

1 Land, economic development, social justice and environmental management in Indonesia: the search for the people's sovereignty

John F. McCarthy and Kathryn Robinson

Unresolved land governance questions are at the heart of President Joko Widodo's political agenda. On 14 October 2014, a week before his inauguration, Widodo made a speech touching on several key issues facing Indonesia: reducing greenhouse gas emissions from annual forest fires; resolving a plethora of often violent disputes in the mining and agricultural sectors; and addressing the poverty of farmers eking out an existence on tiny plots of land (Saturi 2014). During his first months in office the president sought to develop infrastructure to promote development and ease land acquisition for investors. Many of these initiatives and policy statements responded to a deeply held desire among Indonesians for an administration that could steward development, pursue social justice and reduce conflict. Such policies depend on addressing land questions, which are central to economic development, social justice and environmental management.

The state needs to recognise and protect the insecure tenurial rights of many Indonesians while finding ways to support forms of development that assist the majority, to deal with proliferating land conflicts, to resolve the property rights question at the heart of Indonesia's unsustainable environmental transition and to provide affordable housing for the poor. In this introductory chapter we discuss these dilemmas in

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relation to wider international debates about natural resource management, land governance and social justice. For instance, what role might land reform play in poverty alleviation? Can the formalisation of property rights provide a significant means of ensuring development? How might initiatives to recognise customary (*adat*) tenure protect indigenous landowners? How can more effective land-tenure governance build on existing localised, vernacular forms of tenure? Can securing tenure in forest areas ensure effective carbon sequestration in forests and address deforestation? Do international governance initiatives, such as those that involve greater corporate social responsibility or that seek to ensure free, prior and informed consent (FPIC) in land transactions, provide an effective means of dealing with land grabs?

We find that land issues are becoming ever more urgent as demand for land, pressure for individual title over land and the increasing commercialisation of land, including the large-scale acquisition of land by corporate entities, continue to generate conflict. While the shift to a more democratic and decentralised political system has led to gradual progress, the reform of Indonesia's land tenure regime remains a perpetual work in progress. This delayed resolution is due to a combination of factors: Indonesia's political economy depends on resource extraction and land-intensive development; powerful interests continue to thwart thoroughgoing reform; the complexity of Indonesian land arrangements confounds one-size-fits-all approaches; and bureaucratic inertia continues to slow new initiatives. Consequently, policy-makers, reformists and civil society activists are still searching for ways to improve land governance and resolve tenure conflicts. The challenge remains of developing and implementing the policy and political frameworks to ensure that the allocation of property rights supports the capacity of ordinary Indonesians to access and control the land, whether it is state or public land, indigenous or community land, rural land or land in urban *kampung*.

This volume considers critical land questions for Indonesia, and the current prospects for dealing with them. What are the contemporary patterns of land administration and land claims? What political interests, agendas and questions are at play? What are the prospects for building a better system for the management of land tenure, and for resolving the conflicts and injustices that bedevil land arrangements? How are the social and environmental consequences of land management systems being managed?

In the first section of this chapter we consider land questions through the lens of Indonesian political discourse. We then discuss the distributional justice questions associated with land in rural and urban contexts. Next, we examine efforts to improve the governance of customary and private freehold land, and to address the tenurial questions affecting

resource management. In the final section we review the search for more appropriate responses to Indonesia's unresolved land dilemmas.

POPULAR SOVEREIGNTY IN LAND AFFAIRS

Within the Indonesian polity, land questions have a particular inflection. The sovereignty of the people (*kedaulatan rakyat*) is a central concept in the Indonesian political tradition (Robinson 2014). The first article of the constitution places the highest power in the hands of the people (article 1(2)). The nationalist authors of the constitution were influenced by ideas from the Enlightenment and the French Revolution. Indeed, the political value of popular sovereignty is a 'dominant conception of political power' in many modern political cultures (Morris 2000: 7) and can have a range of meanings, not least in Indonesia (Bourchier, forthcoming).

The concept of popular sovereignty is used to support three political assertions: first, that the interests of all citizens should be taken into account in determining policy, or in other words that the ends of state policy should be constrained by justice; second, that a government has authority to act only so far as it is authorised by the people through a process of legitimation and consultation, typically through elections; and finally, that the consent of the governed is necessary for legitimate rule (Morris 2000: 15). With respect to land affairs, the concept of popular sovereignty suggests that state land policy should be accountable to the nation's citizens and that it should support or enhance the right of local populations to access, use and control land and to enjoy the benefits of its use and occupation (Borras and Franco 2012).

Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) articulates this principle through the concept of the 'social function' of land, namely that land has a central role in promoting social justice (see Chapter 12 by Ambarwati et al.). It resonates with the constitution by placing the state at the centre of land affairs: article 2(1) of the Basic Agrarian Law establishes the state's right of control (*hak menguasai*) over land, reflecting article 33(3) of the constitution, which states that 'land and water and the wealth they contain are controlled (*dikuasai*) by the state and used for the welfare of the people'. This is a centralised, statist framing of land governance that leaves the state with the responsibility of allocating rights on behalf of the people. The politico-legal discourse of the constitution has created a nexus between the people's sovereignty, popular justice and state management of land and natural resources. Thus, land policy and administration lie at the heart of the ideal of the nation state as the chief actor in providing collective goods, securing justice, redistributing wealth and protecting the environment.

In practice, governments have often misused their land appropriation powers, including by conflating state sovereignty and the people's sovereignty. During the New Order period, the state deployed the rhetoric that it was acting in the name of the national community to support national development, while allocating large areas of land to vested interests close to the regime. In post-Suharto Indonesia, political rhetoric continues to draw on this tradition. In 2010, for instance, the head of the National Land Agency (Badan Pertanahan Nasional, BPN) stated that land policy needed to focus on four main principles: improving the welfare of the people; pursuing distributive justice; fostering a just and peaceful society; and creating social harmony. This was to be achieved by resolving land conflicts and disputes (Winoto 2010). President Widodo has stated that land reform is a pillar of the national development program (see Chapter 11 by Neilson). This commitment points to the unresolved ideological debates and political questions regarding land that have echoed down the decades since the passage of the framework Basic Agrarian Law in 1960.

DISTRIBUTIONAL JUSTICE AND ECONOMIC DEVELOPMENT

Rural land

For many decades, international development analysts have argued that land tenure reform is critical for the success of development policies. They argue that land is central to poverty alleviation and food security, and that achieving more equitable access to land is desirable on efficiency and equity grounds. Research has found that 'even though access to land insures household income only moderately against shocks, it provides almost complete insurance against malnutrition' (Deininger and Binswanger 1999: 256). Especially for rural populations, or urban dwellers with links to the countryside, land provides an essential safety net when no other is available.

While the Indonesian economy has grown rapidly in recent decades, inequality is increasing more quickly in Indonesia than in any other Asia-Pacific country except China. Zhuang, Kanbur and Maligalig (2014: 23) find that the Gini coefficient for income—a statistical measure of inequality—increased by 1.4 per cent per year in Indonesia between 1990 and 2011, from 29.2 to 38.9. Zhuang, Kanbur and Rhee (2014: 37) note that in any society, 'income inequality is likely to intensify if changes in the relative returns or in asset distribution are in favor of those [who are] better-off in society, such as owners of capital and land, [and] skilled labor'.

Analysis of 73 countries between 1960 and 2000 found that countries with more equal land-distribution policies in the 1960s enjoyed higher

economic growth in subsequent decades. There is a close link between distributional justice and economic development: countries with a more equitable distribution of land achieve growth rates two to three times higher than those in which distribution is inequitable (Deininger 2003: 18–19). El-Ghonemy (2003: 40) notes that ‘a decrease of one-third in the land distribution inequality index results in a reduction in the poverty level of one-half in about 12–14 years’, and adds that ‘the same level of poverty reduction may be obtained in 60 years by agriculture growth sustained at an annual average of 3 percent and *without* changing land distribution inequality’. Research in India supports these conclusions, finding that areas under feudal-type, highly unequal landlord systems had persistently worse developmental outcomes after the beginning of the Green Revolution (Banerjee and Iyer 2005). The study found that non-landlord areas applied 43 per cent more fertiliser and achieved 16 per cent higher agricultural yields than landlord areas (pp. 1,201–2). Inequality in land ownership had entrenched a rentier class that harmed long-run productivity simply because landlords had less incentive to invest in more efficient production than owner-cultivators. Other researchers have found that tenant farmers and share croppers are less likely to invest labour in measures to increase productivity (especially permanent improvements in infrastructure such as irrigation and farm roads), as they reaped only a small amount of the benefits (Huizer 2011).

In Indonesia, as in other countries, the pressure on land is increasing with population growth, and the size of the average landholding is becoming smaller (Bachriadi and Wiradi 2013). This problem of land fragmentation is exacerbated by large-scale land acquisitions and the rapid conversion of agricultural land to other uses, including urban residential use – another consequence of population increase and the growth of cities. According to the Ministry of Forestry’s own figures, 262 corporations have plantation concessions extending over 9.39 million hectares of the forest estate (*kawasan hutan*), managed under licences that may last for up to 100 years. In addition, 303 corporations have timber exploitation rights over 21.49 million hectares of the forest estate, while 600 oil palm plantation corporations control at least 9.4 million hectares of land under commercial lease rights (*hak guna usaha*, HGU) (Toha and Collier 2015). Critics contend that, together, all oil and gas, oil palm, timber and logging concessions cover 68 per cent of the country (Fogarty 2014). Such figures often include the land banks that private and state companies have accumulated under various licences and set aside for later development (McCarthy, Vel and Afiff 2013).

