

RECONSTRUCTION OF LAND ADMINISTRATION SYSTEM IN NANGGROE ACEH DARUSSALAM (NAD) AND NIAS

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Key words: Tsunami; Land Administration; Land Rights Protection; Community Driven Adjudication

SUMMARY:

Indeed the earthquakes and tsunami that thoroughly shattered part of Aceh and Nias in North Sumatra brought particular damage to property rights marks and to the land administration system in general. Land rights recovery and protection, therefore, are necessary and should be recovered as soon as soon as possible. In this situation the role of BPN, as an organization responsible for land administration is very important. It is the policy of Government of Indonesia cq. National Land Agency to develop a policy framework for the reconstruction of property rights, which is implemented under the Reconstruction of Aceh Land Administration (RALAS) Project. This project was effective on August 22, 2005. The goal of the project is to improve land tenure security in Aceh. The specific objectives are: (i) to recover and protect ownership land rights of the people in the affected and surrounding areas; and (ii) to rebuild the land administration system.

It is worth-telling that this paper underlines the importance of participative processes in reconstructing property rights, which are rather innovative in present Indonesian context. The paper was written and organized accordingly. After introduction, it begins by describing context of the tsunami-affected areas followed by describing the performance of reconstruction that is now under implementation in the areas. Then, some key constraints and policy to the construction process and implementation are briefly highlighted before equipping it with closing remarks.

1. INTRODUCTION

It is my pleasure being here today to participate in this esteemed 'Expert Group Meeting on Secure Land Tenure: New Legal Frameworks and Tools in Asia and Pacific'. We cordially thank you for paying attention to the reconstruction of property arrangements after the Tsunami that affected several countries including the Province of NAD and Nias in Indonesia.

Indeed the earthquakes and tsunami that thoroughly shattered part of Aceh and Nias in North Sumatra brought particular damage to property rights marks and to the land administration system in general. In some areas, destruction disappeared marks, which are basis in demarcating the parcels on the ground. The damage took with it the land archive where much information of the location of these boundaries is kept. The destruction of land books and cadastral (land) maps placed in the provincial and

district land offices of the National Land Agency (BPN) have implicated the reconstruction of property rights even more difficult.

Land rights recovery and protection, therefore, are necessary and should be recovered as soon as soon as possible. Recovering and protecting land property rights will place a solid foundation for reconstruction work, spatial planning, compensation, and long-term economic development. Also, recovery and protection of land rights is essential for establishing social justice and ensuring long-term social stability.

In this situation the role of BPN, as an organization responsible for land administration, is very important. It is the policy of Government of Indonesia cq. BPN to develop a framework for the reconstruction of property rights, which is provided under the Reconstruction of Aceh Land Administration (RALAS) Project, being established under the Head of National Land Agency's Decree No.136-X-2005 dated on July 18, 2005, and funded by a \$28.5 million grant (Multi Donor Trust Fund for Aceh and North Sumatera - MDTFANS). This project was effective on August 22, 2005. The goal of the project is *to improve land tenure security in Aceh. The specific objectives are: (i) to recover and protect ownership land rights of the people in the affected and surrounding areas; and (ii) to rebuild the land administration system.*

It is worth-telling that this paper underlines the importance of participative processes in reconstructing property rights, which are rather innovative in present Indonesian context. Looking at the goal and objectives, this paper was written and organized accordingly. After introduction, it begins by describing context of the tsunami-affected areas followed by describing the performance of reconstruction that is now under implementation in the areas. Then, some key constraints to the construction process and implementation are briefly highlighted before giving closing remarks.

Some sections of this paper owe much to the preceding report of the Worldbank & the Reconstruction and Rehabilitation Agency (BRR) published in October 2005. The report is considered comprehensive in describing the disaster and responses taken by many parties. However, writer did some data verification and validation in order to be compatible with data and information held by BPN. Hopefully this paper which emphasizes on describing the on-going reconstruction process in the areas could contribute to the aims of this meeting.

2. CONTEXT OF THE TSUNAMI-AFFECTED AREAS

Context covers two particular matters that are damage and losses and the need for land rights protection in the areas.

2.1 Damage and Losses

Below are some facts about tsunami-disaster collected from several sources mainly from the works of BPN and the Worldbank covering geographical, damage and losses, and amount of affected land parcels.

The geographical extent of the disaster-affected area is about 220 km long and around 5 km wide along the coastline of Aceh and North Sumatra (see Attached-Map

1). In Kota Banda Aceh, the tsunami affected area accounts for 70% of the district's geographic area. In Kabupaten Aceh Besar and Kabupaten Aceh Barat, over 90% of their geographical areas were affected by the tsunami.

