

THE RECONSTRUCTION OF ACEH'S LAND ADMINISTRATION SYSTEM (RALAS)

Discussing the implementation of RALAS in Aceh, Indonesia

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Marchien van der Wal 860704-925-080

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Supervisor: Dik Roth, Law and Governance Group

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Abstract

Indonesia is a perfect example of legal pluralism. In this thesis land administration and land reform will be discussed in Indonesia. The region of Aceh also deals with a difficult background of armed conflict and disaster. Aceh was the region hardest hit in 2004 by the Indian Ocean Tsunami. After this disaster a land administration program was implemented in Aceh. The Reconstruction of Aceh's Land Administration System (RALAS) was implemented to create a new formal land administration system. When implementing a system like this it is necessary to take into consideration the context of the region and the country. Especially when a country has a long and complex history concerning land rights like in the case of Indonesia. This thesis will discuss in what ways the implementation of the RALAS project paid attention to the history and background of land rights in Indonesia and Aceh.

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Chapter 1 Introduction

1.1 Background

In December 2004 Indonesia was hit by the Indian Ocean Tsunami. The region of Aceh was the region hardest hit. To help rebuilding lives and livelihoods the government of Indonesia wanted to reconstruct the land administration system in Aceh. The Reconstruction of Aceh's Land Administration System (RALAS) project was implemented in august 2005 (web.worldbank.org, 13/11/2011). Although the direct reason for implementing this project was the devastation after the tsunami, in the past the government of Indonesia has implemented other land registration projects. The implementation of these projects have been problematic. Legal pluralism in Indonesia is one of the reasons that make the implementation of land registration projects a complex issue. Aceh has a history of armed conflict which also has its influences on land rights, social structures and the implementation of land registration projects. All these different factors have an influence on the implementation of the RALAS project and how this project deals with land rights.

1.1.1 *Indonesia and land rights*

Indonesia is located in Southeast Asia and it is the largest archipelago in the world. Indonesia consists of five large islands (from west to east: Sumatra, Java, Kalimantan, Sulawesi and Papua) and thousands of smaller islands (www.asianinfo.org, 10/11/2010). The population of Indonesia counts over 227 million people (www.worldbank.org/indonesia, 10/11/2010) and this population is made up of many different ethnic and religious groups. These different groups have very distinct cultural values and characteristics and they have historically developed local land rights and tenure arrangements. Although there were overarching national legislations and land policies under colonial rule and after independence, these local land rights are of great importance for dealing with land rights (Slaats et al., 2000).

Land reform is and has been an important issue for the Indonesian government. Reasons for registering land parcels in Indonesia was to realise legal security for landowners. A goal for the government is to have more control over land and land owners. The Basic Agrarian Law (BAL) was introduced in 1960 (Slaats, 2000). The BAL gave recognition on the one hand and restrictions on the other as to what extent local communities might maintain acces and control

over their lands. The Indonesian state has control over land, forest, minerals and other natural resources. State-controlled land was a result of policies to control the natural resources wealth of Indonesia (Slaats, 2000). Overall the government sees formalising land rights as a way to increase tenure security. An increase in tenure security is seen as a way to increase production and income. This is not necessarily the case depending on normative orders that are present in the local communities. Rights to land and access to land are often embedded in social relationships within a community. There are two basic categories of land rights in Indonesia: statutory land rights and customary (adat) land rights (Slaats, 2000). During the colonial domination a so-called 'ethical policy' was introduced by the Dutch. This policy was introduced with the intention to focus on the welfare of local communities, instead of exploitation. It also embodied preservation and protection of local legal systems (adat) (Slaats et al., 2009: 496). Land was classified either as 'European' or 'Indonesian' land. European land would fall under civil law and Indonesian land under adat law. A problem with this system was that European land could be registered and Indonesian land could not be registered because registration in traditional adat law is unknown (Slaats, 1999). This 'ethical policy' and the BAL will be further discussed in chapter three.

Adat law is an ordering system that co-exists along the official law of the state. It is based on normative values, principles and rules in the society independent of the law of the state. Adat law is continuously changing by interaction within a changing world and through decision-making processes of the communities (Slaats, 2000). Land administration projects that have been implemented in the past, like PRONA in 1981 and PAP in 1995, have shown that the local population did not feel the need and/or was unable to register their land formally. These projects, PRONA and PAP, will be discussed shortly in chapter 3. Land was still managed within the traditional system and conflicts over land were dealt with within the traditional system. Within their customary system, the local population was relatively secure of their land rights (Slaats et al., 2009). The complexity of these different legal systems in Indonesia is one of the main issues in this thesis.

1.1.2 *A focus on Aceh*

Land rights in Indonesia and the implementation of the RALAS project will be the main subject of this thesis. The complex history of land rights in Indonesia will be discussed. The implementation of the RALAS will be of interest because this project was implemented in the

region of Aceh, after the Indian Ocean tsunami of 2004. Changes in the political and social environment due to the disaster that happened influence how the project was implemented and perceived by local people. These changes in the environment can distinguish this project from other land registration projects implemented by the state in the past. This thesis wants to look at the RALAS project in particular to investigate how the RALAS project deals with land rights in Aceh. The differences and similarities of the political and social environment, before and after the tsunami, in relation to land administration will be analysed. A focus will be on the region of Aceh.

The tsunami of 2004 hit an area in Indonesia which has a long history of violent conflict. The 30-year separatist conflict between the Free Aceh Movement (GAM, Gerakan Aceh Merdeka) and the Indonesian government was still continuing at that time (Palmer, 2007). Unwilling to accept the authority of the Indonesian government over Aceh, the GAM was established in 1976 in order to struggle for an independent Acehnese state (Schulze, 2005). The Indonesian government wanted control over Aceh mainly because of its great wealth in natural resources and its economic importance for Indonesia. Since the establishment of the GAM, the Indonesian government declared the province of Aceh a Military Operation Zone. Human rights were violated and the province was cut off from the international press. The GAM kept on fighting for the independence of Aceh (Pandya, 2006).

After the tsunami the National Land Agency (BPN) implemented a project called Reconstruction of Aceh's Land Administration System (RALAS). This project was funded by the World Bank and administered by BPN. The idea of the RALAS project was to create a formal land titling system (Deutsch, 2009). One of the reasons why this project is different from previous cadastral programs in Indonesia is because it is implemented in the context of the aftermath of the tsunami.

1.1.3 *The Indian Ocean Tsunami as a window of opportunity*

The impacts of the Indian Ocean tsunami on December 26th, 2004 were massive in Indonesia. The province that was most affected by the tsunami was the province of Aceh. There was a devastation of land, destruction of property and loss of many lives. Aid organisations from all over the world entered the region giving aid to the local people and trying to create a basis for reconstruction. This was of great influence for the region because of the influx of money that

came along with the organisations. The 2004 Indian Ocean Tsunami has had an impact on the conflict in Indonesia between the Indonesian government and the Free Aceh Movement (GAM). The disaster that happened was a factor for the initiation of peace talks between these two parties. This leads to changes in the social and political situation in Indonesia and in Aceh and is therefore of interest for this thesis. The two parties needed to reconcile their disagreements in order to overcome the devastation of the disaster in the region. In this way the Indian Ocean Tsunami can be seen as a window of opportunity for peace talks (Gaillard et al., 2008). This disaster is related to the RALAS project because a direct reason for implementing the project was to reconstruct the region.

