

Land for the People

The State and Agrarian Conflict in Indonesia

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Chapter I

THE LAND, THE LAW, AND THE PEOPLE

ANTON LUCAS AND CAROL WARREN

No one seems to realize that Indonesia is entering a period of social revolution. The signs are there. It can be seen in the farmers who, having had their land stolen from them during the New Order, are now taking it back by force. It can be seen in the protests by farmers outside regional assembly buildings. It can be seen in the attacks on hundreds of police and military posts. In the past, these very same people would have let themselves be robbed of their voices, but now they are fighting back. Whether they realize it or not, they are the vanguard of a social revolution.

—Pramoedya Ananta Toer¹

When Sundanese villagers carved “*Tanah Rakyat*” (People’s Land) onto the fairway of the Cimacan golf course in 1998, shortly after the official demise of the “New Order” regime of President Suharto, they staked a claim against an unredeemed promise of the Indonesian revolution. Land and the welfare of ordinary people have been intrinsic to popular understandings of Indonesian nationhood since the early years of the nationalist movement.

At every significant juncture in Indonesia's recent history, land issues have played a pivotal role. "Land for the People" was the catchphrase of the land reform movement and peasant actions supported by the Communist Party (PKI) in the postrevolutionary period. Land issues were at the heart of the intense political conflict that ended in the anticommunist massacres of 1965–66 and the takeover by army general Suharto. Three decades later, land conflicts contributed to the overwhelming popular animosity that eventually ended Suharto's authoritarian rule.

Land tenure and access issues embody powerful tensions between elites and popular forces, between regional interests and central government, and between Indonesian national and transnational capital. The foundational importance of the land question was expressed in the 1960 Basic Agrarian Law, arguably the most important piece of legislation after the Indonesian constitution. Paradoxically this same piece of legislation oversaw diametrically opposed policies of the Old Order Sukarno (1950–65) and New Order Suharto (1966–98) regimes, and remains today a contentious focal point in the struggle for social justice by marginalized sectors of Indonesia's population.

The Basic Agrarian Law under Old and New Orders

In the postrevolutionary period there were high expectations that the government of Indonesia's first president, Sukarno, would deliver to the predominantly rural and poor population the well-being (*kesejahteraan*) they had been promised. After a decade of debate and political struggle, the Basic Agrarian Law was finally promulgated on 24 September 1960,² as the centerpiece of Sukarno's efforts to fuse nationalist, socialist, and populist political commitments. It asserted the "social function" of land and other resources,³ reiterated the state's responsibility for managing those resources in the interests of "the people," prohibited absentee and foreign ownership of land, and paved the way for the redistribution of land through subsequent land reform legislation.⁴ The Basic Agrarian Law (BAL/UUPA 5/60) has been so

intimately connected with the ideological formation of the Indonesian nation, that it acquired almost sacrosanct status from its inception. The date of its proclamation is still annually celebrated as “Hari Tani” (Peasants’ Day),⁵ accompanied by public awards, seminars, and editorials in the national newspapers. But its “social function” principle had contradictory interpretations under the Sukarno (Old Order) and Suharto (New Order) regimes, with different implications for land poor and landless laborers of “inner island” Indonesia and the indigenous minorities occupying customary lands, primarily in the forested “outer islands” of the country.

UUPA/BAL:

The “Social Function” of Land and Land Reform

The implementation of land reform, the popular socialist cornerstone of the Basic Agrarian Law, depended on complex enabling legislation that was intended to limit the size of land holdings by individuals and redistribute surplus agricultural lands. Law No. 56/1960 set the maximum ceiling for landholdings according to land use, varying from five hectares of riceland in very densely populated areas to fifteen hectares in sparsely populated areas, and six to twenty hectares respectively for drylands (UU56/1960, §1/2). The act also charged the government with efforts to provide every peasant family with a minimum of two hectares of arable land (§8), an “arithmetic impossibility” on crowded Java, according to Mortimer (1972, 16–17), who regarded this minimum land stipulation “as a symbolic display of goodwill rather than as something to be given practical effect.” Subsequent implementing regulations explained what land could be redistributed, how owners were to be compensated (PP 224/1961), and provided for a minimum 50:50 division of harvest in sharecropping agreements (UU 2/1960).

The Sukarno government planned to implement the land reform program in two stages over a three- to five-year period.⁶ However, the redistribution process was very slow and insufficient to deal with the problem.

Wolf Ladejinsky, an expert on land reform, made several visits in the early 1960s to assess Indonesia's land redistribution program. These were sponsored by the Ford Foundation and the Agricultural Development Council, which regarded agrarian reform as "a necessary anti-communist strategy" (Shohibuddin 2009, xiv). Ladejinsky had misgivings about the Indonesian program, concluding that there was not enough land in Java for a significant land redistribution program even if the maximum five hectares holding were reduced. "So long as the rural population continues to grow at the current rate, competing for a virtually fixed area of nine million hectares of cultivated land, the attainment of better tenure conditions is a very difficult task. In short, though a confirmed land reformer, I am of the opinion that the real issue in Java (and Bali) is not land redistribution but population redistribution on the one hand and a breakthrough in agricultural productivity on the other" (Walinsky 1977, 349). Ladejinsky was also concerned that no thought had been given to the pricing and financing of land to be redistributed or to the difficulties that the district land reform committees faced in enforcing reform because of conflicts between landholders and landless farmers. He noted that "despite the stated and implied promises of land to the tiller, the [BAL] enabling document is shot through with conservative safeguards in order to prevent any significant redistribution of land" (Walinsky 1977, 298).⁷

The events of 1965 dramatically reversed the political fortunes of the forces supporting land reform. The massacres and mass arrests of the main advocates of land reform—the PKI and its affiliated organizations, in particular the peasant organization Barisan Tani Indonesia (BTI)—and the dismantling of the land reform administration practically stalled the implementation of the program,⁸ although the land reform law itself was never formally repealed (Utrecht 1969, 86–88; Mortimer 1972, 63–68; Huizer 1980, 122–26).

A later study of the fate of land actually redistributed during the program in three regions (five villages) in West Java by Bachriadi and Lucas (2001b) highlights the extent of corruption and manipulation at the village level in the New Order period.⁹ Outcomes varied

significantly depending on the actions of the village headman, the survival of local BTI leaders who still had copies of land registers recording 1962–68 land redistributions, and attitudes of local officials. Many local officials stopped implementing the land reform program after Suharto came to power, and some were involved in the illegal selling of redistributed land during the 1970s. In one of the Garut district villages (Simpén) 88 percent (276 of the 313 landholders) who obtained blocks of redistributed land are still cultivating it, whereas in the neighboring village of Pangeureunan in the same subdistrict, only 7 percent (14 of the 206 original recipients) still control the land they received. In both south Cianjur villages, 80 percent of cultivators still control their redistributed land. In Indramayu, the 42 percent of peasants who received redistributed state land were disenfranchised by the village head who “borrowed” the land redistribution letters (referred to as SK Redis—*Surat Keterangan Redistribusi*) and sold the land off.¹⁰ The land redistribution process in the five villages studied had specific conditions attached, the most important of which were that each recipient had to pay for the land plus interest in annual installments over fifteen years; that until the land had been paid off in full, rights to the redistributed land could not be transferred; and that the farmer who received redistributed land was obliged to “actively cultivate it himself” (Surat Keputusan 1966).

Despite its negative association with the PKI’s dramatic growth in popularity, land reform remained a popular concept among ordinary people in rural Indonesia. For this reason, land reform continued to be given lip service over the decades since Suharto’s take over in 1965. In practice, however, it was completely sidelined by large-scale transmigration programs, shifting landless peasants from Java to outer island settlements, and the intensification and commercialization of agriculture, which were much more compatible with the capital intensive development drive of the New Order period. Bachriadi and Wiranto trace the impacts of changing state agrarian policies through an analysis of the agricultural census data from 1963 through 2003 in chapter 2 of this volume.

The Basic Agrarian Law is associated with progressive social policies of the postrevolutionary Sukarno era that were popularly perceived to advantage the land poor and landless farmers of the rice-growing heartland of Inner Indonesia, mainly on Java where the majority of Indonesia's population was concentrated. But it does not have the same meaning for customary (*adat*) landholding groups in the sparsely populated forested areas of the Outer Islands. These minority ethnic cultures traditionally depended on shifting cultivation, requiring extensive fallow areas for forest regeneration to maintain their livelihoods and traditional ways of life.

