

## ILLUSTRATION OF THE CONCEPTUAL FRAMEWORK – INDONESIA CASE STUDY

KEY PRINCIPLES IN LA SYSTEM	NARRATIVE OF INDONESIAN LAND ADMINISTRATION PRACTICES
<b>PRINCIPLE 1 – LAND POLICY CONTRIBUTES TO TENURE SECURITY</b>	
<ul style="list-style-type: none"> <li>• There is clear policy for the recognition of land tenure for all types of land, including:               <ul style="list-style-type: none"> <li>○ Private rights (including lease, strata, usufruct, qualified title etc)</li> <li>○ Commons</li> <li>○ Customary rights (including the definition of the holder of the allodial right)</li> <li>○ Public land (public use, protection, future use/land bank)</li> <li>○ Religious land</li> </ul> </li> </ul>	<p>In Indonesia the issue of land policy is administered under a government regulation No.24, 1997.</p> <p>Policy formulation is a continual changing feast according to the government regime interest at the time.</p> <p>Policy implementation and legislation enforcement are based on executive government officials interpretation</p>
<ul style="list-style-type: none"> <li>• The assignment of institutional roles and responsibilities is clear and unambiguous:               <ul style="list-style-type: none"> <li>○ At a national level</li> <li>○ At the various levels of administration</li> <li>○ At both formal and community levels.</li> <li>○ For state and private sectors</li> </ul> </li> </ul>	<p>There is mismanagement, unreliable data, and land conflict as a result of unclear institutional roles and responsibilities. Political influence at various levels creates stagnation and hierarchical conflict between authorities.</p> <p>Private sector is supported.</p>
<b>PRINCIPLE 2 – PROPERTY RIGHTS HAVE LEGAL RECOGNITION</b>	
<ul style="list-style-type: none"> <li>• Real Property has legal recognition</li> </ul>	<p>It is difficult to implement land laws in Indonesia because they have not developed a comprehensive land law to cover all issues. An example of this is that there established separate independent laws for agrarian, forestry, mining, with no correlation to the Land Law. The protection of indigenous land is also confusing although Law No. 5 /1960 (BAL) (Basic Agrarian Law=BAL), has provided the legal foundation to protect indigenous title.</p>
<ul style="list-style-type: none"> <li>• There is a continuum of land rights that have legal recognition and can be upgraded incrementally to real property rights.</li> </ul>	<p>The protection of adat / customary land title is not very convincing, although there is a Ministerial Decree no. 5 of the year 1999 to administer the so called 'ulayat land'</p> <p>Most of adat communities in Indonesia need protection for their adat / customary rights. The mechanism for such a protection only apply for conversion regulation under Law no. 5/1960, but often this is wrongly interpreted by government executive officials.</p> <p>Under article 9 (1) of Law no. 5/1960, it is ruled that male, female are equally entitled to own land with the right of ownership. The implementation of the norm however is not overwhelming throughout the country because of official's misinterpretation of the norm. Similarly on the</p>

