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THE ROLE OF ADAT COMMUNITY AS THE PART OF NORMATIVE SYSTEMS IN PASER

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ABSTRACT *- This paper examines the rights discourses and law as an arena of struggle in which local people attempt to gain and secure access to localities of value. To support these claims, multiple sources of legitimation were used. An access to land registration, which is the official responsibility of the National Land Agency (Badan Pertanahan Nasional, hereafter NLA). Nonetheless other official institutions such as the Department of Forestry and regional governments have authority over issues pertaining to land usage as well. Moreover, local custom (usually called adat can be a normative source opposing NLA decisions. This case study is concerned with the role of the NLA in deciding and maintaining land tenure at the district level, amidst the various interests of the district's economy and the population. The research focuses on the ways in which the local population seeks redress of (perceived) grievances related to land issues: how do poor inhabitants of East Kalimantan deal with disputes over land?*

It shows how possibilities for addressing land related grievances have improved since Reformasi. First important change has been that local population groups have come o demand recognition of adat-based rights to land or compensation for adat lands in use by others. In many instances NGOs took the lead in this, organizing blockades and occupations. A second important change has been that elected government officials are nowadays given to considering the political benefits which they could gain from supporting these land claims. Rather than reverting to police or military assistance as was common in the New Order era, Paser's government engages in dialogue and takes a diplomatic approach to settling these issues.

keywords: role of adat, normative system in paser

1. INTRODUCTION

Paser is the southernmost district of East Kalimantan. Its territory borders the districts of Paser Utara Penajam and Kutai Barat to the north, the provinces of South and Central Kalimantan to the south and west, and the Strait of Makassar to the East. The district's main geographical features are a flat stretch of fertile land along the coast that gives way to the steep northern stretch of the Meratus mountain range, known locally as Gunung Lumut, to the north and west. In 2002 Paser lost around a quarter of its territory and almost forty percent of its population when its northern stretch became part of Paser Utara Penajam, a new district consisting of northern Paser (Paser Utara) and the Penajam area that used to be part of the municipality of Balikpapan.

Paser's territory covers some 11,600 square kilometers and houses a population of 185,000, most of whom are farmers living on the flat, coastal land (*Badan Pusat Statistik*, 2008:57). The district's capital is the city of Tanah Grogot, which also is the main commercial and administrative centre. A number of large market villages have developed along the provincial road that bisects the district and connects Balikpapan and Samarinda to Banjarmasin, the capital of South Kalimantan. Small villages are scattered throughout the district, but mainly on the plain and along the coast.

The district is named after the Orang Paser, a population group that considers itself the original inhabitants of the area and is related to Dayak groups living further inland. Orang Paser currently make up around 40 percent of the district's population. Sub-groups living in the mountains, on the plains between the sea and the mountains, and along the coast speak different dialects of *Bahasa Paser* and have variations in *adat*. Large numbers of Bugis from South Sulawesi live along the coast and on the plains, as do Banjarese from nearby South Kalimantan. Both groups have been living in Paser for centuries and have left their influence on culture and daily life. Over the past decades waves of migration and transmigration have brought Javanese, Balinese, East Nusa Tenggarese, Menadonese, Batak, Toraja and Madurese as well.

Culturally, the district is divided between the Bugis-Malay-oriented coastal plain centered on the capital Tanah Grogot, and the mountains. Until recently, the lack of infrastructure isolated mountain communities, limiting the influx of migrants and maintaining their social and cultural orientation towards the Dayak tribes of the hinterland. The construction of roads by logging companies began to shift the focus of the mountain communities towards the coast.

The capital Tanah Grogot has some 20,000 inhabitants, schools, a hospital, a large market and a shopping mall. The city is dominated by the many government offices of the district government, many of them new and built to impress. Its central street is a one-kilometer stretch of four-lane highway flanked by official buildings, mansions, shops, and public institutions. Although small agricultural enterprises dominate its outskirts, the town is the undisputed urban centre of the area.