As a consequence, land distribution in Indonesia has become more unequal. One study calculated that the Gini ratio for the distribution of agricultural landholdings increased from 0.64 in 1993 to 0.71 in 2003

(Rusastra, Lokollo and Friyatno 2007).¹ Another study found that inequality was particularly pronounced in the irrigated farm areas in Java and in the dry-land food crop and horticultural areas in other islands (Sudaryanto, Susilowati and Sumaryanto 2009). Inequality of land distribution in Indonesia is borne out by Peluso (Chapter 2), Ambarwati et al. (Chapter 12) and Potter (Chapter 14) in this volume.

During the decades after World War II, civil society activists and political reformers across East Asia and the wider developing world pursued agrarian reform, promoting access both to land and to the various inputs (knowledge, credit, markets) required to increase productivity and enhance livelihoods (White, Borras and Hall 2014). These reforms aimed to achieve systematic change in the distribution of land, in order to provide equitable access to productive assets and to the economic opportunities that can be derived from the use of productive land. Such reforms can address historical injustices while supporting the structural transformation of economies, at once addressing both livelihood and distributional justice questions.

Several nations in Asia have achieved significant development improvements from changes in tenancy laws, ceilings on landholdings, and compulsory or voluntary acquisition of land for distribution to the poor and landless. For instance, thoroughgoing agrarian reforms in Vietnam established a relatively egalitarian agrarian structure that has led to the revival of family farming and significant improvements in agricultural production (Tuan 2002).

When the Indonesian government passed the Basic Agrarian Law in 1960, land ownership in Java, the central arena of reform at the time, was already fragmented and population density was high. Moreover, while Java contained large areas of state-owned plantation land, it lacked large private latifundia for redistribution, as, for instance, in the Philippines (Lucas and Warren 2013). In the 1960s, the Indonesian Peasants Front (Barisan Tani Indonesia, BTI) began a campaign of unilateral action (*aksi sepihak*) to redistribute land, mainly in Java. BTI was affiliated with the Indonesian Communist Party (Partai Komunis Indonesia, PKI). Its unilateral action campaign led to a high level of class conflict between landlords and tenant farmers, and was one of the critical political dynamics leading to the events of 1965, which resulted in the crushing of PKI and its affiliates. Although this period saw the nationalisation of Dutch estates,

1 Recent publications derived from the 2013 agricultural census do not refer to a Gini coefficient for the distribution of agricultural landholdings. As Neilson has pointed out in a personal comment, the apparent change in enumeration unit in the 2013 agricultural census makes it less easy to use that dataset in a comparative way. See Chapter 11 by Neilson (footnote 12) for further detail on the enumeration changes.

in many respects Indonesia's agrarian reform movement was stillborn. Key provisions in the Basic Agrarian Law, such as the ceilings on land ownership, have never been implemented (see Chapter 12 by Ambarwati et al.).

Given its association with PKI, the land reform agenda remained taboo for decades. But land affairs retained its symbolic place in Indonesian political discourse, and successive administrations have continued to celebrate National Farmers Day (Hari Tani Nasional) on 24 September each year, the anniversary of the day in 1960 when President Sukarno proclaimed the Basic Agrarian Law. This national day provides a platform to bring issues affecting the nation's farmers to public attention. In 2015, it provided an opportunity for interest groups to focus on the agrarian reforms promised by the Widodo government and on the question of whether the people exercise sovereignty over land affairs (Murdaningsih 2015).

Today, discussions revolve around how to bring the governance of land and natural resources into line with the prevailing collective perception of justice and morality in the local economic sphere. The main questions relate to land reform and tenure security, and how to protect those who are dependent on the land for their livelihoods from land grabs and forced dispossession for agribusiness, forestry and resource extraction projects (see Chapter 6 by Robinson, Chapter 13 by Afrizal and Anderson and Chapter 14 by Potter). The agrarian reform question remains pertinent given that 55 per cent of the population depends in one way or another on agriculture and that 'recent studies indicate that more than one-third of Indonesia's rural population is probably landless and faces multiple associated vulnerabilities' (Srinivas et al. 2015: 3).

A contrary view, expressed by Neilson in Chapter 11, is that the land reform agenda has become less relevant to poverty alleviation in Indonesia. Like other countries across the global south, Indonesia is experiencing an erosion of returns to smallholder farmers, the emergence of new opportunities in the non-farm sector (both local and non-local), environmental degradation, increasing land shortages, and cultural and social changes, all of which affect the opportunities for poverty alleviation in agriculture. As Rigg (2006) argues, the process of 'deagrarianisation', the decline on reliance on agriculture within diversified livelihoods and the increasingly multi-local nature of household livelihoods can be seen as limiting the possibility for land reform to drive poverty alleviation across the global south. Neilson points out that Indonesia may fit this pattern to some degree, given the declining proportion of the population whose livelihoods are derived from farming. Indeed, the 2008 World Development Report on agriculture and development classified Indonesia as one of the 'transforming' countries, where agriculture is no longer a major

source of economic growth, but where poverty remains overwhelmingly rural, accounting for the vast majority of all poor (World Bank 2009). In prescribing policy approaches to poverty alleviation in the transforming countries, the World Bank controversially emphasised increased employment in high-value agriculture, new labour opportunities in the rural non-farm economy and migration, rather than emphasising the development of the traditional agricultural sector or land reform.

Yet, as Ambarwati et al. point out in Chapter 12, agriculture is still the single largest provider of rural incomes and employment in Indonesia. With little state support for poor farmers or protection of their land, socio-economic differentiation continues, increasing the inequality and the vulnerability of poor households. Land also continues to play critical social security and cultural functions (as Neilson notes in Chapter 11). These observations lead Ambarwati et al. to argue that policies should re-engage with supporting smallholder agriculture, discourage speculation and accumulation in land, and find ways to provide users of land with secure tenure.

Critics have noted a trend across the global south towards development policies that aim to facilitate private investment in agriculture by supporting large-scale agribusiness investment. Such policies can exacerbate the problem of an uneven playing field that is already tilted against the smallholder sector. There is therefore a need for policies that explicitly aim to support small-scale producers, 'with related benefits for poverty reduction, social cohesion, and natural resource management' (Vorley, Cotula and Chan 2012: 6). Potter (Chapter 14) argues that, in contrast to Thailand, Indonesia has not developed effective supports for oil palm smallholders who cultivate their own land. Decision-makers continue to facilitate access to cheap land and labour for the booming plantation sector, largely at the expense of villagers whose tenurial rights remain insecure. Despite the boom in smallholder oil palm in many areas, frontier areas continue to see large areas allocated to plantations, with a marked shift in the agrarian structure towards the plantation sector. In parallel fashion, Ambarwati et al. (Chapter 12) observe that a pattern of increasingly speculative land purchases, largely driven by absentee landowners, may be generating the concentration of land ownership across rice-growing districts in Sulawesi and Java.

As an alternative to state-led redistributive land reform, where Indonesia has yet to make significant progress, planners can pursue the resettlement of landless persons on state lands. Given the large area of land subject to state control and the statist framing of land law discussed earlier, the state can choose to allocate rights over large tracts of land for specific uses, as it has in the past under government-sponsored internal migration, or transmigration (*transmigrasi*), programs. This strategy can

be used more generally to satisfy the land, food and income needs of the poor and to make land available for agricultural development and housing construction. Former president Susilo Bambang Yudhoyono set out to distribute 9.25 million hectares, comprising state-controlled land and production forest areas, to the poor (Suara Pembaruan 2007). These efforts made little progress, however, because most of the land was already occupied, zoned for forest uses, or subject to existing concession licences that were not readily rescinded and hence difficult to free up. His administration deemed the political costs of making use of legal provisions to rescind licences over unused land (*tanah terlantar*) too high (Alfiyah 2013).²

After receiving support from civil society before his election, President Widodo set new targets for distributing land to internal migrants. Despite continuing criticism of his government's new transmigration program, he is pursuing a plan to allocate an area of 9 million hectares of agricultural land for transmigration (Fahlevi 2015; Jpnn 2015; Safitri et al. 2015). The administration also plans to distribute 12.7 million hectares of land from the forest estate to local and indigenous peoples under a social forestry target (see Chapter 5 by Afiff). Once again, such strategies focus on redistributing forest land – often areas already subject to local uses, or 'underutilised' state land subject to sleeping concessions – rather than pursuing a redistributive agenda, as proposed by the advocates of land reform (Gumelar 2015; Saturi 2015).

