungo of the Jambi province, is an example of the “unwillingness” of the Local Government to acknowledge the adat community.

We should take into consideration the time available to prepare the policies on such adat communities. Identification of dispute areas, registration of adat communities’ claim on their adat regions should be performed. What can the central government do in the preparation of such adat land control?

Our legal structure seems incapable of catering for the diversity of adat contexts, but this does not mean that we should stop and totally cease our arrangement activities. Let’s look back to the Assembly’s Decree No. IX/MPR/2001, this will surely be questioned in the annual Assembly’s meeting, regarding to what extent this decree has been implemented.

A strong “commitment” of the regional government is needed to clarify the management of customary adat communities (for instance by issuing Local Regulations / Perda) referring to national policies in the land sector that sincerely provide acknowledgement of adat communities.

This also depends on the “goodwill” of the central government to genuinely delegate its authority in the land sector to the local regional governments. The problem is what type of authority and how it is delegated to the respective local government? Lest it becomes a tool in the hands of the local government that causes the “nation’s disintegration”. Is this the case? This is something which still can be argued about.
3. Mapping of ulayat land

The Basic Agrarian Law will only be implemented properly if the government possesses, accurate and complete agrarian data. Mapping of land, including ulayat land of each village should hence be performed continually on a systematical basis, until complete and accurate data is produced and collected. If such data is available, then the resolution of adat land disputes can be handled properly. It will not be easy to execute such mapping. Mapping can be performed by the government and can also involve the local community, or be initiated by the local community, and then be co-coordinated amongst the parties. This is to avoid what has happened in the participative mapping case in Kalimantan, where the National Land Agency refused to approve the mapping results, although the Regency Head, the sub-regency head and the village head already signed thus approved the mapping results.

The key for the solution of adat land issues and land disputes is to “immediately” implement the complete registration of land in the entire area of Indonesia, as is stipulated by the Assembly’s Decree (TAP MPR) No. IX/MPR/2001. Hence it is suggested that the World Bank and other partners should focus attention on the empowerment of the public and the government (at national as well as local levels) to immediately prepare maps regarding all land aspects through the implementation of participative land mapping (pilot project) as a starting point for the resolution of disputes. However the Land Administration Agency as the institution possessing the competence in the land sector needs to be involved, to prevent cases such as in Kalimantan. On the other hand the Land Administration Agency should possess the political will and the commitment to perform those implementations.

The presenters’ comments on the participants’ views

1. Regarding delegation of authority in the land sector

Decentralization is needed, and it should not be worried about lest it will cause the nation’s disintegration. On the contrary it has been proven that due to centralization a nation may disintegrate. Hence the central as well as provincial governments should not be hesitant to delegate its authority to the regency’s / municipality’s government. This would not mean that the central government is not anymore needed by the local governments. The local government will continue to need, guidelines, norms, policies on national scale. With the availability of these standard national policies, the local government can develop them into local regulations appropriate to their respective local conditions.

The local government will develop a sustainable system. This system will be discussed with various parties, the House of Representatives, NGO’s, and the respective community itself. And as such, whoever may become the leader in the future, this person should always adhere to the directions and patterns that have been created.
While waiting for further developments of the regulations regarding land issues, the local head is demanded to perform innovatively and to possess the courage to settle land disputes arising in his area of jurisdiction.

2. Regarding acknowledgement of the adat community

Acknowledgement of the adat community should be done including all its consequences. This is done by the local government in applying the existing local conditions. The existing regulations actually do acknowledge the position of adat rights, although of sporadic nature. The existence of the Law regarding Special Autonomy of the Papua Province, can essentially be used in the resolution of land disputes, however it may be argued whether this law is applicable to other local regions. There should preferably exist a type of government regulations that may become the guidelines to create local regulations.

Another opinion is, that the existence of the community is determined by the respective community itself. The government only provides the space to register. The relation between the adat community and their region (land), is an emotional, spiritual and cultural relationship.