In Aceh Province, more than forty BPN staff lost their lives. Most of the deceased were from the Kota Banda Aceh Land Office, which lost 30% of its staff. Six BPN Land Offices, including the District Land Office in Banda Aceh were completely demolished or severely damaged.

BPN estimates that about 10% of land books were lost. However, a significant amount of the remaining 90% of land books was found in a critical condition (e.g. flooded with sea water and mud) requiring conservation and restoration work.

In addition to the land books, there was also a serious loss of other land documents. BPN assessed that about 80% of land documents were lost, including almost all cadastral maps. There was a severe damage and destruction of office facilities, and currently, there is a shortage of computers, photocopiers, scanners, digital cameras, printers, and stationery to support urgent record recovery.

The tsunami destroyed much of the physical mark of property boundaries. Moreover, the disaster also washed away the witness evidence held in the minds of many of the land occupants, who were among the hundreds of thousands of human lives lost in the tsunami.

In term of land parcels, approximately 600,000 land parcels have been affected by the tsunami. As is the case in many areas of Indonesia, less than 25% of land parcels can be expected to be titled. Therefore, of the total number of affected land parcels, approximately 92,000 have been titled. Informal land parcels are up to 250,000; while it is also estimated that 5% of titled land parcels were mortgaged, and these mortgages have been registered by BPN.

2.2 The Need for Land Rights Protection

As far as land rights protection is concerned, there are two things need to be considered. The first is that protection shall be provided to those whose rights were registered before the tsunami. Property rights shall be revalidated and confirmed, and new title certificates issued to landowners. The second is that an equally important, but more difficult issue is related to occupiers of land without registered title. Although their possessory rights were not registered with the government's land records, in reality, they have actually held possessory (or occupancy) rights to land, which has been widely accepted and mutually recognized by the community.

The majority of landowners in Indonesia do not hold registered title to their property. For these people, possessory rights are only secured through long and established occupation. It is estimated that there may be 3-5 times as many land holders with unregistered rights compared to those who hold registered titles. The untitled land parcels are governed largely by traditional customary, or *adat* law.

There are two types of *adat* land in Indonesia. The first concerns *Adat* land held by individuals, which is not registered, but is recognized from the colonial Dutch period as being private land. In the tsunami-affected areas most unregistered private

land is of this type. These individual ownership rights will be recognized under the Basic Agrarian Law. The second is communal *adat* land, which is very rare in the tsunami-affected areas.

Land rights recovery and protection clearly should be a priority task. In many cases facts show that land may be the only thing of value that many people still have. Soon after disaster, many survivors installed mark on sites where previously their houses had stood, which could be implied as a behavior that symbolizing insecurity about their land ownership and property rights. If it is not appropriately handled, there are risk possibilities of land grabbing, particularly in urban areas where the communal traditions are comparatively weak.

The urgency of this matter is substantiated by the fact that, as time passes, remaining physical evidence of land ownership is likely to be destroyed in the general clean-up operations. Moreover, opportunists will begin to make spurious and illegitimate claims over land holdings or rights of vulnerable and disadvantaged groups. Therefore, special attention must be paid to safeguarding the rights of vulnerable groups, such as women, children, and orphans. So far, the tsunami has resulted in an estimated 100,000 inheritance cases. Within three months of re-opening, the Syariah Court, whose basic jurisdiction is divorce and inheritance for Muslims, in Banda Aceh had received close to 6,000 inheritance-related cases. Official estimates suggest that there are over 2,000 children orphaned by the tsunami. In the absence of a proper protection system, according to Syariah law, some of these orphans could well lose their rights.

There is a high likelihood that at least some conflicts will occur. This could include conflict over boundaries, ownership, inheritance, and between individuals and government. Ultimately, if disputes cannot be resolved through mediation at the community level, the processes of the courts will be necessary. Initiatives will be necessary to support community-based dispute resolution and to increase awareness of legal rights and access to the courts where necessary as a last resort.

3. BPN RESPONSES TO TSUNAMI DISASTER

BPN responses after the disaster mainly consist of three steps, they are: conservation and rehabilitation of land documents, preparation of reconstruction process, and implementation of community-driven adjudication.

3.1 Conservation and Rehabilitation of Land Documents

A large portion of land documents was destroyed during the Tsunami including and books and registration maps. To tackle this, soon after the Tsunami, Head of National Land Agency issued Decree No.01-II-2005 dated January 12, 2005 formed a Team tasking to rehabilitate and reactivate land services in Aceh.