The agrarian law of the nation and particularly its "social function" principles were proclaimed to be based ultimately on *adat* (customary law) (BAL/UUPA 5/1960, §5. Elucidation A3/1). Indeed, the legal framework for land and natural resource management effectively takes the *adat* concept of customary territorial rights of avail (*hak ulayat*)¹¹ and converts it to a national principle: "The land, water and atmosphere, including natural resources within them are controlled by the State at its highest level, as the organizational authority of all the people" (BAL/UUPA 5/1960, §2.1). In appropriating the local principle of customary community rights of precedence to the higher scale of national governance, however, the ground was laid for the transgression of local indigenous rights whenever a wider "national interest" claim could be invoked. As a result, despite rhetorical recognition of *adat* values as the foundation of Indonesian land law, the subordination of local customary rights to national interest claims was ultimately rationalized by the same evolutionary developmentalist ethos that had previously underpinned colonial policy and law.¹² The explanatory notes to the legislation go into considerable detail to make clear that the "recognition" that *adat* peoples have the right to receive, "does not permit legal communities based on *adat*, for example, to reject out of hand the opening of forest on a large scale for regulated implementation of large projects for increasing food output or

resettlement of populations.” Thus the oft-invoked qualification that *hak ulayat* territorial rights of *adat* communities are acknowledged only so long as they are “in accord with the national and State interest” and do not “conflict with higher laws” (BAL/UUPA 5/60 §3 and Elucidation II/3) underscored what became the defining experience of outer island minority cultures. The populist-socialist construction of the BAL was easily transformed by a regime with a different agenda into policies that expropriated customary lands to become sites for the mining, timber, and plantation concessions liberally dispensed to Indonesian conglomerates and foreign investors under Suharto. The transmigration program enabled the New Order to circumvent genuine land reform, provide labor for outer island resource development, and impose national unity through demographic redistribution and neocolonial cultural policies.¹³

The Basic Agrarian Law itself contains fundamental ambiguities and contradictions that facilitated the subversion of its foundational social function principles. Its overriding emphasis on a nationalist construction of popular interests became the most often cited legal justification, but its evolutionary presuppositions are also an expression of those revolutionary times. Although the Basic Agrarian Law’s social function principle—restricting accumulation, prohibiting foreign ownership, and providing for land redistribution—had been geared to constrain the unfettered transformation of land into a commodity where social functions would be subordinated to antisocial market forces,¹⁴ paradoxically the BAL/UUPA privileges the Western evolutionary legal concept of private property (*hak milik*) as the “strongest and most complete form” of title, with full rights of alienation and inheritance (BAL/UUPA 5/60, §20).¹⁵ In contrast, as Fitzpatrick (1997, 2007) emphasizes, the customary “*hak ulayat*” claims of *adat* communities are not granted full statutory legitimacy under the BAL. *Adat* forms of tenure were assumed to “evolve” over time into individualized property rights (Fitzpatrick 1997, 188). The state would now be proxy to the collective priority over individual interest that had been the underlying principle of *adat* regimes. This interpretation permitted a situation in which “the state regularly denies formal rights to

occupiers of virgin or abandoned land on the basis that it holds a “state *hak ulayat*” (Fitzpatrick 1997, 207). None of the regulatory provisions pursuant to the BAL/UUPA included “*adat* communities” as legitimate title-holding entities (Fitzpatrick 1997, 187–88).¹⁶

When Suharto came to power in 1966, following the violent suppression of the Communist Party, the “national interest” principle of the Basic Agrarian Law became the Achilles heel in the battleground over agrarian resources that continues to plague the “Reform Era.” The BAL/UUPA was reinterpreted, reorienting the national interest proviso of the law to equate the people’s well-being with the state’s capital-intensive developmentalist program. Perverting the basic intent of the law to serve the private interests of Suharto’s cronies, the New Order’s policy orientation has been well described by Campbell (1999) as “reverse land reform.” Although Campbell was referring to the expropriation of forest land belonging to *adat* communities for timber concessions, it is an apt description of the broader range of policy changes that facilitated land concentration in the hands of elite political-business interests during the New Order period—a concentration of resources that the BAL explicitly describes as “harming the public interest” (§7 and Elucidation II/7).

Whenever the Basic Agrarian Law proved inconvenient for the New Order regime, it was reinterpreted or ignored. A body of sectoral legislation on natural resource extraction undermined the integral relationship of land and resources with the needs of the common person that the Basic Agrarian Law had been intended to convey.¹⁷ Where the BAL at least acknowledged local rights based on *adat* so long as they did not conflict with national law and interest, New Order mining and forestry laws, introduced the year after Suharto took power, stripped even residual rights from *adat* communities. The Basic Forestry Law of 1967 excluded some 70 percent of Indonesia’s land area classified as forest from the provisions of the Basic Agrarian Law, and facilitated legal disenfranchisement of whole populations from ancestral lands. In exercising the nation’s claim over the then vast forested land mass, New Order legislation appropriated to the state the exclusive and unqualified right of management and allocation of resource extraction

rights, with only negligible provision for compensation to the original inhabitants dependent on these resources (Fitzpatrick 2007, 133–39; Bedner and van Huis 2008, 181–84).¹⁸

Although state policy and practice on agrarian issues dramatically altered the relationship between the land, the law, and the people under the New Order, it is worthy of note that over the three decades of Suharto's authoritarian rule the Basic Agrarian Law was never repealed or revised. This might be surprising given its overtly socialist premises and the association of the land reform issue with the dramatic rise of the Communist Party of Indonesia (PKI) in the early 1960s. It is perhaps less so, considering that the socialist and populist causes it reflected have been so intimately identified with Indonesian nationalism from its inception, and proved at least rhetorically necessary to achieve a semblance of legitimacy for the Suharto government and its military power base.¹⁹

It was the remolding of the state's role and its revised construction of the "national interest" principle in the disposition of "state land" (*tanah negara*) that caused the most acute conflicts between the "People" and the "State" in the high developmentalist period of the Late New Order from 1988 to 1998. Lands claimed by the state as "*tanah negara*" comprised vast tracts of forest inhabited by indigenous minorities in outer Indonesia, as well as former colonial plantation estates that had been occupied for decades by peasant cultivators in Java and Sumatra. These became attractive and lucrative sites for the voracious capital intensive megadevelopment projects for which the last ten years of the Suharto Era became notorious.

Anatomy of Land Disputes in the Late New Order

By the 1990s the land issue had become the single most prominent cause of conflict between the government and the heavily repressed civil society under the New Order. Despite political impediments to resistance, open protest and official complaints rose steadily in the last decade of the regime. The National Land Agency (BPN) recorded

1,395 complaints submitted in the six-month period before the end of 1998 (BPN 1999a, 1999b).²⁰ Land disputes made up the largest number of cases dealt with by the newly established Administrative Courts (PTUN) and National Human Rights Commission (Komnas HAM) at that time (see table 1.1 in the chapter appendix).²¹ Between July 1994 and September 1996, Komnas HAM (1997) recorded 891 incidents of human rights abuses involving land expropriation, collated from reports in twenty-eight regional newspapers.²²

Annually published Human Rights Commission data on land cases handled since its establishment in 1994 give some indication of the escalation and growing visibility of the land issue. In 1994 the commission dealt with 101 official complaints involving land issues, rising to 351 complaints in 1997, a threefold increase over the final four years of the New Order. In all but one year since 1991, land disputes represented the largest single category of cases brought to the Jakarta Administrative Court.

The Consortium for Agrarian Reform (KPA), the umbrella non-government organization that coordinates 187 affiliated peoples' organizations and NGOs from twenty-three provinces concerned with agrarian issues, compiled an inventory of structural land conflicts since 1970.²³ As of 2001, they had documented 1,753 cases covering 10.8 million hectares of land and affecting more than a million people. These "structural" cases, which were a systematic consequence of state policy, involved disputes between local people and one or a combination of government (42 percent), private (45 percent), and state (10 percent) corporations, and the military (3 percent). Direct military involvement in these disputes is reported in 7 percent of the cases covered.²⁴

Of the 553 land conflict cases with which Indonesia's Legal Aid Foundation (YLBHI) dealt in 1998, the year that brought the demise of the New Order, 26 percent were due to the establishment of large-scale plantations, 23 percent to land clearance for industrial, residential, and tourist projects, and 13 percent to forest, mining, and aquaculture developments (YLBHI 1998, 1-4). The remaining "nonstructural" cases included complaints about the issuance of false land certificates, road expansion, and misappropriation by government

officials. The disputes dealt with by the Legal Aid Foundation in 1998 alone involved a total of 827,000 hectares of land, and affected the livelihoods of more than a million people (see table 1.2 in the chapter appendix).