Urban areas

As opportunities for poverty alleviation in agriculture have declined, large numbers of people have moved to the cities. Like other countries in the region, Indonesia is rapidly urbanising. It experienced the second-highest expansion in the area of urban land in East Asia between 2000 and 2010, amounting to 1,100 square kilometres (World Bank 2015a: 11). Greater Jakarta has swelled to become Asia's fourth-largest megacity. Home to more than 23 million people, the city spills over into adjacent administrative areas to encompass 1,600 square kilometres (Mead 2015). As discussed by Hudalah, Rahmat and Firman (Chapter 8) and Guinness (Chapter 9), many other urban centres are also expanding rapidly across the archipelago.

The chapters in this volume focus on two sets of issues related to land tenure and land security in urban areas. The first concerns the lack of affordable housing and secure tenure for the urban poor. With no

2 These provisions are set out in Government Regulation 11/2010 on the Control and Utilisation of Neglected Land.

affordable options, urban residents seek low-cost housing in areas with substandard infrastructure where they face a high risk of exposure to environmental hazards and an unhealthy physical environment. Huda-lah, Rahmat and Firman (Chapter 8) and Guinness (Chapter 9) point to the challenges that state interventions face in planning, managing and governing informal city spaces—the sites of much trading, production and housing in the squatter or slum areas known as *kampung*. They stress the need to bring in informal actors, such as the *kampung* masses themselves, as key stakeholders, along with the state and the commercial sector, to work through the tenurial problems and the poverty faced by the insecure urban poor. Formalisation is not a solution, they suggest, and will not serve the people's sovereignty in urban *kampung*.

A second set of issues, relevant to urban (as well as rural) areas, relates to infrastructure provision and development. Widodo has identified this policy area as a key part of his economic development agenda. He is pursuing a large infrastructure development plan first designed under the government of his predecessor, Yudhoyono. The intent is to integrate the localised economies of the archipelago by developing ports and roads. The success of the plan depends on both government and private investment and on the government being able to assist private investors by resuming the required land.

The Indonesian state retains the right of compulsory land acquisition, with compensation, for the broader public benefit: the 'eminent domain' power. In the past the state has used this prerogative to expropriate property—often to serve private rent-seeking interests, without the use of due process and without paying fair compensation—creating serious hardship for the dispossessed landowners (Deininger 2003; Lucas and Warren 2013; Chapter 6 by Robinson, this volume). The use of the eminent domain power by the Jakarta municipal government in 2015 to clear slums shows the potential for conflict if the state's acquisition powers are not used carefully (Van Voorst and Padawangi 2015). To avoid conflict and economic hardship, planners who wish to acquire land under the eminent domain power need to respect the rights of the original occupants of the land and avoid disrupting their livelihoods while ensuring there is a legitimate claim to public benefit.

As Davidson notes in Chapter 7, the Widodo administration faces considerable obstacles in making use of its eminent domain powers to push through its expansive infrastructure plans. To overcome these difficulties, it must develop the capacity to protect the property rights of investors, reform processes for involuntary land acquisition so that they work effectively, and pay unwilling landowners the full market value of their land as compensation for their lost rights. One new approach involves replacing the New Order practice of offering minor compen-

sation (*ganti rugi*) to those asked to move with more appropriate and satisfactory settlements, under profit-sharing (*bagi untung*) arrangements (Kompas 2011; Reerink 2012).

Infrastructure spending has picked up under Widodo and new projects are being pushed forward. However, in a move worrying environmentalists, the administration has weakened environmental and planning laws in order to speed up the development of industrial zones and infrastructure and 'remove obstacles to business and investment', including in the forestry sector (Sekretariat Kabinet Republik Indonesia 2015; Eco Daily 2016). Yet, 'much of Indonesia's bureaucracy has stubbornly resisted Widodo's calls for speed, transparency and efficiency. Land acquisition laws are tortuous, and everything takes an inordinate amount of time' (Economist 2016).

LAND GOVERNANCE AND LEGAL COMPLEXITY

At the heart of the land issue lies the challenge of providing equitable access to and distribution of the opportunities and resources associated with land. Questions of governance revolve around who gains access to resources, the conditions of access, and how decisions on access and use should be made. Such questions need to be resolved in ways that lead to clear, just and transparent land management policies and to systematic implementation of those policies. These questions pertain to land held under informal customary title and private freehold title—a difference that developed in the colonial period—and we will consider these in turn below.

The colonial legal system distinguished between, on the one hand, categories of registered land subject to Dutch law with secure Western style individual property rights, and, on the other hand, areas under state domain, such as forest, as well as areas subject to customary *adat* property systems. The last category was historically determined.

For centuries, villagers had made modest livelihoods on land regulated by customary principles of access, ownership and inheritance. The colonial dispensation of indirect rule considered these *adat* areas as being subject to a right of avail (*hak ulayat*)—the right of a community to avail itself of the land and the resources on that land, and to control access to and the use of resources within a circumscribed territory according to a community's own institutional arrangements (Sonius 1981: xlvii).

After independence, the new republic wished to resolve the dualistic land system inherited from the Dutch. The 1960 Basic Agrarian Law aimed to provide a single framework for regulating land issues for all Indonesian citizens. It privileged western land concepts, requiring that

vernacular and customary forms of tenure be converted to one of the seven types of land rights recognised by the Basic Agrarian Law. As Bedner notes in Chapter 3, this was a way of favouring formalised private ownership, and various state-provided rights, on what was considered to be state land.³ Given the state's administrative capacity at the time, this agenda for formalised management of land affairs across a highly diverse and rapidly developing landscape was very ambitious. More than 50 years on, it has not yet been realised.

With respect to customary land, the Basic Agrarian Law took 'the [Minangkabau] *adat* concept of customary territorial rights of avail (*hak ulayat*) and convert[ed] it to a national principle' (Lucas and Warren 2013: 6). The law also allowed the national government to appropriate and allocate land within local territories by invoking a 'national interest' claim. The New Order government then bifurcated the administrative arrangements for land affairs: BPN would apply the Basic Agrarian Law in areas outside the forest estate, and the Ministry of Forestry would apply forestry law within the areas zoned as forest, which it had mapped to extend over around 70 per cent of the nation. The principle of the state right of control (*hak menguasai*) allowed the forestry ministry to classify many areas that were subject to local customary uses as 'free state domain' – land unencumbered by rights, and that the state could freely dispose of. Hence, many customary uses of land went unrecognised under formal state law. Effectively, this allowed the state to allocate concessions or other development licences over land that lacked formally recognised rights, but which were considered to be 'owned' under customary systems.

In countries with complex legal histories, parallel sets of norms, rules and laws can govern land tenure, sometimes with several decision-making structures pertaining to a particular land issue, each with its own sources of legitimacy and employing its own decision-making processes. In consequence, tenure rules in such countries tend to be flexible, multifaceted and fluid (Schuck 1992). This is the case in Indonesia, which has a pluralist system of land law stretching back to the colonial period. Indeed, as Bedner notes in Chapter 3, legal complexity has become even more central to Indonesian land affairs. The problem, he argues, is not the plurality of land institutions per se – inherent in a complex country such as Indonesia – but rather the opportunities for abuse in a context of bureaucratic competition, a weak judiciary and wide disparities in power.

3 Article 28H(4) of the 1945 Constitution states that 'every person shall have the right to own private property, and such property may not be appropriated arbitrarily by anyone'.

The *reformasi* period around the turn of the millennium can be seen as a critical political turning point. The transition from the Suharto regime led to a new openness – the expansion of civil liberties, the freeing up of the media, the regular holding of freely contested, multi-party elections and the decentralisation of authority, including in resource governance. In this more open political environment, a proliferation of land disputes led to a crisis of legitimacy for Indonesia's centralised land governance system as newly empowered actors attempted to reclaim land rights and to demand more just benefit- and land-sharing arrangements (Warren and McCarthy 2009).

The idea of *adat* rights is stronger in the discourse of social movements than in law, given that the state has not yet enacted effective legal instruments to provide full recognition or protection of those rights. Claims based on *adat* were given a boost by the twin forces of democratisation and decentralisation, which popularised the rhetoric of empowerment (*pemberdayaan*) and promoted localism (see Chapter 6 by Robinson). The prospects for legal recognition of *adat* rights also improved with the formation of the Constitutional Court, which allows for the establishment of judicial doctrines that apply beyond the individual cases considered by other courts (see Chapter 3 by Bedner).

The *reformasi* process has in some cases enabled the dispossessed to push back, particularly where the free media have aired instances of injustice, where the Constitutional Court has issued rulings that support their claims or where the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) has investigated and charged district heads for corrupt transactions in regard to land concessions. Yet, in many other respects the political economy and the oligarchical structure associated with the old regime remain intact (Robison and Hadiz 2004). Many of those who had accumulated licences and permits during the New Order were allowed to retain them after the transition (McCarthy and Moeliono 2012). This has posed problems for the legitimacy of a property rights regime that rewards those who have obtained land by corrupt practices and allows land to become concentrated in the hands of the few. In remote rural areas, powerful businesspeople worked with local officials empowered by the decentralisation process to dominate key resource sectors and land affairs, at least until the recentralisation of many areas of authority in 2014. Corporate developers have continued to enclose large areas of land for plantations and mining concessions (see Chapter 2 by Peluso, Chapter 6 by Robinson and Chapter 15 by Savitri and Price). Political reform has coexisted with continuity or even extension of the concession system associated with the New Order, leading to increased rates of deforestation and forest conversion, and to escalating levels of conflict over resources.