The team got that a little portion of land documents, however, about 632 boxes or 15 ton, are fortunately be able to be rescued in their first action. These documents were found in a critical condition (e.g. flooded with sea water and mud) requiring conservation and restoration work. The documents were transported to Jakarta by three TNI Hercules flights in March, 2005. Since that time the documents have been stored

in a Cold Storage at -40o Celsius in Jakarta. Later on, BPN-Central Office in cooperation with Indonesian National Archive Agency currently commences rehabilitation process utilizing a Dry Chamber provided by Japanese Government. Drying off process will be held from November to December 2005, with first priority is given to land books as it is urgent to deliver it back to Aceh. The remaining documents will be processed in stages until they are completely finished in May 2007.

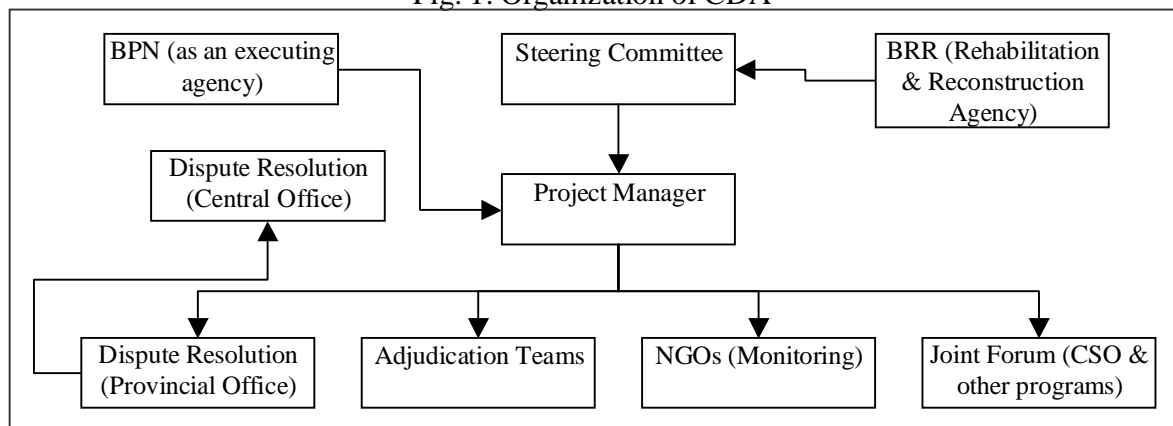
3.2 Reconstruction Process

Fundamentally, the project aims to bring consistency and deliver minimum service standards to the Community Driven Adjudication (CDA) process (often referred to as “community land mapping”). It is doing this by supporting donors and NGOs working with communities and linking them into BPN as the agency with the legal authority to issue formally recognized land title. The project relies in the first instance on securing community agreement to identify ownership rights. This is being done using facilitators available from existing projects such as Kecamatan Development Project (KDP), Urban Poverty Project (UPP) and other donor and NGO initiatives on the ground.

RALAS is also working with a number of NGOs and providing them training and support. Service standards have been agreed with BPN for the completion of survey work and the award of titles. Finally, the project includes provisions aimed at securing transparency and accountability to respond to the concerns on potential corruption and mismanagement.

Through RALAS, BPN aims to ensure that community-led processes are conducted to a standard that will have a strong legal basis for future titling if desired by land owners. Organization of CDA is shown in Fig 1 below. The roles of NGOs in CDA include: facilitating community agreement on ownership and boundary demarcation; facilitating community-based dispute resolution; independent monitoring of land reconstruction; strengthening community institutions and decision-making processes with special attention to the rights of women, children and orphans.

Fig. 1. Organization of CDA



Source: CDA Manual.

3.3 Community Driven Adjudication

Affected communities unequivocally want rapid and unambiguous resolution of their land rights so they can get on with reconstruction. Largely facilitated by NGOs, many communities are conducting what is known as community mapping. That is, they are preparing inventories of land owners (and heirs) and marking the boundaries of land parcels. These are then often drawn into basic sketches, coordinates taken on basic GPS equipment and then the maps digitized. Under a participatory process, these maps have community acceptance, but they do not lead to the issuance of legal title. Only BPN has the legal authority to issue title.