The acknowledgement of adat land should immediately be accomplished, because at present a trend exists to “privatize” natural resources, including those contained in the land. While in Indonesia, land is not a commodity, not a type of matter that is easy to be merchandized. Any regulations regarding acknowledgement of adat land may anticipate the above mentioned trend.

XIII. CONSULTANTS’ VIEW

Regarding Ulayat Rights

Ulayat rights is the term given by Law and legal experts for legal institutions and legal relationship that exists between a particular adat law community and its respective land, that perpetually functions as _lebensraum_ for those community members. The legal adat community themselves did not give a name to this institution. In adat law, the name of their land is known, this is the environment of that respective adat law community. For instance in the Minangkabau region this is known as _ulayat right_.

In the legal sense of the word, ulayat rights are a series of rights and obligations of a certain adat law community on a certain land which is their ulayat land, and which functions as living environment of the community members, which natural resources they may utilize, including the land that is that region. These rights and obligations evolve from a physical as well as spiritual relationship that is inherited and exists between the adat legal community and their respective land. Again this relationship besides being of physical nature, is also a spiritual bond which is of _religious-magical_ nature. Hence, according beliefs of the respective adat law community, this ulayat land provides them with some spiritual force that
has been left by their ancestors to sustain their well being and living in perpetuity. As such, this relationship is of an eternal nature.

A part of the series of rights and obligations are grouped in the civil right category, which are related with the ulayat land as a communal property. Some are grouped in the public law category, which means that the ulayat rights are regarded as an obligatory task to manage, arrange, and direct its function, control, utilization and maintenance the respective communal land, in order to enable its utilization by the adat law community concerned.

To the question of who holds the ulayat right? The answer would be **the adat law community**. Not a single person, and also not the adat chief.

The adat law community, which may have different terms in accordance with their local respective language, are a group of persons that are bound by their respective adat law, becoming a united community living in the same region or having the same ancestors.

Who are implementing these ulayat rights? The answer is the **adat leadership** of the respective adat community, namely the adat chief together with the local elders. The adat leader acts as the executing officer of the adat community.

The rights of the adat community members:

1. To harvest products of the forest located in their ulayat region, after informing the adat leader;
2. To perform land clearing and use/utilize a part of the ulayat land to sustain themselves and their family’s life;

Such a parcel of land is then privately controlled under the under the customary adat laws of this adat law community.

Regarding control of such land parcels, there exists a vice-versa influence between the ulayat rights and the private control. If such a land parcel is actually utilized in a continuous manner, the control of that respective parcel may further develop into an inherited right of a family, taking the form of private property. This can cause the deterioration of the respective ulayat right. On the other hand, if the land parcel is not utilized and wasted, the land will fall back in the full authority of its respective adat law community as land free from any burden.

As such in the adat community environment there are basically 2 types of land, which are:

a. ulayat land which land owned by the entire adat community;
b. private land, which is under private rights of the respective community members.
The existence of the ulayat rights are acknowledged in the Basic Agrarian Law (Article 3 of the BAL / UUPA). However the Basic Agrarian Law itself as well as other national regulations and laws, do not accommodate these ulayat rights. The reason for this is that adat land or ulayat land are of such a diversity. In one regency for instance there may exists various adat laws. Hence, let the adat community be regulated by their respective adat laws, as long as it does not contradict the national regulations and laws.

Indeed on a national scale a common view is needed, on:

1. What is meant by adat community, and what is meant by adat land?
2. What are the criteria to determine the existence of an adat community and all its consequences including its adat region?

This should be arranged for in some Government Regulation which is further elaborated upon in the respective Local Regulations.

Ulayat Rights and Forests Area

Legally the scope of the Basic Agrarian Law is all the land existing the boundaries of the state. This is amongst others stipulated in the Presidential Instruction No. 1 of 1976 regarding *Synchronization of the Implementation of Transmigration and Public Works*. However in practice, control of land in forests’ area are interpreted as being under the jurisdiction of the forestry law, which is mainly catered for in Law No. 5 of 1967 and presently in Law No. 41 of 1999.

