Losing in court, winning in the field
Land reform between customary tenure, project law and state regulation in Indonesia

Réforme agraire entre droit coutumier, droit de projets et droit étatique en Indonésie

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Abstract
This case study of a land reform program in Sulawesi, Indonesia, illustrates the problematic relations between a technical and social engineering approach to land reforms, and the embedded character of property rights to land. I first discuss the legally plural character of land tenure in the sensitive context of a land reform program. Second, I discuss the ambivalent character of land reforms in terms of their embeddedness: though such reforms tend to abstract from local structures and relationships they also build on them, and therefore, in a way, get crucially embedded in local power relations. The paper shows that law plays an important role in the struggle about land reform decisions between interest groups holding different power positions. Land registration and titling were part of the problem rather than of a solution. They were the instruments through which local and regional power groups could further their interests at the expense of those who were more vulnerable in the land reform process. Ultimately, the limited value of state-issued land titles came to the rescue of farmers who had been damaged by the program earlier.

Keywords: customary land tenure, development interventions, embeddedness, land reform, land registration and titling, legal pluralism, project law, state law.

Résumé
Cette étude de cas d’un programme de réforme agraire au Sulawesi, Indonésie, démontre les rapports difficiles entre une approche techniciste et une approche réformiste sur le plan social dans le cadre d’un programme de réforme agraire et des droits fonciers ancrés dans la société locale. Premièrement, nous discuterons le caractère multiforme du droit foncier dans le contexte sensible d’un programme de
réforme agraire. Deuxièmement, le caractère équivoque des programmes de réforme agraire en termes de leur ancrage dans un contexte local spécifique sera traité. Quoique ce genre de réformes ait tendance de négliger la spécificité des structures locales et les rapports sociaux sous-jacents ils sont aussi construits à la base de ceux-ci et c’est pour cette raison que ces réformes s’articulent avec les rapports de pouvoir locaux. Je démontrai que le droit joue un rôle important dans les décisions en ce qui concerne le réforme agraire et la lutte entre les groupes d’intérêt diverses occupant des positions de pouvoir différentes. Dans un tel contexte un projet d’immatriculation de terres fait partie du problème plutôt que la solution. Par l’instrument juridique d’immatriculation des groupes locaux et régionaux ont pu promouvoir leurs intérêts à la dépense des couches plus vulnérables dans le processus de réforme agraire. Finalement, la valeur des titres fonciers étatiques est limitée à cause du fait que la grande majorité des litiges soient réglé au niveau local ce que pourraient sauver les paysans qui étaient dépossédé par le programme antérieurement.

Mots clés : droit foncier, droit coutumier, réforme agraire, immatriculation de terre, pluralisme juridique, droit étatique, droit de projets
1. INTRODUCTION

Two parallel and partly contradictory trends can be seen in recent debates about property rights and natural resources. As neo-liberal ideology expanded globally, agendas for creating ‘well-defined’ property rights, mainly conceptualized in terms of private individual ownership, became increasingly influential. Approaches to property rights and land tenure reforms based on unsubstantiated assumptions and ideological notions about the relationship between a private property regime and societal values like economic efficiency, tenure security, productivity and sustainability are very influential (F. and K. von Benda-Beckmann 1999; Hann 1998). At the same time, especially since the debates on common property in reaction to Hardin’s ‘Tragedy of the commons’ (Hardin 1968), we see more empirically-based and analytical approaches to property rights. In the world of land policy similar trends can be discerned. While insights from empirical studies are gradually seeping through into the domain of land tenure policy, reforms that aim at establishing ‘clear’ or ‘secure’ property rights - private individual ownership under a state-issued title - continue to be influential in mainstream development thinking.

Such approaches suffer from several misconceptions and misrepresentations pertaining to land tenure, formalization of property rights, tenure security and the role of law. Using a land reform case from Indonesia, in this paper I will concentrate on three interrelated dimensions of the debate on land tenure that illustrate the problematic relations between a technical and social engineering approach to land reforms and the embedded character of property rights to land. First I will discuss the legally plural character of land tenure and its ‘working’ in the socially and politically sensitive context of a land reform program. A second focus is the ambivalent character of such reforms in terms of their embeddedness in specific contexts. While property reforms tend to abstract from local structures and relationships, they also build on them and thus get crucially embedded in local power relations (e.g. by making use of the knowledge of local elites in surveying, registration etc.). Different sources of legitimacy play an important role in struggles about land reform between interests groups holding different power positions. Further, I will show that land titling in such a context is part of the problem rather than of the solution. In this case study, land reform and titling were the instruments through which local and regional power groups could further their interests at the expense of the more vulnerable actors. The limited (practical) value of a land title - representing a ‘categorical’ rather than an ‘actualized’ right (F. and K. von Benda-Beckmann 1999) - came to the rescue of farmers that had earlier been damaged by the project’s land redistribution program.

The case study used to illustrate these points concerns a land reform and settlement project in Indonesia, implemented in the framework of Indonesian-Dutch development cooperation in the 1980s.
and early 1990s. The project, located in Luwu, South Sulawesi, was called Pompengan Integrated Area Development Project (PIADP; map 1). A project ambition was to redistribute and reallocate land to create more egalitarian, spatially ordered, registered and titled landownership. Though little was known about land tenure, the assumption was that considerable part of the land in the sparsely populated area was still unclaimed. A related assumption was that the area required a settlement plan. Priority groups from outside the area could receive agricultural land through the land reform while finding a place for settlement in one of the project-planned settlement areas.