Moreover, despite the advocacy of social movements, the Ministry of Forestry has managed to retain its administrative authority over the forest estate, a vast area encompassing some 133 million hectares (Wibowo 2010). According to the ministry's own figures, an estimated 48 million people live in 41,000 villages located in or close to areas that are considered part of the forest estate (Santoso 2011). For the most part, these villagers have weak property rights and precarious land tenure. Despite the promise of people's empowerment in the reform era, intractable land disputes continue across Indonesia, particularly in these areas. The Ministry of Forestry has estimated that 16.8 million hectares of land (an area equivalent to around 40 per cent of the Netherlands) are subject to conflict, with active disputes affecting over 1.2 million hectares (Santoso 2011).

Indigeneity: securing customary rights?

Land policy typically aims to provide tenure security, in order to ensure that people are not dispossessed and that the property rights of owners and users of the land are protected. In Indonesia, this raises the question of how to secure customary rights over land. Following the Convention concerning Indigenous and Tribal Peoples of the International Labour Organization (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007), international advocates have developed a body of international law and jurisprudence that recognises the rights of indigenous peoples. As described by Bedner (Chapter 3), Fay and Denduangrudee (Chapter 4), Afiff (Chapter 5) and Robinson (Chapter 6), NGOs and social movements in Indonesia have taken up this rhetoric in order to secure the customary rights of indigenous and local peoples across the archipelago.

The Indonesian state has taken several steps to resolve the issue of *adat* land rights (see Chapter 3 by Bedner, Chapter 4 by Fay and Denduangrudee and Chapter 5 by Afiff). In 2001, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR) passed a decree calling for the revision of agrarian laws implicated in 'poverty, conflict and social injustice among the people and the destruction of natural resources' (Decree IX/MPR/2001). In 2013, Indonesia had what appeared to be its 'Mabo moment' when the Constitutional Court ruled that areas within the forest estate that were subject to *adat* claims could be recognised as private forest (Constitutional Court Decision 35/PUU-X/2012).⁴ Although some government departments have taken steps to comply with the MPR

4 The Mabo decision (1992) was a hallmark moment in Australian recognition of customary rights. It has paved the way for legislation that follows the model of recognising a bundle of rights over a parcel of land (see below).

decree and the Constitutional Court ruling, the state has not developed a clear process for recognising *adat* claims. The Widodo administration appears committed to recognising the land rights of indigenous peoples, but the national parliament (Dewan Perwakilan Rakyat, DPR) is yet to legislate change. The parliament has placed a land bill on the list of legislation to be discussed during Widodo's first term, but there is little momentum for a draft bill that would recognise indigenous rights (see Chapter 4 by Fay and Denduangrudee). The lack of support among political parties for the *adat* reform agenda continues to disappoint those advocating for *adat* rights (Prabowo 2016).

Critics of the structuring of land rights around *adat* concepts suggest that legal concepts of *adat* inherited from the past remain essentialist, relying on a 'customary' or 'traditional' framing of rights according to a nativist discourse. For them, *adat* remains paradoxical, protean and contradictory (Davidson and Henley 2007). The attempt to use *adat* as a means to address historical injustices raises questions about identity and equity, with policy-makers and legislators unwilling to differentiate between Indonesian citizens as a broad category and Indonesians who make claims to *adat* rights based on their indigenous identity (see Chapter 4 by Fay and Denduangrudee). How should the state resolve the difference between citizen-based principles of justice governing urban and rural land management (where 'citizen' is an abstract legal category) and *adat*-based principles of justice (where the consensus from the *adat* movement is that 'indigenous' identity is a form of self-identification)? How should rights be allocated within particular localities, in an archipelago where populations have been so mobile over time? How can the state ensure justice both for Indonesian citizens in general and for the subsection of people claiming also an indigenous identity?

Over the last few decades many countries have established land tenure regimes that attempt to deal with similar questions of indigenous rights. A report by the Washington-based Rights and Resources Initiative states, however, that in most of these countries indigenous people have restricted rights under 'circumscribed and contingent rights regimes' that are characterised by a 'lack of clarity' (RRI 2012: 8). The quest in Indonesia to address historical injustices by formally recognising communal rights (*hak ulayat*) continues to face similar challenges. As Bedner notes in Chapter 3, the anti-*adat* forces remain strong, and the movement advocating for indigenous rights has yet to achieve significant changes to land tenure arrangements to recognise *adat* rights.

Providing secure private property rights

A dominant approach to land tenure security has involved formalising boundaries and conditions of access and ownership, and securing indi-

vidual ownership through land registration and titling. Formalisation in this sense involves the state recognising a user's property rights by creating a legal category, titling a piece of land to an individual and registering the title. As described by Van der Eng (Chapter 10), this means creating a public ownership record, typically in a cadastral database. For the state, formalisation has the advantages of increasing the legibility of land relations for state planners, providing greater control over the conditions under which land is held and providing opportunities for expanded revenues from land taxation. It also has advantages for the right holders: landowners can obtain a more secure hold over their property, sell their land more readily and use it as collateral to obtain loans (Hall, Hirsch and Li 2011; Bruce 2012). On the other hand, researchers have shown that, in practice, formalisation processes tend to exclude less powerful groups, such as women or indigenous groups (Hall, Hirsch and Li 2011; Lucas and Warren 2013).

Nonetheless, a powerful policy narrative has emerged that suggests that the provision of full private-property rights is central to development. In an influential book, De Soto (2000) argued that the provision of formal property rights would allow the poor to use their land assets more effectively, providing a pathway out of poverty. The formalisation of property rights would provide incentives for investment and enhance economic growth, by enabling landowners to access credit and by allowing the transfer of productive lands to those who could use them most efficiently.

In contrast to Thailand and other countries in the Mekong region (Hall, Hirsch and Li 2011), Indonesia has pursued land titling with limited success. The Ministry of Agrarian Affairs and Spatial Planning/BPN has administrative responsibility for all areas outside the forest estate, that is, for approximately 30 per cent of Indonesia's land area. This area contains around 85.8 million land parcels, of which 41 million have not yet been registered (Toha and Collier 2015). Indeed, as Van der Eng notes in Chapter 10, colonial and post-colonial governments have sought to resolve the issue of land registration—without success—for the past 200 years. Shortcomings in administrative processes and structures and the high cost of the required administrative effort continue to hamper progress.

The World Bank has supported Indonesia's land-titling agenda in the past, for instance, through the Land Management and Policy Development Project during the first decade of the new century. While 1.7 million titles were issued to landowners as a result of this project, the World Bank states emphatically that 'the objective of *increasing the efficiency and transparency of land registration* was not achieved' (World Bank 2014: x). The key problems were that the institutions bearing on land rights were

poorly defined and not transparently administered, the costs of registration were too high and there was inadequate coordination between the decentralised state agencies responsible for surveying, mapping and zoning (p. x). Crucially, the state has yet to develop a way to manage the range of complicated customary and vernacular systems of land ownership that exist across Indonesia. Hence, despite efforts to speed up land certification, including an increased budget for land certification programs, Van der Eng (Chapter 10) concludes that the complexity of the existing legal system for land tenure ensures that the coverage of Indonesia's cadastral system remains far from comprehensive.

Given this history, to what degree and how rigorously should Indonesia pursue formalisation? Guinness (Chapter 9) discusses an unsuccessful rights formalisation initiative in Indonesia that followed the De Soto model – the Commission on the Legal Empowerment of the Poor (CLEP) – agreeing with critics that the De Soto argument is too simple, that it neglects existing land management and land-use practices, and that it overestimates the capacity of the state to develop effective land governance mechanisms (Otto and Hoekema 2012). A body of literature has emerged demonstrating the mixed outcomes associated with attempts to implement land registration programs or to impose market-led reforms (Sikor and Muller 2009; Sjaastad and Cousins 2009; Bruce 2012). Other studies have been critical of the assumption that formal property titles and a free market for land will necessarily work to the benefit of the poor, in conditions of great economic and political inequality, and without the support of effective courts and land governance institutions. Von Benda-Beckmann describes this as mere 'wishful thinking'. Given that property rights are a highly political issue, politicians may be inclined to downplay the distributional questions at the heart of the land tenure question (Von Benda-Beckmann 2003: 191).

There seems to be an emerging consensus in development circles that property questions need to be understood in all their complexity: one-dimensional political, economic or legal models will not suffice (Von Benda-Beckmann, Von Benda-Beckmann and Wiber 2006). Initiatives to reform property rights, including attempts to secure tenurial rights, do best when they build on existing tenure arrangements, and adopt a participatory and responsive approach based on careful assessment of the local context (Otto and Hoekema 2012). In other words, rather than pursuing ambitious, top-down, one-size-fits-all land-titling programs, Indonesian policy-makers could opt to build on existing, semi-formal processes for documenting and recording rights to land – such as the letters issued by local governments confirming the payment of land tax, or the letters acknowledging land rights (*surat keterangan tanah*, SKT) issued by village and subdistrict officials. As long as mechanisms were put in

place to ensure transparency and accountability, such an approach could lead to more secure forms of tenure, and provide a way of dealing more effectively with the great variety of de facto systems of land tenure in both urban and rural areas. It would also avoid overambitious efforts that, by inadvertently changing the underlying content and status of land rights, generate new disputes and new forms of uncertainty (Fitzpatrick 2007).