1.2 Definition of the problem

Land rights and tenure arrangements over land are organised and dealt with within the “traditional” adat law. The BAL was introduced in Indonesia with the intention to combine a system of registration and individual rights over land and land use, with recognition of the traditional system (Slaats, 2000). After the fall of the Suharto regime there has been a revival of adat law. Under the authoritarian Suharto regime adat had been suppressed. After the fall of the regime pressure on property increased and with the decentralization of the government claims have been made based upon different legal orders. Many of these claims to land were based upon customary law. Local people demanded a rule of customary law over statutory law (Henley & Davidson, 2008). Specific identity groups demanded a recognition of customary law concerning property rights in their area. The government wants to implement a formal land registration system in order to gain control over resources and land. This raises the question whether the local people have the will to change from their traditional law to state law. There are several reasons for local people to trust on traditional adat law. One of them is the unstable political situation in the country that has been there for many years. This plurality in the land rights system in Indonesia will be analysed with the concept of legal pluralism, defined and explained in the theoretical framework.

A problem more specific to the region of Aceh is the history of armed conflict and the devastation created after the Indian Ocean tsunami of 2004. As mentioned in the background Aceh has a history of more than three decades of armed conflict. This conflict was between the Indonesian government and the Free Aceh Movement (GAM). The region of Aceh under the GAM was fighting for a greater autonomy of Aceh. This period of armed conflict was a

period of great violence and many people were killed (Gaillard et al., 2008). Because of the changes that occur during the course of a war, there can be more political awareness and mobilization which challenges postwar authority structures and legitimacy. Trust in (governmental) institutions is challenged. There is less dependency on the state and more on communities. Regarding to land rights people can rely even more on their customary land tenure system. This is of importance when implementing a land registration project.

Formalisation of land rights by the government have been problematic throughout Indonesia. Aceh in this case is no exception. However there are some elements which makes the region of Aceh a specific case. The history of armed conflict has had a great influence on the population and the political stability in the region. The tsunami of 2004 has had a devastating impact on Indonesia, and Aceh was the region hardest hit. This thesis will focus on the region of Aceh, in order to analyse the land rights problem in a context of conflict and disaster.

This thesis wants to analyse what kind of influences the history of armed conflict and the Indian Ocean tsunami has had on Aceh and Indonesia, especially concerning land rights. When implementing a land registration project like the RALAS project it seems that the history and complexity of land rights in Indonesia should be taken into consideration. This thesis wants to investigate which influences the history of land rights in Indonesia and Aceh has had on how the RALAS project was implemented.

1.3 Theoretical framework

There are several key concepts that will be used in order to answer the (sub)questions mentioned in chapter 1.4 and to gain insight in land rights issues in Indonesia and Aceh. The focus of this thesis is on land rights and therefore property rights. It is important to define property rights in order to understand the complexity of land rights in Indonesia. Legal pluralism is the concept that will be used in order to analyse the land rights and administration system in Indonesia. Tenure security is an important concept in this thesis because increasing tenure security is one of the main reasons to formalise land rights.

1.3.1 *Property rights*

Property rights have been a widely discussed topic for many years. Property rights in society are changing and diverse. Multiple legal and normative frameworks exist. About property rights Feder and Feeney state: 'property as a social institution implies a system of relations between individuals....It involves rights, duties, powers, privileges, forbearance, etc., of certain kinds' (Feder and Feeney, 1991: p.136). They mention that especially in developing countries cultural values, normative orders and local arrangements are of importance for defining property rights. '... , especially in developing countries, the presumption of exclusive, transferable, alienable, and enforceable rights is frequently inaccurate and potentially misleading' (Feder and Feeney, 1991: p.135).

Benda-Beckmann state: 'Property is of central importance in all economies, but it cannot be reduced to 'the economic'. Property is always multifunctional' (von Benda-Beckmann et al., 2006: p.2). According to Benda-Beckmann there are three analytical tools in order to analyse property rights. One is the "bundles of rights", property can have multiple rights belonging to multiple actors. Using the metaphor of 'property as a bundle of rights' is a way of showing that property right consists of different types of rights (von Benda-Beckmann et al., 2006). The second is a "layered character". There is the ideological layer, this is very general and unspecified on what natural resources are and how to deal with it. The BAL can be seen as an example of an ideological layer of property rights. The ideal of BAL is have "traditional" adat law as the basis of Indonesian agrarian law (Slaats, 2000). There is a legal institutional layer which is about the categories that are made, the rightholders and the construction of law making. Third, there is "legal complexity/pluralism", locally there are different perceptions about responsibility and the use of natural resources than there is in general/formal law. This is also a "bundle of rights issue" (von Benda-Beckmann et al, 2006). It becomes clear through these definitions of property rights that social norms are of great importance as to what property rights are and how they are defined.

When looking at land rights and property in Indonesia and Aceh it is important to understand how these rights can be defined. '...ideologies, institutions, concretised property relationships, and the social practices affecting all three, are the basic layers that allow us to understand property, especially in conditions of legal plurality' (von Benda-Beckmann et al, 2006: p.29). This legal plurality will be discussed in the next paragraph.

1.3.2 *Legal pluralism*

In Indonesia there is state law and traditional adat law. Adat law also differs within different communities. Locally there are different perceptions about the use and responsibility of natural resources. “The co-existence and interaction of multiple legal orders within a social setting or domain of social life is called legal pluralism” (Meinzen-Dick and Pradhan, 2002; p.4). Legal pluralism can also be defined in a more juristic sense in the following way: “...in the juristic sense, when a state pursues different bodies of law for different groups of people... Unruh, 2003; p.354). However in this thesis the concept of legal pluralism will not be used in the juristic sense.

The co-existence of multiple legal orders will be analysed with the concept of legal pluralism. The concept of legal pluralism is not seen as a political tool or instrument but it is used as an analytical tool. There are various kinds of law in a society because normative orders in a society, village or community can be understood as law. It is possible to have different kinds of law, these different kinds of law can include statutory law, religious law, customary law, project (or donor) law, organizational law and a range of local norms by which communities live (Meinzen-Dick and Pradhan, 2002). State law is often written down and customary law often not. This means that customary law is more flexible. Since the government wants to control ownership and access over land this can cause friction between state law and customary law.

Because of these different kinds of law, people can also justify their claims over natural resources on different laws. In this case people use certain laws and regulations in order to justify their claims over natural resources (Meinzen-Dick and Pradhan, 2006). The plurality of the legal system means that different parties can find different laws for legitimating their actions. Some will refer to state law and some will refer to customary law, depending on which benefits their point of view. This is called ‘forum shopping’. “The pluralism of legal procedures and substantive law provides opportunities for ‘forum shopping’ in which parties seek the optimal solution for their legal problems” (von Benda-Beckmann, 2010). Because these legal frameworks co-exist in a community, the law or regulation that supports the claims that people make is used to support their behaviour in claims and decisions. “The disputants use different normative repertoires in different contexts and forums depending on which law

or interpretation of law they believe is most likely to support their claims, a process known as forum shopping” (K. Von Benda-Beckmann, 1984 quoted in Meinzen-Dick and Pradhan, 2006; p.5). This concept of legal pluralism can help to understand the land rights system in Indonesia and for that reason will be used in this thesis.

1.3.3 *Tenure security*

When looking at the concept of tenure security, it is important to start with another concept namely land tenure. Bruce describes land tenure: ‘Land tenure is a legal term that means the right to hold land rather than the simple fact of holding land. One may have tenure but may not have taken possession. Resource tenure describes rights to land, water, trees, and other resources’ (Bruce, 1998: 1).

About tenure security Bruce describes that confidence in the legal system and no worries about the loss of one’s rights to land is one usage of the term tenure security. For economists another factor is important: long duration. If you have tenure for one month it cannot be really secure. Another element is full private ownership over land. When tenure is secure but it cannot be freely sold and bought it had no extra benefits. Full rights to the land is required for full ownership over land. The element of full ownership over land is commonly used by strong advocates of private ownership (Bruce, 1998). When looking at this perspective on tenure security, tenure security is at its highest when there are full rights to land and therefore full ownership over land.