After this introduction, the second section of this paper shortly discusses continuity and change in approaches to land tenure. The third section focuses on the emerging role of land reform in PIADP and the legal and normative frameworks underlying intervention in land tenure. Intervention was not merely a neutral technical operation taking place in the force field between customary and state notions of land rights and tenure, but also deeply influenced by normative notions of land tenure incorporated in ‘project law’ (F. von Benda-Beckmann 1993; Weilenmann 2005). Hence, we have to do with a plurality of legal and normative frameworks. The fourth section provides examples of how land reform in its various stages was decisively influenced by local power groups able to ‘hijack’ the process. In section five I conclude this paper with a short reflection on the role of land titling in this case study.

2. DEBATES ON LAND TENURE: CONTINUITY AND CHANGE

Recent empirical research on interventions in land tenure all over the world shows that many assumptions about land tenure reforms are untenable. Criticism of state-initiated intervention through land reform, registration and titling focuses mainly on two (closely related) issues: the problematic nature of the assumptions that guide programs for formalization of land tenure, primarily the assumed positive causal relationships between titling and performance in terms of productivity and sustainable management, as well as between titling and tenure security; and the tensions between mechanistic social engineering approaches to land tenure reforms and the socially and culturally embedded character of property rights and the plural character of definitions of such rights.

Let me just mention some empirical literature that tackles one or both of these issues. In the early 1990s evidence on the relationship between state registration and titling, and security of tenure productivity gathered from several African countries led Bruce et al. (1994) to conclude that land titles do not by definition guarantee tenure security, production increase, or behaviour in accordance with state law. The authors recommended a shift from a ‘replacement paradigm’, a state interventionist bias

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1 I was involved in this project in several ways: first, between 1989 and 1992 as a permanent local advisor of the land reform and settlement program, and later, in several periods between 1995 and 1999 as a researcher on the long-term effects of earlier intervention in land tenure. This gave me an opportunity to analyse intervention in land tenure over a longer period.
on formalization and titling, towards a more demand-based ‘adaptation paradigm’ (Bruce et al. 1994).\(^2\)

The ‘evolutionary approach’ to land rights that emerged in the same period leaves more leeway for more gradual and less interventionist land policies, but tends to have the same bias towards formalized private property rights.\(^3\)

Slaats (1999) presents similar evidence for Thailand and Indonesia, pointing to the legally plural character of property definitions, the close association between definitions of property rights to land and social relations, and the insecurity that may be the result of an externally engineered shift from local communal rights and control towards individual rights of private ownership under a state-issued title. Hirtz (1998), discussing land reforms in the Philippines, also questions the assumed causal link between legal title, tenure security, and productivity. Land reforms are basically ‘a technological answer to a social issue’ (1998: 266) and therefore part of the problem rather than the solution. Reforms, according to Hirtz, are based on ‘structural ignorance’ about local land use (1998: 265). Rather than ‘freeing’ farmers as individual operators from the local web of social relationships and thus being a solution to their problems, land reforms and redistributions create a new layer of social, legal and other complexities. Everything that diverts from the simplistic assumptions of definitions of land as a freely distributable commodity, like kinship and social networks, is occluded from the reform process. Transforming (social) tenure relationships into relationships between an individual and the allocating and legalizing state, land reforms tend to ignore the socially embedded character of land tenure. Hirtz rightly warns against the pitfalls of such social engineering approaches that abstract from existing social networks and relationships.

Latin American case material supports such findings from Africa and Asia. Thus, Jansen and Roquas (1998) put into perspective assumptions on the positive impact of titling on tenure security and productivity in Honduras. More recently, Broegaard (2005) proposed a focus on perceived tenure security. Tenure security should not be reduced to the issuing of a legal title. Putting into perspective the assumed causal relationship between land titles and farmer perceptions of tenure security, the author approaches property relations to land as embedded in specific legal, socio-economic, and power contexts. What matters to farmers is their perceived security of tenure rather than possession of a formal legal title.

Thus, much rethinking on formalization and titling of land tenure has been done, but we can still see a basically interventionist and economistic approach shine through. An example is a recent World Bank report on land tenure (Deininger 2003). The report acknowledges the complexity of land tenure, the role of customary law, and the importance of legitimacy of land policies. It supports an evolutionary approach to property rights, and warns against the disruptive effects on vulnerable groups of the imposition of new property rights regimes through reform and titling programs. However, the underlying basic message seems to be the same as before: land should be freed from existing social

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\(^2\) See also Bruce 1988. For earlier empirical work, see e.g. Coldham 1978.

\(^3\) For a critical discussion, see Platteau 1996.
bonds related to customary forms of tenure that make its use economically inefficient and hamper its marketability. Tenure security thus created will lead to economic growth, and the source and protector of such security is the state and its legal system. The author optimistically states that ‘the key advantage of formal, as compared with informal, property rights is that those holding formal rights can call on the power of the state to enforce their rights’ (2003: XXIII).