The 1998 Legal Aid Foundation report (YLBHI 1998) also provides what little information is available on the regional distribution of land conflicts. It reveals that 58 percent of the 553 cases it dealt with across fourteen of Indonesia's then twenty-seven provinces were located outside Java. However, 99 percent of the total land area and 95 percent of the total households affected were in these Outer Island provinces (table 1.2). It is reasonable to assume that land issues were even more acute at the periphery than these already heavily skewed statistics suggest. There is little information on the other thirteen relatively remote provinces, where it was much less likely that cases would find their way to legal aid networks.

* * *

In the early 1990s, the land question was one of the key issues taken up by student activists and nongovernment organizations (NGOs) in Indonesia. The political response to the satiric "Land for the People" (*Tanah untuk Rakyat*) calendar (see Lucas 1992 and cover illustration to this book) drew attention to the plight of farmers forced off their land without meaningful compensation. In Java, most of the large-scale land clearances under the late New Order involved urban and industrial expansion at the expense of squatter settlements, or the resumption of lands (often former colonial plantations) occupied and in some cases redistributed to local farmers in the land reform period between 1961 and Suharto's takeover in 1966.²⁵ Large-scale land clearances were associated with capital-intensive developments such as golf course/resort complexes, infrastructure, industrial and residential estates, or reforestation and new plantation concessions. The principal issues in these cases were the unresolved tenure status of smallholders on former colonial plantations and the aborted land reform program after 1965 that left most farmers without legal title, the consequent weakness of their position in the negotiation process, and the inadequacy of compensation.

Government regulations theoretically gave farmers occupying plantation lands some basis for claims to occupied land as long as these rights did not conflict with land use regulations or national interest development projects.²⁶ Where (as in most cases) plantation workers and peasant farmers did not hold certificates of title, compensation claims were easily discounted, however. These regulations, all derived from the Basic Agrarian Law, should have given some legal protection to long-term occupants of plantation land. Particularly where those lands had been occupied since the revolution, the popular expectation had been that land reform would lead to recognition of smallholder title.²⁷ But by the Late New Order (1988–98) the demands of “development,” equating the “national interest” with those of conglomerates and their political patrons, invariably meant that well-connected investors were privileged over “illegal” occupants. The number of disputes on former plantation lands that persist into the present is a legacy of this unfulfilled promise of agrarian reform, particularly with respect to the claims of smallholder peasants and farm laborers on former Dutch plantation lands, converted under the New Order to HGU commercial cultivation right concessions.²⁸

By 1992 large plantation estate leases covered 3.8 million hectares,²⁹ held by 1,206 foreign and domestic companies with an average holding of more than 3,000 hectares each (Bachriadi 1997, 128). This compared with the average size family holding of less than 0.5 hectares of agricultural land (1993 Agricultural Census). This figure for land accumulation in the plantation sector rose to more than five million hectares with subsequent conversion of large tracts of forest especially to oil palm plantations.³⁰ According to Ministry of Forestry and Crop Estates statistics, between 1982 and 1999 permits were issued to twelve conglomerates for conversion of more than four million hectares of Indonesia’s forests to plantations. The Salim conglomerate alone, with its close connections to Suharto, was able to obtain in-principle permits (*izin prinsip*) for conversion of 1.2 million hectares of forest to oil palm estates in this period (Casson 2000, 24–25). Even smallholder farmers outside the plantation sector with legally certified title were often unable to protect their tenure in the face of

corrupt officials acting in the name of “development” and backed by the state security apparatus.

To give some indication of the scale of land speculation associated with plantation, industrial, and real estate development, and of the amount of land withdrawn from smallholder agriculture and other productive purposes over the late New Order period, National Land Board records show that between 1993 and 1998 it had issued location permits (*izin lokasi*)³¹ for development projects over some three million hectares of land throughout Indonesia. Most of this (96 percent) was for plantation developments. By 1998, 62 percent of the land on which location permits had been issued had been acquired by big business interests, but only a quarter of that land had actually been developed, leaving large amounts of “sleeping lands” (*tanah tidur*) at the time of the collapse of the Suharto regime.³² These were technically “neglected” (*terlantar*), and according to the Basic Agrarian Law, rights in such land whether cultivation use rights (HGU) or private freehold rights (*hak milik*) should be automatically canceled. The issue of neglected plantation land remained a festering sore throughout the New Order.³³ Thousands of hectares of these lands became objects of reclaiming actions when Suharto fell from power in 1998. Across Indonesia, plantation crops were removed and food crops planted during the euphoric first months of the reform (*reformasi*) movement. Formal resolution of these cases remains one of the most intractable issues facing the successive governments of the post-Suharto Reform Era.

Tables 1.3 and 1.4 (see chapter appendix) show the magnitude of the “sleeping land” problem. By 1998 the BPN had issued location permits (*izin lokasi*) over an area of over three million hectares for several different land uses. Of that three million hectares, only 481,558 hectares (16 percent) had actually been developed. It should be noted that much of the undeveloped land had been subject to the notorious New Order compulsory release of title (*pembebasan tanah*) procedure. The Basic Agrarian Law does not deal with the issue of acquisition of land by private commercial interests. According to its provisions, land could only be compulsorily acquired by government in the public interest by presidential decree (UUPA 5/1960; Harsono 1996, 11, 890). In practice,

during the New Order private interests also acquired compulsorily resumed land, although they had to have a location permit before applying for formal rights (HGU, HGB, or HPL) on such land.³⁴

The very low prices at which land could be extracted from cultivators encouraged speculation and profiteering by developers and their intermediaries. Before the financial crisis of 1998, large landholdings were a means of obtaining bank credit in Indonesia, and selling of rights to foreign investors was a lucrative avenue for wealth accumulation by Indonesian conglomerates and local “calo.”³⁵ In order to solve the demand for land by private investors (both domestic and foreign), regulations on release of title procedures were promulgated in 1975 and 1993. Although theoretically based on the prevailing market price, in practice compensation was invariably much lower. Although people had the right to refuse sale of their land by law where the purpose of land acquisition had nothing to do with public interest, in practice landholders were accused of being “antidevelopment,” “subversive,” or “ex-communist” if they attempted to exercise that right. Most people surrendered their land rather than risk being subjected to intimidation or attack. The role of the military in securing the interests of business concerns, often allied with the Suharto family, by assisting the process of land acquisition is well documented.³⁶

The years leading up to the dramatic and unpredicted collapse of the Suharto regime in 1998 were marked by increasing conflict over land in both rural and urban Indonesia. A wave of direct actions to reoccupy lands resumed for development projects and to reclaim resources allocated to conglomerate interests became a prominent part of the political reform movement. But the new democratically elected governments of the post-Suharto “Reform Era” have remained ambivalent on these highly sensitive issues of land reform and *adat* rights, with the partial exception of Presidents Wahid and Yudhoyono.³⁷

Reformasi: Land Occupations and Other People's Actions

A dramatic resurgence of agrarian protest and direct actions swept Indonesia in the wake of Suharto's resignation. In actions reminiscent

of the peasant unilateral occupations of the early 1960s, dispossessed farmers involved in land disputes, some running for decades, took direct action to rectify their grievances. These “reclaiming” actions included occupation of plantation estates,³⁸ golf courses,³⁹ and neglected “sleeping land” acquired by investors for speculative purposes.⁴⁰ In East Java alone, according to Legal Aid Foundation sources, there were more than fifty actions by dispossessed farmers, reclaiming disputed lands.⁴¹ At Situbondo, thousands of coffee and cacao plantation crops were destroyed and replanted with corn and soy beans by local farmers on the land they said the state had seized from them.⁴² At Jenggawah, where a former Dutch plantation covering more than three thousand hectares had been taken over by a state tobacco plantation company under commercial plantation (HGU) lease, local people occupied the estate after a decades-long struggle.⁴³ In North Sumatra two thousand farmers demanded the return of 100,000 hectares of plantation land controlled by a state company (Nuh 1995). Protests were often accompanied by looting or destruction of plantation crops. Looting of fourteen state-owned plantations whose operations covered some two million hectares of land caused losses totaling billions of rupiah.⁴⁴ These occupations and other protest actions were aimed at obtaining additional payments or retaliating for land and resources previously expropriated without compensation or at unjust rates. They were also related to meeting daily subsistence needs during the economic crisis.⁴⁵