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	<p>issue of conjugal title. Since 2007, under the program of 'joint land titling', the law is being implemented in tsunami affected areas of Aceh for relocation, where husband and wife names are recorded in the certificate of title.</p> <p>Within forested areas, people's rights to land or resources are not well respected. Public land rights are vaguely interpreted by executive government officials. Religious land is dominated by Islamic land claims called waqaf land.</p>
<ul style="list-style-type: none"> <li>• There is broad community understanding of rights and associated processes to recognize these rights.</li> </ul>	<p>Public awareness campaigns for systematic land administration are conducted prior to implementation in a designated village area. The campaign uses local radio station, local mass media, public gatherings, religious ceremony, local traditional festivals, and community elders and figures.</p> <p>Only the Indonesian Peoples' Bank accepts the land tax paper as proof of legal rights, other banks only recognize land certificates as legal evidence.</p>
<ul style="list-style-type: none"> <li>• The system to register/record rights has effective mechanisms to ensure that the systems to record rights reflect the actual situation on the ground (such as adverse possession/prescription).</li> </ul>	<p>Government officials stress that written documentation is legal evidences, while people conceive the on the ground occupation as the real evidence of being a land owner.</p> <p>Adverse possession is recognized based on the existing facts of the real land occupation to denote whether the land is still occupied or has been abandoned.</p> <p>Systematic registration was introduced in 1995 and adopted in Government Regulation No. 24/1997. In the island of Java, systematic registration was adopted by the community. Sporadic registration on the other hand is mostly used by businessmen in the cities.</p> <p>Pilot projects for systematic registration were conducted in 1995-2001 in three Provinces in Java and three cities at Sumatra, Medan, Padang, and Palembang.</p>
<ul style="list-style-type: none"> <li>• There are no undue constraints on the ability to register/record a change in rights (particularly for peri-urban areas): <ul style="list-style-type: none"> <li>○ Uncertainty in administrative boundaries</li> <li>○ Land classification systems and difficulty in changing land classification</li> <li>○ The need to demonstrate compliance with land use planning/zoning requirements</li> <li>○ The need to comply with construction codes/obtain building approvals</li> <li>○ The need to obtain tax clearance certificates</li> </ul> </li> </ul>	<p>There are a lot of hindrances in the fight against corruption. Administrative boundaries on land issues among state institutions are overlapping and confusing, for example lands claims by Department of Forestry are exclusively forbidden for Land Agency to enter and register the land occupied by the people.</p> <p>The constraint for agrarian reform is due to land classification and the definition of state land, adat community's land, forest land, and private land.</p> <p>Commercial need rather than land spatial planning is the main consideration for land conversion.</p> <p>Construction/building approvals are only implemented in cities.</p> <p>A land title will be registered when tax have been paid.</p>

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<ul style="list-style-type: none"> <li>The boundaries of rights are clear and accepted.</li> </ul>	<p>A lack of clarity in terms of hierarchy in determining boundaries creates a lot of land and boundary conflicts because of no clear spatial planning and boundaries determination.</p> <p>Survey standards and the creation of a cadastre are stated in the Government Regulation, but are not yet fully implemented.</p>
<b>PRINCIPLE 3 – COST EFFECTIVE, ACCESSIBLE AND RELIABLE SERVICE DELIVERY BY LAND INSTITUTIONS THAT IS WIDELY UTILIZED</b>	
<ul style="list-style-type: none"> <li>Land administration mechanisms are transparent and predictable and there are clear service standards – promises on time, cost, quality for key processes</li> </ul>	<p>The publishing of standards for service delivery are only used as a show case in the land office but are not fully implemented in real practice for the customers.</p> <p>Costs put in the announcement board in the land office are not followed and generally personal access is required. Land offices are responsible for collecting non land tax fees for land transfer.</p> <p>An open and customer friendly designed office only applies in some land offices</p>
<ul style="list-style-type: none"> <li>The land administration system is accessible and affordable for customers</li> </ul>	<p>Business entrepreneurs are usually willing to pay more, but people from rural areas and non-traders are reluctant to pay expensive cost or go through the complex bureaucratic procedure.</p> <p>Reduce fees are only available under the systematic registration process.</p>
<ul style="list-style-type: none"> <li>The land administration system is sustainable from the stand point of: <ul style="list-style-type: none"> <li>Finances</li> <li>Technology</li> <li>Capacity/HR</li> <li>Participation</li> </ul> </li> </ul>	<p>The investment in establishing the land administration system has been very slow due to funding and financial support. Funding for on-going maintenance is also poor for similar reasons.</p> <p>Capacity building is increasing each year and is ongoing.</p>
<b>PRINCIPLE 4 – BROAD ACCESS TO LAND ADMINISTRATION INFORMATION (BOTH SPATIAL AND TEXTUAL INFORMATION)</b>	
<ul style="list-style-type: none"> <li>Land information is readily accessible and sufficiently detailed (for both public and private rights)</li> </ul>	<p><i>No information</i></p>
<ul style="list-style-type: none"> <li>The spatial information (coordinates and maps) that provides the spatial framework for land rights is readily available.</li> </ul>	<p>Access to spatial records is very limited due to the poor collection of spatial information.</p> <p>Coordinate systems and the National Datum are developed in cooperation with the National Survey and Mapping Board.</p>
<ul style="list-style-type: none"> <li>There is web access to land administration information.</li> </ul>	<p>The National Land Agency had developed a website however this provides limited access by the public to useful information.</p>