This approach to property rights is very influential and deeply engrained in development thinking, such as in the work of Hernando de Soto (2003; see also de Soto 2000). He defines problems of development mainly in terms of people’s lack of formal property rights over their assets, which are thus destined to remain ‘dead capital’ (2003: 180) that cannot be turned into capital, traded or used as collateral. People hold resources ‘in defective forms’ (2003: 180), under what de Soto calls ‘extralegal law’ (2003: 183) or ‘extralegal property arrangements’ (2002: 182). Like the World Bank report, de Soto is exemplary of a market-biased approach to property rights that stresses that property must be drawn into the world of capital, to free it from social ties and bonds and convert ‘a previously anonymous and dispersed mass of owners into an interconnected system of individually identifiable and accountable business interlocutors that are able to create capital’ (2003: 185).

But is this really the problem? This case study, the insights of which cannot, of course, be generalized, shows that the process of formalization of property rights to land (which is a bit of a special case here because of the development project form it takes) can itself be the main cause of increasing tenure insecurity. Depending on local elite support, power and knowledge of land tenure, the externally generated registration and titling process actually strengthens the position of these elites and creates opportunities for them to consolidate their position or even benefit from the reform process.

3. LAND REFORM BETWEEN CUSTOMARY, STATE AND PROJECT REGULATION

From civil to socio-legal engineering

PIADP was implemented in an area where, until the 1970s, state intervention through land registration and titling had been almost absent. It continued the Pompengan Implementation Project (PIP), an irrigation project started in 1980. PIP had a strong construction bias, paying little attention to social aspects of irrigation development. However, during construction many problems had emerged: unclear land tenure and hence ‘target group’ for irrigation development, the threat of land speculation, and uncontrolled land occupation and settlement as expectations of project benefits rose. This required another approach: the project shifted towards ‘integrated area development’, and became known as the Pompengan Integrated Area Development Project (PIADP).
PIADP had been widely propagated as a ‘model’ for integrated rural development, known for combining irrigation development with intervention in land tenure, farmer (re-)settlement and other aspects of rural development. A central role was accorded to intervention in land tenure. This consisted of registration of existing land claims by the Land Registry Agency (BPN), followed by a selection procedure in which the relative strength of land claims was weighed, land was redistributed and ultimately titled, and a variety of project facilities (housing, sanitary units, seedlings) were allocated to the project ‘beneficiaries’. Registration and redistribution of land were expected to prevent speculation and establish equitable land tenure, make adaptation of land tenure to the irrigation infrastructure possible, and create space for establishment of new settlement areas. This attention in PIADP to land tenure meant a shift from a purely technical intervention (implementation of a construction program) towards a rather radical and complex socio-legal type of intervention in land tenure with new social objectives like egalitarian land tenure and security of tenure, as ‘add-ons’ to construction.

The project had been divided into area A and area B (see map 1). Area A, the upper part covering some 5,700 hectares with a population of 4,118 households, had a longer history of settlement and intensive irrigated agriculture. Area B, the lower part, covered 3,300 hectares inhabited by about 705 households. Located in the flood plains of the rivers surrounding the area and only slightly above sea level, this was a marshy area, regularly flooded and partly covered with forest. This difference between the two areas was also expressed in locally diverse patterns of land tenure. In area A there was greater clarity of land tenure than in area B. Therefore, the program for land registration, redistribution, titling, and settlement focused on area B only. The land reform program in area B of PIADP was implemented in four sub-areas of implementation, B1-B4. Each sub-area consisted of a number of tertiary irrigation units of irrigation systems under construction. The examples in this paper relate to different sub-areas of implementation of the land registration, distribution and titling process.

Multiple legal frameworks

This shift from construction to socio-legal engineering, new ambitions of land tenure reforms, and the various definitions of property rights to land that were at stake turned implementation of PIADP into a struggle about rights to land and, through land, to additional project benefits. A variety of sometimes contradictory legal and normative frameworks played a role in this struggle. These frameworks were important as they structured human behaviour in different ways, creating opportunities and space for agency as well as having a constraining influence, and became sources of legitimacy of land claims in contrast to alternative versions. I discuss three normative-legal frameworks relevant to land tenure and redistribution: customary law, state law, and project law.
Customary tenure

Land tenure in Indonesia developed under various customary arrangements called *adat*, which stands for local arrangements for the general moral and normative ordering of society (Haverfield 1999). The simple category of ‘communal land’ does not suffice to describe the diversity of property rights and relationships pertaining to land. In most adat systems, more individual rights to land can be established through first occupation. With first occupation, a gradual process of individualization of rights to communal land sets in. However, this process never reaches ‘total ownership’. Some degree of communal control over individual rights continues to exist. Thus, land cannot be alienated to ‘outsiders’ or left fallow at will. Rights to land, then, are subject to a cyclic process of individualization and communualization, depending on its use (Slaats 1999). Though ‘ownership’ is not an appropriate category to describe the property rights involved, the strength of rights established by first occupation and continued use should not be underestimated. Thus, Hooker states that the concept of ownership in adat ‘is based on the idea, only imperfectly described in the term “ownership”, that the adat group […] controls the allocation and use of land. At the same time all adat systems recognize that the effort and capital put into a piece of land by an individual create something of a personal tie between the person and the land. In some sense […] he had “rights in and over” the land in question’ (1978: 118; see Haverfield 1999).