Very early on, many NGOs commenced the facilitation of community land mapping. Many different approaches were adopted, and there was little recognition of the legal framework that governs land registration. The outputs of early community land mapping efforts are of variable quality and remain to be legally adjudicated by BPN. Because of the large variations in quality and outputs, CDA has been devised as a standardized approach to community land mapping. A CDA Manual was prepared in June 2005 and subsequently BPN issued a formal decree giving it legal status. The BRR has also prescribed the CDA Manual as the standard approach for community land mapping to be undertaken in the reconstruction. Since June 2005, CDA training has continued to be provided to NGOs and other agencies involved in CDA seeks to streamline and standardize the identification of property rights, including the harmonization of already completed efforts undertaken in communities. Through the process of CDA, resolution of land ownership rights, land boundaries and inheritance will be reached through obtaining community agreement. To ensure consistency of approach to CDA across the multiple agencies involved, CDA guidelines have been prepared through a collaborative effort involving government, NGOs/CSOs and donors.

Upon receipt of notification from a community that it has reached agreement on land ownership and the position of the parcel boundaries, BPN is committed to formally adjudicating and surveying within one month. In the field, the adjudication teams conduct field checks and validate “community mapping” and “land inventories” to enable an accurate cadastral map to be prepared.

A team is expected to take about 15 days per block of 10 villages. After there is a clear map and agreement on ownership, BPN is charged with announcing the outcomes publicly, hopefully with cooperation of the media and NGOs. This one month period of public notification provides the public with time to contest the published information on ownership and boundaries. After one month, if there are no complaints, then BPN is to issue a land certificate for these individuals, within a period of 15-30 days. The whole process is free of charge to land owners

4. RECONSTRUCTION PERFORMANCE

Two key performances are given in the following sub sections; they are pertaining to performance of the process and performance of the Community Driven Adjudication.

4.1 Performance of the Process

To support its RALAS Project Implementation Unit, it is well planned that 62 Adjudication Teams with 992 personnel will be deployed to Aceh to the year 2008. As yet BPN has deployed 10 adjudication teams, each of 20 personnel (total 200 personnel). The teams are fully operational in October 2005. BPN has issued some initial procurement packages which include the acquisition of the necessary computing and land surveying equipment to undertake land adjudication.

Manual for CDA was prepared with close engagement of concerned NGOs and others locally, and completed on June 10, 2005. BPN has issued the Manual as a decree. BRR has prescribed the CDA manual as the standard for community land mapping – to be used by all agencies supporting housing projects, including international and local NGOs.

MOU is being prepared with Oxfam, to establish a partnership for the project, covering training, monitoring, information dissemination, etc. Partnership with UNDP - which is providing support in the critical early stages before funds start flowing - for training, surveying equipment, support for website, internet communications for BPN. Partnership with the EU has led to provision of pre-tsunami satellite imagery (and two technical advisor missions to build BPN capacity in imagery processing), to support community mapping.

Australia provided some initial surveying equipment to BPN in March 2005. It has also announced support for land titling, following the Australian Treasurer's visit to Aceh in September 2005. Clarification of the extent of this support is being sought (Australia is not a member of the MDTFANS).

Indonesian Ministry of Finance has committed to ensuring that a Government Regulation for the waiving of all land registration taxes, fees and charges for the tsunami-affected areas, which would have been issued by October 31, 2005. BPN has established a community secretariat to engage with NGOs and CSOs in Aceh. This secretariat is now being re-shaped as an NGO/CSO forum with which BPN can regularly engage and disseminate information

The CDA manual which guides the community mapping process and links into formal recognition through BPN has been completed. The Head of BPN has issued a decree for this manual in June 2005. BPN also established a community secretariat to engage with NGOs and CSOs in Aceh. This secretariat is now being re-shaped as an NGO/CSO forum with which BPN can regularly engage and disseminate information.

4.2 Performance of CDA

Following are some figurative achievements in the recovery of property rights to date. Approximately 17% or 10,200 land parcels have completed community land mapping. This comprises completion of approximately 60 villages in Banda Aceh and 40 villages completed in other parts. At least 500 personnel have now been trained in Community Driven Adjudication (CDA), comprising 300 NGO facilitators and 200 BPN staff, and training is underway for KDP, UPP and other community-level facilitators.

5. RECONSTRUCTION CONSTRAINTS AND POLICY

A number of constraints need to be addressed in progressing the reconstruction activities, include: land registration taxes, fees, and charges; harmonization of existing community mapping activities; tight time schedule in its implementation; slow process of land information recovery; and problems related to inheritances and rights of vulnerable groups.

