

Land titles do not equal agrarian reform

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Activists split with Indonesia's government over whether land registration helps the rural poor

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In a speech on 31 January 2007 President Susilo Bambang Yudhoyono said that agrarian reform would be a priority for his government. Since that time, Indonesia's National Land Agency (BPN, Badan Pertanahan Nasional) has dramatically increased the rate at which it registers land title. But land rights activists are sharply critical of the government's policy. Despite, the increase in registrations, we think the BPN has set aside its original agrarian reform goal of redistributing land to the poor. This is a goal that is mandated by Indonesia's 1960 Basic Agrarian Law, as well as the 2001 legislative Decree No 9, on Agrarian Reform and Natural Resource Management. Providing individual land titles does not necessarily help the poor; in fact it can make the livelihoods of struggling rural people and communities even more precarious.

Accelerated land title registration

Under the leadership of Dr. Joyo Winoto, BPN has pursued a process of 'legalising' land assets through accelerating the certification of land titles at an astonishing rate. The volume of government sponsored land 'legalisation' has risen sharply. In 2004, before Joyo was appointed, the BPN issued full legal title for only 269,902 land holdings. By 2008 the total had reached 2,172,507 – an increase of over 800 per cent. Adding cases for which individuals, groups, and businesses paid their own processing fees brings the total to 4,627,039 property titles certified.

Since 2004, BPN has used a 500 per cent budget increase to update its institutional procedures. It runs several schemes that aim to certify land titles, including two supported by World Bank loans: LMPDP (Land Management and Program Development Project) and RALAS (Reconstruction of Aceh Land Administration System). BPN has established a mobile Land Certification Service to extend its reach to some 60 per cent of Indonesia's land area, sending officers to remote areas, and improving data processing and telecommunications.

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With such accelerated service, Joyo Winoto estimates it will take only 18 years more to title all land holdings in Indonesia. President Yudhoyono's campaign team celebrated this spectacular success in a full-page advertisement: 'Land for the People. Not Just Empty Words' (Pertanahan untuk Rakyat).

Bukan Omong Kosong) in the newspaper Media Indonesia of 24 June 2009.

The advertisement appeared as the 188 member organisations of the Consortium for Agrarian Reform (KPA, Konsorsium Pembaruan Agraria) held their fifth national conference in Puncak, West Java. At the meeting KPA leaders introduced a strategic program and targets, results of three years' work. KPA was founded in 1995 as a nationwide network of NGOs involved in campaigning in favour of a policy of land redistribution for the rural poor.

KPA tackled the Land Agency's claims of success skeptically. Were BPN's remarkable figures on land title certification believable? More importantly, will universal land titles fulfill the primary goal of agrarian reform - to help lift poor people out of poverty? Will they protect the rights and livelihoods of poor farmers and marginalised indigenous communities?

As a national advocacy network of civil society organisations, KPA has long criticised the Land Administration Project, which is funded with a World Bank loan backed by AusAID (The Australian government's overseas aid program). [See Inside Indonesia 47: July-Sept 1996, Noer Fauzi: 'We Promote Community-based Land Mapping ', and 'Australians Help Codify Indonesian Land Titles '].

In a press release on 3 July 2009, KPA's new General Secretary Idham Arshad asserted that BPN's land titling program will cause farmers with small land holdings to lose more land, because individual titles make land easier to sell or to mortgage. 'With tight land and macro-economic conditions that do not favor small farmers, land title certification ... without agrarian reform, is a systematic tool that forces farmers to sell their land more quickly. Land will be transferred toward big capital, so that the existing unequal land distribution will become even worse. That's why farmland is now increasingly owned by urban non-farming groups, while poor farmers become farm labourers.'

Differing positions, arguments, and visions

Joyo Winoto, the BPN head, is aware that 'legalising' assets by certifying land titles often leads poor owners to lose their land, if they cannot use land optimally because they lack capital or other resources. To reduce farmers' vulnerability, his reforms combine land titling with a range of support and extension services for poor farmers.

KPA activists criticise BPN's primary focus on land titles, believing that land titles have become an end in themselves, not just a means to achieve broader social justice. Unlike KPA, officials at BPN treat land title certification as equivalent to agrarian reform. BPN agents in the field and district offices do not differentiate between the two major programs they administer to 'legalise' land assets: land registration through 'adjudication' (land titling through the World Bank-funded Land Management and Program Development Project) and 'land redistribution' (through the National Agrarian Reform Project, paid through the routine national budget). From 2005 to 2008, BPN registered some 651,000 land certificates through 'adjudication', while nearly 333,000 titles were registered through 'land redistribution' schemes. Both programs result in similar land title certificates with the same full legal force, despite the two programs' differing goals, funding sources, budget mechanisms, and administrative procedures.