Adat is neither static nor homogeneous; it has proven everywhere to be dynamic and adaptive. Colonial intervention, the demise of Luwu as a kingdom, and the penetration of the national state and its laws and agencies have brought about radical changes. Land rights came to be conceptualized in completely new ways and given legitimacy by reference to state law. As a consequence, the role of adat in land tenure was severely reduced, but has not disappeared. One element of customary tenure that remained strong is the principle that investments of labour, materials and capital create a right to land. The crumbling of adat structures and the expansion of the market, commoditization of land and private individual ownership have not made such conceptions of land rights disappear, but rather made holders of such land perceive their property more in terms of private ownership rights without restrictions.4

State law

In 1960, the Indonesian Basic Agrarian Law (BAL) was enacted.5 Until that year, Indonesian land law had been largely based on colonial law. BAL was meant to replace the dualistic colonial legacy with a comprehensive and unitary national law including both adat and western types of rights. BAL stressed the social function of land and its role in creating a just society. It replaced colonial law with a new system that prioritized the interests of the Indonesian people, especially small farmers. Enactment of

4 Recent political changes in Indonesia from the late 1990s onwards have also led to a remarkable revival of the political role of, and debates about, customary law.

5 Law No. 5, 24 September 1960.
the law meant a revocation of prior laws and regulations. Though BAL is formally based on adat, customary rights were in fact subordinated to national forms of regulation, interests and development plans (Gautama and Harsono 1972: 24). However, existing adat rights could in principle be converted to rights under the new system (MacAndrews 1986; Slaats 1999).

BAL introduced important changes in land law, among others: the conceptualization of state land (tanah negara) in terms of state stewardship of land resources for the well-being of the population (see Slaats 1999); compulsory registration and titling of land to increase tenure security for farmers; and a region-specific minimum and maximum ownership size per household. BAL was also intended to introduce changes in the broader agrarian relations through redistributive land reform, regulation of share tenancy, pawning and rent, and reduction of absentee landownership. BAL is supported by additional government regulations, like Regulation No. 10, 1961 about land registration and No. 224, 1961 specifying rules for the redistribution of land exceeding maximum ownership and payment of compensation (MacAndrews 1986).

BAL has been criticized for being an ideological hodgepodge, ‘a volatile brew of mutually antagonistic aims, legal principles and ideologies’ (Haverfield 1999: 42). This is especially the case for the position of adat. Adat by definition derives its meaning and legitimacy from local contexts. Turned into an ideological umbrella concept for national unification in BAL, it has lost its meaning. It was paid lip-service to because it was ideologically useful, but ignored as a relevant factor in Indonesian society, and subordinated to state ideology and ‘national development’ (Haverfield 1999; Slaats 1999).

Project law
A land policy document created for PIADP was crucial as ‘project law’ for land tenure. Incorporating a mix of normative donor conceptions of development (‘reaching the poor’, ‘participation’) and sections on land reform of Indonesian BAL, it formed the legal basis of land redistribution and settlement and project land policy: rules and procedures for land allocation and settlement, and for the provision of additional facilities to project beneficiaries. BAL was the primary legal basis of the PIADP land policy. Further, it was based on two Letters of Instruction by the Directorate-General of Land Affairs (Agraria) on behalf of the Ministry of the Interior. The first demanded preparations to be made for a land inventory in a pilot project part of area B (see below), and declared land in that area to be state land with a land reform status (tanah negara obyek land reform). The second gave the land reform status to all project land in area B, and commanded its redistribution with special reference to Government Regulation 224, 1961 about land redistribution ‘to the tillers’ (Departmen Dalam Negeri, 1981: 307). Area B was declared closed for land transactions, transfers of rights and other activities...

6 Article 5 of BAL on the position of adat law.
7 No. 5926/5381/Agraria, 16 August 1984.
that might hinder project implementation. The second decision was to play an important role in later conflicts over land in area B. It had granted the land reform status to area B as far as no prior legal rights were resting on this land (PIADP 1987). The opponents of land reform argued that the government, in its eagerness to implement the donor-funded project, had disregarded existing rights to land in area B.

4. ‘CLOSE TO THE FIRE’: POWER AND THE FORMALIZATION OF LAND TENURE

Land tenure ‘data’ and law as weapons in the struggle for land

The unclear land tenure situation led to the conclusion that a land survey and inventory should form the basis of implementation of land reform. Such activities are often seen as a neutral and objective procedure of ‘data collection’ and administration. Actually they were key elements in the struggle for land and other resources. Land inventories were a primary instrument for gaining access to project land and facilities. The relations of kin, identity, power, and interest between district-, subdistrict-, and local elites, between village heads and part of their populations, government administrators and surveyors, military, police and local leaders were an important determinant of later decision-making in the framework of PIADP. Thus, the ability of actors to influence the initial land surveys and inventories was a first step in the process of ‘translation’ of fake claims into formally recognized rights to land and facilities by making these claims fulfil the formal criteria for recognition by the project.

Intervention in land tenure in all its stages took place within the broader force field of the various legal frameworks sketched above. These legal frameworks became important frames of reference in attempts by various actors to legitimize or delegitimize particular claims to land, decision-making options and alternatives of allocation. The frameworks could also be selectively used in allowing for either narrower or broader margins of discretion in dealing with specific land claim ‘cases’. Thus, law became an important but largely implicit weapon in the struggles about land.

In this section I will give some examples of how the various steps in the process of formalization of land claims were deeply influenced by official positions, relations of power and social ties and networks. Those who were dekat api (close to the fire) had a distinct advantage in using the land reform process to further their own interests. Power over and influence in project planning and negotiations in general, and land inventories, selection meetings and decision-making on allocation of land and other project facilities in particular were a major asset.