Bruce and Migot-adholla state that tenure security exists when: ‘an individual perceives that he or she has the right to a piece of land on a continuous basis, free from imposition or interference from outside sources as well as the ability to reap the benefits of labour and capital invested in that land, either in use or upon transfer to another holder’ (Migot-Adholla and Bruce, 1994: 19, quoted in: Lund, 2000: 15).

Lund discusses another issue that is of importance especially in a legally plural situation. When multiple tenure systems exists, different users can have different types of land rights. So an increase in tenure security for one can mean an decrease in tenure security for the other (Lund, 2000).

1.4 Research questions

The goal of this thesis is to discuss the implementation of the RALAS project in the region of Aceh, Indonesia. The main question of the thesis will be the following:

In what ways did the implementation of the RALAS project take into consideration the history and development of land rights in Indonesia and Aceh?

From this main question the following sub-questions can be derived:

1. What are the influences of armed conflict and disaster for the region of Aceh?
2. What is the history of land rights in Indonesia?
3. What are the goals of the RALAS project?
4. Which assumptions are made for implementing the RALAS project?
 - How do these assumptions relate to a history of property rights, tenure security and legal pluralism in Indonesia and Aceh?

1.5 Organisation of the thesis

This thesis consists of five chapters. The first provided a background and explained the significance of this thesis. Also the theoretical framework is discussed as well as the key concepts used in this thesis. Chapter two will describe a short history of Indonesia and provide contextual information about the region of Aceh concerning the history of armed conflict and the Indian Ocean Tsunami of 2004. Chapter three will focus on the legally plural situation concerning land rights in Indonesia. It will have a more theoretical orientation, analysing land rights and the formalisation of land rights in Indonesia. Chapter four will focus on the implementation of the RALAS project. It will also discuss how the implementation of the project relates to some of the key concepts described in the theoretical framework. Finally, in chapter five conclusions will be drawn from the different chapters and I will try to answer the research questions posed in chapter one.

Chapter 2 History of Indonesia and the region of Aceh

In this chapter the history of Indonesia and the region of Aceh will be discussed shortly. In order to answer the questions asked in chapter one it is important to have knowledge about the history and context of the country and the region of Aceh specifically. The focus will be on the influences of armed conflict and disaster in Aceh on land rights, although land rights issues will be more extensively discussed in chapter three.

2.1 A short history of Indonesia

2.1.1 *Pre-independence period*

The pre-independence period concerning land rights in Indonesia can be divided in four separate periods.

1. the Dutch East India Company (VOC) (1595-1798)
2. the period of indeterminate state administration and British interregnum (1798-1830)
3. the period of the Culture System (1830-1870)
4. the period of liberal colonial administration, followed by the 'Ethical Policy' (1870-1942)

(Slaats, 2000)

The Dutch set foot on Indonesian ground in 1595 (Slaats, 2000). The VOC were looking for new trade opportunities and their goals were primarily commercial. In the beginning the VOC did not interfere with land issues in Indonesia. Since 1700 the VOC had to defend its position in Indonesia because of threats from other countries such as Spain, England and Portugal. The VOC let go of its explicit policy of non-intervention but did not interfere with the local structures and the local exercise of power. They used the Javanese feudal system as an extension of their administration (Slaats, 2000). The VOC went bankrupt in 1798 after which Indonesia formally became a Dutch colony.

There was a British interregnum from 1811 to 1816 (Slaats, 2000). In this time the British introduced a land tax system. In this system rent had to be paid to the colonial government.

This land tax system was unsuccessful because of the lack of financial means and personnel. In 1816 the colony returned to the Dutch, who implemented the land tax system of the British (Slaats, 2000).

The Culture System was a system that was based on compulsory cultivation. This was created to ensure a constant flow of products for the European market. Often the farmers were forced to sign a contract with the government. This system also meant the cultivation of the product on a large area. Traditional land tenure and land use were changed due to this system (Slaats, 2000). In reaction to the Culture System the Dutch policy shifted. A so-called 'ethical policy' was introduced. The intention of the policy was that the indigenous people would have more rights and the wellbeing of the indigenous people would be improved. For the colonial government this policy embodied a shift from exploitation of the local communities to protection of these communities (Slaats et al., 2009). Land was classified either as 'European' or 'Indonesian' land. The European land would fall under civil law and Indonesian land under adat law. A problem with this system was that the European land could be registered and the Indonesian could not be registered because registration in the traditional adat law is unknown. Also collective ownership of land is common practice in adat law but collective claims could not be registered in the state system. The agrarian decree, also referred to as 'domain statement' was enacted in 1870 (Slaats, 2000). It stated that all land for which there was no registration of private ownership under the Dutch civil law was recognised as land owned by the state. Land used and cultivated by the native population was not considered free domain. Goals of these regulations were to create improved access for non-Indonesian investors and at the same time (formally) guarantee the protection of the indigenous communities (Slaats et al., 2009). Another regulation that was implemented in 1875 was the prohibition of alienation. This meant that the native population could not alienate the indigenous rights of use to non-natives (Slaats, 2000). However, the position of large-scale land owners grew and landless peasants were worse off (Slaats, 2000).

After the end of World War II, Indonesia declared its independence. This was on the 17th of August 1945. Although the Dutch wanted to re-establish colonial domination the Dutch Queen formally acknowledged in 1949 the autonomy of Indonesia (Slaats, 2000).

2.1.2 *Post-colonial developments*

A new independent government of Indonesia was established in 1950 under president Sukarno. After the colonial domination there were attempts to replace the Dutch agrarian law. It was after 11 years, in 1960, that the Basic Agrarian Law (BAL) was enacted (Slaats, 2000). The 1960 Basic Agrarian Law (BAL) gave recognition on one hand and restrictions on the other as to what extent local communities might maintain access and control over their lands. The Indonesian state has control over land, forest, minerals and other natural resources. State-controlled land was a result of policies to control the natural resources wealth of Indonesia (Afiff, 2006). The enactment of the Basic Agrarian Law in 1960 was one of the first major legislations since independence in Indonesia. The BAL will be further discussed in chapter three.

In 1965 a new military-led government was established in Indonesia after an abortive coup and a successful counter-coup, the government was headed by Colonel (later Major General) Suharto (Slaats, 2000). Plans were made to create economic growth and development in Indonesia. New laws on natural resources were often contradicting the 1960 Basic Agrarian Law which was intended to be an umbrella type of law for all natural resource law (Thorburn, 2004). The Suharto regime (1966-1998) is also known as the 'New Order' regime. During the regime of Suharto the focus was on economic growth of Indonesia. However, economic success was achieved through corruption, social and political repression and abuse of law. These issues were characteristic of the New Order regime. Many people did not benefit from the economic growth in Indonesia.

After the downfall of the Suharto regime Indonesia entered the so-called "reformasi" period. A transitional government was installed, the Habibie government (May 1998 – October 1999) (Schulte Nordholt & van Klinken, 2007). There were plans for decentralization, bringing regional autonomy and democracy. Decentralization was the main goal of the government. The transitional Habibie government took some very important reform measures, established two laws that would start the process of (administrative) decentralization. Furthermore the government took reform measures in the form of press freedom, the freedom to establish political parties, free elections and granting a referendum in East Timor. Administrative decentralization took place (Schulte Nordholt & van Klinken, 2007). In 1999 the first free elections took place and Abdurrahman Wahid becomes president. This was a short presidency,

in 2001 resigns Wahid and Megawati Sukarnoputri is elected. In 2004 the first direct elections take place and Yodyohono becomes president until present (Schulte Nordholt & van Klinken, 2007).