Governance over the population and lands of Paser is a complex affair. Ministry of Forestry officials estimate that 65 percent of the land in the district

comes under their authority. However, the regional forestry office does not possess a map delineating the borders between forest land and non-forest land. Notably in the coastal areas the NLA claims authority in land matters as well. Government bodies are less occupied with the forest land designation of nearly all of the Gunung Lumut Mountains, contrary to the communities living there. These groups maintain claims of *adat* territories infringement of which gives rise to dispute.

People in Paser claiming *adat* rights to land perceive these as valid for two reasons. First, because of the traditional and historic nature of such claims. *Adat* has been respected and followed for generations, dating back to before the independence of Indonesia. As one respondent put it: "our *adat* was even respected by the Dutch colonists when they came here, and now our own government is telling us that it is no longer valid? Nonsense". The concept of a national government applying a nationwide legal system that rightfully supersedes local customary claims thus is disputed. It is an access to land registration, which is the official responsibility of the National Land Agency (Badan Pertanahan Nasional, hereafter NLA). Nonetheless other official institutions such as the Department of Forestry and regional governments have authority over issues pertaining to land usage as well.

Until recently, it was quite common for individuals claiming ownership of a plot of land based on *adat* to find that the National Land Agency in Tanah Grogot was unwilling to accept *adat* as sufficient ground to grant official ownership rights as well. Although this stance of the NLA has altered in recent years and its legal possibilities were severely restricted (see the next paragraph), this attitude is frequently considered as willful obstruction or even malevolence of its personnel. Rural paserese often feel that official land law does contain recognition of *adapt* land rights, but that these regulations are not implemented. This notion was brought about by human right and indigenous peoples visiting these communities during 'empowerment projects', in which the communities where made aware of their status and rights under official Indonesian law. Exactly how or where and in which law *adat* land rights are recognized is not clear to most of the claimants, but this notion of validity inspires a feeling that the local government is acting against national law on purpose, favoring immigrants and large companies just as it did during the New Order.

Whereas, for instance, *adat*-based land claims traditionally sufficed to arrange affairs among the Paserese population, large-scale immigration to Paser gave rise to conflicts emanating from the land needs of these new arrivals. The regional governments of the time showed a persistent disinclination to engage with these conflicts other than by hard-handed repressive methods. This caused, first, for people to remain silent but discontent regarding what was considered a violation of *adat*-based land claims. Second, it gave rise to an image of Paser as a region that was peaceful and complacent as no riots, fights or other serious violent outbreaks or social disruptions occurred. Yet this popular contentment was ostensive, as dissatisfaction over land rights continued to exist in the Paserese population. Regional government however, largely made up of immigrant officials and civil servants with few connections to Paserese communities, failed to pick up on this dissatisfaction or appreciate its severity. Upon Suharto's resignation as President of Indonesia and the ensuing climate of greater democratic freedom, this dissatisfaction over land claims resurfaced in Paser.

The law enforcement is a kind of set to sail toward the law development. The politic of law which is not explicit and pointed will ruin the results of many aspects. The law theory that will suit this ruin condition as the results of unstable law politic in Indonesia is the fact that we need to fulfill the 3 aspects as the priority in law system. The culture of law often takes place as the growth of law study, society, and civilization

Thurnwald stated that law is considered as the expression of an attitude from a culture, what it means is that the legal order should be learned and realized functionally as the culture system.[1] Koentjaraningrat also said that the connection between law and culture is well described below: [2]

"*a system of the value of a culture exist in almost human thought about what they think what is worth their life, so that the system of culture is usually used as the prior role about human's behaviour, the system of human behavious which is more concrete, such as some norms of law and rules, both are guided by the system of culture"*

The point is that law and culture has a tight connection one to another, that is law is considered as a concrete aspect from the value of culture in a society, or on the other hand law is a manifestation of the system of a culture in the society.

2. MAIN PROBLEMS

Based on the description above, what I am particularly concerned is :

1. What are the legislations when it comes to obtaining and safeguarding access to land?
2. How can the justice be the access for the landless poor?