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The first sub-area of implementation of PIADP was the ‘pilot project’, named ‘Sinangkala’ after a village located there. It covered about 670 hectares, of which 480 hectares could be irrigated and the remainder was used for settlement or had been planned for additional settlement. From the onset, Sinangkala had been presented as the showpiece of PIADP. The project had been conceptualized as a participatory project beneficial to the population, and hence representing its interests. However, the emerging problems in Sinangkala showed that this was not an apolitical technical and administrative routine but that radically contradictory views and interests were at stake. Thus, it also set the tone for implementation in the other areas.

Introduction of project plans to the local population had already created uncertainty and generated local tensions. In 1984, the inhabitants had been informed by their village head about government plans for irrigation development. In 1985, a district official gave more information. He stressed there was no need for people to be afraid. In May 1985, the population had been gathered again by the village head. He told the people that he had been instructed by the subdistrict head to collect all documents (tax receipts; PRONA land titles\(^\text{11}\) etc.) proving a tenure relationship to land. According to the village head, the documents were to be handed in for registration during a meeting with the district head. The farmers who worked land in the area massively complied. However, instead of being registered and returned to the owners, the papers were collected and put in a big bag, never to be returned again. After this, the inhabitants were convinced they were going to be cheated by the project. In 1986, another visit by district officials followed. This time, farmers were told that they would only receive one hectare of irrigated land and 0.25 hectare of home yard. In 1987, officials ordered them to stop working their land in order not to hamper the project. In that same year the village head told the inhabitants in a meeting that all land in the village had the status of free and unclaimed state land (\textit{tanah negara bebas}) upon which no individual rights were acknowledged.

After these initial problems, the land survey and inventory in Sinangkala were ‘hijacked’ by local and external interest groups: mainly village elites, local and regional administrators and project functionaries. A flexible use of formal criteria and surveying and registration methods created opportunities for these groups. Part of the land was only coarsely surveyed and mapped. Marshy sections in the area, parts of which were still unclaimed, were used to smuggle in fake claimants from among circles of local elites, administration, and government officials. A land inventory map used for part of the Sinangkala area illustrates this (see map 2). The inventory had been designed to link data about the land claim (the ‘object’) to data about the claimant (the ‘subject’) and further evidence on the claim. In the Sinangkala survey and registration, however, the relationship between land and claimant remained unspecified, leaving much room for speculation. While part of the land claims on

\(^{10}\) PRONA was a national titling program with the objective of bringing land titling within reach of the poor. It did hardly succeed in doing so. In the project area, a limited area of land had been PRONA-titled.
map 2 were specified by more or less clear boundaries and data about the claimant of the land concerned, the bigger shaded parts (A, B, C and D) were not. Especially the case marked ‘A’ on map 2 became well known: with a total land area of ninety-eight hectares and one hundred names of claimants, it was used to smuggle in a huge number of fake claimants and turn them into registered claimants. As the project was entitled to reshuffle existing land claims and actual decision-making on final land allocation was largely controlled by the same people who had influenced, and interests in, the inventory, those who had been smuggled in could also use their representatives in the formal process to guarantee selection and allocation of land of good quality.\(^\text{11}\)

The selection team: representing whose interests?

In the selection, registered claims had to be turned into project-recognized land rights qualifying for a title. Selection also gave access to additional project facilities. Here, power positions were crucial during the process of giving selection codes to the claimants identified by the inventories. The project rules for selection of land reform beneficiaries were an instrument to create a redistribution effect, to make allocation of one-hectare plots and reservation of land for the additional settlement program possible. However, these rules were mainly used to legitimize decisions taken by the selection team in a rather haphazard way. First, there was the need to reduce the number of accepted claimants to make settlement possible. A second, hidden, agenda was the need on the part of village, subdistrict and government officials to represent fake claimants to whom land had been promised. This required a further reduction of the number of claimants that could be accepted as ‘beneficiaries’. Most of those who were present at selection meetings and took part in decision-making were either people involved in speculation themselves or those representing speculators.

The power of representing certain interests or the certainty of being represented in the selection meetings made the difference for many people, not in the last place for officials themselves. Local administrators often used this power in the allocation and distribution of project facilities as well. Here follow some examples of the way in which the selection process was influenced. The first example shows how dependent interventions in land tenure are on local power holders who command specific knowledge of their society and land tenure.

Yohani, a poor farmer from the village of Seriti, complains that he lost his land in the land reform. Before the project, he had claimed and worked land in one of its areas of implementation. When the land inventory was about to start he had been approached by one of the village administrators who told him that he had to pay in order to make sure that his land

\(^{11}\) Fake claimants, especially those from outside like officials, had no intention to work the land themselves but to rent it out to or have it sharecropped by other farmers, usually landless Javanese from a nearby village.
claim would enter the inventory. Yohanis paid the money to the administrator who, as an experienced village official with extensive knowledge of the local history of land tenure, gave advise to and accompanied the survey teams in his village area. Part of the land claim was, indeed, included in the inventory map and list. However, during the selection process the claim was deemed ‘too small’ for selection and therefore considered not to qualify for recognition and titling as a one-hectare plot. After seeing the selection results, Yohanis complained to the village administrator and wanted his money back. The administrator refused to return the money, stating that he had kept his promise but had not been able to get the claim formally recognized in the selection meetings.