Environmental challenges

A large body of research asserts that clear land and property rights are critical to achieving desirable environmental outcomes (see, for example, Heltberg 2002; Brown, Brown and Brown 2016). Questions of tenure remain central to the global agenda to use forests to sequester carbon – the scheme known as Reducing Emissions from Deforestation and Forest Degradation (REDD+). REDD+ projects require clarity in regard to tenurial rights in order to compensate those who have agreed to preserve carbon stocks in the forests. The projects thereby aim to hold right holders responsible for meeting their obligations. The implementation of REDD+ projects inevitably involves prohibiting certain uses of forest resources, and can result in the exclusion of some groups from the forests. Projects therefore need to be designed in such a way as to ensure that access and management rights are respected, livelihoods enhanced and benefits allocated justly (Sunderlin, Larson and Duchelle 2014). Hence, international agencies and donors have felt justified in using REDD+ funds to support tenure reform in state-controlled forest zones (Barr and Sayer 2012).

Tenure and property rights reform is essential to address the rapid liquidation of Indonesia's forest resources. Indonesia has now surpassed Brazil as the nation with the highest annual primary forest loss (Margono et al. 2014), much of it due to the planned conversion of forest to industrial timber plantations, oil palm plantations and mining. By 2011, the Ministry of Forestry had classified 78 million hectares of land (26.7 million hectares of non-forest land and 51 million hectares of forest land) as degraded (Srinivas et al. 2015: 5). Much of the degradation was due to logging, forest fires and unregulated clearance under ambiguous and poorly implemented governance arrangements. The commodity boom of the last decade has drawn investment into mining, oil palm and timber, increasing the value of land and creating incentives for investors to secure vast land banks through various means (McCarthy, Vel and Afiff 2013). Decentralisation has contributed to this process, by giving the districts the power to raise official and unofficial revenues from the exploitation of natural resources. In response to the perception that district governments had misused their authority over natural resources, in

2014 the government enacted a new law (Law 23/2014 on Regional Government) that reduced the authority of district governments over forestry, marine and extractive affairs, reimposed the authority of provincial governments over exploitation permits and allowed for the removal of elected regional executives who had violated government regulations.

The Yudhoyono government committed Indonesia to reduce its greenhouse gas emissions by 26–41 per cent by 2020. A major component of this plan was to develop a REDD+ program to reduce emissions from deforestation and forest degradation. Given the lack of clarity over property rights and the insecure nature of tenure in the forest zone, Indonesia needed to overhaul its legal framework in order to be able to implement the REDD+ program effectively (Wright 2012). Afiff argues in Chapter 5 that the government commitment to REDD+ provided an opportunity for civil society actors to push for the recognition of indigenous rights, together with new measures to improve the management of Indonesia's forests. The Yudhoyono administration's most significant initiatives were the moratorium on the issuance of new licences in primary forest and peatland and the One Map project (both of which have continued under Widodo). The latter involves the development of a single map to resolve the contradictory mapping and data management systems that have led to overlapping timber, mining and oil palm concessions and to associated conflicts over customary rights (Chatterjee, Ho and Brummitt 2015). The One Map and moratorium initiatives provide opportunities to improve land-use planning and permitting processes, and possibly to move towards a system of rights-based spatial planning.

Afiff describes how reformers have used the REDD+ program to push for significant policy reforms, driving changes that have increased transparency of natural resource decision-making and freedom of information, and that have curtailed the granting of permits in peatland areas. To date, however, many of the REDD+ projects have had only limited effect in actually reducing emissions. The key constraints have included a lack of commitment from local government, limited state capacity to enforce REDD+ policies and a national political economy that is structured around the expansion of resource-dependent industries (Luttrell et al. 2014). Land tenure and land rights lie at the heart of the failure.

The central government is attempting to improve management of the resources sector, including by revising the procedure for issuing plantation and mining permits (see Chapter 3 by Bedner, Chapter 4 by Fay and Denduangrudee, Chapter 5 by Afiff and Chapter 6 by Robinson). This has become increasingly urgent since the devastating 2015 forest fires, which produced more carbon emissions than the whole US economy on 38 of 56 days leading up to October 26 (Harris et al. 2015), negatively impacted the health of more than 40 million people within Indonesia (Daulay 2015)

and cost the economy more than \$16 billion—more than double the cost of reconstructing Aceh after the 2004 tsunami—in the space of just five months (World Bank 2015b). Various studies have linked Indonesia's forest fires to the land tenure problem haunting resource management (Suyanto 2007; Velde 2015). To address the underlying causes of Indonesia's forestry crisis, Afiff concludes that fundamental reform of the land and forest tenurial system is essential.

SEARCHING FOR APPROPRIATE RESPONSES

Whichever pathway Indonesia's policy-makers follow in attempting to reform the country's land tenure system, the underlying issue of justice needs to be addressed. This is particularly urgent given two developments.

First, land grabbing, defined as 'the large-scale acquisition of land or land-related rights and resources by corporate entities' (White et al. 2012: 619), is occurring in contemporary Indonesia, as elsewhere in the world. The demands of domestic and international business interests tend to be supported by state interventions to promote investment in agriculture, mining, forestry and other developments. Case studies suggest that all too often such developments forcibly displace large numbers of people, ignore the proper legal procedures for acquiring land and fail to fulfil the promise of employment creation and infrastructure provision for local people (Borras et al. 2011; Chapter 6 by Robinson). This is certainly the case in Indonesia, where tenurial arrangements are yet to provide effective protection for millions of people.

Second, with population growth, the demand for land, the pressure for individual title over land and the commercialisation of land are increasing. In many places customary institutions continue to adapt to such pressures in their own ways (Warren 2005; McCarthy 2006; Von Benda-Beckmann and Von Benda-Beckmann 2014). In other areas, however, customary systems have lost their stable and cohesive character and have struggled to manage external threats.

The pressures on customary and village-level institutions have emerged from several quarters. An early source of pressure was the withdrawal of state recognition for customary institutions under the New Order's Village Law (Law 5/1979). Another has been the informal and semi-formal land markets that have developed in many parts of Indonesia to facilitate the sale of individual titles (Fitzpatrick 2007). On the oil palm frontier, the role of local landowners and *adat* institutions involved in negotiating land- and benefit-sharing arrangements may be reduced to bargaining over the benefits offered by developers under licences that

have already been issued by higher authorities. In some cases, companies have even manipulated *adat* to shape the conduct of smallholders without enhancing community rights or livelihoods (Acciaioli and Dewi 2016). The question of indigenous land rights is also complicated by the reality that, in many areas, migrants have moved into the historical homelands of *adat* communities, seeking land and land-based livelihoods. Such dynamics can leave the tenurial rights of local landowners poorly protected from external occupiers or buyers, often working with powerful internal actors. Moreover, during the New Order, the state ideology of development (*pembangunan*) was designed to encourage migrants to move to frontier areas and make the land more 'productive' – not to protect the rights of the original occupants.

The post-Suharto reform movement has generated advances in the local domain. For instance, mining licences now need to be declared 'clean and clear' of conflict and are increasingly subject to administrative oversight (see Chapter 6 by Robinson). Decentralisation and global demands for greater corporate social responsibility have persuaded investors to become more sensitive in their relations with local people. Local entrepreneurs and communities have been emboldened to become more involved in resource extraction projects, even as outsiders have been forced to share more of the benefits with local claimants in return for access to sites. On the other hand, all too often local governments seem to be more interested in collecting revenue and imposing illegal levies than in implementing and enforcing regulations or protecting local and indigenous land rights (see Chapter 3 by Bedner and Chapter 4 by Fay and Denduangrudee). Democracy and decentralisation have not provided the solution to the country's messy land tenure conflicts; have not helped establish tenurial security for the majority of local landowners; and have not enhanced the capacity of rural people to derive better livelihoods from local land assets.

Based on consideration of issues relating to the exercise of power, some argue that measures beyond recognising customary rights or reviving customary institutions are required in order to empower local and indigenous peoples and protect land rights in the local domain. A localist approach to community-based tenure security may be insufficient on its own, and protection requires more than the recognition of *adat* rights in law (Otto and Hoekema 2012).

In the case of Papua, the recognition of communal rights (*hak ulayat*) under Law 21/2001 on Special Autonomy for Papua (the Special Autonomy Law) has not had the desired effect of protecting the tenurial rights of indigenous Papuan communities (see Chapter 15 by Savitri and Price). The central problem is that the law provides mechanisms for releasing community land rights without providing effective safeguards to secure

the incomes, livelihoods and well-being of the landowners. Thus, the situation in Papua also raises the question of whether recognition of *adat* rights is sufficient to guarantee tenurial and livelihood security. During asymmetric negotiations of land leases, indigenous Papuans are pressured to consent to the release of their land; they remain exposed to expropriation, and the existing mechanisms do not ensure proper and sufficient compensation. Savitri and Price suggest a number of innovations that could ensure better protection of rights, including a shift to distributive rather than displacing projects, better regulation and control of private developers, and more effective safeguards for landowners, including a genuine right to exercise free, prior and informed consent (FPIC).