3. SOLUTION

3.1. The Legislations In Indonesia that Obtaining and Safeguarding Access to Land

a) Grievances over the seizure of land by others

From the seventies onwards, authorities gave large tracks of land in Paser in use to companies and immigrants. Extensive parts of these lands were considered as *adat* land by local Paserese, thus giving rise to the grievance that the authorities ignored

[1] Soerjono Soekanto, *Disiplin Hukum dan Disiplin Sosial*, Rajawali Press, Jakarta, 2000, hlm.164

[2] Koentjaraningrat, *Kebudayaan: Mentalitas dan Pembangunan*, PT.Gramedia, Jakarta, hlm.25

individual or group ownership of land. Quite often the Paserese claiming *adat* rights were willing to accommodate government plans with those lands – although the matter of local assent rarely featured among official planning- but felt that some type of recognition of their rights would be in order. Using other peoples' lands without permission is a transgression of both Paserese *adat* and official land law. Taking other peoples' land as one's property without the original owners' consent is theft. Paserese communities felt that they had never given up their ownership of those lands, at most they would agree to a temporal usage by others, but since their consent had not been asked at earlier stages they were due apologies, indemnifications, and a return of the lands. At the very least a decent agreement had to be drawn up in which Paserese rights to the land were acknowledged and safeguarded, and compensation or rent established with retrospective force.

Grievances such as this are actively pursued in Paser and occasionally give rise to actual conflict. These grievances are voiced in terms of a violation of *adat* land rights. Migrants perceive this discourse around *adat* as threatening – since many migrants use land that was assigned for transmigration or plantations by previous governments, often land that is claimed by others as *adat* land.

b) Grievances over the compensation of land that is being used by others

Notably in the eighties and nineties did companies and on occasion the government pay attention to protests over the usage of *adat* land and offer –usually financial- compensation. Frequently communities deemed it wise to accept this money rather than remain completely empty handed. Following *reformasi*, however, numerous instances came to the fore in which the circumstances –under pressure of government force, which prevented fair negotiations- and the exact nature of the agreement were brought to the fore. Communities maintained that they had not given up their rights to the land but had only permitted usage. Continued usage by immigrants or companies was usually possible, but only after additional payments that would reflect the actual rental value of the land would have been made.

This grievance is frequently part of the discourse that leads to conflicts over land. As with the preceding issue, solutions are often sought through *adat* organizations rather than through official channels. Yet as various *adat* organizations revert to putting pressure on opponents if negotiations do not work out, a strong and threatening undertone give *adat* rights a rather different meaning to the immigrants and companies that are targeted. As a spokesperson for an immigrant community confronted with such claims told me:

"These claims cannot be real. We have held certificates to this land for the past twenty years and all of a sudden these claims are made. Not as long as the land was not in use but now that we have planted oil palm trees and they are bound to start bearing fruit, the land is claimed. These people are only looking for money." *Adat* spokespersons counter that there was no point for them in voicing their claims under the New Order as this would only result in a reputation as upstarts. They maintain, however, that they had regularly reminded this specific immigrant community of their claim to the land, but that they had refrained from persisting too much for the reason stated.

Defining justice in this and similar thorny situations is a highly delicate task for the relevant authorities. *Adat* authorities and interest groups have a very strong voice in this, although the power of the regional government often supersedes if the conflict reaches that level. In many instances, however, all parties involved prefer to keep a conflict low-level, and reach a swift settlement to which all parties agree. Neither authority wants to be accused of instigating large-scale disagreement with its counterpart, as both the district head and *adat* leaders publicly emphasize their respect for, and commitment to, each other's authority. Reputations are at stake for both *adat* and government officials and both prefer to settle a matter before the other comes in. Rivalry over public favour clearly plays a part in this as well.