No longer did the press use carefully sanitized New Order language to mute the effects of these protests. Newspapers spoke, as in the 1960s, of attacks on landlords,⁴⁶ of protesting women taking off their clothes in front of bulldozers about to raze their homes,⁴⁷ and of demands for the return of land stolen by the Suharto family.⁴⁸ Authorities sometimes resorted to violence in response to incidents of direct popular action.⁴⁹ But in the new climate of political freedom, the sympathy of the media and the public was generally with the protestors. Although many occupations took place without interference from the state apparatus, developers frequently tried to prevent them by using hired henchman (*preman*).⁵⁰

In the outer islands where customary *adat* lands had been taken without acknowledgment of traditional rights for timber and mining concessions, occupations, blockades, and destruction of company assets were widely reported local responses, with substantial impacts on the investment climate and on the relative negotiating position of local and regional interests. During the 1998–2000 period, twenty-eight mining companies suspended their activities because of political insecurity and the lack of legal certainty.⁵¹ The Australian gold mining company Aurora pulled out of its Sulawesi operation in 2001, citing the impossibility of controlling the influx of “wild” miners who were panning on their lease.⁵² In the forested areas of the outer islands, which had been declared “State lands” under the Forest Law, reclamation often took the form of intensified “illegal logging” (Angelsen and Resosudarmo 1999). Dozens of timber companies were reported to have stopped operations owing to conflicts with local communities.⁵³

In some cases, compensation demands for land forcibly acquired by plantation, mining, and other companies, which were documented by nongovernment organizations, led to official responses proffering negotiations toward compensation, distribution of shares, and/or co-management of plantations, national parks, and production forest zones.⁵⁴ The state-owned Forestry Corporation, Perum Perhutani, was charged with the responsibility of including communities in the management and income benefits arising from logging the country’s forests, and to pay compensation for damage to state-managed forests.⁵⁵ At the grassroots level where protest was fierce, officials were sometimes forced to revoke unpopular decisions or found themselves removed from office. In Babatan, an urban ward in Surabaya, one thousand residents forced the headman to revoke the sale of 12.6 hectares of former communal land (*tanah ganjaran*)⁵⁶ to a developer, and to issue a public apology “for lying, for giving up this land without the agreement of residents, and for forging signatures.”⁵⁷

The phenomenon of peasants reclaiming plantation land that had already begun during the New Order became widespread in the immediate post-Suharto period. The Bandung YLBHI office has data on forty-five land disputes involving peasant farmers reclaiming large

plantations between 1981 and 2007 in ten districts in West Java. Over 28,000 households are recorded as being involved in these actions, reclaiming a total of 17,229 hectares. The peasant smallholders faced a combined opposition from a broad alliance of state and private business interests. In all but one of the reclaiming actions, however, the people still control occupied land despite the fact that its legal status in the majority of cases remains unresolved.

It is difficult to present a comprehensive picture of the contested land situation for Indonesia that would enable clear comparison of the situation in the New Order and Reform Eras. Data collection and classification systems in Komnas HAM and PTUN Administrative Courts have changed, and NGOs are less focused on particular cases since *reformasi*.⁵⁸ According to the National Land Agency (BPN) director, Joyo Winoto, 7,491 land cases have been recorded by the agency, of which 2,052 cases remain subject to litigation in the courts. Of the total number of cases, only 1,180 have been settled through legal processes.⁵⁹

Some indication of the depth and continuity of the land problem in the post-Suharto period is revealed in statistics collected from the Indonesian Supreme Court website; the court hears appeals cases. Data presented in table 1.5 (see chapter appendix) cover only those cases actually adjudicated and do not provide an indication of the actual number of appeals brought to the Higher Administrative Courts (PT TUN, *Pengadilan Tinggi Tata Usaha Negara*), or to the PTUN lower courts.⁶⁰ Nonetheless, they show a steady pattern of growth in the number and proportion of land cases adjudicated by Indonesia's administrative courts of appeal. Land cases rose from 3 percent to 48 percent of the total adjudicated caseload between 2000 and 2008.⁶¹

What has been achieved by these popular actions over land and resource rights in the so-called *Era Reformasi*? In the highly publicized cases at Jenggawah and Cimacan, there have been some concrete results. Five thousand cultivators at Jenggawa finally obtained title to plantation lands covering 3,117 hectares in seven villages, ending a thirty-year struggle in the face of state repression. Only a fortnight after Suharto's resignation, on 8 June 1998, the Bupati of Jember endorsed the farmers' claim for land rights in a written recommendation

to the National Land Agency. A subsequent agreement moderated by the East Java Brawijaya military chief of staff was signed by farmers' representatives with the government in a negotiated settlement on 1 October 1998. In Cimacan (discussed in detail in chapter 4), cultivators dispossessed by collusion between the village head and a developer eventually received compensation for lost rights to highly productive former colonial plantation land which they had been cultivating for generations. But the vast majority of successful occupations have not to date achieved any legal resolution in the form of negotiated compensation or the issuance of legal title. Of the 753 hectares at Tapos, claimants had only succeeded in occupying and cultivating 36 hectares at the time they joined the Jakarta student protests. Since then they have been attempting to get recognition from the National Land Board for the land they have occupied, while maintaining a claim on a further 73 hectares of land cultivated by villagers before it was seized by Suharto in 1973. In Batang district, Central Java, farmers occupied three plantations, with mixed results.⁶² In North Sumatra, land-reclaiming actions have taken place with the collaboration of various NGO groups and local movements to regain rights to plantation land.⁶³ In Central Sulawesi local villagers took over five plantations, in all cases without legal resolution.⁶⁴ In Bali and Lombok, reclaiming actions took place in relation to several high-profile resort-development cases, leading to still inconclusive outcomes.⁶⁵ A KPA inventory shows that up to December 2001 out of 1,753 cases, 133 (7.6 percent) had gone to court, and only 50 (38 percent) of those had been resolved by court decision (Bachriadi 2004, 518). Because of the costs of litigation and past experience with the corruption of the judicial system, farmers and NGOs have called for a completely new legal body to deal with all land issues by arbitration (*Kompas*, 25 Sept. 2001; *Forum Keadilan*, 7 Oct. 2001).

Beyond a select few among the "big name" cases, protesting farmers have as yet no assurance of recognition of their land rights or fair compensation for land taken during the Suharto Era. Nor can it be assumed that the gains achieved by these "people's actions" of the post-Suharto period will translate into secure futures for themselves and their children.⁶⁶ The Legal Aid Foundation of Indonesia predicted

that land conflicts would increase in number and intensity as post–New Order governments resorted to extractive economic policies to bolster foreign exchange in the wake of Indonesia’s economic crisis (YLBHI 1998, 8). Certainly, there was reluctance about tackling the land crisis in the first decade of reform despite what might have been considered a mandate for radical change.

In the reform atmosphere that swept Indonesia in 1998, local communities, NGOs, student groups, and academics demanded decentralization of decision-making and fiscal powers, revision of land laws, and a new natural resource management regime that would provide for the people’s welfare and a sustainable future. They called for new laws that would revitalize land reform, fully recognize *adat* institutions and customary land tenure, and facilitate community-based forest management. There were also calls for the cancellation of forest concessions (HPH) large-scale cultivation (HGU), and timber plantation leases (HTI), and an end to the transmigration program. Under intense pressure, the transitional government began introducing new legislation on land, forests, and the decentralization of political authority and economic decision making.⁶⁷ This legislation scrapped or altered the workings of some of the most important pieces of national legislation affecting the regions. The fact that much of the “reform” legislation, including draft revisions of the Basic Agrarian Law, was already being formulated in the last years of the Suharto regime suggests the intensity of the pressure that was building against government policies well before cracks in the facade of the New Order appeared to threaten its foundations. But the origins of the revised legislation suggest, too, the limited extent to which it was likely to bring about the real transformation expected by the public.