Another example of the local manipulation of land tenure ‘data’:

Achmad received one hectare of land through the land reform programme. The plot allocated to him was located on land claimed earlier by Tato. When Achmad actually started preparing the land and making bunds for rice cultivation, Tato forbade him to enter the land. The case was discussed in various meetings organized by the selection team. During one of these meetings, Tato stated that he claimed the land and had been working it since a long time, and that Achmad had only recently arrived on the scene and never claimed land there before. Though (or rather because) invited through the Seriti village administration, Achmad never turned up at such meetings. Without having heard Achmad, the selection team reaffirmed his rights as beneficiary of the land reform, and ordered Tato to accept the reallocation of his land to Achmad. During later investigations by BPN many informants stated that Achmad’s selection had not been based on an earlier land claim, but on his relationship with two Seriti village administrators, of whom he is a client. In the end, Achmad openly acknowledged that he had never claimed land, but had been given the chance to enter the inventory by two village administrators. The conditions under which the deal was made did not become clear – probably a deal about sharecropping was involved. Informants also confirmed the earlier statements by Tato. They recognized the existence of a 0,5 hectare claim exactly on the land allocated to Achmad. According to the accounts given, the same members of the village administration made this claim disappear when they were informants for the survey team: as the village administrators had not represented Tato, his claim had not been registered.

The following case shows how powerful people from outside with strong linkages to the village administration are able to influence the process:

Rosmawati is the wife of Kamaruddin, the local military commander. The selection team, in which her husband held a prominent place, recognized her claim - almost one hectare that had,
according to the claim history in the land inventory, been first cleared in 1965 - and allocated one hectare of irrigated land. Though according to the inventory she has the status of *janda* (widow), her marriage bond with the commander is widely known among farmers. Though avoiding doing so in public, many farmers protested the project decision to give her land, stating that she had no legitimate rights. When no officials of the selection team were around, most people were very clear about it: ‘she has no rights to receive land, because she has never cleared or worked land before.’ The commander had also been involved in similar cases in Sinangkala, in which land had been allocated to other relatives without legitimate claim.

Some claimants played the customary law card to legitimize claims. However, if the results were negative, adat as a basis of legitimacy was easily replaced by another one. This case shows how people shop around between potential bases for legitimacy, in search of recognition:

Petrus Sanu is village head of a village in the project area and also subdistrict official. He received one hectare of land in the land reform. Demanding more land, he filed a complaint against this decision. Though his functions made it difficult for him to openly disturb the project and negate decisions of the selection team, he continued demanding the three hectares of land he claimed as customary land (*tanah adat*). According to informants he had once cleared about one hectare of land and had it registered in the 1970s. It was quite common for the land inventory to mention *adat* as legal basis (*dasar hukum*) of such farmer-cleared claims. However, the land had been sold many years ago and transferred several times since. The project had given Sanu and his brother Yulianus a hectare of land each. Thus, they had got off quite well considering the weak basis of their land claims. Without doubt, this success was related to Sanu’s position in the administrative apparatus and access to the selection team.

While in such cases there was a lot of discretionary space for the selection team to represent all kinds of private speculative interests, farmers in a more vulnerable position were often dealt with by an extremely strict application of the selection rules. Where some had to be squeezed in, others had to move to make place for them. The fact that the latter belonged to the ‘target group’ of poor farmers while the former did not, played no role in decision-making:

Martha lived with her husband and six children on a small piece of land. Martha’s father, who also owned irrigated fields, had given them the 0,4 hectare plot some years ago. Martha and her husband had gradually improved their shack into a small wooden house. Part of the land was planted with perennial crops, the remainder was used for growing vegetables and maize. Both worked as agricultural laborers. Initially the land had been classified as consolidated village land. However, in view of the shortage of home yards for settlement the selection committee
had decided that the area where they lived should be redistributed as a settlement area divided into home yards. The selection committee had given Martha’s claim a ‘C code’ (meaning that the claim was not recognized and the land had to be left), considering that the land originated from her father who was a beneficiary of the program himself and had been transferred after 1986, a violation of project regulations. Finally, as one official stressed during a selection meeting, ‘the land claim was too small to be recognized anyway’.

**Complaint procedure: no complaints allowed**

The registration and selection process in Sinangkala (see above) had been extremely sensitive, the more so because the biases introduced by power groups with personal interests coincided to some extent with a divide between migrants and locals and the different religious identifications of these groups. Project implementation had become fully dependent on a local village head, whose pivotal position between ‘beneficiaries’ and administrators and officials made him play an ambiguous role. As the client of officials he had to submit to their private appetite for project land and facilities, while keeping control of the implementation of land reform in his village. On the other hand, the district officials were fully dependent on him in reaching their project and private objectives. Therefore, he was given quite some discretionary power to pursue his own interests and those of relatives, friends and clients. His local power, knowledge of land claims, support to formal project objectives and representation of speculative external interests in land guaranteed him backing from higher district administrators and officials.