Three pieces of legislation are of major importance when it comes to obtaining and safeguarding access to land. The Basic Agrarian Law (BAL), the Basic Forestry Law, and the Regional Autonomy Laws (RAL). Below follows a brief discussion of these laws.

a. The Basic Agrarian Law (BAL)

Undang-Undang Pokok Agraria No. 5/1960 (UUPA) is an umbrella law providing a framework for a national system of land legislation. It does not contain many elaborated stipulations, but rather provides principles according to which implementing legislation was to be formulated. It is distinctly nationalist in its outlook. Article 1 decrees that all of Indonesia's territory as well as the natural resources it includes belong to the Indonesian people. The state is the manager of the land (Article 2), but –as Article 6 states- all rights to land must have a social function. Whereas this implies that collective rights supersede individual ones, Article 7 decrees that the general interest should be protected by limiting large landownership. The BAL instructs the establishment by law of a maximum size of land property (Article 17), and the formal registration of all land tenure to guarantee its certainty (Article 19). Article 9 stresses that all Indonesian citizens, men and women alike, have an equal right to land to provide for their needs. Nonetheless the interest of the state is paramount: the government has the authority to withdraw citizens' land rights if this is in the national interest (Article 18) – although a suitable indemnification should be paid and the decision must be in accordance with the law - in which case the land reverts to the state (Article 27).

The BAL's drafters aspired to develop a uniform national land law that honours Indonesian traditions, which, for land, come to the fore in the nation's many and diverse local *adat* systems. Article 5 states that the agrarian law governing land and water is *adat* law, whereas Article 3 confirms the validity of communal

(*ulayat*) *adat* land rights. However, the actual impact of these Articles is not so straightforward. Article 5 continues by posing the limiting conditions that *adat* may not conflict with national interests or those of the state, 'Indonesian Socialism', other regulations in the BAL, or other laws. Article 3 prescribes that the effectuation of *ulayat* rights must take place in such a way as to be in accordance with national and state interests and may not be at odds with other legislation. Recognition of *adat*-based land claims thus becomes possible only if no other legal claim is made to the land, and might be annulled if the limiting conditions of Article 5 require this.

Formal recognition of a land claim requires registration of the plot by the National Land Agency (*Badan Pertanahan Nasional*). This agency registers land titles to individuals as one of seven private rights, defined in Article 16 of the BAL. There are four primary land rights: the right of ownership (*hak milik*), exploitation right (*hak guna-usaha*), building right (*hak guna-bangunan*), usage right (*hak pakai*), and three secondary land rights: lease right (*hak sewa*), exploitation right (*hak membuka tanah*) and the right to collect forest products (*hak memungut-hasil-hutan*). The BAL allows for the creation of additional land rights by new laws, and in 1974 a state management right (*hak pengelolaan*) and temporal usage rights derived from subsided *adat* rights such as the sharecropping right (*hak usaha-bagi hasil*), and a right of temporal occupation (*hak menumpang*) have become accepted as rights to land not listed in the BAL. 5

b. The Basic Forestry Law

With over seventy percent of Indonesia's land mass defined as forestry land, those appointed as its managers are in an influential position. Since the early eighties this position is held by the Department of Forestry, based on Law 5 of 1967 on the Basic Forestry Regulations6, the original Basic Forestry Law.

Law 5/1967 gives the state the authority to designate and manage Indonesia's forest lands (Article 1 paragraph 1) –notwithstanding the earlier recording of the state's authority over all land in Indonesia in the BAL- and charges the population with assisting the government in developing the nation. Law 5/1967 hence has little time for land claims by the population that oppose the interest of the state. Article 5 paragraph 1 states that all forest in Indonesia and the natural resources found therein are controlled by the state, which gave the state the right (Article 5 paragraph 2) to plan the usage of forests, decide all legal issues pertaining to forests and draw up legislation relating to the forests.

Law 5/1967 makes no reference to the BAL or the various categories of land rights listed therein. Article 2 distinguishes between state forest (*hutan negara*), where no BAL private ownership rights apply, and private forest (*hutan milik*) which is forest growing on privately owned land, generally known as 'people's forest' that can be owned individually, commonly, or by a legal body (elucidation to Article 2). The key to forest ownership thus lies in landownership.