Case Studies

In the wake of the Indonesian revolution, the Basic Agrarian Law was intended to satisfy popular demands for social justice and equity by providing access to land and just returns to farmers. Fifty years later,

the Basic Agrarian Law's objectives of social justice, legal certainty, and national unity for the Indonesian people have not been achieved. This introductory chapter has presented a historical overview outlining the very different roles played by the Indonesian state in the Old and New Orders, and continuing into the ensuing "reform" era in the intimate and fraught relationship between the land, the law, and the people. The case studies that follow present a detailed, grassroots picture of land conflicts affecting local communities in different parts of the Indonesian archipelago from the independence period to the present.

These studies trace the roots of contemporary land conflicts in traditional land tenure arrangements, through colonial and postcolonial Sukarno and Suharto regimes, into the present, when democratization of governance and significant changes in law and administration pursuant to new regional autonomy legislation have altered the context in which these peoples' claims are being pursued.

The studies, selected from across Indonesia's diverse cultural and ecological landscape, reflect the two critical dimensions of the land problem in Indonesia, which have deep roots in the national psyche and the policies inherited from former regimes: The first is the core question of equity and the redistributive objectives of land reform policy, where case studies are primarily focused on densely populated Java. The second concerns land tenure questions in "outer island" Indonesia where national law has been used to override traditional land rights in the customary (*adat*) domains of indigenous minority groups.

In chapter 2 Dianto Bachriadi and Gunawan Wiradi discuss what Indonesia's five agricultural censuses between 1963 and 2003 reveal about change and continuity in land tenure and land use patterns under contrasting Old and New Order agrarian policies. Whereas the social function of land was a core principle of the 1960 Basic Agrarian Law, under the New Order land became increasingly commodified, with significant implications for the landless and the smallholder agrarian sector generally. Their study analyzes the relatively limited impact of the land reform program of the early postrevolutionary period and the very different New Order approach to redistribution through the transmigration program. The authors discuss the available evidence

on land tenure inequities over five census periods (1963–2003) and the reasons for persisting high levels of rural poverty and landlessness.

Chapter 3 by Carol Warren and Anton Lucas reviews the Land Administration Project (LAP), a World Bank–funded land-titling program, which became the centerpiece of land policy in the late New Order period. Influenced by neoliberal arguments that formalization of land tenure is the key to alleviating poverty, certification was intended to provide legal certainty and greater tenure security for landholders and better access to credit. It would also facilitate more efficient allocation in the land market for development purposes. This chapter considers these claims and NGO criticisms of formal titling as the primary means for dealing with Indonesia’s acute land problems.

In chapter 4 Anton Lucas discusses the long-running Cimacan golf course dispute in the Puncak region of West Java from 1983 to 2007, where local government and developers’ interests were pitted against peasant smallholder vegetable farmers who had leased the land from the village. Despite farmers’ fierce resistance to the development, significant NGO involvement, widespread media coverage, and litigation in the district, provincial, and supreme courts, as well as support from the reform era Cimacan village council, in the end the farmers accepted compensation for the loss of their valuable cultivation rights. This chapter analyzes the stages of this struggle in Cimacan, including attempts by dispossessed landholders to gain power in recent village elections.

In chapter 5 Afrizal (himself from the region of West Sumatra) traces local struggles for recognition of traditional land rights in Nagari Kinali, West Sumatra, which has been transformed into an oil palm plantation economy in the past decade. As a result, demands for fair compensation and restoration of customary (*adat*) land rights for local farmers have dominated agrarian struggles. The chapter analyzes the nature of protests over customary land, how local communities acted to legitimize their claims, the roles of *adat* leaders, and responses from plantation corporations and the local state apparatus.

Chapter 6 by John McCarthy reviews the impact of President Suharto’s notorious “million hectare” megaproject on local Dayak communities

who lost access to resources, as peat swamps were drained, and forests and gardens devastated by the 1997 forest fires. This chapter shows how the Peat Land Development Project fits into the wider transformation of Central Kalimantan province, where development strategies, geared toward capital accumulation by politically well-connected corporate actors, redefined tenurial categories and undermined traditional resource use. The author shows how indigenous actors eventually became opportunistic players in the short-term extraction of local resources, and reflects on whether a pilot Reducing Emissions from Deforestation and Degradation (REDD) program may provide a solution to protecting remaining peat swamp forests.

In chapter 7, John Prior examines several land dispute cases in Flores between villages and the state, which highlight disparate interpretations of customary (*adat*) and national law. He also examines the relationship between indigenous communities and the Catholic Church, which has played an ambiguous role as landowner, on the one hand, and credible mediator, on the other.

In chapter 8 Carol Warren traces the three-decades-long land conflict on the island of Gili Trawangan, Lombok. This case evolved in the context of rapid value transformations in the local, national, and global economies, as smallholders competed for land with commercial plantations, resort development, and more recent incursions of the international real estate property market. The case study documents repeated government land clearance campaigns, the reclaiming actions of local landholders, and the ongoing struggle of smallholder farmers and businesses against eviction by a regional government openly allied with big capital interests. The chapter explores competing understandings of “public interest” and contested interpretations by state and local actors of the legal and social justice principles at stake in this long-running conflict.

Chapter 9 by Gustaaf Reerink discusses the impact of changing commercial land development laws on the urban poor of Bandung, the provincial capital of West Java. Under the New Order, commercial land development was one of Indonesia’s prime investment sectors,

and low-income urban dwellers were under constant pressure to give up their valuable land in inner city urban wards (*kampung*) to developers aided by government coercive force. Post-Suharto democratic reforms have failed to end such practices. The case study of Bandung's Paskal Hyper Square development highlights how decentralization and new deregulation policies have contributed to the commodification of urban land, on the one hand increasing the risks to low-income earners confronted by land hungry developers, but on the other hand offering them new opportunities for resistance.

In chapter 10, Dianto Bachriadi, Anton Lucas, and Carol Warren reflect on the impact of more than a decade of Reform Era struggles to redress the excesses of the New Order and the neoliberal challenge to the socialist premises of land policies of the postrevolutionary era. This chapter considers the fate of the Basic Agrarian Law and efforts to revive progressive agrarian policies, the role of civil society groups, and new political programs that claim to address the long-standing land conflicts described in this book.

The concluding chapter, by Carol Warren and Anton Lucas, considers whether current policies will increase land security for the general population or create new forms of land concentration, and what challenges the emerging issues of global food security and environmental degradation pose for land use and land rights in a rapidly changing world system.

The case studies in this book offer a locally grounded perspective on the factors intensifying conflict over land rights and land use during this period of dramatic political change in Indonesia, within the context of important global debates about sustainable development, food security, democratization, globalization, and human rights. These studies of the long history of land conflicts across the country provide important insights into the extent and limits of the reform process in Indonesia today, and highlight the complexities of building a responsive, participatory "civil society" in the face of severe economic and ecological crisis, entrenched political corruption, and contending global forces.

Appendix

TABLE 1.1

Land cases as a proportion of total cases submitted to the Administrative Court (PTUN) for Jakarta and the National Human Rights Commission (KomnasHAM) 1991–98

	1991	1992	1993	1994	1995	1996	1997	1998
PTUN Jakarta*	37/166	53/207	35/156	30/158	40/171	56/191	55/163	40/130
KomnasHAM**				101/572	178/867	327/1406	351/1093	339/1221

*Administrative courts (PTUN) were instituted in 1991 to hear cases involving administrative arms of government. These statistics represent new cases submitted only to the Administrative Court for Jakarta (one of the twenty-six regional PTUN branches). They do not include cases carried over from previous years, which typically represented half the annual caseload. There are twenty-four categories of human rights cases of which the category “land” (*pertanahan*) represented the largest number of cases in all but two years (1991 and 1994) when cases classified under “housing” and “civil service” outstripped it (Source: PTUN Jakarta 1991–98). The slight decline in the Jakarta Administrative Court and Human Rights Commission figures for 1998 reflects the turbulent political and economic crisis of that year.

**KomnasHAM, the National Human Rights Commission, was established in 1994. These figures represent completed cases dealing with land issues out of total completed cases for the six categories reported: “land,” “labour,” “official abuses,” “housing,” “religion,” “other” (KomnasHAM 1996, 8; 1997, 29; 1998, 38). Approximately 30 percent of complaints submitted were unresolved and carried into the following year’s caseload.