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<ul style="list-style-type: none"> <li>The cost of access to information and certified extracts from the land records do not unduly inhibit public access, including access location (decentralization).</li> </ul>	<p>The written cost to access information is low but the real cost is high and depends on the informal agreement using personal connections.</p>
<b>PRINCIPLE 5 – TRANSPARENT PUBLIC LAND MANAGEMENT, EXPROPRIATION, DISPOSAL OR PRIVATIZATION PROCESS</b>	
<ul style="list-style-type: none"> <li>There is a complete inventory of public land assets (both textual and spatial) and public land is used for public purposes (including public use, protection/reserve, and future use/land bank).</li> </ul>	<p>A policy to have a public land inventory has been stated through People Assembly's Decree, but has not been fully implemented. Since the meaning of public land is vaguely understood, policy statements and management are also very unclear. The objective for public land to be recorded in an inventory is also unclear.</p>
<ul style="list-style-type: none"> <li>There are transparent processes to allocate (dispose of) or privatize public land.</li> </ul>	<p>'Theft' of public land is unknown because in Indonesia the State is not a landowner, and spatial planning and public land is not well defined.</p> <p>The process of allocation or disposal of public land is applied through the Law of Land Expropriation no. 21/1961 and Presidential Regulation no. 56/2006 over State land and private land for public use.</p>
<ul style="list-style-type: none"> <li>There is due process for expropriation and fair and just compensation, and resettlement</li> </ul>	<p>Expropriation and compensation are applied through the Law of Land Expropriation No.21/1961 and Presidential Regulation no. 56/2006 over State land and private land, for public use.</p> <p>A committee for land allocation is established based on Presidential Regulation no. 56/2006.</p> <p>Restitution is paid in the form of money, exchange of land and building, or other valuable form of compensation such as school building, health center, sports center or other public use.</p>
<b>PRINCIPLE 6 – TRANSPARENT SYSTEMS FOR PROPERTY VALUATION AND PROPERTY TAXATION</b>	
<ul style="list-style-type: none"> <li>Information on market prices is readily available and transaction fees and taxes are set and administered in a manner that encourages the declaration of market prices.</li> </ul>	<p>Implications of a lack of market information mean that people wanting to participate in the land market must rely on mediators, informal banking, uncertain prices and high costs.</p>

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<ul style="list-style-type: none"> <li>Property valuations for rating/taxing purposes are prepared in an objective, transparent and uniform manner with appropriate and effective processes for objection or appeal.</li> </ul>	<p>There are no current requirements for statutory valuation rolls or the like. Valuations are applied by a special committee set up by the government.</p> <p>Land tax and fees policy studies were conducted by Directorate General of Tax, under Department of Finance for increasing tax collection.</p>
<ul style="list-style-type: none"> <li>Property taxes and fees are collected in an effective and equitable manner.</li> </ul>	<p>The user of the land pays the tax; exempt properties occur through expropriation and land allocation; and the cost of tax collection is paid by the tax payer. Tax is paid by the tax payer to the bank.</p>
<p><b>PRINCIPLE 7 – ACCESSIBLE AND RESPONSIVE INSTITUTIONS FOR ENFORCEMENT OF RIGHTS AND LAND DISPUTES MANAGEMENT</b></p>	
<ul style="list-style-type: none"> <li>There are standards in the civil service for professional and personal integrity and a system to enforce these standards and/or a system of incentives for ethical behavior.</li> </ul>	<p>Regular reviews of public servant's performance are conducted by supervisors within the government authority.</p>
<ul style="list-style-type: none"> <li>There are efficient community, administrative, and judicial mechanisms to resolve land disputes.</li> </ul>	<p>Initial dispute resolution is resolved by the Head of the Land Office. If this fails then parties are asked to bring it before the court. According to BAL (Law No.5/1960), notaries have no power to register a land deed.</p>