The position of *adat* rights is a precarious one. The elucidation of Article 2 explains that *adat* rights to forest are limited to *ulayat* rights, the validity of which is to be reviewed critically and may not interfere with national interests or higher legislation. It is not stated how the validity of *ulayat* claims is to be reviewed, or by whom. Article 17 decrees that communal as well as individual usufruct rights to forests may remain in place, provided they are deemed still valid and do not interfere with other purposes for which the forest is used. This gives no recognition of *ulayat* claims: the elucidation of Article 17 states that since such claims cannot be verified, they cannot be honoured if they oppose government plans such as forest clearing or transmigration projects. The state designates forest land, which is not subject to the BAL, thus making it virtually impossible to have *adat* claims in forest land recognized. This meant that communities living in forest areas and working forest land would need to request usage rights from the forest authorities. Claims of property based on *adat* have no value in this situation.

The Department of Forestry's resistance against the BAL and the Department's authoritative application of the Forestry Law by rejecting nearly all land claims in forest areas were causes of considerable resentment and uncertainty for those living in areas designated as forest land (see for instance McCarthy, 2000:104-113). Following on the heels of the 1999 decentralization laws, law 5/1967 was revised and reappeared as Law 41 of 1999 on Forestry. Law 41/1999 included various notable changes. First, the concept of *adat* forest (*hutaadat*) was introduced into forestry legislation. *Adat* forest is defined as state forest in the territory of an *adat* community (Article 1.6), and as such is not the exclusive domain of that *adat* community. The state remains in control of all forests and the natural resources with them, and is responsible for defining their status (Article 4). State forest, as explained in Article 5.2., can take the shape of *adat* forest, but to do so the community claiming *adat* forest must qualify as an *adat* community first. The elucidation to Article 67 contains condition for this. It stipulates that an *adat* community can still be considered to exist if :

1. the community still functions as a 'law community;
2. *adat* institutions can be said to exist and function;
3. a clear *adat* territory can be discerned ;
4. *adat* law institutions that are still respected exist;

5. A harvest of forest produce is still collected from the area to meet daily needs.

Article 67 itself states in paragraph 1 that *adat* communities, provided they can be proven to exist and are acknowledged as existing have the rights:

a. To collect product for the daily need of adat communities;

b. To manage the forest based on prevailing adat law provided this does not contradict official law;
c. To receive empowerment aimed at raising their level of prosperity.

It hence remains questionable whether law 41/1999 adds anything to forest law that improves the standing of *adat* claims other than that it indicates that recognition of *adat* communities is possible, it could even worsen the position of *adat* claims to forest land.

Regional autonomy laws The regional autonomy laws of 1999 and 2004 delegated considerable administrative authority to the regional level of government. Three key issues are of importance here.

First, the 1999 RAL transferred authorities from the central level mainly to the regional level of government. Article 11 paragraph 2 of Law 22/1999 explicitly mentis issues as a regional matter. The introduction of the RAL caused confusion as well as opportunistic interpretations by the new regional authorities. This is most visible in the forestry sector, as district governments applied various new Government Regulations decentralized authorities of Law 22/1999 to contravene the monopolist control of the Department of Forestry and begin giving out small scale logging concessions themselves. Within days of the coming into force of the 1999 RAL, forces within the central government effectuated a check on the regions' authority over land. This was Presidential Decision 10/2001 on the Realization of Regional Autonomy Regarding Land Issues.

This decision instructed the preparation of new legislation regulating the authorities of the regions in land management, and decreed that until such legislation was available authority remained with the NLA. This decision failed to make much impact in the heyday of regional autonomy. The legislation ordered in Article 1 of Presidential Decision 10/2001 followed two years later as Presidential Decision 34/2003 on National Authority in Land Issues. It orders the NLA revise and refine the Basic Agrarian Law in accordance with National Assembly Policy Decree IX of 2001 on Agrarian Reform and Management of Natural Resources, and to develop an inclusive land management and information system.