There exists generally some ulayat land in forests’ area, although the respective adat community may live dispersed and not group wise in one location. Another issue is that this Forestry Law do not acknowledge of any ulayat rights applying to forest areas. This Forestry Law does not even mention ulayat right at all.

It only acknowledged the right of the adat community to harvest forests products to be utilized for private and family consumption. And even this right is officially freezed (in fact abolished) in cases where for the respective forest area Forest Concession is allocated to an enterprise. After such allocation, all harvesting of forest products which previously was allowed under the adat law, was prohibited and any action transgressing these new decisions will be dealt with by criminal legal procedures.

A positive development seems to evolve in Law No. 41 of 1999. Article 68 of this law stipulates that the community in and around the forest (hence not only those of adat communities) have the right to obtain compensation for loss of access to their surrounding forests which has been a source for their living, if such an area is changed into forest area. Likewise a person has the right to obtain compensation for losing their property rights on their land, as a result of such a change.
Dispossession and use of ulayat land for development projects

Besides the adat community members, non community members through undergoing adat procedures and with the consent of the respective Adat Leader, can be allowed to open up a part of the ulayat land to be utilized for their business purposes, and by submitting a present known as “pengisi adat”. This type of land possession is only of temporary nature and shall not develop into owners right.

It is possible for development projects, the government as well as private sector to possess and utilize parts of ulayat lands that are available.

The possession and utilization of these lands should be initiated through procuring procedures that adhere to the applicable local adat laws. This means with the consent of the Adat Leader and by providing a compensation. This can be reached through deliberations to achieve a consensus on the release of land and the form of compensation. This is followed by a customary adat ceremony where the land is delivered and the compensation submitted. The deliberations to achieve agreement precedes the release of the procurement permit and the conversion of rights by the authoritative institution.

It is expected that such project does not become an enclave in the environment of the respective adat community. It should become part of the community environment and as such providing actual advantages for the members of those community.

The agreement regarding the delivery of land should be transparent and the period of time of release of ownership rights should be clearly indicated. Is it only for a certain determined time-span or is without time limit. In the Tapanuli region, for instance, the term pago-pago is used in cases that the land is released only for a certain determined time-span, and the term piso-piso for unlimited time land release.

People did not pay attention whether these issues would cause problems in the future, like what is happening presently.

Resolution of disputes

It is presently obvious that many disputes regarding the possession and utilization of ulayat land, by the government, private enterprises, plantation companies, industrial companies and mining companies. While usually land possession is based on the business permit and decree of land title which has already been registered and a certificate of ownership proof being issued. Various causes can produce these disputes.

If the land is possessed not through the above mentioned procedures, then a great chance is that disputes will arise. It is fact that often that in their effort to obtain possession rights on a land area needed for development projects, the government as well as private enterprises do not enough, even not at all, take into account the procedures and prerequisites needed. Some obtain ulayat land only based on their business permit or on a right to use permit issued by a government official or government institution that in some way is related to the use of land. It most likely type of obtained land rights, belong to those that presently are in dispute.
Specific

1. Transfer of authority regarding the land sector completely to the local regency/municipal government, with some revisions.