TABLE 1.2

Land cases handled by the Legal Aid Foundation for fourteen provinces in 1998

<i>Province</i>	<i>Number of cases</i>	<i>Land area (hectares)</i>	<i>Households affected</i>
West Java	28	3,422	2,887
DKI Jakarta	116	637	844
Central Java	23	1,083	1,241
D.I. Yogyakarta	4	1,057	572
East Java	60	1,050	5,632
Subtotal	231 (42%)	7,249 (1%)	11,176 (5%)
D.I. Aceh	7	59,985	4,254
North Sumatra	42	113,050	53,727
West Sumatra	12	15,483	1,612
South Sumatra	135	195,585	26,284
Bandar Lampung	73	253,122	98,846
Bali	9	285	684
South Sulawesi	12	13,110	2,382
North Sulawesi	15	32,285	6,593
Irian Jaya	17	137,197	8,798
Subtotal	322 (58%)	820,102 (99%)	203,180 (95%)
Total	553 (100%)	827,351 (100%)	214,356 (100%)

Source: Adapted from YLBHI 1998 (*Divisi Tanah dan Lingkungan*)

TABLE 1.3
Comparison of unreleased (neglected)
and released land with location permits

Allocation	Land with location permits				Total area with location permits (ha)
	"Unreleased lands" (ha) (passively neglected)	%	"Released lands" (ha)	%	
Housing	29,157	39%	45,578	61%	74,735
Industry	6,685	22%	23,412	78%	29,999
Tourism	7,788	42%	10,794	58%	18,582
Plantation estate	1,103,137	38%	1,799,049	62%	2,902,186
Total	1,146,767	38%	1,878,833	62%	3,025,502
Average	286,692	35.3%	469,708	64.7%	756,375

Source: Pusat Data Bisnis Indonesia. 1998. "Kebijakan Pertanahan Order Reformasi." *Informasi PDBI* 18, no 224 (October): 4.

Notes: "Unreleased" or passively neglected land means that the land still has occupiers/landholders on it, although a location permit has been issued. The original occupiers have not yet been evicted, usually because compensation had not been paid, or investment for the project has not materialized. "Released land" means that the original occupiers/landholders have been evicted (*dibebaskan*).

TABLE 1.4
Comparison of released land (holding location permits) that is in
use or remains undeveloped (neglected)

Allocation	Released land				Total area (ha)
	In use/ developed	%	Not used/ undeveloped (actively neglected)	%	
Housing	6,722	15%	38,856	85%	45,578
Industry	2,875	12%	20,537	88%	23,412
Tourism	1,528	14%	9,266	86%	10,794
Plantation estate	470,433	26%	1,328,616	74%	1,799,049
Total	481,558	26%	1,397,275	74%	1,878,833
Average	120,389	16.7%	349,319	83.3%	469,708

Source: Bachriadi (2000, 26), calculated from data provided in Pusat Data Bisnis Indonesia. 1998. "Kebijakan Pertanahan Orde Reformasi." *Informasi PDBI* 18, no. 224 (October): 4.

Note: "Actively neglected" land means that the developer has cleared the land but has not done anything further to develop it.

TABLE 1.5
Administrative High Court (PT-TUN)
cases adjudicated 2001–2008

<i>Year</i>	<i>Number of land cases adjudicated</i>	<i>Total number of cases adjudicated</i>	<i>Land cases as % of total cases adjudicated</i>
Before 2000	17	N/A	
2000	18	626	3%
2001	23	512	4%
2002	29	482	6%
2003	30	545	6%
2004	82	527	16%
2005	120	609	20%
2006	169	505	33%
2007	184	508	36%
2008	190	397	48%
Total	862	4,711	19%

Source: Data from Indonesian Supreme Court on cases adjudicated by Administrative High Court at <http://putusan.mahkamahagung.go.id/app-mari/putusan/>. Accessed on 12 April and 25 May 2009 by Hilma Savitri.

Notes

1. Interview with Pramoedya Ananta Toer, *Time Magazine*, 6 August 2001.

2. Undang-Undang Pokok Agraria (UUPA) 5/1960 is referenced in Indonesian and English as UUPA and BAL (Basic Agrarian Law), respectively.

3. On the social functions of land, see BAL/UUPA §2 /1–3, 4/1, 7, 8, 11/2, 12 and 13/1.

4. Most important among the regulations implementing land reform are UU 56/1960 on the size of agricultural land holdings, PP 224/1961 on land redistribution and compensation, and KepPres 131/1961 on implementation of land reform. Texts of the most important legislation on agrarian law have been published in the regularly revised editions of Harsono. For a summary and analysis of the 1960s land reform legislation, see Harsono 1996, 771–880; 2007b, 364–413. See also Gautama 1993; Parlindungan 1989, 1993, 1994a, 1994b; and Wiradi 2000, 3–22. For the most recent legislation, see www.hukumonline.com and www.kpa.or.id.

5. The Indonesian word *tani* (*petani*) can be translated either as “peasant,” implying traditional village ties and semisubsistence household-based economic orientation, or as a more commercially oriented “farmer.” In the Sukarno era *tani* were still “peasants” (the PKI-affiliated Barisan Tani Indonesia involved in the land reform program was usually translated as the Indonesian Peasants’ Front). Translations of *petani* as “farmer” reflect the greater market dependence brought about by the Green Revolution in the contemporary period. But activist agrarian reform organizations generally prefer the translation “peasant” to describe small farmer-producers despite increasing market dependence because of the political history of the term and its more radical connotations. Here we use both terms, recognizing the importance and ambiguity of their connotations for the peasant farmers of Indonesia.

6. Stage One included Java, Bali, and Lombok; Stage Two included the rest of Indonesia, but mainly affected Sumatra after 1965.

7. Other issues covered in his report were the practice of listing large landholdings under names of owners’ relatives; large landholders identifying themselves as “cultivators” and their tenant farmers as “agricultural laborers” to evade redistribution; the lack of written agreements on sharecropping arrangements; manipulation of land prices; the poor performance of land reform committees; and the burden of negotiating land redistribution through fifteen different government authorities (Walinsky 1977, 343–49).

8. The Land Reform Committees were abolished by KepPres 55/1980 and the Land Courts by UU 7/1970 (see Harsono 1997, 365–69).

9. This study was based on interviews carried out between March and May 2000 in Garut, Indramayu, and Cianjur districts.

10. The landholders took their case to the Bandung Legal Aid Institute in 1998, but the latter could not seek judicial redress because the Indramayu Land Agency Office refused to release the land transfer records, which would have shown to whom and how much land was originally redistributed and to whom the village headman had sold it off after 1965.

11. The term *hak ulayat*, literally “territorial right,” implies concepts of collective authority over sometimes loosely defined territorial areas. Individual rights are generally understood to derive directly or indirectly from these local ancestrally sanctioned authorities recognized in the BAL as belonging to “adat law communities” (UUPA 5/60 §3).

12. Under the 1870 Agrarian Act, introduced by the Dutch colonial administration, land not legally recognized as privately owned (*eigendom*) was deemed to belong to the state. Although the colonial “domain” principle was rejected by the legal-political regime of the postcolonial Indonesian nation-state (UUPA 5/60, Elucidation II/2), the “social function” and

“national interest” principles came to perform the same function, legitimating the expropriation of millions of hectares of customary lands belonging to *adat* communities, now designated as “state land” (Slaats et al. 2009, 495).

13. Like the colonial domain principle, the successor Indonesian government treated uncultivated land as “unowned” state land (*tanah negara*). In fact, most land throughout the country fell under mutually recognized territorial domains of *adat* communities, known as *hak ulayat*. Haverfield, following the Van Vollenhoven interpretation of *adat* law, argues that there is therefore no “owner-less” land in Indonesia (1999, 45). For a critical analysis of the assertions of Van Vollenhoven’s influential *adat* law school of thought, see Burns (1999, 2007). Although this concept of *hak ulayat* may be somewhat reified, it is certainly the case that land did not have to be currently occupied or exploited to fall under the authority of *adat* communities and their guardian spirits.

14. See in particular the elucidation (*penjelasan*) to the BAL/UUPA, which establishes its intent to prevent oppression of the weak by the powerful, and to produce a modern legal regime that is adapted to Indonesian socialism and overcomes the influence of both capitalism and feudalism (UUPA 5/1960, Elucidation II/7, III/1). But the tension between socialist “use value” and capitalist “exchange value” principles nonetheless pervades the BAL/UUPA as well as the policy commitments of independent Indonesia’s first government. See Harsono 1997, 528–40.