2.2 History of the region of Aceh

2.2.1 *The influences of armed conflict in Aceh*

Aceh has a history of more than three decades of armed conflict. This armed conflict was between the Indonesian military and an Acehnese insurgency named the Free Aceh Movement (Gerakan Aceh Merdeka or GAM). The province of Aceh was one of the economically fastest growing regions in Indonesia. The Acehnese felt that they did not benefit from these developments, this created greater support for the Free Aceh Movement (GAM). The conflict is a state formation conflict. In this case the region of Aceh was fighting for a greater autonomy (Sulistiyanto, 2001). Aceh has played a great role in the fight of Indonesia against the Dutch colonization. Indonesia had promised Aceh an autonomous status but they never followed through. This has led to resistance in the province. The GAM was established in 1976 (Schulze, 2005). To gain control over the issues that were playing in Aceh, Suharto established a highly centralised political system. Also the government immediately responded by starting military operations to limit the activities of the GAM. In the 1980's it seemed that the Indonesian military would win the battle, but the GAM fought back by attacking military and police posts. In the mid-1990's GAM created great support under the Acehnese people. The governor at that time, Ibrahim Hassan, had support of President Suharto and Aceh was made a 'Military Operations Area' (Dearah Operasi Militer, DOM) (Sulistiyanto, 2001). During this period the Indonesian government used violence to suppress the support for GAM. Human rights violations took place in Aceh at that time (Sulistiyanto, 2001). The Indonesian military and police suspected a lot of people in Aceh to be a member of the GAM, therefore they used great violence in order to suppress these "members". Since 1976 around 15000 people have been killed in Aceh and thousands of people disappeared and/or have been tortured by the Indonesia military and/or police (McCulloch, 2005). After the fall of the Suharto regime in May 1998, the special military operation DOM, was ended in August 1998 by the Habibie transitional government (Sulistiyanto, 2001).

Armed conflict can create a chaotic and insecure environment to live in for people. Armed and or civil conflict usually involves changes in social relationships and can create tenure insecurity. There are a few changes that occur during civil conflict and subsequent to civil conflict. These influence rights and obligations in tenure during armed conflict. These are the changes in population patterns, reduction in penetration of state power, identity change and legitimacy (Unruh, 2003). These changes can be sources of contestation over land in post-civil war settings. Civil conflict can lead towards dislocation of the population. This physical separation of their established homes can change rights and obligations that people have towards land and property. This especially occurs when for these rights and obligations it is necessary for people to physically occupy the land. When people are dislocated they can try to find land somewhere else due to their change in social status. From being a member of a community, they have become a refugee, dislocatees, migrants in new locations. The ability to return to the land of the former location depends on several variables, namely the length of the war; the intactness of the return community; relationships between those who left and those who stayed; physical changes at the field, village and landscape variables as these relate to property rights; and the degree to which individual and community changes during dislocation still are compatible with the previous tenure system (Unruh, 2003). Displacement of people often leads to overlapping claims. For example people claim land in the area where they have fled to. These lands can already be claimed. These overlapping claims lead to post-war land disputes. State power is reduced due to civil conflict and the general insecurity that exists, opposition groups that occupy areas, destruction of physical elements of the land system such as land records. A part of the financial resources of the state goes to war efforts and administrative personell are unable and/or unwilling to travel to specific areas. Due to civil war the population can begin to doubt the legitimacy of state institutions (Unruh, 2003). Overall this leads to distrust of state power and in a post-civil war context this distrust still continues. This can lead to the co-existence of land tenure systems and the state can find it difficult to have influence on land tenure systems.

Violence in a country is so destructive that it influences societies even after peace has been achieved. If there is still a threatening climate present, it decreases the trust of people in institutions, and in the case of Indonesia and Aceh, democratization cannot flourish (Schulte Nordholt & van Klinken, 2007). Legitimacy plays an important role in post-civil war settings. During civil war legitimacy is contested. This especially plays a role in issues over land and property because claims are based on legitimacy and authority. There can be a reduction in

the legitimacy of state power and the formal land tenure system. Different claims justifications can take place. They can involve claims based on identity and historical occupation. These types of justification can be reinforced due to civil conflict, there can be a “return” to historical lands and territory. They can become a priority in the peace process. Land tenure systems can evolve that are connected to the opposition which is made legitimate. And legitimacy can follow a reaction to the insecurity that is created during conflict (Unruh, 2003).

Looking at a post-conflict setting from a legal pluralism perspective the focus is on changing informal normative orders and multiple social fields which play a role. Because of the changes that occur during the course of a war, there can be more political awareness and mobilization which challenges postwar authority structures and legitimacy. In the peace process this has to be dealt with and this is the problem that occurs in relation to the overall property rights arrangements in the peace process.

2.2.2 The 2004 Indian Ocean Tsunami

The impacts of the Indian Ocean tsunami on 26 december 2004 were massive in Indonesia. The province that was most affected by the tsunami was the province of Aceh. There was a devastation of land, destruction of property and loss of many lives. Aid organisations from all over the world came into the region giving aid to the local people and trying to create a basis for reconstruction. This was of great influence for the region because of the influx of money that came along with the organisations. A report of Fitzpatrick on restoring and confirming land rights in Aceh (2005) describes the damage in Aceh:

- 126,602 people killed and 93,638 missing;
- 514,150 people displaced;
- 654 out of 5947 villages severely damaged or destroyed and 640 village administrations not functioning;
- 252,223 houses totally destroyed or partially damaged as a result of the tsunami;
- Approximately 23,330 ha of rice fields and 126,806 ha of other agricultural or garden areas damaged by mud, salination, sand or erosion;

- Approximately 300,000 parcels of land (170,000 urban, 130,000 rural) out of an estimated 1,498,200 were affected by tsunami-related damage. Of these, only around 60,000 parcels were titled, mostly in urban areas;
- The provincial office of the National Land Agency (BPN) in Banda Aceh was badly damaged;
- BPN's provincial office in Banda Aceh lost approximately 30% of their staff;
- Substantial damage to or loss of land records in BPN and sub-district offices;
- Widespread loss of personal identity records in tsunami-affected areas;
- Significant inundation and subsidence of affected coastal lands, in many cases averaging between 10 and 20% per village area;
- Significant obscuring or obliteration of boundary lines and markers.

(Fitzpatrick, 2005: 4-5)

After the tsunami a flow of international aid agencies, (international) non-governmental organisations entered Indonesia. Land tenure and ownership in the province was an obstacle for reconstruction processes. Land disputes between family members and family members that were absent before the tsunami, appeared and presented ownership claims. Many of the local people did not have formal land titles but customary tenure (Steinberg, 2007). All these factors play a role in the reconstruction of the area. It complicates not only issues concerning the land administration and land titling but also other aspects of reconstruction. In the tsunami-affected area of Aceh there was a need to provide tenure security in order to support housing reconstruction.

The tsunami created a lot of damage to the systems of land administration, both statutory rights and customary rights. In the rehabilitation phase the government of Indonesia identified the reconstruction of land rights as one of the important elements. The programs that were set up could fall under one of the following categories: rehabilitation and replacement of lost land records, systematic land title registration, community-based mapping and adjudication, and proposals for law reform (Fitzpatrick, 2005).

The Indian Ocean Tsunami had a big impact on the policy of the government of Indonesia. One of the reasons is that there was great international support and humanitarian aid. Because of this and the weakness of the Indonesian government the government was practically forced to change their attitude, especially towards the region of Aceh. It was also necessary for

policies to be focused on land issues. Land administration and policy is an important factor for the reconstruction of a country after a disaster like the tsunami of 2004. The government has paid a lot of attention in their policies for implementing land administration programs

2.2.3 *Disaster diplomacy*

When president Megawati Sukarnoputri was elected in 2001 there came a basis for a peace agreement. This was a proposal that Aceh would be given more autonomy. Despite this peace agreement, the conflict revived in 2002. After the tsunami in December 2004 new peace talks began and this resulted in signing of the Memorandum of Understanding (MoU) in August 2005 (Shewfelt, 2007).