Second, the RAL abrogated Law 5 of 1979 on Village Government. This law had introduced a Javanese model, the *desa*, as the basis of village government throughout the nation. This model clashed with local *adat* governance of the village and was experienced as an unwelcome intrusion by those preferring their own *adat*, although it provided opportunities to induce change for those opposing custom. Following the law, local government representatives were installed at the village level with largely the same tasks as the *adat* leaders carried out. The 1aw on Village Government thus introduced a competitor to *adat* that made it possible to substantially weaken, or overrule, the influence of its leaders. Law 22/1999 contains a change of outlook. It defines a village (Article 1 under o) as:

An undivided legal community with the authority to govern and regulate the interests of the local community on the basis of local origins and customs (*asal-usul dan adat-istiadat*) which are acknowledged in the national government system and is [hierarchically] positioned below the district level.

The acknowledgement of the existence of regulating origins and customs in this definition provides leverage for *adat* authority at the village level. This is further elaborated in Article 99 which states that the scope of village government can be based on the rights of origin of the village, while Article 111 paragraph 2 states that all district regulations must take the rights, origins and traditions (*hak, asal-usul, dan adat-istiadat*) of the village into account. The RAL thus gives the position of the traditional authorities of the village a significant boost *vis-à-vis* the official authorities that he 1979 law on village government introduced.

Third, an important point here is that Law 32/2004 promotes regional democracy by giving more responsibility to the position of the regional head. Articles 56 to 67 provide guidelines for the direct election of regional heads by the population instead of being appointed by the regional parliament. This change greatly increases the population's influence in the governance of the area. Moreover, the central government gets the authority to suspend a regional head if he is sentenced for –among others- corruption, terrorism, subversion, threatening the state security or when sentenced to more than five years in prison for other reasons (Article 29 to 31). As members of the regional parliament, who are elected directly as well and can also be subjected to criminal prosecution, and the regional head together make up the regional government, this means that Law 32/2004 made this level of government accountable to both the regional population and the central government.

Adat authorities, the last category, are probably the most complex of them all. *Adat*, in Paser, is a very lively normative category that has validity for a large part of the population. Whereas the population is ethnically diverse and for a large part consists of immigrants, many of these agree to the validity of *adat*. As migrant communities settled in Paser throughout its history, many accepted land from the local rulers in exchange for their agreement to follow *adat*. Even if the interpretations among ethnically homogeneous migrant groups are mixed with the *adat* of their area of origin, a notice that local *adat* should be respected is quite common. In later migrants this notions exists as well. *Adat* concepts are common throughout Indonesia and the population of each area requires new arrival to respect their rights. For migrants arriving by themselves a respect for *adat* was essential to gain local acceptance, and for groups of transmigrants who usually hold land certificates and find strength in numbers, consideration of local *adat* is if not essential, at least sensible. As such, many inhabitants of Paser who are second, third or even further removed descendants of

migrants to the district consider Paserese *adat* if not as their own *adat*, then at least as the common norms of Paser. As their own interests are shaped and formulated with this *adat* in mind, many of these migrants will argue the validity of Paserese *adat*, even if they do not consider or present themselves as ethnic Paserese.