15. The most significant forms of title provided by the BAL in addition to *hak milik* (freehold) are commercial use right (HGU), building use right (HGB), and land use right (HPL) (UUPA 5/60 §III–VI). It was these concession rights that the Indonesian state dispensed to resource developers, on what it claimed as state land (*tanah negara*), ignoring the customary *adat* rights of indigenous peoples and long-term claims of untitled peasant smallholders. Under the New Order, separate sectoral legislation—granting HPH (Forest Utilization Concession) and HTI (Industrial Timber Plantation) rights under the Forest Act UU 5/1967—established another basis for accumulation and exploitation of vast areas of land claimed by the state, and became vehicles for disenfranchising local people from their traditional lands.

16. See Fitzpatrick (2007, 132–34). The BAL also negatively associates *adat* with the “feudalism” of the traditional kingdoms of Indonesia (BAL/UUPA 5, 1960, Elucid. 3/1).

17. The most important were UU Pokok Kehutanan 5/1967 (Basic Forestry Law); UU Pokok Pertambangan 11/1967 (Basic Mining Law).

18. Where granted at all, compensation was only for destroyed buildings and crops.

19. Suharto rose to power on the back of an alleged communist coup. The countercoup he led wiped out the Communist Party (PKI), which had been rapidly growing in popularity, and resulted in the slaughter of an estimated 500,000 people associated with the PKI, or its mass organizations, in particular the Indonesian Peasants Union (BTI). Although much of the land reform legislation of the Sukarno Era was left in place under Suharto, the mechanisms for carrying it out—the land reform courts and committees—were dismantled under the New Order.

20. Most of the complaints concerned irregularities in the certification process carried out by the BPN, and claims of forced expropriation by government authorities, the military, or private companies.

21. See also *Kompas*, 21 October 1996.

22. This publication recorded only land disputes reported in the press that appeared to have a human rights dimension, but it has an advantage over other sources in that it includes information on cases that were not formally taken to the authorities (Dianto Bachriadi, pers. comm., October 1999).

23. The KPA Database on Agrarian Conflicts was initiated in collaboration with the authors as part of a research project funded by the Australian Research Council between 1998 and 2001. It utilizes reports from local member organizations and KPA investigators, as well as their own collection of clippings from major national and some regional papers dating back to 1972. The statistics it provides are inevitably biased by media interest and accessibility of activist organizations to conflict sites, and must be interpreted carefully for these reasons. The majority of cases recorded in the database are for provinces in Java (58 percent) and Sumatra (26 percent). This is partly accounted for by the intensity of investment pressure in these provinces. But the low visibility of conflicts in remote locations means that outer island conflicts are most certainly underrepresented in KPA as well as in other official statistics. This database has not been updated by KPA since 2002, when the organization became more focused on organizing and education, and less interested in individual case advocacy (Bachriadi, pers. comm. 25 August 2009).

24. Setiawan (2010, 355). KPA's most recent annual report (2011) notes 163 agrarian conflicts throughout Indonesia for that year (an increase of 53 percent since 2010), with 60 percent of cases from the plantation sector, followed by the sectors of forestry (22 percent), infrastructure (13 percent), mining (4 percent), and aquaculture (1 percent). Laporan Akhir Tahun KPA Tahun 2011 "Tahun Perampasan Tanah dan Kekerasan Terhadap Rakyat" at <http://www.kpa.or.id/?p=646>. Accessed 27 January 2012.

25. See Pelzer (1991); Bachriadi and Lucas (2001a).

26. UU 51/1960, prohibiting the use of land without legal permit or authority, provides that in resolving conflicts over illegal occupation of

plantation lands, the Minister of Agriculture should give attention to the needs of the people using the land. Explaining the law in a 1962 letter, the minister advised that state lands not used by government or other authorized interests should in principle become agricultural land and be redistributed to the people (Harsono 1997, 110–16). A decree issued by President Suharto (KepPres 32/1979) stated that “HGU lands converted from former Western [that is, the old colonial lease] rights that were occupied by the people and that from the perspective of land use and environmental protection are better used for residence or farming, will be given under new rights to the people occupying them.” But this and similar government decisions indicated that such redistribution is only “so long as they are not needed for public interest projects,” and do not provide for conversion to full private property title (*hak milik*) (KepPres 32/1979, §2/4 and PerMendagri 3/1979, §10). In reality, the above legislation proved a weak basis for claiming unused or neglected leasehold plantation land.

27. Emergency Law 8/1954 attempted to deal with what was then a widespread decolonization issue. In the elucidation to this law it is noted that out of 200,000 hectares of plantation land in Java at that time, approximately 80,000 hectares were occupied by cultivators; in East Sumatra a further 65,000 hectares of tobacco plantations and 60,000 hectares of rubber, coconut, and other plantations were under occupation (Soedargo 1962, 280; Bachriadi and Lucas 2001a, 48–49).

28. Nineteen of forty-five land conflict cases dealt with by the Legal Aid Institute (LBH) for West Java alone between 1984 and 2008 concerned HGU cultivation use rights. See Hardiyanto (1998, 160–71).

29. As part of the New Order development model, plantations were initially rehabilitated to increase export earnings. Coffee, rubber, and palm oil were the most important plantation crops.

30. A notorious example, covered in chapter 6 of this volume, was the disastrous million-hectare peat swamp forest project in Central Kalimantan, approved by presidential fiat in 1996 initially for a transmigrant rice cultivation scheme, and later for oil palm.

31. Under PerMenag/BPN 2/1993, which regulated procedures for companies to obtain location permits and land for investors, the National Land Agency (BPN) was able to issue location permits to companies seeking land for development. The company with a location permit could then take direct steps to acquire the land from landholders, circumventing the usually drawn-out negotiations involving land procurement committees in order to determine compensation, as stipulated in KepPres 55/1993, which regulates the procurement of land for public projects by government in the public interest. In practical terms PerMenag 2/93 made it easier for private

investors to obtain land under “building use right” leases (HGB), because it allowed the company to negotiate directly with landholders once the location permits (*izin lokasi*) had been issued. This circumvented the process of having to work through cumbersome (for investors) land clearance committees, as required for both public and private projects under earlier legislation (PerMendagri 2/1976, see Suhendar and Kasim 1996, 58–59). However, coercion in private land release often occurred, and speculation was widespread. Gustaaf Reerink’s chapter 9 in this volume deals with the legal and practical problems of urban land clearance policy.

32. “Kebijakan Pertanahan Orde Reformasi,” *Informasi*, no. 224 Tahun XVIII, October 1998, p. 4.

33. The Basic Agrarian Law provides that HGU leases that are neglected shall be canceled (§34). SK Menteri Pertanian 167/1990, §§3, 4, and 5 also provide for cancellation if a lease is not used for its specified purpose. In the Gili Trawangan case (chapter 8) the neglected status of the HGU plantation was ignored in the case put to the courts by smallholder claimants, and only acted upon to enable transfer to more powerful political business interests.

34. Even under these repressive circumstances, farmers did not always acquiesce. One of the original landholders at Tanah Lot, Bali, resisted pressure to sell and continued to pay tax on the 0.41 hectares of rice land that now stands under the lobby of the Meridien Hotel in the controversial Bakrie-owned Nirwana Bali Resort complex (interview with NS, October 1999; see also Warren 1998).

35. The term *calo* refers to middleman, or agent, and usually has pejorative overtones of extortion.

36. See, for example, accounts of some of the more notorious land conflicts at Kedung Ombo (Stanley 1994; Aditjondro 1998); Tanah Lot in Bali (Warren 1998); Tubanan in Surabaya (Lucas 1997); Cimacan and Tapos (Bachriadi and Lucas 2001a); and Jenggawah in East Java (Hafid 2001). See also the publications of the Legal Aid Institute (YLBHI) (*Laporan Kasus* 1990, 1991) and the Consortium for Agrarian Reform (KPA—the nongovernment umbrella organization that brings together a large number of local organizations struggling for land reform and *adat* land rights); Bachriadi, Faryadi, and Setiawan (1997); Hardiyanto (1998); and the publications of the social research institute AKATIGA (Suhendar 1994; Suhendar and Winarni 1998).

37. See chapter 10 in this volume for a detailed discussion of President Yudhoyono’s controversial National Agrarian Reform Program (PPAN).