A disaster can have a great impact on the stability and on international and internal diplomacies. After the Indian Ocean Tsunami the Indonesian government and the Free Aceh Movement quickly reached a peace agreement in Aceh (Gaillard et al., 2008). The peace talks for the MoU started in January 2005 (Aspinall & Crouch, 2003) The fact that already two peace agreements had failed in the recent past, it did not necessarily mean that this peace agreement would succeed. The agreement became possible when the GAM changed their goal and agreed with a government in Aceh based upon 'self-governing' within the Indonesian state instead of making Aceh a separate independent state. The Helsinki agreement sets out a new relationship between the Indonesian state and the region of Aceh and it also includes agreements about human rights, political participation, rule of law and economic issues. A disarmament of GAM and reintegrating the GAM members into society was also included in the agreement (Aspinall, 2005). Free elections for provincial level officials were held on December 11, 2006. The circumstances in Aceh concerning the conflict have improved because of the signing of the MoU (Shewfelt, 2007).

2.3 Conclusion

Many changes in the legal system of Indonesia were made during colonial times. The so-called "ethical policy" of the Dutch was introduced in order to recognise the rights of the indigenous people. European land would fall under state law and Indonesian land under adat law. This meant that the land under adat law could not be registered. The agrarian decree (domain statement) was enacted in 1870. When land was not registered it would be

recognised as land owned by the state. Since land under adat law could not be registered it was not considered free domain. This is in contrast with the “ethical policy” which was intended to recognise the rights of indigenous people. After colonial domination attempts were made to replace Dutch agrarian law and in 1960 the BAL was enacted. The ideal of the BAL was that adat law would be at the basis of national agrarian law.

Under the “New Order” regime of Suharto the focus was on economic growth. The province of Aceh did not benefit from this economic growth. A reaction was that the Free Aceh Movement (GAM) was established. The Acehnese were in a struggle for greater autonomy of Aceh. This led to three decades of violent conflict between the state and GAM. This violent conflict can have a great influence on tenure systems and land rights. Conflict creates an insecure environment for people and leads to a decline of trust in state power. It is then increasingly difficult for the state to have an influence on tenure systems. Adat law flourishes because people rely more on local law than state law.

The Indian Ocean Tsunami had a great impact on Aceh. For the reconstruction process it was important to gain insight in land rights. A focus of the government was on the implementation of land administration programs in order to establish tenure security. The Indian Ocean Tsunami created an opportunity to resolve the conflict between the state and GAM. This window of opportunity for peace is a form of disaster diplomacy. Peace is an important element for rebuilding lives and livelihoods. Both parties needed each other to rebuild the region.

Chapter 3 Land rights in Indonesia

3.1 Customary law in the colonial period

The colonial period is an important era to understand legal pluralism in land rights in Indonesia. Native property rights and European property rights were an important issue during the colonisation of Indonesia. The legal system during the colonial period was of a dualistic character. Legal procedures and jurisdiction for the Dutch and Europeans was mainly based on the legal system present in the Netherlands. The native Indonesians had their own religious laws and customs. This resulted in two court systems, one for the Europeans and one for the Indonesians. During the last decades of colonial rule this dualism was debated. The advantages of one uniform legal system were discussed. Cornelis van Vollenhoven (1974-1933) from the so-called Leiden adat law school studied this subject thoroughly and was the most important thinker on adat law in Indonesia (Henley & Davidson, 2007).

3.2 Legal pluralism in Indonesia

3.2.1 *Different legal orders*

Different communities in Indonesia have their own legal systems based on normative values, principles and rules called adat law. Also land rights and tenure arrangements over land are organized and dealt with within this traditional law. Adat law also changes within different communities. Every community has their own culture and adat law is based upon values and norms that exist in a community. Different legal orders are present in Indonesia. Among them is the state law and adat law. There are also many Indonesians which do not live by state law nor adat law. Within adat law there are many differences. Different traditional communities live by different adat law. Historically the debate about adat law is a debate between a choice for legal unification or legal pluralism. In this debate unification is seen as a necessity for national development by the government. On the other hand adat law and legal pluralism can be seen as a social given that can not be avoided (Fitzpatrick, 2008).

3.2.2 State law, customary law and land rights

Legal pluralism becomes clear when looking at land rights in Indonesia. When defining it in the simplest way there are two basic categories of land rights in Indonesia: statutory land rights and customary (adat) land rights. Like explained earlier adat law is an ordering system that co-exists along the official law of the state. It is based on normative values, principles and rules in the society independent of the law of the state. Adat law is continuously changing through decision-making processes of the communities (Slaats, 2000). This is also the case when studying land rights. A figure from the article of Slaats makes the differences between statutory law and customary law in Indonesia a bit more clear.

Comparison of characteristics between Indonesian state law and adat law

State law	Adat law
Explicit dogmatics and theory	Implicit dogmatics and theory
Analytical scientific system	Participatory folk system
Recorded	Unwritten
A body of rules	General principles and normative notions concretised in formal processes of decision-making
Top-down	Bottom-up (with exceptions)
Static	Dynamic
Unified	Different per area and within areas
Rights in land of individual character	Rights in land of communal character, even after individualisation

(Slaats, 2000; chapter 5-4)

Land records are written by local people and most of the time by a village head. After land records are made they could be transferred to the BPN. Most of the time this does not happen and one of reasons is the extra costs that are involved. Also the lack of trust in the BPN system plays a role in this. This local form of land administration is the main form of land administration in Indonesia. A decentralized form of land administration has many advantages, but in this case it also has a lot of disadvantages. It has shown to be vulnerable to natural

hazards and this local record-keeping tends to be incomplete. Another disadvantage in this case is that the records should be duplicated to a regional or national institute like the BPN, but this does not happen in reality (Fitzpatrick, 2008). This is a main point of view for state officials who want to create an uniform body of rules for land registration in Indonesia. However this has not been created so far. Living by adat law is what local people prefer and what works the best for them, since they still do so.

Despite the introduction of the Basic Agrarian Law which made the registration of ownership rights mandatory, the registrations in Indonesia remained low. Group rights were not recognised. In 1995 the legal status of only seven to eight percent of the land in Indonesia had been registered and verified (Slaats, 2000). Land registration is assumed to create more legal and tenure security for landowners. Through the BAL the Indonesian government wanted to see that land 'registered' under the traditional adat law would instead be registered as statutory ownership. The Indonesian government did initiate some projects which as a goal had the registration of the land rights under customary ownership. The BAL will be further discussed in the next part of this chapter.

3.2.3 *The Basic Agrarian Law*

After the colonial domination there were attempts to replace the Dutch agrarian law. The colonial laws were seen as discriminatory and not beneficial for the Indonesian people. However new laws could not be implemented easily because of practical reasons. Colonial laws were maintained for some time after the independence was declared (Slaats, 1999). After 11 years, in 1960, the Basic Agrarian Law (BAL) was enacted. The 1960 Basic Agrarian Law (BAL) gave recognition on one hand and restrictions on the other as to what extent local communities might maintain access and control over their lands. The Indonesian state has control over land, forest, minerals and other natural resources. State-controlled land was a result of policies to control the natural resources wealth of Indonesia (Afiff, 2006). Two concepts were of importance in the BAL, these were *adat* and *ulayat* (beschikkingsrecht). These concepts were taken from traditional adat law and used to create national agrarian law. Adat stands for the social function of natural resources and the normative order existing in communities. Ulayat can be seen as the common good. These concepts were formally recognised in the BAL. However in practice this recognition does not exist. There are restraints to the recognition of adat and ulayat in the BAL. Implementation of these rights has

to be in accordance with state law and regulations. This means that interests of local communities are inferior to national and state interests (Slaats et al., 2009). Cornelius van Vollenhoven (founder of the 'Adat Law School' in Leiden) presented six basic characteristics of ulayat.