Beyond questions of customary rights, the challenge for Indonesian reformers is to develop the policy and political frameworks required to control the allocation of land—particularly for resource and infrastructure projects—in regions where this would result in the enclosure or alienation of areas that are important to sustain local livelihoods. This necessarily requires a shift in power to support the capacity of the poor to access and control land that is claimed by the state and that may be allocated to concessionaires or developers—whether it is state or public land, indigenous or community land, rural land or land in urban *kampung*.

Bedner (Chapter 3) and Fay and Denduangrudee (Chapter 4) suggest that a possible way forward, in some cases, may be to rethink state understandings of property rights. Rather than building on notions of exclusive private property rights in accordance with the liberal tradition that poses a set of binary oppositions (communal versus individual title; state versus private property; customary versus formalised rights), legislators might work with the notion of property as a bundle of rights, where ownership rights dissolve into different bundles of rights over a particular space. For instance, under conditions of shared duties and obligations, the state might retain overall oversight over a rich ecological area, while local right holders—whether they have an *adat* identity or not—might control the use of the land and retain the right to benefit from it, while ensuring careful and responsible management.

In Chapter 2, Peluso reminds us of the dynamic nature of land occupation, land use and the designation of rights as populations grow, move and seek new livelihoods. Land institutions evolve constantly, often taking on vernacular forms that do not fit the simplifying models set out by Van Vollenhoven and the *adatrecht* scholars of colonial days, the narratives of advocates of *adat* rights or the tenurial concepts found in state law. In such circumstances, as much of the property rights and natural resource literature now suggests, it is necessary to work at different scales and

find ways of nesting local vernacular forms within wider governance arrangements. Today, 'kinship', 'traditional' and 'community' systems of authority sit within district and provincial institutions of government, subject to national law, which defines the rights of citizens.

Dealing with complexity into the future may entail building on localised, vernacular or customary arrangements that exist in some hybrid relationship with other jurisdictions, rather than returning to a prescription that involves the 'reinvention of tradition'. This is not just an issue of individual versus collective rights; it also involves accommodating the complex bundle of rights and claims of access that people seek to have recognised or protected, as well as the political economy that shapes people's ability to make use of those rights. Following examples from elsewhere (Fitzpatrick 2005; Bruce 2012), Indonesian policy-makers could consider recognising a collective or corporate actor (for example, a village governance structure or a wider customary structure – with or without an *adat* identity) to manage and control land, subject to conditions to ensure that land affairs were managed in a transparent and accountable fashion (Von Benda-Beckmann and Von Benda-Beckmann 2013). The village and subdistrict institutions that already undertake much of the daily management of land affairs are obvious candidates. But whatever solution is chosen, it is unlikely that one size would fit all.

A recent initiative by legislators to develop communal or collective rights (*hak komunal*) may represent a step in this direction. As discussed by Bedner (Chapter 3) and Fay and Denduangrudee (Chapter 4), Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 allows communities that have subsisted on land for a substantial period (10 years or more) – whether tied to an *adat* community or not – to register a communal right. A communal right can be recognised both within the forest zone and within plantation areas. However, as Fay and Denduangrudee observe, it remains to be seen how the recognition of communal rights under this initiative can be reconciled with the commercial lease rights (HGU) or forest concession and plantation permits already awarded within a particular area.

The multi-layered nature of land management within large and complex systems requires that multiple organisations are involved in land management under some coordinating mechanism (Cleverly 2012; Merrey and Cook 2012). Such solutions would need to allow for the interests and capacities of existing local land management institutions, with their own notions of justice and their own rules for allocating land. But they would also entail a role for the state in managing the problems of community, class and group differentiation associated with customary forms of control. At the same time, the state should be held accountable for the justice of its land policies. In this way, policy could build on 'the

strengths of both state-centric and community-orientated perspectives', and in that way address the key weaknesses of each (Borras and Franco 2012: 7).

Questions of tenure are increasingly influenced by international discourses and legal developments. Local actors have discovered that they can make use of international rules that go beyond national regulations to protect landowners from the acquisition of their land by investors. For example, palm oil corporations that have subscribed to the Roundtable on Sustainable Palm Oil (RSPO) are obliged to obtain the free, prior and informed consent (FPIC) of communities that will be affected by their projects, to respect community rights to land and to resolve outstanding conflicts.

Afrizal and Anderson (Chapter 13) describe the attempts of several communities in Sumatra to make use of these voluntary international standards to address injustices arising from the rapid expansion of oil palm, pulp and paper concessions. Such concessions already cover 15 million hectares of land in Indonesia and there are plans to triple the area under licence. Afrizal and Anderson conclude that the norms set out in private regulatory systems such as the RSPO provide a point of leverage for communities and social movements. McCarthy (2012) also found that transnational advocacy networks were more likely to achieve a successful resolution of disputes with palm oil and pulp and paper companies if they used international multi-stakeholder forums and private governance systems to apply pressure to suppliers and buyers in the international arena. Similar local-national-global alliances have been effective in highlighting unfair dealings between mining companies and local communities, using platforms such as social media and shareholder meetings to highlight injustices (see Chapter 6 by Robinson).

However, Afrizal and Anderson caution that the likelihood of achieving a desirable outcome typically depends on the pressure that a community-NGO alliance can bring to bear in a particular case, and that this is often limited by a lack of support and resources. It remains to be seen whether private regulatory systems such as the RSPO can develop the kind of structural power required to change corporate practices, whether public pressure from social movements can significantly affect outcomes and whether the implementation of state regulations can change conduct in upstream production areas (McCarthy, Gillespie and Zen 2012). Nonetheless, such efforts provide opportunities for social learning. Afrizal and Anderson argue that, when combined with recent legal reforms that strengthen communal rights to land (such as Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015), the influence exerted by these private regulatory bodies should gradually bring Indonesian resource companies closer to meeting international standards.

CONCLUDING THOUGHTS

The idea of the people's sovereignty asserts human equality and sets conditions for acceptable forms of political authority: that those who govern must obtain consent from the governed and govern in their interests (Morris 2000). This powerful concept remains at the centre of Indonesia's political tradition. It is a rhetorical resource that activists can mobilise to remind their fellow citizens of the need to address festering land issues.

Rhetoric aims to inform, persuade and motivate people and always works at a distance from reality. Nation states rarely conform to the aspirations set out in their founding documents; political authority is never derived totally from the people in a bottom-up fashion (Morris 2000). In a country as pluralist and diverse as archipelagic Indonesia, political authority is heterogeneous, and in some remote parts of Indonesia, the state may be all but absent, leaving governance and dispute resolution in the hands of a local village-level authority (Li 2014). All too often, people have to get by without the state determining, once and for all, in the name of the people, how land affairs are governed. The result can be unresolved justice, environmental and social issues.

Several chapters in this book discuss the ongoing pursuit of appropriate initiatives and policy instruments to resolve some of the problems bedevilling land arrangements. Several authors point to signs of progress: the One Map policy; forestry reforms; discussion of proper compensation (including the idea of *bagi untung*) in the cities; moves to recognise communal rights (*hak komunal*); and Widodo's social forestry initiatives. However, the gap between rhetoric and reality has a long history, and implementation of new initiatives on the ground – where high rhetoric and legislated changes are translated into reality – remains difficult, not least because the political economy of land limits the possibilities for rapid progress. In the political economy of Indonesia, development and economic growth are tied to an expansion of the resource sectors, especially industrial-scale timber, oil palm and mining ventures (Thorburn and Kull 2015; Cramb and McCarthy 2016). The planned massive infrastructure development to facilitate the exploitation of natural resources, coupled with rapid economic growth and urbanisation, is a challenge to the practical expression of the people's sovereignty and the people's democratic rights in regard to land, for Indonesia's diverse citizenry.

The weight of history and the positive experiences of other countries show that it is possible to achieve progress by pursuing existing pathways as well as new initiatives. The search continues for appropriate ways to achieve the aspirations set out in the Indonesian constitution and to realise the promise of democratic reform in the critical area of land administration and tenurial rights.