In tackling the constraints, BPN has done some efforts including the formulation of Draft of Government Regulation to Replace Existing Land Law (PERPU) to regulate matters related to land tenure and rights protection, banking, inheritance, and guardianship. Following are the constraints and efforts.

- ✓ In order to support the fulfillment of free of charges registration policy to land owners for the whole process of CDA, there should be a high commitment from the Government, Ministry of Finance, to should immediately waive of all land registration taxes, fees, and charges. Should it is not secure the necessary government regulation for land titling will not be issued before land owners pay standard fees required by existing regulation.
- ✓ Harmonization of existing community mapping activities facilitated by NGOs is vital so the outputs of these efforts can be formally adjudicated and surveyed by BPN to ensure that property rights are legally registered. Harmonizing community mapping initiatives with BPN's formal reconstruction of property rights may face the following challenges: The perception of communities that community mapping is the only legal determinant of ownership and boundaries, rather than the formal adjudication and survey by BPN. In fact the community land map (sketch) and inventory of owners (and heirs) are inputs or evidence that must be validated by BPN using other available records, as part of the overall legal adjudication process. Once BPN has completed its adjudication, the outputs must be publicly notified for a period of 30 days. It is only after all of this has taken place, and there are no outstanding objections, that legal title may be issued. Disputes which might emerge if BPN needs to adjust the position of community placed boundary markers to more accurately delineate parcel boundaries in the case of mistakes made by communities.

To tackle these constraints, BPN advises that community land mapping should be carried out in accordance with the CDA Manual in order to minimize the risk to property rights. The manual has been provided by BPN through the Head of National Land Agency's Decree No. 114-II-2005 dated on June 21, 2005 regarding Community-Based Land Registration Manual on Tsunami Affected Areas in Aceh and North Sumatera.

- ✓ Tight time scheduled to issue 50,000 land titles could also become constraints to the implementation of RALAS Project. The current budget for BPN to support RALAS is only valid until December 31, 2005. There are almost 2 months delays in issuing DIPA by the Ministry of Finance. It has significantly slowed the work of RALAS Project. As a result, there are delaying in deployment of staff to Aceh and delaying in the procurement of the necessary equipment to enable the Adjudication Teams to work properly. As this is urgent, BPN has considered to

operationalize its Teams more quickly by delivering some surveying and computing equipment from other BPN-Provincial Offices, on temporary basis before planned procurement is available.

- ✓ The recovery process of damaged land document has progress very slowly, which impacts in delaying of reconstruction. Taking experiences from the difficulties of doing coordination, however, in future BPN, will take policy to utilize digital information technology to back up all land data and information, which will be placed at BPN Districts and Central Offices. BPN has promoted policy to implement digital land administration system in BPN Provincial Office of Aceh. The program has full support from multi donor funds for its implementation.
- ✓ People have started to re-build their houses and communities. They inevitably commence before BPN is fully operational under RALAS to support CDA. Under RALAS, BPN will not prevent anyone from commencing to build on their land. Where building has already been completed or commenced, BPN will retrospectively adjudicate and survey these land parcels.
- ✓ Since early on Project implementation, it is realized that the availability of medium that can be used to communicate and disseminate information about CDA through RALAS Project is limited. Situation worsens as many land owners or heirs or person who acts on behalf of them live outside Aceh where are difficult to reach or even in some cases unknown. These could bring other problems in terms of inheritances and rights of vulnerable groups. For this, BPN will pay special attention to establish social justice, ensure long-term social stability, and to safeguarding the rights of vulnerable groups. To anticipate this, BPN has been participate in preparing Draft of Government Regulation to Replace Existing Land Law (PERPU) to regulate matters related to land tenure and rights protection, banking, inheritance, and guardianship. The Regulation is interdepartmental in characteristics, and is still under deliberation (1 year after tsunami).

6. CLOSING REMARKS

In the above description, it has been described context of the tsunami-affected areas, the performance of reconstruction, and some key constraints to the construction process and implementation.

The role of BPN, as an organization responsible for land administration, is very important. One of the policy responses of Government of Indonesia is to develop a framework for the reconstruction of property rights, which is provided under the Reconstruction of Aceh Land Administration (RALAS) Project. The goal of the project is *to improve land tenure security in Aceh. The specific objectives are: (i) to recover and protect ownership land rights of the people in the affected and surrounding areas; and (ii) to rebuild the land administration system.*

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term economic development. Also, recovery and protection of land rights is essential for establishing social justice and ensuring long-term social stability.

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Map 1. Geographical Extent of the Disaster-Affected Areas