When the outcome of selection and the land allocation plan based on it had become publicly known and BPN started marking new plot boundaries in the field, farmer protests broke out. Since long, rumours had circulated about ‘farmers wearing a tie’ (*petani berdasi*), officials and administrators without pre-project land claims who had been able to acquire land and project facilities on the basis of the power positions and ties to the decision-making forums. Farmers protested against the fact that they had claimed land before the project but had not been selected as beneficiaries of the land reform. There were also protests against relocations away from the land people had worked before the project, either to land claimed by others (which created a sense of insecurity and tension between farmers) or to more marginal low quality marshy land (often to make place for the officials smuggled in through the inventory; see above), which created a feeling of having been damaged by the project and a deep resentment against those involved in its implementation. Further, many farmers felt that they fulfilled project conditions but were not selected, or were selected but lost a large part of their land. A large group of farmers who felt damaged joined forces in the so-called ‘Group of 88’ (*Kelompok 88*). Headed by a small group of larger (and in some cases speculative) claimants of land in whose interest it was to mobilize a broad basis of support, and supported by a lawyer with kinship ties to some of
these persons, the group decided not to accept the selection results. The members of this group were united in their common rejection of the land reform program. Though formally there was a complaint procedure, those without access to the village elite stood little chance of having their complaints taken seriously. As a former consultant involved in the pilot project stated:

‘Though the complaint procedure in Sinangkala had been formally held, it was actively boycotted by the village head and the officials […] Complaint forms were not handed out to farmers requesting one. Farmers who did not know how to fill up the forms were not assisted by the village administration. They were, in fact, actively discouraged from handing in their forms, nor were farmers given the opportunity to vent their complaints through other channels. Any criticism of the project was seen as a threat to established positions of the village head, project officials, and representatives of the local and regional administration. Only when the leading persons of Kelompok 88 started organizing farmers and inciting them not to accept the new ownership boundaries, awareness grew that implementation of the land redistribution program generates conflicts of interest that, some way or another, have to be solved.’

When the complaint procedure did not lead to serious changes in the outcome of the land reform, a growing number of signs of conflict became visible in the field: farmers who were disturbed by other farmers when they tried to work the land allocated to them by the project; removal of the new boundary markers placed by BPN; assertion of control over either the initial claim or newly acquired land by planting it; destruction of crops and bunds of irrigated fields; threats, and in some cases the use of violence. The project staff reacted to the discontent by disregard of the protests and a stress on enforcement of the land reform decisions. ‘There are no problems’ was the main message. However, as protests increased, which authorities and project staff had never expected, a committee was formed to inquire into the problems and, if necessary, to adapt the land allocation decision.

Though the committee did investigate some of the protest cases, above all it tried to ‘buy off’ the leading persons of Kelompok 88 by giving them more land and project facilities and thus break resistance of the group as a whole. The leaders readily accepted all project land and facilities, but still refused to part with their initial land claims. As an act of vengeance on the part of the authorities, a bulldozer destroyed part of the land of one of them. Escalation seemed unavoidable. Some members of the project staff threatened to use violence, to use the army in Sinangkala, and even to let the leaders of the protests ‘disappear’. However, the district head had also stressed that ‘starting a legal procedure is part of the Indonesian legal system’.

The leaders of the group readily took that remark to heart: in August 1988 their lawyer filed a court complaint against PIADP. The lawyer of the group mainly challenged the interpretation of the decision of the Ministry of the Interior, which stated that ‘land which is not owned by private persons or a legal body can be turned into an object for land redistribution’. Rights to clear land (hak buka) and
to use it productively (hak garap), important mechanisms for acquiring rights to land in customary law (hukum adat), are recognized in BAL. Surveying and registration by the state for the purpose of tax collection provide a further recognition of the continuous use of the land which, ‘if seen from the perspective of adat law, in fact already is an ownership right’. PRONA titling entailed a further recognition of rights on part of this land. Thus, the initial right of clearing developed into a right to work the land, and from there either into a state-recognized ownership (PRONA) or into rights under adat law (which is recognized in BAL).

Early 1990, the district court pronounced verdict on the complaint by Kelompok 88. All claims were rejected, with a reference to the legal basis of land reform in PIADP (BAL) and the various Letters of Instruction and District Decisions that comprised PIADP project law. An appeal in the province capital and even cassation in Jakarta were to follow. In the meantime, the authorities continued exerting pressure on the area. Seventeen kilometres of field bunds were constructed under local army supervision. In the course of 1991 a few Sinangkala cases entered court. All were decided in favour of those whose claim was supported by the land reform allocation. Especially in the early years of the conflict (1988-1991), leaders of the movement were arrested for short periods, convicted and detained, sometimes beaten and confronted with threats, and obliged to report frequently to the district authorities. Protesters risked being labelled ‘unruly’ (tidak mau diatur oleh pemerintah) or, worse, ‘communists’ (orang PKI). The Sinangkala case also had impact on the other land reform areas, where distrust against the program had rapidly increased and land reform was hardly implemented.

4. CONCLUDING: LOSING IN COURT, WINNING IN THE FIELD

Solving land conflicts outside the law

Notwithstanding the problems in Sinangkala and other areas, titles were massively handed out to ‘beneficiaries’ to fulfil quantitative titling targets. Throughout the land reform area, plot boundaries had either never been changed in accordance with the land reform decisions, or the changes had created disputes and sometimes open conflicts between pre-reform claimants of the land and ‘beneficiaries’ of the land reform program. Thus, the official land titles did not correspond with actual tenure patterns in the field, which tended still to follow the pro-land reform boundaries or were rapidly reverting to them. The latter was especially the case where attempts at enforcement had been strongest, like in Sinangkala and in all the settlement areas, where housing on project-distributed home yards had replaced pre-project claimants. Even if the latter had formally received land through the land reform program, they could not access or use it because pre-project claimants of that land refused to leave their land. Therefore, the land reform decisions, allocation maps and title documents based on them existed on paper only, representing formal (‘categorical’) rights to land issued by the state but not the
pattern of land tenure (the ‘actualized’ right). How did farmers and local administrators, after finalization of PIADP in 1992, cope with this situation and the land conflicts caused by land reform?