REFERENCES

- Acciaoli, G. and O. Dewi (2016) 'Opposition to oil palm plantations in Kalimantan: divergent strategies, convergent outcomes', in R.A. Cramb and J.F. McCarthy (eds) *The Oil Palm Complex: Smallholders, Agribusiness and the State in Indonesia and Malaysia*, NUS Press, Singapore: 327–53.
- Alfiah, N. (2013) 'Ribuan hektare tanah telantar akan dibagikan' [Thousands of hectares of abandoned land will be distributed], *Tempo*, 31 December. Available at <http://nasional.tempo.co/read/news/2013/12/31/173541146/ribuan-hektare-tanah-telantar-akan-dibagikan>
- Bachriadi, D. and G. Wiradi (2013) 'Land concentration and land reform in Indonesia: interpreting agricultural census data 1963–2003', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press, Athens, OH: 42–92.
- Banerjee, A. and L. Iyer (2005) 'History, institutions, and economic performance: the legacy of colonial land tenure systems in India', *American Economic Review*, 95(4): 1,190–213.
- Barr, C.M. and J.A. Sayer (2012) 'The political economy of reforestation and forest restoration in Asia–Pacific: critical issues for REDD+', *Biological Conservation*, 154: 9–19.
- Borras, S.M. and J.C. Franco (2012) 'A "land sovereignty" alternative? Towards a peoples' counter-enclosure', discussion paper, TNI Agrarian Justice Programme, Amsterdam, July. Available at https://www.tni.org/files/a_land_sovereignty_alternative_.pdf
- Borras, S.M., R. Hall, I. Scoones, B. White and W. Wolford (2011) 'Towards a better understanding of global land grabbing: an editorial introduction', *Journal of Peasant Studies*, 38(2): 209–16.
- Bourchier, D. (forthcoming) *Illiberal Democracy in Indonesia: The Ideology of the Family State*, Routledge, London and New York, NY.
- Brown, D.S., J.C. Brown and C. Brown (2016) 'Land occupations and deforestation in the Brazilian Amazon', *Land Use Policy*, 54: 331–8.
- Bruce, J.W. (2012) 'Simple solutions to complex problems: land formalisation as a silver bullet', in J.M. Otto and A. Hoekema (eds) *Fair Land Governance: How to Legalize Land Rights for Rural Development*, Leiden University Press, Leiden: 1–51.
- Chatterjee, N., Y. Ho and C. Brummitt (2015) "'Dangerous" inequality spurs Widodo's Indonesia shakeup', *Bloomberg*, 3 February.
- Cleaver, F. (2012) *Development through Bricolage: Rethinking Institutions for Natural Resource Management*, Routledge, Taylor and Francis Group, New York, NY.
- Cramb, R.A. and J.F. McCarthy (2016) *The Oil Palm Complex: Smallholders, Agribusiness and the State in Indonesia and Malaysia*, NUS Press, Singapore.
- Daulay, F.F. (2015) 'Terungkap, mereka dibalik dewan komisaris perusahaan "perambah" hutan' [Revealed, the people behind the board of directors of the company 'destroying' the forest], *Tribun Medan*, 4 November.
- Davidson, J.S. and D. Henley (eds) (2007) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY.
- De Soto, H. (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books, New York, NY.
- Deininger, K. (2003) *Land Policies for Growth and Poverty Reduction*, World Bank and Oxford University Press, Washington, DC and Oxford.

- Deininger, K. and H. Binswanger (1999) 'The evolution of the World Bank's land policy: principles, experience, and future challenges', *World Bank Research Observer*, 14(2): 247–76.
- Eco Daily (2016) 'Indonesia govt to streamline licensing for business setup, industrial zones', *Eco Daily*, 18 March.
- Economist (2016) 'Infrastructure: the 13,466 island problem', *Economist*, 27 February.
- El-Ghonemy, M.R. (2003) 'Land reform development challenges of 1963–2003 continue into the twenty-first century', *Land Reform*, 2: 33–42.
- Fahlevi, F. (2015) 'Tiga kementerian tandatangan MoU penyediaan 9 juta hektare lahan transmigrasi' [Three ministries sign MoU concerning 9 million hectares of land for transmigration scheme], *Tribun Nasional*, 8 May.
- Fitzpatrick, D. (2005) "'Best practice" options for the legal recognition of customary tenure', *Development and Change*, 36(3): 449–75.
- Fitzpatrick, D. (2007) 'Land, custom, and the state in post-Suharto Indonesia: a foreign lawyer's perspective', in J.S. Davidson and D. Henley (eds) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY: 130–48.
- Fogarty, D. (2014) 'Indonesia tries to clamp down on coal sector's worst excesses', *Mongabay*, 16 October.
- Gumelar, G. (2015) 'Bagikan lahan, Jokowi dianggap tak paham reformasi agraria' [Distributing land, Jokowi considered not to understand land reform], *CNN Indonesia*, 9 March.
- Hall, D., P. Hirsch and T.M. Li (2011) *Powers of Exclusion: Land Dilemmas in Southeast Asia*, NUS Press and University of Hawai'i Press, Singapore and Honolulu.
- Harris, N., S. Minnemeyer, N. Sizer, S.A. Mann and O.A. Payne (2015) 'With latest fires crisis, Indonesia surpasses Russia as world's fourth-largest emitter', blog posting, World Resources Institute, 29 October. Available at <http://www.wri.org/blog/2015/10/latest-fires-crisis-indonesia-surpasses-russia-world%E2%80%99s-fourth-largest-emitter>
- Heltberg, R. (2002) 'Property rights and natural resource management in developing countries', *Journal of Economic Surveys*, 6(2): 189–214.
- Huizer, G. (2011) 'Research-through-action: some practical experiences with peasant organization', in G. Huizer and B. Mannheim (eds) *The Politics of Anthropology: From Colonialism and Sexism toward a View from Below*, Mouton Publishers, The Hague and Paris: 395–420.
- Jpnn (2015) 'Ini sorotan KPA tentang program redistribusi lahan 9 juta hektar' [This is the KPA spotlight on the 9-million-hectare land distribution program], *Jpnn.com*, 5 March.
- Kompas (2011) 'Kunci realisasi proyek di lahan: UU Pengadaan Lahan Ditunggu' [The key to implementing projects in the field: waiting for the Land Acquisition Law], *Kompas*, 23 August.
- Li, T.M. (2014) *Land's End: Capitalist Relations on an Indigenous Frontier*, Duke University Press, Durham, NC.
- Lucas, A. and C. Warren (2013) 'The land, the law, and the people', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press, Athens, OH: 1–41.
- Luttrell, C., I.A.P. Resosudarmo, E. Muharrom, M. Brockhaus and F. Seymour (2014) 'The political context of REDD+ in Indonesia: constituencies for change', *Environmental Science and Policy*, 35: 67–75.

- Margono, B.A., P.V. Potapov, S. Turubanova, F. Stolle and M.C. Hansen (2014) 'Primary forest cover loss in Indonesia over 2000–2012', *Nature Climate Change*, advance online publication. Available at www.forestlegality.org/sites/default/files/nclimate2277.pdf
- McCarthy, J.F. (2006) *The Fourth Circle: A Political Ecology of Sumatra's Rainforest Regime*, Stanford University Press, Stanford, CA.
- McCarthy, J.F. (2012) 'Certifying in contested spaces: private regulation in Indonesian forestry and palm oil', *Third World Quarterly*, 33(10): 1,871–88.
- McCarthy, J.F. and M. Moeliono (2012) 'The post-authoritarian politics of agrarian and forest reform in Indonesia', in R. Robison (ed.) *Routledge Handbook of Southeast Asian Politics*, Routledge, New York, NY: 242–59.
- McCarthy, J.F., P. Gillespie and Z. Zen (2012) 'Swimming upstream: local Indonesian production networks in "globalized" palm oil production', *World Development*, 40(3): 555–69.
- McCarthy, J.F., J.A.C. Vel and S. Afiff (2012) 'Trajectories of land acquisition and enclosure: development schemes, virtual land grabs, and green acquisitions in Indonesia's outer islands', *Journal of Peasant Studies*, 39(2): 521–49.
- Mead, N. (2015) 'China's Pearl River Delta overtakes Tokyo as world's largest megacity', *Guardian*, 28 January.
- Merrey, D.J. and S. Cook (2012) 'Fostering institutional creativity at multiple levels: towards facilitated institutional bricolage', *Water Alternatives*, 5(1): 1–19.
- Morris, C.W. (2000) 'The very idea of popular sovereignty: "we the people" reconsidered', *Social Philosophy and Policy*, 17(1): 1–26.
- Murdaningsih, D. (2015) 'Jelang Hari Tani, pemerintah diminta tingkatkan kesejahteraan petani' [Approaching Farmers Day, government is asked to improve farmers' welfare], *Republika*, 23 September.
- Otto, J.M. and A. Hoekema (2012) *Fair Land Governance: How to Legalize Land Rights for Rural Development*, Leiden University Press, Leiden.
- Prabowo, D. (2016) 'Ini 40 RUU dalam prolegnas prioritas 2016' [These are the 40 draft laws in the 2016 national legislative program], *Kompas*, 22 January.
- Reerink, G. (2012) *Tenure Security for Indonesia's Urban Poor: A Socio-legal Study on Land, Decentralisation and the Rule of Law in Bandung*, Leiden University Press, Leiden.
- Rigg, J. (2006) 'Land, farming, livelihoods, and poverty: rethinking the links in the rural south', *World Development*, 34(1): 180–202.
- Robinson, K. (2014) 'Citizenship, identity and difference in Indonesia', *Review of Indonesian and Malaysian Affairs*, 48(1): 5–34.
- Robison, R. and V.R. Hadiz (2004) *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*, Routledge, New York, NY.
- RRI (Rights and Resources Initiative) (2012) 'What rights? A comparative analysis of developing countries' national legislation on community and indigenous peoples', Forest Tenure Rights, RRI, Washington, DC, May.
- Rusastra, I.W., E.M. Lokollo and S. Friyatno (2007) 'Land and household economy: analysis of agricultural census 1983–2003', Indonesian Center for Agriculture Socio Economics and Policy Studies (ICASEPS), Ministry of Agriculture, Bogor.
- Safitri, M.A., N. Ramdhaniaty, Y. Arizona, G.A. Abimanyu, M. Muhajir and I. Arsyad (2015) 'Legality and justice in the establishment of forest zones in Indonesia', Policy Paper 2/2015, Epistema Institute, Jakarta. Available at http://www.epistema.or.id/download/Policy_Paper_Epistema_2-2015_English.pdf