Authorities enforcing *adat* exist in a number of varieties. Traditional *adat* experts generally exist at the village level and are often called upon in first instances of dispute. They are able to settle a conflict swiftly and –usually- reasonably amicably, but they often do not have influence over unwilling opponents. In that case one of the various organizations championing *adat* rights might be of use. A few of these exist throughout Paser, and these are able to field eloquent and well-respected spokespersons with a reasonable knowledge of national law and contacts with local government officials. These can bring more social pressure to bear than the village-level *adat* authorities can, but not as much as a third category of *adat* organizations. These consist of a few organized groups that present themselves as '*adat* councils' or '*adat* militias'. These are larger organizations that add an element of compulsion to the procedure. When called upon, these organizations visit the opponent with a large group of members and attempt to convince him of their client's rights. Whereas the large group itself can already be intimidating, covert or overt threats of violence and land occupations may well be part of the procedure. For one group the threat and exercise of violence is their one strategy, most others prefer the threat as a means to force negotiation. These organizations are mainly called upon in conflict with large, non-local opponents such as plantation or mining companies. Such enterprises prefer to bring any disputes before the district court – which will usually confirm the validity of the official certificates and permits that the companies possess. The *adat* militias take the opposite stance; their main take on valid law is not with official law but on *adat* rights. If rights under official law violate *adat* rights, return of lands or indemnifications are in order. The police do not object to these organizations since, as one officer put it: "they ensure that local *adat* is respected and no conflict arises from it. We do not know local *adat*, so we cannot fulfill this task."

2.2. Access to Justice for The Landless Poor

The access to land and the settlement of claims for one group, 'the poor'. Defined as people with little property and financial means, this group transcends ethnic boundaries and comprises members of the original population, descendants of earlier migrants as well as recent arrivals. All claim land in East Kalimantan, be it through *adat*, indigeneity or national law. The role of the NLA in adjudicating land matters is a pivotal point of this research, as the NLA is the government agency responsible for land registration. Used together, registration and the issuing of a land certificate should improve the legal certainty of the certificate-holder. Yet in large parts of the nation such certification does not, as yet, inspire such certainty. NLA officials have a tenacious reputation for corruption. They are seen as demanding sums far higher than the required fees, as giving out multiple certificates to plots of land and as 'loosing' documents from their archives when this is convenient. Obviously such acts cannot be singularly ascribed to all NLA officials but the reputation effects the entire institution and causes many individual Indonesians to seek alternative sources of certainty. The dynamic impact of *reformasi* on Indonesian politics makes clear that government authority is not obvious. When considering authority over access to land, one should thus look beyond the established rules and laws and include political processes and local power relations. Why do people turn to specific authorities? The answer, I suspect, is much related to what people perceive as 'justice'.

The present post-New Order situation in which the Indonesian economy is steadily recovering from the crisis of the late nineteen nineties has given rise to numerous stimuli influencing the land tenure situation, as this case study of Paser illustrates. International companies invest in natural resource exploitation, stimulating the local economy while simultaneously creating stiff competition for land usage. Increased democracy has seen district heads and politicians start to heed the needs and interests of the local masses of voters, but this can work adversely as popular expectations do not live up to government means. Land indemnification for the construction of Tanah Grogot's boulevard and the ensuing expectations of high prices paid for land needed to broaden the main road is an example of this. The boulevard and other examples illustrate that the regional level of government is relatively autonomous from central government in plotting its own course in land matters, and that local land conflicts are mediated and settled by a variety of authorities, many of whom do not have such powers according to the law. Whereas this allows for original thoughts and pragmatic solutions that bypass a strictly bureaucratic application of the law, it does not necessarily contribute to a stable situation. Access to justice in matters of land access in Paser is dynamic and, if anything, a road of which the direction regularly changes. This is not necessarily a bad thing. Notably when it comes to poor people –by their own definition or by that of others- a strong readiness exists locally to look into their interests. This readiness is manifest in various ways. First in the willingness of individuals to come forward and state their grievances, second in the formation of non-government organizations –for instance *adat* organizations- representing the interests of these people and, third, in the willingness of the regional government to engage with these issues.

This does not mean, however, that these factors preclude other interests. The potential of equating the poor to those who maintain *adat* claims to land is a strategy that brings a considerable (potential) following to those championing the observance of *adat* rights. Poor subsistence farmers from the hinterlands do not approach the NLA of their own

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accord. Deference to state authority, combined with a (comfortable) remoteness of state representatives and a distrust of government officials, stop these poor from manifesting themselves beyond their own environment if outside support is absent. Introducing and providing such support thus provides not only assistance to these poor but also, in the best Foucauldian tradition, a vehicle to access district government. The predicament of the poor –as well as the category of 'poor' itself- thus can be used as a stepping stone to greater social power by the upwards mobile; be it politicians or leaders of non-governmental organizations.