According to Law No. 22 of 1999 regarding Regional Government, the regencies and municipalities are autonomous regions that have been granted autonomy, amongst others covering government authority in the land sector (Article 11). Autonomy according clause (h) of Article 1, is the authority to manage and control the interest of local community according their own initiatives based on the community’s aspirations in accordance with the regulations and laws. However these all should be in the frame of a Unitary Indonesian State. In the General Elucidation clause (i) digit (4) it is stipulated that the implementation of local autonomy should be performed in accordance with the state’s constitution, to enable a harmonious relation between the Central and the Local governments and amongst the Local governments themselves. In the elucidation on clause (1) of Article 11, it is elaborated that with the enactment of this law, basically all authority already is in the hands of the local Regencies and Municipalities. As such the transfer of authority does not have to be done actively, but is actualized through an acknowledgement by the government. Clause (2) of Article 132 stipulates that “the implementation of this law is effectively performed at the latest in two years after the enactment of this law”. This means that it should be effective since 07 May 2001. However, further developments produced the release of Presidential Decree No. 10 of 2001 dated 17 January 2001 regarding the Implementation of Local Autonomy in the Land Sector, where it was stipulated that “prior to any new regulations based on Government Regulations No. 25 of 2000 regarding the implementation of autonomy in the land sector are implemented, the existing Regulations, Decrees, Instructions and Announcements of the Minister of State for Agrarian Affairs/Head of the National Land Agency shall prevail”.

Further with the release of the Presidential Decree No. 62 of 2001 it was stipulated that “a part of governance tasks in the local regions will continue to be performed by the central government up until all regulations in field sector have been issued, in at least 2 (two) years. These stipulations were reiterated in Presidential Decree No. 103 of 2001, using the wordings “A part of government tasks that are being performed by the National Land Agency in the local regions will continue to be implemented by the central government until the enactment of all regulations and laws in the land sector, at the latest on 31 May 2003 (see footnote 1).

Recently work has accelerated to draft revisions of Law No. 22 of 1999. Amongst others regarding the Governor’s position in relation to the Regency Head and Mayor, and this is itself related to the statement in the General Elucidation, which says that “the Provincial Region is positioned as an Autonomous Region and at the same time an Administration Region, that implements the authority of the Central Government that has been delegated to the Governor. The Regency Regions and Municipalities are not
subordinate to the Provincial Government. As such the Autonomous Provincial Region and the Regency regions as well as Municipalities are not bound by a hierarchy line.

Such a condition then surely causes confusion amongst the Regency’s/Municipality’s governments. If there exists a proposal to perform a revision with the objective of an complete transfer of authority in the land sector, then this item should be re-considered, since it seems that there are efforts to revise with the purpose of returning the centralistic system. Should there be any Regency/Municipality propose to revise with the objective of a total and complete transfer of authority to the Regencies/Municipalities, what should be taken into account are:

a. That legally Article 2 of the BAL promulgates the de-concentration principle, while Law No. 22 of 1999 designates the decentralization in the land sector. Hence it is necessary to synchronize between the Assembly’s Decree No. IX/MPR of 2001 regarding the Reformation of Agrarian Law and Management of Natural Resources and the Assembly’s Decree regarding Recommendations for the Implementation of Regional Autonomy.

b. The Land Administration Agency as the institution that possesses the authority in the land sector should actually possess the initiative to commence the reformation of agrarian law in the spirit of regional autonomy.

c. The central government’s authority is to ascertain national policies in the land sector while the local regency/municipal authority would deal with the implementation of national policies that have been ordained in the context of services to the public, which include easiness for the public to obtain information related to land. The implementation of local authority in the land sector should surely be adjusted to the conditions and characteristics of the respective regions.

d. The Regency/Municipal governments should prepare themselves for implementing this authority, such as preparing the human resources, facilities and related infra-structure needed.

e. During the transition period, the Local Governments can utilize employees of the Land Administration Agency and at the same time train their Human Resources that are prepared to continue the tasks in the land sector. These all should be executed in the context of the Republic of Indonesia Unitary State, as such localism should be avoided.