Yet these two program approaches recognise very different legal bases for land ownership. Legal titles granted through the 'adjudication' process certify property based on evidence of customary ownership, inheritance, purchase, donation/bequest, or other land transactions recognised by local practices. By contrast, BPN's 'redistribution' process deals with 'state land' (tanah negara), that has been designated for redistribution by BPN, targeting approximately 1.1 million hectares of such land

for eventual redistribution.

KPA contends that it is necessary to differentiate between land 'legalisation' and redistribution because of the very different origins, agendas, and visions of these two approaches. KPA asserts that BPN's underlying purpose in certifying, or legalising, land titles is to foster a global agenda to expand the land market. In line with the World Bank's economic liberalisation agenda, clarifying land rights by issuing land certificates in huge numbers furthers economic development.

In fact, BPN's land title certification program is one tool in President Yudhoyono's and Joyo Winoto's embrace of an ideological vision promoted by Peruvian economist Hernando de Soto, the most recent in a long line of neo-liberal modernisation proponents to gain disciples in Indonesia. De Soto presented his thoughts to President Yudhoyono and ten cabinet-level ministers in November 2006 (see the report on the presidential website).

De Soto's reputation as a 'global guru of neo-liberal populism', as Mike Davis dubbed him in his 2006 book *Planet of Slums*, is based on de Soto's promotion of a simple and highly seductive prescription: the solution to poverty lies in providing secure property rights to the poor, and integrating their land assets into the market system. The policy tool to achieve this is a massive government land registration and titling effort.

KPA's alternative agrarian reform agenda starts from the evidence we see all around us of the suffering experienced by victims of land expropriation and land-grabbing, and the concentration of wealth by people who control extensive lands

De Soto believes that most rules that govern landed property and transactions in non-western nations like Indonesia operate outside the formal legal system, in customary and informal practices. Modernisation must transform all of these extra-legal rules into a single, integrated system of property rights and contracts accepted by all parties. Only in this way can the peoples' land, now wasted as 'dead capital' beyond the formal legal system, be brought to life through land titling, and enter the economic system. Poor landowners will then be able to use their title as collateral in securing loans to assist their entrepreneurship. In this way, de Soto promotes a capitalist market system as the instrument to lift the people out of poverty.

In contrast to Joyo Winoto's eager embrace of de Soto's approach, KPA rejects the notion that integrating all land into the market system will overcome poverty in Indonesia. De Soto's thinking merely softens, even hides, the greedy and predatory character of a capitalist economy based on universal private property and on commodification of everything through market mechanisms. KPA's alternative agrarian reform agenda starts from the evidence we see all around us of the suffering experienced by victims of land expropriation and land-grabbing, and the concentration of wealth by people who control extensive lands.

In Indonesia, the underlying legal mechanism for pervasive land expropriation is what I call 'state-isation of peoples' land' (*negaraisasi tanah-tanah rakyat*). In this process, the state legalises and legitimates its expropriation of peoples' land, then turns it over to private companies for exploitation or 'investment'. KPA rejects not only the transfer of control over land to private corporations, but also the 'state-isation' process that enables it.

KPA insists that the central intentions of the 1960 Basic Agrarian Law were to redistribute extensive land areas controlled by the state and by private companies, to give land to landless and impoverished farmers, and to raise their productivity by providing them with credit, education and appropriate technology. Managing land with regard to its ecological functions, rather than just profits, was also key in the Basic Agrarian Law. KPA supporters believe that only by reviving this

agenda can we surmount the major causes of chronic rural poverty today.

Over the past five years, KPA's leaders have worked closely with BPN's policy reform process from conception to implementation. KPA took this course because the president had charged BPN to carry out an agrarian reform agenda, as spelled out in Presidential Decree No. 10/2006 and in other places. KPA hoped to see a genuine government agrarian reform program, dedicated to overcoming poverty and protecting human rights as its fundamental values. But, after four years of implementation, land rights activists including KPA have concluded that President Yudhoyono's Program for Agrarian Reform has moved too far from the experiences of the victims of land expropriation and the day-to-day struggles of poor rural people.

Where are we going?

Government agencies are still a long way away from formulating a convincing approach to agrarian reform. Agrarian reformers in civil society must carefully consider our own future direction.

State land 'reform' policies legitimate a new model of land grabbing for food production, energy and biofuels, and the production of industrial raw materials

In the agrarian dialogue at KPA's recent national conference, participants were troubled by more than just the problems of land titling. State land 'reform' policies also legitimate a new model of land grabbing for food production, energy and biofuels, and the production of industrial raw materials. If this model prevails, it will turn Indonesia into merely a source of land, natural resources, and cheap labour for the global market. Constant vigilance is required to accurately understand this, even more to resist it.

After almost ten years of democratic politics in Indonesia, now is a time for introspection and renewed resolve for those of us, like KPA, who struggle for agrarian justice. Where are we going? It will be a long, steep climb without clear direction unless we understand what has occurred, what is taking place now, and what is likely happen if current directions continue.

P.S.

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