- Santoso, I. (2011) 'Revitalisasi industri kehutanan dan tantangannya ke depan Direktorat Jenderal Bina Usaha Kehutanan' [Revitalisation of forestry industry and future challenges for Directorate-General of Forest Industry Development], Kongres Kehutanan Indonesia V [Indonesian Forestry Congress], 22-24 November.
- Saturi, S. (2014) "'Kawin" kementerian LH dan kehutanan, kerja berat menanti sang menteri' ['Marriage' of environment and forestry ministries, a difficult task for ministers], *Mongabay*, 26 October.
- Saturi, S. (2015) 'Reservations about Indonesian "land reform" as details unclear', *Mongabay*, 2 April.
- Schuck, P.H. (1992) 'Legal complexity: some causes, consequences and cures', *Duke Law Journal*, 42(1): 1-52.
- Sekretariat Kabinet Republik Indonesia (2015) 'Sebelumnya perlu 2-4 tahun, izin investasi di sektor kehutanan kini paling lama 15 hari' [Previously it took 2-4 years, now investment permits in the forestry sector take a maximum of 15 days], Cabinet Secretariat of the Republic of Indonesia (Sekretariat Kabinet Republik Indonesia), Jakarta. Available at <http://setkab.go.id/sebelumnya-perlu-2-4-tahun-izin-investasi-di-sektor-kehutanan-kini-paling-lama-15-hari/>
- Sikor, T. and D. Muller (2009) 'The limits of state-led land reform: an introduction', *World Development*, 37(8): 1,307-16.
- Sjaastad, E. and B. Cousins (2009) 'Formalisation of land rights in the south: an overview', *Land Use Policy*, 26(1): 1-9.
- Sonius, H.W.L. (1981) 'Introduction', in J.F Holleman (ed.) *Van Vollenhoven on Indonesian Adat Law*, Hartinus Nijhoff, The Hague: xxix-lxvii.
- Srinivas, S., K.C. Bell, K. Toha, A. Zaenal and B. Collier (2015) 'A review of the Indonesian land-based sectors with particular reference to land governance and political economy', paper presented to the Annual World Bank Conference on Land and Poverty 2015, Washington, DC, 23-27 March. Available at www.oicrf.org/document.asp?ID=14940
- Suara Pembaruan (2007) 'Reforma agraria sudah siap dilaksanakan' [Land reform is ready to be implemented], *Suara Pembaruan*, 6 June.
- Sudaryanto, T., S.H. Susilowati and S. Sumaryanto (2009) 'Increasing number of small farms in Indonesia: causes and consequences', paper presented to the 111th Seminar of the European Association of Agricultural Economists, Canterbury, 26-27 June.
- Sunderlin, W.D., A.M. Larson and A.E. Duchelle (2014) 'How are REDD+ proponents addressing tenure problems? Evidence from Brazil, Cameroon, Tanzania, Indonesia, and Vietnam', *World Development*, 55: 37-52.
- Suyanto, S. (2007) 'Underlying cause of fire: different form of land tenure conflicts in Sumatra', *Mitigation and Adaptation Strategies for Global Change*, 12(1): 67-74.
- Thorburn, C.G. and C.A. Kull (2015) 'Peatlands and plantations in Sumatra, Indonesia: complex realities for resource governance, rural development and climate change mitigation', *Asia Pacific Viewpoint*, 56(1): 153-68.
- Toha, K. and W.L. Collier (2015) 'Land control, governance and agrarian conflict in Indonesia', expanded version of paper presented to the Annual World Bank Conference on Land and Poverty 2015, Washington, DC, 23-27 March.
- Tuan, D.T. (2002) 'Vietnam: consecutive agrarian reforms and success in family farming', Réseau Agriculture Paysanne et Modernisation (APM), Institut de Recherche et d'Applications des Méthodes de Développement (IRAM) and Fondation Charles Léopold Mayer pour le Progrès de l'Homme (FPH),

- Cedex. Available at http://www.agter.org/bdf/en/corpus_chemin/fiche_chemin-59.html
- Van Voorst, R. and R. Padawangi (2015) 'Floods and forced evictions in Jakarta', *New Mandala*, 21 August.
- Velde, B.V. (2015) 'Q&A on fires and haze in Southeast Asia', CIFOR Forests News Blog, 25 August. Available at <http://blog.cifor.org/23000/forests-news-update-qa-on-fires-and-haze-in-southeast-asia?fnl=en>
- Von Benda-Beckmann, F. (2003) 'Mysteries of capital or mystification of legal property?', *Focaal: European Journal of Anthropology*, 41: 187–91.
- Von Benda-Beckmann, F. and K. von Benda-Beckmann (2013) *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation*, Cambridge University Press, Cambridge.
- Von Benda-Beckmann, F. and K. von Benda-Beckmann (2014) 'Temporalities in property relations under a plural legal order: Minangkabau revisited', *Journal of Legal Pluralism and Unofficial Law*, 46(1): 18–36.
- Von Benda-Beckmann, F., K. von Benda-Beckmann and M.G. Wiber (2006) 'The properties of property', in K. von Benda-Beckmann, F. von Benda-Beckmann and M. Wiber (eds) *Changing Properties of Property*, Berghahn Books, Oxford and New York, NY: 1–39.
- Vorley, B., L. Cotula and M.-K. Chan (2012) 'Tipping the balance: policies to shape agricultural investments and markets in favour of small-scale farmers', research report, International Institute for Environment and Development (IIED) and Oxfam, December. Available at www.iied.org; www.oxfam.org
- Warren, C. (2005) 'Mapping common futures: customary communities, NGOs and the state in Indonesia's reform era', *Development and Change*, 36(1): 49–73.
- Warren, C. and J.F. McCarthy (2009) (eds) *Community, Environment and Local Governance in Indonesia: Locating the Commonwealth*, Routledge, Taylor & Francis Group, Abingdon and New York, NY.
- White, B., S.M. Borrás Jr. and R. Hall (2014) 'Land reform', in B. Currie-Alder, R. Kanbur, D.M. Malone and R. Medhora (eds) *International Development: Ideas, Experiences, and Prospects*, Oxford University Press, Oxford: Chapter 28. Available at <http://www.developmentideas.info/chapter/land-reform/>
- White, B., S.M. Borrás Jr., R. Hall, I. Scoones and W. Wolford (2012) 'The new enclosures: critical perspectives on corporate land deals', *Journal of Peasant Studies*, 39(3–4): 619–47.
- Wibowo, A. (2010) 'Potensi degradasi dan manfaat lingkungan akibat pemban-
gunan hutan tanaman' [The potential for degradation and the advantages
for the environment as a consequence of the development of commercial for-
estry], Centre for Plantation Forest Research and Development (Pusat Peneli-
tihan dan Pengembangan Peningkatan Produktivitas Hutan), December.
- Winoto, J. (2010) 'Taking land policy and administration in Indonesia to the next
stage', in K. Deininger, C. Augustinus, S. Enemark and P. Munro-Faure (eds)
Innovations in Land Rights Recognition, Administration, and Governance, World
Bank, GLTN, FIG and FAO, Washington, DC, April: 12–19.
- World Bank (2009) *World Development Report 2008: Agriculture for Development*,
World Bank, Washington, DC.
- World Bank (2014) 'Project performance assessment report: Indonesia. Land
Management and Policy Development Project', Report No. 85809, World
Bank, Washington, DC, 5 March.
- World Bank (2015a) *East Asia's Changing Urban Landscape: Measuring a Dec-
ade of Spatial Growth*, Urban Development Series, World Bank, Washington,
DC. Available at <http://www.worldbank.org/content/dam/Worldbank/>

- Publications/Urban%20Development/EAP_Urban_Expansion_full_report_web.pdf
- World Bank (2015b) 'Indonesia economic quarterly December 2015: reforming amid uncertainty', World Bank, Jakarta.
- Wright, G. (2012) 'Indigenous people and customary land ownership under domestic REDD frameworks: a case study of Indonesia', *Law, Environment and Development Journal*, 7(2). Available at <http://hdl.handle.net/1885/39666>
- Zhuang, J., R. Kanbur and D. Maligalig (2014) 'Asia's income inequalities: recent trends', in R. Kanbur, C. Rhee and J. Zhuang (eds) *Inequality in Asia and the Pacific*, Asian Development Bank and Routledge, Oxon: 21–36.
- Zhuang, J., R. Kanbur and C. Rhee (2014) 'What drives Asia's rising inequality?', in R. Kanbur, C. Rhee and J. Zhuang (eds) *Inequality in Asia and the Pacific*, Asian Development Bank and Routledge, Oxon: 37–57.