- The autonomous adat community and its members may make free use of virgin land within its area. It may be brought into cultivation; it may be used to found a village; it may be used for gleaning; etc.
- Others may do the same there only with the permission of that community: without it, they commit an offence.
- For such use, outsiders must always pay some charge or give a gratuity in tribute, sometimes members of the community are also obliged to make such payments;
- The autonomous adat community retains in greater or smaller measure the rights to intervene concerning land within its area;
- The autonomous adat community is accountable for whatever transpires within its area if there is no one else from whom recovery can be made (for examples, offences for which the culprit remains unknown).
- The autonomous adat community cannot alienate ulayat rights in perpetuity (Burns, 1989; pp. 9-10 quoted in Thorburn, 2004; pp. 35-36).

Ulayat at a local level refers to land that is identified by local adat law communities as communal land. Transformed to national agrarian law it means that all land within the territory of the state belongs to the whole Indonesian population (Slaats, 2000). This makes clear that adat law actually cannot be transferred to national law. Adat law is law at a local level. These rules cannot be copied into national agrarian law because this action would change the rule/law itself. When adat law is copied to create national law, it automatically is not adat law anymore because it is not local but national. The BAL was introduced to simplify the agrarian law system and adat law would be at the basis of national law. Adat law embodies different rules within different communities and can be seen as a flexible, changeable set of rules and laws. Adat law changes when normative orders in a community change. Therefore the BAL cannot simplify the agrarian law system because at the basis stands a multi-interpretable and changeable adat law. Policy-makers can interpret and manipulate the BAL in such way that every policy introduced conforms to the BAL. This

makes the BAL a vague and confusing law. From this perspective the usefulness of the law is questionable.

3.3 Formalising land rights

3.3.1 *Land registration projects PRONA and PAP*

There were some small scale land registration projects at district and sub-district level. The registrations that came from these projects were few. The government introduced two more large scale projects. This was the Proyek Operasi Nasional Agraria (PRONA) and the Proyek Administrasi Pertanahan (PAP) (also called Indonesia Land Administration Project, ILAP) (Slaats, 1999).

PRONA was a nation-wide project and initiated in 1981 (Slaats, 1999). This meant that the project was implemented in several regions at the same time. The goal of the project was to promote land registration, provide legal security for land owners and to prevent disputes over land. As a method in order to promote and stimulate land registration the government reduced the costs for land registration. The project did result in more land registrations than before but the result was below expectation (Slaats, 1999). One of the reasons for this could be the fact that political preferences played a role. The then ruling party was Golkar and support by the public for this party seemed to be one of the selection criteria to be registered. There was a quota for the number of registration that could be submitted in the selected areas. When the applicants would have a certain political preference this would play a role in the admission of the requests. This was one of the reasons why the project did not have support by the population. There were also groups that would take the initiative to apply, instead of waiting to be selected. These groups also gained preference because this would mean that a larger part of the costs would be paid by this group (Slaats, 2000). Under this project much more land was registered but the massive registration that was expected did not happen.

Another project that was initiated in 1995 was the project of PAP (Slaats, 1999). As a goal this project wanted to register all land parcels in Indonesia within 25 years. Unlike PRONA this project had external funding from the World Bank and the Australian government. The World Bank also had a say in the design and the development of the project. A difference with earlier projects was that this project focused on the plots of land instead of the

landowners. An area would be selected and then the systematic registration of all plots of land would be the goal. This would make the registration process quicker (Slaats, 1999). The reason for this is that some families have dispersed plots of land and now they could register all the plots of land per area. Main objectives of the project was to ensure tenure security for rural plot owners so it would be easier to enjoy and access financial credits and investments, reduce land disputes and to increase productivity of the families and therefore their income (Slaats, 1999). The approach for the project was also different from previous projects. Land would not be registered sporadically but special teams of people would go to the selected areas and inform the local people about procedures and establish people's rights and register the plots of land (Slaats, 1999). In general this project was better organised than previous registration projects. There were still occurrences of usual delay and fraud in documentation but overall less than previous registration projects (Slaats et al., 2009).

3.3.2 *Formalising land rights and social orders*

For many years the Indonesian government has tried to formalise land rights in the country. In developed countries every parcel of land and every house or other building is documented and property rights are acknowledged. In developing countries this is not always the case. People rely on their own community and the moral economy in which they operate which has a basis of trust instead of formal property rights. Formalising land rights is not a simple technical issue. Culture and politics play a large role in the capability of a country to formalise land rights. Deep political changes are needed in order to formalise land rights. Land formalisation can be established for several reasons, these reasons could be greater economic growth and efficiency, more state control and greater equality (Sjaastad and Cousins, 2008). The formalisation of land rights in Indonesia could be a way to reduce poverty in the country and generate more income. However people must have knowledge and assets (economical and social) in order to use these formal land rights in their economical advantage. When people do not have access to these assets they will still rely on traditional law.

Formalising land rights can have a great impact on economic growth in a country. This is when people know how to take advantage of these formal land rights. There are many more factors that play a role in the economic growth of a country. People have to have trust in legal institutions and they must have the knowledge to gain access to markets. They also need access

to other assets and inputs for economic production. Local people must recognise these formal land rights and be able to use these formal rights in their advantage.

In traditional communities land is not just an economic asset. Rights to land and access to land are often embedded in the social relationships within a community. Also access to land depends on social structures. Rights to land and land itself cannot be seen separated from social structures, it is part of the social identity of people. Land can also function as an instrument for maintaining good social relationships within a community. In most of these communities, local people are well aware of the rights to land within their community and communities surrounding them. This does not mean that there are no land disputes between these local people. When land disputes occur, these are usually solved within traditional law and traditional regulations. The internal security of the land is not truly endangered as long as the dispute is solved or handled within the community and by traditional law.

Overall the government sees formalising land rights as a way to increase tenure security in a country. This is not necessarily the case depending on the normative orders that are present in the local communities. When there is a lack of trust in the institutions in a country people are more likely to base their decisions and actions on the traditional adat law within their community. When the government and the socio-political situation in a country is unstable it can be less likely for the local people to have trust in formalisation of their land rights. Their belief and trust in their own community is stronger.

3.4 Conclusion

The colonial times were of great influence for legal pluralism in Indonesia. State law was mainly based upon the Dutch law. Still the local people could live by their adat law. In 1960 the Basic Agrarian Law was enacted. Adat law is a local law and as different as there are different communities. For these communities adat law works and it has worked for many years already. This is one of the reasons why it is so difficult for the government to register land for all the local people. These local people already have a system. The government mostly wants to register plots of land in order to increase tenure security for people. When people have tenure security they could get access to financial credits and investments because they can prove to people outside their community that they actually own a certain plot of land. This would then increase their productivity and their income, thereby their living standard.

However there are more issues that play a role in trying to increase productivity and income. People have to have the knowledge and the money to be able to register their land. And when they would have a registered plot of land, they still would have to have the knowledge and capacity to be able to gain more money for investments and increase their productivity.