This aspect is an important aspect of the reason why the poor get noticed. Ambitious social leaders need support to rise above their peers and the poor can provide it. Land conflict and its resolution provide a useful arena. Both the BAL and *adat* have ambiguous roles in land conflicts. Recognition of *adat* claims to land might well interfere with BAL-derived rights of others, be it large companies or poor (descendants of) immigrants. Claimants of *adat* land rights may be poor, but they are not the only poor land users.

'The poor' are more than an element in an equation for access to power. They cannot be simplified into a category subject to the whims of authorities in search of power, but they can hardly be seen as a homogeneous group with common interests either. What unites groups of people subject to conditions of restricted access to land is a shared legal consciousness, an abstract notion of how the law ought to be and what it should do: an ideal situation that cannot be reached by those without power. Yet they can, as the masses sustaining leaders and representatives, influence the directionality of events. 'The poor' thus are a source of political power for those in positions of leadership as much as a force directing where these leaders should take them if they want to maintain support. The issue of land registration shows a large category within the poor is unable to effort registration of land or the yearly taxes such property incurs. The land-tax system is geared towards people with a modicum of financial income and relatively small plots of land -the urban and semi-urban areas- or towards large commercial agricultural enterprises. The *adat* groups practicing shifting cultivation and subsistence farming on large tracks of land are by no means able to raise the taxes that their claims would command. Their problem is thoroughly foreign to the theoretical assumptions underlying Paser's land taxes, in which a large areal equals intensive commercial exploitation. Tax deductions for such traditional modes of land usage could be a solution in theory, but would lead to gross inequality once these fiscal advantages become incorporated in the market economy and *adat* land is leased out to companies. The current situation in which claimants do not request registration and the NLA refrains from actual registration in these areas is a go-between, but a more constructive solution will be needed in the future.

4. CONCLUSION

The official responsibility of the National Land Agency (Badan Pertanahan Nasional, hereafter NLA). Nonetheless other official institutions such as the Department of Forestry and regional governments have authority over issues pertaining to land usage as well. Moreover, local custom (adat) can be a normative source opposing NLA decisions. The application of national land law has come under pressure from powerful appeals to local adat. The validity of such adat-based rights is established in national land law, although subject to severe limiting conditions. *Adat* rights are subsidiary to national interests and all land rights distinguished in official land law. This effectively limits the official validity of *adat* to land on which no other rights are placed; a situation that is close to non-existent in Indonesia. Yet throughout the nation, *adat* rights to land are argued through appeals to indigeneity. Original populations feel they lost tremendous stretches of their *adat* lands to accommodate state interests, companies and immigrants. Pointing out their sacrifices, these groups address local governments demanding return or recompense of these lands.

'The poor' are more than an element in an equation for access to power. They cannot be simplified into a category subject to the whims of authorities in search of power, but they can hardly be seen as a homogeneous group with common interests either. What unites groups of people subject to conditions of restricted access to land is a shared legal consciousness, an abstract notion of how the law ought to be and what it should do: an ideal situation that cannot be reached by those without power. Yet they can, as the masses sustaining leaders and representatives, influence the directionality of events. 'The poor' thus are a source of political power for those in positions of leadership as much as a force directing where these leaders should take them if they want to maintain support. Their problem is thoroughly foreign to the theoretical assumptions underlying Paser's land taxes, in which a large areal equals intensive commercial exploitation. Tax deductions for such traditional modes of land usage could be a solution in theory, but would lead to gross inequality once these fiscal advantages become incorporated in the market economy and *adat* land is leased out to companies. The current situation in which claimants do not request registration and the NLA refrains from actual registration in these areas is a go-between, but a more constructive solution will be needed in the future.

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