38. For detailed references to protest actions in this period, see Lucas and Warren (2003, 87–94). For background to these reclaiming actions

and the strategies adopted from the point of view of Legal Aid and local activist groups involved, see Wijardjo and Perdana (2001). Among the best known of the reclaiming cases involving former Dutch plantation estates were those at Cimacan and Tapos. Cimacan was one of the six cases that achieved notoriety in the “Land for the People” calendar for which two student activists were jailed by the Suharto regime (Lucas 1992); the Cimacan case is the subject of chapter 4 in this volume.

39. A publication of the Indonesian Golf Association (PGI) shows a total of 119 golf courses located in twenty-two provinces in Indonesia. One course of eighteen holes in Citeureup in West Java occupies seven hundred hectares, compared with an eighteen-hole course at the hill resort of Kaliurang (Yogyakarta) that uses only sixty hectares (Indonesian Golf Association, *Golf Map*, Jakarta, 2000–2001). By 2007 there were still 104 golf courses in Indonesia (Indonesian Golf Association 2006–7). Despite recognizing that golf courses absorbed a large amount of space that was only “enjoyed by a small number of wealthy people,” the governor of West Java, H. R. Nuriana, rejected the proposal to convert golf courses to food crop cultivation even in that time of food crisis (*Kompas On Line*, 24 June 1998).

40. See table 1.4 (chapter appendix). According to the Basic Agrarian Law, all property rights including private *hak milik* title are automatically canceled when land is abandoned (*terlantar*) (UUPA 5/60 §27). As described in the elucidation to the legislation, “Land is deemed ‘neglected’ if with intention it is not used properly in accord with its condition or character and in accord with the purpose of attached rights.” On the “abandoned lands” regulation (PP 36/1998 and PP 11/2010) see Setiawan (2010, 348–49, 422).

41. Herlambang Perdana, pers. comm., 11 December 2001. Long-running disputes over lands leased to plantations in East Java include those at Malang, Ngawi, and Pasuruan (*Surabaya Post On Line*, 17 September 1996).

42. *Republika*, 12 December 1998.

43. *Tempo*, 12 June 2001. In 1995, long before there were any signs of an end to the Suharto regime, several hundred farmers in Jember showed their anger at the government decision to issue an HGU lease on land they had worked for twenty-five years to a state plantation company by setting fire to nineteen tobacco sheds, administrative offices, and company vehicles (*Kompas*, 25 September 2000; Hafid 2001). It would be a mistake, therefore, to assume, as Pramoedya’s remarks introducing this chapter might suggest, that there was no popular resistance to dispossession under the New Order.

44. *Surya*, 9 September 1998; *Indonesian Observer*, 24 May 2000.

45. For further detail on direct action agrarian protests that accompanied the *reformasi* movement, see Lucas and Warren 2003, 87–94.

46. *Republika*, 12 December 1998.
47. *Kompas*, 22 April 1998. See also reference to similar gendered protest in the Gili Trawangan case in this volume (chapter 8).
48. *Merdeka*, 24 September 1998.
49. *Tempo Interaktif*, 23 November 2001; *Surya*, 1 September 1998; *Inside Indonesia*, January–March 2002, pp. 16–17; *Prisma*, August 2001, no. 7, 27–28. The West Java Peasants' Union (SPJB) claimed to have evidence of 660 cases of the use of force toward farmers since Suharto stepped down (*Republika*, 15 September 2001; *Kompas*, 25 September 2001).
50. *Waspada*, 7 July 1998. While at Gili Trawangan and Cimacan state security officers stood by without intervening in these reclaiming actions of the *reformasi* period, developers hired thugs in attempts to thwart local occupations (see chapters 4 and 8).
51. See *Republika*, 26 June 2000; *Suara Kaltim*, 2 July 2000; *Waspada*, 23 July 1998, *Banjarmasin Pos*, 28 October 1999; *Sriwijaya Pos*, 25 September 1999; Agence France Presse, 15 May 2000.
52. *Far Eastern Economic Review*, 13 July 2000 and 18 July 2002; *Indonesian Observer*, 17 February 2001; *Time*, 28 May 2001.
53. *Jakarta Post*, 4 March 2000; *Bali Post*, 8 February 2000; *Suara Kalimantan*, 22 March 2000; *Suara Merdeka*, 2 May 2000.
54. *Indonesian Observer*, 24 May 2000.
55. *Suara Merdeka*, 2 May 2000.
56. *Tanah ganjaran* (from *ganjar* meaning reward), elsewhere in Java termed *tanah bengkok*, is land provided to officials in lieu of salary. Since headmen and officials of urban communities designated as *kelurahan* under the Village Government Law (UU 5/1979) are now civil servants, *kelurahan* have had to give up *tanah ganjaran* to the next level of local government, where it is commonly sold off to investors. In Surabaya, this has become a serious problem (Arief Djati, pers. comm. 17 February 2002). Although technically the subdistrict (*kecamatan*) is responsible for the sale of the land, without the headman's approval the transfer of rights cannot be completed. Residents of Babatan, therefore, assumed that the subdistrict was in collusion with the village head (*lurah*) in this instance.
57. *Surya*, 11 July 1998.
58. There are two reasons for this. First, since *reformasi*, external funding for NGO human rights programs, including land disputes advocacy, has been replaced by programs to strengthen governance and civil society. Second, farmers' organizations formed during the Reform Era do not have the resources to collect, record, and report data on land disputes. After 2000, the Dutch aid organization NOVIB, YLBHI's biggest donor for twenty years, stopped funding this umbrella legal aid organization, and several of

its branches no longer collect data on land disputes (Bachriadi, pers.comm. 19 September 2009).

59. See BPN Director Joyo Winoto's speech at <http://www.brighten.or.id/brighten/index.php/opinion/joyo-winoto/64-mewujudkan-keadilan-dan-kesejahteraan>. Accessed 5 December 2011.

60. For the geographic location of the PTUN administrative courts see <http://www.mahkamahagung.go.id>.

61. The administrative courts, however, have extremely limited jurisdiction, and have a ninety-day term of limitation (Bedner 2011).

62. The local NGO, the Batang Farmers Struggle Forum, supported the takeover of 187 hectares of rubber and clove plantations by 2,200 families and an unsuccessful application to the local Batang Land Office to issue ownership certificates. Farmers were not successful in reclaiming another 113 hectares leased since 1966 under HGU by a company (PT Pagilaran) run by a Gadjah Mada University-controlled foundation. After they reclaimed the just-mentioned land, protesters were physically beaten by a three-hundred-strong mobile police brigade (Brimob) trucked in from neighboring districts (interview by Dianto Bachriadi with FPPB activist, Garut 26 April 2002; Statement, BPN Propinsi Jawa Tengah, 3 July 2001).

63. The North Sumatran land conflicts (which began in the early 1990s) involved occupation of both state-owned (including military-owned) and privately owned palm oil plantations. These actions have been part of an ongoing agrarian reform campaign by the North Sumatra Farmers Union (SPSU), and the national Indonesian Federation of Farmers' Unions (FSPI).

64. The five plantations totaling 23,000 hectares in Banggai, Donggala, and Bual districts have been reclaimed by 7,900 families with support from the local Yayasan Tanah Merdeka, but NGO activists believed government recognition was unlikely (*Tempo*, 28 April 2002).

65. See chapter 8 on the Gili Trawangan case in Lombok. At Serangan, Sendang Pasir, and Sumber Kelampok in Bali, negotiations have taken place between district officials and villagers over occupied lands, but no final agreements have been struck. Regional governments continue to resist occupants' demands, since large-scale development for capital-intensive projects on the lands claimed is in officials' interest.

66. It should not be assumed that local people perceive retention of reclaimed lands as a priority in all cases. This has been the cause of tension between activists and the local groups they have supported. The NGO focus on sustainable outcomes has meant that where the return of land is feasible, this is their preferred option. Activists frequently commented on the difficulty of persuading recipients not to sell off their land. The point

that farmers involved in reclaiming actions often preferred fair compensation to the return of their lands is a common complaint of NGO supporters. The very low prices received for agricultural commodities and the poor bargaining position of smallholders in the global market need to be taken into account when assessing the implications of such choices.

67. UU 22/1999 concerning regional government (revised by UU 32/2004 on regional government) and UU25/1999 on revenue sharing.

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