Besides the above mentioned issues, the move to revise Law No. 22 of 1999 with the purpose of returning centralization of the land sector to the central government, should be foreseen.
2. Establishing Land Disputes Resolution Agency

In was suggested in the land discussions to establish a Land Dispute Resolution Agency in each and every Regency/Municipality. To such a purpose, it would be beneficial to know that land disputes can be solved through 3 (three) methods, namely:

a. Direct dispute solving by the disputing parties through deliberations.

b. Solving of dispute through the Court by submitting the case to the public court whether taking civil law or criminal law, if the dispute is about illegal use of land that is prohibited by Law No. 51/Prp/1960 regarding Prohibition to Use of Land Without Permit of the owner or its legal representative or through the State’s Administrative Court. Generally all disputes can be submitted to court, whether in the scope of public court as well as state administrative court. However it is not a secret that relatively many land disputes are not effectively dealt with in the court, besides the huge amount of time and money involved. And it is obvious that from the analysis of land disputes solved by court, whether settled at the first level, at the appeal level, or at the highest court, we can say here without any means to generalize, that there should be some improvement in the understanding of problem substance related to the underlying concept in order for the verdict to be really providing justice and legal guarantee, and as such becomes useful to the justice seeker.

c. Through Arbitration and Alternative Dispute Resolution.

With the enactment of Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution, legal assurance exists to accommodate the resolution of civil cases outside public court.

c.1. Arbitration

The resolution of disputes through arbitration of informal nature, in closed sphere, inexpensive and efficient manner that is capable of solving disputes with an outcome that fulfills the hopes of the parties involved is something hoped for by all parties. Arbitration as one of the alternatives to solve disputes outside court is often sought by the parties by mentioning it as a clause in special agreement made up after the dispute evolved. If this is the way preferred, then taking into account the dispute’s structure we can ask which type of arbitration is opted for, is it a special one established by approval of the parties involved (ad hoc) or is the institutional arbitrary board opted for?

A number of issues need to be considered in relation to establishing an arbitration institution.

First, determine what type of land disputes can be solved through arbitration. Second, determine who can become an arbitrator. An arbitrator should be possess an independent attitude in order to be trusted by both parties, besides the person should understand the regulations, whether written or not written related to land issues. A
working capacity of land law substance is also of the demands that should be met by an arbitrator. Third, determine the guidelines for selection and positioning the arbitrator, rules and prerequisites for submitting the case and of taking the decisions. Fourth, the decision reached should be of a final nature, and no appeal should be allowed.

The idea of forming a land arbitration institution still needs thorough considerations. If all elements needed to establish such an agency have been to be taken into account and the prerequisites fulfilled, then the idea to establish such arbitration institution may be accomplished. However the establishment of such an institution itself does not provide any guarantee that the resolution of land disputes will be enhanced. The availability of professionals, clear working patterns, and the availability of needed supporting data will have a great impact on the time needed to settle a dispute. Experience has shown that the existing Indonesian National Arbitration Board (BANI), so far does not fulfill the requirements as mentioned above. It is expected that with the enactment of Law No. 30 of 1999, the resolution of disputes through arbitration may satisfy the expectations of all parties involved.

c.2. The other alternative for the resolution of disputes is through consultation, negotiation, mediation, consolidation or through the assessment of experts. Actually beside arbitration, the other alternative which can be chosen for settling a dispute out of court, is mediation. Basically mediation is “a process of negotiations facilitated by a third person (s) who assists disputants to pursue a mutually agreeable settlement of their dispute." (Maria SW Sumardjono, 1996). The characteristics of mediation are a short time needed, structurized, task-oriented, and is an intervention method that involved all parties in an active manner. The disputing parties appoint a third party as mediator that assists in achieving issues that both can agree upon. The success of the mediation is determined by the good intentions of both parties to jointly achieve a way out that both agreed upon.

The positive points here are, a short time needed, lest costs spent, and a simple procedure. The disputing parties will feel more powerful as compared at a court settlement, since they themselves determine the outcome. Besides, in a mediation, the parties involved will be more conducive to other values than only legal factors. The negative side is that mediation results can not be verified by the court, and hence its effectiveness solely depend on the obedience of the parties to adhere to mutually agreed solution.