*Kelompok 88* lost a provincial and a high Court appeal in 1992-1993. But what did this mean in terms of tenure security in former PIADP? By 1997 the trend of return to original claims had progressed to such an extent that the land reform pattern was hardly visible in the field any more. Many project settlers had left the village settlement areas, and initial claimants of the land had reoccupied it. Most owners based on fake claims in Sinangkala (where most of them were located), who had benefited from the land reform in the project period, had now been pushed out again by the initial claimants of the land. Throughout the former land reform area, farmers disputing land in the settlement areas had also engaged in solving their problems by land exchanges or compensation payments. Thus, farmers formally entitled to a home yard in one of the settlement areas had three options: moving, paying compensation to the initial claimant, or facing the consequences of staying (conflict). Wherever payments were made, problems were solved and tenure security was restored.

The limited role of legal institutions and legally binding documents like land reform decisions and land titles is striking. The lawyer of former *Kelompok 88*:

What I am still worried about is what will happen in the future. Many PIADP land title documents are circulating, but there are hardly any titles that cover the existing situation. Land title documents have proven to be of little use to the owners […]. Still, titles can damage those who actually work the land if anyone would decide to start a legal procedure on the basis of such a title. Fortunately, there is slight chance that people will start a legal procedure on the basis of their PIADP land title. Whoever knows the situation in PIADP will not venture into such an undertaking […]. I have concluded for myself that this is the way it should be, that in the end it is the best way of solving the problems in Sinangkala. In the end, it does not matter if you get beaten in court. We lost in court but we have won in the field.’

Often, it took many years for parties to these conflicts to reach a solution. Making things even more complex: solutions to conflicts take a localized, unregistered and informal shape. An administrator who was engaged in attempts to solve conflicts created by the land reform locally and informally:

Solving conflicts in the field means taking decisions that are not consistent with the district land reform decisions […]. Even the court does not have the courage to take decisions that could be interpreted as changes in or criticism of a district decision. Understandably, the subdistrict administration tries to refrain from too deep an involvement, and from decisions that may damage the careers of administrators. In 1996, the subdistrict head even sent around an official
letter to all village heads in his subdistrict, warning that it is strictly forbidden to deviate from the official land reform decisions.¹²

Law as a source of tenure insecurity

The land reform program was a major source of disorder, insecurity, tension and conflict. With massive protests and no government agencies or administrative units actively enforcing the project decisions of land redistribution and settlement after PIADP had stopped, a massive return to initial claim boundaries was the strongest guarantee of tenure security. In the nineties, this return to initial claims led to the expulsion of part of the fake claimants. Holding a PIADP land title became an increasingly weak guarantee of rights. In the end, the fake claimants (officials and administrators) were about the only people who retained a distinct interest in upholding the project definition of legitimate ownership of land: the land title documents. As they had no initial land claim to return to, a title document was their only weapon. Even then, the power position of the persons involved (and also the question whether there was a competing claim on the land) rather than the mere possession of a formal title document determined whether fake claimants were able to keep their land or not. In Sinangkala, for instance, enforcement of the land reform decisions withered away after finalization of the project, speculators were mainly absentee owners (urban-based officials), their renters or sharecroppers were powerless in a society they did not belong to, and legal institutions did no longer deal with land cases from PIADP. This shifted the balance of power towards the initial claimants.

This meant the final demise of the legal-administrative symbols of the land reform program: land allocation decisions and title documents. It marked the beginning of a period of withdrawal of state involvement in land registration and titling in the area. Many years after termination of PIADP, the farmers affected by PIADP and a diversity of government agencies and administrators involved were still struggling with the tensions, uncertainty and insecurity caused by the program. By their specific ways of coping with the effects of intervention in land tenure through local and informal conflict settlement, they were creating a new layer of unregistered and untitled rights to land in the area. Fully invisible, but at least providing more tenure security than the land title documents. This also makes the role of law stand out more clearly: it was a weapon manifesting itself in the shapes of state land law, project law and local customary norms used by officials, speculators, farmers and other actors to legitimize courses of action, decisions, claims, demands and behaviour pertaining to land tenure in a context of unequal power relations rather than a state institution guaranteeing tenure security.

¹² It stated that ‘whatever the government has decided should be affirmed and upheld. Nobody except the responsible authorities should change a government decision. Anybody who feels damaged by the project [...] has the opportunity to complain through the existing legal procedures.’
References


Map 1: the PLADP project area

Subdistrict LAMASI

Subdistrict WALEN range

Legend:
- Existing village / hamlet
- New settlement
- Existing / new combined
- River
- Main drain
- River protection dike
- Irrigation canal
- Main road
- Gravel road
- Bridge
- Boundary area A / area B
- Subdistrict boundary
- Subareas B1 - B4
- Hill
- Marsh

Areas:
- A
- B

Map 2: registration of claims and fake claims in Sinangkala