Chapter 4 The RALAS project

4.1 Background, objectives and goals of the RALAS project

In this chapter the assumptions made on land rights, legal pluralism and tenure (in-) security of RALAS project documents will be discussed. For this analysis two project documents will be used: the RALAS project appraisal document (PAD) of 2005 of the World Bank. This document is chosen because it is the official project appraisal document on which implementation is based. Another project document that will be used is the Project Implementation and Beneficiary Assessment 2008, written by Robert Deutsch. This document is prepared for BPN and with financial support from the Multi-Donor Trust Fund for Aceh and Nias (MDFTAN), through the World Bank with counterpart funding through GOI/BRR/BPN. The reason that this document is chosen is that the document describes the initial goals of the project as well as the start of the implementation.

The National Land Agency (BPN) is formally the institution that can confirm land boundaries and the grant of land title certificates in Indonesia. In post-tsunami Indonesia this created some problems. One of the problems was that communities could not identify and reconstruct new boundaries and land titles. They did not have the legal authority (Fitzpatrick, 2008).

The main action of BPN after the tsunami was the implementation of the Reconstruction of Aceh's Land Administration Systems (RALAS). The Reconstruction of Aceh's Land Administration Systems (RALAS) is a land project funded by the World Bank and administered by Badan Pertanahan Nasional (BPN) (Fitzpatrick, 2008). BPN is the National Land Agency. There were three main focus areas for the activities of the project:

- *“accelerated systematic land registration and titling program based on Community Driven Adjudication (CDA),*
- *land management policy development, reconstruction of BPN's land records, community awareness and participation, and*
- *rebuilding the physical and human infrastructure and capacity of BPN in Aceh province” (Deutsch, 2009)*

RALAS has the goal to restore ownership over parcels of land. RALAS is different from other cadastral programs in Indonesia because the region of Aceh is tsunami affected. This means that property has been submerged by floods, physical indications of property are lost and people are dead or missing. Difficulties identified by RALAS are: overlapping land rights, commercial and large scale development projects and tenure security and promotion of privatization of common property (Afiff, 2006).

A direct reason for the Indonesian government and the World Bank to set up the RALAS project was the loss of almost all records of land ownership rights, personal identification documents and land boundary markers (Da Silva, 2010). The lack of formal land titles before the tsunami were seen as a reflection of tenure insecurity in the region. International donors, NGO's and the government agreed that formal land registration was necessary in order to reconstruct Aceh and for political and economical development in the future (Green, 2010).

The realisation of a systematic land titling system created some implications and tensions between actors in the area. The RALAS management had to work on an ad hoc basis especially in the early phase (Deutsch, 2009). Land certificates that have existed were destroyed due to the tsunami, but there was also a strong customary law before the tsunami. Legal pluralism in this case could result in some implications and tensions when trying to implement a statutory land titling system. Some of the implications mentioned in RALAS project documents were a result of the post-disaster and post-conflict environment in which the project took place for example the destruction of land records and loss of BPN personnel. In the emergency phase there were also many demands for relief and for the recovery of property rights. This created a chaotic working environment (Deutsch, 2009).

There are many actors that play a role in the RALAS project. These actors include the government of Indonesia, housing providers, NGOs, Civil Society Organizations (CSOs), BPN and the local people. The design of the RALAS project was done in a way that these actors would interact in the main goals of the project, which were (a) community land mapping; (b) public awareness raising; and (c) consultation and feedback to BPN. The whole project was funded by the Multi-Donor Fund (MDF) through the World Bank (Deutsch, 2009).

In order to implement the Community Driven Adjudication (CDA) approach, NGO's were recruited to implement and monitor the CDA process. Community Land Mapping techniques

(CLM) was seen as a innovative tool for post-tsunami reconstruction work and for securing the land rights for families that were affected by the tsunami. BPN was originally a important leading actor in the titling program but there were tensions created between BPN/RALAS and housing providers and NGO's because there was uncertainty about the legal status that the CLM results would have. As a result the communication was not clear between these actors. This again resulted in the fact that information and justification for actions and decisions were not provided sufficiently. Eventually a number of CLM technique's were used by RALAS for the preparation of parcel maps (Deutsch, 2009). In the goals of the project it is clear that CDA and CLM were important factors for producing systematic land registration. In practice the importance of the input of the community and NGO's were undermined by these tensions.

Meetings were held in order to inform the residents of the area about the land registration program. An implication of this was that it was not clear if people who attended the meeting would be able to understand the information. This was of great importance in order for the people to registrate future land transactions. There was no (consistent) method to evaluate the understanding of the information provided (Deutsch, 2009). If people are not able to registrate future land transactions, the systematic land titling system could not work properly in the future. There could be a chance that people would fall back on customary (adat) law.

4.2 Assumptions on land rights, legal pluralism and tenure (in-)security: an analysis of RALAS project documents

Below a few statements will be derived from the RALAS project appraisal document (PAD) of 2005 and the Project Implementation and Beneficiary Assessment 2008.. Based on these assumptions the implementation of the RALAS project was conducted. A special focus will be on assumptions made based on the specific context of the region. Further in the chapter some of these assumptions will be discussed with the concepts of land rights, legal pluralism and tenure (in-)security.

First some quotes from the project documents will be given:

'In the recovery work the government of Indonesia found that restoring land ownership rights, securing land tenure of the tsunami affected areas and developing and efficient land management and administration are key elements in the rehabilitation and reconstruction of

the region of Aceh. In the short term, this approach would contribute to poverty reduction; and improved governance in the longer term' (Deutsch, 2009: x).

'Land is a basic resource for social and economic recovery. Land rights recovery and protection and certainty of property rights is necessary pre-condition for reconstructing homes and communities' (Deutsch, 2009: 1)

'Damages to several tons of land registries and cadastral maps has made the reconstruction of property rights even more difficult' (Deutsch, 2009: 2).

'BPN's immediate responsibility is to reconstruct property ownership and land boundaries as they existed immediately prior to the tsunami. This is also BPN's legal responsibility. In some cases it may be desirable to propose changes to the spatial planning of communities in order to improve the quality of life or public safety. However, before such changes are made, the pre-tsunami land ownership status and property rights must be resolved through CDA, and subsequently further community consultation and agreement and government determination on any spatial planning design' (RALAS PAD, 2005: 10)

In the RALAS project appraisal document there are also some risks mentioned for the implementation of the project. These are of importance when looking at how the project deals with the specific context of the region. There are four risks mentioned: the capacity of BPN, which will be mitigated through training new staff, using private sector for surveying and mapping, and redeploying trained staff from other regions (RALAS PAD 2005: 12). Another risk mentioned is 'capacity of the CSO's and community leaders to facilitate the community driven adjudication process' (RALAS PAD 2005: 13). This will also be mitigated through training. The next risk is security and conflict in Aceh. This is seen as an external risk for the project and it will be mitigated by working in areas where conflict does not occur and by carrying out the activities closely with the communities (RALAS PAD 2005: 13) The final risk is assessed as high which is the potential for corruption. This risk will be mitigated by '(i) opening the procurement committee to members outside BPN, including representatives of civil society; (ii) external monitoring of project activities by CSOs and community members; and (iii) establishment of a complaints hotline and a clear complaints handling procedures' (RALAS PAD 2005: 13).

There are also some social issues identified in the project appraisal document. These social issues are planned to be dealt with: 'To ensure that ownership rights, demarcation of boundaries and inheritance issues will be agreed at the community level with no intervention of government, the proposed project would support CDA in which local leaders will be trained to facilitate a process in which community members, in the presence of community leaders agree on the land rights, boundaries between neighbours, and any inheritance issues' (RALAS PAD 2005: 15).