The mediator’s tasks are amongst others:

1. to determine whether it is appropriate for the case to be handled through mediation and whether the disputing parties are ready to participate;

2. to explain the mediation process and the role of the mediator;

3. to assist the parties in exchanging information and perform bargaining;
4. to assist the parties in determining and planning of the agreement.

Is the mediation appropriate to be utilized for the settlement of land disputes? Although some are of the opinion that the choice of mediation is determined by the will of the parties to settle their dispute, in the US or Britain the practice of mediation is more appropriate to be applied in cases where both parties still expect their relation to continue, or where both parties are equally strong on legal grounds, or when a short time span is sought, or when it is suspected that no satisfactory judicial outcome will be produced by a court settlement. (Maria SW Sumardjono, 1996)

Possible for Indonesia, where deliberations to reach consensus is a common procedure, in land dispute cases which in the broadest sense of the word are of civil nature, that are not related to administrative and criminal aspects, and where the parties prefer it, an arbitration method can be applied. It may be useful to mention here that efforts exerted by the National Human Rights Commission (Komnas HAM) to assist in solving some land dispute cases, were arbitration methods.

The above mentioned issues have been presented to provide a picture regarding resolution of existing land disputes. While with regard to the initiative during the land discussions, of establishing a Land Dispute Resolution Agency, the following issues need to be clarified / elaborated on:

a. Into what type of Alternative Dispute Resolution (ADR) is the resolution through such Land Dispute Resolution Agency categorized?

b. How is the structure of such Land Dispute Agency? And such an agency should preferable by established in every regency / municipality.

c. How is the process of dispute resolution performed through this Agency?

It should be anticipated whether with the existence of such Land Dispute Resolution Agency, the settling of land disputes and land claims through the public court or administrative court is eliminated. This needs to be discussed, because since the presently applicable legal pattern system accommodates such to happen.

d. A legal tool for the operation of such an agency needs to be prepared in the form of a Law, a Government Regulation down to Local Regulations (Perda).

e. It is suggested that this Land Dispute Resolution Agency be established in each Regency/Municipality. Taking this in account, consideration should be given to which elements should be available. It is suggested that the elements needed here are the Local Government, the National Land Agency, Tertiary Academic Institutions, and representatives of the community. The personnel members becoming part of it should possess the knowledge and capabilities to settle disputes, in such a way as to produce a “win-win” solution. The decisions produced by this agency should not be of a tentative nature but should really settle the dispute and be final, so that no opportunity exists lodge any legal action at the court for the same case.
3. A moratorium on the Local Regulation Formulation Process (Raperda), Law Drafts (RUU) and others of sectoral nature.

The Assembly’s Decree No. IX/MPR/2001 regarding Revitalization and Management of Natural Resources stipulates the policy directives on Agrarian Revitalization and the policy directives on Management of Natural Resources. Taking this into account, the House of Representatives (DPR) together with the President have been instructed to further arrange the implementation of the agrarian reform and the management of natural resources, to revoke, change and/or replace all laws including its operational procedures that do not conform with this Assembly’s Decree.

It was suggested in the discussion that a moratorium/freeze of all sectoral natured regulatory and law formulation processes should be applied. It is understandable that this proposal arose because one of the roots of land disputes are the enactment of these regulations and laws that are of sectoral nature. This has been happening all the time due to the practice of policy diversion that do not fully refer to the Basic Agrarian Law as the Umbrella Law in the agrarian sector. This again originates from the policies issued by the previous New Order that prioritized on growth. However at present, now the government is ordered to further arrange the management of the agrarian and natural resources sector, there is an opportunity to comprehensively arrange and integrate amongst the sectors.

If some are suggesting for the freezing of all formulation processes of regulations that are of sectoral nature, than it would be advisable to priory assess what social consequences may arise. Then what would be the basis of such type of freezing? Would a Presidential Decree suffice?