4.2.1 *Property rights, legal pluralism and tenure security*

The idea of the RALAS project was to create a formal land titling system. This would be difficult because the context was one of destruction of land records, missing people and death of many land officials in the tsunami (Palmer, 2007). Assumptions about this issue is mentioned in the document of Deutsch several times. 'Damages to several tons of land registries and cadastral maps has made the reconstruction of property rights even more difficult' (Deutsch, 2009: 2). A remarkable element in the assumptions made is the fact that the document speaks of 'reconstruction' of property rights. This implies that property rights were all recorded and official and that there were many registered land records before the tsunami. However, we have learned that this is not the case. There was no extensive formal land titling system present in the region of Aceh. There were many attempts for formalising land records in the region in the past and this was proven to be a problematic process. Also lack of knowledge and financial means are reasons that the registration of land records has been proven difficult in the past. Many communities live by traditional law and have trust in adat law. As mentioned before, especially in a chaotic environment, like during conflict or after disaster, people tend to rely more on what they know which is adat law. So the assumption that it would be difficult to create a formal land titling system due to missing land records and death of land officials in the tsunami would be a narrow minded assumption.

According to project documents systematic registration and certification of land using community driven adjudication titling procedures will be used for restoring and strengthening tenure security and speed up resolution of land disputes. Systematic land titling means that all parcels of land would be mapped and recorded. The RALAS project aims at doing this through CDA, this would be necessary because of the complex situation in which the RALAS project would be implemented. CLM techniques were developed and implemented in order to

protect land parcels and also to reinforce tenure security (Deutsch, 2009). The CDA process was designed in order to create consensus between the land owners about which parcels would be registered in what way. This process would then need complete community participation in order to create this consensus. The goal of the RALAS project is that systematic land titling processes would result in proper land ownership and the development of property rights (Deutsch, 2009). Systematic land titling is not a guarantee for proper land ownership and development of property rights. What is missing in this assumption is whether there is a need for systematic land titling. Formalising their rights to land can be irrelevant for some people. They rely on adat law as they are used doing. The CLM techniques were implemented to protect land parcels and reinforce tenure security. Again 'reinforce' implies that tenure security was already enjoyed by landowners prior to the tsunami. It could be stated that there was a certain form of tenure security prior to the tsunami but this was not the form that is meant here. Tenure security can also be present within communities, within the rules of adat law. The implementation of the RALAS project aims at tenure security that derives from formal land records. It is not certain whether formal land titling will increase tenure security. As mentioned earlier in this thesis, knowledge and financial means are also necessities when it comes to using this formal tenure security for improving livelihoods and developing property rights.

Although property rights and tenure security are important concepts within the implementation of the RALAS project, no clear definition of these concepts are mentioned in the project documents. Increasing tenure security is stated as one of the main reasons for implementing the RALAS project after the tsunami. It does not become clear in the project documents how the implementation of the project deals with multiple legal and normative orders. It seems from the documents that tenure security in this case equals formal land titling. Especially in a post-conflict and post-disaster situation state legitimacy can be challenged and undermined by local people (Green, 2010).

In the project appraisal document it becomes clear that the RALAS project wants to address many issues such as security and conflict through adjudication mechanisms. It also wants to enhance and restore the capacity of BPN because BPN experienced great losses (Fried, 2011). There is little attention paid to the fact that the extensive history of armed conflict in the region of Aceh already limited the capacity of BPN. When analysing the project documents it seems as if BPN was a well functioning institute prior to the tsunami. This was not the case.

Another issue that is unclear when analysing the project documents is how they address the issue of communal land holding. When analysing the project documents it seems that the focus is mainly on restoring individual ownership over land. Communal land holding is a common practice in Indonesia and Aceh. Elaboration on this issue is not present in the project documents discussed.

4.3 Conclusion

When looking at the project documents on the implementation of the RALAS project some things become clear. One of them is the fact that the word reconstruction and restore are used a lot. This implies that the goal of the RALAS project is to get back to the land administration system before the tsunami. However this is not the case. The actual goal of the RALAS project is to implement a formal systematic land administration system. This did not exist before the tsunami. Little attention is paid to the history of armed conflict in Aceh and the fact that this already had a limited affect on the functioning on BPN. Another element that is missing in the project documents is legal pluralism in the region. Since different legal (local) systems are present in the region, attention should be paid to issues like communal land holding. RALAS is more focused on restoring individual ownership over land parcels.

Chapter 5 General conclusions

Land rights in Indonesia have changed in colonial times. The Dutch made attempts to recognise the rights of the indigenous people. Indonesian land would fall under adat law and European land would fall under state law. However, with the enactment of the agrarian decree, land that was not registered would be recognised as land owned by the state. This was in contrast with the 'ethical policy' which would recognise the rights of the indigenous people.

The region of Aceh has a history of violent conflict. Violent conflict has influence on land rights and tenure systems. Violent conflict creates an insecure environment under which adat law can flourish. This was also the case in Aceh, Indonesia. In 2004 the Indian Ocean Tsunami hit Indonesia and the region hardest hit was Aceh. In order to rebuild the region, the government focused on the formalisation of land rights in order to gain tenure security. The Indian Ocean Tsunami also created an opportunity to resolve the conflict between the state and GAM.

In Indonesia legal pluralism in land rights becomes very clear. Indonesia is a perfect example of legal pluralism. Traditional communities have their own legal system which is called adat law. The government of Indonesia wants to register land for all the local people in Indonesia and have made many attempts in order to do so. This has proven to be difficult since many people rely on adat law. Adat law works for these people and it is difficult to create a formal titling system. Programs that have been implemented by the government were not really successful since they were not able to register all plots of land. One of the reasons for the government to want a formal system is to increase tenure security. When people have tenure security they could get access to financial credits and investments because they can prove to people outside their community that they actually own a certain plot of land. This would then increase their productivity and their income thereby their living standard. This would then benefit the economic status of the country as a whole. But there are more elements needed for increasing productivity and income, like knowledge and financial means.

After the tsunami the RALAS project was implemented. The goal of the RALAS project was to restore ownership over parcels of land. In order to reconstruct the region of Aceh it was, according to RALAS, necessary to create a systematic land titling system. So the main objectives of RALAS were to recover and protect land ownership rights and to rebuild the land administration system.

Attempts are made to create a systematic land administration system. Adat law can be formally incorporated in state law, but in practice this incorporation does not have any effect. A reason why this can not be done is that one of the characteristics of adat law is the fact that it is flexible and a socially constructed law based on normative orders present in a community.

When looking at RALAS project documents, the goals of the project are to *recover* land ownerships rights and to *rebuild* the land administration system. This way of formulating the goals is strange. Most of the land ownership rights before the tsunami were not registered and there was no working formal land administration system present. Most communities deal with land issues within adat law.

Formalising land rights in Indonesia has proven to be a difficult task. One of the reasons for this is legal pluralism in the region. Because of this it is difficult to create a working uniform systematic land registration system. At least one that works for the indigenous communities. A history of armed conflict and the disaster of the Indian Ocean Tsunami in 2004 are issues that are more specific to the region of Aceh. These issues play a role when implementing a land registration project. It affects individuals, communities and institutions.

It is unclear from the documents how the RALAS project deals with legal pluralism and alternative tenure systems in the region. RALAS aims to deal with these issues through CDA and CLM. These are methods in order to create formal land titles. An assumption made is that having documented formal land titles equals an increase in tenure security, for the RALAS project. In a post-conflict and post-disaster environment like Aceh this does not have to be the case. More attention should be paid to government legitimacy and legal pluralism in the region before statutory land titling takes place. Nothing is mentioned in the project about different legal systems and how to deal with this. People use specific laws for their benefit (forum shopping). This leads to overlapping claims to land, it is not mentioned which laws and rules would be the inferior ones. Government legitimacy and legal pluralism are influenced and changed by the history and development of land rights in Indonesia and Aceh. In order to gain support and a need for a systematic land registration system, these issues need to be addressed first and extensively. When studying the project documents concerning RALAS it has become clear that there is not enough attention paid to the history and development of land rights in Indonesia and Aceh.

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