To avoid the evolved land disputes, Presidential Instruction No. 1 of 1976 regarding the Synchronization of Land, Forestry and Mining Sectors should have been implemented a long time ago. This has been implemented in the practice of using land for transmigrants, but was later neglected. It is hence suggested that the material content in the Presidential Instruction No. 1 of 1976 is developed and its hierarchy improved to the level of Government Regulation, to enable its use to implement co-ordination.

XIV. Closing Remarks

Conclusions:

As a follow-up of the 2001 Land Dialogue, this workshop conducted further assessment of local government study, decentralization of land administration, reformation of Agrarian Law, land dispute resolution mechanisms, discussion of state land conflicts, acknowledgement of customary adat land rights, transparency in land information, and discussion of forest land disputes. The Assembly’s Decree (TAP MPR) No. IX/MPR/2001 provides the frame for the integral reformation of policies on land and natural resources. Hence, the efforts and the political will of the government is needed to implement reformation of land policies and of the land administration system.

In the context of identifying priorities for reform, it is important to take an adat land perspective and comprehensive approach towards the resolution of land disputes. This
workshop is expected to produce a vessel for the betterment of agrarian reform. Hence the government should initiate with organizing further land discussions. The workshop produced:

1. The fact that adat land prevails to be a symbol of dignity for the adat community, but that politically land possesses a strategic position in the nation’s existence and as such the government’s policy regarding the land sector will determine the national stability. Besides, that land can not be separated form all natural resources it embodies. Strong spiritual and cultural bonds with the land is the most accentuated characteristic that distinguish the adat community from other local inhabitants who only regard land as a commodity. Hence it is necessary that the government exerts actual acknowledgement of adat land and provide guidelines for the regency/municipal governments to perform innovations to prevent and find solutions for land disputes in their regions.

2. Best practice that have been performed by the Regencies of Sumedang, West Kutai, West Lampung and Simalungun have proven that local innovations that involve the role of the community can fill the “empty space” of regulations and laws needed to manage land disputes.

3. The involvement of the community and the political will of the regency’s/municipality’s government to achieve a solution based on the local good governance is a good starting point for the development of a sustainable system of Natural Resources Management.

Suggestions:

1. Law should indeed be implemented universally, however as concerned customary community adat rights, whose conditions differ from one place to the other, an acknowledgement of adat / ulayat rights is needed that should be given by the regions in accordance with the existing conditions but still referring to the national policies issued by the Central Government.

2. The need to compile and identify in a participative manner the unity of the adat community and their adat region including the management of boundaries and mapping of adat land.

3. To avoid the occurrence of disputes in the land sector transparency of land information is urgently needed, such as announcement of all permits that have issued, conferring of rights on legal land, the process of conferring rights before the land becomes legal, the granting of Exploitation Rights, the Authority to Mining, and other permits that are related to the utilization of community land, to the public from the regency level down to the village level.

4. In relation to the implementation of regional autonomy in the land sector, the authority of the central government is to declare national policies, while the authority of the regency/municipal governments is to implement those national policies by way of performing services to the public, namely providing easiness to the community towards obtaining land sector information. The implementation of regional authority in the land sector should surely be adjusted to the conditions and characteristics of each respective region.
5. During the transition period, to avoid friction between the Regency/Municipality on one hand and the Land Administration Office, the Minister of Home Affairs is suggested to issue a Combined Decree, together with the Land Administration Agency, to enable the co-operation of LAA staff and the Department of Home Affairs staff in the Regencies/Municipalities, keeping in mind that in some Regencies/Municipalities the Land Services already is established.

6. It is suggested that during the transition period, the regency government continues to make innovations in solving of land conflict disputes in their respective areas. This should be followed-up by the enactment of a Government Regulation that provide the guidelines to the regency to formulate their local regulations regarding the resolution of land disputes.

It is suggested to establish a Land Dispute Resolution Agency which will settle land disputes outside the public court.

Next Agenda

As mentioned in the beginning, this dialogue has two objectives, i.e. first, to formulate proposal in form of actual of the government (central/regional) in the efforts to get recognition of the existence of traditional land; and the second, to formulate proposal for the efforts of comprehensive settlement of land matter conflicts.

In relation to the first objectives, the important thing is the fact that there is no formal recognition by the state on the ownership of traditional land, even though some laws recognize the existence of traditional land. This then has caused dragging conflicts and uncertainty about the use of traditional land for the traditional community itself. There are several basic reasons which those things happened, i.e.:

- In consistency in land matters policy in the past. This can be seen for example from law system which tends to be by sector, and on reference to the Basic Agrarian Law by other laws by sector.
- Regulation of State Minister of Agrarian Affairs/Head of BPN No.5 Year 1999 is considered to be not adequate for the efforts to overcome the issue of customary land in the region.
- Land procurement in the past is considered to be ignoring traditional procedures and requirements.
- No strong political will in the past of the central government to give clarification about the authority in overcoming traditional land problems.
- No extensive utilization of participatory traditional land mapping yet, in some region it was even rejected by the head of the region.

In relation to land matters conflicts in general, the problems faced at this moment among others are regional government is not capable to overcome land matters conflicts in the region. Some of the reasons are:
• No institutions, especially in the region, which is specifically responsible for overcoming the conflicts.

• No formal authority for the region to overcome the problems in accordance with the characteristics of the problems in the region, because certain authorities are still held by the central government.

• No clear commitment of central government to encourage the realization of mechanism in the region for overcoming the conflicts.

In the efforts to overcome the two problems, some important prerequisites and activities which must be carried out in the near future are:

1. The existence of clear authority for regional government to overcome land matters problems (either traditional or other land matters conflicts) in accordance with the problems in the region. While activities which can be carried out to realize that matters among others are:

   • **Identification of land matters authorities** (either those which are still carried out by central government in the region through deconcentration or those which are already carried out by regional government) in the region at this moment as efforts to find out further about the capability of the region in overcoming land matters problems in its region.

   • **Prepare strategy of land matters policy** which gives clarification about authority of central government as well as regional government in overcoming land matters problems, so that both can act freely, each according to their authority, overcoming land matters problems. These activities are carried out in the framework of decentralization of land matters authority as mentioned in Presidential Decree 10/2001.

   • **Prepare institutional design of land matters agency in the region**, including merging of land matters services office and land matters office in district/town as efforts to make both agencies to be more effective in overcoming land matters problems.

2. The existence of guidelines for regional government in overcoming conflicts. Some activities which can be carried out among others are:

   • **Identification of land matters conflicts settlements** which have been carried out in the region which is considered to be successful in overcoming land matters conflicts, either related to traditional land or other land matters conflicts.

   • **Conduct pilot project** in the settlement of certain cases, which involved stakeholders, either in the region or in the center, These activities can be considered as learning proves in the overcoming land matters problems in the region.
• **Prepare guidelines for settlement of conflicts** for regional government in overcoming traditional land problems together with its recognition, as well as overcoming the overall land matters problems. This guidelines can be issued by the Ministry of Home Affairs as the responsible ministry in the implementation of regional autonomy.

3. The existence of institution in the region which is capable of settling conflicts occurred in the region. Activities which can be carried out are:

• **Identification of institutions** which are effective in the settlement or land matters problems, which involve various parties and are considered to be successful in overcoming land matters problems in the region, either traditional institution or other established institutions.

• **Conduct institutional pilot project** as mentioned in point 2 of prerequisites and activities.

4. The existence of political commitment of stakeholders in overcoming conflicts. Activities which can be carried out among others are:

• **Conduct dialogue at local and national level** (including interdepartmental) in the efforts to develop common agreement and understanding among stakeholders about land matters problems and efforts to overcome them.

The above prerequisites and activities are interconnected with each other. Therefore, it is necessary to have coordination of the Ministry of Home Affairs as the responsible institution for the implementation of regional autonomy in Indonesia.